

# As Passed by the House

124th General Assembly

Regular Session

2001-2002

Am. H. B. No. 533

REPRESENTATIVES Buehrer, Willamowski, Seitz, Manning,  
Womer Benjamin, Gilb, Calvert, Otterman, Salerno, Hughes, Setzer, Roman,  
Schmidt, Peterson, Hoops, Hagan, Flannery, Redfern, Collier

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## A B I L L

To amend section 2317.02 of the Revised Code to permit 1  
the testimonial privilege between a physician and a 2  
deceased patient to be waived by any party to a 3  
will contest action. 4

### BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That section 2317.02 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 2317.02.** The following persons shall not testify in 7  
certain respects: 8

(A) An attorney, concerning a communication made to the 9  
attorney by a client in that relation or the attorney's advice to 10  
a client, except that the attorney may testify by express consent 11  
of the client or, if the client is deceased, by the express 12  
consent of the surviving spouse or the executor or administrator 13  
of the estate of the deceased client and except that, if the 14  
client voluntarily testifies or is deemed by section 2151.421 of 15  
the Revised Code to have waived any testimonial privilege under 16  
this division, the attorney may be compelled to testify on the 17  
same subject; 18

(B)(1) A physician or a dentist concerning a communication 19  
made to the physician or dentist by a patient in that relation or 20  
the physician's or dentist's advice to a patient, except as 21  
otherwise provided in this division, division (B)(2), and division 22  
(B)(3) of this section, and except that, if the patient is deemed 23  
by section 2151.421 of the Revised Code to have waived any 24  
testimonial privilege under this division, the physician may be 25  
compelled to testify on the same subject. 26

The testimonial privilege established under this division 27  
does not apply, and a physician or dentist may testify or may be 28  
compelled to testify, in any of the following circumstances: 29

(a) In any civil action, in accordance with the discovery 30  
provisions of the Rules of Civil Procedure in connection with a 31  
civil action, or in connection with a claim under Chapter 4123. of 32  
the Revised Code, under any of the following circumstances: 33

(i) If the patient or the guardian or other legal 34  
representative of the patient gives express consent; 35

(ii) If the patient is deceased, the spouse of the patient or 36  
the executor or administrator of the patient's estate gives 37  
express consent; 38

(iii) If a medical claim, dental claim, chiropractic claim, 39  
or optometric claim, as defined in section 2305.11 of the Revised 40  
Code, an action for wrongful death, any other type of civil 41  
action, or a claim under Chapter 4123. of the Revised Code is 42  
filed by the patient, the personal representative of the estate of 43  
the patient if deceased, or the patient's guardian or other legal 44  
representative. 45

(b) In any civil action concerning court-ordered treatment or 46  
services received by a patient, if the court-ordered treatment or 47  
services were ordered as part of a case plan journalized under 48  
section 2151.412 of the Revised Code or the court-ordered 49

treatment or services are necessary or relevant to dependency, 50  
neglect, or abuse or temporary or permanent custody proceedings 51  
under Chapter 2151. of the Revised Code. 52

(c) In any criminal action concerning any test or the results 53  
of any test that determines the presence or concentration of 54  
alcohol, a drug of abuse, or alcohol and a drug of abuse in the 55  
patient's blood, breath, urine, or other bodily substance at any 56  
time relevant to the criminal offense in question. 57

(d) In any criminal action against a physician or dentist. In 58  
such an action, the testimonial privilege established under this 59  
division does not prohibit the admission into evidence, in 60  
accordance with the Rules of Evidence, of a patient's medical or 61  
dental records or other communications between a patient and the 62  
physician or dentist that are related to the action and obtained 63  
by subpoena, search warrant, or other lawful means. A court that 64  
permits or compels a physician or dentist to testify in such an 65  
action or permits the introduction into evidence of patient 66  
records or other communications in such an action shall require 67  
that appropriate measures be taken to ensure that the 68  
confidentiality of any patient named or otherwise identified in 69  
the records is maintained. Measures to ensure confidentiality that 70  
may be taken by the court include sealing its records or deleting 71  
specific information from its records. 72

(e) In any will contest action under sections 2107.71 to 73  
2107.77 of the Revised Code if all of the following apply: 74

(i) The patient is deceased. 75

(ii) A party to the will contest action requests the 76  
testimony, demonstrates to the court that that party would be an 77  
heir of the patient if the patient died without a will, is a 78  
beneficiary under the will that is the subject of the will contest 79  
action, or is a beneficiary under another testamentary document 80

allegedly executed by the patient, and demonstrates to the court  
that the testimony is necessary to establish the party's rights as  
described in this division.

(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the person's blood, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.

(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this division shall be construed to

limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.

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(3)(a) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(a)(iii) of this section, a physician or dentist may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

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(b) If the testimonial privilege described in division (B)(1) of this section does not apply to a physician or dentist as provided in division (B)(1)(c) of this section, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of results submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision

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(c) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(e) of this section, a physician or dentist may be compelled to testify or to submit to discovery in the will contest action under sections 2107.71 to 2107.77 of the Revised Code only as to the patient in question on issues relevant to the competency of the patient at the time of the execution of the will. Testimony or discovery conducted pursuant to this division shall be conducted in accordance with the Rules of Civil Procedure.

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(4) The testimonial privilege described in division (B)(1) of this section is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

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(5)(a) As used in divisions (B)(1) to (4) of this section, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

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(b) As used in division (B)(2) of this section, "health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

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(c) As used in division (B)(5)(b) of this section:

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(i) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not

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require hospitalization, including a dialysis center, ambulatory  
surgical facility, cardiac catheterization facility, diagnostic  
imaging center, extracorporeal shock wave lithotripsy center, home  
health agency, inpatient hospice, birthing center, radiation  
therapy center, emergency facility, and an urgent care center.  
"Ambulatory health care facility" does not include the private  
office of a physician or dentist, whether the office is for an  
individual or group practice.

(ii) "Emergency facility" means a hospital emergency  
department or any other facility that provides emergency medical  
services.

(iii) "Health care practitioner" has the same meaning as in  
section 4769.01 of the Revised Code.

(iv) "Hospital" has the same meaning as in section 3727.01 of  
the Revised Code.

(v) "Long-term care facility" means a nursing home,  
residential care facility, or home for the aging, as those terms  
are defined in section 3721.01 of the Revised Code; an adult care  
facility, as defined in section 3722.01 of the Revised Code; a  
nursing facility or intermediate care facility for the mentally  
retarded, as those terms are defined in section 5111.20 of the  
Revised Code; a facility or portion of a facility certified as a  
skilled nursing facility under Title XVIII of the "Social Security  
Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) "Pharmacy" has the same meaning as in section 4729.01 of  
the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section  
apply to doctors of medicine, doctors of osteopathic medicine,  
doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section  
affects, or shall be construed as affecting, the immunity from

civil liability conferred by section 307.628 or 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(C) A member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect, when the member of the clergy, rabbi, priest, or minister remains accountable to the authority of that church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the member of the clergy, rabbi, priest, or minister for a religious counseling purpose in the member of the clergy's, rabbi's, priest's, or minister's professional character; however, the member of the clergy, rabbi, priest, or minister may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust;

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is



sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, or independent social worker, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.

(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client or social worker-client relationship.

(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after

an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

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(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

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(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.

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(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

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(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.35 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication

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made through a telecommunications relay service. Nothing in this  
section shall limit the obligation of a communications assistant  
to divulge information or testify when mandated by federal law or  
regulation or pursuant to subpoena in a criminal proceeding.

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Nothing in this section shall limit any immunity or privilege  
granted under federal law or regulation.

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(J)(1) A chiropractor in a civil proceeding concerning a  
communication made to the chiropractor by a patient in that  
relation or the chiropractor's advice to a patient, except as  
otherwise provided in this division. The testimonial privilege  
established under this division does not apply, and a chiropractor  
may testify or may be compelled to testify, in any civil action,  
in accordance with the discovery provisions of the Rules of Civil  
Procedure in connection with a civil action, or in connection with  
a claim under Chapter 4123. of the Revised Code, under any of the  
following circumstances:

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(a) If the patient or the guardian or other legal  
representative of the patient gives express consent.

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(b) If the patient is deceased, the spouse of the patient or  
the executor or administrator of the patient's estate gives  
express consent.

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(c) If a medical claim, dental claim, chiropractic claim, or  
optometric claim, as defined in section 2305.11 of the Revised  
Code, an action for wrongful death, any other type of civil  
action, or a claim under Chapter 4123. of the Revised Code is  
filed by the patient, the personal representative of the estate of  
the patient if deceased, or the patient's guardian or other legal  
representative.

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(2) If the testimonial privilege described in division (J)(1)  
of this section does not apply as provided in division (J)(1)(c)  
of this section, a chiropractor may be compelled to testify or to

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submit to discovery under the Rules of Civil Procedure only as to 333  
a communication made to the chiropractor by the patient in 334  
question in that relation, or the chiropractor's advice to the 335  
patient in question, that related causally or historically to 336  
physical or mental injuries that are relevant to issues in the 337  
medical claim, dental claim, chiropractic claim, or optometric 338  
claim, action for wrongful death, other civil action, or claim 339  
under Chapter 4123. of the Revised Code. 340

(3) The testimonial privilege established under this division 341  
does not apply, and a chiropractor may testify or be compelled to 342  
testify, in any criminal action or administrative proceeding. 343

(4) As used in this division, "communication" means 344  
acquiring, recording, or transmitting any information, in any 345  
manner, concerning any facts, opinions, or statements necessary to 346  
enable a chiropractor to ~~diagnosis~~ diagnose, treat, or act for a 347  
patient. A communication may include, but is not limited to, any 348  
chiropractic, office, or hospital communication such as a record, 349  
chart, letter, memorandum, laboratory test and results, x-ray, 350  
photograph, financial statement, diagnosis, or prognosis. 351  
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**Section 2.** That existing section 2317.02 of the Revised Code 353  
is hereby repealed. 354