

**As Passed by the Senate**

**129th General Assembly  
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2011-2012**

**S. B. No. 72**

**Senator Lehner**

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

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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 perform or induce the abortion certifies in writing that, in the physician's good faith medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. 170  
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(2) Another physician who is not professionally related to the physician who intends to perform or induce the abortion certifies in writing that, in that physician's good faith medical judgment, based on the facts known to that physician at that time, the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. 177  
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(3) The physician performs or induces or attempts to perform or induce the abortion in a hospital or other health care facility that has appropriate neonatal services for premature infants. 184  
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(4) The physician who performs or induces or attempts to perform or induce the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in the physician's good faith medical judgment, based on the facts known to the physician at that time, that the termination of the pregnancy in that manner poses a greater risk of the death of the pregnant woman or a greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion. 187  
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(5) The physician certifies in writing the available method or techniques considered and the reasons for choosing the method or technique employed. 197  
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(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 450  
ability to resume practice in compliance with acceptable and 451  
prevailing standards under the provisions of the individual's 452  
certificate. For the purpose of this division, any individual who 453  
applies for or receives a certificate to practice under this 454  
chapter accepts the privilege of practicing in this state and, by 455  
so doing, shall be deemed to have given consent to submit to a 456  
mental or physical examination when directed to do so in writing 457  
by the board, and to have waived all objections to the 458  
admissibility of testimony or examination reports that constitute 459  
a privileged communication. 460

(20) Except when civil penalties are imposed under section 461  
4731.225 or 4731.281 of the Revised Code, and subject to section 462  
4731.226 of the Revised Code, violating or attempting to violate, 463  
directly or indirectly, or assisting in or abetting the violation 464  
of, or conspiring to violate, any provisions of this chapter or 465  
any rule promulgated by the board. 466

This division does not apply to a violation or attempted 467  
violation of, assisting in or abetting the violation of, or a 468  
conspiracy to violate, any provision of this chapter or any rule 469  
adopted by the board that would preclude the making of a report by 470  
a physician of an employee's use of a drug of abuse, or of a 471  
condition of an employee other than one involving the use of a 472  
drug of abuse, to the employer of the employee as described in 473  
division (B) of section 2305.33 of the Revised Code. Nothing in 474  
this division affects the immunity from civil liability conferred 475  
by that section upon a physician who makes either type of report 476  
in accordance with division (B) of that section. As used in this 477  
division, "employee," "employer," and "physician" have the same 478  
meanings as in section 2305.33 of the Revised Code. 479

(21) The violation of section 3701.79 of the Revised Code or 480  
of any abortion rule adopted by the public health council pursuant 481  
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;	576 577 578 579 580 581
(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.	582 583 584 585 586
(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;	587 588 589
(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;	590 591 592 593 594
(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;	595 596 597 598
(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	599 600 601 602 603 604

care arrangement;	605
(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;	606 607 608
(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;	609 610 611 612 613 614 615 616 617
(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;	618 619 620
(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;	621 622 623
(37) Assisting suicide as defined in section 3795.01 of the Revised Code;	624 625
(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;	626 627
(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;	628 629 630
(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;	631 632 633
<u>(41) Failure to comply with the requirements of section</u>	634

2919.171 of the Revised Code or failure to submit to the 635  
department of health in accordance with a court order a complete 636  
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  
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.

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

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

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

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

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

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

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

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

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

(2) For professional services rendered to any other person

authorized to practice pursuant to this chapter, to the extent 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