

ORIGINAL

IN THE SUPREME COURT OF OHIO

DENNIS CARTER et al., : Case No.: 2015-0108

Plaintiffs/Appellants : On appeal from the Butler County  
Court of Appeals, Twelfth  
Appellate District

vs. : Court of Appeals  
Case No. CA 14 04 0095

LARRY REESE, JR., :

Defendant/Appellee :

MERIT BRIEF OF APPELLEE, LARRY REESE, JR.

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## STATEMENT OF FACTS

Per S.Ct.Prac.R. 16.03(B)(2), Defendant/Appellee Larry Reese, Jr., agrees with the Appellants' statement of facts for the purposes of this appeal and, as such, will not reiterate the facts herein.

## ARGUMENT

The Carters argue that Mr. Reese should not have been awarded summary judgment pursuant to R.C. 2305.23 for three reasons: (1) that Mr. Reese is not a health care professional, a firefighter, or a law enforcement officer and, as such, is not entitled to statutory immunity; (2) that Mr. Reese did not render *medical* care to Mr. Carter and, as such, is not entitled to statutory immunity; and (3) that Mr. Reese did not render any type of care to Mr. Carter and, as such, is not entitled to statutory immunity.

Given the language of R.C. 2305.23 and the case law that has interpreted or applied that statute, the facts of this case demonstrate that Mr. Reese was entitled to statutory immunity and summary judgment on that basis.

**A. The Carters' argument that R.C. 2305.23 only applies to health care professionals, firefighters, and law enforcement officers ignores the plain and unambiguous statutory language, is not supported by case law, and is being impermissibly raised for the first time in this appeal so cannot be considered.**

The Carters argue that R.C. 2305.23 only protects health care professionals, firefighters, and law enforcement officers and that, because Mr. Reese falls into none of those categories, the lower courts erred by granting summary judgment in his favor based on that statute. However, this argument fails for several reasons.

First, the plain language of the statute states that “[n]o *person* shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency \*\*\*.” (Emphasis added). The statute unambiguously applies to any person, regardless of his or her

profession. No case law supports the Carters' proposition that R.C. 2305.23 was ever intended to or interpreted to apply only to health care workers.

The amendment specifying that firefighters and law enforcement officers are protected by the statute is simply a clarification that their status as paid individuals does not remove the statutory protection. Had the Legislature intended the statute to protect only health care professionals, it would have used the phrase "health care professionals," as opposed to the chosen word "person."

In fact, the Legislature did choose to use the phrase "health care professionals" in R.C. 2305.234, a mere four statutes down the list in the Revised Code from the one at issue in this case. See R.C. 2305.234, "Immunity for Volunteer *Health Care Workers, Professionals, Facilities, and Nonprofit Referral Organizations*" (emphasis added). But in drafting the statute at issue in this case, the Legislature opted to use the all-encompassing "person," as opposed to the limiting phrase "health care worker or professional." This demonstrates the Legislature's clear intent to protect all people, not limited classes.

This Court has stated that,

[i]n the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent, and it is well settled that none of the language employed therein should be disregarded, and that all of the terms used should be given their usual and ordinary meaning and signification except where the lawmaking body has indicated that the language is not so used.

*Carter v. Youngstown Div. of Water*, 146 Ohio St. 203, 65 N.E.2d 63, paragraph one of the syllabus (1946).

Further, this Court explained that it

must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act, and in the absence of

any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.

*Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370, paragraph five of the syllabus (1948).

“It is the responsibility of courts to enforce the literal language of a statute whenever possible.” *Cablevision of the Midwest, Inc. v. Gross*, 70 Ohio St.3d 541, 544, 639 N.E.2d 1154 (1994)(internal citations omitted). “A court's role is to interpret, not legislate.” *Id.* (internal citations omitted). “Absent ambiguity, the court must give effect to the plain meaning of a statute even when a court believes that the statute results in an unfavorable outcome.” *Id.* “The role of a court is not to decide what the law *should* say; rather, the role of this court is to interpret what the law says *as it has been written by the General Assembly.*” *Clark v. Scarpelli*, 91 Ohio St.3d 271, 291, 744 N.E.2d 719 (2001) (Cook, J., dissenting).

And, most noteworthy to the Carters’ argument that R.C. 2305.23 applies only to health care professionals, firefighters, and law enforcement officers (despite the statutory language using the general word “person”), this Court has written that, “[t]he Legislature will be presumed to have intended to make no limitations to a statute in which it has included by general language many subjects, *persons* or entities, without limitation. *Id.* at 237 (emphasis added).

Simply put, this Court must apply the plain and unambiguous language of R.C. 2305.23, which is that all persons, including Mr. Reese, are eligible for the immunity protection of the statute.

Additionally, the Carters’ argument that Mr. Reese does not fall into a category of people protected by R.C. 2305.23 was raised for the first time in their merit brief filed in the Supreme Court. They never raised the argument at the trial court or court of appeals. As such, Ohio law prohibits them from raising the argument now, and this Court should not consider it. Ordinarily,

reviewing courts do not consider questions not presented to the court whose judgment is sought to be reversed. *State ex rel. Quarto Mining Co. v. Foreman*, 95 Ohio St.3d 78, 81, 679 N.E.2d 706 (1997). An appellate court may decline to consider errors which could have been brought to the trial court's attention and hence avoided or corrected. *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210 (1982). Issues that are not raised or tried in the trial court and are not addressed in the court's judgment may not be raised for the first time on appeal. *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155 (1993).

**B. The Carters' argument that R.C. 2305.23 only affords immunity to people rendering emergency medical care or treatment requires this Court to read a word into the statute that the Legislature did not include, thereby ignoring long-standing rules of statutory construction and case law applying the statute.**

Probably the most pivotal issue in this case has been whether R.C. 2305.23 provides immunity to a person rendering emergency *medical* care or treatment at the scene of an emergency or whether the statute protects someone providing any sort of care or treatment.

The pertinent language of the statute is: "No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency \* \* \*." R.C. 2305.23. Throughout this case, the Carters have argued that the statute only protects individuals providing emergency *medical* care or treatment. Mr. Reese has successfully argued that the statute protects individuals providing any type of care or treatment at the scene of an emergency. The statute does not say "emergency medical care or treatment" and, instead, simply says "emergency care or treatment." The missing word needed to support the Carters' argument is "medical," so the issue is whether this Court will read the word "medical" into the statute, despite the Legislature's choice not to include it.

In addition to the rules of statutory construction set forth above, this Court explained its role in interpreting statutes in great detail in the case of *Wachendorf v. Shaver*, 149 Ohio St. 231 at 236-237. That explanation states, in part:

The only mode in which the will of a legislature is spoken is the statute itself. Hence, in the construction of statutes, it is the legislative intent manifested in the statute that is of importance, and such intent must be determined primarily from the language of the statute, which affords the best means of the exposition of the intent.

Indeed, it is the duty of the courts to give a statute the interpretation its language calls for where this can reasonably be done, and **the general rule is that no intent may be imputed to the Legislature in the enactment of a law, other than such as is supported by the language of the law itself. The courts may not speculate, apart from the words, as to the probable intent of the Legislature.**

**As a reason for these rules, it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute; that nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself; and that the court may write no limitations therein. As variously expressed, the statute may not be restricted, constricted, qualified, narrowed or abridged.**

It is a general rule that courts, in the interpretation of a statute, may not take, strike or read anything out of a statute, or delete, subtract or omit anything therefrom. To the contrary, it is a cardinal rule of statutory construction that significance and effect should if possible be accorded every word, phrase, sentence and part of an act. \*\*\* These rules of construction are subject to some exceptions; nevertheless, **if the act or acts in question are couched in plain and unambiguous language, courts are not justified in adding words to such statutes**, neither may the courts delete words from a statute, but must construe intent of the lawmakers as expressed in the law itself.

(Emphasis added).

Therefore, by this Court's own rules, the word "medical" may not be added or read into R.C. 2305.23, thereby narrowing, limiting, or abridging the statute in derogation of the Legislature's intent.

Just as the Legislature did not opt to use the phrase “health care professional” in R.C. 2305.23 but did opt to use it in a section of the revised code several sections thereafter, the same is true with respect to the use of the word “medical.” In R.C. 2305.231(B), the very next section of the revised code after the one at issue in this case, the Legislature enacted a statute that says, in part:

No physician who volunteers the physician's services as a team physician or team podiatrist to a school's athletics program, no dentist who volunteers the dentist's services as a team dentist to a school's athletics program, and no registered nurse who volunteers the registered nurse's services as a team nurse to a school's athletics program is liable in damages in a civil action for administering **emergency medical care**, emergency dental care, other emergency professional care, or **first aid treatment** to a participant in an athletic event \* \* \*.

(Emphasis added).

This shows that the Legislature could have included (and in fact did so the very next section of the revised code) the word “medical” in R.C. 2305.23 had it intended to have the statute cover only individuals rendering medical care or treatment. But it did not choose to do so, and this Court may not read that word into an otherwise unambiguous statute.

**C. The lower courts did not err by holding that Mr. Reese, by attempting to free Mr. Carter from being trapped by the semi, was providing emergency care and was, therefore, protected by R.C. 2305.23.**

The lower courts agreed that the case of *Held v. City of Rocky River*, 34 Ohio App.3d 35, 516 N.E.2d 1272 (8th Dist. 1986), is the only case directly on point that squarely decides the issue presented. In *Held*, a firefighter who was on the scene of a fire was knocked down and pinned to the ground, but uninjured, by a strong stream of water coming from a hydrant. *Id.* at 36. Another (off-duty) firefighter who happened upon the scene helped drag the pinned man out of the water stream to safety. *Id.* The rescued firefighter eventually wound up suing the off-duty officer for negligence regarding the manner in which he pulled him from the rushing water. *Id.*

The Eighth District Court of Appeals found that the off-duty firefighter was immune from civil liability pursuant to R.C. 2305.23 and upheld the trial court's entry of summary judgment in favor of the off-duty firefighter on that basis. *Id.* at 38-39. In arriving at its decision, the Court noted,

[i]t is un rebutted on this record that James Held had been knocked to the ground and pinned there by a continuous stream of rushing water. This was clearly an emergency situation to which Cahill responded by removing Held from the danger. It may thus be said as a matter of law that Cahill rendered emergency care to Held, and is immune under the language of R.C. 2305.23 for any alleged negligence in doing so.

*Id.* at 39.

The court in *Held* determined that the defendant was responding to an emergency situation and that his act of unpinning the firefighter constituted emergency care. Likewise, in this case Mr. Carter had been pinned (whether already injured or not) between his truck and the loading dock and was stuck there when Mr. Reese first encountered him. As was found to be the case in *Held*, that was an emergency situation to which Mr. Reese responded by locating Mr. Carter and providing emergency care to him by trying to move the truck. The reasoning in the *Held* case applies equally to the facts of this case, and Mr. Reese is likewise immune under the language of R.C. 2305.23 for any alleged negligence in rendering the emergency care to Mr. Carter.

The cases cited by the Carters are entirely distinguishable, largely because they do not reach a holding on the same issue, as was set forth in Mr. Reese's jurisdictional memorandum submitted to this Court previously. *Primes v. Tyler*, 43 Ohio St.2d 195, 331 N.E.2d 723 (1975), mentioned R.C. 2305.23 in passing in a footnote that was merely dicta. As the Twelfth District Court of Appeals pointed out, the language from *Primes* regarding R.C. 2305.23 "is unquestionably dicta, and therefore is not controlling in this case." *Carter v. Reese*, 2014-Ohio-5395 ¶ 19, 25 N.E.3d 1086 (12th Dist. 2014). Because the *Primes* language was dicta, and

because the *Primes* case decided an entirely separate issue from the question of law presented in this matter, there is no conflict between *Primes* and the Twelfth District's decision.

The Carters also claim the Twelfth District's decision conflicts with the First District Court of Appeals' decision in *Hamisfar v. Baker Concrete Constr.*, 1st. Dist., Hamilton No. C-970228, 1998 WL 173238 (Feb. 8, 1998). The *Hamisfar* decision's brief mention of R.C. 2305.23 is also dicta, and is also found in a footnote. The issue decided in *Hamisfar* was whether plaintiff's claim for negligent undertaking was proper. R.C. 2305.23 was mentioned once, in a footnote, and had no bearing on the issue presented or on the First District's decision. Therefore, there is no conflict between *Hamisfar* and the Twelfth District's decision in this case.

Finally, the Carters claim the Twelfth District's decision conflicts with the Ninth District Court of Appeals' decision in *Butler v. Rejon, Jr.*, 9th Dist. Summit No. 19699, 2000 WL 141009 (Feb. 2, 2000). *Butler* does actually address issues regarding R.C. 2305.23; however, it does not decide the same issue presented in this case. The issue in *Butler* was whether R.C. 2305.23 could be used as a defense against third parties. The decision had nothing to do with whether the individual had to be providing emergency medical care to be protected by the Good Samaritan statute. Although *Butler* included language favorable to Mr. Carter's argument, that language was merely dicta, which the Twelfth District recognized in its decision.

The only case that has squarely decided the same issue presented in this case is *Held v. City of Rocky River*, *supra*, and that case should be applied to these facts to affirm the lower courts' entries of summary judgment in favor of Mr. Reese.

### **CONCLUSION**

The Court of Appeals' decision should be affirmed. Reversing that decision would require this Court to improperly read an absent word into R.C. 2305.23 in derogation of the clear

and unambiguous intent of the legislature. Mr. Reese respectfully requests this Court affirm the decisions of the lower courts.

Respectfully submitted,



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on this 25th day of September, 2015.

  
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# **APPENDIX**

Baldwin's Ohio Revised Code Annotated  
Title XXIII. Courts--Common Pleas  
Chapter 2305. Jurisdiction; Limitation of Actions (Refs & Annos)  
Miscellaneous Provisions

R.C. § 2305.231

2305.231 Liability of volunteers as athletic team's dentist, physician, podiatrist or nurse

Effective: [See Text Amendments] to September 28, 2015  
Currentness

<Note: See also version(s) of this section with later effective date(s).>

(A) As used in this section:

- (1) "Dentist" means a person who is licensed under Chapter 4715. of the Revised Code to practice dentistry.
- (2) "Physician" means a person who holds a certificate issued by the state medical board to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.
- (3) "Registered nurse" means a nurse who is licensed as a registered nurse under Chapter 4723. of the Revised Code.

(B) No physician who volunteers the physician's services as a team physician or team podiatrist to a school's athletics program, no dentist who volunteers the dentist's services as a team dentist to a school's athletics program, and no registered nurse who volunteers the registered nurse's services as a team nurse to a school's athletics program is liable in damages in a civil action for administering emergency medical care, emergency dental care, other emergency professional care, or first aid treatment to a participant in an athletic event involving the school, at the scene of the event or while the participant is being transported to a hospital, physician's or dentist's office, or other medical or dental facility, or for acts performed in administering the care or treatment, unless the acts of the physician, dentist, or registered nurse constitute willful or wanton misconduct.

(C) This section does not apply if the administration of emergency medical care, emergency dental care, other emergency professional care, or first aid treatment is rendered for remuneration, or with the expectation of remuneration, from the recipient of the care or treatment or from someone on the recipient's behalf.

**CREDIT(S)**

(1998 H 612, eff. 9-1-98; 1981 S 159, eff. 10-20-81)

R.C. § 2305.231, OH ST § 2305.231

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Baldwin's Ohio Revised Code Annotated  
Title XXIII. Courts--Common Pleas  
Chapter 2305. Jurisdiction; Limitation of Actions (Refs & Annos)  
Miscellaneous Provisions

R.C. § 2305.234

2305.234 Immunity for volunteer health care workers,  
professionals, facilities, and nonprofit referral organizations

Effective: March 23, 2015  
Currentness

(A) As used in this section:

- (1) "Chiropractic claim," "medical claim," and "optometric claim" have the same meanings as in section 2305.113 of the Revised Code.
- (2) "Dental claim" has the same meaning as in section 2305.113 of the Revised Code, except that it does not include any claim arising out of a dental operation or any derivative claim for relief that arises out of a dental operation.
- (3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.
- (4) "Health care facility or location" means a hospital, clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, a free clinic or other nonprofit shelter or health care facility as those terms are defined in section 3701.071 of the Revised Code, or any other place where medical, dental, or other health-related diagnosis, care, or treatment is provided to a person.
- (5) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment:
  - (a) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;
  - (b) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code and individuals who hold a certificate of authority issued under that chapter that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;
  - (c) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;
  - (d) Dentists and dental hygienists licensed under Chapter 4715. of the Revised Code;

- (e) Physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, and athletic trainers licensed under Chapter 4755. of the Revised Code;
  - (f) Chiropractors licensed under Chapter 4734. of the Revised Code;
  - (g) Optometrists licensed under Chapter 4725. of the Revised Code;
  - (h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;
  - (i) Dietitians licensed under Chapter 4759. of the Revised Code;
  - (j) Pharmacists licensed under Chapter 4729. of the Revised Code;
  - (k) Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under Chapter 4765. of the Revised Code;
  - (l) Respiratory care professionals licensed under Chapter 4761. of the Revised Code;
  - (m) Speech-language pathologists and audiologists licensed under Chapter 4753. of the Revised Code;
  - (n) Licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists, licensed under Chapter 4757. of the Revised Code;
  - (o) Psychologists licensed under Chapter 4732. of the Revised Code;
  - (p) Individuals licensed or certified under Chapter 4758. of the Revised Code who are acting within the scope of their license or certificate as members of the profession of chemical dependency counseling or alcohol and other drug prevention services.
- (6) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.
- (7) "Indigent and uninsured person" means a person who meets both of the following requirements:
- (a) Relative to being indigent, the person's income is not greater than two hundred per cent of the federal poverty line, as defined by the United States office of management and budget and revised in accordance with section 673(2) of the "Omnibus Budget

Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, except in any case in which division (A)(7)(b)(iii) of this section includes a person whose income is greater than two hundred per cent of the federal poverty line.

(b) Relative to being uninsured, one of the following applies:

(i) The person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan.

(ii) The person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

(iii) Until June 30, 2019, the person is eligible for the medicaid program or is a medicaid recipient.

(iv) Except as provided in division (A)(7)(b)(iii) of this section, the person is not eligible for or a recipient, enrollee, or beneficiary of any governmental health care program.

(8) "Nonprofit health care referral organization" means an entity that is not operated for profit and refers patients to, or arranges for the provision of, health-related diagnosis, care, or treatment by a health care professional or health care worker.

(9) "Operation" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means, including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, or the removal of intraocular foreign bodies. "Operation" does not include the administration of medication by injection, unless the injection is administered in conjunction with a procedure infiltrating human tissue by mechanical means other than the administration of medicine by injection. "Operation" does not include routine dental restorative procedures, the scaling of teeth, or extractions of teeth that are not impacted.

(10) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or government entities.

(11) "Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any health care facility or location, any nonprofit health care referral organization, or any other person or government entity.

(12) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(13) "Deep sedation" means a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation, a patient's ability to independently maintain ventilatory function may be impaired, a patient may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate, and cardiovascular function is usually maintained.

(14) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation, the ability to independently maintain ventilatory function is often impaired, a patient often requires assistance in maintaining a patent airway, positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, and cardiovascular function may be impaired.

(B)(1) Subject to divisions (F) and (G)(3) of this section, a health care professional who is a volunteer and complies with division (B)(2) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, including the provision of samples of medicine and other medical products, unless the action or omission constitutes willful or wanton misconduct.

(2) To qualify for the immunity described in division (B)(1) of this section, a health care professional shall do all of the following prior to providing diagnosis, care, or treatment:

(a) Determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence;

(b) Inform the person of the provisions of this section, including notifying the person that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot hold the health care professional liable for damages in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, unless the action or omission of the health care professional constitutes willful or wanton misconduct;

(c) Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section. A written waiver under division (B)(2)(c) of this section shall state clearly and in conspicuous type that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional unless the action or omission of the health care professional constitutes willful or wanton misconduct.

(3) A physician or podiatrist who is not covered by medical malpractice insurance, but complies with division (B)(2) of this section, is not required to comply with division (A) of section 4731.143 of the Revised Code.

(C) Subject to divisions (F) and (G)(3) of this section, health care workers who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct.

(D) Subject to divisions (F) and (G)(3) of this section, a nonprofit health care referral organization is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the nonprofit health care referral organization in referring indigent and uninsured persons to, or arranging for the provision of, medical, dental, or other health-related diagnosis, care, or treatment by a health care professional described in division (B) (1) of this section or a health care worker described in division (C) of this section, unless the action or omission constitutes willful or wanton misconduct.

(E) Subject to divisions (F) and (G)(3) of this section and to the extent that the registration requirements of section 3701.071 of the Revised Code apply, a health care facility or location associated with a health care professional described in division (B) (1) of this section, a health care worker described in division (C) of this section, or a nonprofit health care referral organization described in division (D) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or worker or nonprofit health care referral organization relative to the medical, dental, or other health-related diagnosis, care, or treatment provided to an indigent and uninsured person on behalf of or at the health care facility or location, unless the action or omission constitutes willful or wanton misconduct.

(F)(1) Except as provided in division (F)(2) of this section, the immunities provided by divisions (B), (C), (D), and (E) of this section are not available to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location if, at the time of an alleged injury, death, or loss to person or property, the health care professionals or health care workers involved are providing one of the following:

(a) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under division (B) of section 2951.02 of the Revised Code or imposed by a court as a community control sanction;

(b) Performance of an operation to which any one of the following applies:

(i) The operation requires the administration of deep sedation or general anesthesia.

(ii) The operation is a procedure that is not typically performed in an office.

(iii) The individual involved is a health care professional, and the operation is beyond the scope of practice or the education, training, and competence, as applicable, of the health care professional.

(c) Delivery of a baby or any other purposeful termination of a human pregnancy.

(2) Division (F)(1) of this section does not apply when a health care professional or health care worker provides medical, dental, or other health-related diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.

(G)(1) This section does not create a new cause of action or substantive legal right against a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location may be entitled in connection with the provision of emergency or other medical, dental, or other health-related diagnosis, care, or treatment.

(3) This section does not grant an immunity from tort or other civil liability to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location for actions that are outside the scope of authority of health care professionals or health care workers.

In the case of the diagnosis, care, or treatment of an indigent and uninsured person who is eligible for the medicaid program or is a medicaid recipient, this section grants an immunity from tort or other civil liability only if the person's diagnosis, care, or treatment is provided in a free clinic, as defined in section 3701.071 of the Revised Code.

(4) This section does not affect any legal responsibility of a health care professional, health care worker, or nonprofit health care referral organization to comply with any applicable law of this state or rule of an agency of this state.

(5) This section does not affect any legal responsibility of a health care facility or location to comply with any applicable law of this state, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution, sanitation, health, fire, zoning, or safety.

**CREDIT(S)**

(2014 H 320, eff. 3-23-15; 2014 H 232, eff. 7-10-14; 2013 H 59, eff. 9-29-13; 2012 H 303, eff. 3-20-13; 2009 H 1, eff. 10-16-09; 2004 S 80, eff. 4-7-05; 2003 S 86, eff. 7-12-04; 2003 S 51, § 3, eff. 1-1-04; 2003 S 51, § 1, eff. 10-29-03; 2003 H 95, § 3.07, eff. 1-1-04; 2003 H 95, § 1, eff. 6-26-03; 2002 S 281, eff. 4-11-03; 2002 H 490, eff. 1-1-04; 2000 H 349, eff. 9-22-00; 1999 H 261, § 2, eff. 6-8-00; 1998 H 612, § 4, eff. 11-15-00; 1998 S 66, eff. 7-22-98; 1996 S 259, § 4, eff. 11-15-00; 1996 S 259, § 1, eff. 11-6-96; 1995 H 218, § 2, eff. 11-15-00; 1995 H 218, § 1, eff. 11-15-95)

R.C. § 2305.234, OH ST § 2305.234

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