

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 276

Representative Stautberg

**Cosponsors: Representatives Becker, Blair, Blessing, Hackett, Hottinger,
Johnson, Scherer, Sears, Smith**

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A B I L L

To amend section 2317.43 and to enact sections 1
2305.27 and 2323.40 of the Revised Code to provide 2
that certain statements and communications made 3
regarding an unanticipated outcome of medical care 4
are inadmissible as evidence, to require a 5
plaintiff in a medical claim to establish that the 6
defendant's act or omission is a deviation from 7
the required standard of medical care and the 8
direct and proximate cause of the alleged injury, 9
death, or loss, to provide that any loss of a 10
chance of recovery or survival by itself is not an 11
injury, death, or loss for which damages may be 12
recovered, and to grant civil immunity to a health 13
care facility for injury, death, or loss caused by 14
a health care practitioner who is not an employee 15
or agent of, and provides medical services at, the 16
facility. 17

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

Section 1. That section 2317.43 be amended and sections 18
2305.27 and 2323.40 of the Revised Code be enacted to read as 19

follows: 20

Sec. 2305.27. (A) As used in this section: 21

(1) "Health care facility or location" has the same meaning as in section 2305.234 of the Revised Code. 22
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(2) "Health care practitioner" has the same meaning as in division (B)(5) of section 2317.02 of the Revised Code. 24
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(3) "Independent medical practitioner" means any health care practitioner who is not an actual employee or agent of the health care facility or location in which the medical services are being provided. 26
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(4) "Medical claim" has the same meaning as in section 2305.113 of the Revised Code. 30
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(B) A health care facility or location is not liable in damages for injury, death, or loss to person in a civil action asserting a medical claim if the injury, death, or loss to person is the result of an act or omission of a health care practitioner who is an independent medical practitioner and the health care facility or location has provided notice in accordance with divisions (C) and (D) of this section that the health care practitioner is or could be an independent medical practitioner. 32
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(C) A health care facility or location is considered as having provided the notice under division (B) of this section if the health care facility or location either provided a copy of the notice in writing to the patient or the patient's representative prior to providing the medical services at issue or the health care facility or location has posted the notice in all of the regular and established admitting areas of the facility or location. In the case of an emergency and in the absence of posting of the notice as provided in this division, a health care facility or location shall provide a copy of the notice in writing 40
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to the patient or the patient's representative as soon as 50
practicable under the circumstances. 51

(D) The notice under division (B) of this section shall be in 52
substantially the following form: 53

"NOTICE 54

Not all of the health care practitioners who are providing 55
your medical services while you are here are employed by or agents 56
of [name of health care facility or location]. If you want to 57
determine whether a health care practitioner is an employee or 58
agent of [name of health care facility or location], contact [name 59
and phone number for contact person]. In the absence of 60
confirmation that a health care practitioner is an employee or 61
agent of [name of health care facility or location], you should 62
assume that the practitioner is not an employee or agent of [name 63
of health care facility or location]. 64

[Name of health care facility or location] is not legally 65
responsible for the acts or omissions of health care practitioners 66
who are not employed by or agents of [name of health care facility 67
or location]." 68

(E) This section applies only to a health care facility or 69
location if it requires independent medical practitioners, as a 70
condition of their ability to provide medical services at the 71
health care facility or location, to maintain a minimum of one 72
million dollars in professional liability coverage. 73

(F) This section does not apply to any action brought against 74
the state in the court of claims, including, but not limited to, 75
any action in which a state university or college is a defendant. 76

(G) This section does not preclude liability for damages for 77
injury, death, or loss to person under any other provision of the 78
Revised Code or federal law. 79

(H)(1) This section does not create a new cause of action or 80

substantive legal right against a health care facility or 81
location. 82

(2) This section does not affect any immunities from civil 83
liability or defenses established by another section of the 84
Revised Code or available at common law to which a health care 85
facility or location may be entitled in connection with medical 86
services provided by the facility or location. 87

Sec. 2317.43. (A) In any civil action brought by an alleged 88
victim of an unanticipated outcome of medical care or in any 89
arbitration proceeding related to such a civil action, any and all 90
statements, affirmations, gestures, or conduct expressing apology, 91
sympathy, commiseration, condolence, compassion, error, fault, or 92
a general sense of benevolence that are made by a health care 93
provider ~~or~~, an employee of a health care provider, or a 94
representative of a health care provider to the alleged victim, a 95
relative of the alleged victim, or a representative of the alleged 96
victim, and that relate to the discomfort, pain, suffering, 97
injury, or death of the alleged victim as the result of the 98
unanticipated outcome of medical care are inadmissible as evidence 99
of an admission of liability or as evidence of an admission 100
against interest. 101

(B) In any civil action brought by an alleged victim of an 102
unanticipated outcome of medical care, in any arbitration 103
proceeding related to such a civil action, or in any other civil 104
proceeding, any communications made by a health care provider, an 105
employee of a health care provider, or a representative of a 106
health care provider to the alleged victim, a relative or 107
acquaintance of the alleged victim, or a representative of the 108
alleged victim following an unanticipated outcome and made as part 109
of a review conducted in good faith by the health care provider, 110
an employee of the health care provider, or a representative of 111

the health care provider into the cause of or reasons for an 112
unanticipated outcome, are inadmissible as evidence unless the 113
communications are recorded in the medical record of the alleged 114
victim. Nothing in this section requires a review to be conducted. 115

(C) For purposes of this section, unless the context 116
otherwise requires: 117

(1) "Health care provider" has the same meaning as in 118
division (B)(5) of section 2317.02 of the Revised Code. 119

(2) "Relative" means a victim's spouse, parent, grandparent, 120
stepfather, stepmother, child, grandchild, brother, sister, half 121
brother, half sister, or spouse's parents. The term includes said 122
relationships that are created as a result of adoption. In 123
addition, "relative" includes any person who has a family-type 124
relationship with a victim. 125

(3) "Representative of an alleged victim" means a legal 126
guardian, attorney, person designated to make decisions on behalf 127
of a patient under a medical power of attorney, or any person 128
recognized in law or custom as a patient's agent. 129

(4) "Representative of a health care provider" means an 130
attorney, health care provider, employee of a health care 131
provider, or other person designated by a health care provider or 132
an employee of a health care provider to participate in a review 133
conducted by a health care provider or employee of a health care 134
provider. 135

(5) "Review" means the policy, procedures, and activities 136
undertaken by or at the direction of a health care provider, 137
employee of a health care provider, or person designated by a 138
health care provider or employee of a health care provider with 139
the purpose of determining the cause of or reasons for an 140
unanticipated outcome, and initiated and completed during the 141
first forty-five days following the occurrence or discovery of an 142

unanticipated outcome. A review may be extended for a longer 143
period if necessary upon written notice to the patient, relative 144
of the patient, or representative of the patient. 145

(6) "Unanticipated outcome" means the outcome of a medical 146
treatment or procedure that differs from an expected result or any 147
outcome that is adverse or not satisfactory to the patient. 148

Sec. 2323.40. (A) As used in this section, "medical claim" 149
has the same meaning as in section 2305.113 of the Revised Code. 150

(B) In any civil action upon a medical claim, in order for 151
the plaintiff to recover any damages resulting from the alleged 152
injury, death, or loss to person, the plaintiff shall establish by 153
a preponderance of the evidence that the act or omission of the 154
defendant in rendering medical care or treatment is a deviation 155
from the required standard of medical care or treatment and the 156
direct and proximate cause of the injury, death, or loss to 157
person. Direct and proximate cause of the injury, death, or loss 158
to person is established by evidence showing that it is more 159
likely than not that the defendant's act or omission was a cause 160
in fact of the injury, death, or loss to person. Any loss or 161
diminution of a chance of recovery or survival by itself is not an 162
injury, death, or loss to person for which damages may be 163
recovered. 164

Section 2. That existing section 2317.43 of the Revised Code 165
is hereby repealed. 166

Section 3. The General Assembly finds that in civil actions 167
based upon a medical claim, the negligent act or omission of the 168
responsible party must be shown to have been the direct and 169
proximate cause of the injury, death, or loss to person complained 170
of. The General Assembly also finds that the application of the 171
so-called loss of chance doctrine in those actions improperly 172

alters or eliminates the requirement of direct and proximate	173
causation. Therefore, the Ohio Supreme Court decision adopting the	174
loss of chance doctrine in <i>Roberts v. Ohio Permanente Medical</i>	175
<i>Group, Inc.</i> (1996), 76 Ohio St.3d 483, is hereby abrogated.	176