

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 421**

**Representatives Slaby, O'Brien**

**Cosponsors: Representatives Johnson, Combs, Stebelton, Anielski,  
McGregor, Maag**

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**A B I L L**

To amend sections 2305.33, 2317.02, and 4731.22 and 1  
to enact section 2305.331 of the Revised Code to 2  
grant civil immunity to physicians who report a 3  
patient's use of a drug of abuse or other 4  
condition not involving such use to specified 5  
persons or entities, to exclude the making of 6  
those reports from the grounds for disciplinary 7  
action against physicians, and to apply the civil 8  
immunity of physicians who report to an employer 9  
in the business of public transportation an 10  
employee's use of a drug of abuse or other 11  
condition not involving such use to any violation 12  
of a patient's privacy rights. 13

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

**Section 1.** That sections 2305.33, 2317.02, and 4731.22 be 14  
amended and section 2305.331 of the Revised Code be enacted to 15  
read as follows: 16

**Sec. 2305.33.** (A) As used in this section: 17

(1) "Bus" has the same meaning as in section 4511.78 of the 18

Revised Code. 19

(2) "Business of public transportation" means a business that 20  
includes among its functions the transporting of passengers in 21  
interstate or intrastate commerce by aircraft, railroad train, 22  
school or other bus, taxicab, or other type of common carrier, 23  
whether or not a charge is imposed for the transportation. 24  
"Business of public transportation" includes, but is not limited 25  
to, an Ohio transit system. 26

(3) "Civil action" means a tort or contract action for 27  
damages for harm. 28

(4) "Employee" means an individual who is employed by an 29  
employer to operate any aircraft, railroad train, school or other 30  
bus, taxicab, or other type of common carrier. 31

(5) "Employer" means a person that is engaged in the business 32  
of public transportation. 33

(6) "Harm" means any injury, death, or loss to person or 34  
property or any violation of a patient's privacy or 35  
confidentiality rights under federal or state law. 36

(7) "Ohio transit system" means a county transit system 37  
operated in accordance with sections 306.01 to 306.13 of the 38  
Revised Code, a regional transit authority operated in accordance 39  
with sections 306.30 to 306.71 of the Revised Code, a regional 40  
transit commission operated in accordance with sections 306.80 to 41  
306.90 of the Revised Code, any municipally owned transportation 42  
system, and any mass transit company that operates exclusively 43  
within the territorial limits of a municipal corporation, or 44  
within the territorial limits of a municipal corporation and one 45  
or more municipal corporations immediately contiguous to that 46  
municipal corporation. 47

(8) "Physician" means a person who is licensed pursuant to 48  
Chapter 4731. of the Revised Code to practice medicine or surgery 49

or osteopathic medicine and surgery. 50

(9) "Prescription" has the same meaning as in section 4729.01 51  
of the Revised Code. 52

(10) "School bus" has the same meaning as in section 4511.01 53  
of the Revised Code. 54

~~(11) "Tort action" means a civil action for damages for 55  
injury, death, or loss to person or property, other than a civil 56  
action for damages for a breach of contract or another agreement 57  
between persons. "Tort action" includes, but is not limited to, a 58  
civil action for damages against a physician on the ground of a 59  
breach of the confidentiality of the physician patient 60  
relationship. 61~~

(B) A physician is not liable in damages in a civil action 62  
for harm that allegedly is incurred by an employee as a result of 63  
the physician reporting any of the following to the employer of 64  
the employee: 65

(1) The physician has determined that the employee is using a 66  
drug of abuse dispensed pursuant to a prescription and that the 67  
employee's use of the drug of abuse represents a potential risk of 68  
~~harm~~ injury, death, or loss to person or property of passengers on 69  
any aircraft, railroad train, school or other bus, taxicab, or 70  
other type of common carrier operated by the employee; 71

(2) The physician has determined that the employee is using a 72  
drug of abuse otherwise than pursuant to a prescription. 73

(3) The physician has determined that the employee has a 74  
condition, other than one involving the use of a drug of abuse, 75  
that represents a potential risk of ~~harm~~ injury, death, or loss to 76  
person or property of passengers on any aircraft, railroad train, 77  
school or other bus, taxicab, or other type of common carrier 78  
operated by the employee. 79

(C)(1) This section does not create, and shall not be 80  
construed as creating, a new cause of action or substantive legal 81  
right against a physician and in favor of an employee who was a 82  
patient of the physician, who was the subject of a report 83  
described in division (B) of this section, and who allegedly 84  
sustained harm as a result of the report, or in favor of any other 85  
person who allegedly sustained harm as a result of the report. 86

(2) This section does not impose, and shall not be construed 87  
as imposing, a duty upon a physician to make a report as described 88  
in division (B) of this section to an employer of an employee who 89  
the physician determines is using a drug of abuse dispensed 90  
pursuant to a prescription or is using a drug of abuse other than 91  
pursuant to a prescription, or who the physician determines has a 92  
condition, other than one involving the use of a drug of abuse, 93  
that represents a potential risk of ~~harm~~ injury, death, or loss to 94  
person or property of passengers on the type of common carrier 95  
operated by the employee. 96

(3) This section does not affect and shall not be construed 97  
as affecting, any immunities from civil liability or defenses 98  
established by another section of the Revised Code or available at 99  
common law, to which a physician may be entitled. 100

(D) ~~In the event that~~ If a physician makes a report described 101  
in division (B) of this section, the physician also shall make a 102  
report to the employee who was the subject of the report. If the 103  
report to the employer is in writing, the report to the employee 104  
shall be in writing. 105

**Sec. 2305.331.** (A) As used in this section: 106

(1) "Civil action" means a tort or contract action for 107  
damages for harm. 108

(2) "Harm" means any injury, death, or loss to person or 109

property or any violation of a patient's privacy or 110  
confidentiality rights under federal or state law. 111

(3) "Motor vehicle" has the same meaning as in section 112  
4511.01 of the Revised Code. 113

(4) "Physician" means a person who is licensed pursuant to 114  
Chapter 4731. of the Revised Code to practice medicine and surgery 115  
or osteopathic medicine and surgery. 116

(5) "Prescription" has the same meaning as in section 4729.01 117  
of the Revised Code. 118

(B) A physician is not liable in damages in a civil action 119  
for harm that allegedly is incurred by a patient of the physician 120  
as a result of the physician reporting any of the following to the 121  
registrar of motor vehicles as provided in section 4507.20 of the 122  
Revised Code, to another physician, to a police or other law 123  
enforcement entity, to a family member or other individual 124  
involved in the medical treatment of the patient, to a court 125  
official, or to any other governmental body: 126

(1) The physician has determined that the patient is using a 127  
drug of abuse dispensed pursuant to a prescription and that the 128  
patient's use of the drug of abuse represents a potential risk of 129  
injury, death, or loss to person or property arising from the 130  
patient's operation of a motor vehicle. 131

(2) The physician has determined that the patient is using a 132  
drug of abuse otherwise than pursuant to a prescription. 133

(3) The physician has determined that the patient has a 134  
condition, other than one involving the use of a drug of abuse, 135  
that represents a potential risk of injury, death, or loss to 136  
person or property arising from the patient's operation of a motor 137  
vehicle. 138

(C)(1) This section does not create, and shall not be 139

construed as creating, a new cause of action or substantive legal 140  
right against a physician and in favor of a patient of the 141  
physician who was the subject of a report described in division 142  
(B) of this section and who allegedly sustained harm as a result 143  
of the report or in favor of any other person who allegedly 144  
sustained harm as a result of the report. 145

(2) This section does not impose, and shall not be construed 146  
as imposing, a duty upon a physician to make a report as described 147  
in division (B) of this section to any person or entity regarding 148  
a patient who the physician determines is using a drug of abuse 149  
dispensed pursuant to a prescription or is using a drug of abuse 150  
other than pursuant to a prescription or who the physician 151  
determines has a condition, other than one involving the use of a 152  
drug of abuse, that represents a potential risk of injury, death, 153  
or loss to person or property arising from the patient's operation 154  
of a motor vehicle. 155

(3) This section does not affect and shall not be construed 156  
as affecting any immunities from civil liability or defenses 157  
established by another section of the Revised Code or available at 158  
common law to which a physician may be entitled. 159

(D) If a physician makes a report described in division (B) 160  
of this section, the physician also shall make a report to the 161  
patient who was the subject of the report. If the report to a 162  
person or entity described in division (B) of this section is in 163  
writing, the report to the patient shall be in writing. 164

**Sec. 2317.02.** The following persons shall not testify in 165  
certain respects: 166

(A)(1) An attorney, concerning a communication made to the 167  
attorney by a client in that relation or the attorney's advice to 168  
a client, except that the attorney may testify by express consent 169  
of the client or, if the client is deceased, by the express 170

consent of the surviving spouse or the executor or administrator 171  
of the estate of the deceased client. However, if the client 172  
voluntarily testifies or is deemed by section 2151.421 of the 173  
Revised Code to have waived any testimonial privilege under this 174  
division, the attorney may be compelled to testify on the same 175  
subject. 176

The testimonial privilege established under this division 177  
does not apply concerning a communication between a client who has 178  
since died and the deceased client's attorney if the communication 179  
is relevant to a dispute between parties who claim through that 180  
deceased client, regardless of whether the claims are by testate 181  
or intestate succession or by inter vivos transaction, and the 182  
dispute addresses the competency of the deceased client when the 183  
deceased client executed a document that is the basis of the 184  
dispute or whether the deceased client was a victim of fraud, 185  
undue influence, or duress when the deceased client executed a 186  
document that is the basis of the dispute. 187

(2) An attorney, concerning a communication made to the 188  
attorney by a client in that relationship or the attorney's advice 189  
to a client, except that if the client is an insurance company, 190  
the attorney may be compelled to testify, subject to an in camera 191  
inspection by a court, about communications made by the client to 192  
the attorney or by the attorney to the client that are related to 193  
the attorney's aiding or furthering an ongoing or future 194  
commission of bad faith by the client, if the party seeking 195  
disclosure of the communications has made a prima\_facie showing of 196  
bad faith, fraud, or criminal misconduct by the client. 197

(B)(1) A physician or a dentist concerning a communication 198  
made to the physician or dentist by a patient in that relation or 199  
the physician's or dentist's advice to a patient, except as 200  
otherwise provided in this division, division (B)(2), and division 201  
(B)(3) of this section, and except that, if the patient is deemed 202

by section 2151.421 of the Revised Code to have waived any 203  
testimonial privilege under this division, the physician may be 204  
compelled to testify on the same subject. 205

The testimonial privilege established under this division 206  
does not apply, and a physician or dentist may testify or may be 207  
compelled to testify, in any of the following circumstances: 208

(a) In any civil action, in accordance with the discovery 209  
provisions of the Rules of Civil Procedure in connection with a 210  
civil action, or in connection with a claim under Chapter 4123. of 211  
the Revised Code, under any of the following circumstances: 212

(i) If the patient or the guardian or other legal 213  
representative of the patient gives express consent; 214

(ii) If the patient is deceased, the spouse of the patient or 215  
the executor or administrator of the patient's estate gives 216  
express consent; 217

(iii) If a medical claim, dental claim, chiropractic claim, 218  
or optometric claim, as defined in section 2305.113 of the Revised 219  
Code, an action for wrongful death, any other type of civil 220  
action, or a claim under Chapter 4123. of the Revised Code is 221  
filed by the patient, the personal representative of the estate of 222  
the patient if deceased, or the patient's guardian or other legal 223  
representative. 224

(b) In any civil action concerning court-ordered treatment or 225  
services received by a patient, if the court-ordered treatment or 226  
services were ordered as part of a case plan journalized under 227  
section 2151.412 of the Revised Code or the court-ordered 228  
treatment or services are necessary or relevant to dependency, 229  
neglect, or abuse or temporary or permanent custody proceedings 230  
under Chapter 2151. of the Revised Code. 231

(c) In any criminal action concerning any test or the results 232  
of any test that determines the presence or concentration of 233



alcohol, a drug of abuse, a combination of them, a controlled 234  
substance, or a metabolite of a controlled substance in the 235  
patient's whole blood, blood serum or plasma, breath, urine, or 236  
other bodily substance at any time relevant to the criminal 237  
offense in question. 238

(d) In any criminal action against a physician or dentist. In 239  
such an action, the testimonial privilege established under this 240  
division does not prohibit the admission into evidence, in 241  
accordance with the Rules of Evidence, of a patient's medical or 242  
dental records or other communications between a patient and the 243  
physician or dentist that are related to the action and obtained 244  
by subpoena, search warrant, or other lawful means. A court that 245  
permits or compels a physician or dentist to testify in such an 246  
action or permits the introduction into evidence of patient 247  
records or other communications in such an action shall require 248  
that appropriate measures be taken to ensure that the 249  
confidentiality of any patient named or otherwise identified in 250  
the records is maintained. Measures to ensure confidentiality that 251  
may be taken by the court include sealing its records or deleting 252  
specific information from its records. 253

(e)(i) If the communication was between a patient who has 254  
since died and the deceased patient's physician or dentist, the 255  
communication is relevant to a dispute between parties who claim 256  
through that deceased patient, regardless of whether the claims 257  
are by testate or intestate succession or by inter vivos 258  
transaction, and the dispute addresses the competency of the 259  
deceased patient when the deceased patient executed a document 260  
that is the basis of the dispute or whether the deceased patient 261  
was a victim of fraud, undue influence, or duress when the 262  
deceased patient executed a document that is the basis of the 263  
dispute. 264

(ii) If neither the spouse of a patient nor the executor or 265

administrator of that patient's estate gives consent under 266  
division (B)(1)(a)(ii) of this section, testimony or the 267  
disclosure of the patient's medical records by a physician, 268  
dentist, or other health care provider under division (B)(1)(e)(i) 269  
of this section is a permitted use or disclosure of protected 270  
health information, as defined in 45 C.F.R. 160.103, and an 271  
authorization or opportunity to be heard shall not be required. 272

(iii) Division (B)(1)(e)(i) of this section does not require 273  
a mental health professional to disclose psychotherapy notes, as 274  
defined in 45 C.F.R. 164.501. 275

(iv) An interested person who objects to testimony or 276  
disclosure under division (B)(1)(e)(i) of this section may seek a 277  
protective order pursuant to Civil Rule 26. 278

(v) A person to whom protected health information is 279  
disclosed under division (B)(1)(e)(i) of this section shall not 280  
use or disclose the protected health information for any purpose 281  
other than the litigation or proceeding for which the information 282  
was requested and shall return the protected health information to 283  
the covered entity or destroy the protected health information, 284  
including all copies made, at the conclusion of the litigation or 285  
proceeding. 286

(2)(a) If any law enforcement officer submits a written 287  
statement to a health care provider that states that an official 288  
criminal investigation has begun regarding a specified person or 289  
that a criminal action or proceeding has been commenced against a 290  
specified person, that requests the provider to supply to the 291  
officer copies of any records the provider possesses that pertain 292  
to any test or the results of any test administered to the 293  
specified person to determine the presence or concentration of 294  
alcohol, a drug of abuse, a combination of them, a controlled 295  
substance, or a metabolite of a controlled substance in the 296  
person's whole blood, blood serum or plasma, breath, or urine at 297

any time relevant to the criminal offense in question, and that 298  
conforms to section 2317.022 of the Revised Code, the provider, 299  
except to the extent specifically prohibited by any law of this 300  
state or of the United States, shall supply to the officer a copy 301  
of any of the requested records the provider possesses. If the 302  
health care provider does not possess any of the requested 303  
records, the provider shall give the officer a written statement 304  
that indicates that the provider does not possess any of the 305  
requested records. 306

(b) If a health care provider possesses any records of the 307  
type described in division (B)(2)(a) of this section regarding the 308  
person in question at any time relevant to the criminal offense in 309  
question, in lieu of personally testifying as to the results of 310  
the test in question, the custodian of the records may submit a 311  
certified copy of the records, and, upon its submission, the 312  
certified copy is qualified as authentic evidence and may be 313  
admitted as evidence in accordance with the Rules of Evidence. 314  
Division (A) of section 2317.422 of the Revised Code does not 315  
apply to any certified copy of records submitted in accordance 316  
with this division. Nothing in this division shall be construed to 317  
limit the right of any party to call as a witness the person who 318  
administered the test to which the records pertain, the person 319  
under whose supervision the test was administered, the custodian 320  
of the records, the person who made the records, or the person 321  
under whose supervision the records were made. 322

(3)(a) If the testimonial privilege described in division 323  
(B)(1) of this section does not apply as provided in division 324  
(B)(1)(a)(iii) of this section, a physician or dentist may be 325  
compelled to testify or to submit to discovery under the Rules of 326  
Civil Procedure only as to a communication made to the physician 327  
or dentist by the patient in question in that relation, or the 328  
physician's or dentist's advice to the patient in question, that 329

related causally or historically to physical or mental injuries 330  
that are relevant to issues in the medical claim, dental claim, 331  
chiropractic claim, or optometric claim, action for wrongful 332  
death, other civil action, or claim under Chapter 4123. of the 333  
Revised Code. 334

(b) If the testimonial privilege described in division (B)(1) 335  
of this section does not apply to a physician or dentist as 336  
provided in division (B)(1)(c) of this section, the physician or 337  
dentist, in lieu of personally testifying as to the results of the 338  
test in question, may submit a certified copy of those results, 339  
and, upon its submission, the certified copy is qualified as 340  
authentic evidence and may be admitted as evidence in accordance 341  
with the Rules of Evidence. Division (A) of section 2317.422 of 342  
the Revised Code does not apply to any certified copy of results 343  
submitted in accordance with this division. Nothing in this 344  
division shall be construed to limit the right of any party to 345  
call as a witness the person who administered the test in 346  
question, the person under whose supervision the test was 347  
administered, the custodian of the results of the test, the person 348  
who compiled the results, or the person under whose supervision 349  
the results were compiled. 350

(4) The testimonial privilege described in division (B)(1) of 351  
this section is not waived when a communication is made by a 352  
physician to a pharmacist or when there is communication between a 353  
patient and a pharmacist in furtherance of the physician-patient 354  
relation. 355

(5)(a) As used in divisions (B)(1) to (4) of this section, 356  
"communication" means acquiring, recording, or transmitting any 357  
information, in any manner, concerning any facts, opinions, or 358  
statements necessary to enable a physician or dentist to diagnose, 359  
treat, prescribe, or act for a patient. A "communication" may 360  
include, but is not limited to, any medical or dental, office, or 361

hospital communication such as a record, chart, letter, 362  
memorandum, laboratory test and results, x-ray, photograph, 363  
financial statement, diagnosis, or prognosis. 364

(b) As used in division (B)(2) of this section, "health care 365  
provider" means a hospital, ambulatory care facility, long-term 366  
care facility, pharmacy, emergency facility, or health care 367  
practitioner. 368

(c) As used in division (B)(5)(b) of this section: 369

(i) "Ambulatory care facility" means a facility that provides 370  
medical, diagnostic, or surgical treatment to patients who do not 371  
require hospitalization, including a dialysis center, ambulatory 372  
surgical facility, cardiac catheterization facility, diagnostic 373  
imaging center, extracorporeal shock wave lithotripsy center, home 374  
health agency, inpatient hospice, birthing center, radiation 375  
therapy center, emergency facility, and an urgent care center. 376  
"Ambulatory health care facility" does not include the private 377  
office of a physician or dentist, whether the office is for an 378  
individual or group practice. 379

(ii) "Emergency facility" means a hospital emergency 380  
department or any other facility that provides emergency medical 381  
services. 382

(iii) "Health care practitioner" has the same meaning as in 383  
section 4769.01 of the Revised Code. 384

(iv) "Hospital" has the same meaning as in section 3727.01 of 385  
the Revised Code. 386

(v) "Long-term care facility" means a nursing home, 387  
residential care facility, or home for the aging, as those terms 388  
are defined in section 3721.01 of the Revised Code; an adult care 389  
facility, as defined in section 5119.70 of the Revised Code; a 390  
nursing facility or intermediate care facility for the mentally 391  
retarded, as those terms are defined in section 5111.20 of the 392

Revised Code; a facility or portion of a facility certified as a 393  
skilled nursing facility under Title XVIII of the "Social Security 394  
Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 395

(vi) "Pharmacy" has the same meaning as in section 4729.01 of 396  
the Revised Code. 397

(d) As used in divisions (B)(1) and (2) of this section, 398  
"drug of abuse" has the same meaning as in section 4506.01 of the 399  
Revised Code. 400

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section 401  
apply to doctors of medicine, doctors of osteopathic medicine, 402  
doctors of podiatry, and dentists. 403

(7) Nothing in divisions (B)(1) to (6) of this section 404  
affects, or shall be construed as affecting, the immunity from 405  
civil liability conferred by ~~section~~ any of the following: 406

(a) Section 307.628 of the Revised Code ~~or the immunity from~~ 407  
~~civil liability conferred by section;~~ 408

(b) Section 2305.33 of the Revised Code upon physicians who 409  
report an employee's use of a drug of abuse, or a condition of an 410  
employee other than one involving the use of a drug of abuse, to 411  
the employer of the employee in accordance with division (B) of 412  
that section. As used in division (B)(7)(b) of this section, 413  
"employee," "employer," and "physician" have the same meanings as 414  
in section 2305.33 of the Revised Code. 415

(c) Section 2305.331 of the Revised Code upon physicians who, 416  
in accordance with division (B) of that section, report a 417  
patient's use of a drug of abuse or a condition of a patient other 418  
than one involving the use of a drug of abuse to any of the 419  
persons or entities described in that division. As used in 420  
division (B)(7)(c) of this section, "physician" has the same 421  
meaning as in section 2305.331 of the Revised Code. 422

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric 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 and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(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 454  
done, in the known presence or hearing of a third person competent 455  
to be a witness; and such rule is the same if the marital relation 456  
has ceased to exist; 457

(E) A person who assigns a claim or interest, concerning any 458  
matter in respect to which the person would not, if a party, be 459  
permitted to testify; 460

(F) A person who, if a party, would be restricted under 461  
section 2317.03 of the Revised Code, when the property or thing is 462  
sold or transferred by an executor, administrator, guardian, 463  
trustee, heir, devisee, or legatee, shall be restricted in the 464  
same manner in any action or proceeding concerning the property or 465  
thing. 466

(G)(1) A school guidance counselor who holds a valid educator 467  
license from the state board of education as provided for in 468  
section 3319.22 of the Revised Code, a person licensed under 469  
Chapter 4757. of the Revised Code as a professional clinical 470  
counselor, professional counselor, social worker, independent 471  
social worker, marriage and family therapist or independent 472  
marriage and family therapist, or registered under Chapter 4757. 473  
of the Revised Code as a social work assistant concerning a 474  
confidential communication received from a client in that relation 475  
or the person's advice to a client unless any of the following 476  
applies: 477

(a) The communication or advice indicates clear and present 478  
danger to the client or other persons. For the purposes of this 479  
division, cases in which there are indications of present or past 480  
child abuse or neglect of the client constitute a clear and 481  
present danger. 482

(b) The client gives express consent to the testimony. 483

(c) If the client is deceased, the surviving spouse or the 484



executor or administrator of the estate of the deceased client 485  
gives express consent. 486

(d) The client voluntarily testifies, in which case the 487  
school guidance counselor or person licensed or registered under 488  
Chapter 4757. of the Revised Code may be compelled to testify on 489  
the same subject. 490

(e) The court in camera determines that the information 491  
communicated by the client is not germane to the counselor-client, 492  
marriage and family therapist-client, or social worker-client 493  
relationship. 494

(f) A court, in an action brought against a school, its 495  
administration, or any of its personnel by the client, rules after 496  
an in-camera inspection that the testimony of the school guidance 497  
counselor is relevant to that action. 498

(g) The testimony is sought in a civil action and concerns 499  
court-ordered treatment or services received by a patient as part 500  
of a case plan journalized under section 2151.412 of the Revised 501  
Code or the court-ordered treatment or services are necessary or 502  
relevant to dependency, neglect, or abuse or temporary or 503  
permanent custody proceedings under Chapter 2151. of the Revised 504  
Code. 505

(2) Nothing in division (G)(1) of this section shall relieve 506  
a school guidance counselor or a person licensed or registered 507  
under Chapter 4757. of the Revised Code from the requirement to 508  
report information concerning child abuse or neglect under section 509  
2151.421 of the Revised Code. 510

(H) A mediator acting under a mediation order issued under 511  
division (A) of section 3109.052 of the Revised Code or otherwise 512  
issued in any proceeding for divorce, dissolution, legal 513  
separation, annulment, or the allocation of parental rights and 514  
responsibilities for the care of children, in any action or 515

proceeding, other than a criminal, delinquency, child abuse, child 516  
neglect, or dependent child action or proceeding, that is brought 517  
by or against either parent who takes part in mediation in 518  
accordance with the order and that pertains to the mediation 519  
process, to any information discussed or presented in the 520  
mediation process, to the allocation of parental rights and 521  
responsibilities for the care of the parents' children, or to the 522  
awarding of parenting time rights in relation to their children; 523

(I) A communications assistant, acting within the scope of 524  
the communication assistant's authority, when providing 525  
telecommunications relay service pursuant to section 4931.06 of 526  
the Revised Code or Title II of the "Communications Act of 1934," 527  
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 528  
made through a telecommunications relay service. Nothing in this 529  
section shall limit the obligation of a communications assistant 530  
to divulge information or testify when mandated by federal law or 531  
regulation or pursuant to subpoena in a criminal proceeding. 532

Nothing in this section shall limit any immunity or privilege 533  
granted under federal law or regulation. 534

(J)(1) A chiropractor in a civil proceeding concerning a 535  
communication made to the chiropractor by a patient in that 536  
relation or the chiropractor's advice to a patient, except as 537  
otherwise provided in this division. The testimonial privilege 538  
established under this division does not apply, and a chiropractor 539  
may testify or may be compelled to testify, in any civil action, 540  
in accordance with the discovery provisions of the Rules of Civil 541  
Procedure in connection with a civil action, or in connection with 542  
a claim under Chapter 4123. of the Revised Code, under any of the 543  
following circumstances: 544

(a) If the patient or the guardian or other legal 545  
representative of the patient gives express consent. 546

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

(c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 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.

(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 submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor'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.

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

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

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

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

(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 division (K) of this section:

(a) "Crisis response services" means consultation, risk

assessment, referral, and on-site crisis intervention services 609  
provided by a critical incident stress management team to 610  
individuals affected by crisis or disaster. 611

(b) "Critical incident stress management team member" or 612  
"team member" means an individual specially trained to provide 613  
crisis response services as a member of an organized community or 614  
local crisis response team that holds membership in the Ohio 615  
critical incident stress management network. 616

(c) "Debriefing session" means a session at which crisis 617  
response services are rendered by a critical incident stress 618  
management team member during or after a crisis or disaster. 619

(L)(1) Subject to division (L)(2) of this section and except 620  
as provided in division (L)(3) of this section, an employee 621  
assistance professional, concerning a communication made to the 622  
employee assistance professional by a client in the employee 623  
assistance professional's official capacity as an employee 624  
assistance professional. 625

(2) Division (L)(1) of this section applies to an employee 626  
assistance professional who meets either or both of the following 627  
requirements: 628

(a) Is certified by the employee assistance certification 629  
commission to engage in the employee assistance profession; 630

(b) Has education, training, and experience in all of the 631  
following: 632

(i) Providing workplace-based services designed to address 633  
employer and employee productivity issues; 634

(ii) Providing assistance to employees and employees' 635  
dependents in identifying and finding the means to resolve 636  
personal problems that affect the employees or the employees' 637  
performance; 638

(iii) Identifying and resolving productivity problems	639
associated with an employee's concerns about any of the following	640
matters: health, marriage, family, finances, substance abuse or	641
other addiction, workplace, law, and emotional issues;	642
(iv) Selecting and evaluating available community resources;	643
(v) Making appropriate referrals;	644
(vi) Local and national employee assistance agreements;	645
(vii) Client confidentiality.	646
(3) Division (L)(1) of this section does not apply to any of	647
the following:	648
(a) A criminal action or proceeding involving an offense	649
under sections 2903.01 to 2903.06 of the Revised Code if the	650
employee assistance professional's disclosure or testimony relates	651
directly to the facts or immediate circumstances of the offense;	652
(b) A communication made by a client to an employee	653
assistance professional that reveals the contemplation or	654
commission of a crime or serious, harmful act;	655
(c) A communication that is made by a client who is an	656
unemancipated minor or an adult adjudicated to be incompetent and	657
indicates that the client was the victim of a crime or abuse;	658
(d) A civil proceeding to determine an individual's mental	659
competency or a criminal action in which a plea of not guilty by	660
reason of insanity is entered;	661
(e) A civil or criminal malpractice action brought against	662
the employee assistance professional;	663
(f) When the employee assistance professional has the express	664
consent of the client or, if the client is deceased or disabled,	665
the client's legal representative;	666
(g) When the testimonial privilege otherwise provided by	667

division (L)(1) of this section is abrogated under law. 668

**Sec. 4731.22.** (A) The state medical board, by an affirmative 669  
vote of not fewer than six of its members, may revoke or may 670  
refuse to grant a certificate to a person found by the board to 671  
have committed fraud during the administration of the examination 672  
for a certificate to practice or to have committed fraud, 673  
misrepresentation, or deception in applying for or securing any 674  
certificate to practice or certificate of registration issued by 675  
the board. 676

(B) The board, by an affirmative vote of not fewer than six 677  
members, shall, to the extent permitted by law, limit, revoke, or 678  
suspend an individual's certificate to practice, refuse to 679  
register an individual, refuse to reinstate a certificate, or 680  
reprimand or place on probation the holder of a certificate for 681  
one or more of the following reasons: 682

(1) Permitting one's name or one's certificate to practice or 683  
certificate of registration to be used by a person, group, or 684  
corporation when the individual concerned is not actually 685  
directing the treatment given; 686

(2) Failure to maintain minimal standards applicable to the 687  
selection or administration of drugs, or failure to employ 688  
acceptable scientific methods in the selection of drugs or other 689  
modalities for treatment of disease; 690

(3) Selling, giving away, personally furnishing, prescribing, 691  
or administering drugs for other than legal and legitimate 692  
therapeutic purposes or a plea of guilty to, a judicial finding of 693  
guilt of, or a judicial finding of eligibility for intervention in 694  
lieu of conviction of, a violation of any federal or state law 695  
regulating the possession, distribution, or use of any drug; 696

(4) Willfully betraying a professional confidence. 697

For purposes of this division, "willfully betraying a professional confidence" does not include ~~providing any of the following:~~

(a) ~~Providing~~ any information, documents, or reports to a child fatality review board under sections 307.621 to 307.629 of the Revised Code ~~and does not include the making of;~~

(b) ~~Making~~ a report of an employee's use of a drug of abuse, or a ~~report of~~ a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes ~~either type of a report as described in this division~~ in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(c) ~~Making a report of a patient's use of a drug of abuse or a report of a condition of a patient other than one involving the use of a drug of abuse to any of the persons or entities described in division (B) of section 2305.331 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes a report as described in this division in accordance with division (B) of that section. As used in this division, "physician" has the same meaning as in section 2305.331 of the Revised Code.~~

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.



As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or 761  
a judicial finding of eligibility for intervention in lieu of 762  
conviction for, a misdemeanor involving moral turpitude; 763

(14) Commission of an act involving moral turpitude that 764  
constitutes a misdemeanor in this state, regardless of the 765  
jurisdiction in which the act was committed; 766

(15) Violation of the conditions of limitation placed by the 767  
board upon a certificate to practice; 768

(16) Failure to pay license renewal fees specified in this 769  
chapter; 770

(17) Except as authorized in section 4731.31 of the Revised 771  
Code, engaging in the division of fees for referral of patients, 772  
or the receiving of a thing of value in return for a specific 773  
referral of a patient to utilize a particular service or business; 774

(18) Subject to section 4731.226 of the Revised Code, 775  
violation of any provision of a code of ethics of the American 776  
medical association, the American osteopathic association, the 777  
American podiatric medical association, or any other national 778  
professional organizations that the board specifies by rule. The 779  
state medical board shall obtain and keep on file current copies 780  
of the codes of ethics of the various national professional 781  
organizations. The individual whose certificate is being suspended 782  
or revoked shall not be found to have violated any provision of a 783  
code of ethics of an organization not appropriate to the 784  
individual's profession. 785

For purposes of this division, a "provision of a code of 786  
ethics of a national professional organization" does not include 787  
any provision that would preclude ~~the making of a report by a~~ 788  
~~physician of an employee's use of a drug of abuse, or of a~~ 789  
~~condition of an employee other than one involving the use of a~~ 790  
~~drug of abuse, to the employer of the employee as described in~~ 791

~~division (B) of section 2305.33 of the Revised Code from making a~~ 792  
~~report of the information described in division (B)(4)(b) or (c)~~ 793  
~~of this section.~~ Nothing in this division affects the immunity 794  
from civil liability conferred by ~~that~~ section 2305.33 or 2305.331 795  
of the Revised Code upon a physician who makes ~~either type of a~~ 796  
report as described in this division in accordance with division 797  
(B) of ~~that~~ either section, whichever is applicable. As used in 798  
this division, "~~employee,~~" "~~employer,~~" and "physician" ~~have~~ has 799  
the same ~~meanings~~ meaning as in section 2305.33 or 2305.331 of the 800  
Revised Code, whichever is applicable. 801

(19) Inability to practice according to acceptable and 802  
prevailing standards of care by reason of mental illness or 803  
physical illness, including, but not limited to, physical 804  
deterioration that adversely affects cognitive, motor, or 805  
perceptive skills. 806

In enforcing this division, the board, upon a showing of a 807  
possible violation, may compel any individual authorized to 808  
practice by this chapter or who has submitted an application 809  
pursuant to this chapter to submit to a mental examination, 810  
physical examination, including an HIV test, or both a mental and 811  
a physical examination. The expense of the examination is the 812  
responsibility of the individual compelled to be examined. Failure 813  
to submit to a mental or physical examination or consent to an HIV 814  
test ordered by the board constitutes an admission of the 815  
allegations against the individual unless the failure is due to 816  
circumstances beyond the individual's control, and a default and 817  
final order may be entered without the taking of testimony or 818  
presentation of evidence. If the board finds an individual unable 819  
to practice because of the reasons set forth in this division, the 820  
board shall require the individual to submit to care, counseling, 821  
or treatment by physicians approved or designated by the board, as 822  
a condition for initial, continued, reinstated, or renewed 823

authority to practice. An individual affected under this division 824  
shall be afforded an opportunity to demonstrate to the board the 825  
ability to resume practice in compliance with acceptable and 826  
prevailing standards under the provisions of the individual's 827  
certificate. For the purpose of this division, any individual who 828  
applies for or receives a certificate to practice under this 829  
chapter accepts the privilege of practicing in this state and, by 830  
so doing, shall be deemed to have given consent to submit to a 831  
mental or physical examination when directed to do so in writing 832  
by the board, and to have waived all objections to the 833  
admissibility of testimony or examination reports that constitute 834  
a privileged communication. 835

(20)(a) Except when civil penalties are imposed under section 836  
4731.225 or 4731.281 of the Revised Code, and subject to section 837  
4731.226 of the Revised Code or division (B)(20)(b) of this 838  
section, violating or attempting to violate, directly or 839  
indirectly, or assisting in or abetting the violation of, or 840  
conspiring to violate, any provisions of this chapter or any rule 841  
promulgated by the board. 842

~~This division (b) Division (B)(20)(a) of this section~~ 843  
~~does not apply to a violation or attempted violation of, assisting in~~ 844  
~~or abetting the violation of, or a conspiracy to violate, any~~ 845  
~~provision of this chapter or any rule adopted by the board that~~ 846  
~~would preclude the making of a report by a physician of an~~ 847  
~~employee's use of a drug of abuse, or of a condition of an~~ 848  
~~employee other than one involving the use of a drug of abuse, to~~ 849  
~~the employer of the employee as described in division (B) of~~ 850  
~~section 2305.33 of the Revised Code from making a report of the~~ 851  
~~information described in division (B)(4)(b) or (c) of this~~ 852  
~~section. Nothing in this division affects the immunity from civil~~ 853  
~~liability conferred by ~~that~~ section 2305.33 or 2305.331 of the~~ 854  
~~Revised Code upon a physician who makes ~~either type of a~~ report as~~ 855

described in this division in accordance with division (B) of ~~that~~ 856  
either section, whichever is applicable. As used in this division, 857  
~~"employee," "employer," and "physician" have~~ has the same ~~meanings~~ 858  
meaning as in section 2305.33 or 2305.331 of the Revised Code, 859  
whichever is applicable. 860

(21) The violation of section 3701.79 of the Revised Code or 861  
of any abortion rule adopted by the public health council pursuant 862  
to section 3701.341 of the Revised Code; 863

(22) Any of the following actions taken by an agency 864  
responsible for authorizing, certifying, or regulating an 865  
individual to practice a health care occupation or provide health 866  
care services in this state or another jurisdiction, for any 867  
reason other than the nonpayment of fees: the limitation, 868  
revocation, or suspension of an individual's license to practice; 869  
acceptance of an individual's license surrender; denial of a 870  
license; refusal to renew or reinstate a license; imposition of 871  
probation; or issuance of an order of censure or other reprimand; 872

(23) The violation of section 2919.12 of the Revised Code or 873  
the performance or inducement of an abortion upon a pregnant woman 874  
with actual knowledge that the conditions specified in division 875  
(B) of section 2317.56 of the Revised Code have not been satisfied 876  
or with a heedless indifference as to whether those conditions 877  
have been satisfied, unless an affirmative defense as specified in 878  
division (H)(2) of that section would apply in a civil action 879  
authorized by division (H)(1) of that section; 880

(24) The revocation, suspension, restriction, reduction, or 881  
termination of clinical privileges by the United States department 882  
of defense or department of veterans affairs or the termination or 883  
suspension of a certificate of registration to prescribe drugs by 884  
the drug enforcement administration of the United States 885  
department of justice; 886

(25) Termination or suspension from participation in the 887  
medicare or medicaid programs by the department of health and 888  
human services or other responsible agency for any act or acts 889  
that also would constitute a violation of division (B)(2), (3), 890  
(6), (8), or (19) of this section; 891

(26) Impairment of ability to practice according to 892  
acceptable and prevailing standards of care because of habitual or 893  
excessive use or abuse of drugs, alcohol, or other substances that 894  
impair ability to practice. 895

For the purposes of this division, any individual authorized 896  
to practice by this chapter accepts the privilege of practicing in 897  
this state subject to supervision by the board. By filing an 898  
application for or holding a certificate to practice under this 899  
chapter, an individual shall be deemed to have given consent to 900  
submit to a mental or physical examination when ordered to do so 901  
by the board in writing, and to have waived all objections to the 902  
admissibility of testimony or examination reports that constitute 903  
privileged communications. 904

If it has reason to believe that any individual authorized to 905  
practice by this chapter or any applicant for certification to 906  
practice suffers such impairment, the board may compel the 907  
individual to submit to a mental or physical examination, or both. 908  
The expense of the examination is the responsibility of the 909  
individual compelled to be examined. Any mental or physical 910  
examination required under this division shall be undertaken by a 911  
treatment provider or physician who is qualified to conduct the 912  
examination and who is chosen by the board. 913

Failure to submit to a mental or physical examination ordered 914  
by the board constitutes an admission of the allegations against 915  
the individual unless the failure is due to circumstances beyond 916  
the individual's control, and a default and final order may be 917  
entered without the taking of testimony or presentation of 918

evidence. If the board determines that the individual's ability to 919  
practice is impaired, the board shall suspend the individual's 920  
certificate or deny the individual's application and shall require 921  
the individual, as a condition for initial, continued, reinstated, 922  
or renewed certification to practice, to submit to treatment. 923

Before being eligible to apply for reinstatement of a 924  
certificate suspended under this division, the impaired 925  
practitioner shall demonstrate to the board the ability to resume 926  
practice in compliance with acceptable and prevailing standards of 927  
care under the provisions of the practitioner's certificate. The 928  
demonstration shall include, but shall not be limited to, the 929  
following: 930

(a) Certification from a treatment provider approved under 931  
section 4731.25 of the Revised Code that the individual has 932  
successfully completed any required inpatient treatment; 933

(b) Evidence of continuing full compliance with an aftercare 934  
contract or consent agreement; 935

(c) Two written reports indicating that the individual's 936  
ability to practice has been assessed and that the individual has 937  
been found capable of practicing according to acceptable and 938  
prevailing standards of care. The reports shall be made by 939  
individuals or providers approved by the board for making the 940  
assessments and shall describe the basis for their determination. 941

The board may reinstate a certificate suspended under this 942  
division after that demonstration and after the individual has 943  
entered into a written consent agreement. 944

When the impaired practitioner resumes practice, the board 945  
shall require continued monitoring of the individual. The 946  
monitoring shall include, but not be limited to, compliance with 947  
the written consent agreement entered into before reinstatement or 948  
with conditions imposed by board order after a hearing, and, upon 949

termination of the consent agreement, submission to the board for 950  
at least two years of annual written progress reports made under 951  
penalty of perjury stating whether the individual has maintained 952  
sobriety. 953

(27) A second or subsequent violation of section 4731.66 or 954  
4731.69 of the Revised Code; 955

(28) Except as provided in division (N) of this section: 956

(a) Waiving the payment of all or any part of a deductible or 957  
copayment that a patient, pursuant to a health insurance or health 958  
care policy, contract, or plan that covers the individual's 959  
services, otherwise would be required to pay if the waiver is used 960  
as an enticement to a patient or group of patients to receive 961  
health care services from that individual; 962

(b) Advertising that the individual will waive the payment of 963  
all or any part of a deductible or copayment that a patient, 964  
pursuant to a health insurance or health care policy, contract, or 965  
plan that covers the individual's services, otherwise would be 966  
required to pay. 967

(29) Failure to use universal blood and body fluid 968  
precautions established by rules adopted under section 4731.051 of 969  
the Revised Code; 970

(30) Failure to provide notice to, and receive acknowledgment 971  
of the notice from, a patient when required by section 4731.143 of 972  
the Revised Code prior to providing nonemergency professional 973  
services, or failure to maintain that notice in the patient's 974  
file; 975

(31) Failure of a physician supervising a physician assistant 976  
to maintain supervision in accordance with the requirements of 977  
Chapter 4730. of the Revised Code and the rules adopted under that 978  
chapter; 979



(32) Failure of a physician or podiatrist to enter into a	980
standard care arrangement with a clinical nurse specialist,	981
certified nurse-midwife, or certified nurse practitioner with whom	982
the physician or podiatrist is in collaboration pursuant to	983
section 4731.27 of the Revised Code or failure to fulfill the	984
responsibilities of collaboration after entering into a standard	985
care arrangement;	986
(33) Failure to comply with the terms of a consult agreement	987
entered into with a pharmacist pursuant to section 4729.39 of the	988
Revised Code;	989
(34) Failure to cooperate in an investigation conducted by	990
the board under division (F) of this section, including failure to	991
comply with a subpoena or order issued by the board or failure to	992
answer truthfully a question presented by the board at a	993
deposition or in written interrogatories, except that failure to	994
cooperate with an investigation shall not constitute grounds for	995
discipline under this section if a court of competent jurisdiction	996
has issued an order that either quashes a subpoena or permits the	997
individual to withhold the testimony or evidence in issue;	998
(35) Failure to supervise an acupuncturist in accordance with	999
Chapter 4762. of the Revised Code and the board's rules for	1000
supervision of an acupuncturist;	1001
(36) Failure to supervise an anesthesiologist assistant in	1002
accordance with Chapter 4760. of the Revised Code and the board's	1003
rules for supervision of an anesthesiologist assistant;	1004
(37) Assisting suicide as defined in section 3795.01 of the	1005
Revised Code;	1006
(38) Failure to comply with the requirements of section	1007
2317.561 of the Revised Code;	1008
(39) Failure to supervise a radiologist assistant in	1009
accordance with Chapter 4774. of the Revised Code and the board's	1010

rules for supervision of radiologist assistants;	1011
(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;	1012 1013 1014
(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;	1015 1016 1017 1018
(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;	1019 1020 1021 1022
(43) Failure to comply with the requirements of section 4729.79 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;	1023 1024 1025 1026
<del>(41)</del> <u>(44)</u> Failure to comply with the requirements of section 2919.171 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 of the Revised Code.	1027 1028 1029 1030
(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall	1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041

be of no force or effect. 1042

A telephone conference call may be utilized for ratification 1043  
of a consent agreement that revokes or suspends an individual's 1044  
certificate to practice. The telephone conference call shall be 1045  
considered a special meeting under division (F) of section 121.22 1046  
of the Revised Code. 1047

If the board takes disciplinary action against an individual 1048  
under division (B) of this section for a second or subsequent plea 1049  
of guilty to, or judicial finding of guilt of, a violation of 1050  
section 2919.123 of the Revised Code, the disciplinary action 1051  
shall consist of a suspension of the individual's certificate to 1052  
practice for a period of at least one year or, if determined 1053  
appropriate by the board, a more serious sanction involving the 1054  
individual's certificate to practice. Any consent agreement 1055  
entered into under this division with an individual that pertains 1056  
to a second or subsequent plea of guilty to, or judicial finding 1057  
of guilt of, a violation of that section shall provide for a 1058  
suspension of the individual's certificate to practice for a 1059  
period of at least one year or, if determined appropriate by the 1060  
board, a more serious sanction involving the individual's 1061  
certificate to practice. 1062

(D) For purposes of divisions (B)(10), (12), and (14) of this 1063  
section, the commission of the act may be established by a finding 1064  
by the board, pursuant to an adjudication under Chapter 119. of 1065  
the Revised Code, that the individual committed the act. The board 1066  
does not have jurisdiction under those divisions if the trial 1067  
court renders a final judgment in the individual's favor and that 1068  
judgment is based upon an adjudication on the merits. The board 1069  
has jurisdiction under those divisions if the trial court issues 1070  
an order of dismissal upon technical or procedural grounds. 1071

(E) The sealing of conviction records by any court shall have 1072  
no effect upon a prior board order entered under this section or 1073

upon the board's jurisdiction to take action under this section 1074  
if, based upon a plea of guilty, a judicial finding of guilt, or a 1075  
judicial finding of eligibility for intervention in lieu of 1076  
conviction, the board issued a notice of opportunity for a hearing 1077  
prior to the court's order to seal the records. The board shall 1078  
not be required to seal, destroy, redact, or otherwise modify its 1079  
records to reflect the court's sealing of conviction records. 1080

(F)(1) The board shall investigate evidence that appears to 1081  
show that a person has violated any provision of this chapter or 1082  
any rule adopted under it. Any person may report to the board in a 1083  
signed writing any information that the person may have that 1084  
appears to show a violation of any provision of this chapter or 1085  
any rule adopted under it. In the absence of bad faith, any person 1086  
who reports information of that nature or who testifies before the 1087  
board in any adjudication conducted under Chapter 119. of the 1088  
Revised Code shall not be liable in damages in a civil action as a 1089  
result of the report or testimony. Each complaint or allegation of 1090  
a violation received by the board shall be assigned a case number 1091  
and shall be recorded by the board. 1092

(2) Investigations of alleged violations of this chapter or 1093  
any rule adopted under it shall be supervised by the supervising 1094  
member elected by the board in accordance with section 4731.02 of 1095  
the Revised Code and by the secretary as provided in section 1096  
4731.39 of the Revised Code. The president may designate another 1097  
member of the board to supervise the investigation in place of the 1098  
supervising member. No member of the board who supervises the 1099  
investigation of a case shall participate in further adjudication 1100  
of the case. 1101

(3) In investigating a possible violation of this chapter or 1102  
any rule adopted under this chapter, the board may administer 1103  
oaths, order the taking of depositions, inspect and copy any 1104  
books, accounts, papers, records, or documents, issue subpoenas, 1105

and compel the attendance of witnesses and production of books, 1106  
accounts, papers, records, documents, and testimony, except that a 1107  
subpoena for patient record information shall not be issued 1108  
without consultation with the attorney general's office and 1109  
approval of the secretary and supervising member of the board. 1110  
Before issuance of a subpoena for patient record information, the 1111  
secretary and supervising member shall determine whether there is 1112  
probable cause to believe that the complaint filed alleges a 1113  
violation of this chapter or any rule adopted under it and that 1114  
the records sought are relevant to the alleged violation and 1115  
material to the investigation. The subpoena may apply only to 1116  
records that cover a reasonable period of time surrounding the 1117  
alleged violation. 1118

On failure to comply with any subpoena issued by the board 1119  
and after reasonable notice to the person being subpoenaed, the 1120  
board may move for an order compelling the production of persons 1121  
or records pursuant to the Rules of Civil Procedure. 1122

A subpoena issued by the board may be served by a sheriff, 1123  
the sheriff's deputy, or a board employee designated by the board. 1124  
Service of a subpoena issued by the board may be made by 1125  
delivering a copy of the subpoena to the person named therein, 1126  
reading it to the person, or leaving it at the person's usual 1127  
place of residence. When the person being served is a person whose 1128  
practice is authorized by this chapter, service of the subpoena 1129  
may be made by certified mail, restricted delivery, return receipt 1130  
requested, and the subpoena shall be deemed served on the date 1131  
delivery is made or the date the person refuses to accept 1132  
delivery. 1133

A sheriff's deputy who serves a subpoena shall receive the 1134  
same fees as a sheriff. Each witness who appears before the board 1135  
in obedience to a subpoena shall receive the fees and mileage 1136  
provided for under section 119.094 of the Revised Code. 1137

(4) All hearings and investigations of the board shall be 1138  
considered civil actions for the purposes of section 2305.252 of 1139  
the Revised Code. 1140

(5) Information received by the board pursuant to an 1141  
investigation is confidential and not subject to discovery in any 1142  
civil action. 1143

The board shall conduct all investigations and proceedings in 1144  
a manner that protects the confidentiality of patients and persons 1145  
who file complaints with the board. The board shall not make 1146  
public the names or any other identifying information about 1147  
patients or complainants unless proper consent is given or, in the 1148  
case of a patient, a waiver of the patient privilege exists under 1149  
division (B) of section 2317.02 of the Revised Code, except that 1150  
consent or a waiver of that nature is not required if the board 1151  
possesses reliable and substantial evidence that no bona fide 1152  
physician-patient relationship exists. 1153

The board may share any information it receives pursuant to 1154  
an investigation, including patient records and patient record 1155  
information, with law enforcement agencies, other licensing 1156  
boards, and other governmental agencies that are prosecuting, 1157  
adjudicating, or investigating alleged violations of statutes or 1158  
administrative rules. An agency or board that receives the 1159  
information shall comply with the same requirements regarding 1160  
confidentiality as those with which the state medical board must 1161  
comply, notwithstanding any conflicting provision of the Revised 1162  
Code or procedure of the agency or board that applies when it is 1163  
dealing with other information in its possession. In a judicial 1164  
proceeding, the information may be admitted into evidence only in 1165  
accordance with the Rules of Evidence, but the court shall require 1166  
that appropriate measures are taken to ensure that confidentiality 1167  
is maintained with respect to any part of the information that 1168  
contains names or other identifying information about patients or 1169

complainants whose confidentiality was protected by the state 1170  
medical board when the information was in the board's possession. 1171  
Measures to ensure confidentiality that may be taken by the court 1172  
include sealing its records or deleting specific information from 1173  
its records. 1174

(6) On a quarterly basis, the board shall prepare a report 1175  
that documents the disposition of all cases during the preceding 1176  
three months. The report shall contain the following information 1177  
for each case with which the board has completed its activities: 1178

(a) The case number assigned to the complaint or alleged 1179  
violation; 1180

(b) The type of certificate to practice, if any, held by the 1181  
individual against whom the complaint is directed; 1182

(c) A description of the allegations contained in the 1183  
complaint; 1184

(d) The disposition of the case. 1185

The report shall state how many cases are still pending and 1186  
shall be prepared in a manner that protects the identity of each 1187  
person involved in each case. The report shall be a public record 1188  
under section 149.43 of the Revised Code. 1189

(G) If the secretary and supervising member determine both of 1190  
the following, they may recommend that the board suspend an 1191  
individual's certificate to practice without a prior hearing: 1192

(1) That there is clear and convincing evidence that an 1193  
individual has violated division (B) of this section; 1194

(2) That the individual's continued practice presents a 1195  
danger of immediate and serious harm to the public. 1196

Written allegations shall be prepared for consideration by 1197  
the board. The board, upon review of those allegations and by an 1198  
affirmative vote of not fewer than six of its members, excluding 1199

the secretary and supervising member, may suspend a certificate 1200  
without a prior hearing. A telephone conference call may be 1201  
utilized for reviewing the allegations and taking the vote on the 1202  
summary suspension. 1203

The board shall issue a written order of suspension by 1204  
certified mail or in person in accordance with section 119.07 of 1205  
the Revised Code. The order shall not be subject to suspension by 1206  
the court during pendency of any appeal filed under section 119.12 1207  
of the Revised Code. If the individual subject to the summary 1208  
suspension requests an adjudicatory hearing by the board, the date 1209  
set for the hearing shall be within fifteen days, but not earlier 1210  
than seven days, after the individual requests the hearing, unless 1211  
otherwise agreed to by both the board and the individual. 1212

Any summary suspension imposed under this division shall 1213  
remain in effect, unless reversed on appeal, until a final 1214  
adjudicative order issued by the board pursuant to this section 1215  
and Chapter 119. of the Revised Code becomes effective. The board 1216  
shall issue its final adjudicative order within seventy-five days 1217  
after completion of its hearing. A failure to issue the order 1218  
within seventy-five days shall result in dissolution of the 1219  
summary suspension order but shall not invalidate any subsequent, 1220  
final adjudicative order. 1221

(H) If the board takes action under division (B)(9), (11), or 1222  
(13) of this section and the judicial finding of guilt, guilty 1223  
plea, or judicial finding of eligibility for intervention in lieu 1224  
of conviction is overturned on appeal, upon exhaustion of the 1225  
criminal appeal, a petition for reconsideration of the order may 1226  
be filed with the board along with appropriate court documents. 1227  
Upon receipt of a petition of that nature and supporting court 1228  
documents, the board shall reinstate the individual's certificate 1229  
to practice. The board may then hold an adjudication under Chapter 1230  
119. of the Revised Code to determine whether the individual 1231



committed the act in question. Notice of an opportunity for a 1232  
hearing shall be given in accordance with Chapter 119. of the 1233  
Revised Code. If the board finds, pursuant to an adjudication held 1234  
under this division, that the individual committed the act or if 1235  
no hearing is requested, the board may order any of the sanctions 1236  
identified under division (B) of this section. 1237

(I) The certificate to practice issued to an individual under 1238  
this chapter and the individual's practice in this state are 1239  
automatically suspended as of the date of the individual's second 1240  
or subsequent plea of guilty to, or judicial finding of guilt of, 1241  
a violation of section 2919.123 of the Revised Code, or the date 1242  
the individual pleads guilty to, is found by a judge or jury to be 1243  
guilty of, or is subject to a judicial finding of eligibility for 1244  
intervention in lieu of conviction in this state or treatment or 1245  
intervention in lieu of conviction in another jurisdiction for any 1246  
of the following criminal offenses in this state or a 1247  
substantially equivalent criminal offense in another jurisdiction: 1248  
aggravated murder, murder, voluntary manslaughter, felonious 1249  
assault, kidnapping, rape, sexual battery, gross sexual 1250  
imposition, aggravated arson, aggravated robbery, or aggravated 1251  
burglary. Continued practice after suspension shall be considered 1252  
practicing without a certificate. 1253

The board shall notify the individual subject to the 1254  
suspension by certified mail or in person in accordance with 1255  
section 119.07 of the Revised Code. If an individual whose 1256  
certificate is automatically suspended under this division fails 1257  
to make a timely request for an adjudication under Chapter 119. of 1258  
the Revised Code, the board shall do whichever of the following is 1259  
applicable: 1260

(1) If the automatic suspension under this division is for a 1261  
second or subsequent plea of guilty to, or judicial finding of 1262  
guilt of, a violation of section 2919.123 of the Revised Code, the 1263

board shall enter an order suspending the individual's certificate 1264  
to practice for a period of at least one year or, if determined 1265  
appropriate by the board, imposing a more serious sanction 1266  
involving the individual's certificate to practice. 1267

(2) In all circumstances in which division (I)(1) of this 1268  
section does not apply, enter a final order permanently revoking 1269  
the individual's certificate to practice. 1270

(J) If the board is required by Chapter 119. of the Revised 1271  
Code to give notice of an opportunity for a hearing and if the 1272  
individual subject to the notice does not timely request a hearing 1273  
in accordance with section 119.07 of the Revised Code, the board 1274  
is not required to hold a hearing, but may adopt, by an 1275  
affirmative vote of not fewer than six of its members, a final 1276  
order that contains the board's findings. In that final order, the 1277  
board may order any of the sanctions identified under division (A) 1278  
or (B) of this section. 1279

(K) Any action taken by the board under division (B) of this 1280  
section resulting in a suspension from practice shall be 1281  
accompanied by a written statement of the conditions under which 1282  
the individual's certificate to practice may be reinstated. The 1283  
board shall adopt rules governing conditions to be imposed for 1284  
reinstatement. Reinstatement of a certificate suspended pursuant 1285  
to division (B) of this section requires an affirmative vote of 1286  
not fewer than six members of the board. 1287

(L) When the board refuses to grant a certificate to an 1288  
applicant, revokes an individual's certificate to practice, 1289  
refuses to register an applicant, or refuses to reinstate an 1290  
individual's certificate to practice, the board may specify that 1291  
its action is permanent. An individual subject to a permanent 1292  
action taken by the board is forever thereafter ineligible to hold 1293  
a certificate to practice and the board shall not accept an 1294  
application for reinstatement of the certificate or for issuance 1295

of a new certificate.	1296
(M) Notwithstanding any other provision of the Revised Code,	1297
all of the following apply:	1298
(1) The surrender of a certificate issued under this chapter	1299
shall not be effective unless or until accepted by the board. A	1300
telephone conference call may be utilized for acceptance of the	1301
surrender of an individual's certificate to practice. The	1302
telephone conference call shall be considered a special meeting	1303
under division (F) of section 121.22 of the Revised Code.	1304
Reinstatement of a certificate surrendered to the board requires	1305
an affirmative vote of not fewer than six members of the board.	1306
(2) An application for a certificate made under the	1307
provisions of this chapter may not be withdrawn without approval	1308
of the board.	1309
(3) Failure by an individual to renew a certificate of	1310
registration in accordance with this chapter shall not remove or	1311
limit the board's jurisdiction to take any disciplinary action	1312
under this section against the individual.	1313
(N) Sanctions shall not be imposed under division (B)(28) of	1314
this section against any person who waives deductibles and	1315
copayments as follows:	1316
(1) In compliance with the health benefit plan that expressly	1317
allows such a practice. Waiver of the deductibles or copayments	1318
shall be made only with the full knowledge and consent of the plan	1319
purchaser, payer, and third-party administrator. Documentation of	1320
the consent shall be made available to the board upon request.	1321
(2) For professional services rendered to any other person	1322
authorized to practice pursuant to this chapter, to the extent	1323
allowed by this chapter and rules adopted by the board.	1324
(O) Under the board's investigative duties described in this	1325

section and subject to division (F) of this section, the board 1326  
shall develop and implement a quality intervention program 1327  
designed to improve through remedial education the clinical and 1328  
communication skills of individuals authorized under this chapter 1329  
to practice medicine and surgery, osteopathic medicine and 1330  
surgery, and podiatric medicine and surgery. In developing and 1331  
implementing the quality intervention program, the board may do 1332  
all of the following: 1333

(1) Offer in appropriate cases as determined by the board an 1334  
educational and assessment program pursuant to an investigation 1335  
the board conducts under this section; 1336

(2) Select providers of educational and assessment services, 1337  
including a quality intervention program panel of case reviewers; 1338

(3) Make referrals to educational and assessment service 1339  
providers and approve individual educational programs recommended 1340  
by those providers. The board shall monitor the progress of each 1341  
individual undertaking a recommended individual educational 1342  
program. 1343

(4) Determine what constitutes successful completion of an 1344  
individual educational program and require further monitoring of 1345  
the individual who completed the program or other action that the 1346  
board determines to be appropriate; 1347

(5) Adopt rules in accordance with Chapter 119. of the 1348  
Revised Code to further implement the quality intervention 1349  
program. 1350

An individual who participates in an individual educational 1351  
program pursuant to this division shall pay the financial 1352  
obligations arising from that educational program. 1353

**Section 2.** That existing sections 2305.33, 2317.02, and 1354  
4731.22 of the Revised Code are hereby repealed. 1355

**Section 3.** Section 4731.22 of the Revised Code is presented 1356  
in this act as a composite of the section as amended by both H.B. 1357  
78 and Am. Sub. H.B. 93 of the 129th General Assembly. The General 1358  
Assembly, applying the principle stated in division (B) of section 1359  
1.52 of the Revised Code that amendments are to be harmonized if 1360  
reasonably capable of simultaneous operation, finds that the 1361  
composite is the resulting version of the section in effect prior 1362  
to the effective date of the section as presented in this act. 1363