

## As Introduced

126th General Assembly  
Regular Session  
2005-2006

S. B. No. 19

Senators Schuler, Wachtmann, Mumper, Clancy, Hagan

—

### A BILL

To amend section 2317.02 and to enact section 1  
2305.2341 of the Revised Code to make the 2  
testimonial privilege against disclosure of 3  
certain communications applicable to critical 4  
incident stress management (CISM) team members and 5  
to provide CISM team members with immunity against 6  
tort or other civil liability arising from actions 7  
or omissions during debriefing sessions. 8

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

**Section 1.** That section 2317.02 be amended and section 9  
2305.2341 of the Revised Code be enacted to read as follows: 10

**Sec. 2305.2341.** (A) As used in this section: 11

(1) "Crisis response services" means consultation, risk 12  
assessment, referral, and on-site crisis intervention services 13  
provided by a critical incident stress management team to 14  
individuals affected by crisis or disaster. 15

(2) "Critical incident stress management team member" or 16  
"team member" means an individual specially trained to provide 17  
crisis response services as a member of an organized community or 18  
local crisis response team that holds membership in the Ohio 19  
critical incident stress management network. 20

(3) "Debriefing session" means a session at which crisis 21  
response services are rendered by a critical incident stress 22  
management team member during or after a crisis or disaster. 23

(4) "Tort action" means a civil action for damages for 24  
injury, death, or loss to person or property other than a civil 25  
action for a breach of contract or another agreement between 26  
persons or government entities. 27

(B) A critical incident stress management team member is not 28  
liable in damages to any person or government entity in a tort or 29  
other civil action, including an action on a physical or mental 30  
health-related claim, for injury, death, or loss to person or 31  
property that allegedly arises from an action or omission of the 32  
team member during a debriefing session, unless the action or 33  
omission constitutes willful or wanton misconduct. 34

**Sec. 2317.02.** The following persons shall not testify in 35  
certain respects: 36

(A) An attorney, concerning a communication made to the 37  
attorney by a client in that relation or the attorney's advice to 38  
a client, except that the attorney may testify by express consent 39  
of the client or, if the client is deceased, by the express 40  
consent of the surviving spouse or the executor or administrator 41  
of the estate of the deceased client and except that, if the 42  
client voluntarily testifies or is deemed by section 2151.421 of 43  
the Revised Code to have waived any testimonial privilege under 44  
this division, the attorney may be compelled to testify on the 45  
same subject; 46

(B)(1) A physician or a dentist concerning a communication 47  
made to the physician or dentist by a patient in that relation or 48  
the physician's or dentist's advice to a patient, except as 49  
otherwise provided in this division, division (B)(2), and division 50

(B)(3) of this section, and except that, if the patient is deemed 51  
by section 2151.421 of the Revised Code to have waived any 52  
testimonial privilege under this division, the physician may be 53  
compelled to testify on the same subject. 54

The testimonial privilege established under this division 55  
does not apply, and a physician or dentist may testify or may be 56  
compelled to testify, in any of the following circumstances: 57

(a) In any civil action, in accordance with the discovery 58  
provisions of the Rules of Civil Procedure in connection with a 59  
civil action, or in connection with a claim under Chapter 4123. of 60  
the Revised Code, under any of the following circumstances: 61

(i) If the patient or the guardian or other legal 62  
representative of the patient gives express consent; 63

(ii) If the patient is deceased, the spouse of the patient or 64  
the executor or administrator of the patient's estate gives 65  
express consent; 66

(iii) If a medical claim, dental claim, chiropractic claim, 67  
or optometric claim, as defined in section 2305.113 of the Revised 68  
Code, an action for wrongful death, any other type of civil 69  
action, or a claim under Chapter 4123. of the Revised Code is 70  
filed by the patient, the personal representative of the estate of 71  
the patient if deceased, or the patient's guardian or other legal 72  
representative. 73

(b) In any civil action concerning court-ordered treatment or 74  
services received by a patient, if the court-ordered treatment or 75  
services were ordered as part of a case plan journalized under 76  
section 2151.412 of the Revised Code or the court-ordered 77  
treatment or services are necessary or relevant to dependency, 78  
neglect, or abuse or temporary or permanent custody proceedings 79  
under Chapter 2151. of the Revised Code. 80

(c) In any criminal action concerning any test or the results 81  
of any test that determines the presence or concentration of 82  
alcohol, a drug of abuse, or alcohol and a drug of abuse in the 83  
patient's blood, breath, urine, or other bodily substance at any 84  
time relevant to the criminal offense in question. 85

(d) In any criminal action against a physician or dentist. In 86  
such an action, the testimonial privilege established under this 87  
division does not prohibit the admission into evidence, in 88  
accordance with the Rules of Evidence, of a patient's medical or 89  
dental records or other communications between a patient and the 90  
physician or dentist that are related to the action and obtained 91  
by subpoena, search warrant, or other lawful means. A court that 92  
permits or compels a physician or dentist to testify in such an 93  
action or permits the introduction into evidence of patient 94  
records or other communications in such an action shall require 95  
that appropriate measures be taken to ensure that the 96  
confidentiality of any patient named or otherwise identified in 97  
the records is maintained. Measures to ensure confidentiality that 98  
may be taken by the court include sealing its records or deleting 99  
specific information from its records. 100

(e) In any will contest action under sections 2107.71 to 101  
2107.77 of the Revised Code if all of the following apply: 102

(i) The patient is deceased. 103

(ii) A party to the will contest action requests the 104  
testimony, demonstrates to the court that that party would be an 105  
heir of the patient if the patient died without a will, is a 106  
beneficiary under the will that is the subject of the will contest 107  
action, or is a beneficiary under another testamentary document 108  
allegedly executed by the patient, and demonstrates to the court 109  
that the testimony is necessary to establish the party's rights as 110  
described in this division. 111

(2)(a) If any law enforcement officer submits a written 112  
statement to a health care provider that states that an official 113  
criminal investigation has begun regarding a specified person or 114  
that a criminal action or proceeding has been commenced against a 115  
specified person, that requests the provider to supply to the 116  
officer copies of any records the provider possesses that pertain 117  
to any test or the results of any test administered to the 118  
specified person to determine the presence or concentration of 119  
alcohol, a drug of abuse, or alcohol and a drug of abuse in the 120  
person's blood, breath, or urine at any time relevant to the 121  
criminal offense in question, and that conforms to section 122  
2317.022 of the Revised Code, the provider, except to the extent 123  
specifically prohibited by any law of this state or of the United 124  
States, shall supply to the officer a copy of any of the requested 125  
records the provider possesses. If the health care provider does 126  
not possess any of the requested records, the provider shall give 127  
the officer a written statement that indicates that the provider 128  
does not possess any of the requested records. 129

(b) If a health care provider possesses any records of the 130  
type described in division (B)(2)(a) of this section regarding the 131  
person in question at any time relevant to the criminal offense in 132  
question, in lieu of personally testifying as to the results of 133  
the test in question, the custodian of the records may submit a 134  
certified copy of the records, and, upon its submission, the 135  
certified copy is qualified as authentic evidence and may be 136  
admitted as evidence in accordance with the Rules of Evidence. 137  
Division (A) of section 2317.422 of the Revised Code does not 138  
apply to any certified copy of records submitted in accordance 139  
with this division. Nothing in this division shall be construed to 140  
limit the right of any party to call as a witness the person who 141  
administered the test to which the records pertain, the person 142  
under whose supervision the test was administered, the custodian 143

of the records, the person who made the records, or the person 144  
under whose supervision the records were made. 145

(3)(a) If the testimonial privilege described in division 146  
(B)(1) of this section does not apply as provided in division 147  
(B)(1)(a)(iii) of this section, a physician or dentist may be 148  
compelled to testify or to submit to discovery under the Rules of 149  
Civil Procedure only as to a communication made to the physician 150  
or dentist by the patient in question in that relation, or the 151  
physician's or dentist's advice to the patient in question, that 152  
related causally or historically to physical or mental injuries 153  
that are relevant to issues in the medical claim, dental claim, 154  
chiropractic claim, or optometric claim, action for wrongful 155  
death, other civil action, or claim under Chapter 4123. of the 156  
Revised Code. 157

(b) If the testimonial privilege described in division (B)(1) 158  
of this section does not apply to a physician or dentist as 159  
provided in division (B)(1)(c) of this section, the physician or 160  
dentist, in lieu of personally testifying as to the results of the 161  
test in question, may submit a certified copy of those results, 162  
and, upon its submission, the certified copy is qualified as 163  
authentic evidence and may be admitted as evidence in accordance 164  
with the Rules of Evidence. Division (A) of section 2317.422 of 165  
the Revised Code does not apply to any certified copy of results 166  
submitted in accordance with this division. Nothing in this 167  
division shall be construed to limit the right of any party to 168  
call as a witness the person who administered the test in 169  
question, the person under whose supervision the test was 170  
administered, the custodian of the results of the test, the person 171  
who compiled the results, or the person under whose supervision 172  
the results were compiled. 173

(c) If the testimonial privilege described in division (B)(1) 174  
of this section does not apply as provided in division (B)(1)(e) 175

of this section, a physician or dentist may be compelled to 176  
testify or to submit to discovery in the will contest action under 177  
sections 2107.71 to 2107.77 of the Revised Code only as to the 178  
patient in question on issues relevant to the competency of the 179  
patient at the time of the execution of the will. Testimony or 180  
discovery conducted pursuant to this division shall be conducted 181  
in accordance with the Rules of Civil Procedure. 182

(4) The testimonial privilege described in division (B)(1) of 183  
this section is not waived when a communication is made by a 184  
physician to a pharmacist or when there is communication between a 185  
patient and a pharmacist in furtherance of the physician-patient 186  
relation. 187

(5)(a) As used in divisions (B)(1) to (4) of this section, 188  
"communication" means acquiring, recording, or transmitting any 189  
information, in any manner, concerning any facts, opinions, or 190  
statements necessary to enable a physician or dentist to diagnose, 191  
treat, prescribe, or act for a patient. A "communication" may 192  
include, but is not limited to, any medical or dental, office, or 193  
hospital communication such as a record, chart, letter, 194  
memorandum, laboratory test and results, x-ray, photograph, 195  
financial statement, diagnosis, or prognosis. 196

(b) As used in division (B)(2) of this section, "health care 197  
provider" means a hospital, ambulatory care facility, long-term 198  
care facility, pharmacy, emergency facility, or health care 199  
practitioner. 200

(c) As used in division (B)(5)(b) of this section: 201

(i) "Ambulatory care facility" means a facility that provides 202  
medical, diagnostic, or surgical treatment to patients who do not 203  
require hospitalization, including a dialysis center, ambulatory 204  
surgical facility, cardiac catheterization facility, diagnostic 205  
imaging center, extracorporeal shock wave lithotripsy center, home 206

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 237  
involving the use of a drug of abuse, to the employer of the 238  
employee in accordance with division (B) of that section. As used 239  
in division (B)(7) of this section, "employee," "employer," and 240  
"physician" have the same meanings as in section 2305.33 of the 241  
Revised Code. 242

(C) A member of the clergy, rabbi, priest, or regularly 243  
ordained, accredited, or licensed minister of an established and 244  
legally cognizable church, denomination, or sect, when the member 245  
of the clergy, rabbi, priest, or minister remains accountable to 246  
the authority of that church, denomination, or sect, concerning a 247  
confession made, or any information confidentially communicated, 248  
to the member of the clergy, rabbi, priest, or minister for a 249  
religious counseling purpose in the member of the clergy's, 250  
rabbi's, priest's, or minister's professional character; however, 251  
the member of the clergy, rabbi, priest, or minister may testify 252  
by express consent of the person making the communication, except 253  
when the disclosure of the information is in violation of a sacred 254  
trust; 255

(D) Husband or wife, concerning any communication made by one 256  
to the other, or an act done by either in the presence of the 257  
other, during coverture, unless the communication was made, or act 258  
done, in the known presence or hearing of a third person competent 259  
to be a witness; and such rule is the same if the marital relation 260  
has ceased to exist; 261

(E) A person who assigns a claim or interest, concerning any 262  
matter in respect to which the person would not, if a party, be 263  
permitted to testify; 264

(F) A person who, if a party, would be restricted under 265  
section 2317.03 of the Revised Code, when the property or thing is 266  
sold or transferred by an executor, administrator, guardian, 267

trustee, heir, devisee, or legatee, shall be restricted in the 268  
same manner in any action or proceeding concerning the property or 269  
thing. 270

(G)(1) A school guidance counselor who holds a valid educator 271  
license from the state board of education as provided for in 272  
section 3319.22 of the Revised Code, a person licensed under 273  
Chapter 4757. of the Revised Code as a professional clinical 274  
counselor, professional counselor, social worker, independent 275  
social worker, marriage and family therapist or independent 276  
marriage and family therapist, or registered under Chapter 4757. 277  
of the Revised Code as a social work assistant concerning a 278  
confidential communication received from a client in that relation 279  
or the person's advice to a client unless any of the following 280  
applies: 281

(a) The communication or advice indicates clear and present 282  
danger to the client or other persons. For the purposes of this 283  
division, cases in which there are indications of present or past 284  
child abuse or neglect of the client constitute a clear and 285  
present danger. 286

(b) The client gives express consent to the testimony. 287

(c) If the client is deceased, the surviving spouse or the 288  
executor or administrator of the estate of the deceased client 289  
gives express consent. 290

(d) The client voluntarily testifies, in which case the 291  
school guidance counselor or person licensed or registered under 292  
Chapter 4757. of the Revised Code may be compelled to testify on 293  
the same subject. 294

(e) The court in camera determines that the information 295  
communicated by the client is not germane to the counselor-client, 296  
marriage and family therapist-client, or social worker-client 297  
relationship. 298

(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.

(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.

(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.

(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;

(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 330  
the Revised Code or Title II of the "Communications Act of 1934," 331  
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 332  
made through a telecommunications relay service. Nothing in this 333  
section shall limit the obligation of a communications assistant 334  
to divulge information or testify when mandated by federal law or 335  
regulation or pursuant to subpoena in a criminal proceeding. 336

Nothing in this section shall limit any immunity or privilege 337  
granted under federal law or regulation. 338

(J)(1) A chiropractor in a civil proceeding concerning a 339  
communication made to the chiropractor by a patient in that 340  
relation or the chiropractor's advice to a patient, except as 341  
otherwise provided in this division. The testimonial privilege 342  
established under this division does not apply, and a chiropractor 343  
may testify or may be compelled to testify, in any civil action, 344  
in accordance with the discovery provisions of the Rules of Civil 345  
Procedure in connection with a civil action, or in connection with 346  
a claim under Chapter 4123. of the Revised Code, under any of the 347  
following circumstances: 348

(a) If the patient or the guardian or other legal 349  
representative of the patient gives express consent. 350

(b) If the patient is deceased, the spouse of the patient or 351  
the executor or administrator of the patient's estate gives 352  
express consent. 353

(c) If a medical claim, dental claim, chiropractic claim, or 354  
optometric claim, as defined in section 2305.113 of the Revised 355  
Code, an action for wrongful death, any other type of civil 356  
action, or a claim under Chapter 4123. of the Revised Code is 357  
filed by the patient, the personal representative of the estate of 358  
the patient if deceased, or the patient's guardian or other legal 359  
representative. 360

(2) If the testimonial privilege described in division (J)(1) 361  
of this section does not apply as provided in division (J)(1)(c) 362  
of this section, a chiropractor may be compelled to testify or to 363  
submit to discovery under the Rules of Civil Procedure only as to 364  
a communication made to the chiropractor by the patient in 365  
question in that relation, or the chiropractor's advice to the 366  
patient in question, that related causally or historically to 367  
physical or mental injuries that are relevant to issues in the 368  
medical claim, dental claim, chiropractic claim, or optometric 369  
claim, action for wrongful death, other civil action, or claim 370  
under Chapter 4123. of the Revised Code. 371

(3) The testimonial privilege established under this division 372  
does not apply, and a chiropractor may testify or be compelled to 373  
testify, in any criminal action or administrative proceeding. 374

(4) As used in this division, "communication" means 375  
acquiring, recording, or transmitting any information, in any 376  
manner, concerning any facts, opinions, or statements necessary to 377  
enable a chiropractor to diagnose, treat, or act for a patient. A 378  
communication may include, but is not limited to, any 379  
chiropractic, office, or hospital communication such as a record, 380  
chart, letter, memorandum, laboratory test and results, x-ray, 381  
photograph, financial statement, diagnosis, or prognosis. 382

(K)(1) Except as provided under division (K)(2) of this 383  
section, a critical incident stress management team member 384  
concerning a communication received from an individual who 385  
receives crisis response services from the team member, or the 386  
team member's advice to the individual, during a debriefing 387  
session. 388

(2) The testimonial privilege established under division 389  
(K)(1) of this section does not apply if any of the following are 390  
true: 391

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

(b) The individual who received crisis response services gives express consent to the testimony.

(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.

(f) The communication or advice pertains or is related to any criminal act.

(3) As used in this division, "critical incident stress management team member" or "team member" and "debriefing session" have the same meanings as in section 2305.2341 of the Revised Code.

**Section 2.** That existing section 2317.02 of the Revised Code is hereby repealed.

**Section 3.** Section 2317.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 374, Am. H.B. 533, and Am. Sub. S.B. 281, all of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that

amendments are to be harmonized if reasonably capable of	422
simultaneous operation, finds that the composite is the resulting	423
version of the section in effect prior to the effective date of	424
the section as presented in this act.	425