

As Introduced

**129th General Assembly
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S. B. No. 72

Senator Lehner

**Cosponsors: Senators Bacon, Beagle, Cates, Daniels, Faber, Gillmor,
Grendell, Hite, Hughes, Jordan, Patton, Schaffer, Seitz, Wagoner, Wilson**

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A B I L L

To amend sections 2305.11, 2307.52, 2919.16, and 1
4731.22, to enact new sections 2919.17 and 2
2919.18, to enact section 2919.171, and to repeal 3
sections 2919.17 and 2919.18 of the Revised Code 4
to revise the criminal laws governing 5
post-viability abortions. 6

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

Section 1. That sections 2305.11, 2307.52, 2919.16, and 7
4731.22 be amended and new sections 2919.17 and 2919.18 and 8
section 2919.171 of the Revised Code be enacted to read as 9
follows: 10

Sec. 2305.11. (A) An action for libel, slander, malicious 11
prosecution, or false imprisonment, an action for malpractice 12
other than an action upon a medical, dental, optometric, or 13
chiropractic claim, or an action upon a statute for a penalty or 14
forfeiture shall be commenced within one year after the cause of 15
action accrued, provided that an action by an employee for the 16
payment of unpaid minimum wages, unpaid overtime compensation, or 17
liquidated damages by reason of the nonpayment of minimum wages or 18

overtime compensation shall be commenced within two years after 19
the cause of action accrued. 20

(B) A civil action for unlawful abortion pursuant to section 21
2919.12 of the Revised Code, a civil action authorized by division 22
(H) of section 2317.56 of the Revised Code, a civil action 23
pursuant to division (B)(1) or (2) of section 2307.51 of the 24
Revised Code for performing a dilation and extraction procedure or 25
attempting to perform a dilation and extraction procedure in 26
violation of section 2919.15 of the Revised Code, and a civil 27
action pursuant to division (B)~~(1) or (2)~~ of section 2307.52 of 28
the Revised Code for terminating or attempting to terminate a 29
human pregnancy after viability in violation of division (A) ~~or~~ 30
~~(B)~~ of section 2919.17 of the Revised Code shall be commenced 31
within one year after the performance or inducement of the 32
abortion, within one year after the attempt to perform or induce 33
the abortion in violation of division (A) ~~or (B)~~ of section 34
2919.17 of the Revised Code, within one year after the performance 35
of the dilation and extraction procedure, or, in the case of a 36
civil action pursuant to division (B)(2) of section 2307.51 of the 37
Revised Code, within one year after the attempt to perform the 38
dilation and extraction procedure. 39

(C) As used in this section, "medical claim," "dental claim," 40
"optometric claim," and "chiropractic claim" have the same 41
meanings as in section 2305.113 of the Revised Code. 42

Sec. 2307.52. (A) As used in this section: 43

(1) "Frivolous conduct" has the same meaning as in section 44
2323.51 of the Revised Code. 45

(2) "Viable" has the same meaning as in section 2919.16 of 46
the Revised Code. 47

(B)~~(1)~~ A woman upon whom an abortion is purposely performed 48

or induced or attempted to be performed or induced in violation of 49
division (A) of section 2919.17 of the Revised Code has and may 50
commence a civil action for compensatory damages, punitive or 51
exemplary damages if authorized by section 2315.21 of the Revised 52
Code, and court costs and reasonable attorney's fees against the 53
person who purposely performed or induced or attempted to perform 54
or induce the abortion in violation of division (A) of section 55
2919.17 of the Revised Code. 56

~~(2) A woman upon whom an abortion is purposely performed or 57
induced or attempted to be performed or induced in violation of 58
division (B) of section 2919.17 of the Revised Code has and may 59
commence a civil action for compensatory damages, punitive or 60
exemplary damages if authorized by section 2315.21 of the Revised 61
Code, and court costs and reasonable attorney's fees against the 62
person who purposely performed or induced or attempted to perform 63
or induce the abortion in violation of division (B) of section 64
2919.17 of the Revised Code. 65~~

(C) If a judgment is rendered in favor of the defendant in a 66
civil action commenced pursuant to division (B)~~(1) or (2)~~ of this 67
section and the court finds, upon the filing of a motion under 68
section 2323.51 of the Revised Code, that the commencement of the 69
civil action constitutes frivolous conduct and that the defendant 70
was adversely affected by the frivolous conduct, the court shall 71
award in accordance with section 2323.51 of the Revised Code 72
reasonable attorney's fees to the defendant. 73

Sec. 2919.16. As used in sections 2919.16 to 2919.18 of the 74
Revised Code: 75

(A) "Fertilization" means the fusion of a human spermatozoon 76
with a human ovum. 77

(B) "Gestational age" or "gestation" means the age of an 78
unborn ~~human~~ child as calculated from the first day of the last 79

menstrual period of a pregnant woman. 80

(C) "Health care facility" means a hospital, clinic, 81
ambulatory surgical treatment center, other center, medical 82
school, office of a physician, infirmary, dispensary, medical 83
training institution, or other institution or location in or at 84
which medical care, treatment, or diagnosis is provided to a 85
person. 86

(D) "Hospital" has the same meanings as in sections 3701.01, 87
3727.01, and 5122.01 of the Revised Code. 88

(E) "Live birth" has the same meaning as in division (A) of 89
section 3705.01 of the Revised Code. 90

(F) "Medical emergency" means a condition that ~~a pregnant~~ 91
~~woman's physician determines,~~ in the physician's good faith and ~~in~~ 92
~~the exercise of reasonable~~ medical judgment, based upon the facts 93
known to the physician at that time, so complicates the woman's 94
pregnancy as to necessitate the immediate performance or 95
inducement of an abortion in order to prevent the death of the 96
pregnant woman or to avoid a serious risk of the substantial and 97
irreversible impairment of a major bodily function of the pregnant 98
woman that delay in the performance or inducement of the abortion 99
would create. 100

(G) "Physician" has the same meaning as in section 2305.113 101
of the Revised Code. 102

(H) "Pregnant" means the human female reproductive condition, 103
that commences with fertilization, of having a developing fetus. 104

(I) "Pregnancy" means the condition of being pregnant. 105

(J) "Premature infant" means a human whose live birth occurs 106
prior to thirty-eight weeks of gestational age. 107

~~(J)~~(K) "Serious risk of the substantial and irreversible 108
impairment of a major bodily function" means any medically 109

diagnosed condition that so complicates the pregnancy of the woman 110
as to directly or indirectly cause the substantial and 111
irreversible impairment of a major bodily function, ~~including, but~~ 112
~~not limited to, the following conditions:~~ 113

~~(1) Pre-eclampsia;~~ 114

~~(2) Inevitable abortion;~~ 115

~~(3) Prematurely ruptured membrane;~~ 116

~~(4) Diabetes;~~ 117

~~(5) Multiple sclerosis. A medically diagnosed condition that 118
constitutes a "serious risk of the substantial and irreversible 119
impairment of a major bodily function" includes pre-eclampsia, 120
inevitable abortion, and premature rupture of the membranes, may 121
include, but is not limited to, diabetes and multiple sclerosis, 122
and does not include a condition related to the woman's mental 123
health. 124~~

~~(K)(L) "Unborn human child" means an individual organism of 125
the species homo sapiens from fertilization until live birth. 126~~

~~(L)(M) "Viable" means the stage of development of a human 127
fetus at which in the determination of a physician, based on the 128
particular facts of a woman's pregnancy that are known to the 129
physician and in light of medical technology and information 130
reasonably available to the physician, there is a realistic 131
possibility of the maintaining and nourishing of a life outside of 132
the womb with or without temporary artificial life-sustaining 133
support. 134~~

Sec. 2919.17. (A) No person shall purposely perform or induce 135
or attempt to perform or induce an abortion on a pregnant woman 136
when the unborn child is viable. 137

(B)(1) It is an affirmative defense to a charge under 138
division (A) of this section that the abortion was performed or 139

induced or attempted to be performed or induced by a physician and 140
that the physician determined, in the physician's good faith 141
medical judgment, based on the facts known to the physician at 142
that time, that either of the following applied: 143

(a) The unborn child was not viable. 144

(b) The abortion was necessary to prevent the death of the 145
pregnant woman or a serious risk of the substantial and 146
irreversible impairment of a major bodily function of the pregnant 147
woman. 148

(2) No abortion shall be considered necessary under division 149
(B)(1)(b) of this section on the basis of a claim or diagnosis 150
that the pregnant woman will engage in conduct that would result 151
in the pregnant woman's death or a substantial and irreversible 152
impairment of a major bodily function of the pregnant woman or 153
based on any reason related to the woman's mental health. 154

(C) Except when a medical emergency exists that prevents 155
compliance with section 2919.18 of the Revised Code, the 156
affirmative defense set forth in division (B)(1)(a) of this 157
section does not apply unless the physician who performs or 158
induces or attempts to perform or induce the abortion performs the 159
viability testing required by division (A) of section 2919.18 of 160
the Revised Code and certifies in writing, based on the results of 161
the tests performed, that in the physician's good faith medical 162
judgment the unborn child is not viable. 163

(D) Except when a medical emergency exists that prevents 164
compliance with one or more of the following conditions, the 165
affirmative defense set forth in division (B)(1)(b) of this 166
section does not apply unless the physician who performs or 167
induces or attempts to perform or induce the abortion complies 168
with all of the following conditions: 169

(1) The physician who performs or induces or attempts to 170

perform or induce the abortion certifies in writing that, in the 171
physician's good faith medical judgment, based on the facts known 172
to the physician at that time, the abortion is necessary to 173
prevent the death of the pregnant woman or a serious risk of the 174
substantial and irreversible impairment of a major bodily function 175
of the pregnant woman. 176

(2) Another physician who is not professionally related to 177
the physician who intends to perform or induce the abortion 178
certifies in writing that, in that physician's good faith medical 179
judgment, based on the facts known to that physician at that time, 180
the abortion is necessary to prevent the death of the pregnant 181
woman or a serious risk of the substantial and irreversible 182
impairment of a major bodily function of the pregnant woman. 183

(3) The physician performs or induces or attempts to perform 184
or induce the abortion in a hospital or other health care facility 185
that has appropriate neonatal services for premature infants. 186

(4) The physician who performs or induces or attempts to 187
perform or induce the abortion terminates or attempts to terminate 188
the pregnancy in the manner that provides the best opportunity for 189
the unborn child to survive, unless that physician determines, in 190
the physician's good faith medical judgment, based on the facts 191
known to the physician at that time, that the termination of the 192
pregnancy in that manner poses a greater risk of the death of the 193
pregnant woman or a greater risk of the substantial and 194
irreversible impairment of a major bodily function of the pregnant 195
woman than would other available methods of abortion. 196

(5) The physician certifies in writing the available method 197
or techniques considered and the reasons for choosing the method 198
or technique employed. 199

(6) The physician who performs or induces or attempts to 200
perform or induce the abortion has arranged for the attendance in 201

the same room in which the abortion is to be performed or induced 202
or attempted to be performed or induced at least one other 203
physician who is to take control of, provide immediate medical 204
care for, and take all reasonable steps necessary to preserve the 205
life and health of the unborn child immediately upon the child's 206
complete expulsion or extraction from the pregnant woman. 207

(E) For purposes of this section, there is a rebuttable 208
presumption that an unborn child of at least twenty-four weeks 209
gestational age is viable. 210

(F) Whoever violates this section is guilty of terminating or 211
attempting to terminate a human pregnancy after viability, a 212
felony of the fourth degree. 213

(G) The state medical board shall revoke a physician's 214
license to practice medicine in this state if the physician 215
violates this section. 216

(H) Any physician who performs or induces an abortion or 217
attempts to perform or induce an abortion with actual knowledge 218
that neither of the affirmative defenses set forth in division 219
(B)(1) of this section applies, or with a heedless indifference as 220
to whether either affirmative defense applies, is liable in a 221
civil action for compensatory and exemplary damages and reasonable 222
attorney's fees to any person, or the representative of the estate 223
of any person, who sustains injury, death, or loss to person or 224
property as the result of the performance or inducement or the 225
attempted performance or inducement of the abortion. In any action 226
under this division, the court also may award any injunctive or 227
other equitable relief that the court considers appropriate. 228

(I) A pregnant woman on whom an abortion is performed or 229
induced or attempted to be performed or induced in violation of 230
division (A) of this section is not guilty of violating division 231
(A) of this section or of attempting to commit, conspiring to 232

commit, or complicity in committing a violation of division (A) of 233
this section. 234

Sec. 2919.171. (A) A physician who performs or induces or 235
attempts to perform or induce an abortion on a pregnant woman 236
shall submit a report to the department of health in accordance 237
with the forms, rules, and regulations adopted by the department 238
that includes all of the information the physician is required to 239
certify in writing or determine under sections 2919.17 and 2919.18 240
of the Revised Code. 241

(B) By September 30 of each year, the department of health 242
shall issue a public report that provides statistics for the 243
previous calendar year compiled from all of the reports covering 244
that calendar year submitted to the department in accordance with 245
this section for each of the items listed in division (A) of this 246
section. The report shall also provide the statistics for each 247
previous calendar year in which a report was filed with the 248
department pursuant to this section, adjusted to reflect any 249
additional information that a physician provides to the department 250
in a late or corrected report. The department shall ensure that 251
none of the information included in the report could reasonably 252
lead to the identification of any pregnant woman upon whom an 253
abortion is performed. 254

(C)(1) The physician shall submit the report described in 255
division (A) of this section to the department of health within 256
fifteen days after the woman is discharged. If the physician fails 257
to submit the report more than thirty days after that fifteen-day 258
deadline, the physician shall be subject to a late fee of five 259
hundred dollars for each additional thirty-day period or portion 260
of a thirty-day period the report is overdue. A physician who is 261
required to submit to the department of health a report under 262
division (A) of this section and who has not submitted a report or 263

has submitted an incomplete report more than one year following 264
the fifteen-day deadline may, in an action brought by the 265
department of health, be directed by a court of competent 266
jurisdiction to submit a complete report to the department of 267
health within a period of time stated in a court order or be 268
subject to contempt of court. 269

(2) If a physician fails to comply with the requirements of 270
this section, other than filing a late report with the department 271
of health, or fails to submit a complete report to the department 272
of health in accordance with a court order, the physician is 273
subject to division (B)(41) of section 4731.22 of the Revised 274
Code. 275

(3) No person shall falsify any report required under this 276
section. Whoever violates this division is guilty of abortion 277
report falsification, a misdemeanor of the first degree. 278

(D) Within ninety days of the effective date of this section, 279
the department of health shall adopt rules pursuant to section 280
111.15 of the Revised Code to assist in compliance with this 281
section. 282

Sec. 2919.18. (A) Except in a medical emergency that prevents 283
compliance with this division, no physician shall perform or 284
induce or attempt to perform or induce an abortion on a pregnant 285
woman after the beginning of the twentieth week of gestation 286
unless, prior to the performance or inducement of the abortion or 287
the attempt to perform or induce the abortion, the physician 288
determines, in the physician's good faith medical judgment, that 289
the unborn child is not viable, and the physician makes that 290
determination after performing a medical examination of the 291
pregnant woman and after performing or causing to be performed 292
those tests for assessing gestational age, weight, lung maturity, 293
or other tests that the physician, in that physician's good faith 294

medical judgment, believes are necessary to determine whether an 295
unborn child is viable. 296

(B) Except in a medical emergency that prevents compliance 297
with this division, no physician shall perform or induce or 298
attempt to perform or induce an abortion on a pregnant woman after 299
the beginning of the twentieth week of gestation without first 300
entering the determination made in division (A) of this section 301
and the associated findings of the medical examination and tests 302
in the medical record of the pregnant woman. 303

(C) Whoever violates this section is guilty of failure to 304
perform viability testing, a misdemeanor of the fourth degree. 305

(D) The state medical board shall suspend a physician's 306
license to practice medicine in this state for a period of not 307
less than six months if the physician violates this section. 308

Sec. 4731.22. (A) The state medical board, by an affirmative 309
vote of not fewer than six of its members, may revoke or may 310
refuse to grant a certificate to a person found by the board to 311
have committed fraud during the administration of the examination 312
for a certificate to practice or to have committed fraud, 313
misrepresentation, or deception in applying for or securing any 314
certificate to practice or certificate of registration issued by 315
the board. 316

(B) The board, by an affirmative vote of not fewer than six 317
members, shall, to the extent permitted by law, limit, revoke, or 318
suspend an individual's certificate to practice, refuse to 319
register an individual, refuse to reinstate a certificate, or 320
reprimand or place on probation the holder of a certificate for 321
one or more of the following reasons: 322

(1) Permitting one's name or one's certificate to practice or 323
certificate of registration to be used by a person, group, or 324

corporation when the individual concerned is not actually 325
directing the treatment given; 326

(2) Failure to maintain minimal standards applicable to the 327
selection or administration of drugs, or failure to employ 328
acceptable scientific methods in the selection of drugs or other 329
modalities for treatment of disease; 330

(3) Selling, giving away, personally furnishing, prescribing, 331
or administering drugs for other than legal and legitimate 332
therapeutic purposes or a plea of guilty to, a judicial finding of 333
guilt of, or a judicial finding of eligibility for intervention in 334
lieu of conviction of, a violation of any federal or state law 335
regulating the possession, distribution, or use of any drug; 336

(4) Willfully betraying a professional confidence. 337

For purposes of this division, "willfully betraying a 338
professional confidence" does not include providing any 339
information, documents, or reports to a child fatality review 340
board under sections 307.621 to 307.629 of the Revised Code and 341
does not include the making of a report of an employee's use of a 342
drug of abuse, or a report of a condition of an employee other 343
than one involving the use of a drug of abuse, to the employer of 344
the employee as described in division (B) of section 2305.33 of 345
the Revised Code. Nothing in this division affects the immunity 346
from civil liability conferred by that section upon a physician 347
who makes either type of report in accordance with division (B) of 348
that section. As used in this division, "employee," "employer," 349
and "physician" have the same meanings as in section 2305.33 of 350
the Revised Code. 351

(5) Making a false, fraudulent, deceptive, or misleading 352
statement in the solicitation of or advertising for patients; in 353
relation to the practice of medicine and surgery, osteopathic 354
medicine and surgery, podiatric medicine and surgery, or a limited 355

branch of medicine; or in securing or attempting to secure any 356
certificate to practice or certificate of registration issued by 357
the board. 358

As used in this division, "false, fraudulent, deceptive, or 359
misleading statement" means a statement that includes a 360
misrepresentation of fact, is likely to mislead or deceive because 361
of a failure to disclose material facts, is intended or is likely 362
to create false or unjustified expectations of favorable results, 363
or includes representations or implications that in reasonable 364
probability will cause an ordinarily prudent person to 365
misunderstand or be deceived. 366

(6) A departure from, or the failure to conform to, minimal 367
standards of care of similar practitioners under the same or 368
similar circumstances, whether or not actual injury to a patient 369
is established; 370

(7) Representing, with the purpose of obtaining compensation 371
or other advantage as personal gain or for any other person, that 372
an incurable disease or injury, or other incurable condition, can 373
be permanently cured; 374

(8) The obtaining of, or attempting to obtain, money or 375
anything of value by fraudulent misrepresentations in the course 376
of practice; 377

(9) A plea of guilty to, a judicial finding of guilt of, or a 378
judicial finding of eligibility for intervention in lieu of 379
conviction for, a felony; 380

(10) Commission of an act that constitutes a felony in this 381
state, regardless of the jurisdiction in which the act was 382
committed; 383

(11) A plea of guilty to, a judicial finding of guilt of, or 384
a judicial finding of eligibility for intervention in lieu of 385
conviction for, a misdemeanor committed in the course of practice; 386

(12) Commission of an act in the course of practice that 387
constitutes a misdemeanor in this state, regardless of the 388
jurisdiction in which the act was committed; 389

(13) A plea of guilty to, a judicial finding of guilt of, or 390
a judicial finding of eligibility for intervention in lieu of 391
conviction for, a misdemeanor involving moral turpitude; 392

(14) Commission of an act involving moral turpitude that 393
constitutes a misdemeanor in this state, regardless of the 394
jurisdiction in which the act was committed; 395

(15) Violation of the conditions of limitation placed by the 396
board upon a certificate to practice; 397

(16) Failure to pay license renewal fees specified in this 398
chapter; 399

(17) Except as authorized in section 4731.31 of the Revised 400
Code, engaging in the division of fees for referral of patients, 401
or the receiving of a thing of value in return for a specific 402
referral of a patient to utilize a particular service or business; 403

(18) Subject to section 4731.226 of the Revised Code, 404
violation of any provision of a code of ethics of the American 405
medical association, the American osteopathic association, the 406
American podiatric medical association, or any other national 407
professional organizations that the board specifies by rule. The 408
state medical board shall obtain and keep on file current copies 409
of the codes of ethics of the various national professional 410
organizations. The individual whose certificate is being suspended 411
or revoked shall not be found to have violated any provision of a 412
code of ethics of an organization not appropriate to the 413
individual's profession. 414

For purposes of this division, a "provision of a code of 415
ethics of a national professional organization" does not include 416
any provision that would preclude the making of a report by a 417

physician of an employee's use of a drug of abuse, or of a 418
condition of an employee other than one involving the use of a 419
drug of abuse, to the employer of the employee as described in 420
division (B) of section 2305.33 of the Revised Code. Nothing in 421
this division affects the immunity from civil liability conferred 422
by that section upon a physician who makes either type of report 423
in accordance with division (B) of that section. As used in this 424
division, "employee," "employer," and "physician" have the same 425
meanings as in section 2305.33 of the Revised Code. 426

(19) Inability to practice according to acceptable and 427
prevailing standards of care by reason of mental illness or 428
physical illness, including, but not limited to, physical 429
deterioration that adversely affects cognitive, motor, or 430
perceptive skills. 431

In enforcing this division, the board, upon a showing of a 432
possible violation, may compel any individual authorized to 433
practice by this chapter or who has submitted an application 434
pursuant to this chapter to submit to a mental examination, 435
physical examination, including an HIV test, or both a mental and 436
a physical examination. The expense of the examination is the 437
responsibility of the individual compelled to be examined. Failure 438
to submit to a mental or physical examination or consent to an HIV 439
test ordered by the board constitutes an admission of the 440
allegations against the individual unless the failure is due to 441
circumstances beyond the individual's control, and a default and 442
final order may be entered without the taking of testimony or 443
presentation of evidence. If the board finds an individual unable 444
to practice because of the reasons set forth in this division, the 445
board shall require the individual to submit to care, counseling, 446
or treatment by physicians approved or designated by the board, as 447
a condition for initial, continued, reinstated, or renewed 448
authority to practice. An individual affected under this division 449

shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's certificate. For the purpose of this division, any individual who applies for or receives a certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

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

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or 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.

(21) The violation of section 3701.79 of the Revised Code or of any abortion rule adopted by the public health council pursuant

to section 3701.341 of the Revised Code; 482

(22) Any of the following actions taken by the agency 483
responsible for regulating the practice of medicine and surgery, 484
osteopathic medicine and surgery, podiatric medicine and surgery, 485
or the limited branches of medicine in another jurisdiction, for 486
any reason other than the nonpayment of fees: the limitation, 487
revocation, or suspension of an individual's license to practice; 488
acceptance of an individual's license surrender; denial of a 489
license; refusal to renew or reinstate a license; imposition of 490
probation; or issuance of an order of censure or other reprimand; 491

(23) The violation of section 2919.12 of the Revised Code or 492
the performance or inducement of an abortion upon a pregnant woman 493
with actual knowledge that the conditions specified in division 494
(B) of section 2317.56 of the Revised Code have not been satisfied 495
or with a heedless indifference as to whether those conditions 496
have been satisfied, unless an affirmative defense as specified in 497
division (H)(2) of that section would apply in a civil action 498
authorized by division (H)(1) of that section; 499

(24) The revocation, suspension, restriction, reduction, or 500
termination of clinical privileges by the United States department 501
of defense or department of veterans affairs or the termination or 502
suspension of a certificate of registration to prescribe drugs by 503
the drug enforcement administration of the United States 504
department of justice; 505

(25) Termination or suspension from participation in the 506
medicare or medicaid programs by the department of health and 507
human services or other responsible agency for any act or acts 508
that also would constitute a violation of division (B)(2), (3), 509
(6), (8), or (19) of this section; 510

(26) Impairment of ability to practice according to 511
acceptable and prevailing standards of care because of habitual or 512

excessive use or abuse of drugs, alcohol, or other substances that 513
impair ability to practice. 514

For the purposes of this division, any individual authorized 515
to practice by this chapter accepts the privilege of practicing in 516
this state subject to supervision by the board. By filing an 517
application for or holding a certificate to practice under this 518
chapter, an individual shall be deemed to have given consent to 519
submit to a mental or physical examination when ordered to do so 520
by the board in writing, and to have waived all objections to the 521
admissibility of testimony or examination reports that constitute 522
privileged communications. 523

If it has reason to believe that any individual authorized to 524
practice by this chapter or any applicant for certification to 525
practice suffers such impairment, the board may compel the 526
individual to submit to a mental or physical examination, or both. 527
The expense of the examination is the responsibility of the 528
individual compelled to be examined. Any mental or physical 529
examination required under this division shall be undertaken by a 530
treatment provider or physician who is qualified to conduct the 531
examination and who is chosen by the board. 532

Failure to submit to a mental or physical examination ordered 533
by the board constitutes an admission of the allegations against 534
the individual unless the failure is due to circumstances beyond 535
the individual's control, and a default and final order may be 536
entered without the taking of testimony or presentation of 537
evidence. If the board determines that the individual's ability to 538
practice is impaired, the board shall suspend the individual's 539
certificate or deny the individual's application and shall require 540
the individual, as a condition for initial, continued, reinstated, 541
or renewed certification to practice, to submit to treatment. 542

Before being eligible to apply for reinstatement of a 543
certificate suspended under this division, the impaired 544

practitioner shall demonstrate to the board the ability to resume 545
practice in compliance with acceptable and prevailing standards of 546
care under the provisions of the practitioner's certificate. The 547
demonstration shall include, but shall not be limited to, the 548
following: 549

(a) Certification from a treatment provider approved under 550
section 4731.25 of the Revised Code that the individual has 551
successfully completed any required inpatient treatment; 552

(b) Evidence of continuing full compliance with an aftercare 553
contract or consent agreement; 554

(c) Two written reports indicating that the individual's 555
ability to practice has been assessed and that the individual has 556
been found capable of practicing according to acceptable and 557
prevailing standards of care. The reports shall be made by 558
individuals or providers approved by the board for making the 559
assessments and shall describe the basis for their determination. 560

The board may reinstate a certificate suspended under this 561
division after that demonstration and after the individual has 562
entered into a written consent agreement. 563

When the impaired practitioner resumes practice, the board 564
shall require continued monitoring of the individual. The 565
monitoring shall include, but not be limited to, compliance with 566
the written consent agreement entered into before reinstatement or 567
with conditions imposed by board order after a hearing, and, upon 568
termination of the consent agreement, submission to the board for 569
at least two years of annual written progress reports made under 570
penalty of perjury stating whether the individual has maintained 571
sobriety. 572

(27) A second or subsequent violation of section 4731.66 or 573
4731.69 of the Revised Code; 574

(28) Except as provided in division (N) of this section: 575

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

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

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

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

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

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

(33) Failure to comply with the terms of a consult agreement

entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

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

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

(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;

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

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

(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;

(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;

(41) Failure to comply with the requirements of section 2919.171 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete

report as described in section 2919.171 of the Revised Code. 637

(C) Disciplinary actions taken by the board under divisions 638
(A) and (B) of this section shall be taken pursuant to an 639
adjudication under Chapter 119. of the Revised Code, except that 640
in lieu of an adjudication, the board may enter into a consent 641
agreement with an individual to resolve an allegation of a 642
violation of this chapter or any rule adopted under it. A consent 643
agreement, when ratified by an affirmative vote of not fewer than 644
six members of the board, shall constitute the findings and order 645
of the board with respect to the matter addressed in the 646
agreement. If the board refuses to ratify a consent agreement, the 647
admissions and findings contained in the consent agreement shall 648
be of no force or effect. 649

If the board takes disciplinary action against an individual 650
under division (B) of this section for a second or subsequent plea 651
of guilty to, or judicial finding of guilt of, a violation of 652
section 2919.123 of the Revised Code, the disciplinary action 653
shall consist of a suspension of the individual's certificate to 654
practice for a period of at least one year or, if determined 655
appropriate by the board, a more serious sanction involving the 656
individual's certificate to practice. Any consent agreement 657
entered into under this division with an individual that pertains 658
to a second or subsequent plea of guilty to, or judicial finding 659
of guilt of, a violation of that section shall provide for a 660
suspension of the individual's certificate to practice for a 661
period of at least one year or, if determined appropriate by the 662
board, a more serious sanction involving the individual's 663
certificate to practice. 664

(D) For purposes of divisions (B)(10), (12), and (14) of this 665
section, the commission of the act may be established by a finding 666
by the board, pursuant to an adjudication under Chapter 119. of 667
the Revised Code, that the individual committed the act. The board 668

does not have jurisdiction under those divisions if the trial 669
court renders a final judgment in the individual's favor and that 670
judgment is based upon an adjudication on the merits. The board 671
has jurisdiction under those divisions if the trial court issues 672
an order of dismissal upon technical or procedural grounds. 673

(E) The sealing of conviction records by any court shall have 674
no effect upon a prior board order entered under this section or 675
upon the board's jurisdiction to take action under this section 676
if, based upon a plea of guilty, a judicial finding of guilt, or a 677
judicial finding of eligibility for intervention in lieu of 678
conviction, the board issued a notice of opportunity for a hearing 679
prior to the court's order to seal the records. The board shall 680
not be required to seal, destroy, redact, or otherwise modify its 681
records to reflect the court's sealing of conviction records. 682

(F)(1) The board shall investigate evidence that appears to 683
show that a person has violated any provision of this chapter or 684
any rule adopted under it. Any person may report to the board in a 685
signed writing any information that the person may have that 686
appears to show a violation of any provision of this chapter or 687
any rule adopted under it. In the absence of bad faith, any person 688
who reports information of that nature or who testifies before the 689
board in any adjudication conducted under Chapter 119. of the 690
Revised Code shall not be liable in damages in a civil action as a 691
result of the report or testimony. Each complaint or allegation of 692
a violation received by the board shall be assigned a case number 693
and shall be recorded by the board. 694

(2) Investigations of alleged violations of this chapter or 695
any rule adopted under it shall be supervised by the supervising 696
member elected by the board in accordance with section 4731.02 of 697
the Revised Code and by the secretary as provided in section 698
4731.39 of the Revised Code. The president may designate another 699
member of the board to supervise the investigation in place of the 700

supervising member. No member of the board who supervises the 701
investigation of a case shall participate in further adjudication 702
of the case. 703

(3) In investigating a possible violation of this chapter or 704
any rule adopted under this chapter, the board may administer 705
oaths, order the taking of depositions, issue subpoenas, and 706
compel the attendance of witnesses and production of books, 707
accounts, papers, records, documents, and testimony, except that a 708
subpoena for patient record information shall not be issued 709
without consultation with the attorney general's office and 710
approval of the secretary and supervising member of the board. 711
Before issuance of a subpoena for patient record information, the 712
secretary and supervising member shall determine whether there is 713
probable cause to believe that the complaint filed alleges a 714
violation of this chapter or any rule adopted under it and that 715
the records sought are relevant to the alleged violation and 716
material to the investigation. The subpoena may apply only to 717
records that cover a reasonable period of time surrounding the 718
alleged violation. 719

On failure to comply with any subpoena issued by the board 720
and after reasonable notice to the person being subpoenaed, the 721
board may move for an order compelling the production of persons 722
or records pursuant to the Rules of Civil Procedure. 723

A subpoena issued by the board may be served by a sheriff, 724
the sheriff's deputy, or a board employee designated by the board. 725
Service of a subpoena issued by the board may be made by 726
delivering a copy of the subpoena to the person named therein, 727
reading it to the person, or leaving it at the person's usual 728
place of residence. When the person being served is a person whose 729
practice is authorized by this chapter, service of the subpoena 730
may be made by certified mail, restricted delivery, return receipt 731
requested, and the subpoena shall be deemed served on the date 732

delivery is made or the date the person refuses to accept 733
delivery. 734

A sheriff's deputy who serves a subpoena shall receive the 735
same fees as a sheriff. Each witness who appears before the board 736
in obedience to a subpoena shall receive the fees and mileage 737
provided for under section 119.094 of the Revised Code. 738

(4) All hearings and investigations of the board shall be 739
considered civil actions for the purposes of section 2305.252 of 740
the Revised Code. 741

(5) Information received by the board pursuant to an 742
investigation is confidential and not subject to discovery in any 743
civil action. 744

The board shall conduct all investigations and proceedings in 745
a manner that protects the confidentiality of patients and persons 746
who file complaints with the board. The board shall not make 747
public the names or any other identifying information about 748
patients or complainants unless proper consent is given or, in the 749
case of a patient, a waiver of the patient privilege exists under 750
division (B) of section 2317.02 of the Revised Code, except that 751
consent or a waiver of that nature is not required if the board 752
possesses reliable and substantial evidence that no bona fide 753
physician-patient relationship exists. 754

The board may share any information it receives pursuant to 755
an investigation, including patient records and patient record 756
information, with law enforcement agencies, other licensing 757
boards, and other governmental agencies that are prosecuting, 758
adjudicating, or investigating alleged violations of statutes or 759
administrative rules. An agency or board that receives the 760
information shall comply with the same requirements regarding 761
confidentiality as those with which the state medical board must 762
comply, notwithstanding any conflicting provision of the Revised 763

Code or procedure of the agency or board that applies when it is 764
dealing with other information in its possession. In a judicial 765
proceeding, the information may be admitted into evidence only in 766
accordance with the Rules of Evidence, but the court shall require 767
that appropriate measures are taken to ensure that confidentiality 768
is maintained with respect to any part of the information that 769
contains names or other identifying information about patients or 770
complainants whose confidentiality was protected by the state 771
medical board when the information was in the board's possession. 772
Measures to ensure confidentiality that may be taken by the court 773
include sealing its records or deleting specific information from 774
its records. 775

(6) On a quarterly basis, the board shall prepare a report 776
that documents the disposition of all cases during the preceding 777
three months. The report shall contain the following information 778
for each case with which the board has completed its activities: 779

(a) The case number assigned to the complaint or alleged 780
violation; 781

(b) The type of certificate to practice, if any, held by the 782
individual against whom the complaint is directed; 783

(c) A description of the allegations contained in the 784
complaint; 785

(d) The disposition of the case. 786

The report shall state how many cases are still pending and 787
shall be prepared in a manner that protects the identity of each 788
person involved in each case. The report shall be a public record 789
under section 149.43 of the Revised Code. 790

(G) If the secretary and supervising member determine that 791
there is clear and convincing evidence that an individual has 792
violated division (B) of this section and that the individual's 793
continued practice presents a danger of immediate and serious harm 794

to the public, they may recommend that the board suspend the 795
individual's certificate to practice without a prior hearing. 796
Written allegations shall be prepared for consideration by the 797
board. 798

The board, upon review of those allegations and by an 799
affirmative vote of not fewer than six of its members, excluding 800
the secretary and supervising member, may suspend a certificate 801
without a prior hearing. A telephone conference call may be 802
utilized for reviewing the allegations and taking the vote on the 803
summary suspension. 804

The board shall issue a written order of suspension by 805
certified mail or in person in accordance with section 119.07 of 806
the Revised Code. The order shall not be subject to suspension by 807
the court during pendency of any appeal filed under section 119.12 808
of the Revised Code. If the individual subject to the summary 809
suspension requests an adjudicatory hearing by the board, the date 810
set for the hearing shall be within fifteen days, but not earlier 811
than seven days, after the individual requests the hearing, unless 812
otherwise agreed to by both the board and the individual. 813

Any summary suspension imposed under this division shall 814
remain in effect, unless reversed on appeal, until a final 815
adjudicative order issued by the board pursuant to this section 816
and Chapter 119. of the Revised Code becomes effective. The board 817
shall issue its final adjudicative order within seventy-five days 818
after completion of its hearing. A failure to issue the order 819
within seventy-five days shall result in dissolution of the 820
summary suspension order but shall not invalidate any subsequent, 821
final adjudicative order. 822

(H) If the board takes action under division (B)(9), (11), or 823
(13) of this section and the judicial finding of guilt, guilty 824
plea, or judicial finding of eligibility for intervention in lieu 825
of conviction is overturned on appeal, upon exhaustion of the 826

criminal appeal, a petition for reconsideration of the order may 827
be filed with the board along with appropriate court documents. 828
Upon receipt of a petition of that nature and supporting court 829
documents, the board shall reinstate the individual's certificate 830
to practice. The board may then hold an adjudication under Chapter 831
119. of the Revised Code to determine whether the individual 832
committed the act in question. Notice of an opportunity for a 833
hearing shall be given in accordance with Chapter 119. of the 834
Revised Code. If the board finds, pursuant to an adjudication held 835
under this division, that the individual committed the act or if 836
no hearing is requested, the board may order any of the sanctions 837
identified under division (B) of this section. 838

(I) The certificate to practice issued to an individual under 839
this chapter and the individual's practice in this state are 840
automatically suspended as of the date of the individual's second 841
or subsequent plea of guilty to, or judicial finding of guilt of, 842
a violation of section 2919.123 of the Revised Code, or the date 843
the individual pleads guilty to, is found by a judge or jury to be 844
guilty of, or is subject to a judicial finding of eligibility for 845
intervention in lieu of conviction in this state or treatment or 846
intervention in lieu of conviction in another jurisdiction for any 847
of the following criminal offenses in this state or a 848
substantially equivalent criminal offense in another jurisdiction: 849
aggravated murder, murder, voluntary manslaughter, felonious 850
assault, kidnapping, rape, sexual battery, gross sexual 851
imposition, aggravated arson, aggravated robbery, or aggravated 852
burglary. Continued practice after suspension shall be considered 853
practicing without a certificate. 854

The board shall notify the individual subject to the 855
suspension by certified mail or in person in accordance with 856
section 119.07 of the Revised Code. If an individual whose 857
certificate is automatically suspended under this division fails 858

to make a timely request for an adjudication under Chapter 119. of 859
the Revised Code, the board shall do whichever of the following is 860
applicable: 861

(1) If the automatic suspension under this division is for a 862
second or subsequent plea of guilty to, or judicial finding of 863
guilt of, a violation of section 2919.123 of the Revised Code, the 864
board shall enter an order suspending the individual's certificate 865
to practice for a period of at least one year or, if determined 866
appropriate by the board, imposing a more serious sanction 867
involving the individual's certificate to practice. 868

(2) In all circumstances in which division (I)(1) of this 869
section does not apply, enter a final order permanently revoking 870
the individual's certificate to practice. 871

(J) If the board is required by Chapter 119. of the Revised 872
Code to give notice of an opportunity for a hearing and if the 873
individual subject to the notice does not timely request a hearing 874
in accordance with section 119.07 of the Revised Code, the board 875
is not required to hold a hearing, but may adopt, by an 876
affirmative vote of not fewer than six of its members, a final 877
order that contains the board's findings. In that final order, the 878
board may order any of the sanctions identified under division (A) 879
or (B) of this section. 880

(K) Any action taken by the board under division (B) of this 881
section resulting in a suspension from practice shall be 882
accompanied by a written statement of the conditions under which 883
the individual's certificate to practice may be reinstated. The 884
board shall adopt rules governing conditions to be imposed for 885
reinstatement. Reinstatement of a certificate suspended pursuant 886
to division (B) of this section requires an affirmative vote of 887
not fewer than six members of the board. 888

(L) When the board refuses to grant a certificate to an 889

applicant, revokes an individual's certificate to practice, 890
refuses to register an applicant, or refuses to reinstate an 891
individual's certificate to practice, the board may specify that 892
its action is permanent. An individual subject to a permanent 893
action taken by the board is forever thereafter ineligible to hold 894
a certificate to practice and the board shall not accept an 895
application for reinstatement of the certificate or for issuance 896
of a new certificate. 897

(M) Notwithstanding any other provision of the Revised Code, 898
all of the following apply: 899

(1) The surrender of a certificate issued under this chapter 900
shall not be effective unless or until accepted by the board. 901
Reinstatement of a certificate surrendered to the board requires 902
an affirmative vote of not fewer than six members of the board. 903

(2) An application for a certificate made under the 904
provisions of this chapter may not be withdrawn without approval 905
of the board. 906

(3) Failure by an individual to renew a certificate of 907
registration in accordance with this chapter shall not remove or 908
limit the board's jurisdiction to take any disciplinary action 909
under this section against the individual. 910

(N) Sanctions shall not be imposed under division (B)(28) of 911
this section against any person who waives deductibles and 912
copayments as follows: 913

(1) In compliance with the health benefit plan that expressly 914
allows such a practice. Waiver of the deductibles or copayments 915
shall be made only with the full knowledge and consent of the plan 916
purchaser, payer, and third-party administrator. Documentation of 917
the consent shall be made available to the board upon request. 918

(2) For professional services rendered to any other person 919
authorized to practice pursuant to this chapter, to the extent 920

allowed by this chapter and rules adopted by the board. 921

(0) Under the board's investigative duties described in this 922
section and subject to division (F) of this section, the board 923
shall develop and implement a quality intervention program 924
designed to improve through remedial education the clinical and 925
communication skills of individuals authorized under this chapter 926
to practice medicine and surgery, osteopathic medicine and 927
surgery, and podiatric medicine and surgery. In developing and 928
implementing the quality intervention program, the board may do 929
all of the following: 930

(1) Offer in appropriate cases as determined by the board an 931
educational and assessment program pursuant to an investigation 932
the board conducts under this section; 933

(2) Select providers of educational and assessment services, 934
including a quality intervention program panel of case reviewers; 935

(3) Make referrals to educational and assessment service 936
providers and approve individual educational programs recommended 937
by those providers. The board shall monitor the progress of each 938
individual undertaking a recommended individual educational 939
program. 940

(4) Determine what constitutes successful completion of an 941
individual educational program and require further monitoring of 942
the individual who completed the program or other action that the 943
board determines to be appropriate; 944

(5) Adopt rules in accordance with Chapter 119. of the 945
Revised Code to further implement the quality intervention 946
program. 947

An individual who participates in an individual educational 948
program pursuant to this division shall pay the financial 949
obligations arising from that educational program. 950

Section 2. That existing sections 2305.11, 2307.52, 2919.16, 951
4731.22 and sections 2919.17 and 2919.18 of the Revised Code are 952
hereby repealed. 953

Section 3. Section 4731.22 of the Revised Code is presented 954
in this act as a composite of the section as amended by Am. Sub. 955
H.B. 280, Sub. H.B. 525, and Sub. S.B. 229 of the 127th General 956
Assembly. The General Assembly, applying the principle stated in 957
division (B) of section 1.52 of the Revised Code that amendments 958
are to be harmonized if reasonably capable of simultaneous 959
operation, finds that the composite is the resulting version of 960
the section in effect prior to the effective date of the section 961
as presented in this act. 962