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Representatives Schmidt, Schneider, White, Collier, Peterson, Hollister, Kearns, Wagner, Faber, Gibbs, DeWine, Flowers, Taylor, Setzer, Raga, Reidelbach, Wolpert, Webster, Aslanides, Raussen, Daniels, Carmichael, Blasdel, Koziura, D. Evans, T. Patton, Sferra, Seaver, Hughes, Barrett, G. Smith, Driehaus, Woodard, Olman, Book, Brown, Brinkman, Calvert, Cates, Chandler, Clancy, Combs, Core, DeGeeter, Distel, Domenick, C. Evans, Fessler, Gilb, Grendell, Hagan, Hartnett, Harwood, Hoops, Husted, Key, Kilbane, Martin, Mason, Niehaus, Oelslager, Otterman, S. Patton, Price, Reinhard, Schaffer, Schlichter, Seitz, Slaby, J. Stewart, Widowfield, Yates, Young

A B I L L

To amend section 2743.43, to enact sections 2317.43, 1
2323.421, 2323.45, and 3929.302, and to repeal 2
section 2303.23 of the Revised Code to prohibit 3
the use of a defendant's statement of sympathy as 4
evidence in a medical liability action, establish 5
qualifications for expert witnesses in medical 6
liability actions, regulate the use of affidavits 7
of noninvolvement in medical claims, and regulate 8
the collection and disclosure of medical claims 9
data. 10

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

Section 1. That section 2743.43 be amended and sections 11
2317.43, 2323.421, 2323.45, and 3929.302 of the Revised Code be 12

enacted to read as follows:

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Sec. 2317.43. (A) In any civil action brought by an alleged victim of an unanticipated outcome of medical care or in any arbitration proceeding related to such a civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim, and that relate to the discomfort, pain, suffering, injury, or death of the alleged victim as the result of the unanticipated outcome of medical care are inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

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(B) For purposes of this section, unless the context otherwise requires:

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(1) "Health care provider" has the same meaning as in division (B)(5) of section 2317.02 of the Revised Code.

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(2) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

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(3) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

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(4) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

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Sec. 2323.421. A person licensed in another state to practice medicine, who testifies as an expert witness on behalf of any party in this state in any action against a physician for injury or death, whether in contract or tort, arising out of the provision of or failure to provide health care services, shall be deemed to have a temporary license to practice medicine in this state for the purpose of providing such testimony and is subject to the authority of the state medical board and the provisions of Chapter 4731. of the Revised Code. 43
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Sec. 2323.45. (A)(1) A health care provider named as a defendant in a civil action based upon a medical claim is permitted to file a motion with the court for dismissal of the claim accompanied by an affidavit of noninvolvement. The defendant shall notify all parties in writing of the filing of the motion. Prior to ruling on the motion, the court shall allow the parties not less than thirty days from the date that the parties were served with the notice to respond to the motion. 52
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(2) An affidavit of noninvolvement shall set forth, with particularity, the facts that demonstrate that the defendant was misidentified or otherwise not involved individually or through the action of the defendant's agents or employees in the care and treatment of the plaintiff, was not obligated individually or through the defendant's agents or employees to provide for the care and treatment of the plaintiff, and could not have caused the alleged malpractice individually or through the defendant's agents or employees in any way. 60
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(B)(1) The parties shall have the right to challenge the affidavit of noninvolvement by filing a motion and submitting an affidavit with the court that contradicts the assertions of noninvolvement made in the defendant's affidavit of 69
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noninvolvement.

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(2) If the affidavit of noninvolvement is challenged, any party may request an oral hearing on the motion for dismissal. If requested, the court shall hold a hearing to determine if the defendant was involved, directly or indirectly, in the care and treatment of the plaintiff, or was obligated, directly or indirectly, for the care and treatment of the plaintiff.

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(3) The court shall consider all evidence submitted by the parties and the parties' arguments and may dismiss the civil action based upon the defendant's lack of involvement in the elements of the plaintiff's medical claim. The court shall rule on all challenges to the affidavit of noninvolvement within seventy-five days after the filing of the affidavit of noninvolvement.

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(4) A court's dismissal of a claim against a defendant pursuant to this section shall be deemed otherwise than upon the merits and without prejudice. In the event subsequent discovery indicates involvement by the dismissed defendant, then upon the motion of any party the dismissed defendant shall be reinstated as a party defendant by the court.

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(C) If the court determines that a health care provider named as a defendant has falsely filed or made false or inaccurate statements in an affidavit of noninvolvement, the court, upon a motion or upon its own initiative, shall immediately reinstate the claim against that defendant, if previously dismissed.

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Reinstatement of a party pursuant to this division shall not be barred by any statute of limitations defense that was not valid at the time the original affidavit was filed.

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(D) In any action in which the defendant is found by the court to have knowingly filed a false or inaccurate affidavit of noninvolvement, the court shall impose upon the person who signed

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the affidavit or represented the defendant, or both, an 104
appropriate sanction, including, but not limited to, an order to 105
pay to other parties to the claim the amount of the reasonable 106
expenses that the parties incurred as a result of the filing of 107
the false or inaccurate affidavit, including reasonable attorney's 108
fees. 109

(E) In any action in which the court determines that a party 110
falsely objected to a defendant's affidavit of noninvolvement, or 111
knowingly provided an inaccurate statement regarding a defendant's 112
affidavit, the court shall impose upon the party or the party's 113
counsel, or both, an appropriate sanction, including, but not 114
limited to, an order to pay to the other parties to the claim the 115
amount of the reasonable expenses that the parties incurred as a 116
result of the submission of the false objection or inaccurate 117
statement, including reasonable attorney's fees. 118

(F) As used in this section: 119

(1) "Health care provider" has the same meaning as in 120
division (B)(5) of section 2317.02 of the Revised Code. 121

(2) "Medical claim" means any claim that is asserted in any 122
civil action against a health care provider and that arises out of 123
the medical diagnosis, care, or treatment of any person. "Medical 124
claim" includes derivative claims for relief. 125

Sec. 2743.43. (A) No person shall be deemed competent to give 126
expert testimony on the liability issues in a medical claim, as 127
defined in section 2305.113 of the Revised Code, unless: 128

(1) Such person is licensed to practice medicine and surgery, 129
osteopathic medicine and surgery, or podiatric medicine and 130
surgery by the state medical board or by the licensing authority 131
of any state; 132

(2) Such person devotes three-fourths of the person's 133

professional time to the active clinical practice of medicine or 134
surgery, osteopathic medicine and surgery, or podiatric medicine 135
and surgery, or to its instruction in an accredited university; 136

(3) The person practices in the same or a substantially 137
similar specialty as the defendant. The court shall not permit an 138
expert in one medical specialty to testify against a health care 139
provider in another medical specialty unless the expert shows both 140
that the standards of care and practice in the two specialties are 141
similar and that the expert has substantial familiarity between 142
the specialties. 143

(4) If the person is certified in a specialty, the person 144
must be certified by a board recognized by the American board of 145
medical specialties or the American board of osteopathic 146
specialties in a specialty having acknowledged expertise and 147
training directly related to the particular health care matter at 148
issue. 149

(B) Nothing in division (A) of this section shall be 150
construed to limit the power of the trial court to adjudge the 151
testimony of any expert witness incompetent on any other ground. 152

(C) Nothing in division (A) of this section shall be 153
construed to limit the power of the trial court to allow the 154
testimony of any other ~~expert~~ witness, on a matter unrelated to 155
the liability issues in the medical claim, when that testimony is 156
relevant to the medical claim involved. 157

Sec. 3929.302. (A) Each authorized insurer, surplus lines 158
insurer, risk retention group, self-insurer, the medical liability 159
underwriting association if created under section 3929.63 of the 160
Revised Code, and any other entity that offers medical malpractice 161
insurance in this state, shall report to the department of 162
insurance at least annually any medical, dental, optometric, or 163
chiropractic claim filed against an insured located in this state, 164

<u>if the claim resulted in any of the following results:</u>	165
<u>(1) A final judgment in any amount;</u>	166
<u>(2) A settlement in any amount;</u>	167
<u>(3) A final disposition of the claim resulting in no indemnity payment on behalf of the insured.</u>	168 169
<u>(B) The report required by division (A) of this section shall contain all of the following information:</u>	170 171
<u>(1) The name, address, health care provider professional license number, and specialty coverage of the insured;</u>	172 173
<u>(2) The insured's policy number;</u>	174
<u>(3) The date of the occurrence that created the claim;</u>	175
<u>(4) The name and address of the injured person;</u>	176
<u>(5) The date that the claim was filed;</u>	177
<u>(6) The injured person's age and sex;</u>	178
<u>(7) The total number, names, and health care provider professional license numbers of all defendants involved in the claim;</u>	179 180 181
<u>(8) The date and amount of the judgment, if any, including a description of the portion of the judgment that represents economic loss, noneconomic loss and, if applicable, punitive damages;</u>	182 183 184 185
<u>(9) In the case of a settlement, the date and amount of the settlement, the injured person's incurred and anticipated medical expenses, wage loss, and other expenses;</u>	186 187 188
<u>(10) The loss adjustment expense paid to defense's counsel, plaintiff's counsel if available, and all other allocated loss adjustment expenses paid;</u>	189 190 191

<u>(11) The date and reason for final disposition, if no judgment or settlement occurred;</u>	192
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<u>(12) A summary of the occurrence that created the claim, including all of the following information:</u>	194
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<u>(a) The name of the institution, if any, and the location within the institution where the injury occurred;</u>	196
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<u>(b) The final diagnosis for which treatment was sought or rendered, including the patient's actual condition;</u>	198
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<u>(c) The operation, diagnostic, or treatment procedure causing the injury;</u>	200
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<u>(d) A description of the principal injury that gave rise to the claim;</u>	202
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<u>(e) The safety management steps that have been taken by the insured to make similar occurrences or injuries less likely in the future.</u>	204
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<u>(13) Any other information required by the superintendent of insurance pursuant to rules adopted in accordance with Chapter 119. of the Revised Code.</u>	207
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<u>(C) The superintendent may prescribe the format and the manner in which the information described in division (B) of this section is reported. The superintendent may, by rule adopted in accordance with Chapter 119. of the Revised Code, prescribe the frequency that the information described in division (B) of this section is reported.</u>	210
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<u>(D) The superintendent may designate one or more rating organizations licensed pursuant to section 3937.05 of the Revised Code or other agencies to assist the superintendent in gathering the information, and making compilations thereof, required by this section.</u>	216
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<u>(E) There shall be no liability on the part of, and no cause</u>	221

of action of any nature shall arise against, any person or entity 222
reporting under this section or its agents or employees, or the 223
department of insurance or its employees, for any action taken 224
that is authorized under this section. 225

(F) The superintendent shall impose a fine of five hundred 226
dollars against any person designated in division (A) of this 227
section that fails to timely submit the report required under this 228
section. Fines imposed under this section shall be paid into the 229
state treasury to the credit of the department of insurance 230
operating fund created under section 3901.021 of the Revised Code. 231

(G) Except as specifically provided in division (H) of this 232
section, the information required by this section shall be 233
confidential and privileged and is not a public record as defined 234
in section 149.43 of the Revised Code. The information provided 235
under this section is not subject to discovery or subpoena and 236
shall not be made public by the superintendent or any other 237
person. 238

(H) The department of insurance shall prepare an annual 239
report that summarizes the closed claims reported under this 240
section. The annual report shall summarize the closed claim 241
reports on a statewide basis, and also by specialty and geographic 242
region. Individual claims data shall not be released in the annual 243
report. Copies of the report shall be provided to the members of 244
the general assembly. 245

(I) As used in this section, medical, dental, optometric, and 246
chiropractic claims include those claims filed with a medical 247
malpractice insurer against an insured located in this state that 248
either: 249

(1) Meet the definition of a "medical claim," "dental claim," 250
"optometric claim," or "chiropractic claim" under section 2305.113 251
of the Revised Code; 252

(2) Have not been asserted in any civil action, but that 253
otherwise meet the definition of a "medical claim," "dental 254
claim," "optometric claim," or "chiropractic claim" under section 255
2305.113 of the Revised Code. 256

Section 2. That existing section 2743.43 and section 2303.23 257
of the Revised Code are hereby repealed. 258

Section 3. The General Assembly respectfully requests the 259
Supreme Court to require a plaintiff filing a medical liability 260
claim to include a certificate of expert review with the complaint 261
or to file the certificate of expert review with the court within 262
thirty days after the filing of the claim. The General Assembly 263
respectfully requests that the certificate of expert review 264
require the signature of an expert witness from the same specialty 265
as the defendant; said witness shall be required to meet the 266
evidentiary and case law requirements of a medical expert capable 267
of testifying at trial. A certificate of expert review should be 268
required to state with particularity the expert's familiarity with 269
the applicable standard of care, the expert's qualifications, the 270
expert's opinion as to how the applicable standard of care was 271
breached, and the expert's opinion as to how the breach resulted 272
in the injury or death. 273

Section 4. The General Assembly respectfully requests the 274
Supreme Court to amend the Rules of Civil Procedure to incorporate 275
the mandatory discovery disclosure rules embodied in Rule 26 of 276
the Federal Rules of Civil Procedure. 277