

ISSUES and ANSWERS

Oklahoma State Board of
Medical Licensure & Supervision

LEGISLATIVE FOCUS

Vol 18 No 1
Spring 2007

Physicians' Legal Obligation A WOMAN'S RIGHT TO KNOW Informed Consent Booklets and Web Site Ready for Distribution

In May of 2005, Oklahoma Governor Brad Henry signed into law new legislation concerning a woman's right to be fully informed. The new law is in regard to women who are seeking to obtain an abortion and in their right to relevant information concerning their pregnancy that might assist them in their decision-making process. This new law sets forth the legal obligation of physicians who provide abortions, physicians who refer for abortions, or the agents of either physician, to inform the woman seeking an abortion of the availability of certain and specified materials concerning her pregnancy and her right to choose to view, or not, these materials not less than 24 hours prior to the performance of an abortion. Amendatory and additional legislation concerning these matters passed the House of Representatives the 26th of November 2006 and became effective on November 1, 2006.

"This new law sets forth the legal obligation of physicians who provide abortions [and] physicians who refer for abortions..."

The Oklahoma State Board of Medical Licensure and Supervision, OS-BMLS, was appointed as the responsible state agency to provide certain specified information. This specified information is to be provided in printed form and via a stable and affiliated Internet web site.

Two booklets have been prepared by the OSBMLS to comply with the current Informed Consent Laws and are available for distribution upon request. These booklets have been written in laymen's terms and are provided for educational and informational purposes only and are not intended to be a substitute for professional medical advice, diagnosis, or treatment.

A Woman's Right to Know Information Material Booklet contains probable anatomical and physiological characteristics of the unborn child in two-week increments, a description of commonly employed abortion procedures and associated medical risks, an overview of pregnancy and childbirth and associated risks, and possible detrimental psychological effects of both abortion or carrying a child to term.

A Woman's Right to Know Resource Directory lists various agencies within the state of Oklahoma that might offer assistance to a woman who is pregnant and considering an alternative to abortion. These services could assist a woman throughout her pregnancy, upon childbirth, and while her child is dependent.

For a complete review of
the laws, see
***A Woman's Right
to Know*** web site at:
www.awomansrighttoknowok.org

CONTINUED ON BACK PAGE

A SUMMARY

THE LAWS AND THE SPECIFIED INFORMATION

At least 24 hours prior to the abortion

Oklahoma law (Title 63 O.S. § 1-738.2) states that no abortion shall be performed without the voluntary and informed consent of the woman upon whom the abortion is to be performed, except in the case of a medical emergency. Under the law, the abortion provider **or referring physician** or their agents are required to offer patients the option of reviewing the published materials as provided by the OSBMLS or the web site at least 24 hours prior to the abortion. Information shall include the following:

- Geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies, and services that are available to assist a woman through pregnancy, upon childbirth, and while her child is dependent.
- Probable anatomical and physiological characteristics of the unborn child.
- Photos/drawings of the unborn child and current and medically reliable information concerning the development of an unborn child at two-week gestational increments.
- Methods of abortion procedures most commonly employed.
- Medical risks commonly associated with the listed abortion procedures.
- Medical risks commonly associated with carrying a child to term.
- Possible detrimental psychological effects of abortion or carrying a child to term.
- Free Ultrasound Imaging and or Heart Tone monitoring Facilities. EHGR. S.B. NO. 1742 (Amendatory Section 7, Chapter 200, O.S.L. (63 O.S. Supp. 2005, Section 1-738.2)

The Unborn Child Pain Awareness/Prevention Act Statement

“By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or older who undergo prenatal surgery.” Title 63 O.S. §1-738-10(A).

24-Hour notice required

Title 63 O.S. § 1-738.10 Except in the case of a medical emergency, at least twenty four (24) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20)

weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 10 Title 63 O.S. § 1-738.10. The physician or agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the web site, the materials shall be given to the female at least twenty-four (24) hours before the abortion, or mailed to the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. This information may be provided by tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials. The female shall certify in writing, prior to the abortion, that the above said information has been furnished and that she has been informed of the opportunity to review the printed materials published and made available as per the above stated statute as described in Section 10 Title 63 O.S. § 1-738.8. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

Use of Anesthesia/Analgesic

NEW LAW Section 9, Title 63 O.S. § 1-738.9 reads as follows: “Except in the case of a medical emergency, before an abortion is performed on an unborn child who is twenty (20) weeks gestational age or more, the physician performing the abortion or the agent of the physician shall inform the female if an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused by the particular method of abortion to be employed and inform the female of the particular medical risks associated with the particular anesthetic or analgesic. With the consent of the female, the physician shall administer the anesthetic or analgesic.”

Medical Emergencies

NEW LAW Section 12, Title 63 O.S. § 1-738.12 reads as follows: When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert the death of the female or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

ADDITIONAL NEW LEGISLATION PARENTAL NOTIFICATION AND CONSENT LAWS

The following information is a summary of the legal obligation of Oklahoma's physicians to comply with the new laws that concern the notification and written consent of the parent of an unemancipated minor who is seeking to obtain an abortion. The summary begins with the designated legal definitions as defined by the legislative body of Oklahoma.

O.S. § 1-740.1 of Title 63 defines the following:

- **“Parent”** means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and

- **“Unemancipated minor”** means any person under eighteen (18) years of age who is not or has not been married or who is under the care, custody and control of the person's parent or parents, guardian or juvenile court of competent jurisdiction.

Oklahoma law (Title 63 O.S. § 1-740.2)

A. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified by this law and the attending physician must secure the written consent of one parent (according to Section 18 AMENDATORY Section 12, Chapter 200, O.K.)

1. The notice and request for written informed consent of one parent shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent;
2. In lieu of the delivery required by paragraph 1, the notice and request for written consent of one parent shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 noon on the next day on which regular mail delivery takes place; or
3. The parent entitled to notice and consent certifies in a notarized statement that he or she has been notified and consents to the abortion.

B. No notice or request for written informed consent of one parent shall be required if one of the

following conditions is met:

1. The attending physician certifies in the medical records of the pregnant unemancipated minor that the abortion is necessary to prevent the death of the minor and there is insufficient time to provide the required notice and obtain the written consent of one parent; or
2. The attending physician certifies that a medical emergency exists and that a delay will create serious risk of substantial and irreversible impairment of a major bodily function; or
3. The unemancipated minor declares that she is a victim of sexual abuse, as defined in Section 7102 of Title 10 of the Oklahoma Statutes and the attending physician has notified local law enforcement or the Department of Human Services about the alleged sexual abuse.

C. The State Board of Health shall adopt the forms necessary for physicians to obtain the consent of one parent required for an abortion to be performed on an unemancipated minor (see paragraph A above). The physician must retain the form executed to obtain consent for a period of not less than five (5) years.

Section 19 AMENDATORY Section 13, Chapter 200, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-740.3)

This section of the law addresses judicial intervention on behalf of the pregnant unemancipated minor electing not to allow notification and request for written informed consent of her parent.

Oklahoma State Board of Medical
Licensure and Supervision
P.O. Box 18256
Oklahoma City OK 73154
or
5104 North Francis, Suite C, Oklahoma City OK 73118

Phone: (405) 848-6841
Fax: (405) 848-8240
Web Site:
www.okmedicalboard.org

CONTINUED FROM FRONT PAGE

A Woman's Right to Know web site contains both booklets. All materials may be downloaded from the PDF files that appear on the web site and may be printed for distribution. The web site address is: www.awomansrighttoknowok.org

Section 7 of Oklahoma State Law Title 63 § 1-738.2 states that not less than twenty (24) hours prior to the performance of the abortion, except in the case of a medical emergency, **the woman is to be told the following by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:**

1. The name of the physician who will perform the abortion.
2. The medical risks associated with the particular abortion procedure to be employed.
3. The probable gestational age of the unborn child at the time the abortion is to be performed.
4. The medical risks associated with carrying her child to term.
5. That medical assistance benefits may be available for prenatal care, childbirth, and neo-natal care.
6. That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for an abortion.
7. She has the option to review the printed materials and/or affiliated web site and may choose to have the materials mailed to her, by a method chosen by the woman, and be told that these materials have been provided by the State Board of Medical Licensure and Supervision.

According to the Oklahoma Statute **the woman must certify in writing**, prior to the abortion, that she has been told the above-mentioned information. **The physician** shall confirm with the patient that she has received the above stated information referred to in the Oklahoma Statute page 7 Section 7 of Title 63 § 1-738.2 paragraphs 3 & 4 C and D.

The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements as stated by the Oklahoma Statutes. OSBMLS rules are found in OAC 435:10-21-1. For more information go to the web site www.awomansrighttoknowok.org.

This publication, printed by Central Printing, is authorized by the Board of Medical Licensure and Supervision. 10,300 copies have been prepared at a cost of \$1357.00. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.