

As Introduced

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Representative Schneider

**Cosponsors: Representatives Aslanides, Setzer, Uecker, Brinkman, Flowers,
Combs, Huffman, Zehringer, Widener, Adams, Hite, Jones, Hottinger,
Wachtmann, Seitz, Evans, Latta, Bulp, McGregor, J., Fessler, Wagner,
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Bolon, Blessing, Hagan, J., Mandel, Goodwin, Batchelder, Distel, Oelslager,
Brady, Barrett**

—

A B I L L

To amend sections 2919.25, 3702.30, and 4731.22 and 1
to enact section 3701.791 of the Revised Code 2
requiring facilities that perform abortions to 3
display a sign and enhancing the criminal penalty 4
for causing or attempting to cause physical harm 5
to a family or household member who was pregnant 6
at the time of the offense. 7

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

Section 1. That sections 2919.25, 3702.30, and 4731.22 be 8
amended and section 3701.791 of the Revised Code be enacted to 9
read as follows: 10

Sec. 2919.25. (A) No person shall knowingly cause or attempt 11
to cause physical harm to a family or household member. 12

(B) No person shall recklessly cause serious physical harm to 13
a family or household member. 14

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D)(1) Whoever violates this section is guilty of domestic violence.

(2) Except as otherwise provided in division (D)(3) ~~or (4)~~ to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and a violation of division (C) of this section is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a

violation of division (A) or (B) of this section is a felony of 47
the third degree, and a violation of division (C) of this section 48
is a misdemeanor of the first degree. 49

(5) If the offender knew the victim of the violation was 50
pregnant at the time of the violation, a violation of division (A) 51
or (B) of this section is a felony of the fifth degree and a 52
violation of division (C) of this section is a misdemeanor of the 53
third degree. 54

(E) Notwithstanding any provision of law to the contrary, no 55
court or unit of state or local government shall charge any fee, 56
cost, deposit, or money in connection with the filing of charges 57
against a person alleging that the person violated this section or 58
a municipal ordinance substantially similar to this section or in 59
connection with the prosecution of any charges so filed. 60

(F) As used in this section and sections 2919.251 and 2919.26 61
of the Revised Code: 62

(1) "Family or household member" means any of the following: 63

(a) Any of the following who is residing or has resided with 64
the offender: 65

(i) A spouse, a person living as a spouse, or a former spouse 66
of the offender; 67

(ii) A parent or a child of the offender, or another person 68
related by consanguinity or affinity to the offender; 69

(iii) A parent or a child of a spouse, person living as a 70
spouse, or former spouse of the offender, or another person 71
related by consanguinity or affinity to a spouse, person living as 72
a spouse, or former spouse of the offender. 73

(b) The natural parent of any child of whom the offender is 74
the other natural parent or is the putative other natural parent. 75

(2) "Person living as a spouse" means a person who is living 76

or has lived with the offender in a common law marital 77
relationship, who otherwise is cohabiting with the offender, or 78
who otherwise has cohabited with the offender within five years 79
prior to the date of the alleged commission of the act in 80
question. 81

Sec. 3701.791. (A) As used in this section, "medical 82
emergency" means a condition of a pregnant woman that, in the 83
reasonable judgment of the physician who is attending the woman, 84
creates an immediate threat of serious risk to the life or 85
physical health of the woman from the continuation of the 86
pregnancy necessitating the immediate performance or inducement of 87
an abortion. 88

(B) Except as provided in division (D) of this section, an 89
office or facility at which abortions are performed or induced 90
shall post the notice described in division (C) of this section in 91
a conspicuous location in an area of the office or facility that 92
is accessible to all patients, employees, and visitors. 93

The notice shall be displayed on a poster with dimensions of 94
at least seventeen inches by eleven inches. The first two 95
sentences of the notice shall be printed in at least a 96
forty-four-point typeface and the remaining lines shall be in at 97
least a thirty-point typeface. 98

(C) The department of health shall publish the following 99
notice on its internet web site in a manner that can be copied and 100
produced in poster form: 101

"NO ONE CAN FORCE YOU TO HAVE AN ABORTION. 102

NO ONE - NOT A PARENT, NOT A HUSBAND, NOT A BOYFRIEND - NO 103
ONE. 104

Under Ohio law, an abortion cannot be legally performed on 105
anyone, regardless of her age, unless she VOLUNTARILY CONSENTS to 106

having the abortion. 107

Ohio law requires that, before an abortion can legally be 108
performed, the pregnant female must sign a form indicating that 109
she consents to having the abortion "voluntarily" and "WITHOUT 110
COERCION BY ANY PERSON." 111

IF SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION AGAINST 112
YOUR WILL: 113

DO NOT SIGN THE CONSENT FORM 114

IF YOU ARE AT AN ABORTION FACILITY, TELL AN EMPLOYEE OF THE 115
FACILITY THAT SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION." 116

(D) Division (B) of this section does not apply to an office 117
or facility at which abortions are performed or induced due only 118
to a medical emergency. 119

Sec. 3702.30. (A) As used in this section: 120

(1) "Ambulatory surgical facility" means a facility, whether 121
or not part of the same organization as a hospital, that is 122
located in a building distinct from another in which inpatient 123
care is provided, and to which any of the following apply: 124

(a) Outpatient surgery is routinely performed in the 125
facility, and the facility functions separately from a hospital's 126
inpatient surgical service and from the offices of private 127
physicians, podiatrists, and dentists. 128

(b) Anesthesia is administered in the facility by an 129
anesthesiologist or certified registered nurse anesthetist, and 130
the facility functions separately from a hospital's inpatient 131
surgical service and from the offices of private physicians, 132
podiatrists, and dentists. 133

(c) The facility applies to be certified by the United States 134
centers for medicare and medicaid services as an ambulatory 135

surgical center for purposes of reimbursement under Part B of the 136
medicare program, Part B of Title XVIII of the "Social Security 137
Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended. 138

(d) The facility applies to be certified by a national 139
accrediting body approved by the centers for medicare and medicaid 140
services for purposes of deemed compliance with the conditions for 141
participating in the medicare program as an ambulatory surgical 142
center. 143

(e) The facility bills or receives from any third-party 144
payer, governmental health care program, or other person or 145
government entity any ambulatory surgical facility fee that is 146
billed or paid in addition to any fee for professional services. 147

(f) The facility is held out to any person or government 148
entity as an ambulatory surgical facility or similar facility by 149
means of signage, advertising, or other promotional efforts. 150

"Ambulatory surgical facility" does not include a hospital 151
emergency department. 152

(2) "Ambulatory surgical facility fee" means a fee for 153
certain overhead costs associated with providing surgical services 154
in an outpatient setting. A fee is an ambulatory surgical facility 155
fee only if it directly or indirectly pays for costs associated 156
with any of the following: 157

(a) Use of operating and recovery rooms, preparation areas, 158
and waiting rooms and lounges for patients and relatives; 159

(b) Administrative functions, record keeping, housekeeping, 160
utilities, and rent; 161

(c) Services provided by nurses, orderlies, technical 162
personnel, and others involved in patient care related to 163
providing surgery. 164

"Ambulatory surgical facility fee" does not include any 165

additional payment in excess of a professional fee that is 166
provided to encourage physicians, podiatrists, and dentists to 167
perform certain surgical procedures in their office or their group 168
practice's office rather than a health care facility, if the 169
purpose of the additional fee is to compensate for additional cost 170
incurred in performing office-based surgery. 171

(3) "Governmental health care program" has the same meaning 172
as in section 4731.65 of the Revised Code. 173

(4) "Health care facility" means any of the following: 174

(a) An ambulatory surgical facility; 175

(b) A freestanding dialysis center; 176

(c) A freestanding inpatient rehabilitation facility; 177

(d) A freestanding birthing center; 178

(e) A freestanding radiation therapy center; 179

(f) A freestanding or mobile diagnostic imaging center. 180

(5) "Third-party payer" has the same meaning as in section 181
3901.38 of the Revised Code. 182

(B) By rule adopted in accordance with sections 3702.12 and 183
3702.13 of the Revised Code, the director of health shall 184
establish quality standards for health care facilities. The 185
standards may incorporate accreditation standards or other quality 186
standards established by any entity recognized by the director. 187

(C) Every ambulatory surgical facility shall require that 188
each physician who practices at the facility comply with all 189
relevant provisions in the Revised Code that relate to the 190
obtaining of informed consent from a patient. 191

(D) The director shall issue a license to each health care 192
facility that makes application for a license and demonstrates to 193
the director that it meets the quality standards established by 194

the rules adopted under division (B) of this section and satisfies 195
the informed consent compliance requirements specified in division 196
(C) of this section. 197

(E)(1) Except as provided in section 3702.301 of the Revised 198
Code, no health care facility shall operate without a license 199
issued under this section. 200

(2) If the department of health finds that a physician who 201
practices at a health care facility is not complying with any 202
provision of the Revised Code related to the obtaining of informed 203
consent from a patient, the department shall report its finding to 204
the state medical board, the physician, and the health care 205
facility. 206

(3) This division does not create, and shall not be construed 207
as creating, a new cause of action or substantive legal right 208
against a health care facility and in favor of a patient who 209
allegedly sustains harm as a result of the failure of the 210
patient's physician to obtain informed consent from the patient 211
prior to performing a procedure on or otherwise caring for the 212
patient in the health care facility. 213

(F) The rules adopted under division (B) of this section 214
shall include all of the following: 215

(1) Provisions governing application for, renewal, 216
suspension, and revocation of a license under this section; 217

(2) Provisions governing orders issued pursuant to section 218
3702.32 of the Revised Code for a health care facility to cease 219
its operations or to prohibit certain types of services provided 220
by a health care facility; 221

(3) Provisions governing the imposition under section 3702.32 222
of the Revised Code of civil penalties for violations of this 223
section or the rules adopted under this section, including a scale 224
for determining the amount of the penalties. 225

(G) An ambulatory surgical facility that performs or induces abortions shall comply with section 3701.791 of the Revised Code. 226
227

Sec. 4731.22. (A) The state medical board, by an affirmative 228
vote of not fewer than six of its members, may revoke or may 229
refuse to grant a certificate to a person found by the board to 230
have committed fraud during the administration of the examination 231
for a certificate to practice or to have committed fraud, 232
misrepresentation, or deception in applying for or securing any 233
certificate to practice or certificate of registration issued by 234
the board. 235

(B) The board, by an affirmative vote of not fewer than six 236
members, shall, to the extent permitted by law, limit, revoke, or 237
suspend an individual's certificate to practice, refuse to 238
register an individual, refuse to reinstate a certificate, or 239
reprimand or place on probation the holder of a certificate for 240
one or more of the following reasons: 241

(1) Permitting one's name or one's certificate to practice or 242
certificate of registration to be used by a person, group, or 243
corporation when the individual concerned is not actually 244
directing the treatment given; 245

(2) Failure to maintain minimal standards applicable to the 246
selection or administration of drugs, or failure to employ 247
acceptable scientific methods in the selection of drugs or other 248
modalities for treatment of disease; 249

(3) Selling, giving away, personally furnishing, prescribing, 250
or administering drugs for other than legal and legitimate 251
therapeutic purposes or a plea of guilty to, a judicial finding of 252
guilt of, or a judicial finding of eligibility for intervention in 253
lieu of conviction of, a violation of any federal or state law 254
regulating the possession, distribution, or use of any drug; 255

(4) Willfully betraying a professional confidence. 256

For purposes of this division, "willfully betraying a 257
professional confidence" does not include providing any 258
information, documents, or reports to a child fatality review 259
board under sections 307.621 to 307.629 of the Revised Code and 260
does not include the making of a report of an employee's use of a 261
drug of abuse, or a report of a condition of an employee other 262
than one involving the use of a drug of abuse, to the employer of 263
the employee as described in division (B) of section 2305.33 of 264
the Revised Code. Nothing in this division affects the immunity 265
from civil liability conferred by that section upon a physician 266
who makes either type of report in accordance with division (B) of 267
that section. As used in this division, "employee," "employer," 268
and "physician" have the same meanings as in section 2305.33 of 269
the Revised Code. 270

(5) Making a false, fraudulent, deceptive, or misleading 271
statement in the solicitation of or advertising for patients; in 272
relation to the practice of medicine and surgery, osteopathic 273
medicine and surgery, podiatric medicine and surgery, or a limited 274
branch of medicine; or in securing or attempting to secure any 275
certificate to practice or certificate of registration issued by 276
the board. 277

As used in this division, "false, fraudulent, deceptive, or 278
misleading statement" means a statement that includes a 279
misrepresentation of fact, is likely to mislead or deceive because 280
of a failure to disclose material facts, is intended or is likely 281
to create false or unjustified expectations of favorable results, 282
or includes representations or implications that in reasonable 283
probability will cause an ordinarily prudent person to 284
misunderstand or be deceived. 285

(6) A departure from, or the failure to conform to, minimal 286
standards of care of similar practitioners under the same or 287

similar circumstances, whether or not actual injury to a patient	288
is established;	289
(7) Representing, with the purpose of obtaining compensation	290
or other advantage as personal gain or for any other person, that	291
an incurable disease or injury, or other incurable condition, can	292
be permanently cured;	293
(8) The obtaining of, or attempting to obtain, money or	294
anything of value by fraudulent misrepresentations in the course	295
of practice;	296
(9) A plea of guilty to, a judicial finding of guilt of, or a	297
judicial finding of eligibility for intervention in lieu of	298
conviction for, a felony;	299
(10) Commission of an act that constitutes a felony in this	300
state, regardless of the jurisdiction in which the act was	301
committed;	302
(11) A plea of guilty to, a judicial finding of guilt of, or	303
a judicial finding of eligibility for intervention in lieu of	304
conviction for, a misdemeanor committed in the course of practice;	305
(12) Commission of an act in the course of practice that	306
constitutes a misdemeanor in this state, regardless of the	307
jurisdiction in which the act was committed;	308
(13) A plea of guilty to, a judicial finding of guilt of, or	309
a judicial finding of eligibility for intervention in lieu of	310
conviction for, a misdemeanor involving moral turpitude;	311
(14) Commission of an act involving moral turpitude that	312
constitutes a misdemeanor in this state, regardless of the	313
jurisdiction in which the act was committed;	314
(15) Violation of the conditions of limitation placed by the	315
board upon a certificate to practice;	316
(16) Failure to pay license renewal fees specified in this	317

chapter; 318

(17) Except as authorized in section 4731.31 of the Revised 319
Code, engaging in the division of fees for referral of patients, 320
or the receiving of a thing of value in return for a specific 321
referral of a patient to utilize a particular service or business; 322

(18) Subject to section 4731.226 of the Revised Code, 323
violation of any provision of a code of ethics of the American 324
medical association, the American osteopathic association, the 325
American podiatric medical association, or any other national 326
professional organizations that the board specifies by rule. The 327
state medical board shall obtain and keep on file current copies 328
of the codes of ethics of the various national professional 329
organizations. The individual whose certificate is being suspended 330
or revoked shall not be found to have violated any provision of a 331
code of ethics of an organization not appropriate to the 332
individual's profession. 333

For purposes of this division, a "provision of a code of 334
ethics of a national professional organization" does not include 335
any provision that would preclude the making of a report by a 336
physician of an employee's use of a drug of abuse, or of a 337
condition of an employee other than one involving the use of a 338
drug of abuse, to the employer of the employee as described in 339
division (B) of section 2305.33 of the Revised Code. Nothing in 340
this division affects the immunity from civil liability conferred 341
by that section upon a physician who makes either type of report 342
in accordance with division (B) of that section. As used in this 343
division, "employee," "employer," and "physician" have the same 344
meanings as in section 2305.33 of the Revised Code. 345

(19) Inability to practice according to acceptable and 346
prevailing standards of care by reason of mental illness or 347
physical illness, including, but not limited to, physical 348
deterioration that adversely affects cognitive, motor, or 349

perceptive skills. 350

In enforcing this division, the board, upon a showing of a 351
possible violation, may compel any individual authorized to 352
practice by this chapter or who has submitted an application 353
pursuant to this chapter to submit to a mental examination, 354
physical examination, including an HIV test, or both a mental and 355
a physical examination. The expense of the examination is the 356
responsibility of the individual compelled to be examined. Failure 357
to submit to a mental or physical examination or consent to an HIV 358
test ordered by the board constitutes an admission of the 359
allegations against the individual unless the failure is due to 360
circumstances beyond the individual's control, and a default and 361
final order may be entered without the taking of testimony or 362
presentation of evidence. If the board finds an individual unable 363
to practice because of the reasons set forth in this division, the 364
board shall require the individual to submit to care, counseling, 365
or treatment by physicians approved or designated by the board, as 366
a condition for initial, continued, reinstated, or renewed 367
authority to practice. An individual affected under this division 368
shall be afforded an opportunity to demonstrate to the board the 369
ability to resume practice in compliance with acceptable and 370
prevailing standards under the provisions of the individual's 371
certificate. For the purpose of this division, any individual who 372
applies for or receives a certificate to practice under this 373
chapter accepts the privilege of practicing in this state and, by 374
so doing, shall be deemed to have given consent to submit to a 375
mental or physical examination when directed to do so in writing 376
by the board, and to have waived all objections to the 377
admissibility of testimony or examination reports that constitute 378
a privileged communication. 379

(20) Except when civil penalties are imposed under section 380
4731.225 or 4731.281 of the Revised Code, and subject to section 381

4731.226 of the Revised Code, violating or attempting to violate, 382
directly or indirectly, or assisting in or abetting the violation 383
of, or conspiring to violate, any provisions of this chapter or 384
any rule promulgated by the board. 385

This division does not apply to a violation or attempted 386
violation of, assisting in or abetting the violation of, or a 387
conspiracy to violate, any provision of this chapter or any rule 388
adopted by the board that would preclude the making of a report by 389
a physician of an employee's use of a drug of abuse, or of a 390
condition of an employee other than one involving the use of a 391
drug of abuse, to the employer of the employee as described in 392
division (B) of section 2305.33 of the Revised Code. Nothing in 393
this division affects the immunity from civil liability conferred 394
by that section upon a physician who makes either type of report 395
in accordance with division (B) of that section. As used in this 396
division, "employee," "employer," and "physician" have the same 397
meanings as in section 2305.33 of the Revised Code. 398

(21) The violation of section 3701.79 of the Revised Code or 399
of any abortion rule adopted by the public health council pursuant 400
to section 3701.341 of the Revised Code; 401

(22) Any of the following actions taken by the agency 402
responsible for regulating the practice of medicine and surgery, 403
osteopathic medicine and surgery, podiatric medicine and surgery, 404
or the limited branches of medicine in another jurisdiction, for 405
any reason other than the nonpayment of fees: the limitation, 406
revocation, or suspension of an individual's license to practice; 407
acceptance of an individual's license surrender; denial of a 408
license; refusal to renew or reinstate a license; imposition of 409
probation; or issuance of an order of censure or other reprimand; 410

(23) The violation of section 2919.12 of the Revised Code or 411
the performance or inducement of an abortion upon a pregnant woman 412
with actual knowledge that the conditions specified in division 413

(B) of section 2317.56 of the Revised Code have not been satisfied 414
or with a heedless indifference as to whether those conditions 415
have been satisfied, unless an affirmative defense as specified in 416
division (H)(2) of that section would apply in a civil action 417
authorized by division (H)(1) of that section; 418

(24) The revocation, suspension, restriction, reduction, or 419
termination of clinical privileges by the United States department 420
of defense or department of veterans affairs or the termination or 421
suspension of a certificate of registration to prescribe drugs by 422
the drug enforcement administration of the United States 423
department of justice; 424

(25) Termination or suspension from participation in the 425
medicare or medicaid programs by the department of health and 426
human services or other responsible agency for any act or acts 427
that also would constitute a violation of division (B)(2), (3), 428
(6), (8), or (19) of this section; 429

(26) Impairment of ability to practice according to 430
acceptable and prevailing standards of care because of habitual or 431
excessive use or abuse of drugs, alcohol, or other substances that 432
impair ability to practice. 433

For the purposes of this division, any individual authorized 434
to practice by this chapter accepts the privilege of practicing in 435
this state subject to supervision by the board. By filing an 436
application for or holding a certificate to practice under this 437
chapter, an individual shall be deemed to have given consent to 438
submit to a mental or physical examination when ordered to do so 439
by the board in writing, and to have waived all objections to the 440
admissibility of testimony or examination reports that constitute 441
privileged communications. 442

If it has reason to believe that any individual authorized to 443
practice by this chapter or any applicant for certification to 444

practice suffers such impairment, the board may compel the 445
individual to submit to a mental or physical examination, or both. 446
The expense of the examination is the responsibility of the 447
individual compelled to be examined. Any mental or physical 448
examination required under this division shall be undertaken by a 449
treatment provider or physician who is qualified to conduct the 450
examination and who is chosen by the board. 451

Failure to submit to a mental or physical examination ordered 452
by the board constitutes an admission of the allegations against 453
the individual unless the failure is due to circumstances beyond 454
the individual's control, and a default and final order may be 455
entered without the taking of testimony or presentation of 456
evidence. If the board determines that the individual's ability to 457
practice is impaired, the board shall suspend the individual's 458
certificate or deny the individual's application and shall require 459
the individual, as a condition for initial, continued, reinstated, 460
or renewed certification to practice, to submit to treatment. 461

Before being eligible to apply for reinstatement of a 462
certificate suspended under this division, the impaired 463
practitioner shall demonstrate to the board the ability to resume 464
practice in compliance with acceptable and prevailing standards of 465
care under the provisions of the practitioner's certificate. The 466
demonstration shall include, but shall not be limited to, the 467
following: 468

(a) Certification from a treatment provider approved under 469
section 4731.25 of the Revised Code that the individual has 470
successfully completed any required inpatient treatment; 471

(b) Evidence of continuing full compliance with an aftercare 472
contract or consent agreement; 473

(c) Two written reports indicating that the individual's 474
ability to practice has been assessed and that the individual has 475

been found capable of practicing according to acceptable and 476
prevailing standards of care. The reports shall be made by 477
individuals or providers approved by the board for making the 478
assessments and shall describe the basis for their determination. 479

The board may reinstate a certificate suspended under this 480
division after that demonstration and after the individual has 481
entered into a written consent agreement. 482

When the impaired practitioner resumes practice, the board 483
shall require continued monitoring of the individual. The 484
monitoring shall include, but not be limited to, compliance with 485
the written consent agreement entered into before reinstatement or 486
with conditions imposed by board order after a hearing, and, upon 487
termination of the consent agreement, submission to the board for 488
at least two years of annual written progress reports made under 489
penalty of perjury stating whether the individual has maintained 490
sobriety. 491

(27) A second or subsequent violation of section 4731.66 or 492
4731.69 of the Revised Code; 493

(28) Except as provided in division (N) of this section: 494

(a) Waiving the payment of all or any part of a deductible or 495
copayment that a patient, pursuant to a health insurance or health 496
care policy, contract, or plan that covers the individual's 497
services, otherwise would be required to pay if the waiver is used 498
as an enticement to a patient or group of patients to receive 499
health care services from that individual; 500

(b) Advertising that the individual will waive the payment of 501
all or any part of a deductible or copayment that a patient, 502
pursuant to a health insurance or health care policy, contract, or 503
plan that covers the individual's services, otherwise would be 504
required to pay. 505

(29) Failure to use universal blood and body fluid 506

precautions established by rules adopted under section 4731.051 of 507
the Revised Code; 508

(30) Failure to provide notice to, and receive acknowledgment 509
of the notice from, a patient when required by section 4731.143 of 510
the Revised Code prior to providing nonemergency professional 511
services, or failure to maintain that notice in the patient's 512
file; 513

(31) Failure of a physician supervising a physician assistant 514
to maintain supervision in accordance with the requirements of 515
Chapter 4730. of the Revised Code and the rules adopted under that 516
chapter; 517

(32) Failure of a physician or podiatrist to enter into a 518
standard care arrangement with a clinical nurse specialist, 519
certified nurse-midwife, or certified nurse practitioner with whom 520
the physician or podiatrist is in collaboration pursuant to 521
section 4731.27 of the Revised Code or failure to fulfill the 522
responsibilities of collaboration after entering into a standard 523
care arrangement; 524

(33) Failure to comply with the terms of a consult agreement 525
entered into with a pharmacist pursuant to section 4729.39 of the 526
Revised Code; 527

(34) Failure to cooperate in an investigation conducted by 528
the board under division (F) of this section, including failure to 529
comply with a subpoena or order issued by the board or failure to 530
answer truthfully a question presented by the board at a 531
deposition or in written interrogatories, except that failure to 532
cooperate with an investigation shall not constitute grounds for 533
discipline under this section if a court of competent jurisdiction 534
has issued an order that either quashes a subpoena or permits the 535
individual to withhold the testimony or evidence in issue; 536

(35) Failure to supervise an acupuncturist in accordance with 537

Chapter 4762. of the Revised Code and the board's rules for supervision of an acupuncturist;	538 539
(36) 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;	540 541 542
(37) Assisting suicide as defined in section 3795.01 of the Revised Code;	543 544
<u>(38) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code.</u>	545 546 547
(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.	548 549 550 551 552 553 554 555 556 557 558 559
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	560 561 562 563 564 565 566 567 568

to a second or subsequent plea of guilty to, or judicial finding 569
of guilt of, a violation of that section shall provide for a 570
suspension of the individual's certificate to practice for a 571
period of at least one year or, if determined appropriate by the 572
board, a more serious sanction involving the individual's 573
certificate to practice. 574

(D) For purposes of divisions (B)(10), (12), and (14) of this 575
section, the commission of the act may be established by a finding 576
by the board, pursuant to an adjudication under Chapter 119. of 577
the Revised Code, that the individual committed the act. The board 578
does not have jurisdiction under those divisions if the trial 579
court renders a final judgment in the individual's favor and that 580
judgment is based upon an adjudication on the merits. The board 581
has jurisdiction under those divisions if the trial court issues 582
an order of dismissal upon technical or procedural grounds. 583

(E) The sealing of conviction records by any court shall have 584
no effect upon a prior board order entered under this section or 585
upon the board's jurisdiction to take action under this section 586
if, based upon a plea of guilty, a judicial finding of guilt, or a 587
judicial finding of eligibility for intervention in lieu of 588
conviction, the board issued a notice of opportunity for a hearing 589
prior to the court's order to seal the records. The board shall 590
not be required to seal, destroy, redact, or otherwise modify its 591
records to reflect the court's sealing of conviction records. 592

(F)(1) The board shall investigate evidence that appears to 593
show that a person has violated any provision of this chapter or 594
any rule adopted under it. Any person may report to the board in a 595
signed writing any information that the person may have that 596
appears to show a violation of any provision of this chapter or 597
any rule adopted under it. In the absence of bad faith, any person 598
who reports information of that nature or who testifies before the 599
board in any adjudication conducted under Chapter 119. of the 600

Revised Code shall not be liable in damages in a civil action as a 601
result of the report or testimony. Each complaint or allegation of 602
a violation received by the board shall be assigned a case number 603
and shall be recorded by the board. 604

(2) Investigations of alleged violations of this chapter or 605
any rule adopted under it shall be supervised by the supervising 606
member elected by the board in accordance with section 4731.02 of 607
the Revised Code and by the secretary as provided in section 608
4731.39 of the Revised Code. The president may designate another 609
member of the board to supervise the investigation in place of the 610
supervising member. No member of the board who supervises the 611
investigation of a case shall participate in further adjudication 612
of the case. 613

(3) In investigating a possible violation of this chapter or 614
any rule adopted under this chapter, the board may administer 615
oaths, order the taking of depositions, issue subpoenas, and 616
compel the attendance of witnesses and production of books, 617
accounts, papers, records, documents, and testimony, except that a 618
subpoena for patient record information shall not be issued 619
without consultation with the attorney general's office and 620
approval of the secretary and supervising member of the board. 621
Before issuance of a subpoena for patient record information, the 622
secretary and supervising member shall determine whether there is 623
probable cause to believe that the complaint filed alleges a 624
violation of this chapter or any rule adopted under it and that 625
the records sought are relevant to the alleged violation and 626
material to the investigation. The subpoena may apply only to 627
records that cover a reasonable period of time surrounding the 628
alleged violation. 629

On failure to comply with any subpoena issued by the board 630
and after reasonable notice to the person being subpoenaed, the 631
board may move for an order compelling the production of persons 632

or records pursuant to the Rules of Civil Procedure. 633

A subpoena issued by the board may be served by a sheriff, 634
the sheriff's deputy, or a board employee designated by the board. 635
Service of a subpoena issued by the board may be made by 636
delivering a copy of the subpoena to the person named therein, 637
reading it to the person, or leaving it at the person's usual 638
place of residence. When the person being served is a person whose 639
practice is authorized by this chapter, service of the subpoena 640
may be made by certified mail, restricted delivery, return receipt 641
requested, and the subpoena shall be deemed served on the date 642
delivery is made or the date the person refuses to accept 643
delivery. 644

A sheriff's deputy who serves a subpoena shall receive the 645
same fees as a sheriff. Each witness who appears before the board 646
in obedience to a subpoena shall receive the fees and mileage 647
provided for witnesses in civil cases in the courts of common 648
pleas. 649

(4) All hearings and investigations of the board shall be 650
considered civil actions for the purposes of section 2305.252 of 651
the Revised Code. 652

(5) Information received by the board pursuant to an 653
investigation is confidential and not subject to discovery in any 654
civil action. 655

The board shall conduct all investigations and proceedings in 656
a manner that protects the confidentiality of patients and persons 657
who file complaints with the board. The board shall not make 658
public the names or any other identifying information about 659
patients or complainants unless proper consent is given or, in the 660
case of a patient, a waiver of the patient privilege exists under 661
division (B) of section 2317.02 of the Revised Code, except that 662
consent or a waiver of that nature is not required if the board 663

possesses reliable and substantial evidence that no bona fide 664
physician-patient relationship exists. 665

The board may share any information it receives pursuant to 666
an investigation, including patient records and patient record 667
information, with law enforcement agencies, other licensing 668
boards, and other governmental agencies that are prosecuting, 669
adjudicating, or investigating alleged violations of statutes or 670
administrative rules. An agency or board that receives the 671
information shall comply with the same requirements regarding 672
confidentiality as those with which the state medical board must 673
comply, notwithstanding any conflicting provision of the Revised 674
Code or procedure of the agency or board that applies when it is 675
dealing with other information in its possession. In a judicial 676
proceeding, the information may be admitted into evidence only in 677
accordance with the Rules of Evidence, but the court shall require 678
that appropriate measures are taken to ensure that confidentiality 679
is maintained with respect to any part of the information that 680
contains names or other identifying information about patients or 681
complainants whose confidentiality was protected by the state 682
medical board when the information was in the board's possession. 683
Measures to ensure confidentiality that may be taken by the court 684
include sealing its records or deleting specific information from 685
its records. 686

(6) On a quarterly basis, the board shall prepare a report 687
that documents the disposition of all cases during the preceding 688
three months. The report shall contain the following information 689
for each case with which the board has completed its activities: 690

(a) The case number assigned to the complaint or alleged 691
violation; 692

(b) The type of certificate to practice, if any, held by the 693
individual against whom the complaint is directed; 694

(c) A description of the allegations contained in the 695
complaint; 696

(d) The disposition of the case. 697

The report shall state how many cases are still pending and 698
shall be prepared in a manner that protects the identity of each 699
person involved in each case. The report shall be a public record 700
under section 149.43 of the Revised Code. 701

(G) If the secretary and supervising member determine that 702
there is clear and convincing evidence that an individual has 703
violated division (B) of this section and that the individual's 704
continued practice presents a danger of immediate and serious harm 705
to the public, they may recommend that the board suspend the 706
individual's certificate to practice without a prior hearing. 707
Written allegations shall be prepared for consideration by the 708
board. 709

The board, upon review of those allegations and by an 710
affirmative vote of not fewer than six of its members, excluding 711
the secretary and supervising member, may suspend a certificate 712
without a prior hearing. A telephone conference call may be 713
utilized for reviewing the allegations and taking the vote on the 714
summary suspension. 715

The board shall issue a written order of suspension by 716
certified mail or in person in accordance with section 119.07 of 717
the Revised Code. The order shall not be subject to suspension by 718
the court during pendency of any appeal filed under section 119.12 719
of the Revised Code. If the individual subject to the summary 720
suspension requests an adjudicatory hearing by the board, the date 721
set for the hearing shall be within fifteen days, but not earlier 722
than seven days, after the individual requests the hearing, unless 723
otherwise agreed to by both the board and the individual. 724

Any summary suspension imposed under this division shall 725

remain in effect, unless reversed on appeal, until a final 726
adjudicative order issued by the board pursuant to this section 727
and Chapter 119. of the Revised Code becomes effective. The board 728
shall issue its final adjudicative order within sixty days after 729
completion of its hearing. A failure to issue the order within 730
sixty days shall result in dissolution of the summary suspension 731
order but shall not invalidate any subsequent, final adjudicative 732
order. 733

(H) If the board takes action under division (B)(9), (11), or 734
(13) of this section and the judicial finding of guilt, guilty 735
plea, or judicial finding of eligibility for intervention in lieu 736
of conviction is overturned on appeal, upon exhaustion of the 737
criminal appeal, a petition for reconsideration of the order may 738
be filed with the board along with appropriate court documents. 739
Upon receipt of a petition of that nature and supporting court 740
documents, the board shall reinstate the individual's certificate 741
to practice. The board may then hold an adjudication under Chapter 742
119. of the Revised Code to determine whether the individual 743
committed the act in question. Notice of an opportunity for a 744
hearing shall be given in accordance with Chapter 119. of the 745
Revised Code. If the board finds, pursuant to an adjudication held 746
under this division, that the individual committed the act or if 747
no hearing is requested, the board may order any of the sanctions 748
identified under division (B) of this section. 749

(I) The certificate to practice issued to an individual under 750
this chapter and the individual's practice in this state are 751
automatically suspended as of the date of the individual's second 752
or subsequent plea of guilty to, or judicial finding of guilt of, 753
a violation of section 2919.123 of the Revised Code, or the date 754
the individual pleads guilty to, is found by a judge or jury to be 755
guilty of, or is subject to a judicial finding of eligibility for 756
intervention in lieu of conviction in this state or treatment or 757

intervention in lieu of conviction in another jurisdiction for any 758
of the following criminal offenses in this state or a 759
substantially equivalent criminal offense in another jurisdiction: 760
aggravated murder, murder, voluntary manslaughter, felonious 761
assault, kidnapping, rape, sexual battery, gross sexual 762
imposition, aggravated arson, aggravated robbery, or aggravated 763
burglary. Continued practice after suspension shall be considered 764
practicing without a certificate. 765

The board shall notify the individual subject to the 766
suspension by certified mail or in person in accordance with 767
section 119.07 of the Revised Code. If an individual whose 768
certificate is automatically suspended under this division fails 769
to make a timely request for an adjudication under Chapter 119. of 770
the Revised Code, the board shall do whichever of the following is 771
applicable: 772

(1) If the automatic suspension under this division is for a 773
second or subsequent plea of guilty to, or judicial finding of 774
guilt of, a violation of section 2919.123 of the Revised Code, the 775
board shall enter an order suspending the individual's certificate 776
to practice for a period of at least one year or, if determined 777
appropriate by the board, imposing a more serious sanction 778
involving the individual's certificate to practice. 779

(2) In all circumstances in which division (I)(1) of this 780
section does not apply, enter a final order permanently revoking 781
the individual's certificate to practice. 782

(J) If the board is required by Chapter 119. of the Revised 783
Code to give notice of an opportunity for a hearing and if the 784
individual subject to the notice does not timely request a hearing 785
in accordance with section 119.07 of the Revised Code, the board 786
is not required to hold a hearing, but may adopt, by an 787
affirmative vote of not fewer than six of its members, a final 788
order that contains the board's findings. In that final order, the 789

board may order any of the sanctions identified under division (A) 790
or (B) of this section. 791

(K) Any action taken by the board under division (B) of this 792
section resulting in a suspension from practice shall be 793
accompanied by a written statement of the conditions under which 794
the individual's certificate to practice may be reinstated. The 795
board shall adopt rules governing conditions to be imposed for 796
reinstatement. Reinstatement of a certificate suspended pursuant 797
to division (B) of this section requires an affirmative vote of 798
not fewer than six members of the board. 799

(L) When the board refuses to grant a certificate to an 800
applicant, revokes an individual's certificate to practice, 801
refuses to register an applicant, or refuses to reinstate an 802
individual's certificate to practice, the board may specify that 803
its action is permanent. An individual subject to a permanent 804
action taken by the board is forever thereafter ineligible to hold 805
a certificate to practice and the board shall not accept an 806
application for reinstatement of the certificate or for issuance 807
of a new certificate. 808

(M) Notwithstanding any other provision of the Revised Code, 809
all of the following apply: 810

(1) The surrender of a certificate issued under this chapter 811
shall not be effective unless or until accepted by the board. 812
Reinstatement of a certificate surrendered to the board requires 813
an affirmative vote of not fewer than six members of the board. 814

(2) An application for a certificate made under the 815
provisions of this chapter may not be withdrawn without approval 816
of the board. 817

(3) Failure by an individual to renew a certificate of 818
registration in accordance with this chapter shall not remove or 819
limit the board's jurisdiction to take any disciplinary action 820

under this section against the individual. 821

(N) Sanctions shall not be imposed under division (B)(28) of 822
this section against any person who waives deductibles and 823
copayments as follows: 824

(1) In compliance with the health benefit plan that expressly 825
allows such a practice. Waiver of the deductibles or copayments 826
shall be made only with the full knowledge and consent of the plan 827
purchaser, payer, and third-party administrator. Documentation of 828
the consent shall be made available to the board upon request. 829

(2) For professional services rendered to any other person 830
authorized to practice pursuant to this chapter, to the extent 831
allowed by this chapter and rules adopted by the board. 832

(O) Under the board's investigative duties described in this 833
section and subject to division (F) of this section, the board 834
shall develop and implement a quality intervention program 835
designed to improve through remedial education the clinical and 836
communication skills of individuals authorized under this chapter 837
to practice medicine and surgery, osteopathic medicine and 838
surgery, and podiatric medicine and surgery. In developing and 839
implementing the quality intervention program, the board may do 840
all of the following: 841

(1) Offer in appropriate cases as determined by the board an 842
educational and assessment program pursuant to an investigation 843
the board conducts under this section; 844

(2) Select providers of educational and assessment services, 845
including a quality intervention program panel of case reviewers; 846

(3) Make referrals to educational and assessment service 847
providers and approve individual educational programs recommended 848
by those providers. The board shall monitor the progress of each 849
individual undertaking a recommended individual educational 850
program. 851

(4) Determine what constitutes successful completion of an 852
individual educational program and require further monitoring of 853
the individual who completed the program or other action that the 854
board determines to be appropriate; 855

(5) Adopt rules in accordance with Chapter 119. of the 856
Revised Code to further implement the quality intervention 857
program. 858

An individual who participates in an individual educational 859
program pursuant to this division shall pay the financial 860
obligations arising from that educational program. 861

Section 2. That existing sections 2919.25, 3702.30, and 862
4731.22 of the Revised Code are hereby repealed. 863