

Ohio Department of Health

Exhibit #6

## **2317.56 Information provided before abortion procedure.**

(A) As used in this section:

(1) "Medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion.

(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 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, one or more physicians or one or more agents of one or more physicians do 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) 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.

(4) 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)(3) 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 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 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.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 07-01-2000

## **2317.561 View of ultrasound image of fetus prior to abortion.**

In addition to the requirements in section 2317.56 of the Revised Code, if an obstetric ultrasound examination is performed at any time prior to the performance or inducement of an abortion or the physician performing or inducing the abortion determines that an ultrasound examination will be performed as part of the abortion procedure, the physician shall do both of the following prior to the performance or inducement of the abortion:

(A) Provide the pregnant woman receiving the abortion the opportunity to view the active ultrasound image of the embryo or fetus;

(B) Offer to provide the pregnant woman with a physical picture of the ultrasound image of the embryo or fetus.

The requirements of division (A) of this section shall be performed at no additional charge to the pregnant woman.

Effective Date: 2008 HB314 06-20-2008

## **3701.79 Physician, hospital, and department abortion reports.**

(A) As used in this section:

- (1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.
- (2) "Abortion report" means a form completed pursuant to division (C) of this section.
- (3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.
- (4) "Department" means the department of health.
- (5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.
- (6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.
- (7) "Postabortion care" means care given after the uterus has been evacuated by abortion.

(B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.

(C) The attending physician shall complete an individual abortion report for each abortion the physician performs upon a woman. The report shall be confidential and shall not contain the woman's name. The report shall include, but is not limited to, all of the following, insofar as the patient makes the data available that is not within the physician's knowledge:

- (1) Patient number;
- (2) The name and address of the facility in which the abortion was performed, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;
- (3) The date of the abortion;
- (4) All of the following regarding the woman on whom the abortion was performed:
  - (a) Zip code of residence;
  - (b) Age;
  - (c) Race;

- (d) Marital status;
  - (e) Number of previous pregnancies;
  - (f) Years of education;
  - (g) Number of living children;
  - (h) Number of previously induced abortions;
  - (i) Date of last induced abortion;
  - (j) Date of last live birth;
  - (k) Method of contraception at the time of conception;
  - (l) Date of the first day of the last menstrual period;
  - (m) Medical condition at the time of the abortion;
  - (n) Rh-type;
  - (o) The number of weeks of gestation at the time of the abortion.
  - (5) The type of abortion procedure performed;
  - (6) Complications by type;
  - (7) Type of procedure performed after the abortion;
  - (8) Type of family planning recommended;
  - (9) Type of additional counseling given;
  - (10) Signature of attending physician.
- (D) The physician who completed the abortion report under division (C) of this section shall submit the abortion report to the department within fifteen days after the woman is discharged.
- (E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.
- (F) A copy of the abortion report shall be made part of the medical record of the patient of the facility in which the abortion was performed.
- (G) Each hospital shall file monthly and annual reports listing the total number of women who have undergone a post-twelve-week-gestation abortion and received postabortion care. The annual report shall be filed following the conclusion of the state's fiscal year. Each report shall be filed within thirty



days after the end of the applicable reporting period.

(H) Each case in which a physician treats a post abortion complication shall be reported on a postabortion complication form. The report shall be made upon a form prescribed by the department, shall be signed by the attending physician, and shall be confidential.

(I)

(1) Not later than the first day of October of each year, the department shall issue an annual report of the abortion data reported to the department for the previous calendar year as required by this section. The annual report shall include at least the following information:

(a) The total number of induced abortions;

(b) The number of abortions performed on Ohio and out-of-state residents;

(c) The number of abortions performed, sorted by each of the following:

(i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;

(ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;

(iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;

(iv) The marital status of the woman on whom the abortion was performed;

(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;

(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;

(vii) The county in which the abortion was performed;

(viii) The type of abortion procedure performed;

(ix) The number of abortions previously performed on the woman on whom the abortion was performed;

(x) The type of facility in which the abortion was performed;

(xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(2) The report also shall indicate the number and type of the abortion complications reported to the department either on the abortion report required under division (C) of this section or the postabortion complication report required under division (H) of this section.

(3) In addition to the annual report required under division (I)(1) of this section, the department shall make available, on request, the number of abortions performed by zip code of residence.

(J) The director of health shall implement this section and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of its requirements. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Effective Date: 03-30-2006

## **3701.791 Notice to be posted where abortions performed.**

(A) As used in this section, "medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion.

(B) Except as provided in division (D) of this section, an office or facility at which abortions are performed or induced shall post the notice described in division (C) of this section in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors.

The notice shall be displayed on a poster with dimensions of at least seventeen inches by eleven inches. The first two sentences of the notice shall be printed in at least a forty-four-point typeface and the remaining lines shall be in at least a thirty-point typeface.

(C) The department of health shall publish the following notice on its internet web site in a manner that can be copied and produced in poster form:

"NO ONE CAN FORCE YOU TO HAVE AN ABORTION.

NO ONE -- NOT A PARENT, NOT A HUSBAND, NOT A BOYFRIEND -- NO ONE.

Under Ohio law, an abortion cannot be legally performed on anyone, regardless of her age, unless she VOLUNTARILY CONSENTS to having the abortion.

Ohio law requires that, before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion "voluntarily" and "WITHOUT COERCION BY ANY PERSON."

IF SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION AGAINST YOUR WILL:

DO NOT SIGN THE CONSENT FORM

IF YOU ARE AT AN ABORTION FACILITY, TELL AN EMPLOYEE OF THE FACILITY THAT SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION."

(D) Division (B) of this section does not apply to an office or facility at which abortions are performed or induced due only to a medical emergency.

Effective Date: 2008 HB280 04-07-2009

## **2919.11 Abortion defined.**

As used in the Revised Code, "abortion" means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. Abortion is the practice of medicine or surgery for the purposes of section 4731.41 of the Revised Code.

Effective Date: 09-16-1974

## 2919.12 Unlawful abortion.

(A) No person shall perform or induce an abortion without the informed consent of the pregnant woman.

(B)

(1)

(a) No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated unless at least one of the following applies:

(i) Subject to division (B)(2) of this section, the person has given at least twenty-four hours actual notice, in person or by telephone, to one of the woman's parents, her guardian, or her custodian as to the intention to perform or induce the abortion, provided that if the woman has requested, in accordance with division (B)(1)(b) of this section, that notice be given to a specified brother or sister of the woman who is twenty-one years of age or older or to a specified stepparent or grandparent of the woman instead of to one of her parents, her guardian, or her custodian, and if the person is notified by a juvenile court that affidavits of the type described in that division have been filed with that court, the twenty-four hours actual notice described in this division as to the intention to perform or induce the abortion shall be given, in person or by telephone, to the specified brother, sister, stepparent, or grandparent instead of to the parent, guardian, or custodian;

(ii) One of the woman's parents, her guardian, or her custodian has consented in writing to the performance or inducement of the abortion;

(iii) A juvenile court pursuant to section 2151.85 of the Revised Code issues an order authorizing the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian;

(iv) A juvenile court or a court of appeals, by its inaction, constructively has authorized the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian under division (B)(1) of section 2151.85 or division (A) of section 2505.073 of the Revised Code.

(b) If a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated desires notification as to a person's intention to perform or induce an abortion on the woman to be given to a specified brother or sister of the woman who is twenty-one years of age or older or to a specified stepparent or grandparent of the woman instead of to one of her parents, her guardian, or her custodian, the person who intends to perform or induce the abortion shall notify the specified brother, sister, stepparent, or grandparent instead of the parent, guardian, or custodian for purposes of division (B)(1)(a)(i) of this section if all of the following apply:

(i) The woman has requested the person to provide the notification to the specified brother, sister, stepparent, or grandparent, clearly has identified the specified brother, sister, stepparent, or grandparent and her relation to that person, and, if the specified relative is a brother or sister, has indicated the age of the brother or sister;

(ii) The woman has executed an affidavit stating that she is in fear of physical, sexual, or severe emotional abuse from the parent, guardian, or custodian who otherwise would be notified under division (B)(1)(a)(i) of this section, and that the fear is based on a pattern of physical, sexual, or severe emotional abuse of her exhibited by that parent, guardian, or custodian, has filed the affidavit with the juvenile court of the county in which the woman has a residence or legal settlement, the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, or the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be performed or induced is located, and has given the court written notice of the name and address of the person who intends to perform or induce the abortion;

(iii) The specified brother, sister, stepparent, or grandparent has executed an affidavit stating that the woman has reason to fear physical, sexual, or severe emotional abuse from the parent, guardian, or custodian who otherwise would be notified under division (B)(1)(a)(i) of this section, based on a pattern of physical, sexual, or severe emotional abuse of her by that parent, guardian, or custodian, and the woman or the specified brother, sister, stepparent, or grandparent has filed the affidavit with the juvenile court in which the affidavit described in division (B)(1)(b)(ii) of this section was filed;

(iv) The juvenile court in which the affidavits described in divisions (B)(1)(b)(ii) and (iii) of this section were filed has notified the person that both of those affidavits have been filed with the court.

(c) If an affidavit of the type described in division (B)(1)(b)(ii) of this section and an affidavit of the type described in division (B)(1)(b)(iii) of this section are filed with a juvenile court and the court has been provided with written notice of the name and address of the person who intends to perform or induce an abortion upon the woman to whom the affidavits pertain, the court promptly shall notify the person who intends to perform or induce the abortion that the affidavits have been filed. If possible, the notice to the person shall be given in person or by telephone.

(2) If division (B)(1)(a)(ii), (iii), or (iv) of this section does not apply, and if no parent, guardian, or custodian can be reached for purposes of division (B)(1)(a)(i) of this section after a reasonable effort, or if notification is to be given to a specified brother, sister, stepparent, or grandparent under that division and the specified brother, sister, stepparent, or grandparent cannot be reached for purposes of that division after a reasonable effort, no person shall perform or induce such an abortion without giving at least forty-eight hours constructive notice to one of the woman's parents, her guardian, or her custodian, by both certified and ordinary mail sent to the last known address of the parent, guardian, or custodian, or if notification for purposes of division (B)(1)(a)(i) of this section is to be given to a specified brother, sister, stepparent, or grandparent, without giving at least forty-eight hours constructive notice to that specified brother, sister, stepparent, or grandparent by both certified and ordinary mail sent to the last known address of that specified brother, sister, stepparent, or grandparent. The forty-eight-hour period under this division begins when the certified mail notice is mailed. If a parent, guardian, or custodian of the woman, or if notification under division (B)(1)(a)(i) of this section is to be given to a specified brother, sister, stepparent, or grandparent, the specified brother, sister, stepparent, or grandparent, is not reached within the forty-eight-hour period, the abortion may proceed even if the certified mail notice is not received.

(3) If a parent, guardian, custodian, or specified brother, sister, stepparent, or grandparent who has been notified in accordance with division (B)(1) or (2) of this section clearly and unequivocally expresses that he or she does not wish to consult with a pregnant woman prior to her abortion, then the abortion may proceed without any further waiting period.

(4) For purposes of prosecutions for a violation of division (B)(1) or (2) of this section, it shall be a rebuttable presumption that a woman who is unmarried and under eighteen years of age is unemancipated.

(C)

(1) It is an affirmative defense to a charge under division (B)(1) or (2) of this section that the pregnant woman provided the person who performed or induced the abortion with false, misleading, or incorrect information about her age, marital status, or emancipation, about the age of a brother or sister to whom she requested notice be given as a specified relative instead of to one of her parents, her guardian, or her custodian, or about the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given and the person who performed or induced the abortion did not otherwise have reasonable cause to believe the pregnant woman was under eighteen years of age, unmarried, or unemancipated, to believe that the age of a brother or sister to whom she requested notice be given as a specified relative instead of to one of her parents, her guardian, or her custodian was not twenty-one years of age, or to believe that the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given was incorrect.

(2) It is an affirmative defense to a charge under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant woman from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(D) Whoever violates this section is guilty of unlawful abortion. A violation of division (A) of this section is a misdemeanor of the first degree on the first offense and a felony of the fourth degree on each subsequent offense. A violation of division (B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(E) Whoever violates this section is liable to the pregnant woman and her parents, guardian, or custodian for civil compensatory and exemplary damages.

(F) As used in this section "unemancipated" means that a woman who is unmarried and under eighteen years of age has not entered the armed services of the United States, has not become employed and self-sustaining, or has not otherwise become independent from the care and control of her parent, guardian, or custodian.

Effective Date: 07-01-1996

## **2919.121 Unlawful abortion upon minor.**

(A) For the purpose of this section, a minor shall be considered "emancipated" if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian.

(B) No person shall knowingly perform or induce an abortion upon a pregnant minor unless one of the following is the case:

(1) The attending physician has secured the informed written consent of the minor and one parent, guardian, or custodian;

(2) The minor is emancipated and the attending physician has received her written informed consent;

(3) The minor has been authorized to consent to the abortion by a court order issued pursuant to division (C) of this section, and the attending physician has received her informed written consent;

(4) The court has given its consent in accordance with division (C) of this section and the minor is having the abortion willingly.

(C) The right of a minor to consent to an abortion under division (B)(3) of this section or judicial consent to obtain an abortion under division (B)(4) of this section may be granted by a court order pursuant to the following procedures:

(1) The minor or next friend shall make an application to the juvenile court of the county in which the minor has a residence or legal settlement or the juvenile court of any county that borders the county in which she has a residence or legal settlement. The juvenile court shall assist the minor or next friend in preparing the petition and notices required by this section. The minor or next friend shall thereafter file a petition setting forth all of the following: the initials of the minor; her age; the names and addresses of each parent, guardian, custodian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis of the minor; that the minor has been fully informed of the risks and consequences of the abortion; that the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion; that the minor has not previously filed a petition under this section concerning the same pregnancy that was denied on the merits; that, if the court does not authorize the minor to consent to the abortion, the court should find that the abortion is in the best interests of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem; and if the minor does not have private counsel, that the court should appoint counsel. The petition shall be signed by the minor or the next friend.

(2)

(a) A hearing on the merits shall be held on the record as soon as possible within five days of filing the petition. If the minor has not retained counsel, the court shall appoint counsel at least twenty-four hours prior to the hearing. The court shall appoint a guardian ad litem to protect the interests of the minor at the hearing. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's counsel. At the hearing, the court shall do all of the following:



(i) Hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted the right to consent to the abortion or whether the abortion is in the best interests of the minor;

(ii) Specifically inquire about the minor's understanding of the possible physical and emotional complications of abortion and how the minor would respond if the minor experienced those complications after the abortion;

(iii) Specifically inquire about the extent to which anyone has instructed the minor on how to answer questions and on what testimony to give at the hearing.

(b) If the minor or her counsel fail to appear for a scheduled hearing, jurisdiction shall remain with the judge who would have presided at the hearing.

(3) If the court finds by clear and convincing evidence that the minor is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall grant the petition and permit the minor to consent to the abortion.

If the court finds by clear and convincing evidence that the abortion is in the best interests of the minor, the court shall give judicial consent to the abortion, setting forth the grounds for its finding.

If the court does not make either of the findings specified in division (C)(3) of this section, the court shall deny the petition, setting forth the grounds on which the petition is denied.

The court shall issue its order not later than twenty-four hours after the end of the hearing.

(4) No juvenile court shall have jurisdiction to rehear a petition concerning the same pregnancy once a juvenile court has granted or denied the petition.

(5) If the petition is granted, the informed consent of the minor, pursuant to a court order authorizing the minor to consent to the abortion, or judicial consent to the abortion, shall bar an action by the parents, guardian, or custodian of the minor for battery of the minor against any person performing or inducing the abortion. The immunity granted shall only extend to the performance or inducement of the abortion in accordance with this section and to any accompanying services that are performed in a competent manner.

(6) An appeal from an order issued under this section may be taken to the court of appeals by the minor. The record on appeal shall be completed and the appeal perfected within four days from the filing of the notice of appeal. Because the abortion may need to be performed in a timely manner, the supreme court shall, by rule, provide for expedited appellate review of cases appealed under this section.

(7) All proceedings under this section shall be conducted in a confidential manner and shall be given such precedence over other pending matters as will ensure that the court will reach a decision promptly and without delay.

The petition and all other papers and records that pertain to an action commenced under this section

shall be kept confidential and are not public records under section 149.43 of the Revised Code.

(8) No filing fee shall be required of or court costs assessed against a person filing a petition under this section or appealing an order issued under this section.

(9) Nothing in division (C) of this section shall constitute a waiver of any testimonial privilege provided under the Revised Code or at common law.

(D) It is an affirmative defense to any civil, criminal, or professional disciplinary claim brought under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the minor from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(E) Whoever violates division (B) of this section is guilty of unlawful abortion, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section, unlawful abortion is a felony of the fourth degree.

(F) Whoever violates division (B) of this section is liable to the pregnant minor and her parents, guardian, or custodian for civil, compensatory, and exemplary damages.

Amended by 129th General Assembly File No. 54, HB 63, §1, eff. 2/3/2012.

Effective Date: 05-06-1998

## **2919.122 Application of unlawful abortion on a minor law.**

Section 2919.121 of the Revised Code applies in lieu of division (B) of section 2919.12 of the Revised Code whenever its operation is not enjoined. If section 2919.121 of the Revised Code is enjoined, division (B) of section 2919.12 of the Revised Code applies.

If a person complies with the requirements of division (B) of section 2919.12 of the Revised Code under the good faith belief that the application or enforcement of section 2919.121 of the Revised Code is subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal, or professional disciplinary action brought under section 2919.121 of the Revised Code.

If a person complies with the requirements of section 2919.121 of the Revised Code under the good faith belief that it is not subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any criminal, civil, or professional disciplinary action for failure to comply with the requirements of division (B) of section 2919.12 of the Revised Code.

Effective Date: 05-06-1998

## **2919.123 Unlawful distribution of an abortion-inducing drug.**

(A) No person shall knowingly give, sell, dispense, administer, otherwise provide, or prescribe RU-486 (mifepristone) to another for the purpose of inducing an abortion in any person or enabling the other person to induce an abortion in any person, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the RU-486 (mifepristone) is a physician, the physician satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486 (mifepristone) for inducing abortions, and the physician provides the RU-486 (mifepristone) to the other person for the purpose of inducing an abortion in accordance with all provisions of federal law that govern the use of RU-486 (mifepristone) for inducing abortions. A person who gives, sells, dispenses, administers, otherwise provides, or prescribes RU-486 (mifepristone) to another as described in division (A) of this section shall not be prosecuted based on a violation of the criteria contained in this division unless the person knows that the person is not a physician, that the person did not satisfy all the specified criteria established by federal law, or that the person did not provide the RU-486 (mifepristone) in accordance with the specified provisions of federal law, whichever is applicable.

(B) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for persons to whom or for whom RU-486 (mifepristone) is provided for the purpose of inducing an abortion.

(C)

(1) If a physician provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section and if the physician knows that the person who uses the RU-486 (mifepristone) for the purpose of inducing an abortion experiences during or after the use an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or is hospitalized, receives a transfusion, or experiences any other serious event, the physician promptly must provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the state medical board. The board shall compile and retain all reports it receives under this division. Except as otherwise provided in this division, all reports the board receives under this division are public records open to inspection under section 149.43 of the Revised Code. In no case shall the board release to any person the name or any other personal identifying information regarding a person who uses RU-486 (mifepristone) for the purpose of inducing an abortion and who is the subject of a report the board receives under this division.

(2) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to file a report required under division (C)(1) of this section.

(D) Division (A) of this section does not apply to any of the following:

(1) A pregnant woman who obtains or possesses RU-486 (mifepristone) for the purpose of inducing an abortion to terminate her own pregnancy;

(2) The legal transport of RU-486 (mifepristone) by any person or entity and the legal delivery of the

RU-486 (mifepristone) by any person to the recipient, provided that this division does not apply regarding any conduct related to the RU-486 (mifepristone) other than its transport and delivery to the recipient;

(3) The distribution, provision, or sale of RU-486 (mifepristone) by any legal manufacturer or distributor of RU-486 (mifepristone), provided the manufacturer or distributor made a good faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.

(E) Whoever violates this section is guilty of unlawful distribution of an abortion-inducing drug, a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or of section 2919.12, 2919.121, 2919.13, 2919.14, 2919.151, 2919.17, or 2919.18 of the Revised Code, unlawful distribution of an abortion-inducing drug is a felony of the third degree.

If the offender is a professionally licensed person, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license, including the sanctioning provided in section 4731.22 of the Revised Code for offenders who have a certificate to practice or certificate of registration issued under that chapter.

(F) As used in this section:

(1) "Federal law" means any law, rule, or regulation of the United States or any drug approval letter of the food and drug administration of the United States that governs or regulates the use of RU-486 (mifepristone) for the purpose of inducing abortions.

(2) "Personal identifying information" has the same meaning as in section 2913.49 of the Revised Code.

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

(4) "Professionally licensed person" has the same meaning as in section 2925.01 of the Revised Code.

Effective Date: 09-23-2004

### **2919.13 Abortion manslaughter.**

(A) No person shall purposely take the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman.

(B) No person who performs an abortion shall fail to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the life of a child who is alive when removed from the uterus of the pregnant woman.

(C) Whoever violates this section is guilty of abortion manslaughter, a felony of the first degree.

Effective Date: 09-16-1974

## **2919.14 Abortion trafficking.**

(A) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to sections 313.13 and 2108.50 of the Revised Code.

(B) Whoever violates this section is guilty of abortion trafficking, a misdemeanor of the first degree.

Effective Date: 09-16-1974

## **2919.151 Partial birth feticide.**

(A) As used in this section:

- (1) "Dilation and evacuation procedure of abortion" does not include the dilation and extraction procedure of abortion.
- (2) "From the body of the mother" means that the portion of the fetus' body in question is beyond the mother's vaginal introitus in a vaginal delivery.
- (3) "Partial birth procedure" means the medical procedure that includes all of the following elements in sequence:
  - (a) Intentional dilation of the cervix of a pregnant woman, usually over a sequence of days;
  - (b) In a breech presentation, intentional extraction of at least the lower torso to the navel, but not the entire body, of an intact fetus from the body of the mother, or in a cephalic presentation, intentional extraction of at least the complete head, but not the entire body, of an intact fetus from the body of the mother;
  - (c) Intentional partial evacuation of the intracranial contents of the fetus, which procedure the person performing the procedure knows will cause the death of the fetus, intentional compression of the head of the fetus, which procedure the person performing the procedure knows will cause the death of the fetus, or performance of another intentional act that the person performing the procedure knows will cause the death of the fetus;
  - (d) Completion of the vaginal delivery of the fetus.
- (4) "Partially born" means that the portion of the body of an intact fetus described in division (A)(3)(b) of this section has been intentionally extracted from the body of the mother.
- (5) "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.
- (6) "Viable" has the same meaning as in section 2901.01 of the Revised Code.

(B) When the fetus that is the subject of the procedure is viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a major bodily function.

(C) When the fetus that is the subject of the procedure is not viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a



major bodily function.

(D) Whoever violates division (B) or (C) of this section is guilty of partial birth feticide, a felony of the second degree.

(E) A pregnant woman upon whom a partial birth procedure is performed in violation of division (B) or (C) of this section is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of those divisions.

(F) This section does not prohibit the suction curettage procedure of abortion, the suction aspiration procedure of abortion, or the dilation and evacuation procedure of abortion.

(G) This section does not apply to any person who performs or attempts to perform a legal abortion if the act that causes the death of the fetus is performed prior to the fetus being partially born even though the death of the fetus occurs after it is partially born.

Effective Date: 08-18-2000

## **2919.16 Post-viability abortion definitions.**

As used in sections 2919.16 to 2919.18 of the Revised Code:

- (A) "Fertilization" means the fusion of a human spermatozoon with a human ovum.
- (B) "Gestational age" or "gestation" means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.
- (C) "Health care facility" means a hospital, clinic, ambulatory surgical treatment center, other center, medical school, office of a physician, infirmary, dispensary, medical training institution, or other institution or location in or at which medical care, treatment, or diagnosis is provided to a person.
- (D) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.
- (E) "Live birth" has the same meaning as in division (A) of section 3705.01 of the Revised Code.
- (F) "Medical emergency" means a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.
- (G) "Physician" has the same meaning as in section 2305.113 of the Revised Code.
- (H) "Pregnant" means the human female reproductive condition, that commences with fertilization, of having a developing fetus.
- (I) "Pregnancy" means the condition of being pregnant.
- (J) "Premature infant" means a human whose live birth occurs prior to thirty-eight weeks of gestational age.
- (K) "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 . 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, may include, but is not limited to, diabetes and multiple sclerosis, and does not include a condition related to the woman's mental health.
- (L) "Unborn child" means an individual organism of the species homo sapiens from fertilization until live birth.
- (M) "Viable" means the stage of development of a human fetus at which in the determination of a

physician, based on the particular facts of a woman's pregnancy that are known to the physician and in light of medical technology and information reasonably available to the physician, there is a realistic possibility of the maintaining and nourishing of a life outside of the womb with or without temporary artificial life-sustaining support.

Amended by 129th General Assembly File No. 45, HB 78, §1, eff. 10/20/2011.

Effective Date: 04-11-2003; 2008 HB529 04-07-2009

## **2919.17 Terminating or attempting to terminate human pregnancy after viability.**

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

(B)

(1) It is an affirmative defense to a charge under division (A) of this section that the abortion was performed or induced or attempted to be performed or induced by a physician and that the physician determined, in the physician's good faith medical judgment, based on the facts known to the physician at that time, that either of the following applied:

(a) The unborn child was not viable.

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

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

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

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

(1) The physician who performs or induces or attempts to perform or induce the abortion certifies in writing that, in the physician's good faith medical judgment, based on the facts known to the physician at that time, the abortion is necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

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

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

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

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

(6) The physician who performs or induces or attempts to perform or induce the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced or attempted to be performed or induced at least one other physician who is to take control of, provide immediate medical care for, and take all reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

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

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

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

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

(I) A pregnant woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of division (A) of this section is not guilty of violating division (A) of this section or of attempting to commit, conspiring to commit, or complicity in committing a violation of division (A) of this section.

Added by 129th General Assembly File No.45, HB 78, §1, eff. 10/20/2011.

## **2919.171 Physician's report to department on attempted or completed abortions.**

(A) 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 2919.17 and 2919.18 of the Revised Code:

(B) By September 30 of each year, the department of health shall issue a public report that 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)(41) 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 the effective date of this section, the department of health shall adopt rules pursuant to section 111.15 of the Revised Code to assist in compliance with this section.

Added by 129th General Assembly File No. 45, HB 78, §1, eff. 10/20/2011.

## **2919.18 Failure to perform viability testing.**

(A) Except in a medical emergency that prevents compliance with this division, no physician shall perform or induce or attempt to perform or induce an abortion on a pregnant woman after the beginning of the twentieth week of gestation unless, prior to the performance or inducement of the abortion or the attempt to perform or induce the abortion, the physician determines, in the physician's good faith medical judgment, that the unborn child is not viable, and the physician makes that determination after performing a medical examination of the pregnant woman and after performing or causing to be performed those tests for assessing gestational age, weight, lung maturity, or other tests that the physician, in that physician's good faith medical judgment, believes are necessary to determine whether an unborn child is viable.

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

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

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

Added by 129th General Assembly File No.45, HB 78, §1, eff. 10/20/2011.

## **4731.281 Continuing education.**

(A) On or before the deadline established under division (B) of this section for applying for renewal of a certificate of registration, each person holding a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery shall certify to the state medical board that in the preceding two years the person has completed one hundred hours of continuing medical education. The certification shall be made upon the application for biennial registration submitted pursuant to division (B) of this section. The board shall adopt rules providing for pro rata reductions by month of the number of hours of continuing education required for persons who are in their first registration period, who have been disabled due to illness or accident, or who have been absent from the country. In determining whether a course, program, or activity qualifies for credit as continuing medical education, the board shall approve all continuing medical education taken by persons holding a certificate to practice medicine and surgery that is certified by the Ohio state medical association, all continuing medical education taken by persons holding a certificate to practice osteopathic medicine and surgery that is certified by the Ohio osteopathic association, and all continuing medical education taken by persons holding a certificate to practice podiatric medicine and surgery that is certified by the Ohio podiatric medical association. Each person holding a certificate to practice under this chapter shall be given sufficient choice of continuing education programs to ensure that the person has had a reasonable opportunity to participate in continuing education programs that are relevant to the person's medical practice in terms of subject matter and level. The board may require a random sample of persons holding a certificate to practice under this chapter to submit materials documenting completion of the continuing medical education requirement during the preceding registration period, but this provision shall not limit the board's authority to investigate pursuant to section 4731.22 of the Revised Code.

(B)

(1) Every person holding a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery wishing to renew that certificate shall apply to the board for a certificate of registration upon an application furnished by the board, and pay to the board at the time of application a fee of three hundred five dollars, according to the following schedule:

(a) Persons whose last name begins with the letters "A" through "B," on or before April 1, 2001, and the first day of April of every odd-numbered year thereafter;

(b) Persons whose last name begins with the letters "C" through "D," on or before January 1, 2001, and the first day of January of every odd-numbered year thereafter;

(c) Persons whose last name begins with the letters "E" through "G," on or before October 1, 2000, and the first day of October of every even-numbered year thereafter;

(d) Persons whose last name begins with the letters "H" through "K," on or before July 1, 2000, and the first day of July of every even-numbered year thereafter;

(e) Persons whose last name begins with the letters "L" through "M," on or before April 1, 2000, and the first day of April of every even-numbered year thereafter;

(f) Persons whose last name begins with the letters "N" through "R," on or before January 1, 2000, and the first day of January of every even-numbered year thereafter;



(g) Persons whose last name begins with the letter "S," on or before October 1, 1999, and the first day of October of every odd-numbered year thereafter;

(h) Persons whose last name begins with the letters "T" through "Z," on or before July 1, 1999, and the first day of July of every odd-numbered year thereafter. The board shall deposit the fee in accordance with section 4731.24 of the Revised Code, except that the board shall deposit twenty dollars of the fee into the state treasury to the credit of the physician loan repayment fund created by section 3702.78 of the Revised Code.

(2) The board shall mail or cause to be mailed to every person registered to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, a notice of registration renewal addressed to the person's last known address or may cause the notice to be sent to the person through the secretary of any recognized medical, osteopathic, or podiatric society, according to the following schedule:

(a) To persons whose last name begins with the letters "A" through "B," on or before January 1, 2001, and the first day of January of every odd-numbered year thereafter;

(b) To persons whose last name begins with the letters "C" through "D," on or before October 1, 2000, and the first day of October of every even-numbered year thereafter;

(c) To persons whose last name begins with the letters "E" through "G," on or before July 1, 2000, and the first day of July of every even-numbered year thereafter;

(d) To persons whose last name begins with the letters "H" through "K," on or before April 1, 2000, and the first day of April of every even-numbered year thereafter;

(e) To persons whose last name begins with the letters "L" through "M," on or before January 1, 2000, and the first day of January of every even-numbered year thereafter;

(f) To persons whose last name begins with the letters "N" through "R," on or before October 1, 1999, and the first day of October of every odd-numbered year thereafter;

(g) To persons whose last name begins with the letter "S," on or before July 1, 1999, and the first day of July of every odd-numbered year thereafter;

(h) To persons whose last name begins with the letters "T" through "Z," on or before April 1, 1999, and the first day of April of every odd-numbered year thereafter. Failure of any person to receive a notice of renewal from the board shall not excuse the person from the requirements contained in this section. The notice shall inform the applicant of the renewal procedure. The board shall provide the application for registration renewal in a form determined by the board. The applicant shall provide in the application the applicant's full name, principal practice address and residence address, the number of the applicant's certificate to practice, and any other information required by the board. The applicant shall include with the application a list of the names and addresses of any clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners with whom the applicant is currently collaborating, as defined in section 4723.01 of the Revised Code. The applicant shall execute and deliver the application to the board in a manner prescribed by the board. Every person registered under this section shall give written notice to the board of any change of principal practice address or residence address or in the list within thirty days of the change. The applicant shall report any criminal offense to which the applicant has pleaded guilty, of which the applicant has been found guilty, or for

which the applicant has been found eligible for intervention in lieu of conviction, since last filing an application for a certificate of registration.

(C) The board shall issue to any person holding a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, upon application and qualification therefor in accordance with this section, a certificate of registration under the seal of the board. A certificate of registration shall be valid for a two-year period.

(D) Failure of any certificate holder to register and comply with this section shall operate automatically to suspend the holder's certificate to practice. Continued practice after the suspension of the certificate to practice shall be considered as practicing in violation of section 4731.41, 4731.43, or 4731.60 of the Revised Code. If the certificate has been suspended pursuant to this division for two years or less, it may be reinstated. The board shall reinstate a certificate to practice suspended for failure to register upon an applicant's submission of a renewal application, the biennial registration fee, and the applicable monetary penalty. The penalty for reinstatement shall be fifty dollars. If the certificate has been suspended pursuant to this division for more than two years, it may be restored. Subject to section 4731.222 of the Revised Code, the board may restore a certificate to practice suspended for failure to register upon an applicant's submission of a restoration application, the biennial registration fee, and the applicable monetary penalty and compliance with sections 4776.01 to 4776.04 of the Revised Code. The board shall not restore to an applicant a certificate to practice unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate issued pursuant to section 4731.14, 4731.56, or 4731.57 of the Revised Code. The penalty for restoration shall be one hundred dollars. The board shall deposit the penalties in accordance with section 4731.24 of the Revised Code.

(E) If an individual certifies completion of the number of hours and type of continuing medical education required to receive a certificate of registration or reinstatement of a certificate to practice, and the board finds through the random samples it conducts under this section or through any other means that the individual did not complete the requisite continuing medical education, the board may impose a civil penalty of not more than five thousand dollars. The board's finding shall be made pursuant to an adjudication under Chapter 119. of the Revised Code and by an affirmative vote of not fewer than six members. A civil penalty imposed under this division may be in addition to or in lieu of any other action the board may take under section 4731.22 of the Revised Code. The board shall deposit civil penalties in accordance with section 4731.24 of the Revised Code.

(F) The state medical board may obtain information not protected by statutory or common law privilege from courts and other sources concerning malpractice claims against any person holding a certificate to practice under this chapter or practicing as provided in section 4731.36 of the Revised Code.

(G) Each mailing sent by the board under division (B)(2) of this section to a person registered to practice medicine and surgery or osteopathic medicine and surgery shall inform the applicant of the reporting requirement established by division (H) of section 3701.79 of the Revised Code. At the discretion of the board, the information may be included on the application for registration or on an accompanying page.

Effective Date: 04-10-2001; 03-30-2006; 2007 HB104 03-24-2008; 2008 SB279 01-06-2009

### **3701.341 Rules relating to abortions.**

(A) The director of health , pursuant to Chapter 119. and consistent with section 2317.56 of the Revised Code, shall adopt rules relating to abortions and the following subjects:

- (1) Post-abortion procedures to protect the health of the pregnant woman;
- (2) Pathological reports;
- (3) Humane disposition of the product of human conception;
- (4) Counseling.

(B) The director of health shall implement the rules and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of the rules. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 05-28-1992; 03-30-2006

**Chapter 3701-47 Abortion****3701-47-01 Definitions.**

As used in rules 3701-47-01 to 3701-47-07 of the Ohio Sanitary Code;

(A) "Abortion" means, as defined by section 2919.11 of the Revised Code, the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. Abortion is the practice of medicine or surgery for the purpose of section 4731.41 of the Revised Code.

(B) "Conceptus" means the product of human conception.

(C) "Department" means the department of health of the state of Ohio.

(D) "Director" means the director of health of the state of Ohio.

(E) "Fetus" means the developing conceptus from fourteen (14) weeks after the first day of the woman's last menstrual period until birth.

(F) "Gestation" means pregnancy.

(G) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more non-related individuals, suffering from illness, disease, injury or deformity, and regularly making available at least clinical laboratory services, and diagnostic X-ray services and treatment facilities for surgery or obstetrical care, or other definitive medical treatment. It does not include a "home" as defined in sec. 3721.01 of the Revised Code.

(H) "Pathologist" means a physician licensed to practice in Ohio with special training in the pathology of tissues.

(I) "Post-abortion care" means care given after the uterus has been evacuated by abortion.

R.C. 119.032 review dates: 01/07/2009 and 01/07/2014

Promulgated Under: 119.03

Statutory Authority: 3701.341

Rule Amplifies: 3701.341

Prior Effective Dates: 9/1/1975

**3701-47-02 Post-abortion procedures.**

In all abortions upon a woman whose conceptus, in the best judgment of the attending physician, is a fetus as defined in rule 3701-47-01, the physician shall effect compliance with the following:

(A) Immediate post-abortion care shall be provided in a hospital.

(B) Written and oral discharge instructions shall be issued to each woman which shall include, but not be limited to, the following:

(1) Symptoms of complications to be looked for and recommended response to any such symptoms;

(2) Activities to be avoided;

(3) Notification of a 24-hour emergency service;

(4) Comprehensive birth control information;

(5) The date for follow-up or return visit after the performance of the abortion, which shall be scheduled as indicated by the condition of the patient and instructions on the importance of a follow-up visit;

(6) Use of appropriate medications, when indicated;

(7) Instructions about the care of her body.

(C) Information regarding Rh typing of the patient's blood shall be a part of the patient's medical record. Anti-Rh immune globulin therapy shall be given to all Rh negative patients upon completion of the abortion procedure when medically indicated, except when refused by the patient. If for any reason a patient refuses this therapy, the refusal shall be documented in the clinical record.

R.C. 119.032 review dates: 01/07/2009 and 01/07/2014

Promulgated Under: 119.03

Statutory Authority: 3701.341

Rule Amplifies: 3701.341

Prior Effective Dates: 9/1/1975

### **3701-47-03 Physician abortion reports.**

(A) In addition to the data reported pursuant to division (C) of 3701.79 of the Revised Code, a physician who performs or induces or attempts to perform or induce an abortion on a woman after the beginning of the twentieth week of gestation shall submit a report on a form prescribed by the department of health with the following information:

(1) Whether the attending physician performed a medical examination of the pregnant woman to determine the gestational age of the unborn child and the viability of the unborn child within forty eight hours before the performance or inducement of the abortion or the attempt to perform or induce the abortion;

(2) Whether or not, in the attending physician's good faith judgment, the unborn child was viable;

(3) The type of testing performed to determine gestational age and viability;

(4) Whether or not a medical emergency existed; and

(5) For abortions performed for which the physician has indicated under paragraph (A)(2) of this rule that the unborn child is viable;

(a) Whether, in the attending physician's good faith judgment and based on the facts known to the physician at the time, the abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman and if a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman exists, the physician must document the specific nature of such risk;

(b) If the attending physician determined that the abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, the name of the physician not professionally related to the attending physician who certified in writing that the abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

(c) If the attending physician determined that the abortion was necessary to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, the method or techniques considered and the reasons for choosing the method or technique employed when performing, inducing or attempting to induce an abortion; and

(d) Whether the abortion was based on a claim or diagnosis that the pregnant woman will engage in conduct that would result in the pregnant woman's death or a substantial and irreversible impairment of a major bodily function of the pregnant woman or on any reason related to the women's mental health.

(B) A physician shall submit the report described in paragraph (A) of this rule to the department of health within fifteen days after the woman is discharged.

(C) A physician who fails to submit the report described in paragraph (A) of this rule more than thirty days after the fifteen-day deadline, 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.

(D) A physician who is required to submit to the department of health a report under paragraph (A) of this rule 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.

(E) A physician who fails to comply with the requirements of this rule, 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 is subject to division (B)(41) of section 4731.22 of the Revised Code.

(F) For purposes of this rule, "viable" means the stage of development of a human fetus at which in the determination of a physician, based on the particular facts of a woman's pregnancy that are known to the physician and in light of medical technology and information reasonably available to the physician, there is a realistic possibility of the maintaining and nourishing of a life outside of the womb with or without temporary artificial life-sustaining support.

(G) A physician who, between October 20, 2011 and the effective date of this rule, has performed or induced or attempted to perform or induce an abortion on a woman after the beginning of the twentieth week of gestation shall submit a report to the department of health that includes all of the

information the physician is required to certify in writing or determine under sections 2919.17 and 2919.18 of the Revised Code not later than March 1, 2012. A physician may use the forms prescribed by the department of health to submit such reports.

(H) The department of health may require all reports required by section 2919.171 of the Revised Code and this rule to be filed electronically. Until such time as the department of health approves an electronic reporting form, reports shall be submitted on paper forms approved by the department of health.

Effective: 01/19/2012

R.C. 119.032 review dates: 01/19/2017

Promulgated Under: 111.15

Statutory Authority: 2919.171

Rule Amplifies: 2919.17, 2919.171, 2919.18

### **3701-47-04 Pathological reports.**

In the event a physician finds cause to have a pathological examination performed, then he shall order and obtain the same.

R.C. 119.032 review dates: 01/07/2009 and 01/07/2014

Promulgated Under: 119.03

Statutory Authority: 3701.341

Rule Amplifies: 3701.341

Prior Effective Dates: 9/1/1975

### **3701-47-05 Humane disposition of the product of conception.**

(A) The fetus shall be disposed of in a humane manner.

(B) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to sections 313.13 and 2108.50 of the Revised Code.

R.C. 119.032 review dates: 01/07/2009 and 01/07/2014

Promulgated Under: 119.03

Statutory Authority: 3701.341

Rule Amplifies: 3701.341

Prior Effective Dates: 9/1/1975

### **3701-47-06 Counseling.**

(A) The fact of the availability of both pre-abortion and post-abortion counseling for herself and other persons of her choosing shall be made known by the physician, to each woman who is seeking the abortion of a fetus.

(B) Counseling shall be non-judgmental, regardless of the circumstances of the pregnancy, but shall not be forced upon the woman.

(C) The woman shall be treated in a safe, humane and dignified manner during the counseling period and throughout her stay at the place where the abortion is performed.

R.C. 119.032 review dates: 01/07/2009 and 01/07/2014

Promulgated Under: 119.03

Statutory Authority: 3701.341

Rule Amplifies: 3701.341

Prior Effective Dates: 9/1/1975



Ohio Department of Health

Exhibit #7

**5101:2-36-07 PCSA requirement for conducting an assessment/investigation of the alleged withholding of medically indicated treatment from a disabled infant with life-threatening conditions.**

(A) The public children services agency (PCSA) shall conduct an assessment/investigation if a neglect report alleges the withholding of medically indicated treatment from a disabled infant with life-threatening condition(s).

(1) The withholding of medically indicated treatment is the refusal to provide appropriate nutrition, hydration, medication or other medically indicated treatment from a disabled infant with a life-threatening condition.

(2) Medically indicated treatment includes the medical care most likely to relieve, or correct, the life-threatening condition. Nutrition, hydration, and medication, as appropriate for the infant's needs, are medically indicated for all disabled infants; as well as, the completion of appropriate evaluations or consultations necessary to assure that sufficient information has been gathered to make informed medical decisions on behalf of the disabled infant.

(3) In determining whether treatment is medically indicated, reasonable medical judgments made by a prudent physician, or treatment team, knowledgeable about the case and its treatment possibilities are considered. The opinions about the infant's future "quality of life" are not to bear on whether or not a treatment is judged to be medically indicated. Medically indicated treatment does not include the failure to provide treatment to a disabled infant if the treating physician's medical judgment identifies any of the following:

(a) The disabled infant is chronically and irreversibly comatose.

(b) The provision of the treatment is futile and will prolong dying.

(c) The provision of the treatment would not be effective in ameliorating or correcting all of the disabled infant's life threatening conditions.

(d) The provision of such treatment to the disabled infant is inhumane.

(B) The PCSA shall initiate the screened in medical neglect report in accordance with the following:

(1) Complete face-to-face or telephone contact with the health care facility's administrator, or designee, within one hour from the time the referral was screened in as a report.

(2) Obtain the following information from the health care facility's administrator, or designee, regarding the current condition of the disabled infant, including but not limited to:

(a) The physical location of the disabled infant within the hospital, e.g., emergency room, neonatal intensive care unit, labor and delivery, sixth floor, etc.

(b) The disabled infant's age.

(c) The disabled infant's diagnoses or diagnosis and the prognosis.

- (d) The problem requiring treatment.
- (e) The immediate actions necessary to keep the disabled infant alive.
- (f) Whether or not the withholding of life-sustaining treatment has been recommended.
- (g) Whether or not the withholding of life-sustaining treatment has been implemented.
- (h) Whether or not the parent, guardian, or custodian has refused to consent to life-sustaining treatment.
- (i) Whether or not the hospital chose to sustain life-supporting care for the immediate future, preceding ninety-six hours from the date and time the PCSA initiated the report, while the assessment/investigation is underway.
- (j) Whether or not sustenance (food or water, whether given orally or through an intravenous or nasogastric tube) or medication is being denied.
- (C) The PCSA shall document in the case record the date, time, and with whom the assessment/investigation was initiated.
- (D) The PCSA shall involve a qualified medical consultant within twenty-four hours from the time the referral was screened in as a report to assist in the evaluation of the disabled infant's medical information, including medical records, obtained during the preliminary medical assessment.
- (E) If the PCSA determines the child to be in immediate danger of serious harm, the PCSA shall follow procedures outlined in rule 5101:2-37-02 of the Administrative Code.
- (F) The PCSA shall pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child or to prevent the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.
- (G) The PCSA shall attempt a face-to-face contact in order to conduct an interview with the alleged child victim's parent, guardian, or custodian no later than twenty-four hours from the time the referral was screened in as a report. The purpose of the interview is to:
  - (1) Inform the parent, guardian, or custodian that a neglect report alleging the withholding of medically indicated treatment to a disabled infant has been accepted by the PCSA.
  - (2) Inform the parent guardian, or custodian of the purpose of the assessment/investigation.
  - (3) Seek parental consent for medically indicated treatment, if applicable.
  - (4) Confirm parent, guardian, or custodian's name and identifying information.
  - (5) Determine if parent, guardian, or custodian agrees on the course of action to be followed.
  - (6) Determine if the parent, guardian, or custodian was presented with all treatment options by the medical treatment team.
  - (7) Determine if the prognosis of the disabled infant was presented to the parent, guardian, or custodian.

- (8) Assess if the parent, guardian, or custodian understands the information provided by the medical treatment team.
- (9) Determine the nature and degree of parental involvement in the decision to deny treatment or sustenance to the alleged child victim, if applicable.
- (10) Assess if appropriate counseling services have been made available to the parent, guardian, or custodian.
- (11) Refer the parent, guardian, or custodian to appropriate counseling services, if applicable.
- (12) Determine if the parent, guardian, or custodian was provided information to facilitate access to available services for disabled persons and family members.
- (13) Assist the parent, guardian, or custodian in accessing needed services, if applicable.
- (14) Determine if the parent, guardian, or custodian participated in the hospital review process.
- (15) Determine if the parent, guardian, or custodian was provided with or has access to the results of the hospital review process.
- (H) If the attempted face-to-face contact with the ACV's parent, guardian, or custodian as specified in paragraph (G) of this rule is unsuccessful, the PCSA shall continue making attempts of face-to-face contact at least every five working days until face-to-face contact occurs or until the PCSA is required to make a report disposition pursuant to paragraph (O) of this rule.
- (I) The PCSA shall complete the JFS 01401 "Comprehensive Assessment and Planning Model - I.S., Safety Assessment" (rev. 2/2006) pursuant to rule 5101:2-37-01 of the Administrative Code within four working days from the date the report was screened in.
- (J) If the JFS 01401 is completed with the alleged child victim and his or her caretaker, who is not the child's custodian, the PCSA shall attempt to complete face-to-face contact with the alleged child victim's parent, guardian, or custodian no later than the next working day to inform that an assessment of safety of the child occurred.
  - (1) If unsuccessful, the PCSA shall attempt to complete face-to-face contact with the child's parent, guardian, or custodian once every five working days until contact is made or until the PCSA is required to make a report disposition pursuant to paragraph (O) of this rule.
  - (2) The PCSA shall document in the case record the date and time of the contact, or attempted contacts.
- (K) The PCSA shall, in cooperation with the medical consultant, conduct and document interviews with the attending physician and health care facility staff. The purpose of the interviews is to:
  - (1) Determine the measures that the health care facility staff attending to the disabled infant has taken to provide medically indicated treatment to the disabled infant.
  - (2) Determine whether or not the disabled infant's attending physician, with the consent of the disabled infant's parent, guardian or custodian will sustain needed life-supporting care for twenty-four hours while the PCSA continues the assessment/investigation.

- (3) Determine if any of the following conditions of and risk to the disabled infant were concluded by the attending physician's and/or staff's assessment:
- (a) The disabled infant is chronically and irreversibly comatose.
  - (b) The provision of medical treatment will merely prolong dying, not be effective in ameliorating or correcting all of the disabled infant's life-threatening conditions, or otherwise be futile in terms of the survival of the disabled infant.
  - (c) The provision of medical treatment will be virtually futile in terms of the survival of the disabled infant and the treatment itself under such circumstances will be inhumane.
- (4) Verify if plans have been made to convene a meeting of the health care facility review committee or to adopt the recommendations of the appropriate health care facility review committee, and the meeting has been held.
- (5) Confirm the disabled infant's age.
- (6) Confirm the disabled infant's diagnoses or diagnosis.
- (7) Determine if the disabled infant's life is endangered.
- (8) Determine if the withholding of life-sustaining treatment is recommended.
- (9) Determine if the withholding of life-sustaining treatment is implemented.
- (a) Identify the treatment necessary for the disabled infant's life or health being denied.
  - (b) Determine if sustenance (food or water, whether given orally or through an intravenous or nasogastric tube) or medication is being denied.
- (10) Determine if the parent, guardian, or custodian refused to consent to life-sustaining treatment.
- (11) Determine if the hospital will sustain life-supporting care for the immediate future while the PCSA's assessment/investigation is conducted, if applicable.
- (12) Identify the treatment or sustenance being provided to the disabled infant, if applicable.
- (13) Determine if there is consensus regarding the medical diagnoses among the treatment team.
- (14) Document and identify if there were/have been any differing opinions among the treatment team.
- (15) Document the names of all medical consultants involved including their qualifications/credentials.
- (16) Determine which members of the treatment team discussed the case with the parent, guardian, or custodian.
- (17) Determine if a hospital review process occurred.
- (a) If applicable, document the review process.
  - (b) If applicable, document the recommendations.

(L) The PCSA shall conduct and document all face-to-face interviews with the alleged perpetrator, unless law enforcement or the county prosecutor or medical consultant will interview the alleged perpetrator pursuant to the procedures delineated in the county child abuse and neglect memorandum of understanding, in order to assess his or her knowledge of the allegation.

(M) The PCSA shall advise the alleged perpetrator of the allegations made against him or her at the time of the initial contact. The initial contact between the PCSA and the alleged perpetrator of the report includes the first face-to-face or telephone contact, whichever occurs first, if information is gathered as part of the assessment/investigation process.

(N) The PCSA shall conduct and document face-to-face or telephone interviews with any person identified as a possible source of information during the assessment/investigation to obtain relevant information regarding the safety of and risk to the child.

(1) The PCSA shall exercise discretion in the selection of collateral sources to protect the family or out-of-home care setting's right to privacy.

(2) The PCSA shall protect the confidentiality of the principals, people shall not be randomly interviewed.

(3) The PCSA shall conduct interviews of additional staff who may have information relevant to the investigation.

(O) The PCSA shall complete the report disposition and arrive at a final case decision by completing the JFS 01400 "Comprehensive Assessment and Planning Model - I.S., Family Assessment" (rev. 7/2006) no later than thirty days from the date the PCSA screened in the referral as a child abuse and/or neglect report. The PCSA may extend the time frame by a maximum of fifteen days if information needed to determine the report disposition and final case decision cannot be obtained within thirty days and the reasons are documented in the case record pursuant to rule 5101:2-36-11 of the Administrative Code.

(P) The PCSA shall not waive the completion of the report disposition.

(Q) The PCSA shall have an interpreter present for all interviews if the PCSA has determined that a principal of the report has a language or any other impairment that causes a barrier in communication, including but not limited to a principal of the report who is deaf or hearing impaired, limited English proficiency or is developmentally delayed.

(R) Within two working days of completion of the assessment/investigation, the PCSA shall notify the alleged perpetrator in writing of the report disposition and the right to appeal the disposition pursuant to rule 5101:2-33-20 of the Administrative Code.

(S) Within two working days from the date of the completion of the report disposition, the PCSA shall notify the alleged child victim's parent(s) in writing of the report disposition and case decision.

(T) No later than three working days from the date of the completion of the report disposition, the PCSA shall provide written notification of the report disposition to the following entities, as applicable, in accordance with rules 5101:2-33-21 and 5101:2-36-12 of the Administrative Code.

(1) Administrator, director, or other chief administrator of the health care facility.

(2) The owner or governing board of the health care facility.

(3) The appropriate licensing and supervising authorities of the health care facility.

(U) The PCSA shall notify law enforcement if it is determined that the attending physician failed to provide medically indicated treatment or failed to inform the alleged child victim's parent, guardian, or custodian of the available treatment options.

(V) No later than fifteen calendar days from the completion date of the report disposition and case decision, the PCSA shall notify the Ohio department of job and family services (ODJFS) that a neglect report involving a disabled infant was assessed/investigated. The notification shall include the intake identification number established within the statewide automated child welfare information system (SACWIS).

(W) The PCSA shall maintain all materials obtained as a result of the assessment/investigation in the case record.

R.C. 119.032 review dates: 11/07/2011 and 11/01/2016

Promulgated Under: 119.03

Statutory Authority: 2151.421

Rule Amplifies: 2151.421

Prior Effective Dates: 4/1/86 (Emer.), 6/19/86 (Emer.), 8/1/86, 1/1/89, 10/1/95, 1/1/00, 4/1/01, 3/01/06, 10/01/09

## **2151.421 Reporting child abuse or neglect.**

(A)

(1)

(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; employee of a county department of job and family services who is a professional and who works with children and families; superintendent, board member, or employee of a county board of developmental disabilities; investigative agent contracted with by a county board of developmental disabilities; employee of the department of developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient relationship described in division (A) (2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the



attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The abuse or neglect does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(4)

(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

(i) The penitent, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 of the Revised Code.

(F)

(1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent

with division (H)(1) of this section and protects the rights of the person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case to the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)

(1)

(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.

(H)

(1) Except as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (M) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report

is not the defendant or an agent or employee of the defendant, has been redacted. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)

(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

- (b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;
  - (c) The county peace officer;
  - (d) All chief municipal peace officers within the county;
  - (e) Other law enforcement officers handling child abuse and neglect cases in the county;
  - (f) The prosecuting attorney of the county;
  - (g) If the public children services agency is not the county department of job and family services, the county department of job and family services;
  - (h) The county humane society;
  - (i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.
- (2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.
- (3) A memorandum of understanding shall include all of the following:
- (a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;
  - (b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.
- (4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(5) The clerk of the court of common pleas in the county may sign the memorandum of understanding prepared under division (J)(1) of this section. If the clerk signs the memorandum of understanding, the clerk shall execute all relevant responsibilities as required of officials specified in the memorandum.

(K)

(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected

from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M) Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

(N)

(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered nonpublic school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 or Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

(O) As used in this section, "investigation" means the public children services agency's response to an accepted report of child abuse or neglect through either an alternative response or a traditional response.



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2008 HB314 06-20-2008; 2008 SB163 08-14-2008; 2008 HB280 04-07-2009

## **5101:2-33-26 The county child abuse and neglect memorandum of understanding.**

(A) The county child abuse and neglect memorandum of understanding, hereinafter referred to as the memorandum, is a document that sets forth the normal operating procedures to be employed by all concerned officials in the execution of their respective responsibilities pursuant to division (J)(2) of section 2151.421 of the Revised Code when conducting a child abuse or neglect assessments/investigation. The purpose of the memorandum is to delineate clearly the role and responsibilities of each official or agency in assessing or investigating child abuse or neglect in the county. The respective duties and requirements of all involved shall be addressed in the memorandum.

(B) Each public children services agency (PCSA) shall prepare a memorandum that is signed by all of the following parties:

(1) The juvenile judge of the county or the juvenile judge's representative; or if there is more than one juvenile judge in the county, a juvenile judge or the juvenile judge's representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative.

(2) The county peace officer.

(3) All chief municipal peace officers within the county.

(4) Other law enforcement officers who handle child abuse and neglect cases in the county.

(5) The prosecuting attorney of the county.

(6) If the PCSA is not the county department of job and family services (CDJFS) , the CDJFS.

(7) The county humane society.

(8) If the PCSA participated in the execution of a memorandum under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center.

(C) The memorandum shall include all of the following:

(1) A statement that failure to follow procedures set forth in the memorandum by the concerned officials is not grounds for, and shall not result in the dismissal of any charges or complaints arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or neglect and does not give, and shall not be construed as giving, any rights or grounds for appeal or post-conviction relief to any person.

(2) The PCSA's system for receiving reports of child abuse and neglect twenty-four hours per day, seven days per week. If the PCSA contracts with an outside source to receive after-hour calls, a copy of a signed agreement shall be attached to the memorandum which indicates that all reports with identifying and demographic information of the reporter and principals of the report will be forwarded to a designated PCSA worker within an hour of receipt and that confidentiality requirements will be met. In addition, when the PCSA contracts with an outside source, the PCSA shall include in the memorandum its system for informing the general public of the after-hours phone number, as applicable.

(3) The roles and responsibilities of all concerned officials for responding to emergency and non-emergency reports of child abuse and neglect.

(4) A system for consultation among subscribers as it is deemed necessary to protect children. The county's system for consultation shall include at a minimum the PCSA's protocol for consulting with law enforcement, the prosecuting attorney's office, the juvenile judge, and if applicable, the children's advocacy center established pursuant to section 2151.426 of the Revised Code, for any cases which may require their intervention or assistance.

(5) Standards and procedures for handling and coordinating joint investigations of reported cases of child abuse and neglect including sharing of investigative reports and procedures specific to cases which:

(a) Involve out-of-home care child abuse or neglect.

(b) Require third party investigative procedures and the assistance of law enforcement including addressing instances where law enforcement declines to assist the PCSA.

(c) Require law enforcement to respond immediately.

(d) Involve a child death in which abuse or neglect is suspected as the cause of death.

(e) Involve alleged withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(f) Involve the death of a child who is in the custody of the PCSA in accordance with rule 5101:2-42-89 of the Administrative Code.

(g) Involve alleged child abuse and/or neglect constituting a crime against a child and require a joint assessment/investigation with law enforcement. The procedures shall include a statement of assurance as to how the PCSA will ensure child safety and not compromise the child protective assessment/investigation while concurrently assisting law enforcement with the criminal investigation.

(6) A statement addressing the PCSA's policy for requesting the assistance of law enforcement, which may include, but is not limited to:

(a) The PCSA has reason to believe the child is in immediate danger of serious harm.

(b) The PCSA has reason to believe the worker is, or will be in danger of harm.

(c) The PCSA has reason to believe that a crime is being committed, or has been committed against a child.

(d) An exigent circumstance exists.

(e) The PCSA worker must conduct a home visit after regular PCSA business hours and a law enforcement escort is requested as a standard operating procedure.

(f) The PCSA is removing a child from his or her family via an order of the court and the assistance of law enforcement is needed as the PCSA has reason to believe the family will challenge the removal.

(g) The PCSA must conduct an assessment/investigation at a known drug house and a law enforcement escort is needed.

- (h) The PCSA is working with a client who has a propensity toward violence and the assistance of law enforcement is needed to ensure the safety of all involved.
- (i) The PCSA is working with a family that has historically threatened to do harm to PCSA staff.
- (7) A statement regarding the processes and procedures to attempt to ensure the assistance of law enforcement is obtained timely in cases where child abuse or neglect is alleged in order to ensure child safety and conduct investigative activities within the maximum forty-five day time frame afforded PCSAs to complete abuse/neglect assessment/investigations.
- (8) Methods to be used in interviewing the child who is the subject of the report.
- (9) Standards and procedures addressing the categories of persons who may interview the child who is the subject of the report.
- (10) A system for the elimination of all unnecessary interviews of a child who is the subject of the report.
- (11) A system for receiving and responding to reports involving:
  - (a) Individuals who aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court.
    - (i) Becoming a dependent or neglected child.
    - (ii) Becoming an unruly or delinquent child.
    - (iii) Leaving the custody of any person, department, or public or private institution without the legal consent of that person, department, or institution.
  - (b) Missing children.
- (12) Standards and procedures for removing and placing children on an emergency and non-emergency basis.
- (13) The PCSA's system for notifying the county prosecuting attorney or city director of law when any mandated reporter of child abuse or neglect fails to report suspected or known child abuse or neglect.
- (14) The PCSA's system for notifying the county prosecuting attorney or city director of law when there is unauthorized dissemination of confidential PCSA information.
- (15) The PCSA's procedures to respond to cases regarding the alleged withholding of medically indicated treatment from a disabled infant with life threatening conditions including:
  - (a) Gathering and maintaining current information regarding the name, address, and telephone number of each appropriate health care facility within its jurisdiction.
  - (b) Identifying and maintaining current data regarding the name, title, and telephone number of each facility's contact person for allegations involving alleged withholding of medically indicated treatment from disabled infants with life-threatening conditions, hereinafter referred to as alleged withholding.
  - (c) Identifying and maintaining the name and chairperson of the appropriate health care facility's review committee, if such a committee exists.

(d) Internal PCSA procedures for intervening in cases involving alleged withholding.

(D) In accordance with rule 5101:2-5-13.1 of the Administrative Code, the memorandum may address how the PCSA would continue to maintain operations including, but not limited to, receiving and investigating child abuse and/or neglect reports in the event of a disaster.

(E) All PCSAs shall submit a written copy of the memorandum to the appropriate Ohio department of job and family services (ODJFS) field office.

(1) The PCSA shall submit a written copy of any amendment to the memorandum to the appropriate ODJFS field office within ninety days of amendment.

(2) If amendment to the memorandum is necessary because of revisions to this rule, the PCSA shall submit a written copy of the revised memorandum to the ODJFS field office within ninety days of the effective date of this rule. The revised memorandum shall be signed by all parties to the memorandum.

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