



Board of Medical Licensure and Supervision
State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105

January 3, 2018

Informed Consent for Abortion of Unborn Child with Fetal Anomaly

Any Physician Performing Abortion

The State Board of Medical Licensure and Supervision is required to notify each physician who becomes newly licensed to practice in this state and notify all physician currently licensed to practice in this state of the statutes below on an annual basis (63 O.S. §§ [1-746.3](#), [1-746.6](#)).

Oklahoma Law, [63 O.S. § 1-746.2](#), states “[i]n the case of a female patient seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life,” the female patient is to be informed, by telephone or in person, not less than seventy-two (72) hours before the performance of an abortion, by the physician who is to perform the abortion or the physician’s agent:

- a) that perinatal hospice services are available,
- b) this service is an alternative to abortion,
- c) that she has the right to review the printed materials provided by the State of Oklahoma,
- d) these materials are available on a state-sponsored website, and
- e) what the website address is where she can access this information.

The above information may be provided by a tape recording if the female patient can register whether she does or does not want the materials given or mailed to her.

Perinatal hospice is defined by [63 O.S. § 1-746.1](#) as “comprehensive support that includes support from the time of diagnosis through the time of birth and death of the infant and through the postpartum period. Supportive care may include maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, psychiatrists, psychologists, or other mental health professionals, clergy, social workers, and specialty nurses”

Online Publication of Information and Materials

The materials referred to in the above paragraph are provided by the State Board of Medical Licensure and Supervision at www.awomansright.org. ([63 O.S. § 1-746.3](#)). This material lists agencies that offer perinatal hospice services in Oklahoma and nationally. If the female patient chooses to view the materials other than on the website, they shall either be given to her seventy-two (72) hours before the abortion, or mailed to her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee. The materials will be available to any person, facility, or hospital at no cost by the State Board of Medical Licensure and Supervision.

Written Certification

The female patient must certify in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of [63 O.S. § 1-746.2](#) has been furnished to her and she has been informed of her opportunity to review the information. The physician who is to perform the abortion or the physician's agent shall keep the written certification in the female patient's file for not less than five (5) years.

In the Case of an Emergency

In the case of a medical emergency that compels the performance of an abortion, as required by [63 O.S. § 1-746.5](#), the physician shall inform the female patient, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a seventy-two (72) hour delay will create serious risk of substantial and irreversible impairment of a bodily function.

Reporting by Physicians

Each physician who provided, or whose agent provided, information concerning perinatal hospice to any female patient seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life must, by law ([63 O.S. § 1-746.6\(c\)](#)), submit a report to the State Board of Medical Licensure and Supervision by February 28 following the calendar year the information was given. The link to this report can be accessed at www.awomansright.org. Reports not submitted by thirty (30) days following the due date shall be subject to a late fee of Five-Hundred Dollars (\$500.00) for each additional thirty-day-period or a portion of a thirty-day-period they are overdue. For ease of reporting, The Board of Medical Licensure and Supervision has set up the report so the physician or agent of the physician can fill out the report monthly.

It's important to note that "any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be guilty of a felony." ([63 O.S. § 1-746.7](#)).

In addition, [63 O.S. § 1-746.8](#) states, "Any person upon whom an abortion has been performed or induced without this act being complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action pursuant to Sections [1-738.3f](#) through 1-738.3k of Title 63 of the Oklahoma Statutes against any person or entity which performed or induced or attempted to perform or induce the abortion in violation of this act, or against any person or entity which made a referral as defined in Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes regarding this particular abortion. The procedure and remedy in a civil action brought pursuant to this section shall be the same as the procedure and remedy in other suits brought pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes."

The State Board of Medical Licensure and Supervision has prepared, according to 63 O.S. §§ [1-746.3](#), [1-746.4](#), and [1-746.6](#), Information Materials and Report on a stable Internet web site. As a physician providing information or an agent of physician, you may receive the printed materials that refer the woman to the Internet web site.

As the consultant for the State Medical Board of Licensure and Supervision, I would like to work with you in being a resource for your agency, in providing such materials.

Sincerely,

Valeska Barr

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Informed Consent for Abortion of Unborn Child with Fetal Anomaly Statutes

63 O.S. § 1-746.1 – Definitions

As used in this act, the term:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy or to remove a dead unborn child who died as a result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;
2. "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in Oklahoma in violation of this act;
3. "Fetal anomaly incompatible with life" means a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. Fetal anomaly incompatible with life does not include conditions which can be treated;
4. "Medical emergency" means any condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;
5. "Perinatal hospice" means comprehensive support that includes support from the time of diagnosis through the time of birth and death of the infant and through the postpartum period. Supportive care may include maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, psychiatrists, psychologists, or other mental health professionals, clergy, social workers, and specialty nurses; and
6. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes.

Laws 2014, HB 2685, c. 175, § 1, eff. November 1, 2014.

63 O.S. § 1-746.2 - Informed and Voluntary Consent - Duty to Provide Information to Female Seeking Abortion - Certification of Receipt

No abortion shall be performed or induced or attempted to be performed or induced without the voluntary and informed consent of the female upon whom the abortion is to be performed or induced or attempted to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, at least seventy-two (72) hours before the abortion:

1. In the case of a female seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life, the female is informed, by telephone or in person, by the physician who is to perform the abortion or the physician's agent:
 - a. that perinatal hospice services are available,
 - b. this service is an alternative to abortion,
 - c. that she has the right to review the printed materials described in this section,
 - d. that these materials are available on a state-sponsored website, and
 - e. what the website address is where she can access this information.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her;

2. The physician or the physician's agent shall orally inform the female that the materials have been provided by the State of Oklahoma and that they list the places which offer perinatal hospice services both in her state and nationally. If the female chooses to view the materials other than on the website, they shall either be given to her at least seventy-two (72) hours before the abortion, or received by her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

3. The female certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by paragraph 3 of this section. This certification shall be maintained in the female patient's file for not less than five (5) years.

Laws 2014, HB 2685, c. 175, § 2, eff. November 1, 2014;
Amended by Laws 2015, HB 1409, c. 255, § 7, eff. November 1, 2015.

63 O.S. § 1-746.3 - Online Publication of Information and Materials

A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the state's population, and shall cause to be available on the state website provided for in Section 4 of this act, the following printed materials in such a way as to ensure that the information is easily comprehensible: geographically indexed materials designed to inform the female who has been told her unborn child has a fetal anomaly incompatible with life of public and private agencies and services available to her which offer perinatal hospice and palliative care if she chooses to continue her pregnancy. The material shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted or, at the option of the Board, printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in Section 4 of this act shall be maintained at a minimum resolution of 70 DPI (dots per inch). All letters on the website shall be a minimum of 11-point font. All information shall be accessible with an industry standard browser, requiring no additional plug-ins.

C. The materials required under this section shall be available at no cost from the Board upon request and in appropriate number to any person, facility or hospital.

Laws 2014, HB 2685, c. 175, § 3, eff. November 1, 2014.

63 O.S. § 1-746.5 - Notification by Physician of Medical Emergency that Compels Performance of Abortion

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 physician's judgment that an abortion is necessary to avert her death or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Laws 2014, HB 2685, c. 175, § 5, eff. November 1, 2014.

63 O.S. § 1-746.6 - Reporting by Physicians - Forms

A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians containing a reprint of this act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in paragraph 1 of Section 2 of this act; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 3 of this act other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the female's death, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Board shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after this act is enacted, to all physicians licensed to practice in this state;

2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which this act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 2 of this act during the previous calendar year shall submit to the Board a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period they are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the Board, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year the State Board of Medical Licensure and Supervision shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Board shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual provided information in accordance with paragraph 1 of Section 2 of this act.

F. The Board may by rule alter the dates established by paragraph 3 of subsection B or subsection C or E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

Laws 2014, HB 2685, c. 175, § 6, eff. November 1, 2014;
Amended by Laws 2015, HB 1409, c. 255, § 8, eff. November 1, 2015

63 O.S. § 1-746.7 - Penalties for Violations of Act

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be guilty of a felony. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed.

No penalty or civil liability may be assessed for failure to comply with paragraph 1 or 2 of Section 2 of this act or that portion of paragraph 3 of Section 2 of this act requiring a written certification that the female has been informed of her opportunity to review the information referred to in paragraph 1 of Section 2 of this act unless the Board has made the printed materials available at the time the physician or the physician's agent is required to inform the female of her right to review them.

Laws 2014, HB 2685, c. 175, § 7, eff. November 1, 2014.

63 O.S. § 1-746.8 - Civil Action Maintained by Father or Grandparent Following Unlawful Abortion

Any person upon whom an abortion has been performed or induced without this act being complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes against any person or entity which performed or induced or attempted to perform or induce the abortion in violation of this act, or against any person or entity which made a referral as defined in Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes regarding this particular abortion. The procedure and remedy in a civil action brought pursuant to this section shall be the same as the procedure and remedy in other suits brought pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

Laws 2014, HB 2685, c. 175, § 8, eff. November 1, 2014.