

As Reported by the House Criminal Justice Committee

129th General Assembly

Regular Session

2011-2012

Sub. H. B. No. 421

Representatives Slaby, L., O'Brien

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

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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 and that 73
the employee's use of the drug of abuse represents a potential 74
risk of injury, death, or loss to person or property of passengers 75
on any aircraft, railroad train, school or other bus, taxicab, or 76
other type of common carrier operated by the employer. 77

(3) The physician has determined that the employee has a 78
condition, other than one involving the use of a drug of abuse, 79
that represents a potential risk of harm injury, death, or loss to 80

person or property of passengers on any aircraft, railroad train, 81
school or other bus, taxicab, or other type of common carrier 82
operated by the employee. 83

(C)(1) This section does not create, and shall not be 84
construed as creating, a new cause of action or substantive legal 85
right against a physician and in favor of an employee who was a 86
patient of the physician, who was the subject of a report 87
described in division (B) of this section, and who allegedly 88
sustained harm as a result of the report, or in favor of any other 89
person who allegedly sustained harm as a result of the report. 90

(2) This section does not impose, and shall not be construed 91
as imposing, a duty upon a physician to make a report as described 92
in division (B) of this section to an employer of an employee who 93
the physician determines is using a drug of abuse dispensed 94
pursuant to a prescription or is using a drug of abuse other than 95
pursuant to a prescription, or who the physician determines has a 96
condition, other than one involving the use of a drug of abuse, 97
that represents a potential risk of ~~harm~~ injury, death, or loss to 98
person or property of passengers on the type of common carrier 99
operated by the employee. 100

(3) This section does not affect and shall not be construed 101
as affecting, any immunities from civil liability or defenses 102
established by another section of the Revised Code or available at 103
common law, to which a physician may be entitled. 104

(D) ~~In the event that~~ If a physician makes a report described 105
in division (B) of this section, the physician also shall make a 106
report to the employee who was the subject of the report. If the 107
report to the employer is in writing, the report to the employee 108
shall be in writing. 109

Sec. 2305.331. (A) As used in this section: 110

(1) "Civil action" means a tort or contract action for damages for harm. 111
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(2) "Harm" means any injury, death, or loss to person or property or any violation of a patient's privacy or confidentiality rights under federal or state law. 113
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(3) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code. 116
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(4) "Physician" means a person who is licensed pursuant to Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery. 118
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(5) "Prescription" has the same meaning as in section 4729.01 of the Revised Code. 121
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(B) A physician is not liable in damages in a civil action for harm that allegedly is incurred by a patient of the physician as a result of the physician reporting any of the following to the registrar of motor vehicles as provided in section 4507.20 of the Revised Code or to another physician, a police or other law enforcement entity, a family member or other individual involved in the medical treatment of the patient, a court official, an employer of the patient, or any other governmental body that is reasonably able to prevent or lessen the potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle: 123
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(1) The physician has determined that the patient is using a drug of abuse dispensed pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk of injury, death, or loss to person or property arising from the patient's operation of a motor vehicle. 134
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(2) The physician has determined that the patient is using a drug of abuse otherwise than pursuant to a prescription and that the patient's use of the drug of abuse represents a potential risk 139
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of injury, death, or loss to person or property arising from the 142
patient's operation of a motor vehicle. 143

(3) The physician has determined that the patient has a 144
condition, other than one involving the use of a drug of abuse, 145
that represents a potential risk of injury, death, or loss to 146
person or property arising from the patient's operation of a motor 147
vehicle. 148

(C)(1) This section does not create, and shall not be 149
construed as creating, a new cause of action or substantive legal 150
right against a physician and in favor of a patient of the 151
physician who was the subject of a report described in division 152
(B) of this section and who allegedly sustained harm as a result 153
of the report or in favor of any other person who allegedly 154
sustained harm as a result of the report. 155

(2) This section does not impose, and shall not be construed 156
as imposing, a duty upon a physician to make a report as described 157
in division (B) of this section to any person or entity regarding 158
a patient who the physician determines is using a drug of abuse 159
dispensed pursuant to a prescription or is using a drug of abuse 160
other than pursuant to a prescription or who the physician 161
determines has a condition, other than one involving the use of a 162
drug of abuse, that represents a potential risk of injury, death, 163
or loss to person or property arising from the patient's operation 164
of a motor vehicle. 165

(3) This section does not affect and shall not be construed 166
as affecting any immunities from civil liability or defenses 167
established by another section of the Revised Code or available at 168
common law to which a physician may be entitled. 169

(D) If a physician makes a report described in division (B) 170
of this section, the physician also shall make a report to the 171
patient who was the subject of the report. If the report to a 172

person or entity described in division (B) of this section is in 173
writing, the report to the patient shall be in writing. 174

(E) Any report submitted by a physician to a governmental 175
body under division (B) of this section is confidential, is not a 176
public record, and is not subject to disclosure under section 177
149.43 of the Revised Code. 178

Sec. 2317.02. The following persons shall not testify in 179
certain respects: 180

(A)(1) An attorney, concerning a communication made to the 181
attorney by a client in that relation or the attorney's advice to 182
a client, except that the attorney may testify by express consent 183
of the client or, if the client is deceased, by the express 184
consent of the surviving spouse or the executor or administrator 185
of the estate of the deceased client. However, if the client 186
voluntarily testifies or is deemed by section 2151.421 of the 187
Revised Code to have waived any testimonial privilege under this 188
division, the attorney may be compelled to testify on the same 189
subject. 190

The testimonial privilege established under this division 191
does not apply concerning a communication between a client who has 192
since died and the deceased client's attorney if the communication 193
is relevant to a dispute between parties who claim through that 194
deceased client, regardless of whether the claims are by testate 195
or intestate succession or by inter vivos transaction, and the 196
dispute addresses the competency of the deceased client when the 197
deceased client executed a document that is the basis of the 198
dispute or whether the deceased client was a victim of fraud, 199
undue influence, or duress when the deceased client executed a 200
document that is the basis of the dispute. 201

(2) An attorney, concerning a communication made to the 202
attorney by a client in that relationship or the attorney's advice 203

to a client, except that if the client is an insurance company, 204
the attorney may be compelled to testify, subject to an in camera 205
inspection by a court, about communications made by the client to 206
the attorney or by the attorney to the client that are related to 207
the attorney's aiding or furthering an ongoing or future 208
commission of bad faith by the client, if the party seeking 209
disclosure of the communications has made a prima_facie showing of 210
bad faith, fraud, or criminal misconduct by the client. 211

(B)(1) A physician or a dentist concerning a communication 212
made to the physician or dentist by a patient in that relation or 213
the physician's or dentist's advice to a patient, except as 214
otherwise provided in this division, division (B)(2), and division 215
(B)(3) of this section, and except that, if the patient is deemed 216
by section 2151.421 of the Revised Code to have waived any 217
testimonial privilege under this division, the physician may be 218
compelled to testify on the same subject. 219

The testimonial privilege established under this division 220
does not apply, and a physician or dentist may testify or may be 221
compelled to testify, in any of the following circumstances: 222

(a) In any civil action, in accordance with the discovery 223
provisions of the Rules of Civil Procedure in connection with a 224
civil action, or in connection with a claim under Chapter 4123. of 225
the Revised Code, under any of the following circumstances: 226

(i) If the patient or the guardian or other legal 227
representative of the patient gives express consent; 228

(ii) If the patient is deceased, the spouse of the patient or 229
the executor or administrator of the patient's estate gives 230
express consent; 231

(iii) If a medical claim, dental claim, chiropractic claim, 232
or optometric claim, as defined in section 2305.113 of the Revised 233
Code, an action for wrongful death, any other type of civil 234

action, or a claim under Chapter 4123. of the Revised Code is 235
filed by the patient, the personal representative of the estate of 236
the patient if deceased, or the patient's guardian or other legal 237
representative. 238

(b) In any civil action concerning court-ordered treatment or 239
services received by a patient, if the court-ordered treatment or 240
services were ordered as part of a case plan journalized under 241
section 2151.412 of the Revised Code or the court-ordered 242
treatment or services are necessary or relevant to dependency, 243
neglect, or abuse or temporary or permanent custody proceedings 244
under Chapter 2151. of the Revised Code. 245

(c) In any criminal action concerning any test or the results 246
of any test that determines the presence or concentration of 247
alcohol, a drug of abuse, a combination of them, a controlled 248
substance, or a metabolite of a controlled substance in the 249
patient's whole blood, blood serum or plasma, breath, urine, or 250
other bodily substance at any time relevant to the criminal 251
offense in question. 252

(d) In any criminal action against a physician or dentist. In 253
such an action, the testimonial privilege established under this 254
division does not prohibit the admission into evidence, in 255
accordance with the Rules of Evidence, of a patient's medical or 256
dental records or other communications between a patient and the 257
physician or dentist that are related to the action and obtained 258
by subpoena, search warrant, or other lawful means. A court that 259
permits or compels a physician or dentist to testify in such an 260
action or permits the introduction into evidence of patient 261
records or other communications in such an action shall require 262
that appropriate measures be taken to ensure that the 263
confidentiality of any patient named or otherwise identified in 264
the records is maintained. Measures to ensure confidentiality that 265
may be taken by the court include sealing its records or deleting 266

specific information from its records. 267

(e)(i) If the communication was between a patient who has 268
since died and the deceased patient's physician or dentist, the 269
communication is relevant to a dispute between parties who claim 270
through that deceased patient, regardless of whether the claims 271
are by testate or intestate succession or by inter vivos 272
transaction, and the dispute addresses the competency of the 273
deceased patient when the deceased patient executed a document 274
that is the basis of the dispute or whether the deceased patient 275
was a victim of fraud, undue influence, or duress when the 276
deceased patient executed a document that is the basis of the 277
dispute. 278

(ii) If neither the spouse of a patient nor the executor or 279
administrator of that patient's estate gives consent under 280
division (B)(1)(a)(ii) of this section, testimony or the 281
disclosure of the patient's medical records by a physician, 282
dentist, or other health care provider under division (B)(1)(e)(i) 283
of this section is a permitted use or disclosure of protected 284
health information, as defined in 45 C.F.R. 160.103, and an 285
authorization or opportunity to be heard shall not be required. 286

(iii) Division (B)(1)(e)(i) of this section does not require 287
a mental health professional to disclose psychotherapy notes, as 288
defined in 45 C.F.R. 164.501. 289

(iv) An interested person who objects to testimony or 290
disclosure under division (B)(1)(e)(i) of this section may seek a 291
protective order pursuant to Civil Rule 26. 292

(v) A person to whom protected health information is 293
disclosed under division (B)(1)(e)(i) of this section shall not 294
use or disclose the protected health information for any purpose 295
other than the litigation or proceeding for which the information 296
was requested and shall return the protected health information to 297

the covered entity or destroy the protected health information, 298
including all copies made, at the conclusion of the litigation or 299
proceeding. 300

(2)(a) If any law enforcement officer submits a written 301
statement to a health care provider that states that an official 302
criminal investigation has begun regarding a specified person or 303
that a criminal action or proceeding has been commenced against a 304
specified person, that requests the provider to supply to the 305
officer copies of any records the provider possesses that pertain 306
to any test or the results of any test administered to the 307
specified person to determine the presence or concentration of 308
alcohol, a drug of abuse, a combination of them, a controlled 309
substance, or a metabolite of a controlled substance in the 310
person's whole blood, blood serum or plasma, breath, or urine at 311
any time relevant to the criminal offense in question, and that 312
conforms to section 2317.022 of the Revised Code, the provider, 313
except to the extent specifically prohibited by any law of this 314
state or of the United States, shall supply to the officer a copy 315
of any of the requested records the provider possesses. If the 316
health care provider does not possess any of the requested 317
records, the provider shall give the officer a written statement 318
that indicates that the provider does not possess any of the 319
requested records. 320

(b) If a health care provider possesses any records of the 321
type described in division (B)(2)(a) of this section regarding the 322
person in question at any time relevant to the criminal offense in 323
question, in lieu of personally testifying as to the results of 324
the test in question, the custodian of the records may submit a 325
certified copy of the records, and, upon its submission, the 326
certified copy is qualified as authentic evidence and may be 327
admitted as evidence in accordance with the Rules of Evidence. 328
Division (A) of section 2317.422 of the Revised Code does not 329

apply to any certified copy of records submitted in accordance 330
with this division. Nothing in this division shall be construed to 331
limit the right of any party to call as a witness the person who 332
administered the test to which the records pertain, the person 333
under whose supervision the test was administered, the custodian 334
of the records, the person who made the records, or the person 335
under whose supervision the records were made. 336

(3)(a) If the testimonial privilege described in division 337
(B)(1) of this section does not apply as provided in division 338
(B)(1)(a)(iii) of this section, a physician or dentist may be 339
compelled to testify or to submit to discovery under the Rules of 340
Civil Procedure only as to a communication made to the physician 341
or dentist by the patient in question in that relation, or the 342
physician's or dentist's advice to the patient in question, that 343
related causally or historically to physical or mental injuries 344
that are relevant to issues in the medical claim, dental claim, 345
chiropractic claim, or optometric claim, action for wrongful 346
death, other civil action, or claim under Chapter 4123. of the 347
Revised Code. 348

(b) If the testimonial privilege described in division (B)(1) 349
of this section does not apply to a physician or dentist as 350
provided in division (B)(1)(c) of this section, the physician or 351
dentist, in lieu of personally testifying as to the results of the 352
test in question, may submit a certified copy of those results, 353
and, upon its submission, the certified copy is qualified as 354
authentic evidence and may be admitted as evidence in accordance 355
with the Rules of Evidence. Division (A) of section 2317.422 of 356
the Revised Code does not apply to any certified copy of results 357
submitted in accordance with this division. Nothing in this 358
division shall be construed to limit the right of any party to 359
call as a witness the person who administered the test in 360
question, the person under whose supervision the test was 361

administered, the custodian of the results of the test, the person 362
who compiled the results, or the person under whose supervision 363
the results were compiled. 364

(4) The testimonial privilege described in division (B)(1) of 365
this section is not waived when a communication is made by a 366
physician to a pharmacist or when there is communication between a 367
patient and a pharmacist in furtherance of the physician-patient 368
relation. 369

(5)(a) As used in divisions (B)(1) to (4) of this section, 370
"communication" means acquiring, recording, or transmitting any 371
information, in any manner, concerning any facts, opinions, or 372
statements necessary to enable a physician or dentist to diagnose, 373
treat, prescribe, or act for a patient. A "communication" may 374
include, but is not limited to, any medical or dental, office, or 375
hospital communication such as a record, chart, letter, 376
memorandum, laboratory test and results, x-ray, photograph, 377
financial statement, diagnosis, or prognosis. 378

(b) As used in division (B)(2) of this section, "health care 379
provider" means a hospital, ambulatory care facility, long-term 380
care facility, pharmacy, emergency facility, or health care 381
practitioner. 382

(c) As used in division (B)(5)(b) of this section: 383

(i) "Ambulatory care facility" means a facility that provides 384
medical, diagnostic, or surgical treatment to patients who do not 385
require hospitalization, including a dialysis center, ambulatory 386
surgical facility, cardiac catheterization facility, diagnostic 387
imaging center, extracorporeal shock wave lithotripsy center, home 388
health agency, inpatient hospice, birthing center, radiation 389
therapy center, emergency facility, and an urgent care center. 390
"Ambulatory health care facility" does not include the private 391
office of a physician or dentist, whether the office is for an 392

individual or group practice.	393
(ii) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.	394 395 396
(iii) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code.	397 398
(iv) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.	399 400
(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 5119.70 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.	401 402 403 404 405 406 407 408 409
(vi) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code.	410 411
(d) As used in divisions (B)(1) and (2) of this section, "drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.	412 413 414
(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.	415 416 417
(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 <u>any of the following:</u>	418 419 420
<u>(a) Section</u> 307.628 of the Revised Code or the immunity from civil liability conferred by section;	421 422

(b) Section 2305.33 of the Revised Code upon physicians who 423
report an employee's use of a drug of abuse, or a condition of an 424
employee other than one involving the use of a drug of abuse, to 425
the employer of the employee in accordance with division (B) of 426
that section. As used in division (B)(7)(b) of this section, 427
"employee," "employer," and "physician" have the same meanings as 428
in section 2305.33 of the Revised Code. 429

(c) Section 2305.331 of the Revised Code upon physicians who, 430
in accordance with division (B) of that section, report a 431
patient's use of a drug of abuse or a condition of a patient other 432
than one involving the use of a drug of abuse to any of the 433
persons or entities described in that division. As used in 434
division (B)(7)(c) of this section, "physician" has the same 435
meaning as in section 2305.331 of the Revised Code. 436

(C)(1) A cleric, when the cleric remains accountable to the 437
authority of that cleric's church, denomination, or sect, 438
concerning a confession made, or any information confidentially 439
communicated, to the cleric for a religious counseling purpose in 440
the cleric's professional character. The cleric may testify by 441
express consent of the person making the communication, except 442
when the disclosure of the information is in violation of a sacred 443
trust and except that, if the person voluntarily testifies or is 444
deemed by division (A)(4)(c) of section 2151.421 of the Revised 445
Code to have waived any testimonial privilege under this division, 446
the cleric may be compelled to testify on the same subject except 447
when disclosure of the information is in violation of a sacred 448
trust. 449

(2) As used in division (C) of this section: 450

(a) "Cleric" means a member of the clergy, rabbi, priest, 451
Christian Science practitioner, or regularly ordained, accredited, 452
or licensed minister of an established and legally cognizable 453
church, denomination, or sect. 454

(b) "Sacred trust" means a confession or confidential 455
communication made to a cleric in the cleric's ecclesiastical 456
capacity in the course of discipline enjoined by the church to 457
which the cleric belongs, including, but not limited to, the 458
Catholic Church, if both of the following apply: 459

(i) The confession or confidential communication was made 460
directly to the cleric. 461

(ii) The confession or confidential communication was made in 462
the manner and context that places the cleric specifically and 463
strictly under a level of confidentiality that is considered 464
inviolable by canon law or church doctrine. 465

(D) Husband or wife, concerning any communication made by one 466
to the other, or an act done by either in the presence of the 467
other, during coverture, unless the communication was made, or act 468
done, in the known presence or hearing of a third person competent 469
to be a witness; and such rule is the same if the marital relation 470
has ceased to exist; 471

(E) A person who assigns a claim or interest, concerning any 472
matter in respect to which the person would not, if a party, be 473
permitted to testify; 474

(F) A person who, if a party, would be restricted under 475
section 2317.03 of the Revised Code, when the property or thing is 476
sold or transferred by an executor, administrator, guardian, 477
trustee, heir, devisee, or legatee, shall be restricted in the 478
same manner in any action or proceeding concerning the property or 479
thing. 480

(G)(1) A school guidance counselor who holds a valid educator 481
license from the state board of education as provided for in 482
section 3319.22 of the Revised Code, a person licensed under 483
Chapter 4757. of the Revised Code as a professional clinical 484
counselor, professional counselor, social worker, independent 485

social worker, marriage and family therapist or independent 486
marriage and family therapist, or registered under Chapter 4757. 487
of the Revised Code as a social work assistant concerning a 488
confidential communication received from a client in that relation 489
or the person's advice to a client unless any of the following 490
applies: 491

(a) The communication or advice indicates clear and present 492
danger to the client or other persons. For the purposes of this 493
division, cases in which there are indications of present or past 494
child abuse or neglect of the client constitute a clear and 495
present danger. 496

(b) The client gives express consent to the testimony. 497

(c) If the client is deceased, the surviving spouse or the 498
executor or administrator of the estate of the deceased client 499
gives express consent. 500

(d) The client voluntarily testifies, in which case the 501
school guidance counselor or person licensed or registered under 502
Chapter 4757. of the Revised Code may be compelled to testify on 503
the same subject. 504

(e) The court in camera determines that the information 505
communicated by the client is not germane to the counselor-client, 506
marriage and family therapist-client, or social worker-client 507
relationship. 508

(f) A court, in an action brought against a school, its 509
administration, or any of its personnel by the client, rules after 510
an in-camera inspection that the testimony of the school guidance 511
counselor is relevant to that action. 512

(g) The testimony is sought in a civil action and concerns 513
court-ordered treatment or services received by a patient as part 514
of a case plan journalized under section 2151.412 of the Revised 515
Code or the court-ordered treatment or services are necessary or 516

relevant to dependency, neglect, or abuse or temporary or 517
permanent custody proceedings under Chapter 2151. of the Revised 518
Code. 519

(2) Nothing in division (G)(1) of this section shall relieve 520
a school guidance counselor or a person licensed or registered 521
under Chapter 4757. of the Revised Code from the requirement to 522
report information concerning child abuse or neglect under section 523
2151.421 of the Revised Code. 524

(H) A mediator acting under a mediation order issued under 525
division (A) of section 3109.052 of the Revised Code or otherwise 526
issued in any proceeding for divorce, dissolution, legal 527
separation, annulment, or the allocation of parental rights and 528
responsibilities for the care of children, in any action or 529
proceeding, other than a criminal, delinquency, child abuse, child 530
neglect, or dependent child action or proceeding, that is brought 531
by or against either parent who takes part in mediation in 532
accordance with the order and that pertains to the mediation 533
process, to any information discussed or presented in the 534
mediation process, to the allocation of parental rights and 535
responsibilities for the care of the parents' children, or to the 536
awarding of parenting time rights in relation to their children; 537

(I) A communications assistant, acting within the scope of 538
the communication assistant's authority, when providing 539
telecommunications relay service pursuant to section 4931.06 of 540
the Revised Code or Title II of the "Communications Act of 1934," 541
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 542
made through a telecommunications relay service. Nothing in this 543
section shall limit the obligation of a communications assistant 544
to divulge information or testify when mandated by federal law or 545
regulation or pursuant to subpoena in a criminal proceeding. 546

Nothing in this section shall limit any immunity or privilege 547
granted under federal law or regulation. 548

(J)(1) A chiropractor in a civil proceeding concerning a 549
communication made to the chiropractor by a patient in that 550
relation or the chiropractor's advice to a patient, except as 551
otherwise provided in this division. The testimonial privilege 552
established under this division does not apply, and a chiropractor 553
may testify or may be compelled to testify, in any civil action, 554
in accordance with the discovery provisions of the Rules of Civil 555
Procedure in connection with a civil action, or in connection with 556
a claim under Chapter 4123. of the Revised Code, under any of the 557
following circumstances: 558

(a) If the patient or the guardian or other legal 559
representative of the patient gives express consent. 560

(b) If the patient is deceased, the spouse of the patient or 561
the executor or administrator of the patient's estate gives 562
express consent. 563

(c) If a medical claim, dental claim, chiropractic claim, or 564
optometric claim, as defined in section 2305.113 of the Revised 565
Code, an action for wrongful death, any other type of civil 566
action, or a claim under Chapter 4123. of the Revised Code is 567
filed by the patient, the personal representative of the estate of 568
the patient if deceased, or the patient's guardian or other legal 569
representative. 570

(2) If the testimonial privilege described in division (J)(1) 571
of this section does not apply as provided in division (J)(1)(c) 572
of this section, a chiropractor may be compelled to testify or to 573
submit to discovery under the Rules of Civil Procedure only as to 574
a communication made to the chiropractor by the patient in 575
question in that relation, or the chiropractor's advice to the 576
patient in question, that related causally or historically to 577
physical or mental injuries that are relevant to issues in the 578
medical claim, dental claim, chiropractic claim, or optometric 579
claim, action for wrongful death, other civil action, or claim 580

under Chapter 4123. of the Revised Code. 581

(3) The testimonial privilege established under this division 582
does not apply, and a chiropractor may testify or be compelled to 583
testify, in any criminal action or administrative proceeding. 584

(4) As used in this division, "communication" means 585
acquiring, recording, or transmitting any information, in any 586
manner, concerning any facts, opinions, or statements necessary to 587
enable a chiropractor to diagnose, treat, or act for a patient. A 588
communication may include, but is not limited to, any 589
chiropractic, office, or hospital communication such as a record, 590
chart, letter, memorandum, laboratory test and results, x-ray, 591
photograph, financial statement, diagnosis, or prognosis. 592

(K)(1) Except as provided under division (K)(2) of this 593
section, a critical incident stress management team member 594
concerning a communication received from an individual who 595
receives crisis response services from the team member, or the 596
team member's advice to the individual, during a debriefing 597
session. 598

(2) The testimonial privilege established under division 599
(K)(1) of this section does not apply if any of the following are 600
true: 601

(a) The communication or advice indicates clear and present 602
danger to the individual who receives crisis response services or 603
to other persons. For purposes of this division, cases in which 604
there are indications of present or past child abuse or neglect of 605
the individual constitute a clear and present danger. 606

(b) The individual who received crisis response services 607
gives express consent to the testimony. 608

(c) If the individual who received crisis response services 609
is deceased, the surviving spouse or the executor or administrator 610
of the estate of the deceased individual gives express consent. 611

(d) The individual who received crisis response services 612
voluntarily testifies, in which case the team member may be 613
compelled to testify on the same subject. 614

(e) The court in camera determines that the information 615
communicated by the individual who received crisis response 616
services is not germane to the relationship between the individual 617
and the team member. 618

(f) The communication or advice pertains or is related to any 619
criminal act. 620

(3) As used in division (K) of this section: 621

(a) "Crisis response services" means consultation, risk 622
assessment, referral, and on-site crisis intervention services 623
provided by a critical incident stress management team to 624
individuals affected by crisis or disaster. 625

(b) "Critical incident stress management team member" or 626
"team member" means an individual specially trained to provide 627
crisis response services as a member of an organized community or 628
local crisis response team that holds membership in the Ohio 629
critical incident stress management network. 630

(c) "Debriefing session" means a session at which crisis 631
response services are rendered by a critical incident stress 632
management team member during or after a crisis or disaster. 633

(L)(1) Subject to division (L)(2) of this section and except 634
as provided in division (L)(3) of this section, an employee 635
assistance professional, concerning a communication made to the 636
employee assistance professional by a client in the employee 637
assistance professional's official capacity as an employee 638
assistance professional. 639

(2) Division (L)(1) of this section applies to an employee 640
assistance professional who meets either or both of the following 641

requirements:	642
(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;	643 644
(b) Has education, training, and experience in all of the following:	645 646
(i) Providing workplace-based services designed to address employer and employee productivity issues;	647 648
(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;	649 650 651 652
(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;	653 654 655 656
(iv) Selecting and evaluating available community resources;	657
(v) Making appropriate referrals;	658
(vi) Local and national employee assistance agreements;	659
(vii) Client confidentiality.	660
(3) Division (L)(1) of this section does not apply to any of the following:	661 662
(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;	663 664 665 666
(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;	667 668 669
(c) A communication that is made by a client who is an	670

unemancipated minor or an adult adjudicated to be incompetent and 671
indicates that the client was the victim of a crime or abuse; 672

(d) A civil proceeding to determine an individual's mental 673
competency or a criminal action in which a plea of not guilty by 674
reason of insanity is entered; 675

(e) A civil or criminal malpractice action brought against 676
the employee assistance professional; 677

(f) When the employee assistance professional has the express 678
consent of the client or, if the client is deceased or disabled, 679
the client's legal representative; 680

(g) When the testimonial privilege otherwise provided by 681
division (L)(1) of this section is abrogated under law. 682

Sec. 4731.22. (A) The state medical board, by an affirmative 683
vote of not fewer than six of its members, may revoke or may 684
refuse to grant a certificate to a person found by the board to 685
have committed fraud during the administration of the examination 686
for a certificate to practice or to have committed fraud, 687
misrepresentation, or deception in applying for or securing any 688
certificate to practice or certificate of registration issued by 689
the board. 690

(B) The board, by an affirmative vote of not fewer than six 691
members, shall, to the extent permitted by law, limit, revoke, or 692
suspend an individual's certificate to practice, refuse to 693
register an individual, refuse to reinstate a certificate, or 694
reprimand or place on probation the holder of a certificate for 695
one or more of the following reasons: 696

(1) Permitting one's name or one's certificate to practice or 697
certificate of registration to be used by a person, group, or 698
corporation when the individual concerned is not actually 699
directing the treatment given; 700

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

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

(4) Willfully betraying a professional confidence.

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 732
conferred by that section upon a physician who makes a report as 733
described in this division in accordance with division (B) of that 734
section. As used in this division, "physician" has the same 735
meaning as in section 2305.331 of the Revised Code. 736

(5) Making a false, fraudulent, deceptive, or misleading 737
statement in the solicitation of or advertising for patients; in 738
relation to the practice of medicine and surgery, osteopathic 739
medicine and surgery, podiatric medicine and surgery, or a limited 740
branch of medicine; or in securing or attempting to secure any 741
certificate to practice or certificate of registration issued by 742
the board. 743

As used in this division, "false, fraudulent, deceptive, or 744
misleading statement" means a statement that includes a 745
misrepresentation of fact, is likely to mislead or deceive because 746
of a failure to disclose material facts, is intended or is likely 747
to create false or unjustified expectations of favorable results, 748
or includes representations or implications that in reasonable 749
probability will cause an ordinarily prudent person to 750
misunderstand or be deceived. 751

(6) A departure from, or the failure to conform to, minimal 752
standards of care of similar practitioners under the same or 753
similar circumstances, whether or not actual injury to a patient 754
is established; 755

(7) Representing, with the purpose of obtaining compensation 756
or other advantage as personal gain or for any other person, that 757
an incurable disease or injury, or other incurable condition, can 758
be permanently cured; 759

(8) The obtaining of, or attempting to obtain, money or 760
anything of value by fraudulent misrepresentations in the course 761
of practice; 762

(9) A plea of guilty to, a judicial finding of guilt of, or a	763
judicial finding of eligibility for intervention in lieu of	764
conviction for, a felony;	765
(10) Commission of an act that constitutes a felony in this	766
state, regardless of the jurisdiction in which the act was	767
committed;	768
(11) A plea of guilty to, a judicial finding of guilt of, or	769
a judicial finding of eligibility for intervention in lieu of	770
conviction for, a misdemeanor committed in the course of practice;	771
(12) Commission of an act in the course of practice that	772
constitutes a misdemeanor in this state, regardless of the	773
jurisdiction in which the act was committed;	774
(13) A plea of guilty to, a judicial finding of guilt of, or	775
a judicial finding of eligibility for intervention in lieu of	776
conviction for, a misdemeanor involving moral turpitude;	777
(14) Commission of an act involving moral turpitude that	778
constitutes a misdemeanor in this state, regardless of the	779
jurisdiction in which the act was committed;	780
(15) Violation of the conditions of limitation placed by the	781
board upon a certificate to practice;	782
(16) Failure to pay license renewal fees specified in this	783
chapter;	784
(17) Except as authorized in section 4731.31 of the Revised	785
Code, engaging in the division of fees for referral of patients,	786
or the receiving of a thing of value in return for a specific	787
referral of a patient to utilize a particular service or business;	788
(18) Subject to section 4731.226 of the Revised Code,	789
violation of any provision of a code of ethics of the American	790
medical association, the American osteopathic association, the	791
American podiatric medical association, or any other national	792

professional organizations that the board specifies by rule. The 793
state medical board shall obtain and keep on file current copies 794
of the codes of ethics of the various national professional 795
organizations. The individual whose certificate is being suspended 796
or revoked shall not be found to have violated any provision of a 797
code of ethics of an organization not appropriate to the 798
individual's profession. 799

For purposes of this division, a "provision of a code of 800
ethics of a national professional organization" does not include 801
any provision that would preclude ~~the making of a report by a~~ 802
~~physician of an employee's use of a drug of abuse, or of a~~ 803
~~condition of an employee other than one involving the use of a~~ 804
~~drug of abuse, to the employer of the employee as described in~~ 805
~~division (B) of section 2305.33 of the Revised Code~~ from making a 806
report of the information described in division (B)(4)(b) or (c) 807
of this section. Nothing in this division affects the immunity 808
from civil liability conferred by ~~that~~ section 2305.33 or 2305.331 809
of the Revised Code upon a physician who makes ~~either type of a~~ 810
report as described in this division in accordance with division 811
(B) of ~~that~~ either section, whichever is applicable. As used in 812
this division, ~~"employee," "employer," and "physician" have~~ has 813
the same ~~meanings~~ meaning as in section 2305.33 or 2305.331 of the 814
Revised Code, whichever is applicable. 815

(19) Inability to practice according to acceptable and 816
prevailing standards of care by reason of mental illness or 817
physical illness, including, but not limited to, physical 818
deterioration that adversely affects cognitive, motor, or 819
perceptive skills. 820

In enforcing this division, the board, upon a showing of a 821
possible violation, may compel any individual authorized to 822
practice by this chapter or who has submitted an application 823
pursuant to this chapter to submit to a mental examination, 824

physical examination, including an HIV test, or both a mental and 825
a physical examination. The expense of the examination is the 826
responsibility of the individual compelled to be examined. Failure 827
to submit to a mental or physical examination or consent to an HIV 828
test ordered by the board constitutes an admission of the 829
allegations against the individual unless the failure is due to 830
circumstances beyond the individual's control, and a default and 831
final order may be entered without the taking of testimony or 832
presentation of evidence. If the board finds an individual unable 833
to practice because of the reasons set forth in this division, the 834
board shall require the individual to submit to care, counseling, 835
or treatment by physicians approved or designated by the board, as 836
a condition for initial, continued, reinstated, or renewed 837
authority to practice. An individual affected under this division 838
shall be afforded an opportunity to demonstrate to the board the 839
ability to resume practice in compliance with acceptable and 840
prevailing standards under the provisions of the individual's 841
certificate. For the purpose of this division, any individual who 842
applies for or receives a certificate to practice under this 843
chapter accepts the privilege of practicing in this state and, by 844
so doing, shall be deemed to have given consent to submit to a 845
mental or physical examination when directed to do so in writing 846
by the board, and to have waived all objections to the 847
admissibility of testimony or examination reports that constitute 848
a privileged communication. 849

(20)(a) Except when civil penalties are imposed under section 850
4731.225 or 4731.281 of the Revised Code, and subject to section 851
4731.226 of the Revised Code or division (B)(20)(b) of this 852
section, violating or attempting to violate, directly or 853
indirectly, or assisting in or abetting the violation of, or 854
conspiring to violate, any provisions of this chapter or any rule 855
promulgated by the board. 856

~~This division (b) Division (B)(20)(a) of this section~~ does 857
not apply to a violation or attempted violation of, assisting in 858
or abetting the violation of, or a conspiracy to violate, any 859
provision of this chapter or any rule adopted by the board that 860
would preclude ~~the making of a report by a physician of an~~ 861
~~employee's use of a drug of abuse, or of a condition of an~~ 862
~~employee other than one involving the use of a drug of abuse, to~~ 863
~~the employer of the employee as described in division (B) of~~ 864
~~section 2305.33 of the Revised Code from making a report of the~~ 865
~~information described in division (B)(4)(b) or (c) of this~~ 866
section. Nothing in this division affects the immunity from civil 867
liability conferred by ~~that~~ section 2305.33 or 2305.331 of the 868
Revised Code upon a physician who makes either ~~type of a~~ report as 869
described in this division in accordance with division (B) of ~~that~~ 870
either section, whichever is applicable. As used in this division, 871
~~"employee," "employer," and "physician" have~~ has the same meanings 872
meaning as in section 2305.33 or 2305.331 of the Revised Code, 873
whichever is applicable. 874

(21) The violation of section 3701.79 of the Revised Code or 875
of any abortion rule adopted by the public health council pursuant 876
to section 3701.341 of the Revised Code; 877

(22) Any of the following actions taken by an agency 878
responsible for authorizing, certifying, or regulating an 879
individual to practice a health care occupation or provide health 880
care services in this state or another jurisdiction, for any 881
reason other than the nonpayment of fees: the limitation, 882
revocation, or suspension of an individual's license to practice; 883
acceptance of an individual's license surrender; denial of a 884
license; refusal to renew or reinstate a license; imposition of 885
probation; or issuance of an order of censure or other reprimand; 886

(23) The violation of section 2919.12 of the Revised Code or 887
the performance or inducement of an abortion upon a pregnant woman 888

with actual knowledge that the conditions specified in division 889
(B) of section 2317.56 of the Revised Code have not been satisfied 890
or with a heedless indifference as to whether those conditions 891
have been satisfied, unless an affirmative defense as specified in 892
division (H)(2) of that section would apply in a civil action 893
authorized by division (H)(1) of that section; 894

(24) The revocation, suspension, restriction, reduction, or 895
termination of clinical privileges by the United States department 896
of defense or department of veterans affairs or the termination or 897
suspension of a certificate of registration to prescribe drugs by 898
the drug enforcement administration of the United States 899
department of justice; 900

(25) Termination or suspension from participation in the 901
medicare or medicaid programs by the department of health and 902
human services or other responsible agency for any act or acts 903
that also would constitute a violation of division (B)(2), (3), 904
(6), (8), or (19) of this section; 905

(26) Impairment of ability to practice according to 906
acceptable and prevailing standards of care because of habitual or 907
excessive use or abuse of drugs, alcohol, or other substances that 908
impair ability to practice. 909

For the purposes of this division, any individual authorized 910
to practice by this chapter accepts the privilege of practicing in 911
this state subject to supervision by the board. By filing an 912
application for or holding a certificate to practice under this 913
chapter, an individual shall be deemed to have given consent to 914
submit to a mental or physical examination when ordered to do so 915
by the board in writing, and to have waived all objections to the 916
admissibility of testimony or examination reports that constitute 917
privileged communications. 918

If it has reason to believe that any individual authorized to 919

practice by this chapter or any applicant for certification to 920
practice suffers such impairment, the board may compel the 921
individual to submit to a mental or physical examination, or both. 922
The expense of the examination is the responsibility of the 923
individual compelled to be examined. Any mental or physical 924
examination required under this division shall be undertaken by a 925
treatment provider or physician who is qualified to conduct the 926
examination and who is chosen by the board. 927

Failure to submit to a mental or physical examination ordered 928
by the board constitutes an admission of the allegations against 929
the individual unless the failure is due to circumstances beyond 930
the individual's control, and a default and final order may be 931
entered without the taking of testimony or presentation of 932
evidence. If the board determines that the individual's ability to 933
practice is impaired, the board shall suspend the individual's 934
certificate or deny the individual's application and shall require 935
the individual, as a condition for initial, continued, reinstated, 936
or renewed certification to practice, to submit to treatment. 937

Before being eligible to apply for reinstatement of a 938
certificate suspended under this division, the impaired 939
practitioner shall demonstrate to the board the ability to resume 940
practice in compliance with acceptable and prevailing standards of 941
care under the provisions of the practitioner's certificate. The 942
demonstration shall include, but shall not be limited to, the 943
following: 944

(a) Certification from a treatment provider approved under 945
section 4731.25 of the Revised Code that the individual has 946
successfully completed any required inpatient treatment; 947

(b) Evidence of continuing full compliance with an aftercare 948
contract or consent agreement; 949

(c) Two written reports indicating that the individual's 950

ability to practice has been assessed and that the individual has 951
been found capable of practicing according to acceptable and 952
prevailing standards of care. The reports shall be made by 953
individuals or providers approved by the board for making the 954
assessments and shall describe the basis for their determination. 955

The board may reinstate a certificate suspended under this 956
division after that demonstration and after the individual has 957
entered into a written consent agreement. 958

When the impaired practitioner resumes practice, the board 959
shall require continued monitoring of the individual. The 960
monitoring shall include, but not be limited to, compliance with 961
the written consent agreement entered into before reinstatement or 962
with conditions imposed by board order after a hearing, and, upon 963
termination of the consent agreement, submission to the board for 964
at least two years of annual written progress reports made under 965
penalty of perjury stating whether the individual has maintained 966
sobriety. 967

(27) A second or subsequent violation of section 4731.66 or 968
4731.69 of the Revised Code; 969

(28) Except as provided in division (N) of this section: 970

(a) Waiving the payment of all or any part of a deductible or 971
copayment that a patient, pursuant to a health insurance or health 972
care policy, contract, or plan that covers the individual's 973
services, otherwise would be required to pay if the waiver is used 974
as an enticement to a patient or group of patients to receive 975
health care services from that individual; 976

(b) Advertising that the individual will waive the payment of 977
all or any part of a deductible or copayment that a patient, 978
pursuant to a health insurance or health care policy, contract, or 979
plan that covers the individual's services, otherwise would be 980
required to pay. 981

(29) Failure to use universal blood and body fluid	982
precautions established by rules adopted under section 4731.051 of	983
the Revised Code;	984
(30) Failure to provide notice to, and receive acknowledgment	985
of the notice from, a patient when required by section 4731.143 of	986
the Revised Code prior to providing nonemergency professional	987
services, or failure to maintain that notice in the patient's	988
file;	989
(31) Failure of a physician supervising a physician assistant	990
to maintain supervision in accordance with the requirements of	991
Chapter 4730. of the Revised Code and the rules adopted under that	992
chapter;	993
(32) Failure of a physician or podiatrist to enter into a	994
standard care arrangement with a clinical nurse specialist,	995
certified nurse-midwife, or certified nurse practitioner with whom	996
the physician or podiatrist is in collaboration pursuant to	997
section 4731.27 of the Revised Code or failure to fulfill the	998
responsibilities of collaboration after entering into a standard	999
care arrangement;	1000
(33) Failure to comply with the terms of a consult agreement	1001
entered into with a pharmacist pursuant to section 4729.39 of the	1002
Revised Code;	1003
(34) Failure to cooperate in an investigation conducted by	1004
the board under division (F) of this section, including failure to	1005
comply with a subpoena or order issued by the board or failure to	1006
answer truthfully a question presented by the board at a	1007
deposition or in written interrogatories, except that failure to	1008
cooperate with an investigation shall not constitute grounds for	1009
discipline under this section if a court of competent jurisdiction	1010
has issued an order that either quashes a subpoena or permits the	1011
individual to withhold the testimony or evidence in issue;	1012

(35) Failure to supervise an acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for supervision of an acupuncturist;	1013 1014 1015
(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;	1016 1017 1018
(37) Assisting suicide as defined in section 3795.01 of the Revised Code;	1019 1020
(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;	1021 1022
(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;	1023 1024 1025
(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;	1026 1027 1028
(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;	1029 1030 1031 1032
(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;	1033 1034 1035 1036
(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;	1037 1038 1039 1040
(41) (44) Failure to comply with the requirements of section 2919.171 of the Revised Code or failure to submit to the	1041 1042

department of health in accordance with a court order a complete 1043
report as described in section 2919.171 of the Revised Code. 1044

(C) Disciplinary actions taken by the board under divisions 1045
(A) and (B) of this section shall be taken pursuant to an 1046
adjudication under Chapter 119. of the Revised Code, except that 1047
in lieu of an adjudication, the board may enter into a consent 1048
agreement with an individual to resolve an allegation of a 1049
violation of this chapter or any rule adopted under it. A consent 1050
agreement, when ratified by an affirmative vote of not fewer than 1051
six members of the board, shall constitute the findings and order 1052
of the board with respect to the matter addressed in the 1053
agreement. If the board refuses to ratify a consent agreement, the 1054
admissions and findings contained in the consent agreement shall 1055
be of no force or effect. 1056

A telephone conference call may be utilized for ratification 1057
of a consent agreement that revokes or suspends an individual's 1058
certificate to practice. The telephone conference call shall be 1059
considered a special meeting under division (F) of section 121.22 1060
of the Revised Code. 1061

If the board takes disciplinary action against an individual 1062
under division (B) of this section for a second or subsequent plea 1063
of guilty to, or judicial finding of guilt of, a violation of 1064
section 2919.123 of the Revised Code, the disciplinary action 1065
shall consist of a suspension of the individual's certificate to 1066
practice for a period of at least one year or, if determined 1067
appropriate by the board, a more serious sanction involving the 1068
individual's certificate to practice. Any consent agreement 1069
entered into under this division with an individual that pertains 1070
to a second or subsequent plea of guilty to, or judicial finding 1071
of guilt of, a violation of that section shall provide for a 1072
suspension of the individual's certificate to practice for a 1073
period of at least one year or, if determined appropriate by the 1074

board, a more serious sanction involving the individual's 1075
certificate to practice. 1076

(D) For purposes of divisions (B)(10), (12), and (14) of this 1077
section, the commission of the act may be established by a finding 1078
by the board, pursuant to an adjudication under Chapter 119. of 1079
the Revised Code, that the individual committed the act. The board 1080
does not have jurisdiction under those divisions if the trial 1081
court renders a final judgment in the individual's favor and that 1082
judgment is based upon an adjudication on the merits. The board 1083
has jurisdiction under those divisions if the trial court issues 1084
an order of dismissal upon technical or procedural grounds. 1085

(E) The sealing of conviction records by any court shall have 1086
no effect upon a prior board order entered under this section or 1087
upon the board's jurisdiction to take action under this section 1088
if, based upon a plea of guilty, a judicial finding of guilt, or a 1089
judicial finding of eligibility for intervention in lieu of 1090
conviction, the board issued a notice of opportunity for a hearing 1091
prior to the court's order to seal the records. The board shall 1092
not be required to seal, destroy, redact, or otherwise modify its 1093
records to reflect the court's sealing of conviction records. 1094

(F)(1) The board shall investigate evidence that appears to 1095
show that a person has violated any provision of this chapter or 1096
any rule adopted under it. Any person may report to the board in a 1097
signed writing any information that the person may have that 1098
appears to show a violation of any provision of this chapter or 1099
any rule adopted under it. In the absence of bad faith, any person 1100
who reports information of that nature or who testifies before the 1101
board in any adjudication conducted under Chapter 119. of the 1102
Revised Code shall not be liable in damages in a civil action as a 1103
result of the report or testimony. Each complaint or allegation of 1104
a violation received by the board shall be assigned a case number 1105
and shall be recorded by the board. 1106

(2) Investigations of alleged violations of this chapter or 1107
any rule adopted under it shall be supervised by the supervising 1108
member elected by the board in accordance with section 4731.02 of 1109
the Revised Code and by the secretary as provided in section 1110
4731.39 of the Revised Code. The president may designate another 1111
member of the board to supervise the investigation in place of the 1112
supervising member. No member of the board who supervises the 1113
investigation of a case shall participate in further adjudication 1114
of the case. 1115

(3) In investigating a possible violation of this chapter or 1116
any rule adopted under this chapter, the board may administer 1117
oaths, order the taking of depositions, inspect and copy any 1118
books, accounts, papers, records, or documents, issue subpoenas, 1119
and compel the attendance of witnesses and production of books, 1120
accounts, papers, records, documents, and testimony, except that a 1121
subpoena for patient record information shall not be issued 1122
without consultation with the attorney general's office and 1123
approval of the secretary and supervising member of the board. 1124
Before issuance of a subpoena for patient record information, the 1125
secretary and supervising member shall determine whether there is 1126
probable cause to believe that the complaint filed alleges a 1127
violation of this chapter or any rule adopted under it and that 1128
the records sought are relevant to the alleged violation and 1129
material to the investigation. The subpoena may apply only to 1130
records that cover a reasonable period of time surrounding the 1131
alleged violation. 1132

On failure to comply with any subpoena issued by the board 1133
and after reasonable notice to the person being subpoenaed, the 1134
board may move for an order compelling the production of persons 1135
or records pursuant to the Rules of Civil Procedure. 1136

A subpoena issued by the board may be served by a sheriff, 1137
the sheriff's deputy, or a board employee designated by the board. 1138

Service of a subpoena issued by the board may be made by 1139
delivering a copy of the subpoena to the person named therein, 1140
reading it to the person, or leaving it at the person's usual 1141
place of residence. When the person being served is a person whose 1142
practice is authorized by this chapter, service of the subpoena 1143
may be made by certified mail, restricted delivery, return receipt 1144
requested, and the subpoena shall be deemed served on the date 1145
delivery is made or the date the person refuses to accept 1146
delivery. 1147

A sheriff's deputy who serves a subpoena shall receive the 1148
same fees as a sheriff. Each witness who appears before the board 1149
in obedience to a subpoena shall receive the fees and mileage 1150
provided for under section 119.094 of the Revised Code. 1151

(4) All hearings and investigations of the board shall be 1152
considered civil actions for the purposes of section 2305.252 of 1153
the Revised Code. 1154

(5) Information received by the board pursuant to an 1155
investigation is confidential and not subject to discovery in any 1156
civil action. 1157

The board shall conduct all investigations and proceedings in 1158
a manner that protects the confidentiality of patients and persons 1159
who file complaints with the board. The board shall not make 1160
public the names or any other identifying information about 1161
patients or complainants unless proper consent is given or, in the 1162
case of a patient, a waiver of the patient privilege exists under 1163
division (B) of section 2317.02 of the Revised Code, except that 1164
consent or a waiver of that nature is not required if the board 1165
possesses reliable and substantial evidence that no bona fide 1166
physician-patient relationship exists. 1167

The board may share any information it receives pursuant to 1168
an investigation, including patient records and patient record 1169

information, with law enforcement agencies, other licensing 1170
boards, and other governmental agencies that are prosecuting, 1171
adjudicating, or investigating alleged violations of statutes or 1172
administrative rules. An agency or board that receives the 1173
information shall comply with the same requirements regarding 1174
confidentiality as those with which the state medical board must 1175
comply, notwithstanding any conflicting provision of the Revised 1176
Code or procedure of the agency or board that applies when it is 1177
dealing with other information in its possession. In a judicial 1178
proceeding, the information may be admitted into evidence only in 1179
accordance with the Rules of Evidence, but the court shall require 1180
that appropriate measures are taken to ensure that confidentiality 1181
is maintained with respect to any part of the information that 1182
contains names or other identifying information about patients or 1183
complainants whose confidentiality was protected by the state 1184
medical board when the information was in the board's possession. 1185
Measures to ensure confidentiality that may be taken by the court 1186
include sealing its records or deleting specific information from 1187
its records. 1188

(6) On a quarterly basis, the board shall prepare a report 1189
that documents the disposition of all cases during the preceding 1190
three months. The report shall contain the following information 1191
for each case with which the board has completed its activities: 1192

(a) The case number assigned to the complaint or alleged 1193
violation; 1194

(b) The type of certificate to practice, if any, held by the 1195
individual against whom the complaint is directed; 1196

(c) A description of the allegations contained in the 1197
complaint; 1198

(d) The disposition of the case. 1199

The report shall state how many cases are still pending and 1200

shall be prepared in a manner that protects the identity of each 1201
person involved in each case. The report shall be a public record 1202
under section 149.43 of the Revised Code. 1203

(G) If the secretary and supervising member determine both of 1204
the following, they may recommend that the board suspend an 1205
individual's certificate to practice without a prior hearing: 1206

(1) That there is clear and convincing evidence that an 1207
individual has violated division (B) of this section; 1208

(2) That the individual's continued practice presents a 1209
danger of immediate and serious harm to the public. 1210

Written allegations shall be prepared for consideration by 1211
the board. The board, upon review of those allegations and by an 1212
affirmative vote of not fewer than six of its members, excluding 1213
the secretary and supervising member, may suspend a certificate 1214
without a prior hearing. A telephone conference call may be 1215
utilized for reviewing the allegations and taking the vote on the 1216
summary suspension. 1217

The board shall issue a written order of suspension by 1218
certified mail or in person in accordance with section 119.07 of 1219
the Revised Code. The order shall not be subject to suspension by 1220
the court during pendency of any appeal filed under section 119.12 1221
of the Revised Code. If the individual subject to the summary 1222
suspension requests an adjudicatory hearing by the board, the date 1223
set for the hearing shall be within fifteen days, but not earlier 1224
than seven days, after the individual requests the hearing, unless 1225
otherwise agreed to by both the board and the individual. 1226

Any summary suspension imposed under this division shall 1227
remain in effect, unless reversed on appeal, until a final 1228
adjudicative order issued by the board pursuant to this section 1229
and Chapter 119. of the Revised Code becomes effective. The board 1230
shall issue its final adjudicative order within seventy-five days 1231

after completion of its hearing. A failure to issue the order 1232
within seventy-five days shall result in dissolution of the 1233
summary suspension order but shall not invalidate any subsequent, 1234
final adjudicative order. 1235

(H) If the board takes action under division (B)(9), (11), or 1236
(13) of this section and the judicial finding of guilt, guilty 1237
plea, or judicial finding of eligibility for intervention in lieu 1238
of conviction is overturned on appeal, upon exhaustion of the 1239
criminal appeal, a petition for reconsideration of the order may 1240
be filed with the board along with appropriate court documents. 1241
Upon receipt of a petition of that nature and supporting court 1242
documents, the board shall reinstate the individual's certificate 1243
to practice. The board may then hold an adjudication under Chapter 1244
119. of the Revised Code to determine whether the individual 1245
committed the act in question. Notice of an opportunity for a 1246
hearing shall be given in accordance with Chapter 119. of the 1247
Revised Code. If the board finds, pursuant to an adjudication held 1248
under this division, that the individual committed the act or if 1249
no hearing is requested, the board may order any of the sanctions 1250
identified under division (B) of this section. 1251

(I) The certificate to practice issued to an individual under 1252
this chapter and the individual's practice in this state are 1253
automatically suspended as of the date of the individual's second 1254
or subsequent plea of guilty to, or judicial finding of guilt of, 1255
a violation of section 2919.123 of the Revised Code, or the date 1256
the individual pleads guilty to, is found by a judge or jury to be 1257
guilty of, or is subject to a judicial finding of eligibility for 1258
intervention in lieu of conviction in this state or treatment or 1259
intervention in lieu of conviction in another jurisdiction for any 1260
of the following criminal offenses in this state or a 1261
substantially equivalent criminal offense in another jurisdiction: 1262
aggravated murder, murder, voluntary manslaughter, felonious 1263

assault, kidnapping, rape, sexual battery, gross sexual 1264
imposition, aggravated arson, aggravated robbery, or aggravated 1265
burglary. Continued practice after suspension shall be considered 1266
practicing without a certificate. 1267

The board shall notify the individual subject to the 1268
suspension by certified mail or in person in accordance with 1269
section 119.07 of the Revised Code. If an individual whose 1270
certificate is automatically suspended under this division fails 1271
to make a timely request for an adjudication under Chapter 119. of 1272
the Revised Code, the board shall do whichever of the following is 1273
applicable: 1274

(1) If the automatic suspension under this division is for a 1275
second or subsequent plea of guilty to, or judicial finding of 1276
guilt of, a violation of section 2919.123 of the Revised Code, the 1277
board shall enter an order suspending the individual's certificate 1278
to practice for a period of at least one year or, if determined 1279
appropriate by the board, imposing a more serious sanction 1280
involving the individual's certificate to practice. 1281

(2) In all circumstances in which division (I)(1) of this 1282
section does not apply, enter a final order permanently revoking 1283
the individual's certificate to practice. 1284

(J) If the board is required by Chapter 119. of the Revised 1285
Code to give notice of an opportunity for a hearing and if the 1286
individual subject to the notice does not timely request a hearing 1287
in accordance with section 119.07 of the Revised Code, the board 1288
is not required to hold a hearing, but may adopt, by an 1289
affirmative vote of not fewer than six of its members, a final 1290
order that contains the board's findings. In that final order, the 1291
board may order any of the sanctions identified under division (A) 1292
or (B) of this section. 1293

(K) Any action taken by the board under division (B) of this 1294

section resulting in a suspension from practice shall be 1295
accompanied by a written statement of the conditions under which 1296
the individual's certificate to practice may be reinstated. The 1297
board shall adopt rules governing conditions to be imposed for 1298
reinstatement. Reinstatement of a certificate suspended pursuant 1299
to division (B) of this section requires an affirmative vote of 1300
not fewer than six members of the board. 1301

(L) When the board refuses to grant a certificate to an 1302
applicant, revokes an individual's certificate to practice, 1303
refuses to register an applicant, or refuses to reinstate an 1304
individual's certificate to practice, the board may specify that 1305
its action is permanent. An individual subject to a permanent 1306
action taken by the board is forever thereafter ineligible to hold 1307
a certificate to practice and the board shall not accept an 1308
application for reinstatement of the certificate or for issuance 1309
of a new certificate. 1310

(M) Notwithstanding any other provision of the Revised Code, 1311
all of the following apply: 1312

(1) The surrender of a certificate issued under this chapter 1313
shall not be effective unless or until accepted by the board. A 1314
telephone conference call may be utilized for acceptance of the 1315
surrender of an individual's certificate to practice. The 1316
telephone conference call shall be considered a special meeting 1317
under division (F) of section 121.22 of the Revised Code. 1318
Reinstatement of a certificate surrendered to the board requires 1319
an affirmative vote of not fewer than six members of the board. 1320

(2) An application for a certificate made under the 1321
provisions of this chapter may not be withdrawn without approval 1322
of the board. 1323

(3) Failure by an individual to renew a certificate of 1324
registration in accordance with this chapter shall not remove or 1325

limit the board's jurisdiction to take any disciplinary action 1326
under this section against the individual. 1327

(N) Sanctions shall not be imposed under division (B)(28) of 1328
this section against any person who waives deductibles and 1329
copayments as follows: 1330

(1) In compliance with the health benefit plan that expressly 1331
allows such a practice. Waiver of the deductibles or copayments 1332
shall be made only with the full knowledge and consent of the plan 1333
purchaser, payer, and third-party administrator. Documentation of 1334
the consent shall be made available to the board upon request. 1335

(2) For professional services rendered to any other person 1336
authorized to practice pursuant to this chapter, to the extent 1337
allowed by this chapter and rules adopted by the board. 1338

(O) Under the board's investigative duties described in this 1339
section and subject to division (F) of this section, the board 1340
shall develop and implement a quality intervention program 1341
designed to improve through remedial education the clinical and 1342
communication skills of individuals authorized under this chapter 1343
to practice medicine and surgery, osteopathic medicine and 1344
surgery, and podiatric medicine and surgery. In developing and 1345
implementing the quality intervention program, the board may do 1346
all of the following: 1347

(1) Offer in appropriate cases as determined by the board an 1348
educational and assessment program pursuant to an investigation 1349
the board conducts under this section; 1350

(2) Select providers of educational and assessment services, 1351
including a quality intervention program panel of case reviewers; 1352

(3) Make referrals to educational and assessment service 1353
providers and approve individual educational programs recommended 1354
by those providers. The board shall monitor the progress of each 1355
individual undertaking a recommended individual educational 1356

program. 1357

(4) Determine what constitutes successful completion of an 1358
individual educational program and require further monitoring of 1359
the individual who completed the program or other action that the 1360
board determines to be appropriate; 1361

(5) Adopt rules in accordance with Chapter 119. of the 1362
Revised Code to further implement the quality intervention 1363
program. 1364

An individual who participates in an individual educational 1365
program pursuant to this division shall pay the financial 1366
obligations arising from that educational program. 1367

Section 2. That existing sections 2305.33, 2317.02, and 1368
4731.22 of the Revised Code are hereby repealed. 1369

Section 3. Section 4731.22 of the Revised Code is presented 1370
in this act as a composite of the section as amended by both H.B. 1371
78 and Am. Sub. H.B. 93 of the 129th General Assembly. The General 1372
Assembly, applying the principle stated in division (B) of section 1373
1.52 of the Revised Code that amendments are to be harmonized if 1374
reasonably capable of simultaneous operation, finds that the 1375
composite is the resulting version of the section in effect prior 1376
to the effective date of the section as presented in this act. 1377