

**Committees:**

Armed Services and Veterans Affairs  
Health Provider Services  
Joint Medicaid Oversight Committee  
State and Local Government  
Technology and Innovation



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**Representative Jennifer Gross  
The Ohio House of Representatives**

**Representative Jennifer Gross - HB 73 Sponsor Testimony: March 28, 2023**

Chairman Cutrona, Ranking Member Somani, and members of the Health Provider Services Committee, thank you for allowing Representative Loychik and I to provide sponsor testimony for HB 73; the Dave and Angie Patient and Health Provider Protection Act.

This legislation will protect Ohio's citizens and healthcare providers. As a nurse practitioner, it is my ethical duty to advocate for and to support my patients. As a legislator, it is my duty to ensure that the liberties of my constituents are protected.

Specifically, HB 73 will protect a healthcare provider's ability to prescribe any FDA approved medication which is determined to be medically necessary for their patient, without retaliation from health or state licensing agencies. When a provider or pharmacist fears retaliatory action from health agencies or licensing boards for prescribing off-label drugs, it limits a patient's ability to access potentially lifesaving medications. By protecting our providers, we also protect our patients.

Prescribing off-label drugs has been an accepted medical practice for decades. According to the law firm McGuire Woods, "it is estimated that between 40 and 60 percent of all prescriptions written in the United States are for off-label uses."<sup>1</sup>

HB 73 is not legalizing off-label prescribing of medicine, as it is currently an accepted medical practice. This bill prohibits retaliation against providers, pharmacies, and pharmacists by health and state licensing agencies when that agency's board disagrees with that provider's use of a drug. With this bill, providers continue to be liable for negligence and patients will maintain the right to litigate.

Despite the fact that off-label prescribing is a highly accepted and frequent practice nationwide, many providers have had action taken against their licenses for doing so.

HB 73 is written to ensure that any provider, pharmacy owner, or pharmacist maintains their current right to decline to prescribe or fill any drug for religious reasons.

Ohio law protects the religious rights of our healthcare providers, however, we are lacking in the protection of their freedom of speech. Despite the fact that health authorities continue to remind citizens to "trust their doctor," some doctors are attacked for their prescription choices. Many healthcare providers have had legal action taken against their licenses and their credibility for

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<sup>1</sup> Source: [https://www.mcguirewoods.com/news-resources/publications/health\\_care/off\\_label.pdf](https://www.mcguirewoods.com/news-resources/publications/health_care/off_label.pdf)

expressing a medical opinion that differs from that of an Ohio health agency or regulatory board.

Healthcare providers undergo extensive education to obtain licensure and this licensure indicates their ability to give sound medical advice. No health provider should fear retribution for stating their medical opinion, either privately or publicly. HB73 will protect their right to free medical speech.

HB 73 will also provide some protection against federal drug bans. With this legislation, no political subdivision, public official, or state agency will be able to enforce rules or orders issued by a federal agency which prohibits the use of an off-label drug. This means Ohio citizens and healthcare providers will have some level of protection against federal government overreach.

A recent article that referenced a physician who is suing the FDA stated the following:

“The FDA generally cannot ban particular uses of human drugs once they are otherwise approved and admitted to the market, even if such use differs from the labeling — commonly referred to as ‘off-label’ use,’ the lawsuit argues. ‘The FDA also cannot advise whether a patient should take an approved drug for a particular purpose.’”<sup>2</sup>

And neither should Ohio state agencies.

Ohio should be a place where both patients and health providers have access to life saving treatments without fear of retribution. Reducing these barriers to save lives are key to our strategy and to the future health of our state and its citizens.

Thank you once again for this opportunity to provide sponsor testimony on HB 73.

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<sup>2</sup> Source: <https://thefederalist.com/2023/02/21/doctors-sue-fda-for-prohibiting-ivermectin-to-treat-covid-19/>