



# SAFEGUARDING

## 7TH AMENDMENT RIGHTS AT THE STATEHOUSE

BY JOHN VAN DOORN

*Director of Government Affairs*

January 2019 marks the start of a new two-year session of the Ohio General Assembly, when lawmakers are sworn in and new legislation begins to be introduced. OAJ is ready and well-positioned to pursue our core mission – protecting your clients’ 7<sup>th</sup> Amendment rights by ensuring Ohio has a properly functioning civil justice system.

In the new 133rd General Assembly, OAJ will work with lawmakers to amend or discourage legislation that would put that constitutional right in jeopardy. While opponents of these ideals outnumber us in the halls of the statehouse, they will not out-work us. At the same time, OAJ has some proactive, positive legislation to pursue in the new session of this General Assembly.

Before previewing the new session, let’s review OAJ’s legislative record from this past General Assembly that ended in December 2018.

### Looking back

OAJ’s advocacy played a crucial role in protecting Ohioans’ 7<sup>th</sup> Amendment rights at the statehouse. From workers’ compensation to medical negligence, caps on damages and access to medical records, emergency vehicle immunity, cybersecurity affirmative defenses, and even immunity for beekeepers, OAJ made your voice

heard loud and clear and stood up for Ohioans’ basic rights. Here is a very brief recap of a handful of the bills on which OAJ advocated these past two years.

### Medical Negligence

Following a precedent set by a 2017 Ohio Supreme Court decision, HB 7 adds to Ohio’s current apology statute by making a physician’s confession of error or fault inadmissible. The bill also establishes an optional new 180-day discovery period during which time the statute of limitations is tolled. Numerous problematic provisions were removed from the legislation, including one that would allow only paid medical bills to be presented as evidence. These were removed or significantly amended, thanks to the extraordinary work of OAJ’s Patient Advocacy Task Force, chaired by Michael Shroge. HB 7 passed the General Assembly and becomes law on about March 20, 2019.

OAJ registered a big success amending a medical records bill. As introduced, the bill would give hospitals and physician offices the power to decide what medical records a patient or their representative could receive. OAJ testified against the bill, which resulted in amendments to give patients the option to receive their basic medical record or all their medical data. The bill did not pass.



## Workers' Compensation

Some positive workers' compensation legislation was enacted. The positive changes increased attorney fees, facilitated settlements for handicapped workers, allowed firefighters with cancer to receive working wage loss, and allowed compensation to be paid before the claimant's full weekly wage has been determined. Unfortunately, this same legislation also shortened the statute of limitations for filing a claim for physical injuries from two years to one. This legislation became law in 2017.

OAJ was at the forefront of efforts to defeat negative workers' compensation legislation. Legislation requiring the Industrial Commission to keep score on hearing officers' decisions, rating them as either pro- or anti-employer, was dropped. A bill that would deny workers' comp coverage to undocumented workers did not pass.

## Caps

Legislation that OAJ initiated to remove the cap on non-economic damages for victims of rape and sexual assault did not progress, nor did a bill that an OAJ member proposed to expand the exemption from the cap on punitive damages from knowing or purposeful conduct to felonies for strict liability crimes.

## Immunity

Immunity for emergency vehicles that cause crashes would have been narrowed by legislation that OAJ supported, but did not pass. An OAJ-initiated amendment ensured parents and their attorneys still have access to police reports on school bus accidents when children are injured. This legislation otherwise says such reports are not public records and that law enforcement shall not release information about children. The bill passed and became law last year.

OAJ prevented railroads from getting civil immunity for their maintenance equipment when the equipment riding on the rails collides with motor vehicles at crossings. This legislation did not pass.

## Cybersecurity

OAJ was unable to stop a bill establishing an affirmative defense for corporations that "reasonably comply" with certain minimum standards of cyber security. The cyber security bill became law late last

year.

## Looking ahead

Next session OAJ intends to initiate several news bills and have positive bills that didn't pass this session reintroduced.

One would require liquor permit holders to maintain dram shop liability insurance. Another would establish a long-arm statute so that Ohioans who are injured by out-of-state corporations and individuals are protected. Another would empower small businesses to challenge incorrect information on their commercial credit reports.

In addition to these new proactive bills, OAJ will ask lawmakers to reintroduce positive bills that didn't pass this session. OAJ expects the legislation that would remove the cap on non-economic damages for victims of rape and sexual assault will be reintroduced, as well as the bill to expand the exemption from the punitive damages cap from knowing conduct to felonies for strict liability crimes.

Of course, OAJ will continue to oppose negative legislation that strips Ohioans of their 7<sup>th</sup> Amendment rights. It is imperative that we ensure hospitals must continue to supply patients with their complete medical records. In workers' compensation, OAJ will ensure hearing officers are not pressured to render pro-employer decisions and that all workers are covered by workers' comp coverage. And OAJ will oppose any bill that contains civil immunity because the protections that are afforded by our constitution should be available to all Ohioans.



Richard M. Lewis, Chair,  
OAJ Legislative Committee

## Salute OAJ Legislative Committee

During this past session of the Ohio General Assembly, the OAJ Legislative Committee, chaired by Richard M. Lewis of Jackson, has been the linchpin to OAJ's advocacy program. They have monitored legislation, reviewed bills, drafted position papers and letters, testified and written amendments, and even lobbied individual lawmakers. Their work is essential to our mission – to preserve and protect Ohioans' 7<sup>th</sup> Amendment rights.

## OAJ Firm Spotlight



### **Tsilimos, Dolesh and Peña, LLC**

*Firm Partners: Albert Peña, Jonathan S. Tsilimos, and Joshua M. Dolesh  
Location: Brecksville, OH*

Tsilimos, Dolesh and Peña, LLC dedicates its practice to helping people who have been injured in Ohio. We keep our firm small so we can focus our time and efforts on each client matter and provide a valuable personal service. We believe that clients achieve the best results when they can speak freely with their attorneys and create a relationship of trust. Whether a claim involves skillful pre-suit negotiation or creative litigation, our clients know that their team of attorneys at TDP Law Firm is always working to get them the compensation they deserve for their injuries.

*What are the main areas of law your firm handles the most?*

Personal Injury.

*Please name one or two of your firm's biggest accomplishments.*

One of the partners of the firm, Jonathan Tsilimos has gotten an insurance adjuster to issue a formal apology to our client as part of a settlement agreement. On a serious note, other than that I would say it is our ability to maintain our steady growth as a firm.

*What does OAJ mean to you and your firm?*

It is a great source of information. One of the partners specifically, Joshua Dolesh, takes advantage of it as he finds a ton of relevant articles that we can use to our benefit. I think the organization serves its purpose just fine.