



Am. H.B. 533*
124th General Assembly
(As Reported by H. Civil and Commercial Law)

Rep. Buehrer

BILL SUMMARY

- Provides that the testimonial privilege of a physician or dentist does not apply in a will contest action if the patient is the deceased and a party to the action requests the testimony, demonstrates to the court that the party would be an heir of the patient if the patient died without a will, is a beneficiary under the will that is the subject of the action, or is a beneficiary under another testamentary document allegedly executed by the patient, and demonstrates to the court that the testimony is necessary to establish those rights of the party.
- Specifies that a physician or dentist may be compelled to testify or to submit to discovery in the will contest action only as to the patient in question on issues relevant to the competency of the patient at the time of the execution of the will.

CONTENT AND OPERATION

Continuing law

The Privileged Communications Law precludes specified persons from testifying in certain respects. With certain exceptions specified in that Law, a physician or a dentist cannot testify concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient. This testimonial privilege does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances (R.C. 2317.02(B)(1)(a) to (d)):

* *This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

(1) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under the Workers' Compensation Law, under any of the following circumstances: (a) if the patient or the patient's guardian or other legal representative gives express consent, (b) if the patient is deceased, the patient's spouse or the executor or administrator of the patient's estate gives express consent, or (c) if a medical claim, dental claim, chiropractic claim, or optometric claim, an action for wrongful death, any other type of civil action, or a claim under the Workers' Compensation Law is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative;

(2) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under the Juvenile Court Law or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under that Law;

(3) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the patient's blood, breath, urine, or other bodily substance at any time relevant to the criminal offense in question;

(4) In any criminal action against a physician or dentist, subject to the requirement that the court require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the patient's medical or dental records that are introduced into evidence is maintained.

Operation of the bill

The bill expands the circumstances in which the testimonial privilege of a physician or dentist does not apply. It provides that a physician or dentist may testify or may be compelled to testify in any will contest action under the Probate Law (see **COMMENT**) if all of the following apply (R.C. 2317.02(B)(1)(e)):

(1) The patient is deceased.

(2) A party to the will contest action requests the testimony, demonstrates to the court that that party would be an heir of the patient if the patient died without a will, is a beneficiary under the will that is the subject of the will contest action, or is a beneficiary under another testamentary document allegedly executed by the patient, and demonstrates to the court that the testimony is necessary to establish those rights of the party.

If the testimonial privilege does not apply as described above, a physician or dentist may be compelled to testify or to submit to discovery in the will contest action only as to the patient in question on issues relevant to the competency of the patient at the time of the execution of the will. Testimony or discovery conducted as described in this paragraph must be conducted in accordance with the Rules of Civil Procedure. (R.C. 2317.02(B)(3)(c).)

COMMENT

Under R.C. 2107.71(A), not in the bill, a person interested in a will or codicil admitted to probate in the probate court, if the will or codicil has not been declared valid by judgment of a probate court pursuant to R.C. 2107.084, or if the will or codicil has been declared valid by judgment of a probate court pursuant to that section but has been removed from the possession of the probate judge, may contest its validity by a civil action in the probate court in the county in which the will or codicil was admitted to probate. The persons who are necessary parties to a will contest are the following: (1) any person designated in a will to receive a testamentary disposition of real or personal property, (2) heirs who would take property pursuant to the Intestate Succession Law had the testator died intestate, (3) the executor or the administrator with the will annexed, (4) the Attorney General in judicial proceedings to determine the validity of a will having provisions for a charitable trust, and (5) other interested parties. (R.C. 2107.73--not in the bill.) R.C. 2107.71 to R.C. 2107.77 generally prescribe the procedures and the period of limitations for a will contest action.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-07-02	p. 1499
Reported, H. Civil & Commercial Law	---	---

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