

TESTIMONY OF MICHAEL D. SHROGE, ESQ.
IN OPPOSITION TO SENATE BILL 129
BEFORE THE OHIO SENATE JUDICIARY - CIVIL JUSTICE COMMITTEE
MAY 4, 2011

Chairman Wagoner, Ranking Member Kearney and members of the Senate Judiciary and Civil Justice Committee,

My name is Michael Shroge and I am an attorney practicing in Cleveland, Ohio. I believe my professional experience provides me with a unique perspective on how medical negligence laws enacted by this esteemed body affect Ohioans. I started my career as a law clerk and then offered a position as an attorney, and ultimately an elected partner, at the law firm of Reminger & Reminger. While there my practice consisted mainly of defending doctors and hospitals and other healthcare providers in the medical malpractice setting. After being elected partner, I was asked by The Cleveland Clinic to join their Office of General Counsel working within their inhouse litigation group. While at The Cleveland Clinic I witnessed their institutional approach to medical malpractice incidents and lawsuits. After leaving The Cleveland Clinic, I joined the law firm of Plevin & Gallucci where I now spend the majority of my time on representing individuals and families who have been harmed or have died as a result of medical negligence. As I have said before, and I say to you now, I have seen medical malpractice in action from the defense perspective, the corporate perspective and now from the plaintiff's perspective.

I have read Senate Bill 129, and I have attended the proponent testimony received by this committee several weeks ago.

The proponents of this bill would have this committee believe that SB 129 is a magic bullet. In medicine, a magic bullet is most commonly known as the perfect drug or cure to a disease with absolutely no danger of side effects. The supporters of SB 129 believe this bill will be the cure all for improving access to care for all Ohioans. As it is with most forms of magic, the benefits they propose are merely an illusion.

I am here to speak to you very specifically about the claim that this bill will improve access to emergency care of all Ohioans. The empirical evidence and data are overwhelming and indisputable that this bill does not improve access to care and will lead to a decrease in the quality of care delivered by our emergency room physicians should it be enacted.

Several weeks ago you heard from Dr. Gary Katz, the President of the Ohio Chapter of the American College of Emergency Room Physicians, as well as Dr. Mark Dean who spoke on behalf of the Ohio State Medical Association. In reviewing their testimony, both Dr. Katz and Dr. Dean highlighted several other states as models Ohio should follow including Texas, Florida, Georgia, South Carolina and Oklahoma. All of these states have passed emergency room immunity liability.

As I listened to their testimony, I was struck by moment when Senator Obhof asked Dr. Katz whether or not there were studies that graded the states according to access to care

and revealed evidence that bills such as SB 129 have actually improved access to care. Dr. Katz responded that he was not sure whether such a study existed or grades existed that would give this committee that type of guidance. The witnesses testifying in support of SB 129 should be fully aware of the American College of Emergency Physicians, or ACEP, studies that have been conducted on the exact issue of access to care.

In both 2006 and 2009 ACEP produced The National Report Card on The State of Emergency Medicine. As a brief overview, the ACEP Report Card provides an overall grade for a state's emergency care. Making up that overall grade are subcategories which include, amongst others, access to emergency care. In the executive summary of the 2009 study ACEP states the Report "is designed to provide the American public with an objective assessment of the emergency care environment across the country."

At this time I'd like to highlight for this committee ACEP's analysis for each of the states that have enacted emergency care immunity. These states have also been cited as models that Ohio should follow. Again, those would be Georgia, Florida, Oklahoma, South Carolina and Texas.

Georgia enacted emergency medical immunity in 2005. In 2006 Georgia received a grade of D+ for its access to emergency room care. In 2009, after four years of this experiment, ACEP gave Georgia a grade of F for access to care.

Florida enacted emergency medical immunity in 2003. In 2006 Florida received a grade of C- for access to care. In 2009, after six years of this experiment, they received a grade of F.

Oklahoma enacted emergency medical immunity in 2005. In 2006 Oklahoma received a grade of C- for access to care. In 2009, after four years of this experiment, they received a grade of F.

South Carolina enacted emergency medical immunity in 2005. In 2006 South Carolina received a grade of C for access to care. In 2009, after four years of this experiment, they received a grade of F.

Texas enacted emergency medical immunity in 2003. In 2006 Texas received a grade of D+. In 2009, after six years of this experiment, they received a grade of F.

Over the same period of time, Ohio, without enacting this type of legislation, has increased its number of board certified emergency physicians. As well, those medical specialties that provide lifesaving consultations in the emergency room setting have all increased in number. In other words, Ohio is still an attractive place for physicians to provide their skills in the emergency room setting without immunity from liability.

The ACEP Report Cards from both 2006 and 2009 prove in objective terms that SB 129 will not improve access to emergency care. There can be no doubt that the supporters of this bill

are aware that the data simply does not support the argument for the necessity of this bill, especially when it comes to increasing access to emergency care in Ohio.

I was taught as a young attorney that you can never ignore the bad facts in your case. If you do, and the jury learns the bad facts from your opponent, you lose all credibility in the court room. The witnesses testifying in support of SB 129 have ignored these bad facts and, thus, their arguments for the necessity of this bill lack credibility.

I want to thank you for your time in allowing me to testify in opposition to SB 129. It would be my pleasure to provide each and every one of you with copies of the 2006 and 2009 American College of Emergency Physicians Report Cards as I have already done with several of you on other occasions. Thank you.