

OAJ Medical Negligence Section Article October 2015

A (SECOND) CALL TO ACTION

By: Michael Shroge, Plevin & Gallucci

Over a year ago I authored my first article for the OAJ Medical Section titled *A Call to Action*. For all the members who I am confident saved that article and have it sitting immediately by their desk, there will be no need to remind you of the message in that article. For those of you who didn't specifically cut out my exquisite prose and message, I will remind you that in the article I asked for increased vigilance by the entire membership of OAJ over the continued attempts in Columbus to draft, introduce and pass laws adverse to our clients' best interests and adverse to the explicit mandates of the Ohio Constitution. That first article was written at a time when multiple pieces of legislation had been introduced at the request of OHA and OSMA to expand the apology statute to include admissions of fault, to exclude any references to certain types of medical literature of best practices to establish evidence of the standard of care as well as a few other legislative efforts. In addition, the biggest "bomb" dropped in Columbus was the introduction by Representative Jim Butler of the Medical Insurance Compensation System (a purely administrative system to replace current medical malpractice laws).

While I'm pleased to say that most, if not all, of that legislation was not passed in the last legislative session, most of the non-passage was due to the overbearing process of the budget discussions occurring at that time. However, most recently the Republican leadership in Columbus indicated the intent to introduce several pieces of legislation directed in the area of medical negligence they have labeled "low hanging fruit." It is our belief, and may have already occurred by the time this article is published, that the reintroduction of the extension of the apology statute to include admissions of fault and other prior legislative attempts will be

introduced in this legislative session.

When I wrote the first article in June of 2014 calling for increased awareness as well as involvement of the membership, that call was met. Several new members of OAJ were added to the Patient Advocacy Task Force and several other members were co-opted to use their energy, efforts and ideas to oppose all of these prior attempts to pass harmful legislation. Now that the prior budget issues are no longer hanging over lawmakers, these new attempts to introduce legislation will come fast and furious with increased vigor in an attempt to push through laws that assist only the wrongdoers in medical negligence cases. There has been absolutely no effort to introduce any law that increases protections for injured Ohioans or expand their access to justice.

However, the time for waiting is over. OAJ President, Frank Gallucci, has made one of his major focuses the introduction of legislation by our organization in an effort to pursue the expansion of justice. Earlier this year we saw the introduction, and passage, of the new subrogation statute. In the coming weeks and months you will see information regarding our intent and attempt to introduce the “Ohio Candor Bill.” The proposed law will mirror a similar bill passed last year in Iowa with the cooperation of the Iowa Association for Justice as well as the Iowa Hospital Associations and Medical Associations. The Candor Bill promotes open pre-suit communication between care providers and injured patients and their family in an attempt to seek resolution before the lengthy and costly litigation process begins. The empirical evidence is overwhelming across the United States from hospital systems and other states that have adopted this approach that an open and early mediation process reduces costly litigation and assists injured patients and their families. Included in the law would be a mandate that the care providers, when giving notice to patients that they would like to engage in these discussions, inform patients to seek legal counsel. It has been proven, again through empirical evidence, that the retention of an

attorney to work through the complicated issues involved in medical negligence and assessment of damages and settlements require the skills of experienced counsel.

Thus, OAJ through the assistance of the PATF intends to seek the introduction of the Ohio Candor Bill that meets the same intentions that OHA and OSMA have yearned for through an extension of the apology statute at the same time offering protections (for the first time in more than two decades) for injured patients and their families.

It is anticipated we will meet considerable opposition from the usual suspects, not because the Candor Bill is a bad idea, but simply because we will introduce it and support it. This article calls for a second call to action. This call to action is to put all of our efforts behind raising support for the passage of the Ohio Candor Bill. Keep your eyes open in the immediate future as it is our intent to distribute to the membership a language of the bill coupled with an explanation of the purpose for the bill and why it is our belief that this is the best path forward at this time for all of our membership and our clients.