IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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WOMEN'S MED GROUP PROFESSIONAL CORPORATION
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Plaintiffs,

v.

Case No. A 2101148

Judge Alison Hatheway

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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Defendants.

INTRODUCTION

1. On November 7, 2023, Ohioans voted to amend the Ohio Constitution to protect an individual's "right to make and carry out one's own reproductive decisions, including but not limited to decisions on . . . abortion." Ohio Constitution, Article I, Section 22(A) (the "Amendment"). Pursuant to this explicit constitutional right to abortion, the State may not "directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" either the exercise of Ohioans' decision to have an abortion or any "person or entity" that assists them in exercising that right, unless the State demonstrates that it is using the "least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Constitution, Article I, Section 22(B). As Ohio Attorney General Dave Yost acknowledged prior to the Amendment's passage, the Amendment "creates a new, legal standard" that provides greater protection to reproductive freedom than federal precedent predating the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S. Ct. 2228, 213 L.Ed.2d 545 (2022).[1]

[1] Ohio Atty. Gen., *Issue 1 on the November 2023 Ballot: A Legal Analysis by the Ohio Attorney General* 3 (Oct 5, 2023), https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx.

2. Plaintiffs challenge three categories of restrictions on medication abortion that directly and indirectly burden, penalize, interfere with, and discriminate against an individual's exercise of their right to abortion, and healthcare providers who provide abortion care, without providing any countervailing health benefit: (1) the Telemedicine Ban, (2) the Advanced Practice Clinician ("APC") Ban, and (3) the Evidence-Based Use Ban (collectively, the "Challenged Laws") (attached hereto as Exhibits 4–6). With respect to Ohioans for whom medication abortion is the only viable option, the Challenged Laws may also prohibit patients from making and carrying out their reproductive decisions entirely, by pushing them beyond the point in pregnancy when medication abortion is available. This is particularly true given the intersecting burdens the Challenged Laws impose on medication abortion access.

3. Moreover, the Challenged Laws do nothing to advance patient health in accordance with widely accepted and evidence-based standards of care, let alone by employing the least restrictive means of doing so. To the contrary, by delaying and impeding Ohioans' access to time-sensitive, vital abortion care, the Challenged Laws only serve to affirmatively harm patient health and well-being.

4. **The Telemedicine Ban** prohibits abortion providers from providing medication abortion to Ohioans through telemedicine. *See* Senate Bill No. 260, 2020 Ohio Laws File 113 (adding R.C. 2919.124) ("SB 260"). The Telemedicine Ban restricts access to abortion and threatens draconian felony criminal penalties and civil and professional sanctions for abortion providers who violate it. Telemedicine medication abortion ("TMAB") has been studied extensively and determined to be safe and effective, preferred by many patients, and critical to expanding abortion access to underserved areas and reducing travel and related burdens on patients. This Court previously enjoined enforcement of the Telemedicine Ban before it went into

effect. *See* Entry Granting Pls.' Mot. Prelim. Inj., at 7 (Apr. 19, 2021). If not for the injunction, the Telemedicine Ban would substantially increase the distances that many patients must travel to obtain medication abortions, which in turn would delay and impede access to abortion, risking harm to Ohioans' health and well-being.

5. **The APC Ban** is a group of laws that together restrict qualified and skilled advanced practice clinicians ("APCs") from providing medication abortion, regardless of their education, training, and experience, even though Ohio permits them to prescribe the exact same medications for other purposes. *See* R.C. 2317.56(B), 2919.11, 2919.123, 4723.44(B)(6), 4723.50(B)(1), 4723.151(C), 4730.02(E), 4730.03(F), 4730.39(B)(2), 4730.42(A)(1); Ohio Adm.Code 4723-9-10(K), 4730-2-07(E). Abortion providers and APCs, including physician assistants ("PAs"), certified nurse-midwives ("CNMs"),[2] and nurse practitioners ("NPs"), who violate the APC Ban face criminal charges, civil penalties, civil forfeiture, and professional sanctions. By preventing qualified APCs from providing medication abortion care, the APC Ban restricts the number of available abortion providers throughout Ohio, which in turn delays and impedes access to abortion throughout the State, risking harm to Ohioans' health and well-being.

6. **The Evidence-Based Use Ban** restricts the evidence-based use of the drug mifepristone solely with respect to abortion care, by forcing abortion providers to prescribe mifepristone only in accordance with the U.S. Food and Drug Administration's ("FDA") label for the drug. R.C. 2919.123. Prescribing an FDA-approved drug for use in a manner not specified by the FDA label (*i.e.*, "evidence-based" or "off-label" use) is extremely common, well accepted in medical practice, safe, and effective. The Evidence-Based Use Ban singles out medication abortion for differential and unfavorable treatment when it comes to mifepristone, because Ohio

[2] NPs and CNMs are both types of advanced practice registered nurses ("APRNs").

permits off-label use of mifepristone for other purposes, including miscarriage management. Providers who fail to prescribe mifepristone for abortion in exact conformance with the FDA's final printed labeling face felony criminal penalties, fines, and professional sanctions. R.C. 2919.123. Because of the Evidence-Based Use Ban, mifepristone is only available to Ohio patients for abortion through 70 days from the first day of their last menstrual period ("LMP")—even though research has demonstrated the efficacy and safety of mifepristone for abortion beyond that window. Accordingly, patients beyond 70 days LMP and before the point in pregnancy up to which medication abortion can be provided according to evidence-based standards are left with a difficult choice: seek a procedural abortion, which may be contraindicated, traumatizing, or significantly less manageable for certain patients; travel out of state for medication abortion care; seek medication abortion care outside the medical system; or in some cases, potentially carry an unwanted pregnancy to term.

7. Plaintiffs, who are reproductive health care providers in Ohio, seek preliminary and permanent injunctive relief to prevent the Challenged Laws' enforcement and a declaratory judgment that the Challenged Laws violate the Ohio Constitution.

PARTIES

A. Plaintiffs

8. **Planned Parenthood Southwest Ohio Region** ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO provides abortions, including medication abortion through 70 days LMP, at its ambulatory surgical facility ("ASF") in Cincinnati. PPSWO and its physicians offer TMAB that would be barred by the Telemedicine Ban if not for the preliminary injunction previously entered in this case. Absent the APC Ban, PPSWO APCs would train in and begin to

provide medication abortion, and PPSWO would hire additional APCs as needed to provide this care. Absent the Evidence-Based Use Ban, PPSWO clinicians would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Providers at PPSWO are threatened with criminal charges, loss of their licenses, civil penalties, civil forfeiture, and civil suits if they provide care in violation of the Challenged Laws. PPSWO sues on behalf of itself; its current and future physicians, APCs, staff, officers, and agents; and its patients.

9. **Sharon Liner, M.D.**, is a physician licensed to practice medicine in Ohio. Dr. Liner is the Medical Director at PPSWO, and she provides abortion from PPSWO's Cincinnati Surgical Center in Hamilton County. Dr. Liner offers TMAB that would be barred by the Telemedicine Ban if not for the preliminary injunction previously entered in this case. Absent the Evidence-Based Use Ban, Dr. Liner would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Dr. Liner faces criminal penalties, loss of her medical license, civil penalties, civil forfeiture, and civil suits if she violates the Telemedicine Ban or the Evidence-Based Use Ban. She sues on her own behalf and on behalf of her patients.

10. **Julia Quinn, MSN, WHNP-BC**, is a board-certified NP, a type of APRN, at PPSWO. Ms. Quinn provides a range of sexual and reproductive health care to her patients, including, for example, prescribing contraception, inserting and removing long-acting contraception (*i.e.*, intrauterine devices and Nexplanon contraceptive implants), and prescribing both pre- and post-exposure prophylaxis to prevent HIV. But for the APC Ban, Ms. Quinn would train in and begin to provide medication abortion to patients at PPSWO. Ms. Quinn also would offer TMAB that would be barred by the Telemedicine Ban if not for the preliminary injunction

previously entered in this case. In addition, absent the APC Ban and the Evidence-Based Use Ban, Ms. Quinn would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Ms. Quinn faces criminal penalties, loss of her nursing license, civil penalties, civil forfeiture, and civil suits if she violates the APC Ban. She sues on behalf of herself and her patients.

11. **Planned Parenthood of Greater Ohio** ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH was formed in 2012 through a merger of local and regional Planned Parenthood affiliates that had served patients in Ohio for decades by providing high-quality reproductive health care. PPGOH serves patients in northern, eastern, and central Ohio. PPGOH provides medication abortion through 70 days LMP at its ASFs in East Columbus and Bedford Heights. PPGOH offers TMAB that would be barred by the Telemedicine Ban if not for the preliminary injunction previously entered in this case. Absent the APC Ban, PPGOH APCs would train in and begin to provide medication abortion. But for the Evidence-Based Use Ban, PPGOH clinicians would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Providers at PPGOH are threatened with criminal charges, loss of their licenses, civil forfeiture, civil penalties, and civil suits if they provide care in violation of the Challenged Laws. PPGOH sues on behalf of itself; its current and future physicians, APCs, staff, officers, and agents; and its patients.

12. **Women's Med Group Professional Corporation** ("WMGPC") owns and operates Women's Med Dayton ("WMD") in Kettering, Ohio. WMGPC and its predecessor organizations have been providing abortions in the Dayton area since 1973. WMD is an ASF and provides medication abortions through 70 days LMP. Absent the APC Ban, WMD would seek to hire and train APCs to provide medication abortion and to staff a second clinic location that WMD

would open in the greater Cincinnati area to increase accessibility to abortion and reproductive health care. Absent the Evidence-Based Use Ban, WMD clinicians would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Providers at WMD are threatened with criminal penalties, loss of their medical licenses, civil penalties, civil forfeiture, and civil suits if they provide care in violation of the APC Ban and the Evidence-Based Use Ban. WMGPC sues on behalf of itself; its current and future physicians, APCs, staff, officers, and agents; and its patients.

13. **Preterm-Cleveland** ("Preterm") is a nonprofit clinic in Cleveland, Ohio, which has been serving patients since 1974. Preterm is an ASF under Ohio law. Preterm provides a range of reproductive and sexual health care services, including abortion. Preterm provides medication abortions through 70 days LMP. Absent the APC Ban, Preterm would seek to hire and train APCs to provide medication abortion. Absent the Evidence-Based Use Ban, Preterm clinicians would prescribe mifepristone according to evidence-based standards and as clinically indicated, including beyond 70 days LMP. Providers at Preterm are threatened with criminal penalties, loss of their medical licenses, civil penalties, civil forfeiture, and civil suits if they provide care in violation of the APC Ban or the Evidence-Based Use Ban. Preterm sues on behalf of itself; its current and future physicians, APCs, staff, officers, and agents; and its patients.

B. Defendants

14. **The Ohio Department of Health** ("ODH") is the state agency charged with licensing and overseeing the operation of ASFs, as health care facilities, in the State, including ASFs operated by PPSWO, PPGOH, WMD, and Preterm. ODH can suspend, revoke, or decline to renew Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of the Challenged Laws. *See* Ohio Adm.Code 3701-83-05, -05.1, -.05.2, -09(A), -03(D).

15. **Bruce Vanderhoff, M.D.**, is the Director of ODH. He can suspend, revoke, or decline to renew Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of the Challenged Laws. *See* Ohio Adm.Code 3701-83-05, -05.1, -.05.2, -09(A), -03(D). He is sued in his official capacity.

16. **Kim G. Rothermel, M.D.**, is the Secretary of the **State Medical Board of Ohio** (the "Medical Board"), which is charged with enforcing physician and PA licensing. The Medical Board has authority to act against a physician or PA's license based on a commission of an unlawful act, including a violation of the Challenged Laws, through license suspension or revocation. *See* R.C. 4731.22, 4730.25. The Medical Board may also impose civil penalties for violations. R.C. 4731.225(B), 4730.252. She is sued in her official capacity.

17. **Harish Kakarala, M.D.**, is the Supervising Member of the **Medical Board**. The Medical Board has authority to act against a physician or PA's license based on a commission of an unlawful act, including a violation of the Challenged Laws, through license suspension or revocation. *See* R.C. 4731.22, 4730.25. The Medical Board may also impose civil penalties for violations. R.C. 4731.225(B), 4730.252. He is sued in his official capacity.

18. **Erin Keels, DNP, APRN-CNP**, is the Board President of the **Ohio Board of Nursing** (the "Nursing Board"), which is charged with enforcing NP and CNM licensing. The Nursing Board has authority to act against an NP or CNM's license based on commission of an unlawful act, including a violation of the APC Ban, through license suspension or revocation. R.C. 4723.28(B). The Nursing Board may also impose civil penalties for violations. *Id.* She is sued in her official capacity.

19. **Candy Sue Rinehart, DNP, APRN-CNP**, is the Supervising Member for Disciplinary Matters of the **Nursing Board**, which is charged with enforcing NP and CNM

licensing. The Nursing Board has authority to act against an NP or CNM's license based on commission of an unlawful act, including a violation of the APC Ban, through license suspension or revocation. R.C. 4723.28(B). The Nursing Board may also impose civil penalties for violations. *Id.* She is sued in her official capacity.

20. **Melissa Powers** is the Hamilton County Prosecuting Attorney. She is responsible for the enforcement of all criminal laws in Hamilton County, where two of PPSWO's health centers, including its Cincinnati Surgical Center, are located; where Dr. Liner and other PPSWO physicians provide abortions, including TMAB; and where, if not for the APC Ban, Plaintiff Quinn and other PPSWO APCs would train in and begin to provide medication abortion. She is sued in her official capacity.

21. **G. Gary Tyack** is the Franklin County Prosecuting Attorney. He is responsible for the enforcement of all criminal laws in Franklin County, where PPGOH's East Columbus Surgical Center is located; where PPGOH physicians provide abortions, including TMAB; and where, if not for the APC Ban, PPGOH APCs would train in and begin to provide medication abortion. He is sued in his official capacity.

22. **Michael C. O'Malley** is the Cuyahoga County Prosecutor. He is responsible for the enforcement of all criminal laws in Cuyahoga County, where PPGOH's Bedford Heights ASF and Preterm's ASF are located; where PPGOH and Preterm physicians provide abortion; and where, if not for the APC Ban, PPGOH and Preterm would hire and/or train APCs to begin to provide medication abortion. He is sued in his official capacity.

23. **Mathias H. Heck, Jr.** is the Montgomery County Prosecuting Attorney. He is responsible for the enforcement of all criminal laws in Montgomery County, where WMD's health care clinic and one of PPSWO's health centers are located; where WMD physicians provide

abortions; and where, if not for the APC Ban, PPSWO and WMD would hire and/or train APCs to begin to provide medication abortion. He is sued in his official capacity.

24. **Elliot Kolkovich** is the Summit County Prosecutor. He is responsible for the enforcement of all criminal laws in Summit County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. He is sued in his official capacity.

25. **Keller J. Blackburn** is the Athens County Prosecutor. He is responsible for the enforcement of all criminal laws in Athens County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. He is sued in his official capacity.

26. **Kyle L. Stone** is the Stark County Prosecuting Attorney. He is responsible for the enforcement of all criminal laws in Stark County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. He is sued in his official capacity.

27. **Victor V. Vigluicci** is the Portage County Prosecutor. He is responsible for the enforcement of all criminal laws in Portage County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. He is sued in his official capacity.

28. **Jodie M. Schumacher** is the Richland County Prosecuting Attorney. She is responsible for the enforcement of all criminal laws in Richland County; where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. She is sued in her official capacity.

29. **Julia R. Bates** is the Lucas County Prosecutor. She is responsible for the enforcement of all criminal laws in Lucas County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. She is sued in her official capacity.

30. **Gina DeGenova** is the Mahoning County Prosecutor. She is responsible for the enforcement of all criminal laws in Mahoning County, where one of PPGOH's health centers is located; and where, if not for the APC Ban, PPGOH APCs would be able to train in and begin to provide medication abortion. She is sued in her official capacity.

31. **Michael T. Gmoser** is the Butler County Prosecuting Attorney. He is responsible for the enforcement of all criminal laws in Butler County, where one of PPSWO's health centers is located; and where, if not for the APC Ban, PPSWO APCs would train in and begin to provide medication abortion. He is sued in his official capacity.

32. **Daniel P. Driscoll** is the Clark County Prosecutor. He is responsible for the enforcement of all criminal laws in Clark County, where one of PPSWO's health centers is located; and where, if not for the APC Ban, PPSWO APCs would train in and begin to provide medication abortion. He is sued in his official capacity.

PROCEDURAL BACKGROUND

33. On April 1, 2021, PPSWO, Dr. Liner, and PPGOH brought this action seeking a temporary restraining order followed by a preliminary injunction, as well as a declaratory judgment and permanent injunctive relief, against the Telemedicine Ban. The Complaint asserted claims for violations of the Ohio Constitution's equal protection and benefit guarantee under Article I, Section 2, and the Ohio Constitution's protections for individual liberty under Article I, Sections 1, 2, 16, 20, and 21.

34. On April 7, 2021, this Court issued a temporary restraining order. Following an expedited briefing schedule and oral argument, the Court issued a preliminary injunction enjoining enforcement of the Telemedicine Ban, finding that, absent relief, Ohioans would have suffered irreparable deprivation of their constitutional rights and serious, irreparable harm to their physical, psychological, and emotional well-being. That preliminary injunction is still in effect.

35. On July 13, 2022, the Court granted the original Plaintiffs' Motion to Stay Proceedings pending resolution of *State ex rel. Preterm-Cleveland v. Yost*, No. 2022-0803 (Ohio June 29, 2022).

36. Since this Court's grant of the original Plaintiffs' Motion to Stay, the people of Ohio voted to amend the Ohio Constitution to explicitly protect the right to abortion. Ohio Constitution, Article I, Section 22. The Amendment took effect on December 7, 2023.

37. On December 15, 2023, the Ohio Supreme Court dismissed the appeal in *State ex rel. Preterm-Cleveland v. Yost*, No. 2023-0004 (Ohio Dec. 15, 2023). This Court thereafter lifted the stay in this case.

JURISDICTION AND VENUE

38. The Court has jurisdiction over this Amended Complaint pursuant to R.C. 2721.02, 2727.02, and 2727.03.

39. Venue is proper in this Court pursuant to Civ.R. 3(C)(4) because Defendant Powers maintains her principal office in Hamilton County.

40. Venue is further proper in this Court pursuant to Civ.R 3(C)(3) because Defendant Powers initiates prosecutions in Hamilton County.

41. Venue is further proper in this Court pursuant to Civ.R. 3(C)(6) because Plaintiffs PPSWO, Dr. Liner, and Ms. Quinn provide reproductive health care services in Hamilton County, so the business, professional and other injuries caused by the Challenged Laws with respect to

them occur in Hamilton County, and Defendant Powers would bring any resulting prosecutions against Dr. Liner, Ms. Quinn, or other PPSWO physicians or APCs in Hamilton County. In addition, judicial proceedings to adjudicate ODH enforcement action over violations of the Challenged Laws would occur in Hamilton County. *See* R.C. 119.12(B)(2).

ALLEGATIONS

A. Abortion is an Essential Component of Health Care

42. Abortion is extremely common in the United States. Approximately one in four women in this country will have had an abortion by age 45.

43. Two types of abortion are available in Ohio: medication and procedural abortion. This case concerns restrictions on medication abortion.

44. The most common regimen of medication abortion involves a combination of two medications: mifepristone and misoprostol. Medication abortion patients first take mifepristone orally, which blocks the hormone progesterone. Progesterone is necessary to maintain pregnancy. Then, typically 24 to 48 hours later, patients take misoprostol, which causes the uterus to contract and expel its contents, in a process similar to miscarriage.

45. The decision to terminate a pregnancy is an incredibly personal decision that is informed by a combination of diverse, complex, and interrelated factors that are intimately related to an individual's values, beliefs, culture, religion, health status, reproductive history, familial situation, resources, and economic stability.

46. Most people who seek abortion have already given birth at least once, and many pregnant people seek an abortion because they feel they cannot adequately care for another child; because they want to prioritize the needs of their existing children; or because of other caretaking responsibilities. For some, an additional child can place significant economic and emotional strain

on a family. A significant majority of people seeking abortions in the United States are either poor or low-income.

47. Some people seek abortions because they simply do not want to become a parent at that point in their lives, or ever. For some people, having a child will make it too difficult for them to pursue educational, career, or other life goals and support themselves and their families going forward.

48. People experiencing intimate partner violence may seek abortion to escape the dangers posed by their relationships, which can be amplified by pregnancy and parenting.

49. Survivors of sexual assault or incest may choose abortion to avoid the ongoing emotional distress and trauma associated with carrying a pregnancy resulting from their assault, regain control over their bodies and reproductive choices, facilitate their healing process, and/or prevent further ties to their assailant through parenthood.

50. Others seek an abortion because continuing their pregnancies would threaten their health or life due to pre-existing medical conditions or complications that arise during pregnancy.

51. Individual circumstances vary greatly, and the reasons outlined above are not exhaustive but rather examples of the diverse factors that may influence someone's decision to seek abortion. People seeking abortion often base their decision on multiple interconnected factors and considerations.

52. Whatever a person's reasons, accessing abortion is essential to their autonomy, dignity, and ability to care for themselves and their families. Forcing a person to continue a pregnancy against their will jeopardizes their physical, mental, and emotional health, as well as the stability and well-being of their family and existing children.

53. Patients generally seek abortion as soon as they are able to, but many face logistical obstacles that can delay access to abortion. Patients need to schedule an appointment, gather the resources to pay for the abortion and related costs, arrange transportation to a clinic, take time off work (often unpaid, due to a lack of paid time off or sick leave), and possibly arrange for child care during appointments. The delay caused by these barriers and others posed by the Challenged Laws results in higher financial, physical, and emotional costs to the patient. These burdens fall most heavily on patients with low incomes, patients who live far from health centers, patients of color, patients with children, patients under the age of 18, and patients experiencing interpersonal violence.[3]

B. Abortion Is Extremely Safe

54. Legal abortion is very safe. Complications from both medication and procedural abortions are extremely rare. In the rare cases where complications from medication abortion occur, they can typically be managed in an outpatient clinic setting.

55. Medication abortion is one of the safest treatments in contemporary medical practice. Current medical evidence demonstrates that medication abortion is safe and effective through at least 77 days LMP.

56. Despite this evidence, the Evidence-Based Use Ban prevents patients after 70 days LMP from obtaining medication abortion. *See infra* ¶¶ 143–50; R.C. 2919.123.

57. For some patients, medication abortion may be safer than procedural abortion due to complications of the patient's reproductive and genital tract, such as large uterine fibroids, that

[3] These barriers are further exacerbated by the fact that Ohio law requires patients to receive certain state-mandated information at least 24 hours before their abortion, forcing most patients to make at least two trips to a health center for care. *See infra* ¶ 69.

make accessing the pregnancy inside the uterus as part of a procedural abortion difficult or impossible.

58. Many patients also prefer medication abortion because they can end their pregnancy at home and at a time more suitable for them and because it allows them more privacy and autonomy. Victims of rape, sexual abuse, or molestation may choose medication abortion to feel more in control of the experience and to avoid trauma from having instruments inserted through their vaginas.

59. Regardless of the method of abortion, abortion is substantially safer than continuing a pregnancy through childbirth. The national risk of maternal mortality associated with live birth is approximately 14 times higher than the risk of death associated with induced abortion. The maternal mortality rate is significantly higher for Black women in Ohio, where they are 1.5 to 2.5 times more likely than white women to die of causes related to pregnancy.[4] Indigenous women also face higher maternal mortality rates than white women.

60. Even for the healthiest patients, pregnancy poses extraordinary physical challenges and significant health risks. Pregnancy places significant stress on most major organs and results in profound and long-lasting physiological changes.

61. Pregnancy complications are also extremely common. Some of the more common complications include preeclampsia, gestational diabetes, and maternal cardiac disease. All of

[4] According to Ohio statistics from 2008–2016, non-Hispanic Black women were more than 2.5 times as likely to die from pregnancy-related causes than their white counterparts. Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008–2016*, at 19 (2019), https://bit.ly/3uZraej (accessed Apr. 25, 2024). However, in 2017–2018, due to the adoption of new criteria employed by ODH "to determine the pregnancy-relatedness of unintentional overdose deaths, an increased number of unintentional overdose deaths were determined to be pregnancy related in 2017 and 2018," and the majority of those occurred among non-Hispanic white women. Ohio Dept. of Health, *A Report on Pregnancy-Related Deaths in Ohio 2017–2018*, at 4, 28 (2022), http://bit.ly/4b1iSXx (accessed Apr. 25, 2024). However, "pregnancy-related deaths due to causes other than overdose occurred disproportionately among non-Hispanic Black women." *Id.* at 4, 28.

these conditions can result in serious, permanent harm to an individual's health, up to and including death.

62. Pregnancy may also cause or exacerbate certain health conditions, such as diabetes, hypertension, asthma, heart disease, an autoimmune disorder, or renal disease. People with such conditions face an even greater risk of experiencing medical complications during pregnancy.

63. Forcing someone to continue a pregnancy against their will poses severe risks to their physical, mental, and emotional health, as well as to the stability and well-being of their family, including their existing children.

64. While abortion is always very safe, the risks associated with it do increase as pregnancy progresses. Accordingly, when patients seeking abortion are unnecessarily delayed in accessing that care, they are subjected not only to the harms associated with being forced to remain pregnant for longer, but also to increased risks from abortion, if and when they eventually obtain their desired care.

C. Plaintiffs' Abortion Services

65. PPSWO, PPGOH, WMD, and Preterm provide a broad range of sexual and reproductive health services throughout Ohio.

66. PPSWO operates five clinics in southwest Ohio, and PPGOH operates another 15 clinics throughout the rest of the State. WMD is a clinic in Kettering, Ohio, and Preterm is a clinic in Cleveland, Ohio.

67. Ohio law requires clinics that offer procedural abortion (sometimes called surgical abortion) to be ASFs. Five of these clinics offer procedural abortion: PPSWO's Cincinnati ASF, PPGOH's East Columbus and Bedford Heights ASFs, WMD, and Preterm. Each of the ASFs has one or more physicians at the facility each day it offers services.

68. The remaining health centers operated by PPSWO and PPGOH (*i.e.*, the non-ASF centers) have one or more APCs on site. Other medical professionals, such as registered nurses, licensed practical nurses, and/or medical assistants, also staff each center.

69. Regardless of the method of abortion, abortion patients in Ohio are required by law to travel to a clinic or health center to receive certain state-mandated information in person at least 24 hours prior to obtaining abortion care. *See* R.C. 2317.56(B)(1), 2919.192-94. For most patients, this means that they must make at least two trips to a clinic or health center in order to obtain an abortion: the first to receive the state-mandated information (the "Day 1" visit) and the second—at least 24 hours later, if not much longer—to obtain their abortion (the "Day 2" visit).[5]

70. Ohio law requires the Day 1 mandatory, in-person information session to be completed by a physician. *See* R.C. 2317.56(B)(1). Thus, PPGOH and PPSWO can offer Day 1 visits only at their three ASFs (*i.e.*, their surgical centers in Cincinnati, East Columbus, and Bedford Heights), where physicians are regularly on site. It would not be operationally feasible for PPGOH or PPSWO to place physicians in their non-ASFs to provide Day 1 visits.

D. The Challenged Laws

1. Telemedicine Ban

71. The Telemedicine Ban prohibits abortion providers from providing medication abortion to Ohioans through telemedicine. This prohibition directly and indirectly burdens, penalizes, interferes with, discriminates against and, in some cases, may prohibit patients' exercise of their right to abortion and inhibits Plaintiffs from assisting patients in exercising this right.

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[5] *See* Complaint, *Preterm-Cleveland v. Yost*, Franklin C.P. No. 24 CV 2634 (Mar. 29, 2024). A small minority of medication abortion patients in Ohio are able to obtain a medication abortion with one in-person visit to a clinic followed by a virtual visit at least 24 hours later. However, Ohio law currently requires these patients to schedule two separate appointments—and to delay their care for at least 24 hours. *See id.* ¶ 84.

72. The Ohio General Assembly passed the Telemedicine Ban on December 17, 2020, and Governor DeWine signed it into law on January 9, 2021. While the Telemedicine Ban was slated to take effect on April 12, 2021, this Court issued a temporary restraining order followed by a preliminary injunction blocking its enforcement.

73. Had the Telemedicine Ban not been enjoined by this Court, R.C. 2919.124(B) would have barred a clinician from providing an "abortion-inducing drug" to a pregnant person unless the clinician is "physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time" the patient consumes that dose. SB 260, § 1 (adding R.C. 2919.124(A)(l), (B)).

74. The Telemedicine Ban would also make it illegal for a clinician to "knowingly fail to comply with division (B) of this section" when the clinician provides "an abortion-inducing drug to another" for "the purpose of inducing an abortion." SB 260, § 1 (adding R.C. 2919.124(C)).

75. The Telemedicine Ban defines "abortion-inducing drug" to include mifepristone, the first medication in the most common medication abortion regimen. SB 260, § 1 (adding R.C. 2919.124(A)(l)). However, it also sweeps in any other "drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy." *Id.* (adding R.C. 2919.124(A)(l)).

76. A violation of the Telemedicine Ban is a fourth-degree felony, which carries a potential prison term of between six and eighteen months in Ohio. SB 260, § 1 (adding R.C. 2919.124(E)); *see* R.C. 2929.14(A)(4)). Licensed physicians are also "subject to sanctioning" by the Medical Board for violations of the Telemedicine Ban. SB 260, § 1 (adding R.C. 2919.124(E), which cross-references R.C. 4731.22); *see also* R.C. 2925.01(W)(17).

77. For a second or subsequent violation of the Telemedicine Ban, a physician is subject to mandatory and automatic medical license suspension for at least one year. SB 260, § 1 (amending R.C. 4731.22(I)(1)). That is so even though Ohio law otherwise reserves this automatic suspension penalty to several far more serious crimes, such as aggravated murder, felonious assault, kidnapping, and rape. R.C. 4731.22(I).

a. Benefits of Telemedicine Care

78. Telemedicine is a common and effective way to provide health care. Telemedicine refers to traditional clinical diagnosis and monitoring that a health care provider delivers live to patients via secure audio and/or video. Telemedicine allows patients to interact in real-time with health care providers who are physically distant.

79. Telemedicine is used for a wide range of services, from emergency care to psychotherapy, and in many different settings, including in general medical practices, urgent cares, hospitals, and specialists' offices. The need for telemedicine in reproductive and sexual health care is particularly acute given provider shortages.

80. Although some obstetric and gynecological care can only be done in person, telemedicine can be used to provide a range of medical interventions and treatments, including some that carry far greater medical risks than medication abortion.

81. Ohio and federal government officials alike have recognized telemedicine's benefits. For example, Governor DeWine has stated that Ohio policymakers now "realize[ ] that when you need healthcare and behavioral health services, a virtual visit can save time and money."

and he has touted a law to permanently expand insurance coverage of telehealth.[6] In 2017, then-Attorney General DeWine criticized "bureaucracy" standing in the "way of innovative programs like telemedicine and remote prescribing."[7]

82. The U.S. Department of Health and Human Services acknowledges numerous benefits to telemedicine, including that it can reduce travel time, obviate the need to take time off from work or the need to find child care; shorten wait times to meet with a provider; and increase patients' access to specialists who live farther away.[8] After the COVID-19 public health emergency, many of the Department's telehealth policies implemented during that time have been made permanent, while others have been extended through December 31, 2024.[9]

83. Recognizing these valuable benefits of telemedicine, Ohio has taken steps to reduce legal and regulatory barriers to telemedicine. These aspects of Ohio law are consistent with efforts in many other states to reduce impediments to telemedicine and thereby increase availability of health care. For example, Ohio has adopted flexible licensing rules to facilitate telemedicine. State law permits the creation of a physician-patient relationship without an in-person medical evaluation, provided the standard of care is met. Ohio Adm.Code 4731-11-09(C)–(F); R.C. 4731.74(B). Physicians may prescribe non-controlled substances on that basis. R.C.

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[6] Governor Mike DeWine, *As Prepared State of the State Address*, 3 (Mar. 23, 2022), https://governor.ohio.gov/wps/wcm/connect/gov/27cd3f50-5604-4a35-a531-32914135ec0b/As+Prepared+2022+Governor+Mike+DeWine+State+of+the+State+Remarks.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-27cd3f50-5604-4a35-a531-32914135ec0b-n-Z8q2E.

[7] Press Release, Mike DeWine, *Statement from Ohio Attorney General Mike DeWine Following the President's Declaration of National Public Health Emergency on Opioids* (Oct. 26, 2017), https://www.ohioattorneygeneral.gov/Media/News-Releases/October-2017/Statement-from-Ohio-Attorney-General-Mike-DeWine-F.

[8] Health Resources & Servs. Administration, *Why Use Telehealth?* (updated Feb. 29, 2024), https://telehealth.hhs.gov/patients/why-use-telehealth#what-are-the-benefits-of-telehealth.

[9] Health Resources & Servs. Administration, *Telehealth Policy Changes After the COVID-19 Public Health Emergency* (updated Dec. 19, 2023), https://telehealth.hhs.gov/providers/telehealth-policy/policy-changes-after-the-covid-19-public-health-emergency.

4731.74(B)(1). They can also decide whether prescription of a *controlled* substance is appropriate for a patient via telehealth under some circumstances. R.C. 4731.74(B)(2).

b. PPSWO and PPGOH's Telemedicine Medication Abortion Procedures

84. PPSWO and PPGOH strive to make their services as accessible as possible, particularly for patients in underserved communities. Consistent with this mission, PPSWO and PPGOH offer many services via telemedicine.

85. Before the introduction of TMAB, all Day 1 (in-person pre-abortion information) and Day 2 (abortion provision) visits occurred at PPSWO and PPGOH's ASFs in Cincinnati, East Columbus, and Bedford Heights. As explained above, Plaintiffs cannot legally perform procedural abortions anywhere other than those ASFs. *See* R.C. 3702.30(A)(l), (E)(l). And although state law does not expressly bar the provision of medication abortion at non-ASFs, it provides that only physicians may provide these abortions. Because PPSWO and PPGOH's physicians are based at ASFs, and they cannot feasibly be distributed to other health centers, patients obtaining medication abortion from PPSWO and PPGOH traditionally had to complete their Day 2 visit at one of PPSWO and PPGOH's ASFs as well.

86. Starting in 2018 and 2019, respectively, PPGOH and PPSWO allowed some qualified patients to have their second day medication abortion appointment via site-to-site telemedicine. For administrative reasons, PPSWO and PPGOH have since discontinued this practice, and both are piloting a new telemedicine practice that allows some qualified patients to complete their second medication abortion appointment via telemedicine. After having their Day 1 appointment at one of the ASFs, patients in the TMAB pilot programs are provided with a combination-coded secure lockbox containing their doses of mifepristone and misoprostol, as well as nausea medication and ibuprofen to take home. After the required 24-hour waiting period has

passed, the patient can have their Day 2 appointment via telemedicine from their home or another location of their choosing. During this appointment, the physician confirms the patient's decision to proceed, confirms the patient has not had a change in symptoms, answers any questions the patients may have, and finally, gives the patient the combination code to the lockbox. The physician then observes the patient ingesting the mifepristone. The patient then takes the misoprostol 24 to 48 hours later.

87. PPGOH and PPSWO's experiences with TMAB have been very positive. TMAB services are equivalent in quality to those provided in-person on Day 2 at those clinics' ASFs, and for many patients, the TMAB option is superior in meeting their preferences and needs. The TMAB process also helps reduce patients' travel burden and related delays.

c. Impact of the Telemedicine Ban on Patients and Providers

88. If allowed to go into effect, the Telemedicine Ban would burden, penalize, interfere with, and, in some cases, may prohibit patients' exercise of their right to abortion, and providers' efforts to assist them in doing so. Indeed, PPSWO, PPGOH, and Dr. Liner would be forced to stop offering TMAB entirely.

89. The Telemedicine Ban also discriminates against abortion care compared to all other forms of health care. For example, it does not affect the provision by telemedicine of medication used to manage miscarriage, even though such medication is often identical to that used for medication abortion.

90. The Telemedicine Ban also does nothing to advance patient health in accordance with widely accepted and evidence-based standards of care. According to the National Academies of Sciences, Engineering, and Medicine ("NASEM"), "There is no evidence that the dispensing or taking of mifepristone tablets requires the physical presence of a clinician . . . to ensure safety or quality. The effects of mifepristone occur after women leave the clinic, and extensive research

shows that serious complications are rare."[10] Similarly, the American College of Obstetricians and Gynecologists ("ACOG") has concluded that patients can "safely and effectively" use mifepristone and misoprostol at home for medication abortion.[11]

91. Complications from medication abortion are exceedingly rare, and when such complications arise, it would not matter whether the patient obtained a medication abortion in person or through telemedicine because such events most commonly occur only after the patient has taken the second medication, misoprostol, which occurs at least 24 hours after they have left the clinic.

92. The Telemedicine Ban would force abortion patients in Ohio to make at least two trips to the clinic. Forcing more abortion patients to make at least two separate visits to the clinic for care imposes tangible burdens and costs on them and creates significant logistical barriers to accessing time-sensitive abortion care.

93. As a result of the Telemedicine Ban, abortion patients who could have otherwise made only one visit to the clinic would be forced to take more time off from work or away from school, arrange and pay for additional child care, arrange and pay for additional transportation to and from the clinic on different days, and/or find and pay for overnight accommodations near the clinic, particularly for those traveling from further distances. In many cases, patients would have to overcome all of these obstacles to return to the clinic simply so their physician can hand them medication, which could have easily been provided in a secure lockbox at the initial appointment.

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[10] Nat'l Academies of Sciences, Eng. & Medicine, The Safety & Quality of Abortion Care in the United States 79 (2018).

[11] ACOG, *Medication Abortion Up to 70 Days of Gestation*, Practice Bulletin No. 225 (Oct. 2020), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/10/medication-abortion-up-to-70-days-of-gestation#:~:text=Patients%20can%20safely%20and%20effectively,who%20undergo%20a%20medication%20abortion. ACOG is a professional membership organization for obstetrician–gynecologists.

94. These financial and logistical barriers would be particularly burdensome and harmful for already vulnerable groups, including poor or low-income patients who constitute a majority of people seeking abortion. These patients often have particular difficulty getting time off work due to inflexible scheduling at low-wage jobs, and even if they are able to get days off, they often work in jobs that do not provide paid leave and therefore may forgo wages for time away from work. Low-income patients may also need to delay their second appointment to save up enough money to afford the expense of additional child care and costs.

95. Patients whose access to abortion would be delayed by the Telemedicine Ban may also suffer increased medical risks associated with delaying their abortion or continuing pregnancy—because, as noted above, while abortion is very safe, its risks increase as pregnancy progresses. And some patients may lose the ability to access medication abortion altogether if the pregnancy extends beyond Ohio's 70-day LMP limit.

96. The Telemedicine Ban may create barriers that, for some patients, will so delay their access that they cannot have an abortion at all.

97. If allowed to go into effect, the Telemedicine Ban will cause irreparable harm to both patients and to PPSWO, PPGOH, and Dr. Liner, who will be forced to stop providing constitutionally protected health care to their patients and be threatened with criminal and civil penalties.

98. In sum, the Telemedicine Ban burdens, penalizes, interferes with, discriminates against and, in some cases, may prohibit patients' voluntary exercise of their right to make and carry out their own reproductive decisions, including the decision to obtain medication abortion, and inhibits PPSWO, PPGOH, and Dr. Liner from assisting patients in exercising this right, without any countervailing benefit to patient health.

2. APC Ban

99. The APC Ban prevents health care providers who are not physicians from providing medication abortion. R.C. 2317.56(B), 2919.11, 2919.123, 4723.44(B)(6), 4723.50(B)(1), 4723.151(C), 4730.02(E), 4730.03(F), 4730.39(B)(2), 4730.42(A)(1); Ohio Adm.Code 4723-9-10(K), 4730-2-07(E). Under Ohio law, advanced practice clinicians cannot prescribe "any drug or device to perform or induce an abortion, or otherwise perform or induce an abortion." R.C. 4723.44(B)(6) (advanced practice registered nurses ("APRNs" [12])), 4730.02(E) (PAs); *see also* Ohio Adm.Code 4723-9-10(K) (APRNs), 4730-2-07(E) (PAs). Any APC who does so may be subject to disciplinary action, including the revocation or suspension of their license to practice as an APC. *See* R.C. 4623.28(B)(30) (APRNs); 4730.25(B)(24) (PAs). Ohio law further restricts APCs by preventing any person from providing, selling, dispensing, or administering mifepristone "for the purpose of inducing an abortion in any person or enabling the other person to induce an abortion in any person," unless that person is a physician. R.C. 2919.123(A).

100. Ohio law also provides that abortion constitutes the practice of medicine or surgery, *see* R.C. 2919.11, and that medicine or surgery may only be practiced or performed by a person licensed by the Medical Board, *see* R.C. 4731.41(A).

101. Lastly, as explained above, Ohio law requires the Day 1 mandatory, in-person information session to be completed by a physician. *See* R.C. 2317.56(B)(1). Thus, APCs cannot obtain informed consent from abortion patients. In conjunction, these provisions establish the requirement that only physicians may provide abortions in Ohio.

102. The APC Ban burdens, penalizes, interferes with, and discriminates against patients' right to abortion, and prohibits APCs from assisting such patients by providing

[12] NPs and CNMs are two types of APRNs.

medication abortions. But for the APC Ban, Plaintiffs would train currently employed APCs and/or seek to hire APCs to provide medication abortions, expanding access to care.

a. APCs' Scope of Practice in Ohio

103. APCs are health care professionals who have completed advanced education in a specific area of health care. APCs include NPs, CNMs, and PAs. In Ohio, APCs' scope of practice is highly regulated. Even so, APCs are delegated broad authority by the Medical Board, in the case of PAs, and the Nursing Board, in the case of NPs and CNMs.

104. APCs like Plaintiff Quinn are highly skilled and qualified clinicians who, based on advanced education and training, have a broad scope of practice, including extensive prescriptive authority and the ability to perform a range of complex medical procedures.

105. With appropriate education and training, APCs are highly qualified to provide medication abortions.

106. Ohio APCs currently perform a variety of reproductive health interventions of greater technical complexity that require more advanced skills than administering a medication abortion. For example, consistent with their training and experience, APCs can insert and remove intrauterine devices ("IUDs") and contraceptive implants; and perform colposcopies.

107. APCs are subject to Ohio's generally applicable professional licensure, health, and tort laws and regulations. For instance, the Medical Board has the power to place PAs on probation, impose sanctions or civil penalties, or suspend or revoke their licenses or prescriber number for a variety of acts or conduct. R.C. 4730.25, 4730.252. The Nursing Board has the same power to discipline NPs and CNMs. R.C. 4723.28.

108. APCs also face criminal penalties for violating the APC Ban. *See* R.C. 2919.123(E), 4723.99(A) (APRNs), 4730.99 (PAs).

i. Nurse Practitioners

109. NPs are regulated by the Nursing Board, and in order to practice, must be a registered nurse, be certified by an approved national certification organization, hold a master's or higher degree in nursing or a related field, and have completed a graduate-level NP education program. R.C. 4723.41, 4723.482(A)–(B). NPs are required to renew their license to practice nursing every two years and complete continuing nursing education credits, of which at least twelve hours must be in advanced pharmacology from an accredited institution. *See* R.C. 4723.24(A)(1)(c), (C)(2)(c).

110. NPs have a broad scope of practice by virtue of their advanced education and training. Under Ohio law, NPs' scope of practice includes performing medical procedures and prescribing controlled substances, appropriate to their education and experience. R.C. 4723.43(C).

111. By virtue of their skill and competency, NPs are authorized under Ohio law to practice with a high degree of independence, so long as they have entered into a standard care arrangement with a primary supervising physician. *See* R.C. 4723.43, 4723.431; Ohio Adm.Code 4723-8-04. While physicians can enter into standard care arrangements with more than five nurses, physicians cannot collaborate at the same time with over five nurses "in the prescribing component[s] of their practices." R.C. 4723.431(A)(1). Additionally, while the supervising physician must be "continuously available to communicate" with the NP "either in person, or by electronic communication," the physician is not required to be physically present when the NP is practicing. Ohio Adm.Code 4723-8-01(B)(1).

ii. Certified Nurse-Midwives

112. Like NPs, CNMs are regulated by the Nursing Board. In order to practice, CNMs must obtain a master's or doctoral degree with a major in nursing specialty or in a related field and pass a national CNM certification examination. R.C. 4723.41(A). CNMs must renew their license

to practice nursing every two years and complete continuing nursing education credits, of which at least twelve hours must be in advanced pharmacology from an accredited institution. R.C. 4723.24(A)(1)(c), (C)(2)(c).

113. It is within CNMs' scope of practice in Ohio to manage preventive and primary care services necessary to provide health care to women during pregnancy, labor, and birth, attend to normal vaginal deliveries, and repair vaginal tears. As part of their practice, CNMs regularly treat and monitor maternal risks, including vaginal tears, postpartum hemorrhage, and more—all of which are routine and carry higher risks to patient health than the risks associated with medication abortion.

114. Ohio statutes expressly permit CNMs to prescribe medications, attend patients in uncomplicated labor, and perform procedures associated with childbirth (*i.e.*, episiotomies and repair of vaginal tearing). R.C. 4723.43(A). In emergencies, CNMs can "perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition." *Id.*

115. By virtue of their skill and competency, CNMs are authorized under Ohio law to practice with a high degree of independence, so long as they have entered into a standard care agreement with a primary supervising physician. Ohio Adm.Code 4723-8-04. Although physicians may enter in standard care arrangements with more than five nurses, they are limited to collaborating with no more than five nurses at the same time "in the prescribing component[s] of their practices." R.C. 4723.431(A)(1). Additionally, while the primary or back-up supervising physician must be "continuously available to communicate" with the CNM "either in person, or by electronic communication," the physician is not required to be physically present when the CNM is practicing. Ohio Adm.Code 4723-8-01(B)(2).

iii. Physician Assistants

116. PAs are regulated by the Medical Board, must be licensed, must generally complete a master's or higher degree from an accredited organization or program, and must complete 12 hours of continuing medical education every two years. R.C. 4730.11, 4730.14, 4730.49(A)(1).

117. A PA may perform "services authorized by the supervising physician" that are within the "supervising physician's normal course of practice and expertise." R.C. 4730.20(A).

118. PAs can also see patients in ways similar to physicians. Within their scope of practice, and consistent with their training and qualifications, PAs can perform comprehensive physical exams, order and interpret diagnostic tests, diagnose and initiate treatment, assist physicians in surgery, and perform bedside procedures, among other forms of care.

119. By virtue of their skill and competency, PAs are authorized by Ohio law to practice with a high degree of independence, so long as they practice under a "supervising physician." R.C. 4730.02. As in the case of NPs and CNMs, this does not require the supervising physician's physical presence, provided the physician is "continuously available for direct communication" with the PA through other means. R.C. 4730.21(A)(1). Physicians are not allowed to supervise over five PAs at a time, but a PA may enter into supervision agreements "with any number of supervising physicians." R.C. 4730.21(B).

120. PAs can order, prescribe, personally furnish, and administer drugs and medical devices, including controlled substances, so long as the PA "holds a valid prescriber number issued by the Medical Board and has been granted physician-delegated prescriptive authority." R.C. 4730.20(A)(7), 4730.41.

b. Ohio Law Bars APCs from Providing Medication Abortions Even When Doing So Would Be Within Their Scope of Practice

121. Ohio law prohibits APCs from providing medication abortion despite their qualifications, training, and experience. The APC Ban is out of step with Ohio's scope of practice regulations, as evidenced by the fact that APCs may legally provide the same medications used in medication abortion—mifepristone and misoprostol—for other purposes, such as miscarriage management. There is no medical basis for prohibiting APCs from prescribing and overseeing the use of these same medications for a medication abortion, consistent with their training and experience.

122. Preventing APCs from prescribing certain medications solely in the abortion context is particularly burdensome and discriminatory, as Ohio law does not categorically prevent APCs from handling pre- and post-medication abortion patient care. APCs may, for example, perform an ultrasound, pregnancy test, and/or other lab tests for the patient. In addition, APCs are trained to recognize circumstances when they would need to refer a patient to a physician, should the patient need a higher level of care.

c. Evidence Demonstrates APCs Can Safely and Effectively Provide Medication Abortion

123. There is no medical basis for the APC Ban, because widely accepted, evidence-based standards of care support appropriately trained APCs providing medication abortion.

124. APCs are capable of providing medication abortion safely and effectively. NASEM concluded in their 2018 consensus report that "[b]oth trained physicians . . . and APCs (physician assistants, certified nurse-midwives, and nurse practitioners) can provide medication . . . abortions safely and effectively," citing an "extensive body of research documenting the safety of abortion care in the United States."[13]

[13] Nat'l Academies of Sciences, Eng. & Medicine, The Safety & Quality of Abortion Care in the United States 14 (2018).

125. Leading medical authorities, including ACOG, the American Public Health Association, the World Health Organization, and Physicians for Reproductive Health have concluded that laws prohibiting qualified APCs from providing medication abortion services prevent access to safe abortion care.

126. Indeed, the FDA has contemplated APC prescription of mifepristone since its approval in 2000. The 2000 label allowed APCs to prescribe mifepristone without a physician's physical presence, provided the APC was supervised by a physician. The 2016 label removed all restrictions on APC prescription, allowing them to prescribe mifepristone fully independently.

127. Of the states in which abortion is legal, twenty-one states and the District of Columbia allow APCs to provide medication abortion care.

128. PPSWO currently employs APCs, including NPs and CNMs. PPSWO would train its current APCs to provide medication abortion, and seek to hire additional APCs as needed, if APCs were permitted to provide medication abortion.

129. PPGOH currently employs APCs, including NPs. PPGOH would train its current APCs to provide medication abortion if APCs were permitted to do so.

130. WMD and Preterm are not currently staffed with APCs but would seek to hire and train APCs to provide medication abortion if APCs were permitted to do so.

131. But for the APC Ban, APC provision of medication abortion at PPSWO, PPGOH, WMD, and Preterm would further expand services to meet patient need.

132. APCs at PPSWO and PPGOH, including Plaintiff Quinn, perform procedures, including IUD and contraceptive implants insertion and removal, that are either comparable in complexity and risk to medication abortion, or are even more complex and risky than medication abortion.

133. APCs at PPSWO and PPGOH, including Plaintiff Quinn, are highly qualified and trained clinicians who, but for the APC Ban, would be trained to provide safe medication abortion care through the appropriate collaborative practice and supervisory arrangements with physicians.

d. The APC Ban Harms Patients and Providers

134. By unnecessarily limiting the pool of available medication abortion providers in Ohio, the APC Ban significantly restricts and delays access to abortion and contradicts widely accepted and evidence-based standards of care, thereby jeopardizing (rather than advancing) patient health and safety and imposing significant financial and logistical burdens on clinics and patients.

135. The APC Ban burdens, penalizes, discriminates against, and interferes with Ohioans' fundamental constitutional right to abortion because it subjects medication abortion patients to unnecessary delays in accessing care, which increases risks to patient health and adds to the financial and logistical burdens of obtaining an abortion.

136. The APC Ban also burdens, penalizes, discriminates against, and interferes with providers' ability to assist Ohioans seeking to exercise this fundamental right to make reproductive decisions. APCs are expressly prohibited from providing medication abortions, forcing patients to rely on physicians at ASFs and effectively limiting the number of patients that can access medication abortions.

137. There is a nationwide shortage of reproductive health care providers, and Ohio is no exception. But for the APC Ban, Plaintiffs could expand the pool of qualified professionals able to provide medication abortion care in Ohio to include APCs. This would mean Ohioans would have a larger pool of providers and availability of appointments from which to obtain medication abortion care, increasing schedule flexibility for both Plaintiffs and their patients and reducing delays and travel burdens.

138. Having a limited pool of medication abortion providers does not advance patient health and instead causes medically unnecessary delays that may harm patients' health in a number of ways. Delays subject patients to the risks associated with pregnancy for a longer period of time and force patients to obtain care later in pregnancy, which increases the associated risks of an abortion, despite its overall safety. In some cases, delaying access to care can push a patient past the point in pregnancy when medication abortion is available.

139. But for the APC Ban, PPSWO and PPGOH could provide medication abortion at their non-ASF health centers, rather than just at their ASFs, and WMD would open a new clinic with APCs on staff in the greater Cincinnati area. This would reduce the distance traveled by some patients to receive medication abortion care.

140. But for the APC Ban, the Plaintiff clinics could hire and train APCs to provide medication abortion care, expanding access.

141. In sum, the APC Ban burdens, penalizes, interferes with, discriminates against and, in some cases, may prohibit patients' voluntary exercise of their right to make and carry out their own reproductive decisions, including the decision to obtain medication abortion, and inhibits Plaintiffs from assisting patients in exercising this right, without any countervailing benefit to patient health.

3. Evidence-Based Use Ban

142. The Evidence-Based Use Ban restricts the use of mifepristone solely for abortion care, despite best medical evidence, by mandating that providers use the drug for abortion only in accordance with the FDA's final printed label. This prohibition on other uses of mifepristone not expressly included in the label, also known as "evidence based" or "off-label use," burdens, penalizes, interferes with, discriminates against and, in some cases, may prohibit patients' access to abortion and inhibits Plaintiffs from assisting patients in exercising their right to abortion.

143. In 2004, the Ohio General Assembly enacted R.C. 2919.123—the Evidence-Based Use Ban—a first-of-its-kind restriction on the off-label use of mifepristone.

144. The Evidence-Based Use Ban criminalizes providing mifepristone for abortion care except "in accordance with all provisions of federal law that govern the use of RU-486 (mifepristone) for inducing abortions." R.C. 2919.123(A), 2919.123(F)(1).

145. The Supreme Court of Ohio has interpreted the Evidence-Based Use Ban to mean that a physician providing mifepristone for the purpose of inducing an abortion may do so "only by using the dosage indications and treatment protocols expressly approved by the FDA in the drug's final printed labeling as incorporated by the drug approval letter." *Cordray v. Planned Parenthood Cincinnati Region*, 122 Ohio St.3d 361, 2009-Ohio-2972, 911 N.E.2d 871, ¶ 35 (Ohio 2009).

146. The FDA's approved drug regimen is the result of a lengthy review process. In order to obtain FDA approval to market a drug product in the United States, a manufacturer submits an application containing evidence that the drug is safe and effective for its intended use. If the FDA determines that the drug's health benefits outweigh its known risks for that particular use, the FDA approves the drug for sale along with its proposed label.

147. To ensure the drug's benefits outweigh its risks, the FDA may require a Risk Evaluation and Mitigation Strategy ("REMS"). 21 U.S.C. § 355-1(a)(1). In 2011, the FDA approved a REMS for mifepristone that incorporated the same conditions of use the agency had imposed when first approving mifepristone in 2000.[14] Despite the proven safety of mifepristone

[14] The FDA implemented restrictions for mifepristone when first approving its use, under a provision then known as "subpart H," 21 C.F.R. §§ 314.500–560, and later under a REMS.

in the two decades since its approval, and despite broad calls from the medical community to eliminate it based on mifepristone's safety record, FDA has kept a REMS in place.[15]

148. The current FDA-approved mifepristone regimen, which was established in 2016, includes 200 mg of mifepristone taken orally, followed 24 to 48 hours later by 800 μg of misoprostol taken buccally, through 70 days LMP.

149. If a provider prescribes mifepristone to terminate a pregnancy in a way that differs from this regimen—in other words, if they prescribe mifepristone "off-label"—they are "guilty of unlawful distribution of an abortion-inducing drug, a felony of the fourth degree" under Ohio law, and also subjected to administrative penalties, including revocation of professional licenses. R.C. 2919.123(E). For a second violation, the provider is guilty of a felony in the third degree. *Id.*

a. Evolution and Benefits of Off-Label Use

150. Off-label use of medications pursuant to evidence-based protocols is an essential part of medical practice. In clinical practice, new uses or dosing regimens often become widely adopted and well accepted long before they are reflected in the drug's final printed labeling. Off-label protocols are supported by evidence-based medical practices and providers' exercise of their professional judgment in caring for their patients.

151. Examples of common off-label protocols abound and include prescribing aspirin to prevent heart attacks, Wellbutrin, approved by the FDA as an antidepressant, for smoking cessation, laxatives for children with constipation,[16] and Lidocaine to treat complications from shingles.[17]

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[15] On March 29, 2016, the FDA approved changes to mifepristone's label, including its REMS.

[16] Divya Hoon et al., *Trends in Off-Label Drug Use in Ambulatory Settings: 2006-2015*, 144(4) Pediatrics, 5-6 (2019).

[17] Christopher M. Wittich et al., *Ten Common Questions (and Their Answers) About Off-Label Drug Use*, 87(10) Mayo Clinic Proc. 982 (2012).

152. Ohio does not restrict off-label use of the vast majority of drugs. Upon information and belief, such restrictions are only in effect for mifepristone for abortion and certain Schedule III anabolic steroids, *see* R.C. 3719.06(B), which exhibit significantly higher rates of adverse effects than mifepristone.

153. In Ohio, off-label protocols are even protected in certain areas. For example, as long as a drug has been recognized as safe and effective for treatment, R.C. 1751.66(A) prohibits insurance providers from "exclud[ing] coverage for any drug approved by the [FDA] on the basis that the drug has not been approved by the [FDA] for the treatment of the particular indication for which the drug has been prescribed."

154. The Evidence-Based Use Ban singles out patients and abortion providers using mifepristone for abortion care for differential and unfavorable treatment because Ohio law does not impose similar restrictions on the off-label use of mifepristone for other purposes, including miscarriage management.

155. Mifepristone is a case in point of how off-label use can become the standard of medical care well before the FDA formally approves the protocol.

156. The FDA originally approved mifepristone for use in the United States for abortion care in 2000 using 600 mg of mifepristone, followed two days later by 400 μg of misoprostol, through 49 days LMP.

157. Even before the FDA's approval of mifepristone, newer research had been conducted showing that a lower dosage (200 mg) of mifepristone combined with a different dosage and manner of administering misoprostol was equally safe and effective through 63 days LMP. This research also showed that reducing the mifepristone dose decreased side effects. As a result, for almost two decades after mifepristone was first approved for use by the FDA, the regimen most

commonly used across the country was a regimen that differed from that detailed in the approved label at the time.

158. In 2016, the FDA approved several changes to mifepristone's label, including its REMS, expressly relying on this evidence-based regimen, which had become the standard of care in clinical practice. This update resulted in the current label outlining a regimen of 200 mg of mifepristone taken orally, followed 24 to 48 hours later by 800 μg of misoprostol taken buccally, through 70 days LMP.

159. Additional safe, validated off-label uses of mifepristone have made, and will likely continue to make, abortion safer and more accessible.

160. For example, subsequent research shows that a regimen of mifepristone and misoprostol is safe and effective beyond 70 days LMP.[18]

161. The Evidence-Based Use Ban also restricts the prescription of misoprostol when it is prescribed as part of a medication abortion regimen that includes mifepristone. For example, while some patients prefer to take misoprostol orally or vaginally, the FDA label specifies that it should be taken buccally, so providers cannot employ these alternative routes of administration for misoprostol when the drug is being used in tandem with mifepristone for abortion, even though they have been shown to be safe and effective.

b. The Evidence-Based Use Ban's Impact on Patients and Providers

[18] *See, e.g.*, Ilana G. Dzuba et al., *A Repeat Dose of Misoprostol 800 mcg Following Mifepristone for Outpatient Medical Abortion at 64–70 and 71–77 Days of Gestation: A Retrospective Chart Review*, 102(2) Contraception 104, 106 (2020); Nathalie Kapp et al., *Medical Abortion in the Late First Trimester: A Systematic Review*, 99(2) Contraception 77, 77–86 (Feb. 2019).

162. By prohibiting off-label uses of mifepristone for abortion care, the Evidence-Based Use Ban violates Ohioans' right to make and carry out their own reproductive decisions and interferes with Plaintiffs' ability to assist them in doing so.

163. For many patients, including some of Plaintiffs' patients, an evidence-based, off-label mifepristone regimen is the safest and most effective way to obtain an abortion. Many patients also strongly prefer medication abortions over procedural abortions.

164. Prohibiting off-label use of mifepristone for abortion care impedes access by, among other things, prohibiting these patients from obtaining medication abortion, exacerbating the psychological and emotional toll for those who find a more invasive procedural abortion to be uncomfortable or traumatic; and erecting barriers in the form of travel and its associated costs, such as lost wages and expenses for child care, transportation, and accommodations.

165. Further, patients who are otherwise unable to undergo a procedural abortion, whether because of medical indications, trauma, or concerns around bodily control, are left either to attempt to travel out of state to access medication abortion, obtain a medication abortion outside the medical system, or in some cases, potentially even to carry an unwanted pregnancy to term.[19]

166. But for the Evidence-Based Use Ban, Plaintiffs would prescribe mifepristone for the termination of pregnancies beyond 70 days LMP based on the best available medical evidence.

167. As research continues to progress, additional validated, effective off-label uses of mifepristone for abortion care may be identified, which will continue to make abortion safer and more accessible. But, by prohibiting off-label use of mifepristone for abortions, the Evidence-Based Use Ban prevents patients from benefiting from such advances.

[19] These harms are only exacerbated by the Day 1 and Day 2 visit requirement because the delays resulting from that requirement can push a patient beyond 70 days LMP before the patient is able to access medication abortion services. *See supra* ¶¶ 69–70.

168. Restricting off-label use of mifepristone for abortions does not advance patient health in accordance with widely accepted and evidenced-based standards of care. To the contrary, it risks harming patient health by restricting Plaintiffs' discretion to use the most appropriate, safest, and evidenced-based treatment for their patients and thereby preventing some patients from obtaining their preferred method of abortion; delaying their care while they attempt to travel out of state for medication abortion; or putting them in the position of having to try to obtain a medication abortion outside the medical system or carry an unwanted pregnancy to term.

169. As demonstrated through historical practice and clinical research, evidence-based, off-label protocols for mifepristone are safe and effective, and providers outside of Ohio routinely prescribe mifepristone, as with many drugs, off-label in accordance with evidence-based standards of care, their best medical judgment, and patients' wishes and best interest.

170. The Evidence-Based Use Ban's discriminatory nature and failure to advance patient health is further evidenced by the law's selective restrictions on mifepristone "for the purpose of inducing an abortion" without comparable restrictions on mifepristone in other contexts, including for managing miscarriages. There is simply no medical justification for restricting one and not the other.

171. In sum, the Evidence-Based Use Ban burdens, penalizes, interferes with, discriminates against and, in some cases, may prohibit patients' voluntary exercise of their right to make and carry out their own reproductive decisions, including the decision to obtain medication abortion, and inhibits Plaintiffs from assisting patients in exercising this right, without any countervailing benefit to patient health.

CLAIMS FOR RELIEF

COUNT I – Right to Reproductive Freedom

172. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 171.

173. Under the Ohio Constitution, "[e]very individual has a right to make and carry out one's own reproductive decisions" including the decision to obtain an abortion, and the State "shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" any "individual's voluntary exercise of" the right to abortion, or "a person or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Constitution, Article I, Sections 22(A)–(B).

174. The Challenged Laws impose onerous and unnecessary requirements that delay, impede, and, in some cases, may prevent access to abortion, create financial and logistical obstacles to obtaining an abortion, undermine patient self-determination, and discriminate against abortion patients and providers, singling them out for differential and unfavorable treatment. In doing so, the Challenged Laws—the Telemedicine Ban[20], the APC Ban, and the Evidence-Based Use Ban—each individually and in combination, directly and indirectly burden, penalize, prohibit, interfere with, and discriminate against both Ohioans' right to make and carry out the decision to have an abortion, including a medication abortion, and Plaintiffs in assisting their patients in exercising that right.

175. The Challenged Laws are not "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care."

[20] WMD and Preterm are not challenging the Telemedicine Ban.

The Challenged Laws have no legitimate medical justification, contradict evidence-based best medical practice, the standard of care, and mainstream medical consensus, and serve only to harm patients' health and well-being.

176. Accordingly, the Challenged Laws violate Article I, Section 22 of the Ohio Constitution.

177. Plaintiffs and their patients have no adequate remedy at law to address these harms.

COUNT II – Substantive Due Process

178. PPGOH, PPSWO, and Dr. Liner reallege and incorporate by reference the allegations contained in paragraphs 1 through 171.

179. By prohibiting access to safe and effective TMAB, the Telemedicine Ban infringes on the right to pre-viability abortion, privacy, bodily autonomy, and free choice of health care guaranteed under the Ohio Constitution, Article I, Sections 1, 2, 16, and 20, without adequate justification.

180. If the Telemedicine Ban is allowed to take effect, PPGOH, PPSWO, and Dr. Liner and their patients will be unable to offer and use TMAB in Ohio, thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm. PPGOH, PPSWO, and Dr. Liner have no adequate remedy at law to address these harms.

COUNT III – Patients' Equal Protection

181. PPGOH, PPSWO, and Dr. Liner reallege and incorporate by reference the allegations contained in paragraphs 1 through 171.

182. The Telemedicine Ban denies PPGOH, PPSWO, and Dr. Liner's patients their right to the enjoyment of equal protection and benefit under the Ohio Constitution, Article I, Section 2, by singling out medication abortion for worse treatment than comparable types of health care freely

offered via telemedicine, including forms of health care sought by men, without adequate justification.

183. If the Telemedicine Ban is allowed to take effect, PPGOH, PPSWO, and Dr. Liner's patients will be deprived of equal protection of the laws under the Ohio Constitution, thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm. PPGOH, PPSWO, and Dr. Liner have no adequate remedy at law to address these harms.

COUNT IV – Abortion Providers' Equal Protection

184. PPGOH, PPSWO, and Dr. Liner reallege and incorporate by reference the allegations contained in paragraphs 1 through 171.

185. The Telemedicine Ban denies PPGOH, PPSWO, and Dr. Liner their right to the enjoyment of equal protection and benefit under the Ohio Constitution, Article I, Section 2, by targeting abortion providers with criminal penalties and professional sanctions for providing medication abortion using telemedicine, while leaving unrestricted other medical providers, including those who treat miscarriage using the exact same medications as in medication abortion, without adequate justification.

186. If the Telemedicine Ban is allowed to take effect, PPGOH, PPSWO, and Dr. Liner will be subject to irreparable harm by depriving them of equal protection of the laws under the Ohio Constitution, thereby causing them to suffer significant constitutional, business, and professional harm and threatening them with civil and criminal penalties. PPGOH, PPSWO, and Dr. Liner have no adequate remedy at law to address these harms.

COUNT V – Declaratory Judgment

187. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 171.

188. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. Plaintiffs and their patients are adversely affected by the Challenged Laws, as set forth herein.

189. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

190. Pursuant to R.C. 2721.01, et seq., Plaintiffs request that the Court find and issue a declaration that:

a. The Challenged Laws violate Article I, Section 22 of the Ohio Constitution because they burden, penalize, prohibit, interfere with, and discriminate against Ohioans in exercising their constitutional right to abortion and those who assist them in doing so;

b. The Telemedicine Ban violates Article I, Sections 1, 2, 16, and 20 of the Ohio Constitution by denying PPGOH, PPSWO, and Dr. Liner and their patients substantive due process rights to previability abortion, privacy, bodily autonomy, and free choice in health care;

c. The Telemedicine Ban violates Article I, Section 2 of the Ohio Constitution by denying PPGOH, PPSWO, and Dr. Liner's patients the equal protection and benefit of the law, in that it singles out medication abortion via telemedicine from all other comparable forms of care, including care obtained by men and miscarriage management, without adequate justification; and

d. The Telemedicine Ban violates Article I, Section 2 of the Ohio Constitution by denying PPGOH, PPSWO, and Dr. Liner the equal protection and benefit of the law, in that it singles out abortion providers for criminal and civil sanctions while leaving unregulated other health care providers offering comparable services without adequate justification.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To immediately issue a preliminary injunction, and later a permanent injunction, restraining Defendants, their employees, agents, servants, and successors, and any persons in active concert or participation with them, from enforcing the APC Ban (R.C. 2317.56(B), 2919.11, 2919.123, 4723.44(B)(6), 4723.50(B)(1), 4723.151(C), 4730.02(E), 4730.03(F), 4730.39(B)(2), 4730.42(A)(1); Ohio Adm.Code 4723-9-10(K), 4730-2-07(E)), the Evidence-Based Use Ban (R.C. 2919.123), and any other Ohio statute or regulation that could be understood to give effect to those provisions, including through any future enforcement actions based on conduct that occurred during the pendency of an injunction;

B. To keep in place the preliminary injunction, and later enter a permanent injunction restraining Defendants, their employees, agents, servants and successors, and any persons in active concert or participation with them, from enforcing the Telemedicine Ban (R.C. 2919.124), and any other Ohio statute or regulation that could be understood to give effect to that provision, including through any future enforcement actions based on conduct that occurred during the pendency of an injunction; and

C. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**Motion for pro hac vice forthcoming*

Dated: May 21, 2024

Exhibit 1

Article I, Section 22 | The Right to Reproductive Freedom with Protections for Health and Safety

Ohio Constitution / Article I Bill of Rights

Effective: *2023*

A. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on:

1. contraception;

2. fertility treatment;

3. continuing one's own pregnancy;

4. miscarriage care; and

5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

1. An individual's voluntary exercise of this right or

2. A person or entity that assists an individual exercising this right,

unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.

C. As used in this Section:

1. "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis."

2. "State" includes any governmental entity and any political subdivision.

D. This Section is self-executing.

Exhibit 2

(133rd General Assembly)
(Senate Bill Number 260)

AN ACT

To amend sections 109.572, 2919.123, 2953.25, 4729.291, 4731.22, and 4731.223 and to enact section 2919.124 of the Revised Code regarding abortion-inducing drugs.

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

SECTION 1. That sections 109.572, 2919.123, 2953.25, 4729.291, 4731.22, and 4731.223 be amended and section 2919.124 of the Revised Code be enacted to read as follows:

Sec. 109.572. (A)(1) Upon receipt of a request pursuant to section 121.08, 3301.32, 3301.541, or 3319.39 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(1)(a) of this section;

(c) If the request is made pursuant to section 3319.39 of the Revised Code for an applicant who is a teacher, any offense specified in section 3319.31 of the Revised Code.

(2) On receipt of a request pursuant to section 3712.09 or 3721.121 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for employment in a position for which a criminal records check is required by those sections. The superintendent shall conduct the criminal records check in

the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(2)(a) of this section.

(3) On receipt of a request pursuant to section 173.27, 173.38, 173.381, 3701.881, 5119.34, 5164.34, 5164.341, 5164.342, 5123.081, or 5123.169 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check of the person for whom the request is made. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of, has pleaded guilty to, or (except in the case of a request pursuant to section 5164.34, 5164.341, or 5164.342 of the Revised Code) has been found eligible for intervention in lieu of conviction for any of the following, regardless of the date of the conviction, the date of entry of the guilty plea, or (except in the case of a request pursuant to section 5164.34, 5164.341, or 5164.342 of the Revised Code) the date the person was found eligible for intervention in lieu of conviction:

(a) A violation of section 959.13, 959.131, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2905.32, 2905.33, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.31, 2919.12, 2919.121, 2919.123, 2919.124, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.12, 2921.13, 2921.21, 2921.24, 2921.32, 2921.321, 2921.34, 2921.35, 2921.36, 2921.51, 2923.12, 2923.122, 2923.123, 2923.13, 2923.161, 2923.162, 2923.21, 2923.32, 2923.42, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.24, 2925.36, 2925.55, 2925.56, 2927.12, or 3716.11 of the Revised Code;

(b) Felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(c) A violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996;

(d) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses

listed in divisions (A)(3)(a) to (c) of this section;

(e) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in divisions (A)(3)(a) to (d) of this section.

(4) On receipt of a request pursuant to section 2151.86 or 2151.904 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2913.49, 2917.01, 2917.02, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, two or more OVI or OVUAC violations committed within the three years immediately preceding the submission of the application or petition that is the basis of the request, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(4)(a) of this section.

(5) Upon receipt of a request pursuant to section 5104.013 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2151.421, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.32, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.19, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.04, 2909.05, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2917.01, 2917.02, 2917.03, 2917.31, 2919.12, 2919.22, 2919.224, 2919.225, 2919.24, 2919.25,

2921.03, 2921.11, 2921.13, 2921.14, 2921.34, 2921.35, 2923.01, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, a violation of section 2923.02 or 2923.03 of the Revised Code that relates to a crime specified in this division, or a second violation of section 4511.19 of the Revised Code within five years of the date of application for licensure or certification.

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in division (A)(5)(a) of this section.

(6) Upon receipt of a request pursuant to section 5153.111 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(6)(a) of this section.

(7) On receipt of a request for a criminal records check from an individual pursuant to section 4749.03 or 4749.06 of the Revised Code, accompanied by a completed copy of the form prescribed in division (C)(1) of this section and a set of fingerprint impressions obtained in a manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to a felony in this state or in any other state. If the individual indicates that a firearm will be carried in the course of business, the superintendent shall require information from the federal bureau of investigation as described in division (B)(2) of this

section. Subject to division (F) of this section, the superintendent shall report the findings of the criminal records check and any information the federal bureau of investigation provides to the director of public safety.

(8) On receipt of a request pursuant to section 1321.37, 1321.53, or 4763.05 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for a license, permit, or certification from the department of commerce or a division in the department. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following: a violation of section 2913.02, 2913.11, 2913.31, 2913.51, or 2925.03 of the Revised Code; any other criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, as set forth in Chapters 2909., 2911., 2913., 2915., 2921., 2923., and 2925. of the Revised Code; or any existing or former law of this state, any other state, or the United States that is substantially equivalent to those offenses.

(9) On receipt of a request for a criminal records check from the treasurer of state under section 113.041 of the Revised Code or from an individual under section 928.03, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4729.53, 4729.90, 4729.92, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4747.051, 4751.20, 4751.201, 4751.202, 4751.21, 4753.061, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4774.031, 4774.06, 4776.021, 4778.04, 4778.07, 4779.091, or 4783.04 of the Revised Code, accompanied by a completed form prescribed under division (C)(1) of this section and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any criminal offense in this state or any other state. Subject to division (F) of this section, the superintendent shall send the results of a check requested under section 113.041 of the Revised Code to the treasurer of state and shall send the results of a check requested under any of the other listed sections to the licensing board specified by the individual in the request.

(10) On receipt of a request pursuant to section 124.74, 718.131, 1121.23, 1315.141, 1733.47, or 1761.26 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any criminal offense under any existing or former law of this state, any other state, or the United States.

(11) On receipt of a request for a criminal records check from an appointing or licensing

authority under section 3772.07 of the Revised Code, a completed form prescribed under division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner prescribed in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty or no contest to any offense under any existing or former law of this state, any other state, or the United States that is a disqualifying offense as defined in section 3772.07 of the Revised Code or substantially equivalent to such an offense.

(12) On receipt of a request pursuant to section 2151.33 or 2151.412 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person for whom a criminal records check is required under that section. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(12)(a) of this section.

(13) On receipt of a request pursuant to section 3796.12 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in a manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to the following:

(a) A disqualifying offense as specified in rules adopted under division (B)(2)(b) of section 3796.03 of the Revised Code if the person who is the subject of the request is an administrator or other person responsible for the daily operation of, or an owner or prospective owner, officer or prospective officer, or board member or prospective board member of, an entity seeking a license from the department of commerce under Chapter 3796. of the Revised Code;

(b) A disqualifying offense as specified in rules adopted under division (B)(2)(b) of section 3796.04 of the Revised Code if the person who is the subject of the request is an administrator or other person responsible for the daily operation of, or an owner or prospective owner, officer or prospective officer, or board member or prospective board member of, an entity seeking a license from the state board of pharmacy under Chapter 3796. of the Revised Code.

(14) On receipt of a request required by section 3796.13 of the Revised Code, a completed

form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in a manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to the following:

(a) A disqualifying offense as specified in rules adopted under division (B)(8)(a) of section 3796.03 of the Revised Code if the person who is the subject of the request is seeking employment with an entity licensed by the department of commerce under Chapter 3796. of the Revised Code;

(b) A disqualifying offense as specified in rules adopted under division (B)(14)(a) of section 3796.04 of the Revised Code if the person who is the subject of the request is seeking employment with an entity licensed by the state board of pharmacy under Chapter 3796. of the Revised Code.

(15) On receipt of a request pursuant to section 4768.06 of the Revised Code, a completed form prescribed under division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to a felony in this state or in any other state.

(16) On receipt of a request pursuant to division (B) of section 4764.07 or division (A) of section 4735.143 of the Revised Code, a completed form prescribed under division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to any crime of moral turpitude, a felony, or an equivalent offense in any other state or the United States.

(17) On receipt of a request for a criminal records check under section 147.022 of the Revised Code, a completed form prescribed under division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner prescribed in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty or no contest to any disqualifying offense, as defined in section 147.011 of the Revised Code, or to any offense under any existing or former law of this state, any other state, or the United States that is substantially equivalent to such a disqualifying offense.

(B) Subject to division (F) of this section, the superintendent shall conduct any criminal records check to be conducted under this section as follows:

(1) The superintendent shall review or cause to be reviewed any relevant information gathered and compiled by the bureau under division (A) of section 109.57 of the Revised Code that relates to the person who is the subject of the criminal records check, including, if the criminal records check was requested under section 113.041, 121.08, 124.74, 173.27, 173.38, 173.381,

718.131, 928.03, 1121.23, 1315.141, 1321.37, 1321.53, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3772.07, 3796.12, 3796.13, 4729.071, 4729.53, 4729.90, 4729.92, 4749.03, 4749.06, 4763.05, 4764.07, 4768.06, 5104.013, 5164.34, 5164.341, 5164.342, 5123.081, 5123.169, or 5153.111 of the Revised Code, any relevant information contained in records that have been sealed under section 2953.32 of the Revised Code;

(2) If the request received by the superintendent asks for information from the federal bureau of investigation, the superintendent shall request from the federal bureau of investigation any information it has with respect to the person who is the subject of the criminal records check, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671 if the request is made pursuant to section 2151.86 or 5104.013 of the Revised Code or if any other Revised Code section requires fingerprint-based checks of that nature, and shall review or cause to be reviewed any information the superintendent receives from that bureau. If a request under section 3319.39 of the Revised Code asks only for information from the federal bureau of investigation, the superintendent shall not conduct the review prescribed by division (B)(1) of this section.

(3) The superintendent or the superintendent's designee may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code.

(4) The superintendent shall include in the results of the criminal records check a list or description of the offenses listed or described in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), or (17) of this section, whichever division requires the superintendent to conduct the criminal records check. The superintendent shall exclude from the results any information the dissemination of which is prohibited by federal law.

(5) The superintendent shall send the results of the criminal records check to the person to whom it is to be sent not later than the following number of days after the date the superintendent receives the request for the criminal records check, the completed form prescribed under division (C)(1) of this section, and the set of fingerprint impressions obtained in the manner described in division (C)(2) of this section:

(a) If the superintendent is required by division (A) of this section (other than division (A)(3) of this section) to conduct the criminal records check, thirty;

(b) If the superintendent is required by division (A)(3) of this section to conduct the criminal records check, sixty.

(C)(1) The superintendent shall prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is to be conducted under this section. The form that the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(2) The superintendent shall prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is to be conducted under this section. Any person for whom a records check is to be conducted under this section shall obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent. The office, department, or entity may charge the person a reasonable fee for making

the impressions. The standard impression sheets the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(3) Subject to division (D) of this section, the superintendent shall prescribe and charge a reasonable fee for providing a criminal records check under this section. The person requesting the criminal records check shall pay the fee prescribed pursuant to this division. In the case of a request under section 1121.23, 1155.03, 1163.05, 1315.141, 1733.47, 1761.26, 2151.33, 2151.412, or 5164.34 of the Revised Code, the fee shall be paid in the manner specified in that section.

(4) The superintendent of the bureau of criminal identification and investigation may prescribe methods of forwarding fingerprint impressions and information necessary to conduct a criminal records check, which methods shall include, but not be limited to, an electronic method.

(D) The results of a criminal records check conducted under this section, other than a criminal records check specified in division (A)(7) of this section, are valid for the person who is the subject of the criminal records check for a period of one year from the date upon which the superintendent completes the criminal records check. If during that period the superintendent receives another request for a criminal records check to be conducted under this section for that person, the superintendent shall provide the results from the previous criminal records check of the person at a lower fee than the fee prescribed for the initial criminal records check.

(E) When the superintendent receives a request for information from a registered private provider, the superintendent shall proceed as if the request was received from a school district board of education under section 3319.39 of the Revised Code. The superintendent shall apply division (A)(1)(c) of this section to any such request for an applicant who is a teacher.

(F)(1) Subject to division (F)(2) of this section, all information regarding the results of a criminal records check conducted under this section that the superintendent reports or sends under division (A)(7) or (9) of this section to the director of public safety, the treasurer of state, or the person, board, or entity that made the request for the criminal records check shall relate to the conviction of the subject person, or the subject person's plea of guilty to, a criminal offense.

(2) Division (F)(1) of this section does not limit, restrict, or preclude the superintendent's release of information that relates to the arrest of a person who is eighteen years of age or older, to an adjudication of a child as a delinquent child, or to a criminal conviction of a person under eighteen years of age in circumstances in which a release of that nature is authorized under division (E)(2), (3), or (4) of section 109.57 of the Revised Code pursuant to a rule adopted under division (E)(1) of that section.

(G) As used in this section:

(1) "Criminal records check" means any criminal records check conducted by the superintendent of the bureau of criminal identification and investigation in accordance with division (B) of this section.

(2) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(3) "OVI or OVUAC violation" means a violation of section 4511.19 of the Revised Code or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to section 4511.19 of the Revised Code.

(4) "Registered private provider" means a nonpublic school or entity registered with the superintendent of public instruction under section 3310.41 of the Revised Code to participate in the autism scholarship program or section 3310.58 of the Revised Code to participate in the Jon Peterson special needs scholarship program.

Sec. 2919.123. (A) No person shall knowingly give, sell, dispense, administer, or 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, or 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, 2919.15, 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.

Sec. 2919.124. (A) As used in this section:

(1) "Abortion-inducing drug" means a drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy, including any drug identified in section 2919.123 of the Revised Code.

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

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

(B) No physician shall personally furnish or otherwise provide an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time the initial dose is consumed.

(C) No physician who personally furnishes or otherwise provides an abortion-inducing drug to another for the purpose of inducing an abortion shall knowingly fail to comply with division (B) of this section.

(D) Nothing in this section shall be construed as creating or recognizing a right to abortion or affirming the lawfulness of an abortion that would otherwise be unlawful.

(E) Whoever violates this section is guilty of unlawful performance of a drug-induced

abortion, 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, 2919.123, 2919.13, 2919.14, 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, unlawful performance of a drug-induced abortion 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.

Sec. 2953.25. (A) As used in this section:

(1) "Collateral sanction" means a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed.

"Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(2) "Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.

(3) "Department-funded program" means a residential or nonresidential program that is not a term in a state correctional institution, that is funded in whole or part by the department of rehabilitation and correction, and that is imposed as a sanction for an offense, as part of a sanction that is imposed for an offense, or as a term or condition of any sanction that is imposed for an offense.

(4) "Designee" means the person designated by the deputy director of the division of parole and community services to perform the duties designated in division (B) of this section.

(5) "Division of parole and community services" means the division of parole and community services of the department of rehabilitation and correction.

(6) "Offense" means any felony or misdemeanor under the laws of this state.

(7) "Political subdivision" has the same meaning as in section 2969.21 of the Revised Code.

(8) "Discretionary civil impact," "licensing agency," and "mandatory civil impact" have the same meanings as in section 2961.21 of the Revised Code.

(B)(1) An individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense may file a petition with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

(2) An individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described in division (B)(1) of this section may file for a certificate of qualification for employment by doing either of the following:

(a) In the case of an individual who resides in this state, filing a petition with the court of common pleas of the county in which the person resides or with the designee of the deputy director of the division of parole and community services;

(b) In the case of an individual who resides outside of this state, filing a petition with the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered or with the designee of the deputy director of the division of parole and community services.

(3) A petition under division (B)(1) or (2) of this section shall be made on a copy of the form prescribed by the division of parole and community services under division (J) of this section, shall contain all of the information described in division (F) of this section, and, except as provided in division (B)(6) of this section, shall be accompanied by an application fee of fifty dollars.

(4)(a) Except as provided in division (B)(4)(b) of this section, an individual may file a petition under division (B)(1) or (2) of this section at any time after the expiration of whichever of the following is applicable:

(i) If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at any time after the expiration of one year from the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of one year from the date of the individual's final release from all other sanctions imposed for that offense.

(ii) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(b) The department of rehabilitation and correction may establish criteria by rule adopted under Chapter 119. of the Revised Code that, if satisfied by an individual, would allow the individual to file a petition before the expiration of six months or one year from the date of final release, whichever is applicable under division (B)(4)(a) of this section.

(5)(a) A designee that receives a petition for a certificate of qualification for employment from an individual under division (B)(1) or (2) of this section shall review the petition to determine whether it is complete. If the petition is complete, the designee shall forward the petition, the application fee, and any other information the designee possesses that relates to the petition, to the court of common pleas of the county in which the individual resides if the individual submitting the petition resides in this state or, if the individual resides outside of this state, to the court of common pleas of the county in which the conviction or plea of guilty from which the individual seeks relief was entered.

(b) A court of common pleas that receives a petition for a certificate of qualification for employment from an individual under division (B)(2) of this section, or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section, shall attempt to determine all other

courts in this state in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives or is forwarded the petition shall notify all other courts in this state that it determines under this division were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate.

A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section shall notify the county's prosecuting attorney that the individual has filed the petition.

A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section, or that is forwarded a petition for qualification under division (B)(5)(a) of this section may direct the clerk of court to process and record all notices required in or under this section. Except as provided in division (B)(6) of this section, the court shall pay thirty dollars of the application fee into the state treasury and twenty dollars of the application fee into the county general revenue fund.

(6) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(1) or (2) of this section, a court of common pleas or the designee of the deputy director of the division of parole and community services who receives the petition may waive all or part of the fifty-dollar filing fee for an applicant who is indigent. If an application fee is partially waived, the first twenty dollars of the fee that is collected shall be paid into the county general revenue fund. Any partial fee collected in excess of twenty dollars shall be paid into the state treasury.

(C)(1) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, the court shall review the individual's petition, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the division of parole and community services, the applicant's military service record, if applicable, and whether the applicant has an emotional, mental, or physical condition that is traceable to the applicant's military service in the armed forces of the United States and that was a contributing factor in the commission of the offense or offenses, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

(2) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, except as otherwise provided in this division, the court shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision. Upon request of the individual who filed the petition, the court may extend the sixty-day period specified in this division.

(3) Except as provided in division (C)(5) of this section and subject to division (C)(7) of this section, a court that receives an individual's petition for a certificate of qualification for employment

under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section may issue a certificate of qualification for employment, at the court's discretion, if the court finds that the individual has established all of the following by a preponderance of the evidence:

(a) Granting the petition will materially assist the individual in obtaining employment or occupational licensing.

(b) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(c) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

(4) The submission of an incomplete petition by an individual shall not be grounds for the designee or court to deny the petition.

(5) Subject to division (C)(6) of this section, an individual is rebuttably presumed to be eligible for a certificate of qualification for employment if the court that receives the individual's petition under division (B)(2) of this section or that is forwarded a petition under division (B)(5)(a) of this section finds all of the following:

(a) The application was filed after the expiration of the applicable waiting period prescribed in division (B)(4) of this section;

(b) If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at least three years have elapsed since the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least three years have elapsed since the date of the individual's final release from all other sanctions imposed for that offense;

(c) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at least one year has elapsed since the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least one year has elapsed since the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(6) An application that meets all of the requirements for the presumption under division (C)(5) of this section shall be denied only if the court that receives the petition finds that the evidence reviewed under division (C)(1) of this section rebuts the presumption of eligibility for issuance by establishing, by clear and convincing evidence, that the applicant has not been rehabilitated.

(7) A certificate of qualification for employment shall not create relief from any of the following collateral sanctions:

(a) Requirements imposed by Chapter 2950. of the Revised Code and rules adopted under sections 2950.13 and 2950.132 of the Revised Code;

(b) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation pursuant to section 4510.037, 4510.07, 4511.19, or 4511.191 of the Revised Code if the relief sought is available pursuant to section 4510.021 or division (B) of section 4510.13 of the Revised Code;

(c) Restrictions on employment as a prosecutor or law enforcement officer;

(d) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state under section 2951.041 of the Revised Code, or is subject to treatment or intervention in lieu of conviction for a violation of section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, 2911.11, ~~or~~ 2919.123, or 2919.124 of the Revised Code;

(e) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional under Title XLVII of the Revised Code pursuant to division (C) of section 3719.121 of the Revised Code;

(f) The denial or ineligibility for employment in a pain clinic under division (B)(4) of section 4729.552 of the Revised Code;

(g) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code pursuant to section 3123.43 of the Revised Code.

(8) If a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the court shall provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a certificate of qualification for employment. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a certificate of qualification for employment.

If a court of common pleas that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas.

(D)(1) A certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a decision-maker shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a designee or court under division (C)(3) of this section.

(2) The certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the license, employment opportunity, or certification in question. Notwithstanding the presumption established under this division, the agency may deny the license or certification for the person if it determines that the person is unfit for issuance of the license.

(3) If an employer that has hired a person who has been issued a certificate of qualification for employment applies to a licensing agency for a license or certification and the person has a conviction or guilty plea that otherwise would bar the person's employment with the employer or licensure for the employer because of a mandatory civil impact, the agency shall give the person

individualized consideration, notwithstanding the mandatory civil impact, the mandatory civil impact shall be considered for all purposes to be a discretionary civil impact, and the certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the employment, or that the employer is unfit for the license or certification, in question.

(E) A certificate of qualification for employment does not grant the individual to whom the certificate was issued relief from the mandatory civil impacts identified in division (A)(1) of section 2961.01 or division (B) of section 2961.02 of the Revised Code.

(F) A petition for a certificate of qualification for employment filed by an individual under division (B)(1) or (2) of this section shall include all of the following:

(1) The individual's name, date of birth, and social security number;

(2) All aliases of the individual and all social security numbers associated with those aliases;

(3) The individual's residence address, including the city, county, and state of residence and zip code;

(4) The length of time that the individual has resided in the individual's current state of residence, expressed in years and months of residence;

(5) A general statement as to why the individual has filed the petition and how the certificate of qualification for employment would assist the individual;

(6) A summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;

(7) A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;

(8) Verifiable references and endorsements;

(9) The name of one or more immediate family members of the individual, or other persons with whom the individual has a close relationship, who support the individual's reentry plan;

(10) A summary of the reason the individual believes the certificate of qualification for employment should be granted;

(11) Any other information required by rule by the department of rehabilitation and correction.

(G)(1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of qualification for employment was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued to an individual under this section shall provide immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence.

(3) If an employer hires an individual who has been issued a certificate of qualification for employment under this section, if the individual, after being hired, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer retains the

individual as an employee after the demonstration of dangerousness or the conviction or guilty plea, the employer may be held liable in a civil action that is based on or relates to the retention of the individual as an employee only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or pleaded guilty to the felony and was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.

(H) A certificate of qualification for employment issued under this section shall be revoked if the individual to whom the certificate of qualification for employment was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of qualification for employment. The department of rehabilitation and correction shall periodically review the certificates listed in the database described in division (K) of this section to identify those that are subject to revocation under this division. Upon identifying a certificate of qualification for employment that is subject to revocation, the department shall note in the database that the certificate has been revoked, the reason for revocation, and the effective date of revocation, which shall be the date of the conviction or plea of guilty subsequent to the issuance of the certificate.

(I) A designee's forwarding, or failure to forward, a petition for a certificate of qualification for employment to a court or a court's issuance, or failure to issue, a petition for a certificate of qualification for employment to an individual under division (B) of this section does not give rise to a claim for damages against the department of rehabilitation and correction or court.

(J) The division of parole and community services shall adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and shall prescribe the form for the petition to be used under division (B)(1) or (2) of this section. The form for the petition shall include places for all of the information specified in division (F) of this section.

(K) The department of rehabilitation and correction shall maintain a database that identifies granted certificates and revoked certificates and tracks the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most applicable, and the types of employers that have accepted the certificates. The department shall annually create a report that summarizes the information maintained in the database and shall make the report available to the public on its internet web site.

Sec. 4729.291. (A) Except when provided under section 4731.97 of the Revised Code, when a licensed health professional authorized to prescribe drugs personally furnishes drugs to a patient pursuant to division (B) of section 4729.29 of the Revised Code, the prescriber shall ensure that the drugs are labeled and packaged in accordance with state and federal drug laws and any rules and regulations adopted pursuant to those laws. Records of purchase and disposition of all drugs personally furnished to patients shall be maintained by the prescriber in accordance with state and federal drug statutes and any rules adopted pursuant to those statutes.

(B) When personally furnishing to a patient RU-486 (mifepristone), a prescriber is subject to ~~section~~ sections 2919.123 and 2919.124 of the Revised Code. ~~A prescription for RU-486 (mifepristone) shall be in writing and in accordance with section 2919.123 of the Revised Code.~~

(C)(1) Except as provided in divisions (D) and (E) of this section, no prescriber shall do either of the following:

(a) In any thirty-day period, personally furnish to or for patients, taken as a whole, controlled substances in an amount that exceeds a total of two thousand five hundred dosage units;

(b) In any seventy-two-hour period, personally furnish to or for a patient an amount of a controlled substance that exceeds the amount necessary for the patient's use in a seventy-two-hour period.

(2) The state board of pharmacy may impose a fine of not more than five thousand dollars on a prescriber who fails to comply with the limits established under division (C)(1) of this section. A separate fine may be imposed for each instance of failing to comply with the limits. In imposing the fine, the board's actions shall be taken in accordance with Chapter 119. of the Revised Code.

(D) None of the following shall be counted in determining whether the amounts specified in division (C)(1) of this section have been exceeded:

(1) Methadone personally furnished to patients for the purpose of treating drug dependence or addiction, if the prescriber meets the conditions specified in 21 C.F.R. 1306.07;

(2) Buprenorphine personally furnished to patients for the purpose of treating drug dependence or addiction as part of an opioid treatment program licensed under section 5119.37 of the Revised Code.

(3) Controlled substances personally furnished to research subjects by a facility conducting clinical research in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.

(E) Division (C)(1) of this section does not apply to a prescriber who is a veterinarian.

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

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

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

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

(3) Except as provided in section 4731.97 of the Revised Code, selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of

eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports under sections 307.621 to 307.629 of the Revised Code to a child fatality review board; does not include providing any information, documents, or reports to the director of health pursuant to guidelines established under section 3701.70 of the Revised Code; does not include written notice to a mental health professional under section 4731.62 of the Revised Code; and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by section 2305.33 or 4731.62 of the Revised Code upon a physician who makes a report in accordance with section 2305.33 or notifies a mental health professional in accordance with section 4731.62 of the Revised Code. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

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

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

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

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

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

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

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

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

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

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for

intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

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

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

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

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

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

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

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

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's license or certificate. For the purpose of this division, any individual who applies for or receives a license or certificate to practice under this chapter accepts the privilege

of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except as provided in division (F)(1)(b) of section 4731.282 of the Revised Code or when civil penalties are imposed under section 4731.225 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

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

(21) The violation of section 3701.79 of the Revised Code or of any abortion rule adopted by the director of health pursuant to section 3701.341 of the Revised Code;

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

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

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

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

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

For the purposes of this division, any individual authorized to practice by this chapter accepts

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

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

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

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

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

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

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

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

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

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

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

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

group of patients to receive health care services from that individual;

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

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

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

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

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

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

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

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

(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

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

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

(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;

(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;

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

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

(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised

Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(44) Failure to comply with the requirements of section 2919.171, 2919.202, or 2919.203 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 or 2919.202 of the Revised Code;

(45) Practicing at a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the person operating the facility has obtained and maintains the license with the classification;

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

(47) Failure to comply with any of the requirements regarding making or maintaining medical records or documents described in division (A) of section 2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code;

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

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

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

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

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

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

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

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section

2919.123 or 2919.124 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of that section shall provide for a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

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

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

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

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

(d) The disposition of the case.

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

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

(1) That there is clear and convincing evidence that an individual has violated division (B) of this section;

(2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

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

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

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

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of

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

(I) The license or certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date of the individual's second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code. In addition, the license or certificate to practice or certificate to recommend issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after suspension shall be considered practicing without a license or certificate.

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

(1) If the automatic suspension under this division is for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the board shall enter an order suspending the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's license or certificate to practice.

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

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

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's license or certificate to practice may be reinstated. The board shall adopt rules governing

conditions to be imposed for reinstatement. Reinstatement of a license or certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

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

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

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

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

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

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

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

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

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

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

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

(2) Select providers of educational and assessment services, including a quality intervention

program panel of case reviewers;

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

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

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

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

Sec. 4731.223. (A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B) Whenever any person holding a valid license or certificate issued pursuant to this chapter pleads guilty to, is subject to a judicial finding of guilt of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction for a violation of Chapter 2907., 2925., or 3719. of the Revised Code or of any substantively comparable ordinance of a municipal corporation in connection with the person's practice, or for a second or subsequent time pleads guilty to, or is subject to a judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the prosecutor in the case, on forms prescribed and provided by the state medical board, shall promptly notify the board of the conviction or guilty plea. Within thirty days of receipt of that information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the license or certificate under section 4731.22 of the Revised Code.

(C) The prosecutor in any case against any person holding a valid license or certificate issued pursuant to this chapter, on forms prescribed and provided by the state medical board, shall notify the board of any of the following:

(1) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a felony, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a felony charge;

(2) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor committed in the course of practice, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a misdemeanor, if the alleged act was committed in the course of practice;

(3) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor involving moral turpitude, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a misdemeanor involving moral turpitude.

The report shall include the name and address of the license or certificate holder, the nature of the offense for which the action was taken, and the certified court documents recording the action.

SECTION 2. That existing sections 109.572, 2919.123, 2953.25, 4729.291, 4731.22, and

4731.223 of the Revised Code are hereby repealed.

SECTION 3. Section 109.572 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 166 and S.B. 57 of the 133rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

_____

Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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

_____

Director, Legislative Service Commission.

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

_____

Secretary of State.

File No. _____ Effective Date _____

Exhibit 3

2023 WL 8663888

PRELIMINARY COPY, SUBJECT TO FURTHER EDITING

Supreme Court of Ohio.

PRETERM-CLEVELAND et al., Appellees,

v.

YOST, Atty. Gen., et al., Appellants.

No. 2023-0004

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Submitted December 12, 2023

|

Decided December 15, 2023

APPEAL from the Court of Appeals for Hamilton County, No. C-220504, 2022-Ohio-4540.

Attorneys and Law Firms

ACLU of Ohio Foundation, B. Jessie Hill, Cleveland, Freda J. Levenson, and Rebecca Kendis; Wilmer Cutler Pickering Hale & Dorr, L.L.P., Alan E. Schoenfeld, Michelle Nicole Diamond, Peter Neiman, Davina Pujari, Christopher A. Rheinheimer, and Allyson Slater; and Planned Parenthood Federation of America and Melissa Cohen, for appellees Planned Parenthood Southwest Ohio Region, Sharon Liner, M.D., and Planned Parenthood of Greater Ohio.

ACLU of Ohio Foundation, B. Jessie Hill, Cleveland, Freda J. Levenson, and Rebecca Kendis; and American Civil Liberties Union Foundation and Meagan Burrows, for appellees Preterm Cleveland, Women's Med Group Professional Corporation, and Northeast Ohio Women's Center, L.L.C., d/b/a Toledo Women's Center.

John A. Borell, Kevin A. Pituch, and Evy M. Jarrett, Lucas County Assistant Prosecuting Attorneys, for appellee Lucas County Prosecuting Attorney Julia R. Bates.

Dave Yost, Ohio Attorney General, Michael J. Hendershot, Chief Deputy Solicitor General, Stephen P. Carney and Mathura J. Sridharan, Deputy Solicitors General, and Amanda L. Narog and Andrew D. McCartney, Assistant Attorneys General, for appellants.

Tucker Ellis, L.L.P., Susan M. Audey, Elisabeth C. Arko, and Edward E. Taber, Cleveland, urging affirmance for amicus curiae Academy of Medicine of Cleveland & Northern Ohio.

The Chandra Law Firm, L.L.C., Subodh Chandra, and Donald Screen; Cleveland, and Democracy Forward Foundation, Skye L. Perryman, and Madeline H. Gitomer, urging affirmance for amici curiae American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine.

American College of Obstetricians and Gynecologists and Molly A. Meegan, urging affirmance for amicus curiae American College of Obstetricians and Gynecologists.

Covington & Burling, L.L.P., Jacob Zuberi, Suzan Charlton, Samar Amidi, and Kathryn Irwin Bronstein, in support of appellees, for amicus curiae National Association of Social Workers Including its Ohio Chapter.

Scott G. Stewart, Mississippi Solicitor General, and Justin L. Matheny, Deputy Solicitor General, urging reversal for amici curiae Mississippi, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, and West Virginia.

Alliance Defending Freedom, Julia C. Payne, and James A. Campbell, urging reversal for amici curiae Cincinnati Right to Life, The Justice Foundation, Center for Christian Virtue, Ohio Right to Life, Right to Life Action Coalition, Cleveland Right to Life, Greater Columbus Right to Life, and Students for Life of America.

Dworken & Bernstein Co., L.P.A., and Patrick J. Perotti, Painesville, urging reversal for amicus curiae American Center for Law & Justice.

Corey Shankleton, pro se, in support of appellant, for amicus curiae Faith2Action Michigan.

Janet Folger Porter, pro se, in support of appellant, for amicus curiae Faith2Action Ministries.

Andrew L. Schlafly; and Robert T. Lynch, in support of appellant, for amici curiae Phyllis Schlafly Eagles, Janet Folger Porter, Faith2Action Ministries, Ohio Representative Beth Lear, Ohio Value Voters, Mission America, Margie Christie, Dayton Right to Life Society, Ohio Christian Alliance, Warren County Right to Life, Lori Viars, Eagle Forum of Ohio, Community Pregnancy Center, former Ohio Representative Candice Keller, former Ohio Representative Ron Hood, and Eagle Forum Education & Legal Defense Fund.

Opinion

***1 {¶ 1}** Sua sponte, appeal dismissed due to a change in the law.

Kennedy, C.J., and Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

Brunner, J., dissents and would dismiss the appeal as having been improvidently accepted.

Byrne, J., dissents and would proceed with addressing the propositions of law previously accepted for review.

Matthew Byrne, J., of the Twelfth District Court of Appeals, sitting for Deters, J.

All Citations

--- N.E.3d ----, 2023 WL 8663888 (Mem), 2023-Ohio-4570

Exhibit 4

Ohio Revised Code

Section 2919.124 Unlawful performance of a drug-induced abortion.

Effective: April 12, 2021
Legislation: Senate Bill 260 - 133rd General Assembly

(A) As used in this section:

(1) "Abortion-inducing drug" means a drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy, including any drug identified in section 2919.123 of the Revised Code.

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

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

(B) No physician shall personally furnish or otherwise provide an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time the initial dose is consumed.

(C) No physician who personally furnishes or otherwise provides an abortion-inducing drug to another for the purpose of inducing an abortion shall knowingly fail to comply with division (B) of this section.

(D) Nothing in this section shall be construed as creating or recognizing a right to abortion or affirming the lawfulness of an abortion that would otherwise be unlawful.

(E) Whoever violates this section is guilty of unlawful performance of a drug-induced abortion, 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, 2919.123, 2919.13, 2919.14, 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, unlawful performance of a drug-induced abortion 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.

Exhibit 5

Ohio Revised Code

Section 2317.56 Information provided before abortion procedure.

Effective: April 6, 2021
Legislation: Senate Bill 27 - 133rd General Assembly

(A) As used in this section:

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

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

(3) "Probable gestational age of the zygote, blastocyte, embryo, or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the zygote, blastocyte, 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 zygote, blastocyte, 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, the physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

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

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

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

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

(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies all 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.

(c) If the abortion will be performed or induced surgically, she has been provided with the notification form described in division (A) of section 3726.14 of the Revised Code.

(d) If the abortion will be performed or induced surgically and she desires to exercise the rights under division (A) of section 3726.03 of the Revised Code, she has completed the disposition determination under section 3726.04 or 3726.041 of the Revised Code.

A form shall be completed for each zygote, blastocyte, embryo, or fetus to be aborted. If a pregnant woman is carrying more than one zygote, blastocyte, embryo, or fetus, she shall sign a form for each zygote, blastocyte, embryo, or fetus to be aborted.

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

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

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

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

woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care 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 after it consults with independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

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

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

conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

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

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

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

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

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

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

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

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

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

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

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

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

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

Ohio Revised Code

Section 2919.11 Abortion defined.

Effective: September 16, 1974
Legislation: House Bill 989 - 110th General Assembly

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.

Ohio Revised Code

Section 2919.123 Unlawful distribution of an abortion-inducing drug.

Effective: April 12, 2021
Legislation: Senate Bill 260 - 133rd General Assembly

(A) No person shall knowingly give, sell, dispense, administer, or otherwise provide 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 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, or otherwise provides 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, 2919.15, 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.

Ohio Revised Code

Section 4723.44 Unauthorized practice.

Effective: September 28, 2018
Legislation: House Bill 111 - 132nd General Assembly

(A) No person shall knowingly do any of the following unless the person holds a current, valid license issued by the board of nursing under this chapter to practice nursing as an advanced practice registered nurse in the specialty indicated by the designation:

(1) Engage in the practice of nursing as an advanced practice registered nurse for a fee, salary, or other consideration, or as a volunteer;

(2) Represent the person as being an advanced practice registered nurse, including representing the person as being a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(3) Use any title or initials implying that the person is an advanced practice registered nurse, including using any title or initials implying the person is a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner.

(B) No advanced practice registered nurse shall knowingly do any of the following:

(1) Engage, for a fee, salary, or other consideration, or as a volunteer, in the practice of a nursing specialty other than the specialty designated on the nurse's current, valid license issued by the board under this chapter to practice nursing as an advanced practice registered nurse;

(2) Represent the person as being authorized to practice any nursing specialty other than the specialty designated on the current, valid license to practice nursing as an advanced practice registered nurse;

(3) Use the title "certified registered nurse anesthetist" or the initials "N.A." or "C.R.N.A.," the title "clinical nurse specialist" or the initials "C.N.S.," the title "certified nurse-midwife" or the initials "C.N.M.," the title "certified nurse practitioner" or the initials "C.N.P.," the title "advanced practice registered nurse" or the initials "A.P.R.N.," or any other title or initials implying that the nurse is

authorized to practice any nursing specialty other than the specialty designated on the nurse's current, valid license to practice nursing as an advanced practice registered nurse;

(4) Except as provided in division (A)(2)(c) of section 4723.431 of the Revised Code, enter into a standard care arrangement with a physician or podiatrist who is practicing in a specialty that is not the same as or similar to the nurse's nursing specialty;

(5) Prescribe drugs or therapeutic devices in a manner that does not comply with section 4723.481 of the Revised Code;

(6) Prescribe any drug or device to perform or induce an abortion, or otherwise perform or induce an abortion.

(C) No person shall knowingly employ a person to engage in the practice of nursing as an advanced practice registered nurse unless the person so employed holds a current, valid license and designation issued by the board under this chapter to practice as an advanced practice registered nurse in the specialty indicated by the designation.

(D) A document certified by the executive director of the board, under the official seal of the board, to the effect that it appears from the records of the board that no license to practice nursing as an advanced practice registered nurse has been issued to the person specified in the document, or that a license to practice nursing as an advanced practice registered nurse, if issued, has been revoked or suspended, shall be received as prima-facie evidence of the record of the board in any court or before any officer of the state.

Ohio Revised Code

Section 4723.50 Administrative rules for prescribing drugs and therapeutic devices.

Effective: April 6, 2023
Legislation: House Bill 509

(A) As used in this section:

(1) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(2) "Medication-assisted treatment" has the same meaning as in section 340.01 of the Revised Code.

(B) In accordance with Chapter 119. of the Revised Code, the board of nursing shall adopt rules as necessary to implement the provisions of this chapter pertaining to the authority of advanced practice registered nurses who are designated as clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners to prescribe and furnish drugs and therapeutic devices.

The board shall adopt rules establishing an exclusionary formulary. The exclusionary formulary shall permit, in a manner consistent with section 4723.481 of the Revised Code, the prescribing of controlled substances, including drugs that contain buprenorphine used in medication-assisted treatment and both oral and long-acting opioid antagonists. The formulary shall not permit the prescribing or furnishing of any of the following:

(1) A drug or device to perform or induce an abortion;

(2) A drug or device prohibited by federal or state law.

(C) In addition to the rules described in division (B) of this section, the board shall adopt rules under this section that do the following:

(1) Establish standards for board approval of the course of study in advanced pharmacology and related topics required by section 4723.482 of the Revised Code;

(2) Establish requirements for board approval of the two-hour course of instruction in the laws of this state as required under division (C)(1) of section 4723.482 of the Revised Code;

(3) Establish criteria for the components of the standard care arrangements described in section 4723.431 of the Revised Code that apply to the authority to prescribe, including the components that apply to the authority to prescribe schedule II controlled substances. The rules shall be consistent with that section and include all of the following:

(a) Quality assurance standards;

(b) Standards for periodic review by a collaborating physician or podiatrist of the records of patients treated by the clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(c) Acceptable travel time between the location at which the clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner is engaging in the prescribing components of the nurse's practice and the location of the nurse's collaborating physician or podiatrist.

Ohio Revised Code

Section 4723.151 Unlicensed practice.

Effective: April 6, 2017
Legislation: House Bill 216 - 131st General Assembly

(A) Medical diagnosis, prescription of medical measures, and the practice of medicine or surgery or any of its branches by a nurse are prohibited.

(B) Division (A) of this section does not prohibit a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner from practicing within the nurse's scope of practice in accordance with section 4723.43 of the Revised Code.

(C) Notwithstanding division (B) of this section, nothing in this chapter shall be construed as authorizing any nurse to prescribe any drug or device to perform or induce an abortion, or to otherwise perform or induce an abortion.

Ohio Revised Code

Section 4730.02 Prohibited acts.

Effective: October 17, 2019
Legislation: House Bill 166 - 133rd General Assembly

(A) No person shall hold that person out as being able to function as a physician assistant, or use any words or letters indicating or implying that the person is a physician assistant, without a current, valid license to practice as a physician assistant issued pursuant to this chapter.

(B) No person shall practice as a physician assistant without the supervision, control, and direction of a physician.

(C) No person shall practice as a physician assistant without having entered into a supervision agreement with a supervising physician under section 4730.19 of the Revised Code.

(D) No person acting as the supervising physician of a physician assistant shall authorize the physician assistant to perform services if either of the following is the case:

(1) The services are not within the physician's normal course of practice and expertise;

(2) The services are inconsistent with the supervision agreement under which the physician assistant is being supervised, including, if applicable, the policies of the health care facility in which the physician and physician assistant are practicing.

(E) No person practicing as a physician assistant shall prescribe any drug or device to perform or induce an abortion, or otherwise perform or induce an abortion.

(F) No person shall advertise to provide services as a physician assistant, except for the purpose of seeking employment.

(G) No person practicing as a physician assistant shall fail to wear at all times when on duty a placard, plate, or other device identifying that person as a "physician assistant."

(H) Division (A) of this section does not apply to a person who meets all of the following conditions:

(1) The person holds in good standing a valid license or other form of authority to practice as a physician assistant issued by another state.

(2) The person is practicing as a volunteer without remuneration during a charitable event that lasts not more than seven days.

(3) The medical care provided by the person will be supervised by the medical director of the charitable event or by another physician.

When a person meets the conditions of this division, the person shall be deemed to hold, during the course of the charitable event, a license to practice as a physician assistant from the state medical board and shall be subject to the provisions of this chapter authorizing the board to take disciplinary action against a license holder. Not less than seven calendar days before the first day of the charitable event, the person or the event's organizer shall notify the board of the person's intent to practice as a physician assistant at the event. During the course of the charitable event, the person's scope of practice is limited to the procedures that a physician assistant licensed under this chapter is authorized to perform unless the person's scope of practice in the other state is more restrictive than in this state. If the latter is the case, the person's scope of practice is limited to the procedures that a physician assistant in the other state may perform.

Ohio Revised Code

Section 4730.03 Construction and application.

Effective: October 15, 2015
Legislation: Senate Bill 110 - 131st General Assembly

Nothing in this chapter shall:

(A) Be construed to affect or interfere with the performance of duties of any medical personnel who are either of the following:

(1) In active service in the army, navy, coast guard, marine corps, air force, public health service, or marine hospital service of the United States while so serving;

(2) Employed by the veterans administration of the United States while so employed.

(B) Prevent any person from performing any of the services a physician assistant may be authorized to perform, if the person's professional scope of practice established under any other chapter of the Revised Code authorizes the person to perform the services;

(C) Prohibit a physician from delegating responsibilities to any nurse or other qualified person who does not hold a license to practice as a physician assistant, provided that the individual does not hold the individual out to be a physician assistant;

(D) Be construed as authorizing a physician assistant independently to order or direct the execution of procedures or techniques by a registered nurse or licensed practical nurse in the care and treatment of a person in any setting, except to the extent that the physician assistant is authorized to do so by a physician who is responsible for supervising the physician assistant and, if applicable, the policies of the health care facility in which the physician assistant is practicing;

(E) Authorize a physician assistant to engage in the practice of optometry, except to the extent that the physician assistant is authorized by a supervising physician acting in accordance with this chapter to perform routine visual screening, provide medical care prior to or following eye surgery, or assist in the care of diseases of the eye;

(F) Be construed as authorizing a physician assistant to prescribe any drug or device to perform or induce an abortion, or as otherwise authorizing a physician assistant to perform or induce an abortion.

Ohio Revised Code

Section 4730.39 Rules governing physician-delegated prescriptive authority.

Effective: March 20, 2019
Legislation: Senate Bill 259 - 132nd General Assembly

(A) The state medical board shall adopt rules governing physician-delegated prescriptive authority for physician assistants. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(B) The board's rules governing physician-delegated prescriptive authority shall establish all of the following:

(1) Requirements regarding the pharmacology courses that a physician assistant is required to complete;

(2) A specific prohibition against prescribing any drug or device to perform or induce an abortion;

(3) Standards and procedures to be followed by a physician assistant in personally furnishing samples of drugs or complete or partial supplies of drugs to patients under section 4730.43 of the Revised Code;

(4) Any other requirements the board considers necessary to implement the provisions of this chapter regarding physician-delegated prescriptive authority.

Ohio Revised Code

Section 4730.42 Supervising physician's delegation authority - limitations.

Effective: March 20, 2019
Legislation: Senate Bill 259 - 132nd General Assembly

(A) In granting physician-delegated prescriptive authority to a particular physician assistant who holds a valid prescriber number issued by the state medical board, the supervising physician is subject to all of the following:

(1) The supervising physician shall not grant physician-delegated prescriptive authority for any drug or device that may be used to perform or induce an abortion.

(2) The supervising physician shall not grant physician-delegated prescriptive authority in a manner that exceeds the supervising physician's prescriptive authority, including the physician's authority to treat chronic pain with controlled substances and products containing tramadol as described in section 4731.052 of the Revised Code.

(3) The supervising physician shall supervise the physician assistant in accordance with both of the following:

(a) The supervision requirements specified in section 4730.21 of the Revised Code;

(b) The supervision agreement entered into with the physician assistant under section 4730.19 of the Revised Code, including, if applicable, the policies of the health care facility in which the physician and physician assistant are practicing.

(B)(1) The supervising physician of a physician assistant may place conditions on the physician-delegated prescriptive authority granted to the physician assistant. If conditions are placed on that authority, the supervising physician shall maintain a written record of the conditions and make the record available to the state medical board on request.

(2) The conditions that a supervising physician may place on the physician-delegated prescriptive authority granted to a physician assistant include the following:

(a) Identification by class and specific generic nomenclature of drugs and therapeutic devices that the physician chooses not to permit the physician assistant to prescribe;

(b) Limitations on the dosage units or refills that the physician assistant is authorized to prescribe;

(c) Specification of circumstances under which the physician assistant is required to refer patients to the supervising physician or another physician when exercising physician-delegated prescriptive authority;

(d) Responsibilities to be fulfilled by the physician in supervising the physician assistant that are not otherwise specified in the supervision agreement or otherwise required by this chapter.

Ohio Administrative Code

Rule 4723-9-10 Formulary; standards of prescribing for advanced practice registered nurses designated as clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners.

Effective: February 1, 2022

(A) Definitions; for purposes of this rule and interpretation of the formulary set forth in paragraph (B) of this rule, except as otherwise provided:

(1) "Acute pain" means pain that normally fades with healing, is related to tissue damage, significantly alters a patient's typical function, and is expected to be time-limited and not more than six weeks in duration.

(2) "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve it and continues either episodically or continuously for twelve or more weeks following initial onset of pain. It may be the result of an underlying medical disease or condition, injury, medical treatment, inflammation, or unknown cause. "Chronic pain" does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(3) "Extended-release or long-acting opioid analgesic" means an opioid analgesic that:

(a) Has United States food and drug administration approved labeling indicating that it is an extended-release or controlled release formulation;

(b) Is administered via a transdermal route; or

(c) Contains methadone.

(4) "Family member" means a spouse, parent, child, sibling or other individual with respect to whom an advanced practice registered nurse's personal or emotional involvement may render the advanced practice registered nurse unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

(5) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

(6) "ICD-10-CM medical diagnosis code" means the disease code in the most current international classification of diseases, clinical modifications published by the United States department of health and human services.

(7) "Opioid analgesic" has the same meaning as in section 3719.01 of the Revised Code, and means a controlled substance that has analgesic pharmacological activity at the opioid receptors of the central nervous system, including but not limited to the following drugs and their varying salt forms or chemical congeners: buprenorphine, butorphanol, codeine (including acetaminophen and other combination products), dihydrocodeine, fentanyl, hydrocodone (including acetaminophen combination products), hydromorphone, meperidine, methadone, morphine sulfate, oxycodone (including acetaminophen, aspirin, and other combination products), oxymorphone, tapentadol, and tramadol.

(8) "Medication therapy management" has the same meaning as in rules adopted by agency 4729 of the Administrative Code.

(9) "Minor" has the same meaning as in section 3719.061 of the Revised Code.

(10) "Morphine equivalent daily dose (MED)" means a conversion of various opioid analgesics to a morphine equivalent dose by the use of accepted conversion tables provided by the state board of pharmacy at: https://www.ohiopmp.gov/MED_Calculator.aspx (effective 2017).

(11) "Palliative care" has the same meaning as in section 3712.01 of the Revised Code.

(12) "Sub-acute pain" means pain that has persisted after reasonable medical efforts have been made to relieve it and continues either episodically or continuously for more than six weeks but less than twelve weeks following initial onset of pain. It may be the result of an underlying medical disease or condition, injury, medical or surgical treatment, inflammation, or unknown cause.

(13) "Terminal condition" has the same meaning as in section 2133.01 of the Revised Code.

(B) Exclusionary formulary. An advanced practice registered nurse with a current valid license issued by the board and designated as a certified nurse practitioner, clinical nurse specialist or certified nurse midwife shall not prescribe or furnish any drug or device in violation of federal or Ohio law, or rules adopted by the board, including this rule. The prescriptive authority of an advanced practice registered nurse designated as a certified nurse practitioner, clinical nurse specialist and certified nurse midwife shall not exceed the prescriptive authority of the collaborating physician or podiatrist.

(C) An advanced practice registered nurse with a current valid license issued by the board and designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe any drug or therapeutic device in any form or route of administration if:

(1) The ability to prescribe the drug or therapeutic device is within the scope of practice in the advanced practice registered nurse's license designation;

(2) The prescription is consistent with the terms of a standard care arrangement entered into with a collaborating physician;

(3) The prescription would not exceed the prescriptive authority of the collaborating physician, including restrictions imposed on the physician's practice by action of the United States drug enforcement administration or the state medical board, or by the state medical board rules, including but not limited to rule 4731-11-09 of the Administrative Code;

(4) The individual drug or subtype or therapeutic device is not one excluded by the exclusionary formulary set forth in paragraph (B) of this rule;

(5) The prescription meets the requirements of state and federal law, including but not limited to this rule, and all prescription issuance rules adopted by agency 4729 of the Administrative Code;

(6) A valid prescriber-patient relationship exists. This relationship may include, but is not limited to:

(a) Obtaining a relevant history of the patient;

(b) Conducting a physical or mental examination of the patient;

(c) Rendering a diagnosis;

(d) Prescribing medication;

(e) Consulting with the collaborating physician when necessary; and

(f) Documenting these steps in the patient's medical records;

(7) Notwithstanding paragraph (C)(6) of this rule, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe or personally furnish a drug according to section 4723.4810 of the Revised Code to not more than a total of two individuals who are sexual partners of the advanced practice registered nurse's patient.

(8) If the patient is a family member, acceptable and prevailing standards of safe nursing care require that the advanced practice registered nurse maintain detached professional judgment. The advanced practice registered nurse shall not prescribe to a family member unless:

(a) The advanced practice registered nurse is able to exercise detached professional judgment in reaching diagnostic or therapeutic decisions;

(b) The prescription is documented in the patient's record.

(9) Controlled substances. For drugs that are a controlled substance:

(a) The advanced practice registered nurse has obtained a United States drug enforcement administration registration, except if not required to do so as provided in rules adopted by agency 4729 of the Administrative Code, and indicates the number on the prescription;

(b) The prescription indicates the ICD-10-CM medical diagnosis code of the primary disease or condition that the controlled substance is being used to treat. The code shall, at minimum, include the

first four alphanumeric characters of the ICD-10 CM medical diagnosis code, sometimes referred to as the category and etiology (ex. M165);

(c) The prescription indicates the days' supply of the controlled substance prescription.

(d) The patient is not a family member; and

(e) The advanced practice registered nurse shall not self-prescribe a controlled substance.

(D) Schedule II controlled substances. Except as provided in paragraph (E) of this rule, an advanced practice registered nurse with a current valid license issued by the board and designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe a schedule II controlled substance only in situations where all of the following apply:

(1) A patient has a terminal condition;

(2) A physician initially prescribed the substance for the patient; and

(3) The prescription is for a quantity that does not exceed the amount necessary for the patient's use in a single, seventy-two hour period.

(E) Subject to the requirements set forth in paragraphs (F), , and (J) of this rule, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe a schedule II controlled substance, if not excluded by the exclusionary formulary set forth in paragraph (B) of this rule, if the advanced practice registered nurse issues the prescription to the patient from any of the following locations:

(1) A hospital registered under section 3701.07 of the Revised Code;

(2) An entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals;

(3) A health care facility operated by the department of mental health or the department of

developmental disabilities;

(4) A nursing home licensed under section 3721.02 of the Revised Code or by a political subdivision certified under section 3721.09 of the Revised Code;

(5) A county home or district home operated under Chapter 5155. of the Revised Code that is certified under the medicare or medicaid program;

(6) A hospice care program;

(7) A community mental health agency, as defined in section 5122.01 of the Revised Code;

(8) An ambulatory surgical facility, as defined in section 3702.30 of the Revised Code;

(9) A freestanding birthing center, as defined in section 3702.141 of the Revised Code;

(10) A federally qualified health center, as defined in section 3701.047 of the Revised Code;

(11) A federally qualified health center look-alike, as defined in section 3701.047 of the Revised Code;

(12) A health care office or facility operated by the board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code;

(13) A site where a medical practice is operated, but only if the practice is comprised of one or more physicians who also are owners of the practice; the practice is organized to provide direct patient care; and the clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner providing services at the site has a standard care arrangement and collaborates with at least one of the physician owners who practices primarily at that site; or

(14) A residential care facility, as defined in section 3721.01 of the Revised Code.

(F) An advanced practice registered nurse with a current valid license issued by the board and

designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall not issue to a patient a prescription for a schedule II controlled substance from a convenience care clinic even if the clinic is owned or operated by an entity specified in paragraph (E) of this rule.

(G) Acute pain. For the treatment of acute pain, an advanced practice registered nurse with a current valid license issued by the board and designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall comply with the following:

(1) Extended-release or long-acting opioid analgesics shall not be prescribed for the treatment of acute pain;

(2) Before prescribing an opioid analgesic, the advanced practice registered nurse shall first consider non-opioid treatment options. If opioid analgesic medications are required as determined by history and physical examination, the prescription should be for the minimum quantity and potency needed to treat the expected duration of pain, with a presumption that a three-day supply or less is frequently sufficient;

(3) In all circumstances where opioid analgesics are prescribed for acute pain:

(a) Except as provided in paragraph (G)(3)(a)(iii) of this rule, the duration of the first opioid analgesic prescription for the treatment of an episode of acute pain shall be:

(i) For adults, not more than a seven-day supply with no refills;

(ii) For minors, not more than a five-day supply with no refills. As set forth in section 4723.481 of the Revised Code, the advanced practice registered nurse shall comply with section 3719.061 of the Revised Code, including but not limited to obtaining the parent or guardian's written consent prior to prescribing an opioid analgesic to a minor;

(iii) The seven-day limit for adults and five-day limit for minors may be exceeded for pain that is expected to persist for longer than seven days based on the pathology causing the pain. In this circumstance, the reason that the limits are being exceeded and the reason that a non-opioid analgesic medication was not appropriate to treat the patient's condition shall be documented in the

patient's medical record; and

(iv) If a patient is intolerant of or allergic to an opioid medication initially prescribed, a prescription for a different opioid medication may be issued at any time during the initial seven-day or five-day dosing period, and the new prescription shall be subject to the requirements of this rule. The patient's intolerance or allergy shall be documented in the patient's medical record, and the patient advised to safely dispose of the unused medication;

(b) The patient, or a minor's parent or guardian, shall be advised of the benefits and risks of the opioid analgesic, including the potential for addiction, and the advice shall be documented in the patient's medical record; and

(c) The total morphine equivalent dose (MED) of a prescription for opioid analgesics for treatment of acute pain shall not exceed an average of thirty MED per day, except when:

(i) The circumstances set forth in paragraph (A)(3)(c) of rule 4731-11-13 of the Administrative Code exist; and

(ii) The patient's treating physician has entered a standard care arrangement with the advanced practice registered nurse that states the understanding of the physician as to when the advanced practice registered nurse may exceed the thirty MED average, and when the advanced practice registered nurse must consult with the physician prior to exceeding the thirty MED average. The standard care arrangement in this circumstance must comply with rule 4731-11-13 of the Administrative Code, and the advanced practice registered nurse must document in the patient's record the reason for exceeding the thirty MED average and the reason it is the lowest dose consistent with the patient's medical condition.

(H) The requirements of paragraph (G) of this rule apply to treatment of acute pain, and do not apply when an opioid analgesic is prescribed:

(1) To a patient in a hospice care;

(2) To a patient who is receiving palliative care;

(3) To a patient who has been diagnosed with a terminal condition, as defined as follows:

(a) An irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a physician who has examined the patient, both of the following apply:

(i) There can be no recovery; and

(ii) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered; or

(4) To a patient who has cancer or a condition associated with the individual's cancer or history of cancer.

(I) The requirements of paragraph (G) of this rule do not apply to:

(1) Prescriptions for opioid analgesics for the treatment of opioid addiction utilizing a controlled substance that is approved by the FDA for opioid detoxification or maintenance treatment; or

(2) Inpatient prescriptions as defined in rules adopted by agency 4729 of the Administrative Code.

(J) Sub-acute and chronic pain. As specified in section 4723.481 of the Revised Code, for treatment of sub-acute and chronic pain, an advanced practice registered nurse with a current valid license issued by the board and designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall prescribe in a manner not exceeding the prescriptive authority of the collaborating physician or podiatrist. Prescribing parameters specifically include, but are not limited to, the following requirements set forth in rule 4731-11-14 of the Administrative Code:

(1) Prior to treating, or continuing to treat sub-acute or chronic pain with an opioid analgesic, the advanced practice registered nurse shall first consider and document non-medication options. If opioid analgesic medications are required as determined by a history and physical examination, the advanced practice registered nurse shall prescribe the minimum quantity and potency needed to treat

the expected duration of pain and improve the patient's ability to function;

(2) Before prescribing an opioid analgesic for sub-acute or chronic pain, the advanced practice registered nurse shall complete or update and document in the patient record assessment activities to assure the appropriateness and safety of the medication, as required by rule 4731-11-14 of the Administrative Code, including but not limited to:

(a) Completing an OARRS check in compliance with rule 4723-9-12 of the Administrative Code;

(b) Offering the patient a prescription for naloxone if the following circumstances exist:

(i) The patient has a prior history of opioid overdose;

(ii) The patient is co-prescribed a benzodiazepine, sedative hypnotic drug, carisprodal, tramadol, or gabapentin;

(iii) The patient has a concurrent substance use disorder; or

(iv) The dosage exceeds eighty MED as discussed in paragraph (J)(5) of this rule;

(c) The advanced practice registered nurse shall consider offering the patient a prescription for naloxone if the dosage exceeds fifty MED as discussed in paragraph (J)(4) of this rule.

(3) During the course of treatment with an opioid analgesic at doses below the average of fifty MED per day, the advanced practice registered nurse shall provide periodic follow-up assessment and documentation of the patient's functional status, the patient's progress toward treatment objectives, indicators of possible addiction, drug abuse or diversion, and any adverse drug effects.

(4) Fifty MED. Prior to increasing the opioid dosage to a daily average of fifty MED or greater, the advanced practice registered nurse shall complete and document in the patient record the activities and information set forth in rule 4731-11-14 of the Administrative Code, including but not limited to the following:

(a) Review and update the assessment completed in paragraph (J)(2) of this rule if needed. The advanced practice registered nurse may rely on an appropriate assessment completed within a reasonable time if the advanced practice registered nurse is satisfied that he or she may rely on that information for purposes of meeting the requirements of Chapter 4723-8 and Chapter 4723-9 of the Administrative Code;

(b) Except when the patient was prescribed an average daily dosage that exceeded fifty MED before the effective date of this rule, document consideration of:

(i) Consultation with a specialist in the area of the body affected by the pain;

(ii) Consultation with a pain management specialist;

(iii) Obtaining a medication therapy management review by a pharmacist;

(iv) Consultation with a specialist in addiction medicine or addiction psychiatry, if aberrant behaviors indicating medication misuse or substance use disorder are noted;

(c) The advanced practice registered nurse shall consider offering the patient a prescription for naloxone if the dosage exceeds fifty MED as discussed in paragraph (J)(4) of this rule;

(d) During the course of treatment with an opioid analgesic at doses at or above the average of fifty MED per day, the advanced practice registered nurse shall complete and document in the patient record all of the information and activities required by rule 4731-11-14 of the Administrative Code not less than every three months.

(5) Eighty MED. Prior to increasing the opioid dosage to a daily average of eighty MED or greater, the advanced practice registered nurse shall complete and document in the patient record the activities and information set forth in rule 4731-11-14 of the Administrative Code, including but not limited to the following:

(a) A written pain management agreement shall be entered with the patient that outlines the advanced practice registered nurse's and patient's responsibilities during treatment, which requires the patient

or patient guardian's agreement to all of the provisions set forth in rule 4731-11-14 of the Administrative Code;

(b) The advanced practice registered nurse shall offer the patient a prescription for naloxone;

(c) Except when the patient was prescribed an average daily dosage that exceeded eighty MED before the effective date of this rule, the advanced practice registered nurse shall obtain at least one of the following based upon the patient's clinical presentation:

(i) Consultation with a specialist in the area of the body affected by the pain;

(ii) Consultation with a pain management specialist;

(iii) A medication therapy management review by a pharmacist; or

(iv) Consultation with a specialist in addiction medicine or addiction psychiatry, if aberrant behaviors indicating medication misuse or substance use disorder are noted.

(6) One hundred twenty MED. The advanced practice registered nurse shall not prescribe a dosage that exceeds an average of one hundred twenty MED per day. This prohibition shall not apply under the following circumstances:

(a) The advanced practice registered nurse holds national certification by a national certifying organization approved according to section 4723.46 of the Revised Code in:

(i) Pain management;

(ii) Hospice and palliative care;

(iii) Oncology; or

(iv) Hematology, or coursework in hematology leading to certification in oncology;

(b) The advanced practice registered nurse of has received a written recommendation for a dosage exceeding an average of one hundred twenty MED per day from a board certified pain medicine physician, a board certified hospice and palliative care physician, or a board certified oncology or hematology physician, who based the recommendation on a face-to-face visit and examination of the patient. The advanced practice registered nurse shall maintain the written recommendation in the patient's record; or

(c) The patient was receiving an average daily dose of one hundred twenty MED or more prior to the effective date of this rule. However, prior to escalating the patient's dose, the advanced practice registered nurse shall receive a written recommendation as set forth in paragraph (J)(6)(b) of this rule.

(7) The requirements of paragraph (J) of this rule do not apply when an opioid analgesic is prescribed:

(a) To a patient in hospice care;

(b) To an patient who has terminal cancer or another terminal condition, as defined as follows:

An irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a physician who has examined the patient, both of the following apply:

(i) There can be no recovery; and

(ii) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered; or

(c) As an inpatient prescription as defined in rules adopted by agency 4729 of the Administrative Code.

(K) As specified in section 4723.44 of the Revised Code, an advanced practice registered nurse designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall

not prescribe any drug or device to perform or induce an abortion, as that term is defined in section 2919.11 of the Revised Code.

(L) As specified in section 4723.488 of the Revised Code, notwithstanding the requirements of this rule, an advanced practice registered nurse with a current valid license issued by the board and designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe or personally furnish naloxone.

(M) The requirements of paragraph (C)(9)(c) of this rule apply to prescriptions for products that contain gabapentin.

(N) The advanced practice registered nurse may enter consult agreements with pharmacists in accordance with section 4729.39 of the Revised Code and rules 4723-8-12 and 4723-8-13 of the Administrative Code.

Ohio Administrative Code

Rule 4730-2-07 Standards for prescribing.

Effective: February 28, 2023

(A) A physician assistant who holds a prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician may prescribe a drug or therapeutic device provided the prescription is in accordance with all of the following:

(1) The extent and conditions of the physician-delegated prescriptive authority, granted by the supervising physician who is supervising the physician assistant in the exercise of the authority;

(2) The requirements of Chapter 4730. of the Revised Code;

(3) The requirements of Chapters 4730-1, 4730-2, 4730-4, 4731-11, 4731-35, and 4731-37 of the Administrative Code; and

(4) The requirements of state and federal law pertaining to the prescription of drugs and therapeutic devices.

(B) A physician assistant who holds a prescriber number who has been granted physician-delegated prescriptive authority by a supervising physician shall prescribe in a valid prescriber-patient relationship. This includes, but is not limited to:

(1) Obtaining a thorough history of the patient;

(2) Conducting a physical examination of the patient;

(3) Rendering or confirming a diagnosis;

(4) Prescribing medication, ruling out the existence of any recognized contraindications;

(5) Consulting with the supervising physician when necessary; and

(6) Properly documenting these steps in the patient's medical record.

(C) The physician assistant's prescriptive authority shall not exceed the prescriptive authority of the supervising physician under whose supervision the prescription is being written, including but not limited to, any restrictions imposed on the physician's practice by action of the United States drug enforcement administration or the state medical board of Ohio.

(D) A physician assistant holding a prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician to prescribe controlled substances shall apply for and obtain the United States drug enforcement administration registration prior to prescribing any controlled substances.

(E) A physician assistant holding prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician shall not prescribe any drug or device to perform or induce an abortion.

(F) A physician assistant holding prescriber number and who has been granted physician-delegated prescriptive authority by a supervising physician shall include on each prescription the physician assistant's license number, and, where applicable, shall include the physician assistant's DEA number.

Exhibit 6

Ohio Revised Code

Section 2919.123 Unlawful distribution of an abortion-inducing drug.

Effective: April 12, 2021
Legislation: Senate Bill 260 - 133rd General Assembly

(A) No person shall knowingly give, sell, dispense, administer, or otherwise provide 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 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, or otherwise provides 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, 2919.15, 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.

Exhibit 7

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

PRETERM-CLEVELAND
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NORTHEAST OHIO WOMEN'S CENTER, LLC, d/b/a TOLEDO WOMEN'S CENTER
C/O B. Jessie Hill
ACLU of Ohio
4506 Chester Avenue
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Plaintiffs,

v.

Case No. _____

Judge _____

COMPLAINT

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Defendants.

INTRODUCTION

1. In November 2023, Ohioans voted overwhelmingly to enshrine the right to abortion in the Ohio Constitution, which now directs that the State "shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" a person voluntarily exercising this right or an individual or entity helping them do so. Ohio Const. Article I, Section 22 ("The Right to Reproductive Freedom with Protections for Health and Safety").

2. Plaintiffs bring this challenge to the Ohio Revised Code 2317.56 and 2919.192–2919.194 (collectively, the "Challenged Requirements" or the "Requirements") (attached hereto as Exhibit A), that do precisely what the Ohio Constitution forbids: burden, penalize, interfere with, and, in some cases, prohibit access to abortion, and discriminate against abortion patients and providers. The Requirements also undermine the provision of ethical medical care, the physician-patient relationship, and patient autonomy.

3. The Challenged Requirements can be distilled to three fundamental mandates. They impose a delay of at least 24 hours—which, in practice, is often much longer—on people seeking abortion care in Ohio (the "Waiting Period Requirement"). They also force abortion patients to attend an additional and unnecessary in-person appointment before receiving care (the "In-Person Requirement"). And they compel abortion providers to force upon their patients certain state-mandated information that is not only irrelevant to the patient's informed consent process but may

be harmful, distressing, stigmatizing, and, in some cases, even misleading (the "State Information Requirement").

4. The Challenged Requirements provide no health benefit whatsoever to patients and lack any medical justification. To the contrary, imposing an unnecessary delay on patients' receipt of time-sensitive abortion care risks harm to patients' health and well-being and subjects them to increased medical risk.

5. The Challenged Requirements also undermine patient autonomy; perpetuate harmful assumptions about women's ability to make reasoned, thoughtful decisions; and manipulate abortion patients in a manner intended to discourage them from terminating their pregnancies.

6. Additionally, the Challenged Requirements prevent clinicians from tailoring their provision of information and medical care to individual patients based on their specific circumstances and needs, in contravention of the dictates of medical ethics and best medical practice according to the standard of care.

7. Moreover, the Challenged Requirements discriminate against abortion providers and patients by singling out abortion as the only time-sensitive medical intervention subject to a waiting period under Ohio law; the only medical intervention that requires a separate, in-person visit for informed consent; and the only medical intervention for which providers are prohibited from using their best medical judgment as to which information to convey to a patient based on that individual patient's circumstances and needs.

8. The Requirements constitute blatant State interference with individuals' autonomous decision-making about abortion and medical providers' exercise of their best medical

judgment in providing abortion, in direct violation of Ohioans' constitutional right to make and carry out the decision to have an abortion.

9. Accordingly, Plaintiffs, who are abortion providers in Ohio, seek preliminary and permanent injunctive relief blocking enforcement of the Challenged Requirements, and a declaratory judgment that the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution.

PARTIES

A. Plaintiffs

10. Plaintiff Preterm-Cleveland ("Preterm") is a nonprofit corporation organized under the laws of the State of Ohio that has operated a reproductive health care clinic in Cleveland, Ohio since 1974. Preterm provides a range of reproductive and sexual health care services, including abortion. Preterm provides medication abortions through 9 weeks, 6 days, as measured from the first day of a patient's last menstrual period ("LMP"), and procedural abortions through 21 weeks, 6 days LMP. Providers at Preterm are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. Preterm sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

11. Plaintiff Women's Med Group Professional Corporation ("WMGPC") is a corporation organized under the laws of the State of Ohio that owns and operates Women's Med Center Dayton ("WMCD") in Kettering, Ohio. WMGPC and its predecessor organizations have been providing abortions in the Dayton area since 1975. WMCD provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP. Providers at WMCD are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits

if they provide care in violation of the Challenged Requirements. WMGPC sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

12. Plaintiff Catherine Romanos, M.D., is a board-certified family medicine physician licensed to practice medicine in Ohio. Dr. Romanos is employed by WMCD, where she oversees the care of patients at the clinic and provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP. As a provider at WMCD, Dr. Romanos is threatened with criminal penalties, loss of her medical license, civil forfeiture, and civil suits if she provides care in violation of the Challenged Requirements. Dr. Romanos sues on behalf of herself and her patients.

13. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP at its Cincinnati Surgical Center. Providers at PPSWO are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. PPSWO sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

14. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. PPGOH provides medication abortion up to 10 weeks LMP and procedural abortions through 19 weeks, 6 days LMP at its East Columbus and Bedford Heights Surgical Centers. Providers at PPGOH are threatened

with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. PPGOH sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

15. Plaintiff Northeast Ohio Women's Center, LLC ("NEOWC") is a corporation organized under the laws of the State of Ohio that operates health care clinics and provides abortion care in Shaker Heights, Ohio and in Cuyahoga Falls, Ohio. NEOWC also owns and operates the Toledo Women's Center ("TWC") in Toledo, Ohio. NEOWC provides medication abortions through 9 weeks, 6 days LMP and procedural abortions up to 17 weeks LMP at its Cuyahoga Falls location at all three locations. Providers at NEOWC are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. NEOWC sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

B. Defendants

16. Defendant Dave Yost is the Attorney General of the State of Ohio. As Attorney General, Defendant Yost is responsible for the enforcement of Ohio laws, including Ohio's Challenged Requirements, and is also charged with commencing and prosecuting civil forfeiture when directed to do so by the State Medical Board. He is sued in his official capacity.

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

18. Defendant Harish Kakarala, M.D., is the Supervising Member of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in the Challenged Requirements. He is sued in his official capacity.

19. Defendant Bruce T. Vanderhoff, M.D., M.B.A., is the Director of the Ohio Department of Health ("ODH"), which is responsible for, *inter alia*, promulgating materials that must be provided to each patient under the Challenged Requirements and reporting providers' non-compliance with the Challenged Requirements to the State Medical Board. He is sued in his official capacity.

20. Defendant Michael C. O'Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Cuyahoga County, where Preterm's clinic, NEOWC's Shaker Heights clinic, and PPGOH's Bedford Heights clinic are located. He is sued in his official capacity.

21. Defendant G. Gary Tyack is the Franklin County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Franklin County, where PPGOH's East Columbus clinic is located. He is sued in his official capacity.

22. Defendant Melissa A. Powers is the Hamilton County Prosecutor. She is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Hamilton County, where PPSWO's Cincinnati clinic is located and where WMGPC is headquartered. She is sued in her official capacity.

23. Defendant Julia R. Bates is the Lucas County Prosecutor. She is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Lucas County, where TWC is located. She is sued in her official capacity.

24. Defendant Mathias H. Heck, Jr. is the Montgomery County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained

in the Challenged Requirements, in Montgomery County, where WMGPC's facility is located. He is sued in his official capacity.

25. Defendant Elliot Kolkovich is the Summit County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Summit County, where NEOWC's Cuyahoga Falls facility is located. He is sued in his official capacity.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this complaint pursuant to R.C. 2721.02, 2727.02 and 2727.03.

27. Venue is proper in this Court pursuant to Civ.R. 3(C)(4), because Defendants Yost, Rothermel, Kakarala, Vanderhoff, and Tyack each have their principal office in Franklin County.

FACTUAL ALLEGATIONS

A. Abortion Incidence, Safety, and Methods

28. Abortion is extremely common in the United States. Approximately one in four women in this country will have had an abortion by age forty-five.

29. Two types of abortion are available in Ohio: medication abortion and procedural abortion.

30. Medication abortion involves the use of medications to terminate a pregnancy. The most common regimen involves the use of two drugs taken 24 to 48 hours apart, the combined effect of which stops the pregnancy from progressing and causes uterine contractions, thereby allowing patients to pass the contents of the uterus in a process similar to a miscarriage. In Ohio, medication abortion is legal up to 10 weeks LMP.

31. Procedural abortion[1] involves the use of aspiration (gentle suction) and/or instruments to evacuate the uterus. In Ohio, procedural abortion is legal and available up to 22 weeks LMP.

32. Legal abortion is extremely safe. Complications from both medication and procedural abortion are exceedingly rare. In the rare cases where complications do occur, they can usually be managed safely and effectively in an outpatient clinic setting, either at the time of the abortion or at a follow-up visit.

33. Abortion is far safer than carrying a pregnancy to term. In the United States, the risk of maternal death associated with childbirth is approximately 12 to 14 times higher than the risk of death associated with legal abortion. In 2018, the maternal mortality rate in Ohio was 14.1 per 100,000 live births. The maternal mortality rate is significantly higher for Black women in Ohio, where they are two-and-a-half times more likely to die from a cause related to pregnancy than white women.

34. Even for the healthiest patients, pregnancy poses extraordinary physical challenges and significant health risks. Pregnancy places significant stress on most major organs and results in profound and long-lasting physiological changes.

35. Pregnancy complications are also extremely common. Some of the more common complications include preeclampsia, gestational diabetes, and maternal cardiac disease. All of these conditions can result in serious, permanent harm to an individual's health, up to and including death.

[1] While procedural abortion is sometimes referred to as "surgical" abortion, this is a misnomer because no incision is made.

36. Moreover, pregnancy may also cause or exacerbate certain health conditions—such as hypertension, heart disease, autoimmune disorders, renal disorders, diabetes, or asthma—and people with such conditions face an even greater risk of experiencing medical complications during pregnancy.

37. People seek abortion for a wide variety of reasons. A person's decision to terminate their pregnancy is informed by diverse and deeply personal factors, such as individual values and beliefs, culture and religion, family circumstances, economic circumstances, resource access, reproductive history, and physical and mental health considerations.

38. For some, having a child can place economic and emotional strain on an individual or family that they are simply unable to bear. Approximately 75% of people seeking abortions in the United States are either poor or low-income.

39. Many abortion patients are also already parents. Nearly two-thirds of women having abortions have already given birth at least once. Individuals who are already parenting may seek an abortion because they feel they cannot adequately care for another child or because they want to prioritize the needs of their existing children. Other patients decide to terminate a pregnancy due to caretaking responsibilities for other individuals, such as elderly parents.

40. Some abortion patients simply do not want to become a parent at that point in their lives, or ever. People may choose to have an abortion to pursue career advancement, educational opportunities, or other life goals that they feel are incompatible with the responsibilities of parenting.

41. People experiencing intimate partner violence may seek abortion to escape the dangers posed by their relationships, which can be amplified by pregnancy and parenting.

42. Survivors of sexual assault or incest may choose abortion to avoid the ongoing emotional distress and trauma associated with carrying a pregnancy resulting from their assault, regain control over their bodies and reproductive choices, facilitate their healing process, and/or prevent further ties to their assailant through parenthood.

43. Some patients seek an abortion because continuing their pregnancies would pose a threat to their health or life due to pre-existing medical conditions or complications that arise during pregnancy.

44. Other patients decide to terminate their pregnancy after receiving a diagnosis of a fetal medical condition that is fatal or would cause needless suffering to the child and family.

45. Individual circumstances vary greatly, and the reasons outlined above are not exhaustive but rather examples of the diverse factors that may influence someone's decision to seek abortion. Abortion patients often base their decision on multiple interconnected factors and considerations.

46. Whatever a patient's reasons, accessing abortion is essential to their autonomy, dignity, and ability to care for themselves and their families. Forcing a person to continue a pregnancy against their will jeopardizes their physical, mental, and emotional health, as well as the stability and well-being of their family and existing children.

B. Principles of Informed Consent

47. Informed consent is the process by which a health care provider educates a patient about the nature and purpose, risks and benefits of, and alternatives to, a medical procedure or intervention to ensure that the patient is able to make a fully informed and voluntary decision about whether to undergo the procedure or intervention.

48. Informed consent serves the important medical ethics principle of patient autonomy by ensuring that each patient's dignity and right to self-determination is respected. Obtaining

informed consent prior to providing medical treatment is the standard of care and an ethical imperative of medical practice generally, as well as a legal requirement for all physicians practicing medicine in Ohio.

49. Medical ethics require that, when obtaining informed consent, health care providers exercise their clinical judgment to provide medically relevant and accurate information about the nature and purpose of the proposed course of treatment, its risks and benefits, and its alternatives. Medical ethics further require that health care providers tailor this dialogue to the patient's unique values and preferences, while answering any questions the patient may have.

50. The American Medical Association's ("AMA") Code of Medical Ethics, which is widely recognized as the most comprehensive ethics guide for physicians, dictates that the informed consent process should take account of a patient's individual circumstances and physicians should tailor the information they provide to the patient's needs and expectations.[2]

51. Similarly, the American College of Obstetricians and Gynecologists ("ACOG"), the nation's leading professional association of obstetricians and gynecologists, opines that "[t]he highest ethical standard for adequacy of clinical information requires that the amount and complexity of information be tailored to the desires of the individual patient and to the patient's ability to understand this information."[3]

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[2] Am. Med. Ass'n, Code of Medical Ethics, *Withholding Information from Patients*, Op. No. 2.1.3, https://code-medical-ethics.ama-assn.org/ethics-opinions/withholding-information-patients (last visited Mar. 28, 2024).

[3] Am. Coll. Of Obstetricians & Gynecologists, Committee on Ethics, Op. No. 819, (February 2021) https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/02/informed-consent-and-shared-decision-making-in-obstetrics-and-gynecology (last visited Mar. 28, 2024).

C. Statutory Framework of the Challenged Requirements

i. Ohio Revised Code 2317.56

52. R.C. 2317.56(B)(1) states that, at least 24 hours prior to an abortion, a physician must meet with the patient in an individual and private setting, in person, and inform the patient verbally of the nature and purpose of the abortion as well as its medical risks, the probable gestational age of the embryo or fetus, and the medical risks associated with carrying the pregnancy to term.

53. R.C. 2317.56(B)(2) further requires that the physician or their agent give the patient copies of state-produced materials concerning gestational development, family planning information, and publicly-funded support options. R.C. 2317.56(B)(2)(b). The physician or their agent must also inform the patient that these written materials "are published by the state and * * * describe the zygote, blastocyte, embryo, or fetus and list agencies that offer alternatives to abortion." R.C. 2317.56(B)(2)(c).

54. Before a patient can receive abortion care, the state requires them to certify in writing that the provider has given them all of the required materials and that all of their questions have been answered. R.C. 2317.56(B)(4)(a). The patient has to further certify that they are consenting to the procedure "voluntarily, knowingly, intelligently, and without coercion by any person" and that they are "not under the influence of any drug of abuse or alcohol." R.C. 2317.56(B)(4)(b).[4]

[4] For procedural abortions, Ohio Revised Code section 2317.56(B)(4)(c)–(d) requires the patient to sign and certify additional forms addressing disposition of the uterine contents after the procedure. *See also* R.C. 3726.03, 3726.14. However, these provisions are currently enjoined by the preliminary injunction order in *Planned Parenthood Sw. Ohio Region v. Ohio Dept. Health*, Entry Granting Pls.' Second Mot. for Prelim. Inj., Hamilton C.P. No. A 2100870 (Jan. 31, 2022). Because this provision is the subject of another lawsuit, it is not included in this challenge.

55. There is only one narrow exception to the requirements of R.C. 2317.56 for cases of medical emergency or medical necessity. Medical emergency is defined as "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." R.C. 2317.56(A)(1), 2919.16(F). Medical necessity is defined as "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." R.C. 2317.56(A)(2).

56. Failure to comply with the requirements under R.C. 2317.56 risks severe professional and civil penalties. The state medical board may limit, revoke, or suspend a physician's medical license based on a violation of R.C. 2317.56. R.C. 4731.22(B)(23). In addition, "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 non-compliance with R.C. 2317.56 may bring a civil action for compensatory and exemplary damages against a provider who violates R.C. 2317.56. R.C. 2317.56(G)(1).

ii. Ohio Revised Code 2919.192, 2919.193, and 2919.194

57. R.C. 2919.192, 2919.193, and 2919.194 also require testing for fetal or embryonic cardiac activity prior to an abortion, and—if such activity is detected—require that the patient be provided with additional state-mandated information and be forced to delay their abortion for at least 24 hours.

58. Specifically, if fetal or embryonic cardiac activity is detected, the physician must give the patient written confirmation that embryonic or fetal cardiac activity is present and provide state-mandated information about the statistical probability of carrying the pregnancy to term based on gestational age, and the patient must sign and acknowledge receipt of this information. R.C. 2919.194(A)(1)–(3). The physician must then wait at least 24 hours before providing the patient with an abortion. R.C. 2919.194(A).

59. There is only one narrow exception to these requirements for cases of medical emergency. R.C. 2919.193(B)–(C). Medical emergency is defined as "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." R.C. 2919.193(B), 2919.16(F).

60. Failure to test for fetal or embryonic cardiac activity prior to providing an abortion as required by R.C. 2919.192 is a fifth-degree felony, punishable by up to one year in prison and a fine of up to $2,500. R.C. 2919.193, 2919.139(A), 2929.14(A)(5), and 2929.18(A)(3)(e). Failure to provide the state-mandated information and obtain the written acknowledgment at least 24 hours before an abortion when fetal or embryonic cardiac activity is detected, as required by R.C. 2919.194, is a first-degree misdemeanor on the first offense, punishable by up to 180 days incarceration and a fine of up to $1,000, and a fourth-degree felony on each subsequent offense, punishable by up to eighteen months in prison and a fine of up to $5,000. R.C. 2919.194(E), 2929.24(A)(1), 2929.28(A)(2)(a)(i), 2929.14(A)(4), and 2929.18(A)(3)(d).

61. In addition to these criminal penalties, there are severe professional and civil penalties for violating these laws. The state medical board may assess a forfeiture of up to $20,000 for each violation of R.C. 2919.192, 2919.193, and 2919.194. *See* R.C. 2919.1912(A). The state medical board may also limit, revoke, or suspend a physician's medical license for failing to comply with requirements for making and keeping medical records outlined in R.C. 2919.192 and 2919.193. R.C. 4731.22(B)(46). In addition, a patient may bring a civil action for compensatory and exemplary damages against a provider who violates the testing requirements in R.C. 2919.192. R.C. 2919.193(A)(1). A patient may also bring a civil action against a provider who violates the state-mandated information and written acknowledgment requirements in R.C. 2919.194 and recover damages in the amount of $10,000 or more. R.C. 2919.199(A)(2), (B)(1).

D. The Challenged Requirements Violate Article I, Section 22 of the Ohio Constitution.

62. The three core mandates of the Challenged Requirements—the Waiting Period Requirement, the In-Person Requirement, and the State Information Requirement—individually and collectively burden, penalize, discriminate against, interfere with, and sometimes prohibit patients' exercise of their right to abortion, and providers' actions to assist them in doing so, without doing anything to advance patient health in accordance with widely accepted and evidence-based standards of care.

i. Impact of the Waiting Period Requirement on Patients and Providers

63. The Waiting Period Requirement forces patients to receive state-mandated information in person, and then wait at least 24 hours before they can obtain an abortion. This required delay for receiving time-sensitive medical care, which often ends up being much longer than 24 hours in practice, has no medical benefit for patients and only serves to push them later

into their pregnancies, increasing the risk of harm to their health and well-being as well as the cost of obtaining care.

64. While the law mandates a minimum delay of 24 hours between the initial visit and the abortion, in reality the amount of time between visits is often much longer. Administrative limitations around scheduling and staffing may push the second appointment out by more than a day, and sometimes by up to a week or more. Other practical factors also impact the timing of a patient's second appointment, such as how far the patient's pregnancy has progressed, the method of abortion they are having, and whether the care they will receive involves sedation.

65. Patients' personal circumstances can delay care even further. It is often difficult to find an available time for a second appointment when the patient can secure time off from work or school and child care. Patients are frequently forced to delay abortion care in order to amass the financial resources needed to cover transportation, child care, and/or accommodation costs associated with attending a second appointment.

66. The cost of an abortion typically increases as pregnancy progresses and the procedure becomes more complex. As a result, unnecessary delays may lead to higher total costs, which in turn could lead to further delays as patients struggle to save additional money to cover their care.

67. These compounding barriers can result in lengthy delays, which can put a preferred abortion method out of reach for a patient or push them past the legal limit for obtaining an abortion in Ohio.

68. Medication abortion is legal in Ohio only up to 10 weeks LMP, and the Waiting Period Requirement can easily push a patient past this cut-off for medication abortion, despite patient preference or medical indication. Patients may prefer medication abortion to procedural

abortion for a variety of reasons, such as the comfort and privacy of ending their pregnancy at home, it feels natural, and/or it allows the patient to be more in control of the process. Survivors of sexual assault may find medication abortion to be less traumatic and invasive than procedural abortion. For some patients, medication abortion may be safer than procedural abortion due to medical contraindications.

69. Other patients may be delayed past Ohio's abortion limit of 22 weeks LMP as a result of the Waiting Period Requirement, forcing them to travel out of state for care if they are able or to carry their pregnancy to term. For example, a patient facing a fetal diagnosis around 20 weeks LMP—a common point at which certain fetal conditions are first diagnosed—can easily be pushed past this limit due to financial and logistical barriers created and compounded by the Waiting Period Requirement.

70. Even when patients are not delayed beyond the limit for their preferred abortion method or the legal limit for abortion in Ohio, unnecessary delays to abortion care can increase patient risks and further compound barriers to abortion.

71. While abortion is extremely safe at any point in pregnancy, there is an incremental but continuous increase in the risk level and complexity of the abortion as pregnancy progresses.

72. Remaining pregnant longer than necessary can also increase health risks for patients with underlying health problems. Pregnancy can exacerbate the symptoms of diabetes, hypertension, autoimmune disorders, cardiac disease, and mental health conditions. In the long term, patients with coexisting conditions who are denied timely abortion care risk outcomes including cardiac disease, renal failure, and even stroke.

73. Mainstream medical consensus dictates that the best medical practice is to provide patients with timely abortion care without any unnecessary delays and that mandatory waiting

periods for abortion do not improve patient health. According to the National Academies of Sciences, Engineering, and Medicine (the "National Academies"), a nonprofit organization established by Congress to provide independent, objective advice on policy relating to science, engineering, and medicine, "[t]he clinical evidence * * * on the provision of safe and high-quality abortion care stands in contrast to the extensive regulatory requirements that state laws impose on the provision of abortion services," including laws that impose "waiting periods" for receiving abortion care.[5]

74. The vast majority of abortion patients are certain of their decision to terminate their pregnancy during their initial visit to an abortion clinic.

75. Plaintiffs' staff are trained to assess patient certainty and recognize signs of patient hesitancy. If a patient seems uncertain about their decision to have an abortion, they are encouraged to reschedule the appointment for a later date and take more time to think about their decision.

76. Patients often experience a range of negative emotions from frustration to despair when they are informed that they cannot obtain abortion care during their initial appointment and may need to return to the clinic on another day, despite being certain about their decision.

77. Being forced to send away patients who are certain about their decision to have an abortion and make them come back on a separate day for no legitimate medical reason is also deeply distressing for Plaintiffs.

78. Physicians have an ethical duty to act in accordance with their patients' best interests and to respect their patients' autonomy. The Waiting Period Requirement puts providers in a position of having to depart from those duties and the standard of care by denying patients

[5] Natl. Academies of Science, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United States* 77 (2018), available at https://nap.nationalacademies.org/read/24950/chapter/1 (accessed Mar. 26, 2024) [hereinafter "Natl. Academies Report"]

time-sensitive care for a specified minimum period of time, thereby risking harm to patient health and well-being.

79. Many patients also blame Plaintiff providers and clinic staff for being forced to delay their care and take their frustrations out on them. This takes a heavy emotional toll on Plaintiff providers and their staff and erodes the trust and rapport that is essential to the patient-provider relationship.

80. Under Ohio law, no other medical interventions or procedures that are similarly time-sensitive are subject to a statutorily-imposed waiting period.

81. Singling out abortion for this requirement perpetuates the discriminatory view that women are not competent to render thoughtful, appropriate, moral medical decisions for themselves and their families and must instead be forced by the state to reconsider their medical decisions. The Waiting Period Requirement also reflects the patronizing stereotype that women do not think carefully about their decisions and do not understand the nature of the abortion care.

ii. Impact of the In-Person Requirement on Patients and Providers

82. Ohio law also mandates that abortion patients attend an unnecessary in-person appointment before receiving care. Specifically, R.C. 2317.56 requires the patient to receive certain state-mandated information in person during their first visit to an abortion provider, and R.C. 2919.192, 2919.193, and 2919.194 require the provider to test for embryonic and fetal cardiac activity—something that can only be done in person—during that initial visit as well.

83. These two mandates—collectively the "In-Person Requirement"—have no medical justification or health benefit. Under Ohio law, there is no other medical intervention for which a patient must make and attend a separate, in-person appointment with their medical provider in order to provide informed consent.

84. The In-Person Requirement reinforces and compounds the harms created by the Waiting Period Requirement, as it forces most abortion patients in Ohio to make at least two trips to the clinic, if not more.[6] Forcing most abortion patients to make at least two separate visits to the clinic for care imposes tangible burdens and costs on them and creates significant logistical barriers to accessing time-sensitive abortion care.

85. As a result of the In-Person Requirement, abortion patients who could have otherwise obtained their abortion at their first appointment but now must wait and then attend a second appointment, are forced to take more time off from work or away from school, arrange and pay for additional child care, arrange and pay for additional transportation to and from the clinic on different days, and/or find and pay for overnight accommodations near the clinic, particularly for those traveling from further distances. In many cases, patients must overcome all of these obstacles to return to the clinic simply so that their physician can hand them medication, which could have easily been provided at the initial appointment.

86. For some patients, all of the costs associated with traveling to and attending their abortion appointments may not only be doubled but tripled. For example, a patient must make three separate visits to the clinic if the patient is at a point in their pregnancy where they require overnight cervical dilation prior to a procedural abortion, making it a two-day procedure. Additionally, if embryonic or fetal cardiac activity is detected for the first time during the patient's second visit, that triggers an additional delay of at least 24 hours.

[6] A small minority of medication abortion patients in Ohio are able to obtain a medication abortion with one in-person visit to a clinic followed by a virtual visit at least 24 hours later. However, the Challenged Requirements still require these patients to schedule two separate appointments—and to delay their care for at least 24 hours—for no legitimate medical reason.

87. These financial and logistical barriers are particularly burdensome and harmful for already vulnerable groups, including poor or low-income patients who constitute a majority of people seeking abortion. These patients often have particular difficulty getting time off work due to inflexible scheduling at low-wage jobs, and even if they are able to get days off, they often work in jobs that do not provide paid leave and forgo wages for time away from work. They are also less likely to have reliable access to transportation, either because they do not have a car or because of unreliable public transportation. Low-income patients may also need to delay their second appointment to save up enough money to afford the expense of additional child care and travel costs.

88. The In-Person Requirement, in combination with the Waiting Period Requirement, is also particularly burdensome for patients who are living in unsafe situations or abusive relationships. Coercion through sexual violence and reproductive control (such as birth control sabotage) are common tools of abusive partners that may account for the high incidence of unintended pregnancy among abuse victims. Some victims of intimate partner violence ("IPV") feel they need to end their pregnancy to leave the abusive relationship, as having the child will legally bind them to their abuser, and having a child to care for will make it much more difficult to escape. If the person inflicting abuse learns of their partner's pregnancy, they may try to force them to carry to term as a means of maintaining control. When patients in abusive relationships have to make two or more separate visits to a clinic, it increases the risk that the person inflicting abuse will find out about their pregnancy and/or abortion, thereby increasing the risk of violence and making it more difficult for the patient to escape the abuse. Together, the In-Person Requirement and the Waiting Period Requirement amplify these risks by forcing patients who are suffering from IPV to remain in dangerous living situations for longer than they otherwise would.

89. Even patients who are not victims of abuse often wish to keep the fact of their pregnancy and their abortion decision private from certain people in their lives for various reasons. Requiring abortion patients unnecessarily to delay their abortion care and/or to make an additional trip to a clinic forces patients who wish to keep their decision private to find a way to explain their additional physical absence and to secure additional transportation and funds needed for travel, time off work or school, and child care. This increases the risk that their partners, family members, employers, or others will learn that they are pregnant and/or having an abortion, thereby compromising their privacy.

90. Again, mainstream medical consensus, as reflected in the positions of leading medical authorities, instructs that laws imposing requirements such as multiple in-person visits and waiting periods only "delay abortion services, and by doing so may increase the clinical risks and cost of care," as well as "limit women's options for care and impact providers' ability to provide patient-centered care."[7] Authorities such as the National Academies have recognized that where, as here, a "waiting period is required after an in-person counseling appointment, the delay is exacerbated."[8]

91. It is deeply upsetting to Plaintiff providers to be forced to act contrary to the standard of care and their best medical judgment in sending patients away for no medical reason. Providers are well aware that doing so places their patients' health and well-being at risk, and they know that many of their patients will struggle to return or even forgo basic necessities in order to make a second, medically unnecessary trip to the clinic.

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[7] *See, e.g.*, Natl. Academies Report 77–78.
[8] *Id.* at 78.

iii. Impact of the State Information Requirement on Patients and Providers

92. The State Information Requirement forces physicians to provide abortion patients with irrelevant, potentially harmful, distressing, and/or misleading information.

93. The existence of embryonic or fetal cardiac activity is medically irrelevant for patients who have decided to terminate a pregnancy, as it does not change the nature of the treatment or procedure or impact the potential risks or benefits.

94. Moreover, R.C. 2919.194(A)(2) mandates that physicians tell patients the statistical probability of bringing the pregnancy to term based on the gestational age of the embryo or fetus. This, however, is not a calculation that is routinely made by medical professionals who care for pregnant patients, and there is no standard for such a calculation in existing medical literature. Nor did the Ohio Department of Health ever promulgate their own standards for this calculation, as R.C. 2919.194(C) contemplates. General estimates made pursuant to this statute are imperfect and potentially misleading because the statute does not appear to permit physicians to take into account factors other than the gestational age of the embryo or fetus, despite the fact that a patient's individual circumstances and medical history impact the likelihood of carrying a pregnancy to term. For example, a patient who has a history of multiple cesarean sections has a lower likelihood of carrying a subsequent pregnancy to term than an estimate of the statistical probability based only on the gestational age would indicate.

95. Even when the state-mandated information is medically accurate, it is not medically appropriate to force it on patients. The rigid standards prescribed by the State Information Requirement prevent physicians from tailoring information to their patients' needs and, as a result, often subject patients to trauma, harm, or distress.

96. For some patients, the state-mandated information only highlights and reinforces already deeply traumatic facets of their pregnancies. For example, for patients who are ending wanted pregnancies due to fetal conditions, forcing them to again experience the sight or sound of the embryonic or fetal cardiac activity, or emphasizing the statistical probability of carrying a pregnancy to term based solely upon gestational age and entirely divorced from a patient's specific circumstances, can deepen already unimaginable grief.

97. For patients who became pregnant as the result of sexual assault, the requirement to inform them of the probable gestational age of the embryo or fetus forces physicians to remind these patients of the date of their assault.

98. Far from helping patients, let alone doing anything to advance their health, these requirements undermine patients' trust in their doctors, which is key to the physician-patient relationship, and they distress, upset, and stigmatize patients who have already made the decision to have an abortion.

99. Plaintiffs already have independent systems and procedures in place that meet and exceed legal and ethical informed consent requirements. For each patient, Plaintiffs provide counseling about all of the patient's options; explain and answer questions about the medical care and treatments the patient is seeking, including information about the nature and purpose of the treatment, as well as the risks, benefits, and alternatives to that treatment; ensure that the patient receives any needed support and that all their questions are answered; confirm that the patient's decision to have an abortion is voluntary and free of coercion; and ensure that the patient has provided fully informed and voluntary consent before providing any care.

100. If a patient is uncertain about their decision even after receiving all of the information and counseling Plaintiffs provide, Plaintiffs advise them to take additional time with

the decision and assure them that they can make another appointment if they later decide to move ahead with an abortion.

101. Plaintiffs' robust informed consent practices, which are superior to the Challenged Requirements and better reflect best medical practice, are demonstrative of Plaintiffs' dedication to ensuring that each and every patient has made a fully informed and voluntary decision to consent to an abortion before proceeding with providing care. Plaintiffs would maintain these practices even in the absence of the State Information Requirement, and the other Challenged Requirements discussed *supra* at paragraphs 52–61.

102. The one-size-fits-all State Information Requirement only serves to inundate patients with unnecessary and potentially distressing and misleading information, and it deviates from professional standards of care, medical ethics, and best medical practice which, as discussed *supra* at paragraphs 47–51, necessitates providing individualized information and counseling to patients that is tailored to their informational desires and personal and medical circumstances.

103. ACOG opposes laws that require "state-mandated consent forms" or "require physicians to give, or withhold, specific information when counseling patients before undergoing an abortion," because these laws burden and impair physicians' ability to fulfill their "ethical obligation to provide each patient with information that is evidence-based, tailored to that patient, and comprehensive enough to allow that patient to make an informed decision about care and treatment."[9]

104. Likewise, National Academies has recognized that "the principal objective of the informed consent process is that patients understand the nature and risks of the procedure they are considering," and that the "[l]ong-established ethical and legal standards for informed consent in

[9] Am. Coll. of Obstetricians & Gynecologists, *supra* note 2.

health care appear to have been compromised" by abortion-specific regulations requiring patients to be given certain unnecessary state-mandated information, including information that may be misleading, before receiving an abortion.[10]

105. In sum, the State Information Requirement compels abortion providers to deliver state-mandated information designed to either dissuade people from choosing abortion or stigmatize them for deciding to do so. Forcing physicians to depart from evidence-based counseling, informed consent best practices, the dictates of medical ethics, and their own medical judgment to serve as mouthpieces for the State in this manner is deeply distressing for them as medical providers and does not serve or improve patient health in any way. To the contrary, it only risks harming Plaintiffs' patients by distressing or upsetting them and undermining their trust in their chosen provider.

CLAIMS FOR RELIEF

COUNT I—Right to Reproductive Freedom

106. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 105.

107. Under the Ohio Constitution, every individual has "a right to make and carry out one's own reproductive decisions" including the decision to obtain an abortion, and the State may not "directly or indirectly[] burden, penalize, prohibit, interfere with, or discriminate against" any "individual's voluntary exercise of" the right to abortion, or "a person or entity that assists an individual exercising this right," unless the State demonstrates that it is using "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. Art. I § 22(A)–(B).

[10] Natl. Academies Report 78.

108. The Challenged Requirements impose an onerous and medically unnecessary process that delays, impedes, and prevents access to abortion, creates financial and logistical obstacles to obtaining an abortion, compromises the physician-patient relationship, undermines patient self-determination in direct contradiction to the principle of informed consent, and stigmatizes abortion patients and providers, singling them out for differential and unfavorable treatment. In doing so, the Challenged Requirements—including the Waiting Period Requirement, the In-Person Requirement, and the State Information Requirement—each individually and in combination directly and indirectly burden, penalize, prohibit, interfere with, and discriminate against both Ohioans' right to make and carry out the decision to have an abortion and Plaintiffs' ability to assist their patients in exercising that right.

109. The Challenged Requirements are not "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. Art. I § 22(A)–(B). The Requirements have no legitimate medical justification; contradict evidence-based best medical practice, the standard of care, the dictates of medical ethics, and mainstream medical consensus; and serve only to harm patients' health and well-being.

110. Accordingly, the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution.

111. Plaintiffs and their patients have no adequate remedy at law to address these harms.

COUNT II—Declaratory Judgment

112. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 111.

113. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. Plaintiffs are affected by the Challenged Requirements as set forth herein. In addition, Plaintiffs and their patients are unconstitutionally deprived of their rights under Article I, Section 22 of the Ohio Constitution.

114. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

115. Pursuant to R.C. 2721.01, et seq., Plaintiffs request that the Court find and issue a declaration that the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution because they burden, penalize, prohibit, interfere with, and discriminate against the constitutional right to abortion.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To issue a preliminary injunction restraining Defendants, their agents, employees, servants, and successors, and any persons in active concert or participation with them, from enforcing R.C. 2317.56, 2919.192, 2919.193, and 2919.194, and any other Ohio statute or regulation that could be understood to give effect to these provisions;

B. To issue later a permanent injunction restraining Defendants, their agents, employees, servants, and successors, and any persons in active concert or participation with them, from enforcing R.C. 2317.56, 2919.192, 2919.193, and 2919.194, and any other Ohio statute or regulation that could be understood to give effect to these provisions, including through any future enforcement actions based on conduct that occurred during the pendency of an injunction;

C. To enter a judgment declaring that R.C. 2317.56, 2919.192, 2919.193, and 2919.194 violate the Ohio Constitution; and

D. To grant such other and further relief as the Court deems just and proper.

Dated: March 29, 2024

Respectfully submitted,

/s/ B. Jessie Hill

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**Motions for pro hac vice forthcoming*