

Chairman Butler, Vice Chair Manning, Ranking Member Johnson and members of the House Judiciary Committee, thank you for the opportunity to share with you a personal story that speaks to the importance of House Bill 559.

My name is Dr. Michael McCrea. I am a practicing Emergency Medicine Physician currently working in Toledo at Mercy St. Vincent Medical Center. I am Board Certified in Emergency Medicine by the American Board of Emergency Medicine. I completed my Emergency Medicine Residency at The Ohio State University in 2007. Currently, I am President of the Ohio Chapter of the American College of Emergency Physicians, Ohio ACEP.

Ohio ACEP supports several provisions in the legislation. Specifically, we support the added protection for healthcare professionals who are providing care during a disaster. This protection will enable the physician workforce in Ohio to participate in any disaster response with the freedom to practice medicine, deliver lifesaving emergency care and to do so with increased liability protection.

Many other states enacted similar protections after Hurricane Katrina in 2005. When a mass demand for emergency care is needed, it is important that providers do not face unwarranted legal liability for stepping in to help.

These additional protections are not unprecedented in Ohio law. Currently, Ohio allows for a higher liability standard for:

- EMT's and paramedics;
- Hazmat cleanup volunteers;
- Providers delivering care at shelters and non-profit facilities;
- Good Samaritans providing emergency care;
- ED physicians on the radio directing emergency care provided by paramedics;
- Volunteer school team physicians.

Today I specifically and respectfully ask for your support for HB 559 by illustrating how such a law, had it been in affect six years ago, would have helped me and the family of a patient for whom I cared. On December 30, 2010, I was working at an Ohio hospital in the Emergency Department when we received a 20-month old burn patient transferred from another hospital. He had had a breathing tube placed and was on life support for his burns. Shortly after his arrival to our ED, for reasons to this day that are still not entirely clear, his heart stopped. Our team of Emergency and trauma resident physicians, nurses, technicians, and I coded this small boy. Eventually were able to restart his heart after 57 minutes of CPR and advanced pediatric cardiac resuscitation. He was admitted to the Pediatric ICU in critical life-threatening condition. Unfortunately, despite all efforts, he died three days later.

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I hope to never have another case like this for the rest of my career. Even six years later, I think about it daily. I had a brief interaction with the child's mother that evening in the ED, but that was all. Within days, I had been instructed "not to talk to anyone" about this case, especially the family. I was professionally isolated and alone. When I heard he had died in the PICU, I thought about his mother and father. As a father of two small children at the time, I could not possibly imagine how they felt. I pray daily that I never do.

Approximately a year later, the other physicians and I who were involved in his care were named in a professional liability suit. Over the next two-and-a-half years, countless depositions were taken of all those involved with experts weighing in on both sides. Again, it was still unclear what had led to his cardiac arrest. Theories were, of course, proposed by both sides' experts, in addition to my own. No resolution could be reached because I knew we "did it right." We were prepared to go to trial, which was eventually scheduled for November of 2014, almost four years after I cared for him.

At the pre-trial hearing, I saw the mother for the first time since I had cared for her son. As we were sitting by ourselves in the courtroom while our attorneys were meeting with the judge, she simply looked at me and said, "at some point I'd like to hear what you think happened." That olive branch changed both of our lives forever. Despite strong recommendations from both of our attorneys, we just started talking right there in the courtroom.

For four years, I had wanted to reach out to her but had been instructed not to. I had often wondered what I would say if I ever had the chance. I didn't know how to start, so I just started with, "I'm sorry." The immediate look of relief on her face was an image that I will never forget for the rest of my life. She told me that in four years, no one from our hospital had said, "I'm sorry." After this we cried together, remembering that terrible day and all that has happened since. We laughed. We held each other's hand. We talked about our families. Our attorneys couldn't believe it. My attorney said later that day, "despite everything inside of me screaming 'stop it!', it just felt right to let you two keep talking." Her attorney said afterward, "it was something I will remember very positively for a long time."

That day, she and her husband dismissed me from the suit. She has given me permission to share some of her thoughts she shared with me after our conversation as we have communicated regularly since.

"I want to thank you again for the conversation, I am able to sleep at night again. I had the first sleep after Friday night than I have had in over three years. Our conversation helped me find a peace that no money can buy. The money never was the moving factor for me nor my husband. As I said at the court house, we have been trying to find answers. You apologized for not being able to do enough. I forgive you, please forgive me for all of the hell that the investigation and such has put you through. People don't become doctors with ill intent and I'm certain this whole thing has put you through hell. My only intent was to find answers and peace.

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I wish more people could speak like that. Imagine how many people may find peace in like situations, wouldn't it be nice?"

I understand that not everyone would feel comfortable engaging in such a dialogue, especially against advice from counsel. Even though I know that I was not at fault, there was still doubt, and I exposed myself to significant amount of risk by speaking with my patient's mother that day. Our conversation went much further than simply saying "I'm sorry" as permitted by RC § 2317.43 as I explained in detail what I thought happened that day. In four years, my defense counsel, my employer's or hospital risk manager has never discussed with me reaching out to the family as would have been permitted to say "I'm sorry" by current statute. Opportunity was certainly there immediately afterwards when it would have been most meaningful to everyone involved. I know our ED team and I would have benefited greatly from such discussions, as I know the patient's family would have.

I strongly believe that all health-care providers should be provided the protected opportunity to reach out to patients and family members after an adverse medical event, regardless of fault. As my experience demonstrates, being able to engage in a conversation with a patient or their family may mean more to all involved than anything else. This is not just for the benefits of families but as much for the benefit of health-care providers. One thirty-minute conversation erased four years of pain that I quietly suffered. We practice in a current system that preaches "don't talk to anyone" after an adverse medical event and that needs to change. You have the opportunity to make that change for the benefit of all Ohioans.

In the weeks after that conversation I wrote back to the mother, letting her know about HB 276 (which was a bill considered last General Assembly containing a provision similar to HB 559) and efforts by the OSMA and Ohio ACEP to allow future health-care providers and families to have the opportunity to speak as we did. She replied,

"I am glad to hear the "I'm sorry" is moving forward. I really would like to see it passed. I think it would provide a lot more people the opportunity to feel the peace I have from it."

Mr. Chairman, thank you allowing me to speak to you today. I urge you to support and pass HB 559. I would be happy to answer any questions. Thank you.

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