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Representative Wachtmann

Cosponsors: Representatives Henne, Buchy, Blessing, Rosenberger, Amstutz, McClain, Stautberg, Maag, Bulp, Adams, J., Snitchler, Sears, Roegner, Burke, Grossman, Hottinger, Johnson, Martin, Gardner, Combs, Beck, Schuring, Goodwin, Adams, R., Young, Brenner, Huffman, Hall, Mecklenborg, Slaby, Carey, Blair, Gonzales, Hackett, Kozlowski, Balderson, Hayes, Baker, Dovilla, Boose, Peterson, Derickson, Ruhl, Landis, Sprague, Newbold, Thompson, Uecker, Butler, Conditt, Hagan, C. Speaker Batchelder

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A B I L L

To amend section 4731.22 and to enact section 2919.19 1
of the Revised Code to generally prohibit an 2
abortion of an unborn human individual with a 3
detectable fetal heartbeat. 4

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

Section 1. That section 4731.22 be amended and section 5
2919.19 of the Revised Code be enacted to read as follows: 6

Sec. 2919.19. (A) The general assembly hereby declares that 7
it finds, according to contemporary medical research, all of the 8
following: 9

(1) As many as thirty per cent of natural pregnancies end in 10
spontaneous miscarriage; 11

(2) Less than five per cent of all natural pregnancies end in 12

spontaneous miscarriage after detection of fetal cardiac activity; 13

(3) Over ninety per cent of in vitro pregnancies survive the 14
first trimester if cardiac activity is detected in the gestational 15
sac; 16

(4) Nearly ninety per cent of in vitro pregnancies do not 17
survive the first trimester where cardiac activity is not detected 18
in the gestational sac; 19

(5) Fetal heartbeat, therefore, has become a key, medical 20
predictor that an unborn human individual will reach viability and 21
live birth; 22

(6) Cardiac activity begins at a biologically identifiable 23
moment in time, normally when the fetal heart is formed in the 24
gestational sac. 25

(B)(1) "Contraceptive" means a device, drug, or chemical that 26
prevents conception. 27

(2) "Fetal heartbeat" means cardiac activity or the steady 28
and repetitive rhythmic contraction of the fetal heart within the 29
gestational sac. 30

(3) "Fetus" means the human offspring developing during 31
pregnancy from the moment of conception and includes the embryonic 32
stage of development. 33

(4) "Gestational age" means the age of an unborn human 34
individual as calculated from the first day of the last menstrual 35
period of a pregnant woman. 36

(5) "Gestational sac" comprises the extra embryonic membranes 37
that envelop the fetus and that is typically visible by ultrasound 38
after the fourth week of pregnancy. 39

(6) "Medical emergency" means a condition that in the 40
physician's good faith medical judgment, based upon the facts 41
known to the physician at that time, so endangers the life of the 42

pregnant woman or a major bodily function of the pregnant woman as 43
to necessitate the immediate performance or inducement of an 44
abortion. 45

(7) "Physician" has the same meaning as in section 2305.113 46
of the Revised Code. 47

(8) "Pregnancy" means the human female reproductive condition 48
that begins with fertilization, when the woman is carrying the 49
developing human offspring, and that is calculated from the first 50
day of the last menstrual period of the woman. 51

(9) "Spontaneous miscarriage" means the natural or accidental 52
termination of a pregnancy and the expulsion of the fetus, 53
typically caused by genetic defects in the fetus or physical 54
abnormalities in the pregnant woman. 55

(10) "Unborn human individual" means an individual organism 56
of the species homo sapiens from fertilization until live birth. 57

(C)(1) Except when a medical emergency exists that prevents 58
compliance with this division, no person shall perform an abortion 59
on a pregnant woman prior to determining if the fetus the pregnant 60
woman is carrying has a detectable fetal heartbeat. Any person who 61
performs an abortion on a pregnant woman based on the exception in 62
this division shall note in the pregnant woman's medical records 63
that a medical emergency necessitating the abortion existed. 64

(2) A person who intends to perform an abortion on a pregnant 65
woman shall determine if there is the presence of a fetal 66
heartbeat of the unborn human individual that the pregnant woman 67
is carrying according to standard medical practice. A person shall 68
comply with division (C)(2) of this section regardless of whether 69
or not the director of health promulgated rules under division 70
(C)(3) of this section. 71

(3) The director of health may promulgate rules pursuant to 72
section 111.15 of the Revised Code for the appropriate methods of 73

performing an examination for the presence of a fetal heartbeat of 74
an unborn human individual based on standard medical practice. 75

(4) If a physician performs an abortion on a pregnant woman 76
prior to determining if the fetus the pregnant woman is carrying 77
has a detectable fetal heartbeat, that physician is subject to 78
disciplinary action under division (B)(41) of section 4731.22 of 79
the Revised Code. 80

(D)(1) Division (D) of this section applies to all abortions 81
that are not prohibited under sections 2919.12, 2919.121, and 82
2919.151 of the Revised Code, except when a medical emergency 83
exists that prevents compliance with this division. 84

(2) If the person who intends to perform an abortion on a 85
pregnant woman detects a fetal heartbeat in the unborn human 86
individual that the pregnant woman is carrying, no later than 87
twenty-four hours prior to the performance of the intended 88
abortion, both of the following apply: 89

(a) The person intending to perform the abortion shall inform 90
the pregnant woman in writing that the unborn human individual 91
that the pregnant woman is carrying has a fetal heartbeat and 92
shall inform the pregnant woman, to the best of the person's 93
knowledge, of the statistical probability of bringing the unborn 94
human individual to term based on the gestational age of the 95
unborn human individual possessing a detectable fetal heartbeat. A 96
person shall comply with division (D)(2)(a) of this section 97
regardless of whether or not the director of health promulgated 98
rules under division (D)(3) of this section. 99

(b) The pregnant woman shall sign a form acknowledging that 100
the pregnant woman has received information from the person 101
intending to perform the abortion that the unborn human individual 102
that the pregnant woman is carrying has a fetal heartbeat and that 103
the pregnant woman is aware of the statistical probability of 104

bringing the unborn human individual that the pregnant woman is 105
carrying to term. 106

(3) The director of health may define and promulgate by rules 107
adopted pursuant to section 111.15 of the Revised Code and based 108
upon available medical evidence the statistical probability of 109
bringing an unborn human individual to term based on the 110
gestational age of an unborn human individual who possesses a 111
detectable fetal heartbeat. 112

(4) Division (D) of this section does not repeal any other 113
provision of the Revised Code relating to informed consent for an 114
abortion. 115

(E)(1) Except as provided in division (E)(2) or (3) of this 116
section, no person shall knowingly perform an abortion on a 117
pregnant woman with the specific intent of causing or abetting the 118
termination of the life of the unborn human individual that the 119
pregnant woman is carrying and whose fetal heartbeat has been 120
detected according to the requirements of division (C) of this 121
section. Any person who acts based on the exception in division 122
(E)(2) or (3) of this section shall so note in the pregnant 123
woman's medical records and shall specify in the pregnant woman's 124
medical records which of the exceptions the person invoked. 125

(2)(a) A person is not in violation of division (E)(1) of 126
this section if that person performs a medical procedure designed 127
to or intended, in that person's reasonable medical judgment, to 128
prevent the death of a pregnant woman or to prevent a serious risk 129
of the substantial and irreversible impairment of a major bodily 130
function of the pregnant woman. 131

(b) Any person who performs a medical procedure as described 132
in division (E)(2)(a) of this section shall declare in writing, 133
under penalty of perjury, that the medical procedure is necessary, 134
to the best of that person's reasonable medical judgment, to 135

prevent the death of the pregnant woman or to prevent a serious 136
risk of the substantial and irreversible impairment of a major 137
bodily function of the pregnant woman. That person shall also 138
provide in that written document, under penalty of perjury, the 139
medical condition of that pregnant woman that the medical 140
procedure performed as described in division (E)(2)(a) of this 141
section will assertedly address, and the medical rationale for the 142
conclusion that the medical procedure is necessary to prevent the 143
death of the pregnant woman or to prevent a serious risk of the 144
substantial and irreversible impairment of a major bodily function 145
of the pregnant woman. 146

(c) The person who performs a medical procedure as described 147
in division (E)(2)(a) of this section shall place the written 148
documentation required under division (E)(2)(b) of this section in 149
the pregnant woman's medical records and shall maintain a copy of 150
the written documentation in the person's own records for at least 151
seven years. 152

(3) A person is not in violation of division (E)(1) of this 153
section if that person has performed an examination for the 154
presence of a fetal heartbeat in the fetus utilizing standard 155
medical practice and that examination does not reveal a fetal 156
heartbeat or the person has been informed by a physician who has 157
performed the examination for fetal heartbeat that the examination 158
did not reveal a fetal heartbeat. 159

(4) Division (E) of this section does not repeal any other 160
provision of the Revised Code that restricts or regulates the 161
performance of an abortion by a particular method or during a 162
particular stage of a pregnancy. 163

(5) Whoever violates division (E) of this section is guilty 164
of performing an abortion after the detection of a fetal 165
heartbeat, a felony of the fifth degree. 166

(F) Any person performing an abortion on a pregnant woman 167
carrying an unborn human individual whose heartbeat has been 168
detected pursuant to the requirements of division (C) of this 169
section to preserve the health of the pregnant woman shall set 170
forth in a separate document, under penalty of perjury, the 171
medical condition that the abortion will assertedly address and 172
the medical rationale for the conclusion that the abortion is 173
necessary to address that condition. The person shall place this 174
written documentation in the pregnant woman's medical records and 175
shall maintain a copy in the person's own records for at least 176
seven years. This documentation requirement is independent of the 177
provisions in divisions (E)(2)(a), (b), and (c) of this section. 178

(G) A pregnant woman on whom an abortion is performed in 179
violation of division (C) or (E) of this section is not guilty of 180
violating division (C) or (E) of this section or of attempting to 181
commit, conspiring to commit, or complicity in committing a 182
violation of division (C) or (E) of this section and is not 183
subject to a civil penalty based on that violation. 184

(H) Nothing in this section prohibits the sale, use, 185
prescription, or administration of a measure, drug, or chemical 186
designed for contraceptive purposes. 187

(I) If a state or federal court of competent jurisdiction 188
finds that a provision of this section is unconstitutional, the 189
effective date of that provision is tolled until either of the 190
following occur: 191

(1) An appellate tribunal finds that provision to be 192
constitutional. 193

(2) The attorney general certifies in an opinion to the 194
governor that, due to a subsequent decision or decisions by the 195
supreme court of the United States, it is reasonably probable that 196
the provision would be upheld as constitutional by a court of 197

competent jurisdiction. 198

(J) If a provision of this section is found constitutional by 199
an appellate tribunal or the attorney general issues an opinion as 200
described in division (H)(2) of this section, the provision shall 201
be prospective. 202

(K) If any provisions of this section or its application to 203
any person or circumstance is held invalid, the invalidity does 204
not affect other provisions or applications of this section that 205
can be given effect without the invalid provision or application, 206
and to this end the provisions of this section are severable. 207

Sec. 4731.22. (A) The state medical board, by an affirmative 208
vote of not fewer than six of its members, may revoke or may 209
refuse to grant a certificate to a person found by the board to 210
have committed fraud during the administration of the examination 211
for a certificate to practice or to have committed fraud, 212
misrepresentation, or deception in applying for or securing any 213
certificate to practice or certificate of registration issued by 214
the board. 215

(B) The board, by an affirmative vote of not fewer than six 216
members, shall, to the extent permitted by law, limit, revoke, or 217
suspend an individual's certificate to practice, refuse to 218
register an individual, refuse to reinstate a certificate, or 219
reprimand or place on probation the holder of a certificate for 220
one or more of the following reasons: 221

(1) Permitting one's name or one's certificate to practice or 222
certificate of registration to be used by a person, group, or 223
corporation when the individual concerned is not actually 224
directing the treatment given; 225

(2) Failure to maintain minimal standards applicable to the 226
selection or administration of drugs, or failure to employ 227

acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

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

(4) Willfully betraying a professional confidence.

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

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

As used in this division, "false, fraudulent, deceptive, or

misleading statement" means a statement that includes a 259
misrepresentation of fact, is likely to mislead or deceive because 260
of a failure to disclose material facts, is intended or is likely 261
to create false or unjustified expectations of favorable results, 262
or includes representations or implications that in reasonable 263
probability will cause an ordinarily prudent person to 264
misunderstand or be deceived. 265

(6) A departure from, or the failure to conform to, minimal 266
standards of care of similar practitioners under the same or 267
similar circumstances, whether or not actual injury to a patient 268
is established; 269

(7) Representing, with the purpose of obtaining compensation 270
or other advantage as personal gain or for any other person, that 271
an incurable disease or injury, or other incurable condition, can 272
be permanently cured; 273

(8) The obtaining of, or attempting to obtain, money or 274
anything of value by fraudulent misrepresentations in the course 275
of practice; 276

(9) A plea of guilty to, a judicial finding of guilt of, or a 277
judicial finding of eligibility for intervention in lieu of 278
conviction for, a felony; 279

(10) Commission of an act that constitutes a felony in this 280
state, regardless of the jurisdiction in which the act was 281
committed; 282

(11) A plea of guilty to, a judicial finding of guilt of, or 283
a judicial finding of eligibility for intervention in lieu of 284
conviction for, a misdemeanor committed in the course of practice; 285

(12) Commission of an act in the course of practice that 286
constitutes a misdemeanor in this state, regardless of the 287
jurisdiction in which the act was committed; 288

(13) A plea of guilty to, a judicial finding of guilt of, or	289
a judicial finding of eligibility for intervention in lieu of	290
conviction for, a misdemeanor involving moral turpitude;	291
(14) Commission of an act involving moral turpitude that	292
constitutes a misdemeanor in this state, regardless of the	293
jurisdiction in which the act was committed;	294
(15) Violation of the conditions of limitation placed by the	295
board upon a certificate to practice;	296
(16) Failure to pay license renewal fees specified in this	297
chapter;	298
(17) Except as authorized in section 4731.31 of the Revised	299
Code, engaging in the division of fees for referral of patients,	300
or the receiving of a thing of value in return for a specific	301
referral of a patient to utilize a particular service or business;	302
(18) Subject to section 4731.226 of the Revised Code,	303
violation of any provision of a code of ethics of the American	304
medical association, the American osteopathic association, the	305
American podiatric medical association, or any other national	306
professional organizations that the board specifies by rule. The	307
state medical board shall obtain and keep on file current copies	308
of the codes of ethics of the various national professional	309
organizations. The individual whose certificate is being suspended	310
or revoked shall not be found to have violated any provision of a	311
code of ethics of an organization not appropriate to the	312
individual's profession.	313
For purposes of this division, a "provision of a code of	314
ethics of a national professional organization" does not include	315
any provision that would preclude the making of a report by a	316
physician of an employee's use of a drug of abuse, or of a	317
condition of an employee other than one involving the use of a	318
drug of abuse, to the employer of the employee as described in	319

division (B) of section 2305.33 of the Revised Code. Nothing in 320
this division affects the immunity from civil liability conferred 321
by that section upon a physician who makes either type of report 322
in accordance with division (B) of that section. As used in this 323
division, "employee," "employer," and "physician" have the same 324
meanings as in section 2305.33 of the Revised Code. 325

(19) Inability to practice according to acceptable and 326
prevailing standards of care by reason of mental illness or 327
physical illness, including, but not limited to, physical 328
deterioration that adversely affects cognitive, motor, or 329
perceptive skills. 330

In enforcing this division, the board, upon a showing of a 331
possible violation, may compel any individual authorized to 332
practice by this chapter or who has submitted an application 333
pursuant to this chapter to submit to a mental examination, 334
physical examination, including an HIV test, or both a mental and 335
a physical examination. The expense of the examination is the 336
responsibility of the individual compelled to be examined. Failure 337
to submit to a mental or physical examination or consent to an HIV 338
test ordered by the board constitutes an admission of the 339
allegations against the individual unless the failure is due to 340
circumstances beyond the individual's control, and a default and 341
final order may be entered without the taking of testimony or 342
presentation of evidence. If the board finds an individual unable 343
to practice because of the reasons set forth in this division, the 344
board shall require the individual to submit to care, counseling, 345
or treatment by physicians approved or designated by the board, as 346
a condition for initial, continued, reinstated, or renewed 347
authority to practice. An individual affected under this division 348
shall be afforded an opportunity to demonstrate to the board the 349
ability to resume practice in compliance with acceptable and 350
prevailing standards under the provisions of the individual's 351

certificate. For the purpose of this division, any individual who 352
applies for or receives a certificate to practice under this 353
chapter accepts the privilege of practicing in this state and, by 354
so doing, shall be deemed to have given consent to submit to a 355
mental or physical examination when directed to do so in writing 356
by the board, and to have waived all objections to the 357
admissibility of testimony or examination reports that constitute 358
a privileged communication. 359

(20) Except when civil penalties are imposed under section 360
4731.225 or 4731.281 of the Revised Code, and subject to section 361
4731.226 of the Revised Code, violating or attempting to violate, 362
directly or indirectly, or assisting in or abetting the violation 363
of, or conspiring to violate, any provisions of this chapter or 364
any rule promulgated by the board. 365

This division does not apply to a violation or attempted 366
violation of, assisting in or abetting the violation of, or a 367
conspiracy to violate, any provision of this chapter or any rule 368
adopted by the board that would preclude the making of a report by 369
a physician of an employee's use of a drug of abuse, or of a 370
condition of an employee other than one involving the use of a 371
drug of abuse, to the employer of the employee as described in 372
division (B) of section 2305.33 of the Revised Code. Nothing in 373
this division affects the immunity from civil liability conferred 374
by that section upon a physician who makes either type of report 375
in accordance with division (B) of that section. As used in this 376
division, "employee," "employer," and "physician" have the same 377
meanings as in section 2305.33 of the Revised Code. 378

(21) The violation of section 3701.79 of the Revised Code or 379
of any abortion rule adopted by the public health council pursuant 380
to section 3701.341 of the Revised Code; 381

(22) Any of the following actions taken by the agency 382
responsible for regulating the practice of medicine and surgery, 383

osteopathic medicine and surgery, podiatric medicine and surgery, 384
or the limited branches of medicine in another jurisdiction, for 385
any reason other than the nonpayment of fees: the limitation, 386
revocation, or suspension of an individual's license to practice; 387
acceptance of an individual's license surrender; denial of a 388
license; refusal to renew or reinstate a license; imposition of 389
probation; or issuance of an order of censure or other reprimand; 390

(23) The violation of section 2919.12 of the Revised Code or 391
the performance or inducement of an abortion upon a pregnant woman 392
with actual knowledge that the conditions specified in division 393
(B) of section 2317.56 of the Revised Code have not been satisfied 394
or with a heedless indifference as to whether those conditions 395
have been satisfied, unless an affirmative defense as specified in 396
division (H)(2) of that section would apply in a civil action 397
authorized by division (H)(1) of that section; 398

(24) The revocation, suspension, restriction, reduction, or 399
termination of clinical privileges by the United States department 400
of defense or department of veterans affairs or the termination or 401
suspension of a certificate of registration to prescribe drugs by 402
the drug enforcement administration of the United States 403
department of justice; 404

(25) Termination or suspension from participation in the 405
medicare or medicaid programs by the department of health and 406
human services or other responsible agency for any act or acts 407
that also would constitute a violation of division (B)(2), (3), 408
(6), (8), or (19) of this section; 409

(26) Impairment of ability to practice according to 410
acceptable and prevailing standards of care because of habitual or 411
excessive use or abuse of drugs, alcohol, or other substances that 412
impair ability to practice. 413

For the purposes of this division, any individual authorized 414

to practice by this chapter accepts the privilege of practicing in 415
this state subject to supervision by the board. By filing an 416
application for or holding a certificate to practice under this 417
chapter, an individual shall be deemed to have given consent to 418
submit to a mental or physical examination when ordered to do so 419
by the board in writing, and to have waived all objections to the 420
admissibility of testimony or examination reports that constitute 421
privileged communications. 422

If it has reason to believe that any individual authorized to 423
practice by this chapter or any applicant for certification to 424
practice suffers such impairment, the board may compel the 425
individual to submit to a mental or physical examination, or both. 426
The expense of the examination is the responsibility of the 427
individual compelled to be examined. Any mental or physical 428
examination required under this division shall be undertaken by a 429
treatment provider or physician who is qualified to conduct the 430
examination and who is chosen by the board. 431

Failure to submit to a mental or physical examination ordered 432
by the board constitutes an admission of the allegations against 433
the individual unless the failure is due to circumstances beyond 434
the individual's control, and a default and final order may be 435
entered without the taking of testimony or presentation of 436
evidence. If the board determines that the individual's ability to 437
practice is impaired, the board shall suspend the individual's 438
certificate or deny the individual's application and shall require 439
the individual, as a condition for initial, continued, reinstated, 440
or renewed certification to practice, to submit to treatment. 441

Before being eligible to apply for reinstatement of a 442
certificate suspended under this division, the impaired 443
practitioner shall demonstrate to the board the ability to resume 444
practice in compliance with acceptable and prevailing standards of 445
care under the provisions of the practitioner's certificate. The 446

demonstration shall include, but shall not be limited to, the 447
following: 448

(a) Certification from a treatment provider approved under 449
section 4731.25 of the Revised Code that the individual has 450
successfully completed any required inpatient treatment; 451

(b) Evidence of continuing full compliance with an aftercare 452
contract or consent agreement; 453

(c) Two written reports indicating that the individual's 454
ability to practice has been assessed and that the individual has 455
been found capable of practicing according to acceptable and 456
prevailing standards of care. The reports shall be made by 457
individuals or providers approved by the board for making the 458
assessments and shall describe the basis for their determination. 459

The board may reinstate a certificate suspended under this 460
division after that demonstration and after the individual has 461
entered into a written consent agreement. 462

When the impaired practitioner resumes practice, the board 463
shall require continued monitoring of the individual. The 464
monitoring shall include, but not be limited to, compliance with 465
the written consent agreement entered into before reinstatement or 466
with conditions imposed by board order after a hearing, and, upon 467
termination of the consent agreement, submission to the board for 468
at least two years of annual written progress reports made under 469
penalty of perjury stating whether the individual has maintained 470
sobriety. 471

(27) A second or subsequent violation of section 4731.66 or 472
4731.69 of the Revised Code; 473

(28) Except as provided in division (N) of this section: 474

(a) Waiving the payment of all or any part of a deductible or 475
copayment that a patient, pursuant to a health insurance or health 476

care policy, contract, or plan that covers the individual's 477
services, otherwise would be required to pay if the waiver is used 478
as an enticement to a patient or group of patients to receive 479
health care services from that individual; 480

(b) Advertising that the individual will waive the payment of 481
all or any part of a deductible or copayment that a patient, 482
pursuant to a health insurance or health care policy, contract, or 483
plan that covers the individual's services, otherwise would be 484
required to pay. 485

(29) Failure to use universal blood and body fluid 486
precautions established by rules adopted under section 4731.051 of 487
the Revised Code; 488

(30) Failure to provide notice to, and receive acknowledgment 489
of the notice from, a patient when required by section 4731.143 of 490
the Revised Code prior to providing nonemergency professional 491
services, or failure to maintain that notice in the patient's 492
file; 493

(31) Failure of a physician supervising a physician assistant 494
to maintain supervision in accordance with the requirements of 495
Chapter 4730. of the Revised Code and the rules adopted under that 496
chapter; 497

(32) Failure of a physician or podiatrist to enter into a 498
standard care arrangement with a clinical nurse specialist, 499
certified nurse-midwife, or certified nurse practitioner with whom 500
the physician or podiatrist is in collaboration pursuant to 501
section 4731.27 of the Revised Code or failure to fulfill the 502
responsibilities of collaboration after entering into a standard 503
care arrangement; 504

(33) Failure to comply with the terms of a consult agreement 505
entered into with a pharmacist pursuant to section 4729.39 of the 506
Revised Code; 507

(34) Failure to cooperate in an investigation conducted by 508
the board under division (F) of this section, including failure to 509
comply with a subpoena or order issued by the board or failure to 510
answer truthfully a question presented by the board at a 511
deposition or in written interrogatories, except that failure to 512
cooperate with an investigation shall not constitute grounds for 513
discipline under this section if a court of competent jurisdiction 514
has issued an order that either quashes a subpoena or permits the 515
individual to withhold the testimony or evidence in issue; 516

(35) Failure to supervise an acupuncturist in accordance with 517
Chapter 4762. of the Revised Code and the board's rules for 518
supervision of an acupuncturist; 519

(36) Failure to supervise an anesthesiologist assistant in 520
accordance with Chapter 4760. of the Revised Code and the board's 521
rules for supervision of an anesthesiologist assistant; 522

(37) Assisting suicide as defined in section 3795.01 of the 523
Revised Code; 524

(38) Failure to comply with the requirements of section 525
2317.561 of the Revised Code; 526

(39) Failure to supervise a radiologist assistant in 527
accordance with Chapter 4774. of the Revised Code and the board's 528
rules for supervision of radiologist assistants; 529

(40) Performing or inducing an abortion at an office or 530
facility with knowledge that the office or facility fails to post 531
the notice required under section 3701.791 of the Revised Code; 532

(41) Performing an abortion on a pregnant woman prior to 533
determining if the fetus the pregnant woman is carrying has a 534
detectable fetal heartbeat, as provided in division (C) of section 535
2919.19 of the Revised Code. 536

(C) Disciplinary actions taken by the board under divisions 537

(A) and (B) of this section shall be taken pursuant to an 538
adjudication under Chapter 119. of the Revised Code, except that 539
in lieu of an adjudication, the board may enter into a consent 540
agreement with an individual to resolve an allegation of a 541
violation of this chapter or any rule adopted under it. A consent 542
agreement, when ratified by an affirmative vote of not fewer than 543
six members of the board, shall constitute the findings and order 544
of the board with respect to the matter addressed in the 545
agreement. If the board refuses to ratify a consent agreement, the 546
admissions and findings contained in the consent agreement shall 547
be of no force or effect. 548

If the board takes disciplinary action against an individual 549
under division (B) of this section for a second or subsequent plea 550
of guilty to, or judicial finding of guilt of, a violation of 551
section 2919.123 of the Revised Code, the disciplinary action 552
shall consist of a suspension of the individual's certificate to 553
practice for a period of at least one year or, if determined 554
appropriate by the board, a more serious sanction involving the 555
individual's certificate to practice. Any consent agreement 556
entered into under this division with an individual that pertains 557
to a second or subsequent plea of guilty to, or judicial finding 558
of guilt of, a violation of that section shall provide for a 559
suspension of the individual's certificate to practice for a 560
period of at least one year or, if determined appropriate by the 561
board, a more serious sanction involving the individual's 562
certificate to practice. 563

(D) For purposes of divisions (B)(10), (12), and (14) of this 564
section, the commission of the act may be established by a finding 565
by the board, pursuant to an adjudication under Chapter 119. of 566
the Revised Code, that the individual committed the act. The board 567
does not have jurisdiction under those divisions if the trial 568
court renders a final judgment in the individual's favor and that 569

judgment is based upon an adjudication on the merits. The board 570
has jurisdiction under those divisions if the trial court issues 571
an order of dismissal upon technical or procedural grounds. 572

(E) The sealing of conviction records by any court shall have 573
no effect upon a prior board order entered under this section or 574
upon the board's jurisdiction to take action under this section 575
if, based upon a plea of guilty, a judicial finding of guilt, or a 576
judicial finding of eligibility for intervention in lieu of 577
conviction, the board issued a notice of opportunity for a hearing 578
prior to the court's order to seal the records. The board shall 579
not be required to seal, destroy, redact, or otherwise modify its 580
records to reflect the court's sealing of conviction records. 581

(F)(1) The board shall investigate evidence that appears to 582
show that a person has violated any provision of this chapter or 583
any rule adopted under it. Any person may report to the board in a 584
signed writing any information that the person may have that 585
appears to show a violation of any provision of this chapter or 586
any rule adopted under it. In the absence of bad faith, any person 587
who reports information of that nature or who testifies before the 588
board in any adjudication conducted under Chapter 119. of the 589
Revised Code shall not be liable in damages in a civil action as a 590
result of the report or testimony. Each complaint or allegation of 591
a violation received by the board shall be assigned a case number 592
and shall be recorded by the board. 593

(2) Investigations of alleged violations of this chapter or 594
any rule adopted under it shall be supervised by the supervising 595
member elected by the board in accordance with section 4731.02 of 596
the Revised Code and by the secretary as provided in section 597
4731.39 of the Revised Code. The president may designate another 598
member of the board to supervise the investigation in place of the 599
supervising member. No member of the board who supervises the 600
investigation of a case shall participate in further adjudication 601

of the case. 602

(3) In investigating a possible violation of this chapter or 603
any rule adopted under this chapter, the board may administer 604
oaths, order the taking of depositions, issue subpoenas, and 605
compel the attendance of witnesses and production of books, 606
accounts, papers, records, documents, and testimony, except that a 607
subpoena for patient record information shall not be issued 608
without consultation with the attorney general's office and 609
approval of the secretary and supervising member of the board. 610
Before issuance of a subpoena for patient record information, the 611
secretary and supervising member shall determine whether there is 612
probable cause to believe that the complaint filed alleges a 613
violation of this chapter or any rule adopted under it and that 614
the records sought are relevant to the alleged violation and 615
material to the investigation. The subpoena may apply only to 616
records that cover a reasonable period of time surrounding the 617
alleged violation. 618

On failure to comply with any subpoena issued by the board 619
and after reasonable notice to the person being subpoenaed, the 620
board may move for an order compelling the production of persons 621
or records pursuant to the Rules of Civil Procedure. 622

A subpoena issued by the board may be served by a sheriff, 623
the sheriff's deputy, or a board employee designated by the board. 624
Service of a subpoena issued by the board may be made by 625
delivering a copy of the subpoena to the person named therein, 626
reading it to the person, or leaving it at the person's usual 627
place of residence. When the person being served is a person whose 628
practice is authorized by this chapter, service of the subpoena 629
may be made by certified mail, restricted delivery, return receipt 630
requested, and the subpoena shall be deemed served on the date 631
delivery is made or the date the person refuses to accept 632
delivery. 633

A sheriff's deputy who serves a subpoena shall receive the 634
same fees as a sheriff. Each witness who appears before the board 635
in obedience to a subpoena shall receive the fees and mileage 636
provided for under section 119.094 of the Revised Code. 637

(4) All hearings and investigations of the board shall be 638
considered civil actions for the purposes of section 2305.252 of 639
the Revised Code. 640

(5) Information received by the board pursuant to an 641
investigation is confidential and not subject to discovery in any 642
civil action. 643

The board shall conduct all investigations and proceedings in 644
a manner that protects the confidentiality of patients and persons 645
who file complaints with the board. The board shall not make 646
public the names or any other identifying information about 647
patients or complainants unless proper consent is given or, in the 648
case of a patient, a waiver of the patient privilege exists under 649
division (B) of section 2317.02 of the Revised Code, except that 650
consent or a waiver of that nature is not required if the board 651
possesses reliable and substantial evidence that no bona fide 652
physician-patient relationship exists. 653

The board may share any information it receives pursuant to 654
an investigation, including patient records and patient record 655
information, with law enforcement agencies, other licensing 656
boards, and other governmental agencies that are prosecuting, 657
adjudicating, or investigating alleged violations of statutes or 658
administrative rules. An agency or board that receives the 659
information shall comply with the same requirements regarding 660
confidentiality as those with which the state medical board must 661
comply, notwithstanding any conflicting provision of the Revised 662
Code or procedure of the agency or board that applies when it is 663
dealing with other information in its possession. In a judicial 664
proceeding, the information may be admitted into evidence only in 665

accordance with the Rules of Evidence, but the court shall require 666
that appropriate measures are taken to ensure that confidentiality 667
is maintained with respect to any part of the information that 668
contains names or other identifying information about patients or 669
complainants whose confidentiality was protected by the state 670
medical board when the information was in the board's possession. 671
Measures to ensure confidentiality that may be taken by the court 672
include sealing its records or deleting specific information from 673
its records. 674

(6) On a quarterly basis, the board shall prepare a report 675
that documents the disposition of all cases during the preceding 676
three months. The report shall contain the following information 677
for each case with which the board has completed its activities: 678

(a) The case number assigned to the complaint or alleged 679
violation; 680

(b) The type of certificate to practice, if any, held by the 681
individual against whom the complaint is directed; 682

(c) A description of the allegations contained in the 683
complaint; 684

(d) The disposition of the case. 685

The report shall state how many cases are still pending and 686
shall be prepared in a manner that protects the identity of each 687
person involved in each case. The report shall be a public record 688
under section 149.43 of the Revised Code. 689

(G) If the secretary and supervising member determine that 690
there is clear and convincing evidence that an individual has 691
violated division (B) of this section and that the individual's 692
continued practice presents a danger of immediate and serious harm 693
to the public, they may recommend that the board suspend the 694
individual's certificate to practice without a prior hearing. 695
Written allegations shall be prepared for consideration by the 696

board. 697

The board, upon review of those allegations and by an 698
affirmative vote of not fewer than six of its members, excluding 699
the secretary and supervising member, may suspend a certificate 700
without a prior hearing. A telephone conference call may be 701
utilized for reviewing the allegations and taking the vote on the 702
summary suspension. 703

The board shall issue a written order of suspension by 704
certified mail or in person in accordance with section 119.07 of 705
the Revised Code. The order shall not be subject to suspension by 706
the court during pendency of any appeal filed under section 119.12 707
of the Revised Code. If the individual subject to the summary 708
suspension requests an adjudicatory hearing by the board, the date 709
set for the hearing shall be within fifteen days, but not earlier 710
than seven days, after the individual requests the hearing, unless 711
otherwise agreed to by both the board and the individual. 712

Any summary suspension imposed under this division shall 713
remain in effect, unless reversed on appeal, until a final 714
adjudicative order issued by the board pursuant to this section 715
and Chapter 119. of the Revised Code becomes effective. The board 716
shall issue its final adjudicative order within seventy-five days 717
after completion of its hearing. A failure to issue the order 718
within seventy-five days shall result in dissolution of the 719
summary suspension order but shall not invalidate any subsequent, 720
final adjudicative order. 721

(H) If the board takes action under division (B)(9), (11), or 722
(13) of this section and the judicial finding of guilt, guilty 723
plea, or judicial finding of eligibility for intervention in lieu 724
of conviction is overturned on appeal, upon exhaustion of the 725
criminal appeal, a petition for reconsideration of the order may 726
be filed with the board along with appropriate court documents. 727
Upon receipt of a petition of that nature and supporting court 728

documents, the board shall reinstate the individual's certificate 729
to practice. The board may then hold an adjudication under Chapter 730
119. of the Revised Code to determine whether the individual 731
committed the act in question. Notice of an opportunity for a 732
hearing shall be given in accordance with Chapter 119. of the 733
Revised Code. If the board finds, pursuant to an adjudication held 734
under this division, that the individual committed the act or if 735
no hearing is requested, the board may order any of the sanctions 736
identified under division (B) of this section. 737

(I) The certificate to practice issued to an individual under 738
this chapter and the individual's practice in this state are 739
automatically suspended as of the date of the individual's second 740
or subsequent plea of guilty to, or judicial finding of guilt of, 741
a violation of section 2919.123 of the Revised Code, or the date 742
the individual pleads guilty to, is found by a judge or jury to be 743
guilty of, or is subject to a judicial finding of eligibility for 744
intervention in lieu of conviction in this state or treatment or 745
intervention in lieu of conviction in another jurisdiction for any 746
of the following criminal offenses in this state or a 747
substantially equivalent criminal offense in another jurisdiction: 748
aggravated murder, murder, voluntary manslaughter, felonious 749
assault, kidnapping, rape, sexual battery, gross sexual 750
imposition, aggravated arson, aggravated robbery, or aggravated 751
burglary. Continued practice after suspension shall be considered 752
practicing without a certificate. 753

The board shall notify the individual subject to the 754
suspension by certified mail or in person in accordance with 755
section 119.07 of the Revised Code. If an individual whose 756
certificate is automatically suspended under this division fails 757
to make a timely request for an adjudication under Chapter 119. of 758
the Revised Code, the board shall do whichever of the following is 759
applicable: 760

(1) If the automatic suspension under this division is 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 board shall enter an order suspending the individual's certificate to practice for a period of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's certificate to practice.

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

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

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

(L) When the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent

action taken by the board is forever thereafter ineligible to hold 793
a certificate to practice and the board shall not accept an 794
application for reinstatement of the certificate or for issuance 795
of a new certificate. 796

(M) Notwithstanding any other provision of the Revised Code, 797
all of the following apply: 798

(1) The surrender of a certificate issued under this chapter 799
shall not be effective unless or until accepted by the board. 800
Reinstatement of a certificate surrendered to the board requires 801
an affirmative vote of not fewer than six members of the board. 802

(2) An application for a certificate made under the 803
provisions of this chapter may not be withdrawn without approval 804
of the board. 805

(3) Failure by an individual to renew a certificate of 806
registration in accordance with this chapter shall not remove or 807
limit the board's jurisdiction to take any disciplinary action 808
under this section against the individual. 809

(N) Sanctions shall not be imposed under division (B)(28) of 810
this section against any person who waives deductibles and 811
copayments as follows: 812

(1) In compliance with the health benefit plan that expressly 813
allows such a practice. Waiver of the deductibles or copayments 814
shall be made only with the full knowledge and consent of the plan 815
purchaser, payer, and third-party administrator. Documentation of 816
the consent shall be made available to the board upon request. 817

(2) For professional services rendered to any other person 818
authorized to practice pursuant to this chapter, to the extent 819
allowed by this chapter and rules adopted by the board. 820

(O) Under the board's investigative duties described in this 821
section and subject to division (F) of this section, the board 822

shall develop and implement a quality intervention program 823
designed to improve through remedial education the clinical and 824
communication skills of individuals authorized under this chapter 825
to practice medicine and surgery, osteopathic medicine and 826
surgery, and podiatric medicine and surgery. In developing and 827
implementing the quality intervention program, the board may do 828
all of the following: 829

(1) Offer in appropriate cases as determined by the board an 830
educational and assessment program pursuant to an investigation 831
the board conducts under this section; 832

(2) Select providers of educational and assessment services, 833
including a quality intervention program panel of case reviewers; 834

(3) Make referrals to educational and assessment service 835
providers and approve individual educational programs recommended 836
by those providers. The board shall monitor the progress of each 837
individual undertaking a recommended individual educational 838
program. 839

(4) Determine what constitutes successful completion of an 840
individual educational program and require further monitoring of 841
the individual who completed the program or other action that the 842
board determines to be appropriate; 843

(5) Adopt rules in accordance with Chapter 119. of the 844
Revised Code to further implement the quality intervention 845
program. 846

An individual who participates in an individual educational 847
program pursuant to this division shall pay the financial 848
obligations arising from that educational program. 849

Section 2. That existing section 4731.22 of the Revised Code 850
is hereby repealed. 851

Section 3. Section 4731.22 of the Revised Code is presented 852

in this act as a composite of the section as amended by Am. Sub. 853
H.B. 280, Sub. H.B. 525, and Sub. S.B. 229 of the 127th General 854
Assembly. The General Assembly, applying the principle stated in 855
division (B) of section 1.52 of the Revised Code that amendments 856
are to be harmonized if reasonably capable of simultaneous 857
operation, finds that the composite is the resulting version of 858
the section in effect prior to the effective date of the section 859
as presented in this act. 860