Testimony in Opposition to House Bill 7
Amendments to R.C. 2317.421 and R.C. 2305.2311
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Good afternoon, Chairman Butler, Vice Chairman Hughes, Ranking Member Boggs, and Members of the House Civil Justice Committee. My name is Richard Topper. I am a member of the Ohio Association for Justice and have been a practicing attorney in Ohio for 37 years. I practice in the area of medical malpractice and personal injury.

1. Abandonment of Long-standing Medial Bill Rules (RC 2317.421)

HB 7 seeks to significantly alter a longstanding evidence law and permits malpractice insurance lawyers to keep out relevant evidence of what doctors and hospitals bill the patient for their services. This law works to the detriment of responsible Ohioans who promptly pay their medical insurance premiums and will make trials more expensive and complex.

Present Ohio law allows either party to introduce the itemized hospital and doctor bills to a judge or jury as prima facie evidence that the bill is reasonable. Prima facie evidence means that either party can rebut that evidence. For forty-six years, it has been the job of the judge or jury to determine whether the itemized charge is reasonable.

In a case many of you know, *Robinson vs. Bates*, the Ohio Supreme Court decided that evidence of the amount a health care provider accepted as payment from a health insurance company can also

be relevant evidence for the jury to consider in determining whether a medical or hospital bill is reasonable. Justice Lanzinger wrote for the majority and stated, "The jury may decide that the reasonable value of medical care is the amount originally billed, the amount the medical provider accepted as payment, or some amount in between."

The decision in the *Robinson* case was affirmed in *Jaques vs. Manton*. Justice Cupp was in the majority in the *Jaques* case. Neither of the Supreme Court decisions referred to itemized statements as "phantom damages" or that a jury could be confused by the introduction of both amounts. Contrary to the assertion of the proponents, the courts have not struggled with that issue. The decision in *Robinson* is very clear.

Why is it important for the jury to see the defendant hospital's medical bill? Juries often take the amount paid in medical expense as a basis for their verdict. The size of the medical bill often reflects the seriousness of the injury. Justice Eve Stratton agreed with this concept in her concurring opinion in *Robinson*. She wrote: "As the majority discussed, in this day and age of managed care and discounting of medical bills by insurers, the amount reimbursed often has little relation to the actual cost of the services. However, the actual amount billed is more reflective of the actual value of the services rendered, which juries often use as a benchmark in deciding the seriousness of the injuries. For example, a plaintiff incurs a medical bill for $10,000 for medical care after a car accident. The $10,000 bill is settled for $2,000. However, claiming the plaintiff incurred only $2,000 in treatment distorts the degree of medical care and physical damages actually incurred by the plaintiff and could diminish the seriousness of the plaintiff's injuries."

Under HB 7, patients with insurance will be prohibited from presenting their medical bills to the jury. The uninsured Ohioan is not. This is significant. Most patients pay a great deal of money for insurance premiums to cover their bills. For instance, patients like me pay $12,000 per year for health care coverage and a separate premium for automobile medical payments coverage. Under HB 7, insured Ohioans are not permitted to introduce evidence of their premiums to the juries.

Another issue is that HB 7 creates a falsehood. When a hospital, doctor, or health care provider bills a patient, it represents to the patient, their insurance company, Medicare, and a jury that their charges are reasonable. HB 7 creates the irrebuttable presumption that the only reasonable charge is what the insurance company paid regardless of what the defendant felt was reasonable when they sent the bill.

One issue that has not been discussed by the proponents is that this bill prevents the introduction of itemized medical and hospital bills in all personal injury cases, not just in medical negligence. Please refer to the crossed out sections at line 561. This presents an evidentiary quagmire when it comes time to proving medical bills. It could lead to many subpoenas served on health care providers in order for the plaintiff to prove their medical expenses. RC 2314.421 was passed to circumvent this.

2. <u>Suspension of the reasonable care standard</u>

I would like to address a section of the bill creating R.C. 2305.2311, which permits physicians and health care worker to abandon the exercise of reasonable care under certain circumstances and in essence only holds them accountable if they intentionally injure someone. The proposed law is unnecessary and overbroad.

Long settled law holds physicians and health care workers accountable for a patient's injuries when they fail to use reasonable care. The guiding principle and standard is that health care professional is negligent only if they fail to use "reasonable skill care and diligence under like or similar circumstances."

The key phrase in using reasonable care is "like or similar circumstances." When health care providers are providing emergency care in situations where medical supplies and diagnostic tools such as x-rays and blood tests aren't available, or if they are dealing with hundreds of patients at once, they are held to a different standard than when a doctor performs an emergency evaluation at the hospital or his office.

HB 7 strips the reasonable care standard when patients are treated during, or as a result of what this legislation defines as a "disaster." The standard of care in a defined "disaster is "reckless disregard" which if you read the definition is tantamount to intentional wrongdoing.

The definition of "disaster" is overbroad. It is not limited to disasters declared by the governor, the president, or even the mayor. This legislation defines "disaster" as an "imminent threat or actual occurrence of widespread personal injury, epidemic, or loss of life that results from any natural phenomenon or act of a human." It can anything from a flood to a flu outbreak (not a pandemic) to a bridge collapse to a ten-car pile-up on Interstate 71. A disaster could include the stabbing attack at Ohio State University last fall.

HB 7 does not limit the abrogation of the standard of care to treatment given at the scene of the disaster or treatment by physicians and nurses. Nor is the legislation limited to volunteer care. This legislation can give immunity to treatment by an aide at a well-equipped

and well-staffed hospital for services billed to a patient. The definition of "disaster" can be stretched as much as a defense lawyer can convince a court to stretch it. The legislation begs the questions. Who decides what a disaster is? Or how long a disaster lasts? This legislation promotes more litigation not less.

Let me give you an example. Let's assume that a car crash sets off a chain reaction collision on I-71 and fifteen people suffered personal injuries. The injured were taken to three different hospitals all of which were equipped to deal with trauma victims. Even though the injured were in a hospital setting staffed with multiple personnel and stocked with the most modern medical equipment, the hospital staff will not be held to a standard of reasonableness but the reckless disregard standard.

There is no liability crisis that warrants this sweeping legal protection. OAJ is not aware of any successful claims being brought against an Ohio health care provider under these circumstances. Nor has the committee been presented with any evidence or examples showing the need for this legislation. There simply is no need for this legal protection.

Thank you for your time and attention. I'd be happy to respond to any questions.