

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PRETERM-CLEVELAND

C/O B. JESSIE HILL

ACLU of Ohio

4506 Chester Ave.

Cleveland, OH 44103

PLANNED PARENTHOOD

SOUTHWEST OHIO REGION

C/O Gerhardstein & Branch, LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

SHARON LINER, M.D.

C/O Gerhardstein & Branch, LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

PLANNED PARENTHOOD

GREATER OHIO

C/O Gerhardstein & Branch, LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

WOMEN'S MED GROUP

PROFESSIONAL CORPORATION

C/O Gerhardstein & Branch, LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

CAPITAL CARE NETWORK OF

TOLEDO

C/O Gerhardstein & Branch, LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

Plaintiffs,

vs.

DAVID YOST

Attorney General of Ohio

30 E. Broad Street, 14th Floor

Case No.

Judge:

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Columbus, OH 43215 :

AMY ACTON :

Director, Ohio Department of Health :

246 N. High Street :

Columbus, OH 43215 :

KIM G. ROTHERMEL, M.D. :

Secretary, State Medical Board of Ohio :

30 East Broad Street, 3rd Floor :

Columbus, OH 43215 :

BRUCE R. SAFERIN, D.P.M. :

Supervising Member, State Medical :

Board of Ohio :

30 East Broad Street, 3rd Floor :

Columbus, OH 43215 :

MICHAEL C. O'MALLEY :

Cuyahoga County Prosecutor :

Justice Center Bld. Floor 8th and 9th :

1200 Ontario Street :

Cleveland, OH 44113 :

JOSEPH T. DETERS :

Hamilton County Prosecutor :

230 E. Ninth Street, Suite 4000 :

Cincinnati, OH 45202 :

RONALD O'BRIEN :

Franklin County Prosecutor :

373 S. High Street, 14th Floor :

Columbus, OH 43215 :

GARY BISHOP :

Richland County Prosecutor :

38 South Park Street :

Mansfield, OH 44902 :

PAUL J. GAINS :

Mahoning County Prosecutor :

21 W. Boardman Street, 6th Floor :

Youngstown, OH 44503 :

MATHIAS HECK, JR. :

Montgomery County Prosecutor :

economic stability. In direct conflict with *Roe v. Wade*, 410 U.S. 113 (1973), and more than four decades of precedent affirming *Roe*'s central holding, the Ban criminalizes almost all pre-viability abortions. Specifically, the Ban makes it a crime to perform an abortion after detection of cardiac activity, which generally occurs around six weeks in pregnancy, when many women¹ are unaware they are pregnant. In so doing, the Ban prohibits approximately 90% of abortions currently performed in Ohio and violates Plaintiffs' patients' rights guaranteed by the Fourteenth Amendment to the U.S. Constitution.

4. The Ohio Legislature passed the Ban on April 10, 2019, and Governor DeWine signed the Ban on April 11, 2019. If the Ban takes effect as scheduled on July 10, 2019, it will instantly criminalize the performance of almost all abortions in Ohio. Governor DeWine acknowledged that the Ban is blatantly unconstitutional and has stated that the Ban is an opportunity to advocate for "reversal of existing legal precedents."²

5. Unless this Court grants a temporary restraining order or preliminary injunction, and later a permanent injunction, Plaintiffs will be forced to turn away patients seeking abortion care. This is a direct violation of Plaintiffs' patients' fundamental constitutional right to decide whether to have an abortion prior to viability, and causes those patients irreparable harm.

¹ Plaintiffs use "woman" or "women" in this complaint as a short-hand for people who are or may become pregnant, but note that people of all gender identities, including gender non-conforming people and transgender men, may also become pregnant and seek abortion services and would thus also suffer irreparable harm as a result of the Ban.

² *Ohio Gov. Mike DeWine Signs Ban on Abortion After 1st Heartbeat*, Associated Press (Apr. 12, 2019), <https://www.apnews.com/0b1deb8c1f5d41d8ab4c9e32446a55ce>. Similarly, S.B. 23's sponsor in the Senate acknowledged that, if upheld, S.B. 23 would create "a new standard" for determining an abortion restriction's constitutionality. Talia Kaplan, *Ohio "Heartbeat" Abortion Ban Passes Senate as Governor Vows to Sign It*, Fox News (Mar. 14, 2019), <https://www.foxnews.com/faith-values/ohio-heartbeat-abortion-ban-closer-to-becoming-law>.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

8. Venue is appropriate under 28 U.S.C § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occur in this judicial district.

PLAINTIFFS

9. Plaintiff Preterm-Cleveland ("Preterm"), a nonprofit corporation organized under the laws of the State of Ohio, has operated a reproductive health care clinic in Cleveland, Ohio since 1974. Preterm provides a wide range of reproductive and sexual health care services. The abortion providers at Preterm are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they violate the Ban. Preterm sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

10. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO's surgery center, located in Cincinnati, provides abortion services. The abortion providers at PPSWO are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they violate the Ban. PPSWO sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

11. Plaintiff Sharon Liner, M.D., is a physician licensed to practice medicine in Ohio with fifteen years of experience in women's healthcare. Dr. Liner is PPSWO's Medical

Director, and in that role she supervises physicians providing abortions, develops PPSWO's policies and procedures, and provides health care services including abortion. Dr. Liner has been providing abortions since 2002. She sues on her own behalf and on behalf of her patients.

12. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. Four PPGOH health centers, located in East Columbus, Bedford Heights, Mansfield, and Youngstown, provide abortion services. The Mansfield and Youngstown health centers provide only medication abortion services. The abortion providers at PPGOH are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they violate the Ban. PPGOH sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

13. Plaintiff Women's Med Group Professional Corporation ("WMGPC") owns and operates Women's Med Center of Dayton ("WMCD") in Kettering, Ohio. WMGPC and its predecessors have been providing abortions in the Dayton area since 1975. The abortion providers at WMCD are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they violate the Ban. WMGPC sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

14. Plaintiff Capital Care Network of Toledo ("CCNT"), a corporation organized under the laws of the State of Ohio, has operated a health care clinic in Toledo, Ohio since 2007. The abortion providers at CCNT are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they violate the Ban. CCNT sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

15. Plaintiffs provide medication abortion, surgical abortion, or both medication and surgical abortion at and after six weeks from the first day of the patient's last menstrual period ("LMP"). In accordance with Ohio law, no Plaintiffs provide abortion care at or after twenty weeks post-fertilization (twenty-two weeks LMP). Ohio Rev. Code § 2919.201.

DEFENDANTS

16. Defendant David Yost is the Attorney General of the State of Ohio. He is responsible for the enforcement of all laws, including the Ban. Under the Ban, he is also charged with commencing and prosecuting civil forfeiture when directed to do so by the State Medical Board. S.B. 23 § 1, amending Ohio Rev. Code § 2919.1912(B). He is sued in his official capacity.

17. Defendant Amy Acton, M.D., M.P.H., is the Director of the Ohio Department of Health ("ODH"), which is responsible for promulgating rules to assist in compliance with the Ban, including rules governing the process for determining whether a fetal heartbeat exists and rules dictating reporting requirements. She is charged with administering ODH. She is sued in her official capacity.

18. Defendant Kim G. Rothermel, M.D., is the Secretary of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in the Ban. She is sued in her official capacity.

19. Defendant Bruce R. Saferin, D.P.M., is the Supervising Member of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in the Ban. He is sued in his official capacity.

20. Defendant Michael C. O'Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Cuyahoga County, where Preterm's

clinic and PPGOH's Bedford Heights health center are located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

21. Defendant Joseph T. Deters is the Hamilton County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Hamilton County, where PPSWO's Cincinnati surgery center is located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

22. Defendant Ronald O'Brien is the Franklin County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Franklin County, where PPGOH's East Columbus health center is located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

23. Defendant Gary Bishop is the Richland County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Richland County, where PPGOH's Mansfield health center is located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

24. Defendant Paul G. Gains is the Mahoning County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Mahoning County, where PPGOH's Youngstown health center is located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

25. Defendant Mathias H. Heck, Jr. is the Montgomery County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Montgomery County, where WMGPC's WMCD facility is located, including the criminal provisions contained in the Ban. He is sued in his official capacity.

26. Defendant Julia R. Bates is the Lucas County Prosecutor. She is responsible for the enforcement of all of the criminal laws in Lucas County, where CCNT's health center is located, including the criminal provisions contained in the Ban. She is sued in her official capacity.

STATUTORY FRAMEWORK

27. If a pregnancy is in the uterus, Ohio law requires the provider who intends to perform an abortion to determine whether there is cardiac activity.³ If there is cardiac activity, the Ban makes it a crime to "caus[e] or abet[] the termination of" the pregnancy. S.B. 23 § 1, amending Ohio Rev. Code §§ 2919.192(A), 2919.192(B), 2919.195(A).

28. The Ban has only two very limited exceptions. The Ban permits abortion after cardiac activity is detected only if the abortion is necessary (1) to prevent the patient's death, or (2) to prevent a "serious risk of the substantial and irreversible impairment of a major bodily function." S.B. 23 § 1, amending Ohio Rev. Code § 2919.195(B). "'Serious risk of the substantial and irreversible impairment of a major bodily function' means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function." Ohio Rev. Code § 2919.16(K). A "medically diagnosed condition that constitutes a 'serious risk of the substantial and irreversible impairment of a major bodily function' includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes," but "does not include a condition related to the woman's mental health." *Id.*

³ The Ban instructs the Ohio Department of Health to adopt rules "specifying the appropriate methods of performing an examination for the purpose of determining the presence of a fetal heartbeat" within 120 days of the Ban's effective date. S.B. 23 § 1, amending Ohio Rev. Code § 2919.192.

29. A violation of the Ban is a fifth-degree felony, punishable by up to one year in prison and a fine of \$2,500. S.B. 23 § 1, amending Ohio Rev. Code § 2919.195(A); Ohio Rev. Code §§ 2929.14(A)(5), 2929.18(A)(3)(e). In addition to criminal penalties, the state medical board may assess a forfeiture of up to \$20,000 for each violation of the Ban, S.B. 23 § 1, amending Ohio Rev. Code § 2919.1912(A), and limit, revoke, or suspend a physician's medical license based on a violation of the Ban, *see* Ohio Rev. Code § 4371.22(B)(10). The Plaintiff facilities could face criminal penalties and revocation of their ambulatory surgical center license for a violation of the Ban. A patient may also bring a civil action against a provider who violates the Ban and recover damages in the amount of \$10,000 or more. S.B. 23 § 1, amending Ohio Rev. Code § 2919.199(B)(1).

FACTUAL ALLEGATIONS

30. In a normally developing embryo, cells that form the basis for development of the heart later in gestation produce activity that can be detected with ultrasound.

31. Consistent with medical practice, as well as existing law, *see* Ohio Rev. Code § 2919.191(A), Plaintiffs perform an ultrasound to date the pregnancy and to determine whether there is detectable fetal or embryonic cardiac activity.⁴ Ultrasounds can be performed either by placing a transducer on the patient's abdomen or by inserting a probe into the patient's vagina. Many providers, including providers at Plaintiff clinics, use vaginal ultrasound to confirm and date early pregnancy.

⁴ The embryonic stage of pregnancy lasts from fertilization until approximately eight to ten weeks LMP. Beginning at about eleven weeks LMP, the embryo becomes a fetus.

32. Using vaginal ultrasound, cardiac activity is generally detectable beginning at approximately six weeks, zero days LMP.⁵

33. Ohio law prohibits abortion after viability, except when that abortion is necessary to preserve the pregnant woman's life or health.⁶ Ohio Rev. Code § 2919.17.

34. Six weeks LMP is a pre-viability point in pregnancy. At that point, no embryo is capable of surviving outside of the womb. Thus, the Ban prohibits abortion well before viability.

A. A Ban on Abortion at and After Six Weeks LMP Will Practically Eliminate Abortion Care in Ohio

35. Pregnancy is commonly measured from the first day of a woman's last menstrual period. A full-term pregnancy is approximately forty weeks LMP.

36. The menstrual cycle is usually approximately four weeks long, but will vary based on the individual. Thus, even a woman with highly regular periods would be four weeks pregnant as measured from her last menstrual period when her missed period occurs. A ban on abortion at and after six weeks would only allow two weeks, at most, for a woman to learn that she is pregnant, decide whether to have an abortion, and to seek and obtain abortion care.

37. Prior to six weeks LMP, many women have none of the physical indicators of pregnancy. Many women do not menstruate at regular intervals, or they go long stretches without experiencing a menstrual period. Menstrual patterns commonly vary with age. Indeed, it is extremely common for women to have irregular periods at some point in their lives.

⁵ See Thomas Gellhaus, M.D., *ACOG Opposes Fetal Heartbeat Legislation Restricting Women's Legal Right to Abortion*, American Congress of Obstetricians & Gynecologists (Jan. 18, 2017), <https://www.acog.org/About-ACOG/News-Room/Statements/2017/ACOG-Opposes-Fetal-Heartbeat-Legislation-Restricting-Womens-Legal-Right-to-Abortion>.

⁶ Another provision of Ohio law prohibits abortion after twenty weeks post-fertilization, or twenty-two weeks LMP. Ohio Rev. Code § 2919.201.

Additionally, women may experience bleeding in early pregnancy that can be mistaken for a period.

38. Further, women who have certain common medical conditions, such as obesity, those who are breastfeeding, or those who use hormonal contraceptives may experience irregular periods and therefore may not recognize a missed period before six weeks LMP.

39. For all of these reasons, a woman may be six weeks pregnant but not realize she has missed a period, much less consider a missed period unusual or a signal that she may be pregnant.

40. On top of these biological realities, many patients face logistical obstacles that will make it difficult to obtain an abortion before six weeks in pregnancy.

41. For example, Ohio law mandates that a patient make two in-person trips to the clinic before obtaining an abortion in order to consent, determine whether there is cardiac activity, and receive state-mandated information. Ohio Rev. Code § 2317.56. These visits must be at least twenty-four hours apart. *Id.*

42. State law prohibits Medicaid and other public insurance programs, as well as private insurance plans listed on Ohio's federally run insurance exchange, from covering abortion. Ohio Rev. Code §§ 9.04, 3901.87; Ohio Admin. Code § 5160-17-01. Thus, patients often need time to gather the resources to pay for the abortion and related costs, as well as to arrange transportation to the clinic, time off from work, and possibly arrange for childcare during appointments.

43. In addition to completing this two-day process, patients under eighteen must obtain written consent from a parent or a court order from a judge before receiving abortion care. Ohio Rev. Code § 2919.121.

44. For all of the reasons stated above, approximately 90% of abortions in Ohio occur after six weeks.

45. Thus, the Ban will prohibit almost all abortion care in Ohio.

B. Impact of Banning Abortion Care in Ohio

46. The near-total ban on abortion imposed by S.B. 23 would have a devastating impact on the lives of individuals who want to consider or seek abortion in Ohio.

47. Approximately one in four women in this country will have an abortion by age forty-five. A majority of those having abortions (61%) already have at least one child, while most (66%) also plan to have a child or additional children in the future.⁷

48. Legal abortion is one of the safest medical procedures in the United States and is substantially safer than continuing a pregnancy through to childbirth. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion, and every pregnancy-related complication is more common among women giving birth than among those having abortions.⁸

49. If a woman is forced to continue a pregnancy against her will, it can pose a risk to her physical, mental, and emotional health, as well as to the stability and well-being of her family, including existing children.

⁷ See Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, Guttmacher Institute (Oct. 2017), <https://www.guttmacher.org/article/2017/10/population-group-abortion-rates-and-lifetime-incidence-abortion-united-states-2008>; *Concern for Current and Future Children a Key Reason Women Have Abortions*, Guttmacher Institute (Jan. 7, 2008), <https://www.guttmacher.org/news-release/2008/concern-current-and-future-children-key-reason-women-have-abortions>; *Abortion Facts*, National Abortion Federation, <https://prochoice.org/education-and-advocacy/about-abortion/abortion-facts/>.

⁸ Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 215 (Feb. 2012).

50. A child can place economic and emotional strain on a family and may interfere with an individual's life goals. As most patients who seek abortion already have at least one child, families must consider how an additional child will impact their ability to care for the children they already have.

51. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, carrying that pregnancy to term and giving birth poses serious medical risk and can have long-term medical and physical consequences. For a woman with a medical condition caused or exacerbated by pregnancy or for a woman who learns that her fetus has been diagnosed with a severe or lethal anomaly, these risks are increased.

52. Pregnancy, childbirth, and an additional child may exacerbate an already difficult situation for those who have suffered trauma, such as sexual assault or domestic violence.

53. If a woman is forced to continue a pregnancy against her will, it can pose a risk to her physical, mental, and emotional health, as well as to the stability and wellbeing of her family, including existing children.

54. S.B. 23 will have a disproportionate impact on the lives of Black people, other people of color, and people with low incomes in Ohio.

55. Statistics show that in 2017, Black people made up only 12.9% of Ohio's population but 40% of people who obtained abortions in Ohio; Indigenous (American Indian) people and other people of color (Asian/Pacific Islander, Multiracial, and Hispanic people) made up 8.8% of the population, but 11.9% of the people that obtain abortions.⁹

⁹ *Induced Abortions in Ohio*, Ohio Dep't of Health (2017), <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/vital-statistics/resources/vs-abortionreport2017>; *Quick Facts: Ohio*, U.S. Census Bureau, <https://www.census.gov/quickfacts/oh>.

56. Were the Ban to go into effect, Black people are likely to suffer some of the gravest consequences. Recent statistics from the U.S. Centers for Disease Control and Prevention show that Black women are three times more likely than White women to die of causes related to pregnancy.¹⁰ In Ohio, Black infants are three times more likely than their White counterparts to die before their first birthday.¹¹

57. A large majority of patients who obtain abortion care in Ohio are low income.

58. Absent an injunction, Plaintiffs will have no choice but to turn away patients in need of abortion care. Ohioans well-being and dignity would suffer irreparably. The Ban violates the constitutional rights of Plaintiffs' patients and irreparably harms them.

CLAIMS FOR RELIEF

COUNT I

(Substantive Due Process)

59. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 58.

60. By prohibiting abortion prior to viability, the Ban violates Ohioans' right to privacy guaranteed by the Fourteenth Amendment to the U.S. Constitution.

61. If the Ban is allowed to take effect, Plaintiffs' patients will be subject to irreparable harm for which no adequate remedy at law exists by preventing Plaintiffs' patients

¹⁰ Emily E. Petersen et al., *Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies for Prevention, 13 States, 2013-2017*, 68 *Morbidity & Mortality Weekly Rep.* 423 (May 10, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm?s_cid=mm6818e1_w.

¹¹ *Ohio Infant Deaths in 2017 Second-Lowest on Record While Racial Disparities in Birth Outcomes Continued*, Ohio Dep't of Health (Dec. 6, 2018), <https://odh.ohio.gov/wps/portal/gov/odh/media-center/odh-news-releases/2017-ohio-infant-mortality-report>.

from obtaining an abortion in Ohio, thereby causing them to suffer significant constitutional, medical, emotional, and other harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

- A. To immediately issue a temporary restraining order and/or preliminary injunction, and later a permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing the Ban.
- B. To enter a judgment declaring that the Ban violates the Fourteenth Amendment to the U.S. Constitution.
- C. To award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
- D. To grant such other and further relief as the Court deems just and proper.

Dated: May 15, 2019

Respectfully Submitted,

Elizabeth Watson*
Rachel Reeves*
Brigitte Amiri*
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
(212) 549-2650 (fax)
ewatson@aclu.org
rreeves@aclu.org
bamiri@aclu.org
Counsel for Plaintiff Preterm-Cleveland

Richard Muniz*
Planned Parenthood Federation of America
1110 Vermont Ave NW, Suite 300
Washington, DC 20005
(202) 973-4800
(202) 296-3480 (fax)
richard.muniz@ppfa.org
*Counsel for Plaintiffs Planned Parenthood
Southwest Ohio Region, Planned
Parenthood of Greater Ohio, and Sharon
Liner, M.D.*

Melissa Cohen*
Planned Parenthood Federation of America
123 William Street, Floor 9
New York, NY 10038
(212) 541-7800
(212) 247-6811 (fax)
melissa.cohen@ppfa.org
*Counsel for Plaintiffs Planned Parenthood
Southwest Ohio Region, Planned
Parenthood Greater of Ohio, and Sharon
Liner, M.D.*

/s/ B. Jessie Hill**
B. Jessie Hill #0074770, *Trial Attorney*
Freda J. Levenson #0045916
American Civil Liberties Union of Ohio,
Foundation, Inc.
4506 Chester Ave.
Cleveland, OH 44103
(216) 368-0553 – Jessie Hill
(614) 586-1972 x 125 – Freda Levenson
(614) 586-1974 (fax)
bjh11@cwru.edu
flevenson@acluohio.org
Counsel for Plaintiff Preterm-Cleveland

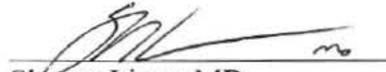
Jennifer L. Branch # 0038893
Alphonse A. Gerhardstein # 0032053
Gerhardstein & Branch Co. LPA
441 Vine Street, Suite 3400
Cincinnati, OH 45202
(513) 621-9100
(513) 345-5543 (fax)
agerhardstein@gbfirm.com
jbranch@gbfirm.com
*Counsel for Plaintiffs Planned
Parenthood Southwest Ohio Region,
Planned Parenthood of Greater Ohio,
Sharon Liner, M.D., Women's Med Group
Professional Corporation and Capital
Care Network of Toledo*

**Applications for admission pro hac vice
forthcoming*

*** Cooperating Counsel for the ACLU of
Ohio Foundation*

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint are true and correct to the best of my knowledge and belief.

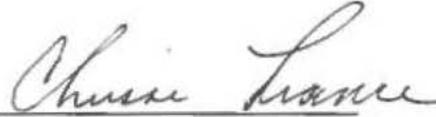


Sharon Liner, MD
Planned Parenthood Southwest Ohio

Executed on Date: 5/14/19

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint related to Plaintiff Preterm-Cleveland are true and correct to the best of my knowledge and belief.



Chrissi France
Executive Director
Preterm-Cleveland

Executed on Date: 5/14/2019

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint related to Plaintiff Planned Parenthood Southwest Ohio Region are true and correct to the best of my knowledge and belief.

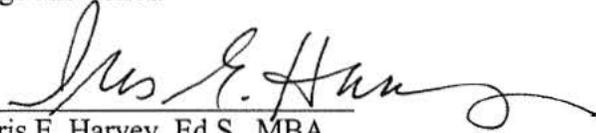


Sharon Liner, M.D.
Planned Parenthood Southwest Ohio

Executed on Date: 5/14/19

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint related to Plaintiff Planned Parenthood of Greater Ohio are true and correct to the best of my knowledge and belief.

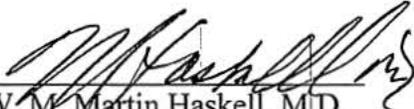


Iris E. Harvey, Ed.S., MBA
President & CEO
Planned Parenthood of Greater Ohio

Executed on Date: May 13, 2019

DECLARATION

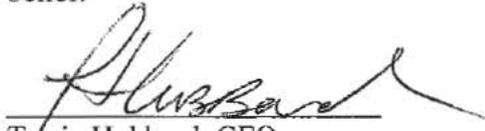
I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint related to Plaintiff Women's Med Group Professional Corporation are true and correct to the best of my knowledge and belief.



W. M. Martin Haskell, M.D.
Women's Med Group Professional Corporation
Executed on Date: 14 MAY 2019

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint related to Plaintiff Capital Care Network of Toledo are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Terrie Hubbard", written over a horizontal line.

Terrie Hubbard, CEO
Capital Care Network of Toledo

Executed on Date: 5/15/19

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Preterm-Cleveland, et al

(b) County of Residence of First Listed Plaintiff Cuyahoga (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) B. Jessie Hill 4506 Chester Ave. ACLU of Ohio Cleveland, Ohio 44103 216-368-0553

DEFENDANTS

David Yost, et al

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U S Government Plaintiff
2 U S Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country. Includes sub-columns for Incorporated or Principal Place of Business.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: Challenge to State Law SB 23 which violated the 14th Amendment to the U.S. Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Timothy S. Black DOCKET NUMBER 1:18-cv-00109

DATE 03/15/2019 SIGNATURE OF ATTORNEY OF RECORD s/ B. Jessie Hill

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

(133rd General Assembly)
(Substitute Senate Bill Number 23)

AN ACT

To amend sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2919.191 (2919.192), 2919.192 (2919.194), and 2919.193 (2919.198); and to enact new sections 2919.191 and 2919.193 and sections 2919.195, 2919.196, 2919.197, 2919.199, 2919.1910, 2919.1912, 2919.1913, and 5103.11 of the Revised Code to enact the Human Rights and Heartbeat Protection Act.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22 be amended; sections 2919.191 (2919.192), 2919.192 (2919.194), and 2919.193 (2919.198) be amended for the purpose of adopting new section numbers as shown in parentheses; and new sections 2919.191 and 2919.193 and sections 2919.195, 2919.196, 2919.197, 2919.199, 2919.1910, 2919.1912, 2919.1913, and 5103.11 of the Revised Code be enacted to read as follows:

Sec. 2317.56. (A) As used in this section:

(1) "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.

(2) "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.

(3) "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the physician informs a pregnant woman pursuant to division (B)(1)(b) of this section.

(B) Except when there is a medical emergency or medical necessity, an abortion shall be performed or induced only if all of the following conditions are satisfied:

(1) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following:

(a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure;

(b) The probable gestational age of the embryo or fetus;

(c) The medical risks associated with the pregnant woman carrying the pregnancy to term.

The meeting need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that facility or with the

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physician who is scheduled to perform or induce the abortion.

(2) At least twenty-four hours prior to the performance or inducement of the abortion, the physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(a) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion;

(b) Give the pregnant woman copies of the published materials described in division (C) of this section;

(c) Inform the pregnant woman that the materials given pursuant to division (B)(2)(b) of this section are published by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not to examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

(3) If it has been determined that the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat, the physician who is to perform or induce the abortion shall comply with the informed consent requirements in section ~~2919.192~~-2919.194 of the Revised Code in addition to complying with the informed consent requirements in divisions (B)(1), (2), (4), and (5) of this section.

(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies both of the following on that form:

(a) She has received the information and materials described in divisions (B)(1) and (2) of this section, and her questions about the abortion that will be performed or induced have been answered in a satisfactory manner.

(b) She consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person, and she is not under the influence of any drug of abuse or alcohol.

The form shall contain the name and contact information of the physician who provided to the pregnant woman the information described in division (B)(1) of this section.

(5) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed form on which she consents to the abortion and that includes the certification required by division (B)(4) of this section.

(C) The department of health shall publish in English and in Spanish, in a typeface large enough to be clearly legible, and in an easily comprehensible format, the following materials on the department's web site:

(1) Materials that inform the pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies. The materials shall be geographically indexed; include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and addresses of the agencies; and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care

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and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in division (C)(1) of this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this division.

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first sixteen weeks of pregnancy and at four-week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published ~~only~~ after it consults with ~~the Ohio state medical association and the Ohio section of the American college of obstetricians and gynecologists~~ independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(D) Upon the submission of a request to the department of health by any person, hospital, physician, or medical facility for one copy of the materials published in accordance with division (C) of this section, the department shall make the requested copy of the materials available to the person, hospital, physician, or medical facility that requested the copy.

(E) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in division (B) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

(F) If the conditions specified in division (B) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(G) The performance or inducement of an abortion without the prior satisfaction of the conditions specified in division (B) of this section does not constitute, and shall not be construed as constituting, a violation of division (A) of section 2919.12 of the Revised Code. The failure of a physician to satisfy the conditions of division (B) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of both of the following:

(1) A civil action for compensatory and exemplary damages as described in division (H) of this section;

(2) Disciplinary action under section 4731.22 of the Revised Code.

(H)(1) Subject to divisions (H)(2) and (3) of this section, any physician who performs or induces an abortion with actual knowledge that the conditions specified in division (B) of this section have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(2) The following shall be affirmative defenses in a civil action authorized by division (H)(1) of this section:

(a) The physician performed or induced the abortion under the circumstances described in division (E) of this section.

(b) The physician made a good faith effort to satisfy the conditions specified in division (B) of this section.

(3) An employer or other principal is not liable in damages in a civil action authorized by division (H)(1) of this section on the basis of the doctrine of respondeat superior unless either of the following applies:

(a) The employer or other principal had actual knowledge or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced an abortion with actual knowledge that the conditions specified in division (B) of this section had not been satisfied or with a heedless indifference as to whether those conditions had been satisfied.

(b) The employer or other principal negligently failed to secure the compliance of an employee or agent with division (B) of this section.

(4) Notwithstanding division (E) of section 2919.12 of the Revised Code, the civil action authorized by division (H)(1) of this section shall be the exclusive civil remedy for persons, or the representatives of estates of persons, who allegedly sustain injury, death, or loss to person or property as a result of a failure to satisfy the conditions specified in division (B) of this section.

(I) The department of job and family services shall prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

Sec. 2919.171. (A)(1) A physician who performs or induces or attempts to perform or induce an abortion on a pregnant woman shall submit a report to the department of health in accordance with the forms, rules, and regulations adopted by the department that includes all of the information the physician is required to certify in writing or determine under ~~sections~~ section 2919.17 and section 2919.18, divisions (A) and (C) of section 2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code.

(2) If a person other than the physician described in division (A)(1) of this section makes or maintains a record required by sections 2919.192 to 2919.196 of the Revised Code on the physician's behalf or at the physician's direction, that person shall comply with the reporting requirement described in division (A)(1) of this section as if the person were the physician described in that division.

(B) By September 30 of each year, the department of health shall issue a public report that

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provides statistics for the previous calendar year compiled from all of the reports covering that calendar year submitted to the department in accordance with this section for each of the items listed in division (A) of this section. The report shall also provide the statistics for each previous calendar year in which a report was filed with the department pursuant to this section, adjusted to reflect any additional information that a physician provides to the department in a late or corrected report. The department shall ensure that none of the information included in the report could reasonably lead to the identification of any pregnant woman upon whom an abortion is performed.

(C)(1) The physician shall submit the report described in division (A) of this section to the department of health within fifteen days after the woman is discharged. If the physician fails to submit the report more than thirty days after that fifteen-day deadline, the physician shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. A physician who is required to submit to the department of health a report under division (A) of this section and who has not submitted a report or has submitted an incomplete report more than one year following the fifteen-day deadline may, in an action brought by the department of health, be directed by a court of competent jurisdiction to submit a complete report to the department of health within a period of time stated in a court order or be subject to contempt of court.

(2) If a physician fails to comply with the requirements of this section, other than filing a late report with the department of health, or fails to submit a complete report to the department of health in accordance with a court order, the physician is subject to division (B)(44) of section 4731.22 of the Revised Code.

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

~~(D) Within ninety days of October 20, 2011, the~~ The department of health shall adopt rules pursuant to section 111.15 of the Revised Code to assist in compliance with this section.

Sec. 2919.19. (A) As used in this section and sections 2919.191 to 2919.193-2919.1910 of the Revised Code:

~~(A)-(1)~~ "Conception" means fertilization.

~~(2)~~ "Contraceptive" means a drug, device, or chemical that prevents conception.

~~(3)~~ "DNA" means deoxyribonucleic acid.

~~(4)~~ "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

~~(B)-(5)~~ "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.

~~(C)-(6)~~ "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

~~(D)-(7)~~ "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

~~(E)-(8)~~ "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.

~~(9)~~ "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.

~~(F)-(10)~~ "Physician" has the same meaning as in section 2305.113 of the Revised Code.

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~~(G)-(11)~~ "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

~~(H)-(12)~~ "Serious risk of the substantial and irreversible impairment of a major bodily function" has the same meaning as in section 2919.16 of the Revised Code.

~~(I)-(13)~~ "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

(14) "Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of section ~~2919.191-2919.192~~ of the Revised Code, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.

~~(J)-(15)~~ "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(B)(1) It is the intent of the general assembly that a court judgment or order suspending enforcement of any provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is not to be regarded as tantamount to repeal of that provision.

(2) Upon the issuance of any court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the United States Constitution restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, the attorney general may apply to the pertinent state or federal court for either or both of the following:

(a) A declaration that any one or more sections specified in division (B)(1) of this section are constitutional;

(b) A judgment or order lifting an injunction against the enforcement of any one or more sections specified in division (B)(1) of this section.

(3) If the attorney general fails to apply for the relief described in division (B)(2) of this section within the thirty-day period after an event described in that division occurs, any county prosecutor, with standing, may apply to the appropriate state or federal court for such relief.

(4) If any provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is held invalid, or if the application of such provision to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of this section and sections 2919.171 and 2919.191 to 2919.1913 of the Revised Code that can be given effect without the invalid provision or application, and to this end the provisions of this section and sections 2919.171 and 2919.191 to 2919.1913 of the Revised Code are severable as provided in section 1.50 of the Revised Code. In particular, it is the intent of the general assembly that any invalidity or potential invalidity of a provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is not to impair the immediate and continuing enforceability of the remaining provisions. It is furthermore the intent of the general assembly that the provisions of this section and sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code are not to have the

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effect of repealing or limiting any other laws of this state, except as specified by this section and sections 2919.171 and 2919.191 to 2919.193 of the Revised Code.

Sec. 2919.191. Sections 2919.192 to 2919.195 of the Revised Code apply only to intrauterine pregnancies.

Sec. ~~2919.191~~ 2919.192. (A) A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good faith understanding of standard medical practice, provided that if rules have been adopted under division ~~(C)~~ (B) of this section, the method chosen shall be one that is consistent with the rules. The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.

~~(B)(1) Except when a medical emergency exists that prevents compliance with this division, no person shall perform or induce an abortion on a pregnant woman prior to determining if the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat. Any person who performs or induces an abortion on a pregnant woman based on the exception in this division shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed and shall also note the medical condition of the pregnant woman that prevented compliance with this division. The person shall maintain a copy of the notes described in this division in the person's own records for at least seven years after the notes are entered into the medical records.~~

~~(2) The person who performs the examination for the presence of a fetal heartbeat shall give the pregnant woman the option to view or hear the fetal heartbeat.~~

~~(C) The (B) Not later than one hundred twenty days of the effective date of S.B. 23 of the 133rd general assembly, the director of health may promulgate shall adopt rules pursuant to section 111.15 of the Revised Code specifying the appropriate methods of performing an examination for the purpose of determining the presence of a fetal heartbeat of an unborn individual based on standard medical practice. The rules shall require only that an examination shall be performed externally.~~

~~(D)(C) A person is not in violation of division (A) or (B) of this section if that person has performed an examination for the purpose of determining the presence of a fetal heartbeat in the fetus of an unborn human individual utilizing standard medical practice in accordance with rules adopted under division (B) of this section, that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat, and the person notes in the pregnant woman's medical records the procedure utilized to detect the presence of a fetal heartbeat.~~

~~(E) Except as provided in division (F) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with division (A) of this section whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat. The failure of a person to satisfy the requirements of this section prior to performing or inducing an abortion on a pregnant woman may be the basis for either of the following:~~

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- (1) A civil action for compensatory and exemplary damages;
- (2) Disciplinary action under section 4731.22 of the Revised Code.

(F) ~~Division (E) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with that division.~~

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

(H) ~~A woman on whom an abortion is performed in violation of division (B) of this section or division (B)(3) of section 2317.56 of the Revised Code may file a civil action for the wrongful death of the woman's unborn child and may receive at the mother's election at any time prior to final judgment damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive.~~

Sec. 2919.193. (A) Except as provided in division (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with division (A) of section 2919.192 of the Revised Code whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat.

Whoever violates this division is guilty of performing or inducing an abortion before determining whether there is a detectable fetal heartbeat, a felony of the fifth degree. A violation of this division may also be the basis of either of the following:

- (1) A civil action for compensatory and exemplary damages;
- (2) Disciplinary action under section 4731.22 of the Revised Code.

(B) Division (A) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency, as defined in section 2919.16 of the Revised Code, exists that prevents compliance with that division.

(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in division (B) of this section shall make written notations in the pregnant woman's medical records of both of the following:

- (1) The physician's belief that a medical emergency necessitating the abortion existed;
- (2) The medical condition of the pregnant woman that assertedly prevented compliance with

division (A) of this section.

For at least seven years from the date the notations are made, the physician shall maintain in the physician's own records a copy of the notations.

(D) A person is not in violation of division (A) of this section if the person acts in accordance with division (A) of section 2919.192 of the Revised Code and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

Sec. ~~2919.192~~ 2919.194. (A) ~~If~~ Notwithstanding division (A)(3) of this section, if a person who intends to perform or induce an abortion on a pregnant woman has determined, under section ~~2919.191~~ 2919.192 of the Revised Code, that the unborn human individual the pregnant woman is

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carrying has a detectable heartbeat, the person shall not, except as provided in division (B) of this section, perform or induce the abortion ~~until~~ without meeting all of the following requirements ~~have been met and~~ without at least twenty-four hours ~~have elapsed~~ elapsing after the last of the requirements is met:

(1) The person intending to perform or induce the abortion shall inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat.

(2) The person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual the pregnant woman is carrying or, if the director of health has specified statistical probability information pursuant to rules adopted under division (C) of this section, shall provide to the pregnant woman that information.

(3) The pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual the pregnant woman is carrying to term.

(B) Division (A) of this section does not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with that division.

(C) The director of health may adopt rules that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. The rules shall be based on available medical evidence and shall be adopted in accordance with section 111.15 of the Revised Code.

(D) This section does not have the effect of repealing or limiting any other provision of the Revised Code relating to informed consent for an abortion, including the provisions in section 2317.56 of the Revised Code.

(E) Whoever violates division (A) of this section is guilty of performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat, a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.

Sec. 2919.195. (A) Except as provided in division (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with division (A) of section 2919.192 of the Revised Code.

Whoever violates this division is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree.

(B) Division (A) of this section does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this division shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable

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medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this division shall place the written document required by this division in the pregnant woman's medical records. The physician shall maintain a copy of the document in the physician's own records for at least seven years from the date the document is created.

(C) A person is not in violation of division (A) of this section if the person acts in accordance with division (A) of section 2919.192 of the Revised Code and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(D) Division (A) of this section does not have the effect of repealing or limiting any other provision of the Revised Code that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.

Sec. 2919.196. The provisions of this section are wholly independent of the requirements of sections 2919.192 to 2919.195 of the Revised Code.

(A) A person who performs or induces an abortion on a pregnant woman shall do whichever of the following is applicable:

(1) If a purported reason for the abortion is to preserve the health of the pregnant woman, the person shall specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition.

(2) If division (A)(1) of this section does not apply, the person shall specify in a written document that maternal health is not a reason of the abortion.

(B) The person who specifies the information in the document described in division (A) of this section shall place the document in the pregnant woman's medical records. The person who specifies the information shall maintain a copy of the document in the person's own records for at least seven years from the date the document is created.

Sec. 2919.197. Nothing in sections 2919.19 to 2919.196 of the Revised Code prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.

Sec. ~~2919.193~~ 2919.198. A pregnant woman on whom an abortion is performed or induced in violation of section ~~2919.191 or 2919.192~~ 2919.193, 2919.194, or 2919.195 of the Revised Code is not guilty of violating any of those sections; is not guilty of attempting to commit, conspiring to commit, or complicity in committing a violation of any of those sections; and is not subject to a civil penalty based on the abortion being performed or induced in violation of any of those sections.

Sec. 2919.199. (A) A woman who meets either or both of the following criteria may file a civil action for the wrongful death of her unborn child:

(1) A woman on whom an abortion was performed or induced in violation of division (A) of section 2919.193 or division (A) of section 2919.195 of the Revised Code;

(2) A woman on whom an abortion was performed or induced who was not given the

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information described in divisions (A)(1) and (2) of section 2919.194 of the Revised Code or who did not sign a form described in division (A)(3) of section 2919.194 of the Revised code.

(B) A woman who prevails in an action filed under division (A) of this section shall receive both of the following from the person who committed the one or more acts described in division (A) (1) or (2) of this section:

(1) Damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence at the mother's election at any time prior to final judgment subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive;

(2) Court costs and reasonable attorney's fees.

(C) A determination by a court of record that division (A) of section 2919.193 of the Revised Code, division (A)(1), (2), or (3) of section 2919.194 of the Revised Code, or division (A) of section 2919.195 of the Revised Code is unconstitutional shall be a defense to an action filed under division (A) of this section alleging that the defendant violated the division that was determined to be unconstitutional.

(D) If the defendant in an action filed under division (A) of this section prevails and all of the following apply the court shall award reasonable attorney's fees to the defendant in accordance with section 2323.51 of the Revised Code:

(1) The court finds that the commencement of the action constitutes frivolous conduct, as defined in section 2323.51 of the Revised Code.

(2) The court's finding in division (D)(1) of this section is not based on that court or another court determining that division (A) of section 2919.193 of the Revised Code, division (A)(1), (2), or (3) of section 2919.194 of the Revised Code, or division (A) of section 2919.195 of the Revised Code is unconstitutional.

(3) The court finds that the defendant was adversely affected by the frivolous conduct.

Sec. 2919.1910. (A) To ensure that citizens are informed of available options in this state, there is hereby created the joint legislative committee on adoption promotion and support. The committee may review or study any matter that it considers relevant to the adoption process in this state, with priority given to the study or review of mechanisms intended to increase awareness of the process, increase its effectiveness, or both.

(B) The committee shall consist of three members of the house of representatives appointed by the speaker of the house of representatives and three members of the senate appointed by the president of the senate. Not more than two members appointed by the speaker of the house of representatives and not more than two members appointed by the president of the senate may be of the same political party.

Each member of the committee shall hold office during the general assembly in which the member is appointed and until a successor has been appointed, notwithstanding the adjournment sine die of the general assembly in which the member was appointed or the expiration of the member's term as a member of the general assembly. Any vacancies occurring among the members of the committee shall be filled in the manner of the original appointment.

(C) The committee has the same powers as other standing or select committees of the general assembly.

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Sec. 2919.1912. (A) The state medical board may assess against a person a forfeiture of not more than twenty thousand dollars for each separate violation or failure of the person to comply with any of the requirements of sections 2919.171, 2919.192, 2919.193, 2919.194, 2919.195, or 2919.196 of the Revised Code. The board shall comply with the adjudication requirements of Chapter 119. of the Revised Code when assessing the forfeiture. The forfeiture may be in addition to criminal penalties that are imposed under other sections of the Revised Code.

(B) An action to recover a forfeiture shall be prosecuted in the name of the state and shall be brought in the court of common pleas of Franklin county. The action shall be commenced and prosecuted by the attorney general when directed by the board.

(C) Moneys collected under division (A) of this section or recovered by an action under division (B) of this section shall be paid to the treasurer of state for deposit into the foster care and adoption initiatives fund created under section 5103.11 of the Revised Code.

Sec. 2919.1913. Sections 2919.171, 2919.19 to 2919.1913, and 4731.22 of the Revised Code, as amended or enacted by this act, shall be known as the "Human Rights and Heartbeat Protection Act."

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to grant a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate if the individual applying for or holding the license or certificate is found by the board to have committed fraud during the administration of the examination for a license or certificate to practice or to have committed fraud, misrepresentation, or deception in applying for, renewing, or securing any license or certificate to practice or certificate to recommend issued by the board.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons:

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

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

(3) Except as provided in section 4731.97 of the Revised Code, selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports under sections 307.621 to 307.629 of the Revised Code to a child fatality review board; does not include providing any information, documents, or

reports to the director of health pursuant to guidelines established under section 3701.70 of the Revised Code; does not include written notice to a mental health professional under section 4731.62 of the Revised Code; and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by section 2305.33 or 4731.62 of the Revised Code upon a physician who makes a report in accordance with section 2305.33 or notifies a mental health professional in accordance with section 4731.62 of the Revised Code. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision 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.

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

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division 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 license or certificate. For the purpose of this division, any individual who applies for or receives a license or 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 as provided in division (F)(1)(b) of section 4731.282 of the Revised Code or when civil penalties are imposed under section 4731.225 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 director of health pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

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

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

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency;

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

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

If it has reason to believe that any individual authorized to practice by this chapter or any

applicant for licensure or certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

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

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

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

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

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

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

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

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

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

(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;

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(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 medical record;

(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 in an investigative interview, an investigative office conference, 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 oriental medicine practitioner or acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for providing that supervision;

(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 standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;

(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;

(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(44) Failure to comply with the requirements of section 2919.171, 2919.202, or 2919.203 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 or 2919.202 of the Revised Code;

(45) Practicing at a facility that is subject to licensure as a category III terminal distributor of

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dangerous drugs with a pain management clinic classification unless the person operating the facility has obtained and maintains the license with the classification;

(46) Owning a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the facility is licensed with the classification;

(47) Failure to comply with any of the requirement requirements regarding making or maintaining notes medical records or documents described in division (B)-(A) of section 2919.191-2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code or failure to satisfy the requirements of section 2919.191 of the Revised Code prior to performing or inducing an abortion upon a pregnant woman;

(48) Failure to comply with the requirements in section 3719.061 of the Revised Code before issuing for a minor a prescription for an opioid analgesic, as defined in section 3719.01 of the Revised Code;

(49) Failure to comply with the requirements of section 4731.30 of the Revised Code or rules adopted under section 4731.301 of the Revised Code when recommending treatment with medical marijuana;

(50) Practicing at a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless the person operating that place has obtained and maintains the license with the classification;

(51) Owning a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless that place is licensed with the classification;

(52) A pattern of continuous or repeated violations of division (E)(2) or (3) of section 3963.02 of the Revised Code.

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

A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license or certificate to practice or certificate to recommend. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or

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

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

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

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

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

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, or in conducting an inspection under division (E) of section 4731.054 of the Revised Code, the board may question witnesses, conduct interviews, administer oaths, order the taking of depositions, inspect and copy any books, accounts, papers, records, or documents, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board.

(a) Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to

records that cover a reasonable period of time surrounding the alleged violation.

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

(c) A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee or agent designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence, usual place of business, or address on file with the board. When serving a subpoena to an applicant for or the holder of a license or certificate issued under this chapter, service of the subpoena may be made by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery. If the person being served refuses to accept the subpoena or is not located, service may be made to an attorney who notifies the board that the attorney is representing the person.

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

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

(5) A report required to be submitted to the board under this chapter, a complaint, or information received by the board pursuant to an investigation or pursuant to an inspection under division (E) of section 4731.054 of the Revised Code is confidential and not subject to discovery in any civil action.

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

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

deleting specific information from its records.

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

- (a) The case number assigned to the complaint or alleged violation;
- (b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

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

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license or certificate to practice or certificate to recommend without a prior hearing:

- (1) That there is clear and convincing evidence that an individual has violated division (B) of this section;
- (2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license or certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

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

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

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's license or certificate to practice. The board may then hold an adjudication under Chapter

119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

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

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license or 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 license or 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 license or 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 license or 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 license or certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a license or 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 or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or

certificate to practice, or refuses to reinstate an individual's license or 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 license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate.

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

(1) The surrender of a license or certificate issued under this chapter shall not be effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license or certificate to practice. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license or certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a license or 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 license or certificate to practice in accordance with this chapter or a certificate to recommend in accordance with rules adopted under section 4731.301 of the Revised Code shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

(4) At the request of the board, a license or certificate holder shall immediately surrender to the board a license or certificate that the board has suspended, revoked, or permanently revoked.

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

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

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

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

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

(4) Determine what constitutes successful completion of an individual educational program

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and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

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

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

Sec. 5103.11. There is hereby created the foster care and adoption initiatives fund. The fund shall be in the custody of the treasurer of state, but shall not be part of the state treasury. The fund shall consist of moneys collected under section 2919.1912 of the Revised Code. All interest earned on the fund shall be credited to the fund. The purpose of the fund is to provide funding for foster care and adoption services and initiatives. The department of job and family services shall allocate moneys from the fund according to the following distribution:

(A) Fifty per cent of the moneys in the fund shall be used for foster care services and initiatives.

(B) Fifty per cent of the moneys in the fund shall be used for adoption services and initiatives.

SECTION 2. That existing sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly hereby declares that it finds, according to contemporary medical research, all of the following:

(A) As many as thirty per cent of natural pregnancies end in spontaneous miscarriage.

(B) Less than five per cent of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity.

(C) Over ninety per cent of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac.

(D) Nearly ninety per cent of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac.

(E) Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth.

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

(G) The State of Ohio has a valid interest in protecting the health of the woman. The State of Ohio has a compelling interest in protecting the life of an unborn human individual who may be born.

(H) In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a valid interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

(I) The State of Ohio finds that the detection of a fetal heartbeat can be accomplished through standard medical practices.

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(J) At fertilization, a human being emerges as a whole, genetically distinct, living human organism and needs only the proper environment to fully develop into a human.

(K) Cardiac activity shows that tissues have come together to form organs and the developing central nervous system signals the heart to autonomically beat.

(L) When a heartbeat is visualized at seven weeks or less, ninety-one and one-half per cent will survive the first trimester and ninety-five per cent of those will deliver live- born infants.

(M) After the detection of a fetal heartbeat there is a ninety-five to ninety-eight per cent certainty that the new life will develop full term.

(N) A human being at an embryonic age and a human being at an adult age are naturally the same, with the only biological differences being due to the differences in maturity.

SECTION 4. If any provisions of a section as amended or enacted by this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

SECTION 5. Section 4731.22 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 111 and Sub. H.B. 156 of the 132nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____