



## Ohio Revised Code

### Section 2317.43 Medical liability action - admissibility of certain communications.

Effective: March 20, 2019

Legislation: House Bill 7 - 132nd General Assembly

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(A) (1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care or in any arbitration proceeding related to such a civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, error, fault, or a general sense of benevolence that are made by a health care provider, an employee of a health care provider, or a representative of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim, and that relate to the discomfort, pain, suffering, injury, or death of the alleged victim as the result of the unanticipated outcome of medical care are inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

(2) If any statements, affirmations, gestures, or conduct that are described in division (A)(1) of this section or any reference to them are included in the medical record pertaining to the victim of an unanticipated outcome of medical care, only the portions of the medical record that include those statements, affirmations, gestures, or conduct or any reference to them are inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

(B) (1) When made as part of a review conducted in good faith by the health care provider, an employee of the health care provider, or a representative of the health care provider into the cause of or reasons for an unanticipated outcome of medical care, the following communications are inadmissible as evidence in any civil action brought by an alleged victim of an unanticipated outcome of medical care, in any arbitration proceeding related to such a civil action, or in any other civil proceeding, unless the communications are recorded in the medical record of the alleged victim, subject to division (A)(2) of this section:

(a) Any communications made by a health care provider, an employee of a health care provider, or a representative of a health care provider to the alleged victim, a relative or acquaintance of the alleged victim, or a representative of the alleged victim;



(b) Any communications made by an alleged victim, a relative or acquaintance of the alleged victim, or a representative of the alleged victim to the health care provider, an employee of a health care provider, or a representative of a health care provider.

(2) Nothing in this section requires a review to be conducted.

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

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

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

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

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

(5) "Review" means the policy, procedures, and activities undertaken by or at the direction of a health care provider, employee of a health care provider, or person designated by a health care provider or employee of a health care provider with the purpose of determining the cause of or reasons for an unanticipated outcome, and initiated and completed during the first forty-five days following the occurrence or discovery of an unanticipated outcome. A review shall be initiated by verbal communication to the patient, relative of the patient, or representative of the patient by the health care provider, employee of a health care provider, or person designated by a health care



provider or employee of a health care provider. The verbal communication shall be followed by a written document explaining the review process. A review may be extended for a longer period if necessary upon written notice to the patient, relative of the patient, or representative of the patient.

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