

**House Bill 7: Important Information Regarding
Changes to Medical Negligence Laws**

House Bill 7 was recently passed into law and signed by Governor Kasich. That Bill was the culmination of several years of negotiation and discussion amongst interested parties including OAJ. While several provisions were eventually stripped from the original language, the remaining Bill still contains several critical elements of changes to current medical negligence law that members should be aware of and plan for prior to and after the Bill's effectiveness date of March 20, 2019. I would urge all members to read the Bill's language for completeness as I've only set forth a few of the provisions that I believe are the most critical.

1. **§ 2305.113: SERVICE OF LETTERS OF EXTENSION (180 DAY LETTERS)**

A positive change for members is that the law regarding service of letters of extension pursuant to Ohio Revised Code §2305.11 will allow notice of the intent to bring a lawsuit to be sent by certified mail and addressed to the individual's residence, professional office, employer, or address on file with the Medical Board or other State agency. This addresses concerns practitioners have with obtaining service of the letters of extension on individual physicians by now simply providing proof that you've served those individuals at either their professional office or their place of employment.

2. **§ 2317.43: EXTENSION OF THE APOLOGY STATUTE TO INCLUDE
ADMISSIONS OF LIABILITY**

HB 7 has now expanded, and memorialized the Ohio Supreme Court's interpretation of, the meaning of an apology. While this change in the prior apology statute language should not be news for anybody at this point in time, it does set in stone and expand statements that would be excluded if made by a practitioner or a facility's representative concerning offers of apology and direct admissions of fault including admissions of a breach of the standard of care.

3. **§ 2317.44 and § 2317.45: EXCLUSION OF CERTAIN WRITTEN GUIDELINES, REGULATIONS, STANDARDS OR BILLING POLICIES OR DETERMINATIONS FROM BEING CONSTRUED TO ESTABLISH THE STANDARD OF CARE**

HB 7 now specifically provides that any guideline, regulation or other standard under any provision of the Affordable Care Act or Social Security Act shall not be construed to establish the standard of care or duty of care owed by a healthcare provider. None of these guidelines, regulations or other standards will be admissible as evidence for or against any party in any civil action based upon the medical claim. More plainly spoken, documents like “never event” lists will not be admissible to prove that a physician breached the standard of care for a never event occurring. Also, insurers reimbursement policies and determinations may not be used for or against any party to establish the standard of care. There will still be debate and likely litigation over whether this law encompasses the inadmissability of these standards, guidelines or other documents for any other purpose of litigation (i.e., can the experts or any other provider still discuss the standards, guidelines and regulations, not as the standard of care, but considered by the individual to form their opinions?).

4. **§ 2323.451: CHANGES TO A 180 DAY DISCOVERY PERIOD FOR PURPOSES OF TOLLING THE STATUTE OF LIMITATIONS**

Changes to Ohio Revised Code §2323.451 are likely the most confusing section of HB 7. The intent of these particular changes were to provide plaintiffs with 1 of 2 options to choose to potentially add new defendants to a claim. The new changes would imply that a plaintiff could add any new party within 180 days after filing suit as long as letters of extension were not sent prior to the actual filing of the Complaint. However, if you do send letters of extension you are time limited for that period of time to add any individual after your original filing. However,

language exists in this law that indicates HB 7 does not modify, change or overturn any existing statute, common law or rule of evidence. As such, it is expected this will lead to litigation over the issue of the discovery of a potential defendant after the 180 day period runs after filing an original Complaint. It is critical that all medical negligence practitioners read this section in detail and make decisions as to how you are going to start the litigation process either with sending letters of extension or choosing to file and avail yourself of the 180 day period following the filing of their Complaint to add new potential defendants.

I would advise every member of OAJ to read the full text and incorporate these substantive changes into your practice so that you are not caught off-guard as you enter the new era of medical negligence litigation after March 20, 2019. The full text link can be found at: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-7>