

As Reported by the House Health and Aging Committee

129th General Assembly

Regular Session

2011-2012

Sub. H. B. No. 125

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

—

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. 61

(2) A person who intends to perform an abortion on a pregnant 62
woman shall determine if there is the presence of a fetal 63
heartbeat of the unborn human individual that the pregnant woman 64
is carrying according to standard medical practice. A person shall 65
comply with division (C)(2) of this section regardless of whether 66
or not the director of health promulgated rules under division 67
(C)(3) of this section. 68

(3) The director of health may promulgate rules pursuant to 69
section 111.15 of the Revised Code for the appropriate methods of 70
performing an examination for the presence of a fetal heartbeat of 71
an unborn human individual based on standard medical practice. 72

(4) If a physician performs an abortion on a pregnant woman prior to determining if the fetus the pregnant woman is carrying has a detectable fetal heartbeat, that physician is subject to disciplinary action under division (B)(41) of section 4731.22 of the Revised Code. 73
74
75
76
77

(D)(1) Division (D) of this section applies to all abortions that are not prohibited under sections 2919.12, 2919.121, and 2919.151 of the Revised Code, except when a medical emergency exists that prevents compliance with this division. 78
79
80
81

(2) If the person who intends to perform an abortion on a pregnant woman detects a fetal heartbeat in the unborn human individual that the pregnant woman is carrying, no later than twenty-four hours prior to the performance of the intended abortion, both of the following apply: 82
83
84
85
86

(a) The person intending to perform the abortion shall inform the pregnant woman in writing that the unborn human individual that the pregnant woman is carrying has a fetal heartbeat and shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectable fetal heartbeat. A person shall comply with division (D)(2)(a) of this section regardless of whether or not the director of health promulgated rules under division (D)(3) of this section. 87
88
89
90
91
92
93
94
95
96

(b) The pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform the abortion that the unborn human individual that the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual that the pregnant woman is carrying to term. 97
98
99
100
101
102
103

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

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

(E)(1) Except as provided in division (E)(2) or (3) of this section, no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected according to the requirements of division (C) of this section.

(2) A person is not in violation of division (E)(1) of this section if that person performs a medical procedure designed to or intended to prevent the death of a pregnant woman or, in that person's reasonable medical judgment, to preserve the life of the pregnant woman.

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

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

particular stage of a pregnancy. 135

(5) Whoever violates division (E) of this section is guilty 136
of performing an abortion after the detection of a fetal 137
heartbeat, a felony of the fifth degree. 138

(F) A pregnant woman on whom an abortion is performed in 139
violation of division (C) or (E) of this section is not guilty of 140
violating division (C) or (E) of this section or of attempting to 141
commit, conspiring to commit, or complicity in committing a 142
violation of division (C) or (E) of this section and is not 143
subject to a civil penalty based on that violation. 144

(G) Nothing in this section prohibits the sale, use, 145
prescription, or administration of a measure, drug, or chemical 146
designed for contraceptive purposes. 147

(H) If a state or federal court of competent jurisdiction 148
finds that a provision of this section is unconstitutional, the 149
effective date of that provision is tolled until either of the 150
following occur: 151

(1) An appellate tribunal finds that provision to be 152
constitutional. 153

(2) The attorney general certifies in an opinion to the 154
governor that, due to a subsequent decision or decisions by the 155
supreme court of the United States, it is reasonably probable that 156
the provision would be upheld as constitutional by a court of 157
competent jurisdiction. 158

(I) If a provision of this section is found constitutional by 159
an appellate tribunal or the attorney general issues an opinion as 160
described in division (H)(2) of this section, the provision shall 161
be prospective. 162

(J) If any provisions of this section or its application to 163
any person or circumstance is held invalid, the invalidity does 164

not affect other provisions or applications of this section that 165
can be given effect without the invalid provision or application, 166
and to this end the provisions of this section are severable. 167

Sec. 4731.22. (A) The state medical board, by an affirmative 168
vote of not fewer than six of its members, may revoke or may 169
refuse to grant a certificate to a person found by the board to 170
have committed fraud during the administration of the examination 171
for a certificate to practice or to have committed fraud, 172
misrepresentation, or deception in applying for or securing any 173
certificate to practice or certificate of registration issued by 174
the board. 175

(B) The board, by an affirmative vote of not fewer than six 176
members, shall, to the extent permitted by law, limit, revoke, or 177
suspend an individual's certificate to practice, refuse to 178
register an individual, refuse to reinstate a certificate, or 179
reprimand or place on probation the holder of a certificate for 180
one or more of the following reasons: 181

(1) Permitting one's name or one's certificate to practice or 182
certificate of registration to be used by a person, group, or 183
corporation when the individual concerned is not actually 184
directing the treatment given; 185

(2) Failure to maintain minimal standards applicable to the 186
selection or administration of drugs, or failure to employ 187
acceptable scientific methods in the selection of drugs or other 188
modalities for treatment of disease; 189

(3) Selling, giving away, personally furnishing, prescribing, 190
or administering drugs for other than legal and legitimate 191
therapeutic purposes or a plea of guilty to, a judicial finding of 192
guilt of, or a judicial finding of eligibility for intervention in 193
lieu of conviction of, a violation of any federal or state law 194
regulating the possession, distribution, or use of any drug; 195

(4) Willfully betraying a professional confidence. 196

For purposes of this division, "willfully betraying a 197
professional confidence" does not include providing any 198
information, documents, or reports to a child fatality review 199
board under sections 307.621 to 307.629 of the Revised Code and 200
does not include the making of a report of an employee's use of a 201
drug of abuse, or a report of a condition of an employee other 202
than one involving the use of a drug of abuse, to the employer of 203
the employee as described in division (B) of section 2305.33 of 204
the Revised Code. Nothing in this division affects the immunity 205
from civil liability conferred by that section upon a physician 206
who makes either type of report in accordance with division (B) of 207
that section. As used in this division, "employee," "employer," 208
and "physician" have the same meanings as in section 2305.33 of 209
the Revised Code. 210

(5) Making a false, fraudulent, deceptive, or misleading 211
statement in the solicitation of or advertising for patients; in 212
relation to the practice of medicine and surgery, osteopathic 213
medicine and surgery, podiatric medicine and surgery, or a limited 214
branch of medicine; or in securing or attempting to secure any 215
certificate to practice or certificate of registration issued by 216
the board. 217

As used in this division, "false, fraudulent, deceptive, or 218
misleading statement" means a statement that includes a 219
misrepresentation of fact, is likely to mislead or deceive because 220
of a failure to disclose material facts, is intended or is likely 221
to create false or unjustified expectations of favorable results, 222
or includes representations or implications that in reasonable 223
probability will cause an ordinarily prudent person to 224
misunderstand or be deceived. 225

(6) A departure from, or the failure to conform to, minimal 226
standards of care of similar practitioners under the same or 227

similar circumstances, whether or not actual injury to a patient	228
is established;	229
(7) Representing, with the purpose of obtaining compensation	230
or other advantage as personal gain or for any other person, that	231
an incurable disease or injury, or other incurable condition, can	232
be permanently cured;	233
(8) The obtaining of, or attempting to obtain, money or	234
anything of value by fraudulent misrepresentations in the course	235
of practice;	236
(9) A plea of guilty to, a judicial finding of guilt of, or a	237
judicial finding of eligibility for intervention in lieu of	238
conviction for, a felony;	239
(10) Commission of an act that constitutes a felony in this	240
state, regardless of the jurisdiction in which the act was	241
committed;	242
(11) A plea of guilty to, a judicial finding of guilt of, or	243
a judicial finding of eligibility for intervention in lieu of	244
conviction for, a misdemeanor committed in the course of practice;	245
(12) Commission of an act in the course of practice that	246
constitutes a misdemeanor in this state, regardless of the	247
jurisdiction in which the act was committed;	248
(13) A plea of guilty to, a judicial finding of guilt of, or	249
a judicial finding of eligibility for intervention in lieu of	250
conviction for, a misdemeanor involving moral turpitude;	251
(14) Commission of an act involving moral turpitude that	252
constitutes a misdemeanor in this state, regardless of the	253
jurisdiction in which the act was committed;	254
(15) Violation of the conditions of limitation placed by the	255
board upon a certificate to practice;	256
(16) Failure to pay license renewal fees specified in this	257

chapter; 258

(17) Except as authorized in section 4731.31 of the Revised 259
Code, engaging in the division of fees for referral of patients, 260
or the receiving of a thing of value in return for a specific 261
referral of a patient to utilize a particular service or business; 262

(18) Subject to section 4731.226 of the Revised Code, 263
violation of any provision of a code of ethics of the American 264
medical association, the American osteopathic association, the 265
American podiatric medical association, or any other national 266
professional organizations that the board specifies by rule. The 267
state medical board shall obtain and keep on file current copies 268
of the codes of ethics of the various national professional 269
organizations. The individual whose certificate is being suspended 270
or revoked shall not be found to have violated any provision of a 271
code of ethics of an organization not appropriate to the 272
individual's profession. 273

For purposes of this division, a "provision of a code of 274
ethics of a national professional organization" does not include 275
any provision that would preclude the making of a report by a 276
physician of an employee's use of a drug of abuse, or of a 277
condition of an employee other than one involving the use of a 278
drug of abuse, to the employer of the employee as described in 279
division (B) of section 2305.33 of the Revised Code. Nothing in 280
this division affects the immunity from civil liability conferred 281
by that section upon a physician who makes either type of report 282
in accordance with division (B) of that section. As used in this 283
division, "employee," "employer," and "physician" have the same 284
meanings as in section 2305.33 of the Revised Code. 285

(19) Inability to practice according to acceptable and 286
prevailing standards of care by reason of mental illness or 287
physical illness, including, but not limited to, physical 288
deterioration that adversely affects cognitive, motor, or 289

perceptive skills. 290

In enforcing this division, the board, upon a showing of a 291
possible violation, may compel any individual authorized to 292
practice by this chapter or who has submitted an application 293
pursuant to this chapter to submit to a mental examination, 294
physical examination, including an HIV test, or both a mental and 295
a physical examination. The expense of the examination is the 296
responsibility of the individual compelled to be examined. Failure 297
to submit to a mental or physical examination or consent to an HIV 298
test ordered by the board constitutes an admission of the 299
allegations against the individual unless the failure is due to 300
circumstances beyond the individual's control, and a default and 301
final order may be entered without the taking of testimony or 302
presentation of evidence. If the board finds an individual unable 303
to practice because of the reasons set forth in this division, the 304
board shall require the individual to submit to care, counseling, 305
or treatment by physicians approved or designated by the board, as 306
a condition for initial, continued, reinstated, or renewed 307
authority to practice. An individual affected under this division 308
shall be afforded an opportunity to demonstrate to the board the 309
ability to resume practice in compliance with acceptable and 310
prevailing standards under the provisions of the individual's 311
certificate. For the purpose of this division, any individual who 312
applies for or receives a certificate to practice under this 313
chapter accepts the privilege of practicing in this state and, by 314
so doing, shall be deemed to have given consent to submit to a 315
mental or physical examination when directed to do so in writing 316
by the board, and to have waived all objections to the 317
admissibility of testimony or examination reports that constitute 318
a privileged communication. 319

(20) Except when civil penalties are imposed under section 320
4731.225 or 4731.281 of the Revised Code, and subject to section 321

4731.226 of the Revised Code, violating or attempting to violate, 322
directly or indirectly, or assisting in or abetting the violation 323
of, or conspiring to violate, any provisions of this chapter or 324
any rule promulgated by the board. 325

This division does not apply to a violation or attempted 326
violation of, assisting in or abetting the violation of, or a 327
conspiracy to violate, any provision of this chapter or any rule 328
adopted by the board that would preclude the making of a report by 329
a physician of an employee's use of a drug of abuse, or of a 330
condition of an employee other than one involving the use of a 331
drug of abuse, to the employer of the employee as described in 332
division (B) of section 2305.33 of the Revised Code. Nothing in 333
this division affects the immunity from civil liability conferred 334
by that section upon a physician who makes either type of report 335
in accordance with division (B) of that section. As used in this 336
division, "employee," "employer," and "physician" have the same 337
meanings as in section 2305.33 of the Revised Code. 338

(21) The violation of section 3701.79 of the Revised Code or 339
of any abortion rule adopted by the public health council pursuant 340
to section 3701.341 of the Revised Code; 341

(22) Any of the following actions taken by the agency 342
responsible for regulating the practice of medicine and surgery, 343
osteopathic medicine and surgery, podiatric medicine and surgery, 344
or the limited branches of medicine in another jurisdiction, for 345
any reason other than the nonpayment of fees: the limitation, 346
revocation, or suspension of an individual's license to practice; 347
acceptance of an individual's license surrender; denial of a 348
license; refusal to renew or reinstate a license; imposition of 349
probation; or issuance of an order of censure or other reprimand; 350

(23) The violation of section 2919.12 of the Revised Code or 351
the performance or inducement of an abortion upon a pregnant woman 352
with actual knowledge that the conditions specified in division 353

(B) of section 2317.56 of the Revised Code have not been satisfied 354
or with a heedless indifference as to whether those conditions 355
have been satisfied, unless an affirmative defense as specified in 356
division (H)(2) of that section would apply in a civil action 357
authorized by division (H)(1) of that section; 358

(24) The revocation, suspension, restriction, reduction, or 359
termination of clinical privileges by the United States department 360
of defense or department of veterans affairs or the termination or 361
suspension of a certificate of registration to prescribe drugs by 362
the drug enforcement administration of the United States 363
department of justice; 364

(25) Termination or suspension from participation in the 365
medicare or medicaid programs by the department of health and 366
human services or other responsible agency for any act or acts 367
that also would constitute a violation of division (B)(2), (3), 368
(6), (8), or (19) of this section; 369

(26) Impairment of ability to practice according to 370
acceptable and prevailing standards of care because of habitual or 371
excessive use or abuse of drugs, alcohol, or other substances that 372
impair ability to practice. 373

For the purposes of this division, any individual authorized 374
to practice by this chapter accepts the privilege of practicing in 375
this state subject to supervision by the board. By filing an 376
application for or holding a certificate to practice under this 377
chapter, an individual shall be deemed to have given consent to 378
submit to a mental or physical examination when ordered to do so 379
by the board in writing, and to have waived all objections to the 380
admissibility of testimony or examination reports that constitute 381
privileged communications. 382

If it has reason to believe that any individual authorized to 383
practice by this chapter or any applicant for certification to 384

practice suffers such impairment, the board may compel the 385
individual to submit to a mental or physical examination, or both. 386
The expense of the examination is the responsibility of the 387
individual compelled to be examined. Any mental or physical 388
examination required under this division shall be undertaken by a 389
treatment provider or physician who is qualified to conduct the 390
examination and who is chosen by the board. 391

Failure to submit to a mental or physical examination ordered 392
by the board constitutes an admission of the allegations against 393
the individual unless the failure is due to circumstances beyond 394
the individual's control, and a default and final order may be 395
entered without the taking of testimony or presentation of 396
evidence. If the board determines that the individual's ability to 397
practice is impaired, the board shall suspend the individual's 398
certificate or deny the individual's application and shall require 399
the individual, as a condition for initial, continued, reinstated, 400
or renewed certification to practice, to submit to treatment. 401

Before being eligible to apply for reinstatement of a 402
certificate suspended under this division, the impaired 403
practitioner shall demonstrate to the board the ability to resume 404
practice in compliance with acceptable and prevailing standards of 405
care under the provisions of the practitioner's certificate. The 406
demonstration shall include, but shall not be limited to, the 407
following: 408

(a) Certification from a treatment provider approved under 409
section 4731.25 of the Revised Code that the individual has 410
successfully completed any required inpatient treatment; 411

(b) Evidence of continuing full compliance with an aftercare 412
contract or consent agreement; 413

(c) Two written reports indicating that the individual's 414
ability to practice has been assessed and that the individual has 415

been found capable of practicing according to acceptable and 416
prevailing standards of care. The reports shall be made by 417
individuals or providers approved by the board for making the 418
assessments and shall describe the basis for their determination. 419

The board may reinstate a certificate suspended under this 420
division after that demonstration and after the individual has 421
entered into a written consent agreement. 422

When the impaired practitioner resumes practice, the board 423
shall require continued monitoring of the individual. The 424
monitoring shall include, but not be limited to, compliance with 425
the written consent agreement entered into before reinstatement or 426
with conditions imposed by board order after a hearing, and, upon 427
termination of the consent agreement, submission to the board for 428
at least two years of annual written progress reports made under 429
penalty of perjury stating whether the individual has maintained 430
sobriety. 431

(27) A second or subsequent violation of section 4731.66 or 432
4731.69 of the Revised Code; 433

(28) Except as provided in division (N) of this section: 434

(a) Waiving the payment of all or any part of a deductible or 435
copayment that a patient, pursuant to a health insurance or health 436
care policy, contract, or plan that covers the individual's 437
services, otherwise would be required to pay if the waiver is used 438
as an enticement to a patient or group of patients to receive 439
health care services from that individual; 440

(b) Advertising that the individual will waive the payment of 441
all or any part of a deductible or copayment that a patient, 442
pursuant to a health insurance or health care policy, contract, or 443
plan that covers the individual's services, otherwise would be 444
required to pay. 445

(29) Failure to use universal blood and body fluid 446

precautions established by rules adopted under section 4731.051 of 447
the Revised Code; 448

(30) Failure to provide notice to, and receive acknowledgment 449
of the notice from, a patient when required by section 4731.143 of 450
the Revised Code prior to providing nonemergency professional 451
services, or failure to maintain that notice in the patient's 452
file; 453

(31) Failure of a physician supervising a physician assistant 454
to maintain supervision in accordance with the requirements of 455
Chapter 4730. of the Revised Code and the rules adopted under that 456
chapter; 457

(32) Failure of a physician or podiatrist to enter into a 458
standard care arrangement with a clinical nurse specialist, 459
certified nurse-midwife, or certified nurse practitioner with whom 460
the physician or podiatrist is in collaboration pursuant to 461
section 4731.27 of the Revised Code or failure to fulfill the 462
responsibilities of collaboration after entering into a standard 463
care arrangement; 464

(33) Failure to comply with the terms of a consult agreement 465
entered into with a pharmacist pursuant to section 4729.39 of the 466
Revised Code; 467

(34) Failure to cooperate in an investigation conducted by 468
the board under division (F) of this section, including failure to 469
comply with a subpoena or order issued by the board or failure to 470
answer truthfully a question presented by the board at a 471
deposition or in written interrogatories, except that failure to 472
cooperate with an investigation shall not constitute grounds for 473
discipline under this section if a court of competent jurisdiction 474
has issued an order that either quashes a subpoena or permits the 475
individual to withhold the testimony or evidence in issue; 476

(35) Failure to supervise an acupuncturist in accordance with 477

Chapter 4762. of the Revised Code and the board's rules for supervision of an acupuncturist;	478 479
(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;	480 481 482
(37) Assisting suicide as defined in section 3795.01 of the Revised Code;	483 484
(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;	485 486
(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;	487 488 489
(40) 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;	490 491 492
<u>(41) Performing an abortion on a pregnant woman prior to determining if the fetus the pregnant woman is carrying has a detectable fetal heartbeat, as provided in division (C) of section 2919.19 of the Revised Code.</u>	493 494 495 496
(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.	497 498 499 500 501 502 503 504 505 506 507 508

If the board takes disciplinary action against an individual 509
under division (B) of this section for a second or subsequent plea 510
of guilty to, or judicial finding of guilt of, a violation of 511
section 2919.123 of the Revised Code, the disciplinary action 512
shall consist of a suspension of the individual's certificate to 513
practice for a period of at least one year or, if determined 514
appropriate by the board, a more serious sanction involving the 515
individual's certificate to practice. Any consent agreement 516
entered into under this division with an individual that pertains 517
to a second or subsequent plea of guilty to, or judicial finding 518
of guilt of, a violation of that section shall provide for a 519
suspension of the individual's certificate to practice for a 520
period of at least one year or, if determined appropriate by the 521
board, a more serious sanction involving the individual's 522
certificate to practice. 523

(D) For purposes of divisions (B)(10), (12), and (14) of this 524
section, the commission of the act may be established by a finding 525
by the board, pursuant to an adjudication under Chapter 119. of 526
the Revised Code, that the individual committed the act. The board 527
does not have jurisdiction under those divisions if the trial 528
court renders a final judgment in the individual's favor and that 529
judgment is based upon an adjudication on the merits. The board 530
has jurisdiction under those divisions if the trial court issues 531
an order of dismissal upon technical or procedural grounds. 532

(E) The sealing of conviction records by any court shall have 533
no effect upon a prior board order entered under this section or 534
upon the board's jurisdiction to take action under this section 535
if, based upon a plea of guilty, a judicial finding of guilt, or a 536
judicial finding of eligibility for intervention in lieu of 537
conviction, the board issued a notice of opportunity for a hearing 538
prior to the court's order to seal the records. The board shall 539
not be required to seal, destroy, redact, or otherwise modify its 540

records to reflect the court's sealing of conviction records. 541

(F)(1) The board shall investigate evidence that appears to 542
show that a person has violated any provision of this chapter or 543
any rule adopted under it. Any person may report to the board in a 544
signed writing any information that the person may have that 545
appears to show a violation of any provision of this chapter or 546
any rule adopted under it. In the absence of bad faith, any person 547
who reports information of that nature or who testifies before the 548
board in any adjudication conducted under Chapter 119. of the 549
Revised Code shall not be liable in damages in a civil action as a 550
result of the report or testimony. Each complaint or allegation of 551
a violation received by the board shall be assigned a case number 552
and shall be recorded by the board. 553

(2) Investigations of alleged violations of this chapter or 554
any rule adopted under it shall be supervised by the supervising 555
member elected by the board in accordance with section 4731.02 of 556
the Revised Code and by the secretary as provided in section 557
4731.39 of the Revised Code. The president may designate another 558
member of the board to supervise the investigation in place of the 559
supervising member. No member of the board who supervises the 560
investigation of a case shall participate in further adjudication 561
of the case. 562

(3) In investigating a possible violation of this chapter or 563
any rule adopted under this chapter, the board may administer 564
oaths, order the taking of depositions, issue subpoenas, and 565
compel the attendance of witnesses and production of books, 566
accounts, papers, records, documents, and testimony, except that a 567
subpoena for patient record information shall not be issued 568
without consultation with the attorney general's office and 569
approval of the secretary and supervising member of the board. 570
Before issuance of a subpoena for patient record information, the 571
secretary and supervising member shall determine whether there is 572

probable cause to believe that the complaint filed alleges a 573
violation of this chapter or any rule adopted under it and that 574
the records sought are relevant to the alleged violation and 575
material to the investigation. The subpoena may apply only to 576
records that cover a reasonable period of time surrounding the 577
alleged violation. 578

On failure to comply with any subpoena issued by the board 579
and after reasonable notice to the person being subpoenaed, the 580
board may move for an order compelling the production of persons 581
or records pursuant to the Rules of Civil Procedure. 582

A subpoena issued by the board may be served by a sheriff, 583
the sheriff's deputy, or a board employee designated by the board. 584
Service of a subpoena issued by the board may be made by 585
delivering a copy of the subpoena to the person named therein, 586
reading it to the person, or leaving it at the person's usual 587
place of residence. When the person being served is a person whose 588
practice is authorized by this chapter, service of the subpoena 589
may be made by certified mail, restricted delivery, return receipt 590
requested, and the subpoena shall be deemed served on the date 591
delivery is made or the date the person refuses to accept 592
delivery. 593

A sheriff's deputy who serves a subpoena shall receive the 594
same fees as a sheriff. Each witness who appears before the board 595
in obedience to a subpoena shall receive the fees and mileage 596
provided for under section 119.094 of the Revised Code. 597

(4) All hearings and investigations of the board shall be 598
considered civil actions for the purposes of section 2305.252 of 599
the Revised Code. 600

(5) Information received by the board pursuant to an 601
investigation is confidential and not subject to discovery in any 602
civil action. 603

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

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

(6) On a quarterly basis, the board shall prepare a report

that documents the disposition of all cases during the preceding 636
three months. The report shall contain the following information 637
for each case with which the board has completed its activities: 638

(a) The case number assigned to the complaint or alleged 639
violation; 640

(b) The type of certificate to practice, if any, held by the 641
individual against whom the complaint is directed; 642

(c) A description of the allegations contained in the 643
complaint; 644

(d) The disposition of the case. 645

The report shall state how many cases are still pending and 646
shall be prepared in a manner that protects the identity of each 647
person involved in each case. The report shall be a public record 648
under section 149.43 of the Revised Code. 649

(G) If the secretary and supervising member determine that 650
there is clear and convincing evidence that an individual has 651
violated division (B) of this section and that the individual's 652
continued practice presents a danger of immediate and serious harm 653
to the public, they may recommend that the board suspend the 654
individual's certificate to practice without a prior hearing. 655
Written allegations shall be prepared for consideration by the 656
board. 657

The board, upon review of those allegations and by an 658
affirmative vote of not fewer than six of its members, excluding 659
the secretary and supervising member, may suspend a certificate 660
without a prior hearing. A telephone conference call may be 661
utilized for reviewing the allegations and taking the vote on the 662
summary suspension. 663

The board shall issue a written order of suspension by 664
certified mail or in person in accordance with section 119.07 of 665

the Revised Code. The order shall not be subject to suspension by 666
the court during pendency of any appeal filed under section 119.12 667
of the Revised Code. If the individual subject to the summary 668
suspension requests an adjudicatory hearing by the board, the date 669
set for the hearing shall be within fifteen days, but not earlier 670
than seven days, after the individual requests the hearing, unless 671
otherwise agreed to by both the board and the individual. 672

Any summary suspension imposed under this division shall 673
remain in effect, unless reversed on appeal, until a final 674
adjudicative order issued by the board pursuant to this section 675
and Chapter 119. of the Revised Code becomes effective. The board 676
shall issue its final adjudicative order within seventy-five days 677
after completion of its hearing. A failure to issue the order 678
within seventy-five days shall result in dissolution of the 679
summary suspension order but shall not invalidate any subsequent, 680
final adjudicative order. 681

(H) If the board takes action under division (B)(9), (11), or 682
(13) of this section and the judicial finding of guilt, guilty 683
plea, or judicial finding of eligibility for intervention in lieu 684
of conviction is overturned on appeal, upon exhaustion of the 685
criminal appeal, a petition for reconsideration of the order may 686
be filed with the board along with appropriate court documents. 687
Upon receipt of a petition of that nature and supporting court 688
documents, the board shall reinstate the individual's certificate 689
to practice. The board may then hold an adjudication under Chapter 690
119. of the Revised Code to determine whether the individual 691
committed the act in question. Notice of an opportunity for a 692
hearing shall be given in accordance with Chapter 119. of the 693
Revised Code. If the board finds, pursuant to an adjudication held 694
under this division, that the individual committed the act or if 695
no hearing is requested, the board may order any of the sanctions 696
identified under division (B) of this section. 697

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

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

(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. 730

(J) If the board is required by Chapter 119. of the Revised 731
Code to give notice of an opportunity for a hearing and if the 732
individual subject to the notice does not timely request a hearing 733
in accordance with section 119.07 of the Revised Code, the board 734
is not required to hold a hearing, but may adopt, by an 735
affirmative vote of not fewer than six of its members, a final 736
order that contains the board's findings. In that final order, the 737
board may order any of the sanctions identified under division (A) 738
or (B) of this section. 739

(K) Any action taken by the board under division (B) of this 740
section resulting in a suspension from practice shall be 741
accompanied by a written statement of the conditions under which 742
the individual's certificate to practice may be reinstated. The 743
board shall adopt rules governing conditions to be imposed for 744
reinstatement. Reinstatement of a certificate suspended pursuant 745
to division (B) of this section requires an affirmative vote of 746
not fewer than six members of the board. 747

(L) When the board refuses to grant a certificate to an 748
applicant, revokes an individual's certificate to practice, 749
refuses to register an applicant, or refuses to reinstate an 750
individual's certificate to practice, the board may specify that 751
its action is permanent. An individual subject to a permanent 752
action taken by the board is forever thereafter ineligible to hold 753
a certificate to practice and the board shall not accept an 754
application for reinstatement of the certificate or for issuance 755
of a new certificate. 756

(M) Notwithstanding any other provision of the Revised Code, 757
all of the following apply: 758

(1) The surrender of a certificate issued under this chapter 759
shall not be effective unless or until accepted by the board. 760

Reinstatement of a certificate surrendered to the board requires 761
an affirmative vote of not fewer than six members of the board. 762

(2) An application for a certificate made under the 763
provisions of this chapter may not be withdrawn without approval 764
of the board. 765

(3) Failure by an individual to renew a certificate of 766
registration in accordance with this chapter shall not remove or 767
limit the board's jurisdiction to take any disciplinary action 768
under this section against the individual. 769

(N) Sanctions shall not be imposed under division (B)(28) of 770
this section against any person who waives deductibles and 771
copayments as follows: 772

(1) In compliance with the health benefit plan that expressly 773
allows such a practice. Waiver of the deductibles or copayments 774
shall be made only with the full knowledge and consent of the plan 775
purchaser, payer, and third-party administrator. Documentation of 776
the consent shall be made available to the board upon request. 777

(2) For professional services rendered to any other person 778
authorized to practice pursuant to this chapter, to the extent 779
allowed by this chapter and rules adopted by the board. 780

(O) Under the board's investigative duties described in this 781
section and subject to division (F) of this section, the board 782
shall develop and implement a quality intervention program 783
designed to improve through remedial education the clinical and 784
communication skills of individuals authorized under this chapter 785
to practice medicine and surgery, osteopathic medicine and 786
surgery, and podiatric medicine and surgery. In developing and 787
implementing the quality intervention program, the board may do 788
all of the following: 789

(1) Offer in appropriate cases as determined by the board an 790
educational and assessment program pursuant to an investigation 791

the board conducts under this section;	792
(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;	793 794
(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.	795 796 797 798 799
(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;	800 801 802 803
(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.	804 805 806
An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.	807 808 809
Section 2. That existing section 4731.22 of the Revised Code is hereby repealed.	810 811
Section 3. Section 4731.22 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 280, Sub. H.B. 525, and Sub. S.B. 229 of the 127th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.	812 813 814 815 816 817 818 819 820