

# HB 73 Proponent Testimony

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“Chairman Huffman, Vice Chair Johnson, and Members of the Senate Health Committee, thank you for hearing my support testimony for HB 73, The Dave & Angie Patient and Health Provider Protection Act.” It is no mystery that HB 73 arises out of the COVID pandemic. We can’t turn the clock back even if we want to. The issue here today is that of pharmacists overruling the clinical judgment of physicians and refusing to fill physician prescriptions.

## A Covid/Pharmacy Story – Personally Witnessed Pharmacist Harm

Before COVID began, I had retired and moved back to Columbus. My practice was always hospital-based and I could not start a private practice from scratch. So, I did more writing and speaking early in the pandemic. Some people learned of my work and sought me out to help them with COVID treatment. One memorable case was an ICU nurse who sought me out because her partner was near death in the ICU. His treating physicians were contemplating placing him on ECMO. In the heated political environment at the time I didn’t want to get involved. I thought he was so ill that it was too late for ivermectin (“IVM”) treatment. This family was desperate. I relented. I wrote a prescription for IVM but the local Ohio pharmacies refused to fill it. The patient’s brother was a colonel in the military. He came to visit his brother on his death bed. The colonel drove to another state to get the IVM filled. In his colonel’s uniform he insisted that the hospital give his brother the IVM. The hospital relented. The last I heard, the deathly ill COVID patient survived to leave the ICU and the hospital finally allowed it. Who were the bad guys in this story? Ohio pharmacists. Who were the good guys? Out of state pharmacists. <sup>1</sup>

## The Science - The Graph

While I did have some personal experience with the issue now before this committee, you did not come to hear my anecdotal stories. All through COVID were told to “follow the science.” I would now like to discuss the science. Please turn your attention to the graph on the back page of my testimony. (Please review the graph and the associated explanatory text.)

The main points of this graph are:

What happened? US COVID healthcare was terrible, among the worst in the world.

Why did it happen? Because mainstream US science and medicine banned and withheld early, outpatient treatment of SARS-CoV-2/COVID with (hydroxychloroquine (“HCQ”) & ivermectin (“IVM”)).

How was effective treatment withheld? This withholding of early, outpatient treatment was largely accomplished by pharmacists refusing to fill physicians' prescriptions. Thus, poor pharmacy care was a major contributor to the horrific, deadly COVID care provided in the US.

HB 73 addresses the root cause of poor US COVID care. The withholding of early outpatient treatment played a major role in the failure of mainstream science and medicine in the US and the West. Pharmacists overruling the clinical judgment of physicians was the essence of that failure. Certain pharmacy advocates would have this body enshrine that poor care into Ohio law. Please don’t allow that to happen. Please pass HB 73 out of this committee and pass it in the Senate.

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<sup>1</sup> While this testimony focuses on the harm caused by pharmacists during COVID, I don’t approach this with an axe to grind, a predisposed bias against pharmacists. My legal background is medical negligence. I recently reviewed a case where my primary recommendation was that the multiple physicians should have consulted a clinical pharmacist to help them sort out the patient’s polypharmacy. So, I’m not afraid to suggest that pharmacists can contribute to physicians’ expertise.

## Change – Accountability in the Courts for Bad Behavior During COVID

We've noted that some things will change and are changing. In Michigan, a woman was awarded \$13 million after she was fired for refusing a vaccine.<sup>1</sup> A companion article in the Detroit free Press reports that “hundreds” of similar cases are pending.<sup>2</sup> We can't just move on as if COVID never occurred is because one of the maxims of life is that we should learn from our mistakes and there were serious mistakes made during COVID! One of the most dramatic changes in healthcare because of COVID is the public's loss of trust. I also respectfully suggest that Ohio's pharmacists undermining physicians' decisions played a large role in that loss of trust.<sup>2</sup>

## Change - Pharmacists' reliance on the FDA has been negated by the federal courts.

The most important national change that impacts HB 73 is that the FDA pronouncements that pharmacists had relied upon have been completely undercut and nullified. In *Apter v. HHS*, the 5th Circuit ruled that that FDA's condemnation of early outpatient treatment was illegal.

The FDA's most infamous and destructive tweet was” “You are not a horse. You are not a cow. Seriously, y'all. Stop it.” The federal Court responded “FDA is not a physician. It has authority to inform, announce, and apprise – but not to endorse, denounce, or advise.” The Court further opined, “the Doctors have plausibly alleged that FDA's Posts fell on the wrong side of the line between telling about and telling to.” And finally, “Even tweet-sized doses of personalized medical advice are beyond FDA's statutory authority.” The FDA was found to be illegally controlling the independent practice of physicians. Likewise, Ohio pharmacists who relied upon the FDA's illegal medical opinions were likewise illegally controlling physicians' medical practices during the COVID pandemic. Today they seek to continue to do so.

In legal terms, the 5th Circuit ruled that that FDA's condemnation of early outpatient treatment e.g. IVM, was an *ultra vires* violation of law, i.e. beyond the FDA's legal power or authority. Ohio's pharmacists were wholly reliant on the FDA and other similar government agencies for their claimed authority to regulate and control physicians. Thus, the intrusive acts of the pharmacists over physicians, like those of the FDA, are an *ultra vires* violation.<sup>3</sup>

## Change - The Select Subcommittee on the Coronavirus Pandemic, December 4, 2024.

The most resent, up-to-date and highly probative COVID information is the, the 500-page AFTER ACTION REVIEW OF THE COVID-19 PANDEMIC from the Select Subcommittee on the Coronavirus Pandemic, Committee on Oversight and Accountability, U.S. House of Representatives, December 4, 2024. In its After Action Review, the Select Subcommittee frequently reassert the same claim made herein, that during the COVID pandemic, pharmacists would override and veto physician's prescriptions for [HCQ] and [IVM] for their patients, i.e. early outpatient treatment. The Select Subcommittee cited the governments “campaign against certain off-label prescriptions, specifically [IVM], has also been the subject of litigation” (pg. 373), i.e. the 5<sup>th</sup> Circuit's *Apter v HHHS* described above.

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<sup>2</sup> An article published by the Journal of the American Medical Association earlier this year found that “[i]n every sociodemographic group . . . , trust in physicians and hospitals decreased substantially over the course of the pandemic, from 71.5% in April 2020 to 40.1% in January 2024.” Perlis RH, Ognyanova K, Uslu A, et al. Trust in Physicians and Hospitals During the COVID-19 Pandemic in a 50-State Survey of US Adults. *JAMA Netw Open*. 2024;7(7):e2424984. doi:10.1001/jamanetworkopen.2024.24984. This proponent respectfully suggest that the public's loss of trust in mainstream medicine and healthcare is well deserved. I also respectfully suggest that Ohio's pharmacists play a large role in that loss of respect.

The Select Subcommittee cites the testimony of Dr. Jerry Williams, frequently reasserting the same claims made above, that he had “prescribed medications off-label many times before and during the COVID-19 pandemic, including [IVM] and [HCQ].” And that, “the government’s pressure campaign had made them more difficult to obtain.” Pg. 374. The Select Subcommittee cited how “Dr. Williams further testified how once the EUA for [HCQ] was revoked by the FDA and pharmacy boards began threatening pharmacists for filling prescriptions, it became difficult to obtain off-label drugs to treat his desperate patients.” Pg. 374-5.

Finally, The Select Subcommittee cited Dr. Williams further testimony that, “Pharmacists had always been my partners, my teammates, in rendering care to my patients. But that changed soon as well during the pandemic when the EUA for [HCQ] was revoked by the FDA. With the government’s misinformation campaigns, pharmacy Boards sending threatening letters to pharmacists, some soon started refusing to fill [HCQ] prescriptions.” Pg. 374.

Thus, the most up-to-date and comprehensive COVID information likewise demonstrates that that during COVID, pharmacists improperly relied on false and illegal FDA opinion to veto and override physicians’ clinical judgment and adversely affect patient care. This interference with physician practice must not be permitted to continue.

## Conclusion

Pharmacists' veto or override authority over physicians' prescriptions is a historical anomaly implemented on an emergency basis during the COVID pandemic. Physician oversight by pharmacists was proven harmful during COVID and thus should be statutorily prohibited.

“I urge the committee to vote YES on HB 73 with all provisions of the bill intact.”

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<sup>1</sup> *Domski v. Blue Cross Blue Shield of Mich.*, No. 23-12023, Eastern District of Michigan, Nov. 12, 2024.

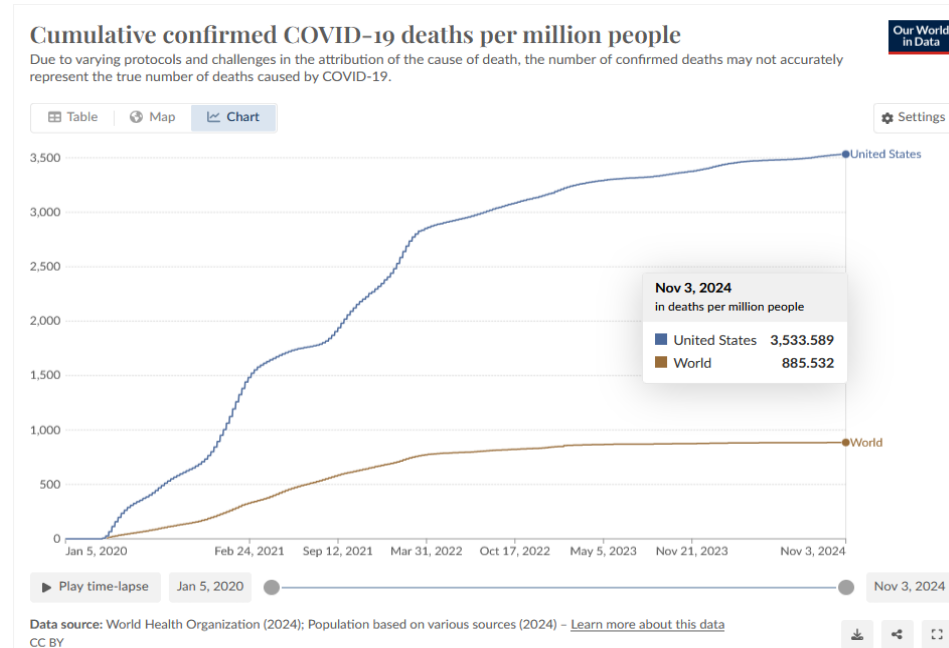
<sup>2</sup> <https://www.freep.com/story/money/business/2024/11/08/jury-awards-millions-blue-cross-michigan-employee-covid-vaccine/76029685007/>.

<sup>3</sup> *Apter v. U.S. Dep’t of Health & Hum. Servs.*, 80 F.4th 579 (5th Cir. 2023).

# One of the Most Important Truths of the COVID Pandemic

## 2020-2024

The best available epidemiological data, from Johns Hopkins University (“JHU”) <sup>1</sup> and the World Health Organization (set in graphical format by Oxford University’s Our World in Data) <sup>2</sup> demonstrates that COVID outcomes (death rates) in the US were four times worse than the rest of the world. The US COVID death rate was 3,534 deaths per million. The average cumulative death rate for the rest of the world was 886 deaths per million. The US COVID death rate, under the care of US science and its healthcare system was four times greater than the rest of the world. <sup>3</sup> Mainstream US science, medicine (and pharmacy) failed us during the COVID pandemic.



US COVID Death rates among the highest in the world!

US COVID Death Rates 4x the Rest of the World!

## Mainstream Science, Medicine, (and Pharmacy) Failed Us During the COVID Pandemic!

These COVID results are or should be embarrassing to all Americans. But, this is the best available and the most widely cited epidemiological data the world was able to produce over the course of the pandemic. We cannot simply reject data that we don’t like. If we reject this data, all discussion is meaningless.

The answer demanded by this data is this: why were COVID outcomes in the US so dismal compared to the rest of the world? The answer to that question is discussed in the accompanying text and testimony.

<sup>1</sup> JHU’s COVID dashboard was viewed literally billions of times during the COVID pandemic and since then.

<sup>2</sup> [//ourworldindata.org/explorers/covid?pickerSort=asc&pickerMetric=location&Metric=Confirmed+deaths&Interval=Cumulative&Relative+to+population=true&country=USA~OWID\\_WRL](https://ourworldindata.org/explorers/covid?pickerSort=asc&pickerMetric=location&Metric=Confirmed+deaths&Interval=Cumulative&Relative+to+population=true&country=USA~OWID_WRL)

<sup>3</sup> All of this data is population adjusted. The data is expressed in deaths per million.