

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 291**

**Representative Smith, T.**

**Cosponsors: Representatives Plummer, Ghanbari, Seitz, Hambley, McClain,  
Arndt, Becker**

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**A BILL**

To amend section 2317.02 of the Revised Code to  
provide privileged testimonial communications  
between a peer recovery supporter and a fellow  
first responder exhibiting signs of distress.

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

**Section 1.** That section 2317.02 of the Revised Code be  
amended to read as follows:

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

(A) (1) An attorney, concerning a communication made to the  
attorney by a client in that relation or concerning the  
attorney's advice to a client, except that the attorney may  
testify by express consent of the client or, if the client is  
deceased, by the express consent of the surviving spouse or the  
executor or administrator of the estate of the deceased client.  
However, if the client voluntarily reveals the substance of  
attorney-client communications in a nonprivileged context or is  
deemed by section 2151.421 of the Revised Code to have waived

any testimonial privilege under this division, the attorney may 18  
be compelled to testify on the same subject. 19

The testimonial privilege established under this division 20  
does not apply concerning either of the following: 21

(a) A communication between a client in a capital case, as 22  
defined in section 2901.02 of the Revised Code, and the client's 23  
attorney if the communication is relevant to a subsequent 24  
ineffective assistance of counsel claim by the client alleging 25  
that the attorney did not effectively represent the client in 26  
the case; 27

(b) A communication between a client who has since died 28  
and the deceased client's attorney if the communication is 29  
relevant to a dispute between parties who claim through that 30  
deceased client, regardless of whether the claims are by testate 31  
or intestate succession or by inter vivos transaction, and the 32  
dispute addresses the competency of the deceased client when the 33  
deceased client executed a document that is the basis of the 34  
dispute or whether the deceased client was a victim of fraud, 35  
undue influence, or duress when the deceased client executed a 36  
document that is the basis of the dispute. 37

(2) An attorney, concerning a communication made to the 38  
attorney by a client in that relationship or the attorney's 39  
advice to a client, except that if the client is an insurance 40  
company, the attorney may be compelled to testify, subject to an 41  
in camera inspection by a court, about communications made by 42  
the client to the attorney or by the attorney to the client that 43  
are related to the attorney's aiding or furthering an ongoing or 44  
future commission of bad faith by the client, if the party 45  
seeking disclosure of the communications has made a prima-facie 46  
showing of bad faith, fraud, or criminal misconduct by the 47

client. 48

(B) (1) A physician, advanced practice registered nurse, or 49  
dentist concerning a communication made to the physician, 50  
advanced practice registered nurse, or dentist by a patient in 51  
that relation or the advice of a physician, advanced practice 52  
registered nurse, or dentist given to a patient, except as 53  
otherwise provided in this division, division (B) (2), and 54  
division (B) (3) of this section, and except that, if the patient 55  
is deemed by section 2151.421 of the Revised Code to have waived 56  
any testimonial privilege under this division, the physician or 57  
advanced practice registered nurse may be compelled to testify 58  
on the same subject. 59

The testimonial privilege established under this division 60  
does not apply, and a physician, advanced practice registered 61  
nurse, or dentist may testify or may be compelled to testify, in 62  
any of the following circumstances: 63

(a) In any civil action, in accordance with the discovery 64  
provisions of the Rules of Civil Procedure in connection with a 65  
civil action, or in connection with a claim under Chapter 4123. 66  
of the Revised Code, under any of the following circumstances: 67

(i) If the patient or the guardian or other legal 68  
representative of the patient gives express consent; 69

(ii) If the patient is deceased, the spouse of the patient 70  
or the executor or administrator of the patient's estate gives 71  
express consent; 72

(iii) If a medical claim, dental claim, chiropractic 73  
claim, or optometric claim, as defined in section 2305.113 of 74  
the Revised Code, an action for wrongful death, any other type 75  
of civil action, or a claim under Chapter 4123. of the Revised 76

Code is filed by the patient, the personal representative of the 77  
estate of the patient if deceased, or the patient's guardian or 78  
other legal representative. 79

(b) In any civil action concerning court-ordered treatment 80  
or services received by a patient, if the court-ordered 81  
treatment or services were ordered as part of a case plan 82  
journalized under section 2151.412 of the Revised Code or the 83  
court-ordered treatment or services are necessary or relevant to 84  
dependency, neglect, or abuse or temporary or permanent custody 85  
proceedings under Chapter 2151. of the Revised Code. 86

(c) In any criminal action concerning any test or the 87  
results of any test that determines the presence or 88  
concentration of alcohol, a drug of abuse, a combination of 89  
them, a controlled substance, or a metabolite of a controlled 90  
substance in the patient's whole blood, blood serum or plasma, 91  
breath, urine, or other bodily substance at any time relevant to 92  
the criminal offense in question. 93

(d) In any criminal action against a physician, advanced 94  
practice registered nurse, or dentist. In such an action, the 95  
testimonial privilege established under this division does not 96  
prohibit the admission into evidence, in accordance with the 97  
Rules of Evidence, of a patient's medical or dental records or 98  
other communications between a patient and the physician, 99  
advanced practice registered nurse, or dentist that are related 100  
to the action and obtained by subpoena, search warrant, or other 101  
lawful means. A court that permits or compels a physician, 102  
advanced practice registered nurse, or dentist to testify in 103  
such an action or permits the introduction into evidence of 104  
patient records or other communications in such an action shall 105  
require that appropriate measures be taken to ensure that the 106

confidentiality of any patient named or otherwise identified in 107  
the records is maintained. Measures to ensure confidentiality 108  
that may be taken by the court include sealing its records or 109  
deleting specific information from its records. 110

(e) (i) If the communication was between a patient who has 111  
since died and the deceased patient's physician, advanced 112  
practice registered nurse, or dentist, the communication is 113  
relevant to a dispute between parties who claim through that 114  
deceased patient, regardless of whether the claims are by 115  
testate or intestate succession or by inter vivos transaction, 116  
and the dispute addresses the competency of the deceased patient 117  
when the deceased patient executed a document that is the basis 118  
of the dispute or whether the deceased patient was a victim of 119  
fraud, undue influence, or duress when the deceased patient 120  
executed a document that is the basis of the dispute. 121

(ii) If neither the spouse of a patient nor the executor 122  
or administrator of that patient's estate gives consent under 123  
division (B) (1) (a) (ii) of this section, testimony or the 124  
disclosure of the patient's medical records by a physician, 125  
advanced practice registered nurse, dentist, or other health 126  
care provider under division (B) (1) (e) (i) of this section is a 127  
permitted use or disclosure of protected health information, as 128  
defined in 45 C.F.R. 160.103, and an authorization or 129  
opportunity to be heard shall not be required. 130

(iii) Division (B) (1) (e) (i) of this section does not 131  
require a mental health professional to disclose psychotherapy 132  
notes, as defined in 45 C.F.R. 164.501. 133

(iv) An interested person who objects to testimony or 134  
disclosure under division (B) (1) (e) (i) of this section may seek 135  
a protective order pursuant to Civil Rule 26. 136

(v) A person to whom protected health information is 137  
disclosed under division (B) (1) (e) (i) of this section shall not 138  
use or disclose the protected health information for any purpose 139  
other than the litigation or proceeding for which the 140  
information was requested and shall return the protected health 141  
information to the covered entity or destroy the protected 142  
health information, including all copies made, at the conclusion 143  
of the litigation or proceeding. 144

(2) (a) If any law enforcement officer submits a written 145  
statement to a health care provider that states that an official 146  
criminal investigation has begun regarding a specified person or 147  
that a criminal action or proceeding has been commenced against 148  
a specified person, that requests the provider to supply to the 149  
officer copies of any records the provider possesses that 150  
pertain to any test or the results of any test administered to 151  
the specified person to determine the presence or concentration 152  
of alcohol, a drug of abuse, a combination of them, a controlled 153  
substance, or a metabolite of a controlled substance in the 154  
person's whole blood, blood serum or plasma, breath, or urine at 155  
any time relevant to the criminal offense in question, and that 156  
conforms to section 2317.022 of the Revised Code, the provider, 157  
except to the extent specifically prohibited by any law of this 158  
state or of the United States, shall supply to the officer a 159  
copy of any of the requested records the provider possesses. If 160  
the health care provider does not possess any of the requested 161  
records, the provider shall give the officer a written statement 162  
that indicates that the provider does not possess any of the 163  
requested records. 164

(b) If a health care provider possesses any records of the 165  
type described in division (B) (2) (a) of this section regarding 166  
the person in question at any time relevant to the criminal 167

offense in question, in lieu of personally testifying as to the 168  
results of the test in question, the custodian of the records 169  
may submit a certified copy of the records, and, upon its 170  
submission, the certified copy is qualified as authentic 171  
evidence and may be admitted as evidence in accordance with the 172  
Rules of Evidence. Division (A) of section 2317.422 of the 173  
Revised Code does not apply to any certified copy of records 174  
submitted in accordance with this division. Nothing in this 175  
division shall be construed to limit the right of any party to 176  
call as a witness the person who administered the test to which 177  
the records pertain, the person under whose supervision the test 178  
was administered, the custodian of the records, the person who 179  
made the records, or the person under whose supervision the 180  
records were made. 181

(3) (a) If the testimonial privilege described in division 182  
(B) (1) of this section does not apply as provided in division 183  
(B) (1) (a) (iii) of this section, a physician, advanced practice 184  
registered nurse, or dentist may be compelled to testify or to 185  
submit to discovery under the Rules of Civil Procedure only as 186  
to a communication made to the physician, advanced practice 187  
registered nurse, or dentist by the patient in question in that 188  
relation, or the advice of the physician, advanced practice 189  
registered nurse, or dentist given to the patient in question, 190  
that related causally or historically to physical or mental 191  
injuries that are relevant to issues in the medical claim, 192  
dental claim, chiropractic claim, or optometric claim, action 193  
for wrongful death, other civil action, or claim under Chapter 194  
4123. of the Revised Code. 195

(b) If the testimonial privilege described in division (B) 196  
(1) of this section does not apply to a physician, advanced 197  
practice registered nurse, or dentist as provided in division 198

(B) (1) (c) of this section, the physician, advanced practice 199  
registered nurse, or dentist, in lieu of personally testifying 200  
as to the results of the test in question, may submit a 201  
certified copy of those results, and, upon its submission, the 202  
certified copy is qualified as authentic evidence and may be 203  
admitted as evidence in accordance with the Rules of Evidence. 204  
Division (A) of section 2317.422 of the Revised Code does not 205  
apply to any certified copy of results submitted in accordance 206  
with this division. Nothing in this division shall be construed 207  
to limit the right of any party to call as a witness the person 208  
who administered the test in question, the person under whose 209  
supervision the test was administered, the custodian of the 210  
results of the test, the person who compiled the results, or the 211  
person under whose supervision the results were compiled. 212

(4) The testimonial privilege described in division (B) (1) 213  
of this section is not waived when a communication is made by a 214  
physician or advanced practice registered nurse to a pharmacist 215  
or when there is communication between a patient and a 216  
pharmacist in furtherance of the physician-patient or advanced 217  
practice registered nurse-patient relation. 218

(5) (a) As used in divisions (B) (1) to (4) of this section, 219  
"communication" means acquiring, recording, or transmitting any 220  
information, in any manner, concerning any facts, opinions, or 221  
statements necessary to enable a physician, advanced practice 222  
registered nurse, or dentist to diagnose, treat, prescribe, or 223  
act for a patient. A "communication" may include, but is not 224  
limited to, any medical or dental, office, or hospital 225  
communication such as a record, chart, letter, memorandum, 226  
laboratory test and results, x-ray, photograph, financial 227  
statement, diagnosis, or prognosis. 228



(b) As used in division (B) (2) of this section, "health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner. 229  
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(c) As used in division (B) (5) (b) of this section: 233

(i) "Ambulatory care facility" means a facility that 234  
provides medical, diagnostic, or surgical treatment to patients 235  
who do not require hospitalization, including a dialysis center, 236  
ambulatory surgical facility, cardiac catheterization facility, 237  
diagnostic imaging center, extracorporeal shock wave lithotripsy 238  
center, home health agency, inpatient hospice, birthing center, 239  
radiation therapy center, emergency facility, and an urgent care 240  
center. "Ambulatory health care facility" does not include the 241  
private office of a physician, advanced practice registered 242  
nurse, or dentist, whether the office is for an individual or 243  
group practice. 244

(ii) "Emergency facility" means a hospital emergency 245  
department or any other facility that provides emergency medical 246  
services. 247

(iii) "Health care practitioner" has the same meaning as 248  
in section 4769.01 of the Revised Code. 249

(iv) "Hospital" has the same meaning as in section 3727.01 250  
of the Revised Code. 251

(v) "Long-term care facility" means a nursing home, 252  
residential care facility, or home for the aging, as those terms 253  
are defined in section 3721.01 of the Revised Code; a 254  
residential facility licensed under section 5119.34 of the 255  
Revised Code that provides accommodations, supervision, and 256  
personal care services for three to sixteen unrelated adults; a 257

nursing facility, as defined in section 5165.01 of the Revised Code; a skilled nursing facility, as defined in section 5165.01 of the Revised Code; and an intermediate care facility for individuals with intellectual disabilities, as defined in section 5124.01 of the Revised Code.

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

(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.

(6) Divisions (B) (1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, advanced practice registered nurses, and dentists.

(7) Nothing in divisions (B) (1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians or advanced practice registered nurses who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B) (7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code and "advanced practice registered nurse" has the same meaning as in section 4723.01 of the Revised Code.

(C) (1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect,

concerning a confession made, or any information confidentially 287  
communicated, to the cleric for a religious counseling purpose 288  
in the cleric's professional character. The cleric may testify 289  
by express consent of the person making the communication, 290  
except when the disclosure of the information is in violation of 291  
a sacred trust and except that, if the person voluntarily 292  
testifies or is deemed by division (A) (4) (c) of section 2151.421 293  
of the Revised Code to have waived any testimonial privilege 294  
under this division, the cleric may be compelled to testify on 295  
the same subject except when disclosure of the information is in 296  
violation of a sacred trust. 297

(2) As used in division (C) of this section: 298

(a) "Cleric" means a member of the clergy, rabbi, priest, 299  
Christian Science practitioner, or regularly ordained, 300  
accredited, or licensed minister of an established and legally 301  
cognizable church, denomination, or sect. 302

(b) "Sacred trust" means a confession or confidential 303  
communication made to a cleric in the cleric's ecclesiastical 304  
capacity in the course of discipline enjoined by the church to 305  
which the cleric belongs, including, but not limited to, the 306  
Catholic Church, if both of the following apply: 307

(i) The confession or confidential communication was made 308  
directly to the cleric. 309

(ii) The confession or confidential communication was made 310  
in the manner and context that places the cleric specifically 311  
and strictly under a level of confidentiality that is considered 312  
inviolable by canon law or church doctrine. 313

(D) Husband or wife, concerning any communication made by 314  
one to the other, or an act done by either in the presence of 315

the other, during coverture, unless the communication was made, 316  
or act done, in the known presence or hearing of a third person 317  
competent to be a witness; and such rule is the same if the 318  
marital relation has ceased to exist; 319

(E) A person who assigns a claim or interest, concerning 320  
any matter in respect to which the person would not, if a party, 321  
be permitted to testify; 322

(F) A person who, if a party, would be restricted under 323  
section 2317.03 of the Revised Code, when the property or thing 324  
is sold or transferred by an executor, administrator, guardian, 325  
trustee, heir, devisee, or legatee, shall be restricted in the 326  
same manner in any action or proceeding concerning the property 327  
or thing. 328

(G) (1) A school guidance counselor who holds a valid 329  
educator license from the state board of education as provided 330  
for in section 3319.22 of the Revised Code, a person licensed 331  
under Chapter 4757. of the Revised Code as a licensed 332  
professional clinical counselor, licensed professional 333  
counselor, social worker, independent social worker, marriage 334  
and family therapist or independent marriage and family 335  
therapist, or registered under Chapter 4757. of the Revised Code 336  
as a social work assistant concerning a confidential 337  
communication received from a client in that relation or the 338  
person's advice to a client unless any of the following applies: 339

(a) The communication or advice indicates clear and 340  
present danger to the client or other persons. For the purposes 341  
of this division, cases in which there are indications of 342  
present or past child abuse or neglect of the client constitute 343  
a clear and present danger. 344

(b) The client gives express consent to the testimony.	345
(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.	346 347 348
(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.	349 350 351 352
(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.	353 354 355 356
(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.	357 358 359 360
(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.	361 362 363 364 365 366 367
(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.	368 369 370 371 372
(H) A mediator acting under a mediation order issued under	373

division (A) of section 3109.052 of the Revised Code or 374  
otherwise issued in any proceeding for divorce, dissolution, 375  
legal separation, annulment, or the allocation of parental 376  
rights and responsibilities for the care of children, in any 377  
action or proceeding, other than a criminal, delinquency, child 378  
abuse, child neglect, or dependent child action or proceeding, 379  
that is brought by or against either parent who takes part in 380  
mediation in accordance with the order and that pertains to the 381  
mediation process, to any information discussed or presented in 382  
the mediation process, to the allocation of parental rights and 383  
responsibilities for the care of the parents' children, or to 384  
the awarding of parenting time rights in relation to their 385  
children; 386

(I) A communications assistant, acting within the scope of 387  
the communication assistant's authority, when providing 388  
telecommunications relay service pursuant to section 4931.06 of 389  
the Revised Code or Title II of the "Communications Act of 390  
1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a 391  
communication made through a telecommunications relay service. 392  
Nothing in this section shall limit the obligation of a 393  
communications assistant to divulge information or testify when 394  
mandated by federal law or regulation or pursuant to subpoena in 395  
a criminal proceeding. 396

Nothing in this section shall limit any immunity or 397  
privilege granted under federal law or regulation. 398

(J) (1) A chiropractor in a civil proceeding concerning a 399  
communication made to the chiropractor by a patient in that 400  
relation or the chiropractor's advice to a patient, except as 401  
otherwise provided in this division. The testimonial privilege 402  
established under this division does not apply, and a 403

chiropractor may testify or may be compelled to testify, in any 404  
civil action, in accordance with the discovery provisions of the 405  
Rules of Civil Procedure in connection with a civil action, or 406  
in connection with a claim under Chapter 4123. of the Revised 407  
Code, under any of the following circumstances: 408

(a) If the patient or the guardian or other legal 409  
representative of the patient gives express consent. 410

(b) If the patient is deceased, the spouse of the patient 411  
or the executor or administrator of the patient's estate gives 412  
express consent. 413

(c) If a medical claim, dental claim, chiropractic claim, 414  
or optometric claim, as defined in section 2305.113 of the 415  
Revised Code, an action for wrongful death, any other type of 416  
civil action, or a claim under Chapter 4123. of the Revised Code 417  
is filed by the patient, the personal representative of the 418  
estate of the patient if deceased, or the patient's guardian or 419  
other legal representative. 420

(2) If the testimonial privilege described in division (J) 421  
(1) of this section does not apply as provided in division (J) 422  
(1)(c) of this section, a chiropractor may be compelled to 423  
testify or to submit to discovery under the Rules of Civil 424  
Procedure only as to a communication made to the chiropractor by 425  
the patient in question in that relation, or the chiropractor's 426  
advice to the patient in question, that related causally or 427  
historically to physical or mental injuries that are relevant to 428  
issues in the medical claim, dental claim, chiropractic claim, 429  
or optometric claim, action for wrongful death, other civil 430  
action, or claim under Chapter 4123. of the Revised Code. 431

(3) The testimonial privilege established under this 432

division does not apply, and a chiropractor may testify or be 433  
compelled to testify, in any criminal action or administrative 434  
proceeding. 435

(4) As used in this division, "communication" means 436  
acquiring, recording, or transmitting any information, in any 437  
manner, concerning any facts, opinions, or statements necessary 438  
to enable a chiropractor to diagnose, treat, or act for a 439  
patient. A communication may include, but is not limited to, any 440  
chiropractic, office, or hospital communication such as a 441  
record, chart, letter, memorandum, laboratory test and results, 442  
x-ray, photograph, financial statement, diagnosis, or prognosis. 443

(K) (1) Except as provided under division (K) (2) of this 444  
section, a critical incident stress management team member 445  
concerning a communication received from an individual who 446  
receives crisis response services from the team member, or the 447  
team member's advice to the individual, during a debriefing 448  
session. 449

(2) The testimonial privilege established under division 450  
(K) (1) of this section does not apply if any of the following 451  
are true: 452

(a) The communication or advice indicates clear and 453  
present danger to the individual who receives crisis response 454  
services or to other persons. For purposes of this division, 455  
cases in which there are indications of present or past child 456  
abuse or neglect of the individual constitute a clear and 457  
present danger. 458

(b) The individual who received crisis response services 459  
gives express consent to the testimony. 460

(c) If the individual who received crisis response 461



services is deceased, the surviving spouse or the executor or 462  
administrator of the estate of the deceased individual gives 463  
express consent. 464

(d) The individual who received crisis response services 465  
voluntarily testifies, in which case the team member may be 466  
compelled to testify on the same subject. 467

(e) The court in camera determines that the information 468  
communicated by the individual who received crisis response 469  
services is not germane to the relationship between the 470  
individual and the team member. 471

(f) The communication or advice pertains or is related to 472  
any criminal act. 473

(3) As used in division (K) of this section: 474

(a) "Crisis response services" means consultation, risk 475  
assessment, referral, and on-site crisis intervention services 476  
provided by a critical incident stress management team to 477  
individuals affected by crisis or disaster. 478

(b) "Critical incident stress management team member" or 479  
"team member" means an individual specially trained to provide 480  
crisis response services as a member of an organized community 481  
or local crisis response team that holds membership in the Ohio 482  
critical incident stress management network. 483

(c) "Debriefing session" means a session at which crisis 484  
response services are rendered by a critical incident stress 485  
management team member during or after a crisis or disaster. 486

(L) (1) Subject to division (L) (2) of this section and 487  
except as provided in division (L) (3) of this section, an 488  
employee assistance professional, concerning a communication 489

made to the employee assistance professional by a client in the 490  
employee assistance professional's official capacity as an 491  
employee assistance professional. 492

(2) Division (L)(1) of this section applies to an employee 493  
assistance professional who meets either or both of the 494  
following requirements: 495

(a) Is certified by the employee assistance certification 496  
commission to engage in the employee assistance profession; 497

(b) Has education, training, and experience in all of the 498  
following: 499

(i) Providing workplace-based services designed to address 500  
employer and employee productivity issues; 501

(ii) Providing assistance to employees and employees' 502  
dependents in identifying and finding the means to resolve 503  
personal problems that affect the employees or the employees' 504  
performance; 505

(iii) Identifying and resolving productivity problems 506  
associated with an employee's concerns about any of the 507  
following matters: health, marriage, family, finances, substance 508  
abuse or other addiction, workplace, law, and emotional issues; 509

(iv) Selecting and evaluating available community 510  
resources; 511

(v) Making appropriate referrals; 512

(vi) Local and national employee assistance agreements; 513

(vii) Client confidentiality. 514

(3) Division (L)(1) of this section does not apply to any 515  
of the following: 516

(a) A criminal action or proceeding involving an offense	517
under sections 2903.01 to 2903.06 of the Revised Code if the	518
employee assistance professional's disclosure or testimony	519
relates directly to the facts or immediate circumstances of the	520
offense;	521
(b) A communication made by a client to an employee	522
assistance professional that reveals the contemplation or	523
commission of a crime or serious, harmful act;	524
(c) A communication that is made by a client who is an	525
unemancipated minor or an adult adjudicated to be incompetent	526
and indicates that the client was the victim of a crime or	527
abuse;	528
(d) A civil proceeding to determine an individual's mental	529
competency or a criminal action in which a plea of not guilty by	530
reason of insanity is entered;	531
(e) A civil or criminal malpractice action brought against	532
the employee assistance professional;	533
(f) When the employee assistance professional has the	534
express consent of the client or, if the client is deceased or	535
disabled, the client's legal representative;	536
(g) When the testimonial privilege otherwise provided by	537
division (L) (1) of this section is abrogated under law.	538
<u>(M) (1) Except as provided under division (M) (2) of this</u>	539
<u>section, a peer recovery supporter concerning a communication</u>	540
<u>received from a first responder who receives peer recovery</u>	541
<u>services from the peer recovery supporter, or the peer recovery</u>	542
<u>supporter's advice to the first responder.</u>	543
<u>(2) The testimonial privilege established under division</u>	544

(M) (1) of this section does not apply if any of the following 545  
are true: 546

(a) The communication or advice indicates clear and 547  
present danger to the first responder who receives peer recovery 548  
services or to other persons. 549

(b) The first responder who received peer recovery 550  
services gives express consent to the testimony. 551

(c) If the first responder who received peer recovery 552  
services is deceased, the surviving spouse or the executor or 553  
administrator of the estate of the deceased first responder 554  
gives express consent. 555

(d) The first responder who received peer recovery 556  
services voluntarily testifies, in which case the peer recovery 557  
supporter may be compelled to testify on the same subject. 558

(e) The court in camera determines that the information 559  
communicated by the first responder who received peer recovery 560  
services is not germane to the relationship between the first 561  
responder and the peer recovery supporter. 562

(f) The communication or advice pertains or is related to 563  
any criminal act. 564

(3) As used in division (M) of this section: 565

(a) "First responder" has the same meaning as in section 566  
4765.01 of the Revised Code. 567

(b) "Peer recovery supporter" means a first responder who 568  
is further certified as a peer recovery supporter by the 569  
department of mental health and addiction services pursuant to 570  
rules adopted by the department. 571

(c) "Peer recovery services" means services provided by a 572  
peer recovery supporter to another first responder, upon the 573  
peer recovery supporter's recognition of signs of distress or 574  
trauma in the other first responder, in order to promote the 575  
recovery and well-being of the other first responder and to 576  
assist that first responder in receiving additional support 577  
resources if necessary. 578

**Section 2.** That existing section 2317.02 of the Revised 579  
Code is hereby repealed. 580