

As Passed by the Senate

125th General Assembly

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Sub. H. B. No. 215

**Representatives Schmidt, Schneider, White, Collier, Peterson, Hollister,
Kearns, Wagner, Faber, Gibbs, DeWine, Flowers, Taylor, Setzer, Raga,
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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**

**Senators Spada, Mumper, Armbruster, Amstutz, Austria, Blessing, Carey,
Coughlin, DiDonato, Fedor, Fingerhut, Robert Gardner, Harris, Hottinger,
Jacobson, Jordan, Mallory, Nein, Padgett, Roberts, Schuler, Schuring, Dann,
Stivers, Wachtmann, Zurz, Randy Gardner**

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: 13

Sec. 2317.43. (A) In any civil action brought by an alleged 14
victim of an unanticipated outcome of medical care or in any 15
arbitration proceeding related to such a civil action, any and all 16
statements, affirmations, gestures, or conduct expressing apology, 17
sympathy, commiseration, condolence, compassion, or a general 18
sense of benevolence that are made by a health care provider or an 19
employee of a health care provider to the alleged victim, a 20
relative of the alleged victim, or a representative of the alleged 21
victim, and that relate to the discomfort, pain, suffering, 22
injury, or death of the alleged victim as the result of the 23
unanticipated outcome of medical care are inadmissible as evidence 24
of an admission of liability or as evidence of an admission 25
against interest. 26

(B) For purposes of this section, unless the context 27
otherwise requires: 28

(1) "Health care provider" has the same meaning as in 29
division (B)(5) of section 2317.02 of the Revised Code. 30

(2) "Relative" means a victim's spouse, parent, grandparent, 31
stepfather, stepmother, child, grandchild, brother, sister, half 32
brother, half sister, or spouse's parents. The term includes said 33
relationships that are created as a result of adoption. In 34
addition, "relative" includes any person who has a family-type 35
relationship with a victim. 36

(3) "Representative" means a legal guardian, attorney, person 37

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 solely 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. The conclusion of
an action against a physician shall not be construed to have any
effect on the board's authority to take action against a physician
who testifies as an expert witness under this section.

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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.

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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

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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.

(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
noninvolvement.

(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.

(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.

(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 pursuant to Civil Rule 41.

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

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

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(F) As used in this section:

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

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

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(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) The superintendent of insurance, by rule 158

adopted in accordance with Chapter 119. of the Revised Code, shall 159
require each authorized insurer, surplus lines insurer, risk 160
retention group, self-insurer, captive insurer, the medical 161
liability underwriting association if created under section 162
3929.63 of the Revised Code, and any other entity that provides 163
medical malpractice insurance to risks located in this state, to 164
report information to the department of insurance at least 165
annually regarding any medical, dental, optometric, or 166
chiropractic claim asserted against a risk located in this state, 167
if the claim resulted in any of the following results: 168

(1) A final judgment in any amount; 169

(2) A settlement in any amount; 170

(3) A final disposition of the claim resulting in no 171
indemnity payment on behalf of the insured. 172

(B) The report required by division (A) of this section shall 173
contain such information as the superintendent prescribes by rule 174
adopted in accordance with Chapter 119. of the Revised Code, 175
including, but not limited to, the following information: 176

(1) The name, address, and specialty coverage of the insured; 177

(2) The insured's policy number; 178

(3) The date of the occurrence that created the claim; 179

(4) The name and address of the injured person; 180

(5) The date and amount of the judgment, if any, including a 181
description of the portion of the judgment that represents 182
economic loss, noneconomic loss and, if applicable, punitive 183
damages; 184

(6) In the case of a settlement, the date and amount of the 185
settlement; 186

(7) Any allocated loss adjustment expenses; 187

(8) Any other information required by the superintendent 188
pursuant to rules adopted in accordance with Chapter 119. of the 189
Revised Code. 190

(C) The superintendent may prescribe the format and the 191
manner in which the information described in division (B) of this 192
section is reported. The superintendent may, by rule adopted in 193
accordance with Chapter 119. of the Revised Code, prescribe the 194
frequency that the information described in division (B) of this 195
section is reported. 196

(D) The superintendent may designate one or more rating 197
organizations licensed pursuant to section 3937.05 of the Revised 198
Code or other agencies to assist the superintendent in gathering 199
the information, and making compilations thereof, required by this 200
section. 201

(E) There shall be no liability on the part of, and no cause 202
of action of any nature shall arise against, any person or entity 203
reporting under this section or its agents or employees, or the 204
department of insurance or its employees, for any action taken 205
that is authorized under this section. 206

(F) The superintendent may impose a fine not to exceed five 207
hundred dollars against any person designated in division (A) of 208
this section that fails to timely submit the report required under 209
this section. Fines imposed under this section shall be paid into 210
the state treasury to the credit of the department of insurance 211
operating fund created under section 3901.021 of the Revised Code. 212

(G) Except as specifically provided in division (H) of this 213
section, the information required by this section shall be 214
confidential and privileged and is not a public record as defined 215
in section 149.43 of the Revised Code. The information provided 216
under this section is not subject to discovery or subpoena and 217
shall not be made public by the superintendent or any other 218

person. 219

(H) The department of insurance shall prepare an annual 220
report that summarizes the closed claims reported under this 221
section. The annual report shall summarize the closed claim 222
reports on a statewide basis, and also by specialty and geographic 223
region. Individual claims data shall not be released in the annual 224
report. Copies of the report shall be provided to the members of 225
the general assembly. 226

(I) As used in this section, medical, dental, optometric, and 227
chiropractic claims include those claims asserted against a risk 228
located in this state that either: 229

(1) Meet the definition of a "medical claim," "dental claim," 230
"optometric claim," or "chiropractic claim" under section 2305.113 231
of the Revised Code; 232

(2) Have not been asserted in any civil action, but that 233
otherwise meet the definition of a "medical claim," "dental 234
claim," "optometric claim," or "chiropractic claim" under section 235
2305.113 of the Revised Code. 236

Section 2. That existing section 2743.43 and section 2303.23 237
of the Revised Code are hereby repealed. 238

Section 3. The General Assembly respectfully requests the 239
Supreme Court to amend the Rules of Civil Procedure to require a 240
plaintiff filing a medical liability claim to include a 241
certificate of expert review as to each defendant. The General 242
Assembly respectfully requests that the certificate of expert 243
review require the signature of an expert witness from the same 244
specialty as the defendant; said witness shall be required to meet 245
the statutory evidentiary and case law requirements of a medical 246
expert capable of testifying at trial. A certificate of expert 247
review should be required to state with particularity the expert's 248

familiarity with the applicable standard of care, the expert's 249
qualifications, the expert's opinion as to how the applicable 250
standard of care was breached, and the expert's opinion as to how 251
the breach resulted in the injury or death. 252

Section 4. The General Assembly respectfully requests the 253
Supreme Court to amend the Rules of Civil Procedure to establish 254
an expedited discovery process in medical liability claims to 255
provide for the timely resolution of the disputes. 256