

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 127

Senators Lehner, Hottinger

**Cosponsors: Senators Uecker, Hite, Eklund, Jones, Burke, Gardner, Oelslager,
Obhof**

A BILL

To amend sections 2305.11 and 4731.22 and to enact
sections 2307.54, 2919.20, 2919.201, 2919.202,
2919.203, 2919.204, and 2919.205 of the Revised
Code to prohibit the performance of an abortion
on a pregnant woman when the probable post-
fertilization age of the unborn child is twenty
weeks or greater.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2305.11 and 4731.22 be amended
and sections 2307.54, 2919.20, 2919.201, 2919.202, 2919.203,
2919.204, and 2919.205 of the Revised Code be enacted to read as
follows:

Sec. 2305.11. (A) An action for libel, slander, malicious
prosecution, or false imprisonment, an action for malpractice
other than an action upon a medical, dental, optometric, or
chiropractic claim, or an action upon a statute for a penalty or
forfeiture shall be commenced within one year after the cause of
action accrued, provided that an action by an employee for the
payment of unpaid minimum wages, unpaid overtime compensation,

or liquidated damages by reason of the nonpayment of minimum 19
wages or overtime compensation shall be commenced within two 20
years after the cause of action accrued. 21

(B) A civil action for unlawful abortion pursuant to 22
section 2919.12 of the Revised Code, a civil action authorized 23
by division (H) of section 2317.56 of the Revised Code, ~~a civil~~ 24
~~action pursuant to division (B) (1) or (2) of section 2307.51 of~~ 25
~~the Revised Code for performing a dilation and extraction~~ 26
~~procedure or attempting to perform a dilation and extraction~~ 27
~~procedure in violation of section 2919.15 of the Revised Code,~~ 28
~~and~~ a civil action pursuant to division (B) of section 2307.52 29
of the Revised Code for terminating or attempting to terminate a 30
human pregnancy after viability in violation of division (A) of 31
section 2919.17 of the Revised Code, and a civil action for 32
terminating or attempting to terminate a human pregnancy of a 33
pain-capable unborn child in violation of division (E) of 34
section 2919.201 of the Revised Code shall be commenced within 35
one year after the performance or inducement of the abortion, or 36
within one year after the attempt to perform or induce the 37
abortion in violation of division (A) of section 2919.17 of the 38
Revised Code or division (E) of section 2919.201 of the Revised 39
Code, ~~within one year after the performance of the dilation and~~ 40
~~extraction procedure, or, in the case of a civil action pursuant~~ 41
~~to division (B) (2) of section 2307.51 of the Revised Code,~~ 42
~~within one year after the attempt to perform the dilation and~~ 43
~~extraction procedure.~~ 44

(C) As used in this section, "medical claim," "dental 45
claim," "optometric claim," and "chiropractic claim" have the 46
same meanings as in section 2305.113 of the Revised Code. 47

Sec. 2307.54. (A) As used in this section, "frivolous" 48

conduct" has the same meaning as in section 2323.51 of the 49
Revised Code. 50

(B) A woman upon whom an abortion is purposely performed 51
or induced or purposely attempted to be performed or induced, or 52
the father of the unborn child who was the subject of such an 53
abortion, in violation of division (E) of section 2919.201 of 54
the Revised Code, has and may commence a civil action for 55
compensatory damages, punitive or exemplary damages if 56
authorized by section 2315.21 of the Revised Code, and court 57
costs and reasonable attorney's fees against the person who 58
purposely performed or induced or purposely attempted to perform 59
or induce the abortion in violation of division (E) of section 60
2919.201 of the Revised Code. 61

(C) If a judgment is rendered in favor of the defendant in 62
a civil action commenced pursuant to division (B) of this 63
section and the court finds, upon the filing of a motion under 64
section 2323.51 of the Revised Code, that the commencement of 65
the civil action constitutes frivolous conduct and that the 66
defendant was adversely affected by the frivolous conduct, the 67
court shall award in accordance with section 2323.51 of the 68
Revised Code reasonable attorney's fees to the defendant. 69

Sec. 2919.20. As used in sections 2919.20 to 2919.204 of 70
the Revised Code: 71

(A) "Fertilization" means the fusion of a human 72
spermatozoon with a human ovum. 73

(B) "Medical emergency" means a condition that in the 74
physician's good faith medical judgment, based upon the facts 75
known to the physician at that time, so complicates the woman's 76
pregnancy as to necessitate the immediate performance or 77

inducement of an abortion in order to prevent the death of the 78
pregnant woman or to avoid a serious risk of the substantial and 79
irreversible impairment of a major bodily function of the 80
pregnant woman that delay in the performance or inducement of 81
the abortion would create. 82

(C) "Pain-capable unborn child" means an unborn child of a 83
probable post-fertilization age of twenty weeks or more. 84

(D) "Physician" has the same meaning as in section 85
2305.113 of the Revised Code. 86

(E) "Post-fertilization age" means the age of the unborn 87
child as calculated from the fusion of a human spermatozoon with 88
a human ovum. 89

(F) "Probable post-fertilization age" means, in reasonable 90
medical judgment and with reasonable probability, the age of the 91
unborn child, as calculated from fertilization, at the time the 92
abortion is performed or induced or attempted to be performed or 93
induced. 94

(G) "Serious risk of the substantial and irreversible 95
impairment of a major bodily function" means any medically 96
diagnosed condition that so complicates the pregnancy of the 97
woman as to directly or indirectly cause the substantial and 98
irreversible impairment of a major bodily function. A medically 99
diagnosed condition that constitutes a "serious risk of the 100
substantial and irreversible impairment of a major bodily 101
function" includes pre-eclampsia, inevitable abortion, and 102
premature rupture of the membranes, may include, but is not 103
limited to, diabetes and multiple sclerosis, and does not 104
include a condition related to the woman's mental health. 105

(H) "Unborn child" means an individual organism of the 106

species homo sapiens from fertilization until live birth. 107

Sec. 2919.201. (A) No person shall purposely perform or 108
induce or purposely attempt to perform or induce an abortion on 109
a pregnant woman when the probable post-fertilization age of the 110
unborn child is twenty weeks or greater. 111

(B)(1) It is an affirmative defense to a charge under 112
division (A) of this section that the abortion was purposely 113
performed or induced or purposely attempted to be performed or 114
induced by a physician and that the physician determined, in the 115
physician's good faith medical judgment, based on the facts 116
known to the physician at that time, that either of the 117
following applied: 118

(a) The probable post-fertilization age of the unborn 119
child was less than twenty weeks. 120

(b) The abortion was necessary to prevent the death of the 121
pregnant woman or a serious risk of the substantial and 122
irreversible impairment of a major bodily function of the 123
pregnant woman. 124

(2) No abortion shall be considered necessary under 125
division (B)(1)(b) of this section on the basis of a claim or 126
diagnosis that the pregnant woman will engage in conduct that 127
would result in the pregnant woman's death or a substantial and 128
irreversible impairment of a major bodily function of the 129
pregnant woman or based on any reason related to the woman's 130
mental health. 131

(C) Except when a medical emergency exists that prevents 132
compliance with section 2919.203 of the Revised Code, the 133
affirmative defense set forth in division (B)(1)(a) of this 134
section does not apply unless the physician who purposely 135

performs or induces or purposely attempts to perform or induce 136
the abortion makes a determination of the probable post- 137
fertilization age of the unborn child as required by division 138
(A) of section 2919.203 of the Revised Code or relied upon such 139
a determination made by another physician and certifies in 140
writing, based on the results of the tests performed, that in 141
the physician's good faith medical judgment the unborn child's 142
probable post-fertilization age is less than twenty weeks. 143

(D) Except when a medical emergency exists that prevents 144
compliance with one or more of the following conditions, the 145
affirmative defense set forth in division (B) (1) (b) of this 146
section does not apply unless the physician who purposely 147
performs or induces or purposely attempts to perform or induce 148
the abortion complies with all of the following conditions: 149

(1) The physician who purposely performs or induces or 150
purposely attempts to perform or induce the abortion certifies 151
in writing that, in the physician's good faith medical judgment, 152
based on the facts known to the physician at that time, the 153
abortion is necessary to prevent the death of the pregnant woman 154
or a serious risk of the substantial and irreversible impairment 155
of a major bodily function of the pregnant woman. 156

(2) A different physician not professionally related to 157
the physician described in division (D) (1) of this section 158
certifies in writing that, in that different physician's good 159
faith medical judgment, based on the facts known to that 160
different physician at that time, the abortion is necessary to 161
prevent the death of the pregnant woman or a serious risk of the 162
substantial and irreversible impairment of a major bodily 163
function of the pregnant woman. 164

(3) The physician purposely performs or induces or 165

purposely attempts to perform or induce the abortion in a 166
hospital or other health care facility that has appropriate 167
neonatal services for premature infants. 168

(4) The physician who purposely performs or induces or 169
purposely attempts to perform or induce the abortion terminates 170
or attempts to terminate the pregnancy in the manner that 171
provides the best opportunity for the unborn child to survive, 172
unless that physician determines, in the physician's good faith 173
medical judgment, based on the facts known to the physician at 174
that time, that the termination of the pregnancy in that manner 175
poses a greater risk of the death of the pregnant woman or a 176
greater risk of the substantial and irreversible impairment of a 177
major bodily function of the pregnant woman than would other 178
available methods of abortion. 179

(5) The physician certifies in writing the available 180
method or techniques considered and the reasons for choosing the 181
method or technique employed. 182

(6) The physician who purposely performs or induces or 183
purposely attempts to perform or induce the abortion has 184
arranged for the attendance in the same room in which the 185
abortion is to be performed or induced or attempted to be 186
performed or induced at least one other physician who is to take 187
control of, provide immediate medical care for, and take all 188
reasonable steps necessary to preserve the life and health of 189
the unborn child immediately upon the child's complete expulsion 190
or extraction from the pregnant woman. 191

(E) Whoever purposely performs or induces or purposely 192
attempts to perform or induce an abortion in violation of, or 193
without complying with, the requirements of this section is 194
guilty of terminating or attempting to terminate a human 195

pregnancy of a pain-capable unborn child, a felony of the fourth 196
degree. 197

(F) The state medical board shall revoke a physician's 198
license to practice medicine in this state if the physician 199
violates or fails to comply with this section. 200

(G) Any physician who purposely performs or induces an 201
abortion or purposely attempts to perform or induce an abortion 202
with actual knowledge that neither of the affirmative defenses 203
set forth in division (B)(1) of this section applies, or with a 204
heedless indifference as to whether either an affirmative 205
defense applies, is liable in a civil action for compensatory 206
and exemplary damages and reasonable attorney's fees to any 207
person, or the representative of the estate of any person, who 208
sustains injury, death, or loss to person or property as the 209
result of the performance or inducement or the attempted 210
performance or inducement of the abortion. In any action under 211
this division, the court also may award any injunctive or other 212
equitable relief that the court considers appropriate. 213

(H) A pregnant woman on whom an abortion is purposely 214
performed or induced or purposely attempted to be performed or 215
induced in violation of division (A) of this section is not 216
guilty of violating division (A) of this section or of 217
attempting to commit, conspiring to commit, or complicity in 218
committing a violation of division (A) of this section. 219

Sec. 2919.202. (A) A physician who performs or induces or 220
attempts to perform or induce an abortion on a pregnant woman 221
shall submit a report to the department of health in accordance 222
with the forms, rules, and regulations adopted by the department 223
that includes all of the information the physician is required 224
to certify in writing or determine under sections 2919.201 and 225

2919.203 of the Revised Code. 226

(B) By the thirtieth day of September of each year, the 227
department of health shall issue a public report that provides 228
statistics for the previous calendar year compiled from all of 229
the reports covering that calendar year submitted to the 230
department in accordance with this section for each of the items 231
listed in division (A) of this section. The report shall also 232
provide the statistics for each previous calendar year in which 233
a report was filed with the department pursuant to this section, 234
adjusted to reflect any additional information that a physician 235
provides to the department in a late or corrected report. The 236
department shall ensure that none of the information included in 237
the report could reasonably lead to the identification of any 238
pregnant woman upon whom an abortion is performed. 239

(C) (1) The physician shall submit the report described in 240
division (A) of this section to the department of health within 241
fifteen days after the woman is discharged. If the physician 242
fails to submit the report more than thirty days after that 243
fifteen-day deadline, the physician shall be subject to a late 244
fee of five hundred dollars for each additional thirty-day 245
period or portion of a thirty-day period the report is overdue. 246
A physician who is required to submit to the department of 247
health a report under division (A) of this section and who has 248
not submitted a report or has submitted an incomplete report 249
more than one year following the last day of the fifteen-day 250
deadline may, in an action brought by the department of health, 251
be directed by a court of competent jurisdiction to submit a 252
complete report to the department of health within a period of 253
time stated in a court order or be subject to contempt of court. 254

(2) If a physician fails to comply with the requirements 255

of this section, other than filing a late report with the 256
department of health, or fails to submit a complete report to 257
the department of health in accordance with a court order, the 258
physician is subject to division (B) (44) of section 4731.22 of 259
the Revised Code. 260

(3) No person shall purposely falsify any report required 261
under this section. Whoever purposely violates this division is 262
guilty of pain-capable unborn child abortion report 263
falsification, a misdemeanor of the first degree. 264

(D) Within ninety days of the effective date of this 265
section, the department of health shall adopt rules pursuant to 266
section 111.15 of the Revised Code to assist in compliance with 267
this section. 268

Sec. 2919.203. (A) Except in a medical emergency that 269
prevents compliance with this division, no physician shall 270
purposely perform or induce or purposely attempt to perform or 271
induce an abortion on a pregnant woman after the unborn child 272
reaches the probable post-fertilization age of twenty weeks 273
unless, prior to the performance or inducement of the abortion 274
or the attempt to perform or induce the abortion, the physician 275
determines, in the physician's good faith medical judgment, the 276
unborn child's probable post-fertilization age. The physician 277
shall make that determination after making inquiries of the 278
pregnant woman and performing any medical examinations or tests 279
of the pregnant woman the physician considers necessary as a 280
reasonably prudent physician, knowledgeable about the case and 281
medical conditions involved, would consider necessary to 282
determine the unborn child's probable post-fertilization age. 283

(B) Except in a medical emergency that prevents compliance 284
with this division, no physician shall purposely perform or 285

induce or purposely attempt to perform or induce an abortion on 286
a pregnant woman after the unborn child reaches the probable 287
post-fertilization age of twenty weeks without first entering 288
the determination made in division (A) of this section and the 289
associated findings of the medical examination and tests in the 290
medical record of the pregnant woman. 291

(C) Whoever violates division (A) of this section is 292
guilty of failure to perform probable post-fertilization age 293
testing, a misdemeanor of the fourth degree. 294

(D) The state medical board shall suspend a physician's 295
license to practice medicine in this state for a period of not 296
less than six months if the physician violates this section. 297

Sec. 2919.204. There is hereby created in the state 298
treasury the Ohio pain-capable unborn child protection act 299
litigation fund to be used by the attorney general to pay for 300
any costs and expenses incurred by the attorney general in 301
relation to actions surrounding defense of the provisions 302
ofB. of the 131st general assembly. The fund shall consist 303
of appropriations made to it and any donations, gifts, or grants 304
made to the fund. Any interest earned on the fund shall be 305
credited to the fund. 306

Sec. 2919.205. Sections 2307.54 and 2919.20 to 2919.205 307
and the provisions of section 2305.11 of the Revised Code as 308
amended or enacted by this bill shall not be construed to 309
repeal, by implication or otherwise, any law regulating or 310
restricting abortion. An abortion that complies with the 311
provisions of those sections as amended or enacted by this bill 312
but violates the provisions of any otherwise applicable 313
provision of state law shall be deemed unlawful as provided in 314
such provision. An abortion that complies with the provisions of 315

state law regulating or restricting abortion but violates the 316
provisions of those sections as amended or enacted by this bill 317
shall be deemed unlawful as provided in those sections. If some 318
or all of the provisions of sections 2307.54 and 2919.20 to 319
2919.205 and the provisions of section 2305.11 of the Revised 320
Code as amended or enacted by this bill are ever temporarily or 321
permanently restrained or enjoined by judicial order, all other 322
provisions of state law regulating or restricting abortion shall 323
be enforced as though such restrained or enjoined provisions had 324
not been adopted; provided, however, that whenever such 325
temporary or permanent restraining order of injunction is stayed 326
or dissolved, or otherwise ceases to have effect, such 327
provisions shall have full force and effect. 328

Sec. 4731.22. (A) The state medical board, by an 329
affirmative vote of not fewer than six of its members, may 330
limit, revoke, or suspend an individual's certificate to 331
practice, refuse to grant a certificate to an individual, refuse 332
to register an individual, refuse to reinstate a certificate, or 333
reprimand or place on probation the holder of a certificate if 334
the individual or certificate holder is found by the board to 335
have committed fraud during the administration of the 336
examination for a certificate to practice or to have committed 337
fraud, misrepresentation, or deception in applying for or 338
securing any certificate to practice or certificate of 339
registration issued by the board. 340

(B) The board, by an affirmative vote of not fewer than 341
six members, shall, to the extent permitted by law, limit, 342
revoke, or suspend an individual's certificate to practice, 343
refuse to register an individual, refuse to reinstate a 344
certificate, or reprimand or place on probation the holder of a 345
certificate for one or more of the following reasons: 346

(1) Permitting one's name or one's certificate to practice 347
or certificate of registration to be used by a person, group, or 348
corporation when the individual concerned is not actually 349
directing the treatment given; 350

(2) Failure to maintain minimal standards applicable to 351
the selection or administration of drugs, or failure to employ 352
acceptable scientific methods in the selection of drugs or other 353
modalities for treatment of disease; 354

(3) Selling, giving away, personally furnishing, 355
prescribing, or administering drugs for other than legal and 356
legitimate therapeutic purposes or a plea of guilty to, a 357
judicial finding of guilt of, or a judicial finding of 358
eligibility for intervention in lieu of conviction of, a 359
violation of any federal or state law regulating the possession, 360
distribution, or use of any drug; 361

(4) Willfully betraying a professional confidence. 362

For purposes of this division, "willfully betraying a 363
professional confidence" does not include providing any 364
information, documents, or reports to a child fatality review 365
board under sections 307.621 to 307.629 of the Revised Code and 366
does not include the making of a report of an employee's use of 367
a drug of abuse, or a report of a condition of an employee other 368
than one involving the use of a drug of abuse, to the employer 369
of the employee as described in division (B) of section 2305.33 370
of the Revised Code. Nothing in this division affects the 371
immunity from civil liability conferred by that section upon a 372
physician who makes either type of report in accordance with 373
division (B) of that section. As used in this division, 374
"employee," "employer," and "physician" have the same meanings 375
as in section 2305.33 of the Revised Code. 376

(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 certificate to practice or certificate of registration 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 406
this state, regardless of the jurisdiction in which the act was 407
committed; 408

(11) A plea of guilty to, a judicial finding of guilt of, 409
or a judicial finding of eligibility for intervention in lieu of 410
conviction for, a misdemeanor committed in the course of 411
practice; 412

(12) Commission of an act in the course of practice that 413
constitutes a misdemeanor in this state, regardless of the 414
jurisdiction in which the act was committed; 415

(13) A plea of guilty to, a judicial finding of guilt of, 416
or a judicial finding of eligibility for intervention in lieu of 417
conviction for, a misdemeanor involving moral turpitude; 418

(14) Commission of an act involving moral turpitude that 419
constitutes a misdemeanor in this state, regardless of the 420
jurisdiction in which the act was committed; 421

(15) Violation of the conditions of limitation placed by 422
the board upon a certificate to practice; 423

(16) Failure to pay license renewal fees specified in this 424
chapter; 425

(17) Except as authorized in section 4731.31 of the 426
Revised Code, engaging in the division of fees for referral of 427
patients, or the receiving of a thing of value in return for a 428
specific referral of a patient to utilize a particular service 429
or business; 430

(18) Subject to section 4731.226 of the Revised Code, 431
violation of any provision of a code of ethics of the American 432
medical association, the American osteopathic association, the 433

American podiatric medical association, or any other national 434
professional organizations that the board specifies by rule. The 435
state medical board shall obtain and keep on file current copies 436
of the codes of ethics of the various national professional 437
organizations. The individual whose certificate is being 438
suspended or revoked shall not be found to have violated any 439
provision of a code of ethics of an organization not appropriate 440
to the individual's profession. 441

For purposes of this division, a "provision of a code of 442
ethics of a national professional organization" does not include 443
any provision that would preclude the making of a report by a 444
physician of an employee's use of a drug of abuse, or of a 445
condition of an employee other than one involving the use of a 446
drug of abuse, to the employer of the employee as described in 447
division (B) of section 2305.33 of the Revised Code. Nothing in 448
this division affects the immunity from civil liability 449
conferred by that section upon a physician who makes either type 450
of report in accordance with division (B) of that section. As 451
used in this division, "employee," "employer," and "physician" 452
have the same meanings as in section 2305.33 of the Revised 453
Code. 454

(19) Inability to practice according to acceptable and 455
prevailing standards of care by reason of mental illness or 456
physical illness, including, but not limited to, physical 457
deterioration that adversely affects cognitive, motor, or 458
perceptive skills. 459

In enforcing this division, the board, upon a showing of a 460
possible violation, may compel any individual authorized to 461
practice by this chapter or who has submitted an application 462
pursuant to this chapter to submit to a mental examination, 463

physical examination, including an HIV test, or both a mental 464
and a physical examination. The expense of the examination is 465
the responsibility of the individual compelled to be examined. 466
Failure to submit to a mental or physical examination or consent 467
to an HIV test ordered by the board constitutes an admission of 468
the allegations against the individual unless the failure is due 469
to circumstances beyond the individual's control, and a default 470
and final order may be entered without the taking of testimony 471
or presentation of evidence. If the board finds an individual 472
unable to practice because of the reasons set forth in this 473
division, the board shall require the individual to submit to 474
care, counseling, or treatment by physicians approved or 475
designated by the board, as a condition for initial, continued, 476
reinstated, or renewed authority to practice. An individual 477
affected under this division shall be afforded an opportunity to 478
demonstrate to the board the ability to resume practice in 479
compliance with acceptable and prevailing standards under the 480
provisions of the individual's certificate. For the purpose of 481
this division, any individual who applies for or receives a 482
certificate to practice under this chapter accepts the privilege 483
of practicing in this state and, by so doing, shall be deemed to 484
have given consent to submit to a mental or physical examination 485
when directed to do so in writing by the board, and to have 486
waived all objections to the admissibility of testimony or 487
examination reports that constitute a privileged communication. 488

(20) Except when civil penalties are imposed under section 489
4731.225 or 4731.281 of the Revised Code, and subject to section 490
4731.226 of the Revised Code, violating or attempting to 491
violate, directly or indirectly, or assisting in or abetting the 492
violation of, or conspiring to violate, any provisions of this 493
chapter or any rule promulgated by the board. 494

This division does not apply to a violation or attempted 495
violation of, assisting in or abetting the violation of, or a 496
conspiracy to violate, any provision of this chapter or any rule 497
adopted by the board that would preclude the making of a report 498
by a physician of an employee's use of a drug of abuse, or of a 499
condition of an employee other than one involving the use of a 500
drug of abuse, to the employer of the employee as described in 501
division (B) of section 2305.33 of the Revised Code. Nothing in 502
this division affects the immunity from civil liability 503
conferred by that section upon a physician who makes either type 504
of report in accordance with division (B) of that section. As 505
used in this division, "employee," "employer," and "physician" 506
have the same meanings as in section 2305.33 of the Revised 507
Code. 508

(21) The violation of section 3701.79 of the Revised Code 509
or of any abortion rule adopted by the public health council 510
pursuant to section 3701.341 of the Revised Code; 511

(22) Any of the following actions taken by an agency 512
responsible for authorizing, certifying, or regulating an 513
individual to practice a health care occupation or provide 514
health care services in this state or another jurisdiction, for 515
any reason other than the nonpayment of fees: the limitation, 516
revocation, or suspension of an individual's license to 517
practice; acceptance of an individual's license surrender; 518
denial of a license; refusal to renew or reinstate a license; 519
imposition of probation; or issuance of an order of censure or 520
other reprimand; 521

(23) The violation of section 2919.12 of the Revised Code 522
or the performance or inducement of an abortion upon a pregnant 523
woman with actual knowledge that the conditions specified in 524

division (B) of section 2317.56 of the Revised Code have not 525
been satisfied or with a heedless indifference as to whether 526
those conditions have been satisfied, unless an affirmative 527
defense as specified in division (H) (2) of that section would 528
apply in a civil action authorized by division (H) (1) of that 529
section; 530

(24) The revocation, suspension, restriction, reduction, 531
or termination of clinical privileges by the United States 532
department of defense or department of veterans affairs or the 533
termination or suspension of a certificate of registration to 534
prescribe drugs by the drug enforcement administration of the 535
United States department of justice; 536

(25) Termination or suspension from participation in the 537
medicare or medicaid programs by the department of health and 538
human services or other responsible agency for any act or acts 539
that also would constitute a violation of division (B) (2), (3), 540
(6), (8), or (19) of this section; 541

(26) Impairment of ability to practice according to 542
acceptable and prevailing standards of care because of habitual 543
or excessive use or abuse of drugs, alcohol, or other substances 544
that impair ability to practice. 545

For the purposes of this division, any individual 546
authorized to practice by this chapter accepts the privilege of 547
practicing in this state subject to supervision by the board. By 548
filing an application for or holding a certificate to practice 549
under this chapter, an individual shall be deemed to have given 550
consent to submit to a mental or physical examination when 551
ordered to do so by the board in writing, and to have waived all 552
objections to the admissibility of testimony or examination 553
reports that constitute privileged communications. 554

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for 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 certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a 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 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 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; 614

(b) Advertising that the individual will waive the payment 615
of all or any part of a deductible or copayment that a patient, 616
pursuant to a health insurance or health care policy, contract, 617
or plan that covers the individual's services, otherwise would 618
be required to pay. 619

(29) Failure to use universal blood and body fluid 620
precautions established by rules adopted under section 4731.051 621
of the Revised Code; 622

(30) Failure to provide notice to, and receive 623
acknowledgment of the notice from, a patient when required by 624
section 4731.143 of the Revised Code prior to providing 625
nonemergency professional services, or failure to maintain that 626
notice in the patient's file; 627

(31) Failure of a physician supervising a physician 628
assistant to maintain supervision in accordance with the 629
requirements of Chapter 4730. of the Revised Code and the rules 630
adopted under that chapter; 631

(32) Failure of a physician or podiatrist to enter into a 632
standard care arrangement with a clinical nurse specialist, 633
certified nurse-midwife, or certified nurse practitioner with 634
whom the physician or podiatrist is in collaboration pursuant to 635
section 4731.27 of the Revised Code or failure to fulfill the 636
responsibilities of collaboration after entering into a standard 637
care arrangement; 638

(33) Failure to comply with the terms of a consult 639
agreement entered into with a pharmacist pursuant to section 640
4729.39 of the Revised Code; 641

(34) Failure to cooperate in an investigation conducted by 642

the board under division (F) of this section, including failure 643
to comply with a subpoena or order issued by the board or 644
failure to answer truthfully a question presented by the board 645
in an investigative interview, an investigative office 646
conference, at a deposition, or in written interrogatories, 647
except that failure to cooperate with an investigation shall not 648
constitute grounds for discipline under this section if a court 649
of competent jurisdiction has issued an order that either 650
quashes a subpoena or permits the individual to withhold the 651
testimony or evidence in issue; 652

(35) Failure to supervise an oriental medicine 653
practitioner or acupuncturist in accordance with Chapter 4762. 654
of the Revised Code and the board's rules for providing that 655
supervision; 656

(36) Failure to supervise an anesthesiologist assistant in 657
accordance with Chapter 4760. of the Revised Code and the 658
board's rules for supervision of an anesthesiologist assistant; 659

(37) Assisting suicide as defined in section 3795.01 of 660
the Revised Code; 661

(38) Failure to comply with the requirements of section 662
2317.561 of the Revised Code; 663

(39) Failure to supervise a radiologist assistant in 664
accordance with Chapter 4774. of the Revised Code and the 665
board's rules for supervision of radiologist assistants; 666

(40) Performing or inducing an abortion at an office or 667
facility with knowledge that the office or facility fails to 668
post the notice required under section 3701.791 of the Revised 669
Code; 670

(41) Failure to comply with the standards and procedures 671

established in rules under section 4731.054 of the Revised Code 672
for the operation of or the provision of care at a pain 673
management clinic; 674

(42) Failure to comply with the standards and procedures 675
established in rules under section 4731.054 of the Revised Code 676
for providing supervision, direction, and control of individuals 677
at a pain management clinic; 678

(43) Failure to comply with the requirements of section 679
4729.79 of the Revised Code, unless the state board of pharmacy 680
no longer maintains a drug database pursuant to section 4729.75 681
of the Revised Code; 682

(44) Failure to comply with the requirements of section 683
2919.171, 2919.202, or 2919.203 of the Revised Code or failure 684
to submit to the department of health in accordance with a court 685
order a complete report as described in section 2919.171 or 686
2919.202 of the Revised Code; 687

(45) Practicing at a facility that is subject to licensure 688
as a category III terminal distributor of dangerous drugs with a 689
pain management clinic classification unless the person 690
operating the facility has obtained and maintains the license 691
with the classification; 692

(46) Owning a facility that is subject to licensure as a 693
category III terminal distributor of dangerous drugs with a pain 694
management clinic classification unless the facility is licensed 695
with the classification; 696

(47) Failure to comply with the requirement regarding 697
maintaining notes described in division (B) of section 2919.191 698
of the Revised Code or failure to satisfy the requirements of 699
section 2919.191 of the Revised Code prior to performing or 700

inducing an abortion upon a pregnant woman; 701

(48) Failure to comply with the requirements in section 702
3719.061 of the Revised Code before issuing for a minor a 703
prescription for an opioid analgesic, as defined in section 704
3719.01 of the Revised Code. 705

(C) Disciplinary actions taken by the board under 706
divisions (A) and (B) of this section shall be taken pursuant to 707
an adjudication under Chapter 119. of the Revised Code, except 708
that in lieu of an adjudication, the board may enter into a 709
consent agreement with an individual to resolve an allegation of 710
a violation of this chapter or any rule adopted under it. A 711
consent agreement, when ratified by an affirmative vote of not 712
fewer than six members of the board, shall constitute the 713
findings and order of the board with respect to the matter 714
addressed in the agreement. If the board refuses to ratify a 715
consent agreement, the admissions and findings contained in the 716
consent agreement shall be of no force or effect. 717

A telephone conference call may be utilized for 718
ratification of a consent agreement that revokes or suspends an 719
individual's certificate to practice. The telephone conference 720
call shall be considered a special meeting under division (F) of 721
section 121.22 of the Revised Code. 722

If the board takes disciplinary action against an 723
individual under division (B) of this section for a second or 724
subsequent plea of guilty to, or judicial finding of guilt of, a 725
violation of section 2919.123 of the Revised Code, the 726
disciplinary action shall consist of a suspension of the 727
individual's certificate to practice for a period of at least 728
one year or, if determined appropriate by the board, a more 729
serious sanction involving the individual's certificate to 730

practice. Any consent agreement entered into under this division 731
with an individual that pertains to a second or subsequent plea 732
of guilty to, or judicial finding of guilt of, a violation of 733
that section shall provide for a suspension of the individual's 734
certificate to practice for a period of at least one year or, if 735
determined appropriate by the board, a more serious sanction 736
involving the individual's certificate to practice. 737

(D) For purposes of divisions (B) (10), (12), and (14) of 738
this section, the commission of the act may be established by a 739
finding by the board, pursuant to an adjudication under Chapter 740
119. of the Revised Code, that the individual committed the act. 741
The board does not have jurisdiction under those divisions if 742
the trial court renders a final judgment in the individual's 743
favor and that judgment is based upon an adjudication on the 744
merits. The board has jurisdiction under those divisions if the 745
trial court issues an order of dismissal upon technical or 746
procedural grounds. 747

(E) The sealing of conviction records by any court shall 748
have no effect upon a prior board order entered under this 749
section or upon the board's jurisdiction to take action under 750
this section if, based upon a plea of guilty, a judicial finding 751
of guilt, or a judicial finding of eligibility for intervention 752
in lieu of conviction, the board issued a notice of opportunity 753
for a hearing prior to the court's order to seal the records. 754
The board shall not be required to seal, destroy, redact, or 755
otherwise modify its records to reflect the court's sealing of 756
conviction records. 757

(F) (1) The board shall investigate evidence that appears 758
to show that a person has violated any provision of this chapter 759
or any rule adopted under it. Any person may report to the board 760

in a signed writing any information that the person may have 761
that appears to show a violation of any provision of this 762
chapter or any rule adopted under it. In the absence of bad 763
faith, any person who reports information of that nature or who 764
testifies before the board in any adjudication conducted under 765
Chapter 119. of the Revised Code shall not be liable in damages 766
in a civil action as a result of the report or testimony. Each 767
complaint or allegation of a violation received by the board 768
shall be assigned a case number and shall be recorded by the 769
board. 770

(2) Investigations of alleged violations of this chapter 771
or any rule adopted under it shall be supervised by the 772
supervising member elected by the board in accordance with 773
section 4731.02 of the Revised Code and by the secretary as 774
provided in section 4731.39 of the Revised Code. The president 775
may designate another member of the board to supervise the 776
investigation in place of the supervising member. No member of 777
the board who supervises the investigation of a case shall 778
participate in further adjudication of the case. 779

(3) In investigating a possible violation of this chapter 780
or any rule adopted under this chapter, or in conducting an 781
inspection under division (E) of section 4731.054 of the Revised 782
Code, the board may question witnesses, conduct interviews, 783
administer oaths, order the taking of depositions, inspect and 784
copy any books, accounts, papers, records, or documents, issue 785
subpoenas, and compel the attendance of witnesses and production 786
of books, accounts, papers, records, documents, and testimony, 787
except that a subpoena for patient record information shall not 788
be issued without consultation with the attorney general's 789
office and approval of the secretary and supervising member of 790
the board. 791

(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 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 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 822
mileage provided for under section 119.094 of the Revised Code. 823

(4) All hearings, investigations, and inspections of the 824
board shall be considered civil actions for the purposes of 825
section 2305.252 of the Revised Code. 826

(5) A report required to be submitted to the board under 827
this chapter, a complaint, or information received by the board 828
pursuant to an investigation or pursuant to an inspection under 829
division (E) of section 4731.054 of the Revised Code is 830
confidential and not subject to discovery in any civil action. 831

The board shall conduct all investigations or inspections 832
and proceedings in a manner that protects the confidentiality of 833
patients and persons who file complaints with the board. The 834
board shall not make public the names or any other identifying 835
information about patients or complainants unless proper consent 836
is given or, in the case of a patient, a waiver of the patient 837
privilege exists under division (B) of section 2317.02 of the 838
Revised Code, except that consent or a waiver of that nature is 839
not required if the board possesses reliable and substantial 840
evidence that no bona fide physician-patient relationship 841
exists. 842

The board may share any information it receives pursuant 843
to an investigation or inspection, including patient records and 844
patient record information, with law enforcement agencies, other 845
licensing boards, and other governmental agencies that are 846
prosecuting, adjudicating, or investigating alleged violations 847
of statutes or administrative rules. An agency or board that 848
receives the information shall comply with the same requirements 849
regarding confidentiality as those with which the state medical 850
board must comply, notwithstanding any conflicting provision of 851

the Revised Code or procedure of the agency or board that 852
applies when it is dealing with other information in its 853
possession. In a judicial proceeding, the information may be 854
admitted into evidence only in accordance with the Rules of 855
Evidence, but the court shall require that appropriate measures 856
are taken to ensure that confidentiality is maintained with 857
respect to any part of the information that contains names or 858
other identifying information about patients or complainants 859
whose confidentiality was protected by the state medical board 860
when the information was in the board's possession. Measures to 861
ensure confidentiality that may be taken by the court include 862
sealing its records or deleting specific information from its 863
records. 864

(6) On a quarterly basis, the board shall prepare a report 865
that documents the disposition of all cases during the preceding 866
three months. The report shall contain the following information 867
for each case with which the board has completed its activities: 868

(a) The case number assigned to the complaint or alleged 869
violation; 870

(b) The type of certificate to practice, if any, held by 871
the individual against whom the complaint is directed; 872

(c) A description of the allegations contained in the 873
complaint; 874

(d) The disposition of the case. 875

The report shall state how many cases are still pending 876
and shall be prepared in a manner that protects the identity of 877
each person involved in each case. The report shall be a public 878
record under section 149.43 of the Revised Code. 879

(G) If the secretary and supervising member determine both 880

of the following, they may recommend that the board suspend an individual's certificate to practice 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 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 910
of the summary suspension order but shall not invalidate any 911
subsequent, final adjudicative order. 912

(H) If the board takes action under division (B) (9), (11), 913
or (13) of this section and the judicial finding of guilt, 914
guilty plea, or judicial finding of eligibility for intervention 915
in lieu of conviction is overturned on appeal, upon exhaustion 916
of the criminal appeal, a petition for reconsideration of the 917
order may be filed with the board along with appropriate court 918
documents. Upon receipt of a petition of that nature and 919
supporting court documents, the board shall reinstate the 920
individual's certificate to practice. The board may then hold an 921
adjudication under Chapter 119. of the Revised Code to determine 922
whether the individual committed the act in question. Notice of 923
an opportunity for a hearing shall be given in accordance with 924
Chapter 119. of the Revised Code. If the board finds, pursuant 925
to an adjudication held under this division, that the individual 926
committed the act or if no hearing is requested, the board may 927
order any of the sanctions identified under division (B) of this 928
section. 929

(I) The certificate to practice issued to an individual 930
under this chapter and the individual's practice in this state 931
are automatically suspended as of the date of the individual's 932
second or subsequent plea of guilty to, or judicial finding of 933
guilt of, a violation of section 2919.123 of the Revised Code, 934
or the date the individual pleads guilty to, is found by a judge 935
or jury to be guilty of, or is subject to a judicial finding of 936
eligibility for intervention in lieu of conviction in this state 937
or treatment or intervention in lieu of conviction in another 938
jurisdiction for any of the following criminal offenses in this 939
state or a substantially equivalent criminal offense in another 940

jurisdiction: aggravated murder, murder, voluntary manslaughter, 941
felonious assault, kidnapping, rape, sexual battery, gross 942
sexual imposition, aggravated arson, aggravated robbery, or 943
aggravated burglary. Continued practice after suspension shall 944
be considered practicing without a certificate. 945

The board shall notify the individual subject to the 946
suspension by certified mail or in person in accordance with 947
section 119.07 of the Revised Code. If an individual whose 948
certificate is automatically suspended under this division fails 949
to make a timely request for an adjudication under Chapter 119. 950
of the Revised Code, the board shall do whichever of the 951
following is applicable: 952

(1) If the automatic suspension under this division is for 953
a second or subsequent plea of guilty to, or judicial finding of 954
guilt of, a violation of section 2919.123 of the Revised Code, 955
the board shall enter an order suspending the individual's 956
certificate to practice for a period of at least one year or, if 957
determined appropriate by the board, imposing a more serious 958
sanction involving the individual's certificate to practice. 959

(2) In all circumstances in which division (I)(1) of this 960
section does not apply, enter a final order permanently revoking 961
the individual's certificate to practice. 962

(J) If the board is required by Chapter 119. of the 963
Revised Code to give notice of an opportunity for a hearing and 964
if the individual subject to the notice does not timely request 965
a hearing in accordance with section 119.07 of the Revised Code, 966
the board is not required to hold a hearing, but may adopt, by 967
an affirmative vote of not fewer than six of its members, a 968
final order that contains the board's findings. In that final 969
order, the board may order any of the sanctions identified under 970

division (A) or (B) of this section. 971

(K) Any action taken by the board under division (B) of 972
this section resulting in a suspension from practice shall be 973
accompanied by a written statement of the conditions under which 974
the individual's certificate to practice may be reinstated. The 975
board shall adopt rules governing conditions to be imposed for 976
reinstatement. Reinstatement of a certificate suspended pursuant 977
to division (B) of this section requires an affirmative vote of 978
not fewer than six members of the board. 979

(L) When the board refuses to grant a certificate to an 980
applicant, revokes an individual's certificate to practice, 981
refuses to register an applicant, or refuses to reinstate an 982
individual's certificate to practice, the board may specify that 983
its action is permanent. An individual subject to a permanent 984
action taken by the board is forever thereafter ineligible to 985
hold a certificate to practice and the board shall not accept an 986
application for reinstatement of the certificate or for issuance 987
of a new certificate. 988

(M) Notwithstanding any other provision of the Revised 989
Code, all of the following apply: 990

(1) The surrender of a certificate issued under this 991
chapter shall not be effective unless or until accepted by the 992
board. A telephone conference call may be utilized for 993
acceptance of the surrender of an individual's certificate to 994
practice. The telephone conference call shall be considered a 995
special meeting under division (F) of section 121.22 of the 996
Revised Code. Reinstatement of a certificate surrendered to the 997
board requires an affirmative vote of not fewer than six members 998
of the board. 999

(2) An application for a certificate made under the provisions of this chapter may not be withdrawn without approval of the board. 1000
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(3) Failure by an individual to renew a certificate of registration in accordance with this chapter shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual. 1003
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(4) At the request of the board, a certificate holder shall immediately surrender to the board a certificate that the board has suspended, revoked, or permanently revoked. 1007
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(N) Sanctions shall not be imposed under division (B) (28) of this section against any person who waives deductibles and copayments as follows: 1010
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(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. 1013
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(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. 1019
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(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 1022
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and implementing the quality intervention program, the board may 1029
do all of the following: 1030

(1) Offer in appropriate cases as determined by the board 1031
an educational and assessment program pursuant to an 1032
investigation the board conducts under this section; 1033

(2) Select providers of educational and assessment 1034
services, including a quality intervention program panel of case 1035
reviewers; 1036

(3) Make referrals to educational and assessment service 1037
providers and approve individual educational programs 1038
recommended by those providers. The board shall monitor the 1039
progress of each individual undertaking a recommended individual 1040
educational program. 1041

(4) Determine what constitutes successful completion of an 1042
individual educational program and require further monitoring of 1043
the individual who completed the program or other action that 1044
the board determines to be appropriate; 1045

(5) Adopt rules in accordance with Chapter 119. of the 1046
Revised Code to further implement the quality intervention 1047
program. 1048

An individual who participates in an individual 1049
educational program pursuant to this division shall pay the 1050
financial obligations arising from that educational program. 1051

Section 2. That existing sections 2305.11 and 4731.22 of 1052
the Revised Code are hereby repealed. 1053