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House Civil Justice Committee
Sponsor Testimony – H.B. 179
May 23, 2023

Chairman Hillyer, Ranking Member Galonski, and all honorable and fellow members of the House Civil Justice Committee, it is my pleasure today to present joint sponsor testimony on House Bill 179, which simplifies our legal system by clarifying against which parties and in what time frame a suit must be brought for certain cases. Our intent is to ensure transparency, clarity, and easily understood standards for all our businesses, hospitals, and attorneys.

Last year, the Supreme Court of Ohio decided *Clawson v. Heights Chiropractic Physicians, LLC* (Clawson) which continued the progression on vicarious liability started by *Wuerth*. In that case, the Court held that the law practice of an attorney could not be vicariously liable for a malpractice claim since it is attorneys that commit malpractice and not firms, and since the statute of limitations had expired for the attorney, the lawsuit could not be brought against the firm. Afterward, Ohio's appellate courts have expanded *Wuerth* to other similar agency relationships with analogous autonomy, namely medical and dental practices. The result in *Clawson* is in keeping with this development, adding in chiropractics.

However, while the result makes sense, the rationale of *Clawson* dismisses with the level of autonomy as a limiting factor and instead could be applied to almost anybody. In paragraph 23 of the decision, the Court explicitly rejects the limitation, saying it's an “erroneous premise that *Wuerth* created a professional-practice exception to the doctrine of respondeat superior.” The implication is that after *Clawson,* the *Wuerth* rule would continue to expand.

This decision may then require plaintiffs to name everyone that may have potentially been involved in a malpractice or vicarious liability claim or else the claim would be dismissed as in *Clawson*. In the medical fields, this would include the medical technicians and nurses. Even further, with no professional-practice exception, this over naming could extend to other types of cases. For example, in wrongful termination case, the HR employee would have to be named, as well as the relevant supervisor, the person who signed off on the employee handbook, and everyone up along the chain.

We have seen how burdensome this type of over naming is in asbestos cases. Businesses, hospitals, and insurance companies would have to defend all of these named parties through at least some of these proceedings, costing time and money. Further, every employee in these spaces would be at higher risk of being named in a suit, adding to stress, embarrassment, and expense.

House Bill 179 solidifies the framework of *Wuerth,* stabilizing the legal environment to ensure Ohio remains business-friendly. We call out the professional positions which must be named, since they individually commit malpractice and generally carry malpractice insurance, while leaving simple employees alone. We appreciate all the interested parties, from the OSMA, ONA, OSBA, OAJ, Doctor's Company, and OHA who have spent time in our offices and worked with us on this complex language.

The second part of House Bill 179 overturns *Elliot v. Durrani*, which held that when a party is absent from the state, the Statute of Repose does not toll. A statute of repose is similar to a statute of limitations, but focused on defendants against stale claims. For example, last General Assembly, we passed SB13 which enforced a 4 year statute of repose in parallel to a one-year statute of limitations for legal practice, and we have similar laws for other areas.

The previous Court changed the understanding of the statute of repose, which is supposed to be a hard time bar, longer than the one or two year statute of limitations but therefore without exceptions. In the decision, the Court added that a person being absent from the state functionally pauses the clock, even when that was not a listed exception. This situation would cause huge ramifications, and I will quote from now Chief Justice Kennedy's dissent because she does better in explaining than I would.

"The statute of repose exists to give medical providers certainty with respect to the time within which a claim can be brought and a time after which they may be free from the fear of litigation. The majority today overrides that statutory purpose and tolls the running of the status of repose whenever the medical provider simply leaves the state-even if he or she departs Ohio without the intention to evade a malpractice action. Under the majority's holding today, when a medical provider leaves Ohio to practice in another state or to retire, he or she potentially has unending exposure to suit for injuries that occurred years or even decades earlier."

For a doctor working in northern Kentucky but practicing in Cincinnati, going home on the weekends or in the evenings may be reason to pause the statute of repose tolling under the Court's rationale. For all professionals with malpractice concerns, keeping this type of tolling rule would make it incredibly risky to take a job in Ohio.

House Bill 179 reaffirms our defined statute of repose to four years, keeping the exceptions previously in place for minority and incapacity.

Our goal with this legislation is to continue working to make Ohio the most business-friendly state in the country and make it easier for our hospitals and businesses to recruit and maintain high quality talent. With the increasing complexity of the law, House Bill 179 would keep the legal framework Ohio has enjoyed for decades in place and provide stability for our economic

and legal environment. We respectfully ask for your support of this common sense legislation, and we are happy to answer any questions the committee may have.