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A B I L L

To amend sections 4729.29, 4731.22, and 4731.223 and 1
to enact section 2919.123 of the Revised Code 2
regarding the provision or use of RU-486 3
(mifepristone) for an abortion. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4729.29, 4731.22, and 4731.223 be 5
amended and section 2919.123 of the Revised Code be enacted to 6
read as follows: 7

Sec. 2919.123. (A) No person shall knowingly give, sell, 8
dispense, administer, otherwise provide, or prescribe RU-486 9
(mifepristone) to another for the purpose of inducing an abortion 10
in any person or enabling the other person to induce an abortion 11
in any person, unless the person who gives, sells, dispenses, 12

administers, or otherwise provides or prescribes the RU-486 (mifepristone) is a physician, the physician satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486 (mifepristone) for inducing abortions, and the physician provides the RU-486 (mifepristone) to the other person for the purpose of inducing an abortion in accordance with all provisions of federal law that govern the use of RU-486 (mifepristone) for inducing abortions. A person who gives, sells, dispenses, administers, otherwise provides, or prescribes RU-486 (mifepristone) to another as described in division (A) of this section shall not be prosecuted based on a violation of the criteria contained in this division unless the person knows that the person is not a physician, that the person did not satisfy all the specified criteria established by federal law, or that the person did not provide the RU-486 (mifepristone) in accordance with the specified provisions of federal law, whichever is applicable.

(B) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for persons to whom or for whom RU-486 (mifepristone) is provided for the purpose of inducing an abortion.

(C)(1) If a physician provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section and if the physician knows that the person who uses the RU-486 (mifepristone) for the purpose of inducing an abortion experiences during or after the use an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or is hospitalized, receives a

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transfusion, or experiences any other serious event, the physician promptly must provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the state medical board. The board shall compile and retain all reports it receives under this division. Except as otherwise provided in this division, all reports the board receives under this division are public records open to inspection under section 149.43 of the Revised Code. In no case shall the board release to any person the name or any other personal identifying information regarding a person who uses RU-486 (mifepristone) for the purpose of inducing an abortion and who is the subject of a report the board receives under this division.

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(2) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to file a report required under division (C)(1) of this section.

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(D) Division (A) of this section does not apply to any of the following:

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(1) A pregnant woman who obtains or possesses RU-486 (mifepristone) for the purpose of inducing an abortion to terminate her own pregnancy;

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(2) The legal transport of RU-486 (mifepristone) by any person or entity and the legal delivery of the RU-486 (mifepristone) by any person to the recipient, provided that this division does not apply regarding any conduct related to the RU-486 (mifepristone) other than its transport and delivery to the recipient;

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(3) The distribution, provision, or sale of RU-486 (mifepristone) by any legal manufacturer or distributor of RU-486 (mifepristone), provided the manufacturer or distributor made a

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good faith effort to comply with any applicable requirements of
federal law regarding the distribution, provision, or sale.

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(E) Whoever violates this section is guilty of unlawful
distribution of an abortion-inducing drug, a felony of the fourth
degree. If the offender previously has been convicted of or
pleaded guilty to a violation of this section or of section
2919.12, 2919.121, 2919.13, 2919.14, 2919.151, 2919.17, or 2919.18
of the Revised Code, unlawful distribution of an abortion-inducing
drug is a felony of the third degree.

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If the offender is a professionally licensed person, in
addition to any other sanction imposed by law for the offense, the
offender is subject to sanctioning as provided by law by the
regulatory or licensing board or agency that has the
administrative authority to suspend or revoke the offender's
professional license, including the sanctioning provided in
section 4731.22 of the Revised Code for offenders who have a
certificate to practice or certificate of registration issued
under that chapter.

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(F) As used in this section:

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(1) "Federal law" means any law, rule, or regulation of the
United States or any drug approval letter of the food and drug
administration of the United States that governs or regulates the
use of RU-486 (mifepristone) for the purpose of inducing
abortions.

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(2) "Personal identifying information" has the same meaning
as in section 2913.49 of the Revised Code.

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(3) "Physician" has the same meaning as in section 2305.113
of the Revised Code.

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(4) "Professionally licensed person" has the same meaning as
in section 2925.01 of the Revised Code.

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Sec. 4729.29. (A) Divisions (A) and (B) of section 4729.01 105
and section 4729.28 of the Revised Code do not do either of the 106
following: 107

(1) Apply to a licensed health professional authorized to 108
prescribe drugs or prevent a prescriber from personally furnishing 109
the prescriber's patients with drugs, within the prescriber's 110
scope of professional practice, that seem proper to the 111
prescriber. 112

(2) Apply to the sale of oxygen, peritoneal dialysis 113
solutions, or the sale of drugs that are not dangerous drugs by a 114
retail dealer, in original packages when labeled as required by 115
the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 116
21 U.S.C.A. 301, as amended. 117

(B) When a prescriber personally furnishes drugs to a patient 118
pursuant to division (A)(1) of this section, the prescriber shall 119
ensure that the drugs are labeled and packaged in accordance with 120
state and federal drug laws and any rules and regulations adopted 121
pursuant to those laws. Records of purchase and disposition of all 122
drugs personally furnished to patients shall be maintained by the 123
prescriber in accordance with state and federal drug statutes and 124
any rules adopted pursuant to those statutes. 125

When personally furnishing to a patient RU-486 126
(mifepristone), a prescriber is subject to section 2919.123 of the 127
Revised Code. A prescription for RU-486 (mifepristone) shall be in 128
writing and in accordance with section 2919.123 of the Revised 129
Code. 130

Sec. 4731.22. (A) The state medical board, by an affirmative 131
vote of not fewer than six of its members, may revoke or may 132
refuse to grant a certificate to a person found by the board to 133
have committed fraud during the administration of the examination 134

for a certificate to practice or to have committed fraud, 135
misrepresentation, or deception in applying for or securing any 136
certificate to practice or certificate of registration issued by 137
the board. 138

(B) The board, by an affirmative vote of not fewer than six 139
members, shall, to the extent permitted by law, limit, revoke, or 140
suspend an individual's certificate to practice, refuse to 141
register an individual, refuse to reinstate a certificate, or 142
reprimand or place on probation the holder of a certificate for 143
one or more of the following reasons: 144

(1) Permitting one's name or one's certificate to practice or 145
certificate of registration to be used by a person, group, or 146
corporation when the individual concerned is not actually 147
directing the treatment given; 148

(2) Failure to maintain minimal standards applicable to the 149
selection or administration of drugs, or failure to employ 150
acceptable scientific methods in the selection of drugs or other 151
modalities for treatment of disease; 152

(3) Selling, giving away, personally furnishing, prescribing, 153
or administering drugs for other than legal and legitimate 154
therapeutic purposes or a plea of guilty to, a judicial finding of 155
guilt of, or a judicial finding of eligibility for intervention in 156
lieu of conviction of, a violation of any federal or state law 157
regulating the possession, distribution, or use of any drug; 158

(4) Willfully betraying a professional confidence. 159

For purposes of this division, "willfully betraying a 160
professional confidence" does not include providing any 161
information, documents, or reports to a child fatality review 162
board under sections 307.621 to 307.629 of the Revised Code and 163
does not include the making of a report of an employee's use of a 164

drug of abuse, or a report of a condition of an employee other 165
than one involving the use of a drug of abuse, to the employer of 166
the employee as described in division (B) of section 2305.33 of 167
the Revised Code. Nothing in this division affects the immunity 168
from civil liability conferred by that section upon a physician 169
who makes either type of report in accordance with division (B) of 170
that section. As used in this division, "employee," "employer," 171
and "physician" have the same meanings as in section 2305.33 of 172
the Revised Code. 173

(5) Making a false, fraudulent, deceptive, or misleading 174
statement in the solicitation of or advertising for patients; in 175
relation to the practice of medicine and surgery, osteopathic 176
medicine and surgery, podiatric medicine and surgery, or a limited 177
branch of medicine; or in securing or attempting to secure any 178
certificate to practice or certificate of registration issued by 179
the board. 180

As used in this division, "false, fraudulent, deceptive, or 181
misleading statement" means a statement that includes a 182
misrepresentation of fact, is likely to mislead or deceive because 183
of a failure to disclose material facts, is intended or is likely 184
to create false or unjustified expectations of favorable results, 185
or includes representations or implications that in reasonable 186
probability will cause an ordinarily prudent person to 187
misunderstand or be deceived. 188

(6) A departure from, or the failure to conform to, minimal 189
standards of care of similar practitioners under the same or 190
similar circumstances, whether or not actual injury to a patient 191
is established; 192

(7) Representing, with the purpose of obtaining compensation 193
or other advantage as personal gain or for any other person, that 194
an incurable disease or injury, or other incurable condition, can 195
be permanently cured; 196

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;	197 198 199
(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;	200 201 202
(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;	203 204 205
(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;	206 207 208
(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;	209 210 211
(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;	212 213 214
(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;	215 216 217
(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;	218 219
(16) Failure to pay license renewal fees specified in this chapter;	220 221
(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;	222 223 224 225
(18) Subject to section 4731.226 of the Revised Code,	226

violation of any provision of a code of ethics of the American 227
medical association, the American osteopathic association, the 228
American podiatric medical association, or any other national 229
professional organizations that the board specifies by rule. The 230
state medical board shall obtain and keep on file current copies 231
of the codes of ethics of the various national professional 232
organizations. The individual whose certificate is being suspended 233
or revoked shall not be found to have violated any provision of a 234
code of ethics of an organization not appropriate to the 235
individual's profession. 236

For purposes of this division, a "provision of a code of 237
ethics of a national professional organization" does not include 238
any provision that would preclude the making of a report by a 239
physician of an employee's use of a drug of abuse, or of a 240
condition of an employee other than one involving the use of a 241
drug of abuse, to the employer of the employee as described in 242
division (B) of section 2305.33 of the Revised Code. Nothing in 243
this division affects the immunity from civil liability conferred 244
by that section upon a physician who makes either type of report 245
in accordance with division (B) of that section. As used in this 246
division, "employee," "employer," and "physician" have the same 247
meanings as in section 2305.33 of the Revised Code. 248

(19) Inability to practice according to acceptable and 249
prevailing standards of care by reason of mental illness or 250
physical illness, including, but not limited to, physical 251
deterioration that adversely affects cognitive, motor, or 252
perceptive skills. 253

In enforcing this division, the board, upon a showing of a 254
possible violation, may compel any individual authorized to 255
practice by this chapter or who has submitted an application 256
pursuant to this chapter to submit to a mental examination, 257
physical examination, including an HIV test, or both a mental and 258

a physical examination. The expense of the examination is the 259
responsibility of the individual compelled to be examined. Failure 260
to submit to a mental or physical examination or consent to an HIV 261
test ordered by the board constitutes an admission of the 262
allegations against the individual unless the failure is due to 263
circumstances beyond the individual's control, and a default and 264
final order may be entered without the taking of testimony or 265
presentation of evidence. If the board finds an individual unable 266
to practice because of the reasons set forth in this division, the 267
board shall require the individual to submit to care, counseling, 268
or treatment by physicians approved or designated by the board, as 269
a condition for initial, continued, reinstated, or renewed 270
authority to practice. An individual affected under this division 271
shall be afforded an opportunity to demonstrate to the board the 272
ability to resume practice in compliance with acceptable and 273
prevailing standards under the provisions of the individual's 274
certificate. For the purpose of this division, any individual who 275
applies for or receives a certificate to practice under this 276
chapter accepts the privilege of practicing in this state and, by 277
so doing, shall be deemed to have given consent to submit to a 278
mental or physical examination when directed to do so in writing 279
by the board, and to have waived all objections to the 280
admissibility of testimony or examination reports that constitute 281
a privileged communication. 282

(20) Except when civil penalties are imposed under section 283
4731.225 or 4731.281 of the Revised Code, and subject to section 284
4731.226 of the Revised Code, violating or attempting to violate, 285
directly or indirectly, or assisting in or abetting the violation 286
of, or conspiring to violate, any provisions of this chapter or 287
any rule promulgated by the board. 288

This division does not apply to a violation or attempted 289
violation of, assisting in or abetting the violation of, or a 290

conspiracy to violate, any provision of this chapter or any rule 291
adopted by the board that would preclude the making of a report by 292
a physician of an employee's use of a drug of abuse, or of a 293
condition of an employee other than one involving the use of a 294
drug of abuse, to the employer of the employee as described in 295
division (B) of section 2305.33 of the Revised Code. Nothing in 296
this division affects the immunity from civil liability conferred 297
by that section upon a physician who makes either type of report 298
in accordance with division (B) of that section. As used in this 299
division, "employee," "employer," and "physician" have the same 300
meanings as in section 2305.33 of the Revised Code. 301

(21) The violation of any abortion rule adopted by the public 302
health council pursuant to section 3701.341 of the Revised Code; 303

(22) Any of the following actions taken by the agency 304
responsible for regulating the practice of medicine and surgery, 305
osteopathic medicine and surgery, podiatric medicine and surgery, 306
or the limited branches of medicine in another jurisdiction, for 307
any reason other than the nonpayment of fees: the limitation, 308
revocation, or suspension of an individual's license to practice; 309
acceptance of an individual's license surrender; denial of a 310
license; refusal to renew or reinstate a license; imposition of 311
probation; or issuance of an order of censure or other reprimand; 312

(23) The violation of section 2919.12 of the Revised Code or 313
the performance or inducement of an abortion upon a pregnant woman 314
with actual knowledge that the conditions specified in division 315
(B) of section 2317.56 of the Revised Code have not been satisfied 316
or with a heedless indifference as to whether those conditions 317
have been satisfied, unless an affirmative defense as specified in 318
division (H)(2) of that section would apply in a civil action 319
authorized by division (H)(1) of that section; 320

(24) The revocation, suspension, restriction, reduction, or 321
termination of clinical privileges by the United States department 322

of defense or department of veterans affairs or the termination or 323
suspension of a certificate of registration to prescribe drugs by 324
the drug enforcement administration of the United States 325
department of justice; 326

(25) Termination or suspension from participation in the 327
medicare or medicaid programs by the department of health and 328
human services or other responsible agency for any act or acts 329
that also would constitute a violation of division (B)(2), (3), 330
(6), (8), or (19) of this section; 331

(26) Impairment of ability to practice according to 332
acceptable and prevailing standards of care because of habitual or 333
excessive use or abuse of drugs, alcohol, or other substances that 334
impair ability to practice. 335

For the purposes of this division, any individual authorized 336
to practice by this chapter accepts the privilege of practicing in 337
this state subject to supervision by the board. By filing an 338
application for or holding a certificate to practice under this 339
chapter, an individual shall be deemed to have given consent to 340
submit to a mental or physical examination when ordered to do so 341
by the board in writing, and to have waived all objections to the 342
admissibility of testimony or examination reports that constitute 343
privileged communications. 344

If it has reason to believe that any individual authorized to 345
practice by this chapter or any applicant for certification to 346
practice suffers such impairment, the board may compel the 347
individual to submit to a mental or physical examination, or both. 348
The expense of the examination is the responsibility of the 349
individual compelled to be examined. Any mental or physical 350
examination required under this division shall be undertaken by a 351
treatment provider or physician who is qualified to conduct the 352
examination and who is chosen by the board. 353

Failure to submit to a mental or physical examination ordered 354
by the board constitutes an admission of the allegations against 355
the individual unless the failure is due to circumstances beyond 356
the individual's control, and a default and final order may be 357
entered without the taking of testimony or presentation of 358
evidence. If the board determines that the individual's ability to 359
practice is impaired, the board shall suspend the individual's 360
certificate or deny the individual's application and shall require 361
the individual, as a condition for initial, continued, reinstated, 362
or renewed certification to practice, to submit to treatment. 363

Before being eligible to apply for reinstatement of a 364
certificate suspended under this division, the impaired 365
practitioner shall demonstrate to the board the ability to resume 366
practice in compliance with acceptable and prevailing standards of 367
care under the provisions of the practitioner's certificate. The 368
demonstration shall include, but shall not be limited to, the 369
following: 370

(a) Certification from a treatment provider approved under 371
section 4731.25 of the Revised Code that the individual has 372
successfully completed any required inpatient treatment; 373

(b) Evidence of continuing full compliance with an aftercare 374
contract or consent agreement; 375

(c) Two written reports indicating that the individual's 376
ability to practice has been assessed and that the individual has 377
been found capable of practicing according to acceptable and 378
prevailing standards of care. The reports shall be made by 379
individuals or providers approved by the board for making the 380
assessments and shall describe the basis for their determination. 381

The board may reinstate a certificate suspended under this 382
division after that demonstration and after the individual has 383
entered into a written consent agreement. 384

When the impaired practitioner resumes practice, the board 385
shall require continued monitoring of the individual. The 386
monitoring shall include, but not be limited to, compliance with 387
the written consent agreement entered into before reinstatement or 388
with conditions imposed by board order after a hearing, and, upon 389
termination of the consent agreement, submission to the board for 390
at least two years of annual written progress reports made under 391
penalty of perjury stating whether the individual has maintained 392
sobriety. 393

(27) A second or subsequent violation of section 4731.66 or 394
4731.69 of the Revised Code; 395

(28) Except as provided in division (N) of this section: 396

(a) Waiving the payment of all or any part of a deductible or 397
copayment that a patient, pursuant to a health insurance or health 398
care policy, contract, or plan that covers the individual's 399
services, otherwise would be required to pay if the waiver is used 400
as an enticement to a patient or group of patients to receive 401
health care services from that individual; 402

(b) Advertising that the individual will waive the payment of 403
all or any part of a deductible or copayment that a patient, 404
pursuant to a health insurance or health care policy, contract, or 405
plan that covers the individual's services, otherwise would be 406
required to pay. 407

(29) Failure to use universal blood and body fluid 408
precautions established by rules adopted under section 4731.051 of 409
the Revised Code; 410

(30) Failure of a collaborating physician to fulfill the 411
responsibilities agreed to by the physician and an advanced 412
practice nurse participating in a pilot program under section 413
4723.52 of the Revised Code; 414

(31) Failure to provide notice to, and receive acknowledgment 415
of the notice from, a patient when required by section 4731.143 of 416
the Revised Code prior to providing nonemergency professional 417
services, or failure to maintain that notice in the patient's 418
file; 419

(32) Failure of a physician supervising a physician assistant 420
to maintain supervision in accordance with the requirements of 421
Chapter 4730. of the Revised Code and the rules adopted under that 422
chapter; 423

(33) Failure of a physician or podiatrist to enter into a 424
standard care arrangement with a clinical nurse specialist, 425
certified nurse-midwife, or certified nurse practitioner with whom 426
the physician or podiatrist is in collaboration pursuant to 427
section 4731.27 of the Revised Code or failure to fulfill the 428
responsibilities of collaboration after entering into a standard 429
care arrangement; 430

(34) Failure to comply with the terms of a consult agreement 431
entered into with a pharmacist pursuant to section 4729.39 of the 432
Revised Code; 433

(35) Failure to cooperate in an investigation conducted by 434
the board under division (F) of this section, including failure to 435
comply with a subpoena or order issued by the board or failure to 436
answer truthfully a question presented by the board at a 437
deposition or in written interrogatories, except that failure to 438
cooperate with an investigation shall not constitute grounds for 439
discipline under this section if a court of competent jurisdiction 440
has issued an order that either quashes a subpoena or permits the 441
individual to withhold the testimony or evidence in issue; 442

(36) Failure to supervise an acupuncturist in accordance with 443
Chapter 4762. of the Revised Code and the board's rules for 444
supervision of an acupuncturist; 445

(37) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

(38) Assisting suicide as defined in section 3795.01 of the Revised Code.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of that section shall provide for a suspension of the individual's certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's certificate to practice.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be supervised by the supervising

member elected by the board in accordance with section 4731.02 of 510
the Revised Code and by the secretary as provided in section 511
4731.39 of the Revised Code. The president may designate another 512
member of the board to supervise the investigation in place of the 513
supervising member. No member of the board who supervises the 514
investigation of a case shall participate in further adjudication 515
of the case. 516

(3) In investigating a possible violation of this chapter or 517
any rule adopted under this chapter, the board may administer 518
oaths, order the taking of depositions, issue subpoenas, and 519
compel the attendance of witnesses and production of books, 520
accounts, papers, records, documents, and testimony, except that a 521
subpoena for patient record information shall not be issued 522
without consultation with the attorney general's office and 523
approval of the secretary and supervising member of the board. 524
Before issuance of a subpoena for patient record information, the 525
secretary and supervising member shall determine whether there is 526
probable cause to believe that the complaint filed alleges a 527
violation of this chapter or any rule adopted under it and that 528
the records sought are relevant to the alleged violation and 529
material to the investigation. The subpoena may apply only to 530
records that cover a reasonable period of time surrounding the 531
alleged violation. 532

On failure to comply with any subpoena issued by the board 533
and after reasonable notice to the person being subpoenaed, the 534
board may move for an order compelling the production of persons 535
or records pursuant to the Rules of Civil Procedure. 536

A subpoena issued by the board may be served by a sheriff, 537
the sheriff's deputy, or a board employee designated by the board. 538
Service of a subpoena issued by the board may be made by 539
delivering a copy of the subpoena to the person named therein, 540
reading it to the person, or leaving it at the person's usual 541

place of residence. When the person being served is a person whose 542
practice is authorized by this chapter, service of the subpoena 543
may be made by certified mail, restricted delivery, return receipt 544
requested, and the subpoena shall be deemed served on the date 545
delivery is made or the date the person refuses to accept 546
delivery. 547

A sheriff's deputy who serves a subpoena shall receive the 548
same fees as a sheriff. Each witness who appears before the board 549
in obedience to a subpoena shall receive the fees and mileage 550
provided for witnesses in civil cases in the courts of common 551
pleas. 552

(4) All hearings and investigations of the board shall be 553
considered civil actions for the purposes of section 2305.252 of 554
the Revised Code. 555

(5) Information received by the board pursuant to an 556
investigation is confidential and not subject to discovery in any 557
civil action. 558

The board shall conduct all investigations and proceedings in 559
a manner that protects the confidentiality of patients and persons 560
who file complaints with the board. The board shall not make 561
public the names or any other identifying information about 562
patients or complainants unless proper consent is given or, in the 563
case of a patient, a waiver of the patient privilege exists under 564
division (B) of section 2317.02 of the Revised Code, except that 565
consent or a waiver of that nature is not required if the board 566
possesses reliable and substantial evidence that no bona fide 567
physician-patient relationship exists. 568

The board may share any information it receives pursuant to 569
an investigation, including patient records and patient record 570
information, with law enforcement agencies, other licensing 571
boards, and other governmental agencies that are prosecuting, 572

adjudicating, or investigating alleged violations of statutes or 573
administrative rules. An agency or board that receives the 574
information shall comply with the same requirements regarding 575
confidentiality as those with which the state medical board must 576
comply, notwithstanding any conflicting provision of the Revised 577
Code or procedure of the agency or board that applies when it is 578
dealing with other information in its possession. In a judicial 579
proceeding, the information may be admitted into evidence only in 580
accordance with the Rules of Evidence, but the court shall require 581
that appropriate measures are taken to ensure that confidentiality 582
is maintained with respect to any part of the information that 583
contains names or other identifying information about patients or 584
complainants whose confidentiality was protected by the state 585
medical board when the information was in the board's possession. 586
Measures to ensure confidentiality that may be taken by the court 587
include sealing its records or deleting specific information from 588
its records. 589

(6) On a quarterly basis, the board shall prepare a report 590
that documents the disposition of all cases during the preceding 591
three months. The report shall contain the following information 592
for each case with which the board has completed its activities: 593

(a) The case number assigned to the complaint or alleged 594
violation; 595

(b) The type of certificate to practice, if any, held by the 596
individual against whom the complaint is directed; 597

(c) A description of the allegations contained in the 598
complaint; 599

(d) The disposition of the case. 600

The report shall state how many cases are still pending and 601
shall be prepared in a manner that protects the identity of each 602
person involved in each case. The report shall be a public record 603

under section 149.43 of the Revised Code. 604

(G) If the secretary and supervising member determine that 605
there is clear and convincing evidence that an individual has 606
violated division (B) of this section and that the individual's 607
continued practice presents a danger of immediate and serious harm 608
to the public, they may recommend that the board suspend the 609
individual's certificate to practice without a prior hearing. 610
Written allegations shall be prepared for consideration by the 611
board. 612

The board, upon review of those allegations and by an 613
affirmative vote of not fewer than six of its members, excluding 614
the secretary and supervising member, may suspend a certificate 615
without a prior hearing. A telephone conference call may be 616
utilized for reviewing the allegations and taking the vote on the 617
summary suspension. 618

The board shall issue a written order of suspension by 619
certified mail or in person in accordance with section 119.07 of 620
the Revised Code. The order shall not be subject to suspension by 621
the court during pendency of any appeal filed under section 119.12 622
of the Revised Code. If the individual subject to the summary 623
suspension requests an adjudicatory hearing by the board, the date 624
set for the hearing shall be within fifteen days, but not earlier 625
than seven days, after the individual requests the hearing, unless 626
otherwise agreed to by both the board and the individual. 627

Any summary suspension imposed under this division shall 628
remain in effect, unless reversed on appeal, until a final 629
adjudicative order issued by the board pursuant to this section 630
and Chapter 119. of the Revised Code becomes effective. The board 631
shall issue its final adjudicative order within sixty days after 632
completion of its hearing. A failure to issue the order within 633
sixty days shall result in dissolution of the summary suspension 634
order but shall not invalidate any subsequent, final adjudicative 635

order. 636

(H) If the board takes action under division (B)(9), (11), or 637
(13) of this section and the judicial finding of guilt, guilty 638
plea, or judicial finding of eligibility for intervention in lieu 639
of conviction is overturned on appeal, upon exhaustion of the 640
criminal appeal, a petition for reconsideration of the order may 641
be filed with the board along with appropriate court documents. 642
Upon receipt of a petition of that nature and supporting court 643
documents, the board shall reinstate the individual's certificate 644
to practice. The board may then hold an adjudication under Chapter 645
119. of the Revised Code to determine whether the individual 646
committed the act in question. Notice of an opportunity for a 647
hearing shall be given in accordance with Chapter 119. of the 648
Revised Code. If the board finds, pursuant to an adjudication held 649
under this division, that the individual committed the act or if 650
no hearing is requested, the board may order any of the sanctions 651
identified under division (B) of this section. 652

(I) The certificate to practice issued to an individual under 653
this chapter and the individual's practice in this state are 654
automatically suspended as of the date of the individual's second 655
or subsequent plea of guilty to, or judicial finding of guilt of, 656
a violation of section 2919.123 of the Revised Code, or the date 657
the individual pleads guilty to, is found by a judge or jury to be 658
guilty of, or is subject to a judicial finding of eligibility for 659
intervention in lieu of conviction in this state or treatment or 660
intervention in lieu of conviction in another jurisdiction for any 661
of the following criminal offenses in this state or a 662
substantially equivalent criminal offense in another jurisdiction: 663
aggravated murder, murder, voluntary manslaughter, felonious 664
assault, kidnapping, rape, sexual battery, gross sexual 665
imposition, aggravated arson, aggravated robbery, or aggravated 666
burglary. Continued practice after suspension shall be considered 667

practicing without a certificate. 668

The board shall notify the individual subject to the 669
suspension by certified mail or in person in accordance with 670
section 119.07 of the Revised Code. If an individual whose 671
certificate is automatically suspended under this division fails 672
to make a timely request for an adjudication under Chapter 119. of 673
the Revised Code, the board shall ~~enter~~ do whichever of the 674
following is applicable: 675

(1) If the automatic suspension under this division is for a 676
second or subsequent plea of guilty to, or judicial finding of 677
guilt of, a violation of section 2919.123 of the Revised Code, the 678
board shall enter an order suspending the individual's certificate 679
to practice for a period of at least one year or, if determined 680
appropriate by the board, imposing a more serious sanction 681
involving the individual's certificate to practice. 682

(2) In all circumstances in which division (I)(1) of this 683
section does not apply, enter a final order permanently revoking 684
the individual's certificate to practice. 685

(J) If the board is required by Chapter 119. of the Revised 686
Code to give notice of an opportunity for a hearing and if the 687
individual subject to the notice does not timely request a hearing 688
in accordance with section 119.07 of the Revised Code, the board 689
is not required to hold a hearing, but may adopt, by an 690
affirmative vote of not fewer than six of its members, a final 691
order that contains the board's findings. In that final order, the 692
board may order any of the sanctions identified under division (A) 693
or (B) of this section. 694

(K) Any action taken by the board under division (B) of this 695
section resulting in a suspension from practice shall be 696
accompanied by a written statement of the conditions under which 697
the individual's certificate to practice may be reinstated. The 698

board shall adopt rules governing conditions to be imposed for 699
reinstatement. Reinstatement of a certificate suspended pursuant 700
to division (B) of this section requires an affirmative vote of 701
not fewer than six members of the board. 702

(L) When the board refuses to grant a certificate to an 703
applicant, revokes an individual's certificate to practice, 704
refuses to register an applicant, or refuses to reinstate an 705
individual's certificate to practice, the board may specify that 706
its action is permanent. An individual subject to a permanent 707
action taken by the board is forever thereafter ineligible to hold 708
a certificate to practice and the board shall not accept an 709
application for reinstatement of the certificate or for issuance 710
of a new certificate. 711

(M) Notwithstanding any other provision of the Revised Code, 712
all of the following apply: 713

(1) The surrender of a certificate issued under this chapter 714
shall not be effective unless or until accepted by the board. 715
Reinstatement of a certificate surrendered to the board requires 716
an affirmative vote of not fewer than six members of the board. 717

(2) An application for a certificate made under the 718
provisions of this chapter may not be withdrawn without approval 719
of the board. 720

(3) Failure by an individual to renew a certificate of 721
registration in accordance with this chapter shall not remove or 722
limit the board's jurisdiction to take any disciplinary action 723
under this section against the individual. 724

(N) Sanctions shall not be imposed under division (B)(28) of 725
this section against any person who waives deductibles and 726
copayments as follows: 727

(1) In compliance with the health benefit plan that expressly 728
allows such a practice. Waiver of the deductibles or copayments 729

shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(0) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention

program. 761

An individual who participates in an individual educational 762
program pursuant to this division shall pay the financial 763
obligations arising from that educational program. 764

Sec. 4731.223. (A) As used in this section, "prosecutor" has 765
the same meaning as in section 2935.01 of the Revised Code. 766

(B) Whenever any person holding a valid certificate issued 767
pursuant to this chapter pleads guilty to, is subject to a 768
judicial finding of guilt of, or is subject to a judicial finding 769
of eligibility for intervention in lieu of conviction for a 770
violation of Chapter 2907., 2925., or 3719. of the Revised Code or 771
of any substantively comparable ordinance of a municipal 772
corporation in connection with the person's practice, or for a 773
second or subsequent time pleads guilty to, or is subject to a 774
judicial finding of guilt of, a violation of section 2919.123 of 775
the Revised Code, the prosecutor in the case, on forms prescribed 776
and provided by the state medical board, shall promptly notify the 777
board of the conviction or guilty plea. Within thirty days of 778
receipt of that information, the board shall initiate action in 779
accordance with Chapter 119. of the Revised Code to determine 780
whether to suspend or revoke the certificate under section 4731.22 781
of the Revised Code. 782

(C) The prosecutor in any case against any person holding a 783
valid certificate issued pursuant to this chapter, on forms 784
prescribed and provided by the state medical board, shall notify 785
the board of any of the following: 786

(1) A plea of guilty to, a finding of guilt by a jury or 787
court of, or judicial finding of eligibility for intervention in 788
lieu of conviction for a felony, or a case in which the trial 789
court issues an order of dismissal upon technical or procedural 790
grounds of a felony charge; 791

(2) A plea of guilty to, a finding of guilt by a jury or 792
court of, or judicial finding of eligibility for intervention in 793
lieu of conviction for a misdemeanor committed in the course of 794
practice, or a case in which the trial court issues an order of 795
dismissal upon technical or procedural grounds of a charge of a 796
misdemeanor, if the alleged act was committed in the course of 797
practice; 798

(3) A plea of guilty to, a finding of guilt by a jury or 799
court of, or judicial finding of eligibility for intervention in 800
lieu of conviction for a misdemeanor involving moral turpitude, or 801
a case in which the trial court issues an order of dismissal upon 802
technical or procedural grounds of a charge of a misdemeanor 803
involving moral turpitude. 804

The report shall include the name and address of the 805
certificate holder, the nature of the offense for which the action 806
was taken, and the certified court documents recording the action. 807

Section 2. That existing sections 4729.29, 4731.22, and 808
4731.223 of the Revised Code are hereby repealed. 809

Section 3. Section 4731.22 of the Revised Code is presented 810
in this act as a composite of the section as amended by both Am. 811
Sub. H.B. 474 and Sub. S.B. 179 of the 124th General Assembly. The 812
General Assembly, applying the principle stated in division (B) of 813
section 1.52 of the Revised Code that amendments are to be 814
harmonized if reasonably capable of simultaneous operation, finds 815
that the composite is the resulting version of the section in 816
effect prior to the effective date of the section as presented in 817
this act. 818