

As Introduced

134th General Assembly

Regular Session

2021-2022

S. B. No. 157

Senators Johnson, Huffman, S.

**Cosponsors: Senators Cirino, Brenner, Lang, Hottinger, Antani, Romanchuk,
Hoagland, Wilson, O'Brien, Schaffer**

A BILL

To amend sections 2919.13, 3701.79, 3701.99, and 1
4731.22 and to enact sections 3701.792 and 2
4731.90 of the Revised Code to require reports 3
to be made after a child is born alive following 4
an abortion or attempted abortion and to 5
establish certain civil or criminal penalties 6
for failing to preserve the health or life of 7
such a child. 8

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

Section 1. That sections 2919.13, 3701.79, 3701.99, and 9
4731.22 be amended and sections 3701.792 and 4731.90 of the 10
Revised Code be enacted to read as follows: 11

Sec. 2919.13. (A) No person shall purposely take the life 12
of a child born by attempted abortion who is alive when removed 13
from the uterus of the pregnant woman. 14

(B) No person who performs an abortion shall purposely 15
fail to take the measures required by the exercise of medical 16
judgment in light of the attending circumstances to preserve the 17

health or life of a child who is alive when removed from the 18
uterus of the pregnant woman. 19

(C) (1) Whoever violates division (A) of this section is 20
guilty of abortion manslaughter, a felony of the first degree. 21

(2) Whoever violates division (B) of this section and the 22
child dies as a result of the person's failure to take the 23
measures described in that division is guilty of abortion 24
manslaughter, a felony of the first degree. 25

(3) Whoever violates division (B) of this section and the 26
child survives notwithstanding the person's failure to take the 27
measures described in that division is guilty of failure to 28
render medical care to an infant born alive, a felony of the 29
first degree. 30

(D) (1) A woman on whom an abortion is performed or 31
attempted may file a civil action for the wrongful death of the 32
woman's child against a person who violates division (A) of this 33
section. 34

(2) A woman on whom an abortion is performed or attempted 35
may file a civil action for injury, death, or loss to person or 36
property against a person who violates division (B) of this 37
section. 38

(3) A woman who prevails in an action filed under division 39
(D) (1) or (2) of this section shall receive both of the 40
following from the person who committed the act: 41

(a) Compensatory and exemplary damages in an amount 42
determined by the trier of fact; 43

(b) Court costs and reasonable attorney's fees. 44

Sec. 3701.79. (A) As used in this section and in sections 45

<u>3701.791 and 3701.792 of the Revised Code:</u>	46
(1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.	47 48
(2) "Abortion report" means a form completed pursuant to division (C) of this section.	49 50
(3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.	51 52
(4) "Department" means the department of health.	53
(5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.	54 55 56 57 58 59 60 61 62 63
(6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.	64 65 66 67 68
(7) "Postabortion care" means care given after the uterus has been evacuated by abortion.	69 70
(B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.	71 72 73

(C) The attending physician shall complete an individual	74
abortion report for the abortion of each zygote, blastocyte,	75
embryo, or fetus the physician performs. The report shall be	76
confidential and shall not contain the woman's name. The report	77
shall include, but is not limited to, all of the following,	78
insofar as the patient makes the data available that is not	79
within the physician's knowledge:	80
(1) Patient number;	81
(2) The name and address of the facility in which the	82
abortion was performed, and whether the facility is a hospital,	83
ambulatory surgical facility, physician's office, or other	84
facility;	85
(3) The date of the abortion;	86
(4) If a surgical abortion, the method of final	87
disposition of the fetal remains under Chapter 3726. of the	88
Revised Code;	89
(5) All of the following regarding the woman on whom the	90
abortion was performed:	91
(a) Zip code of residence;	92
(b) Age;	93
(c) Race;	94
(d) Marital status;	95
(e) Number of previous pregnancies;	96
(f) Years of education;	97
(g) Number of living children;	98
(h) Number of zygotes, blastocytes, embryos, or fetuses	99

previously aborted;	100
(i) Date of last induced abortion;	101
(j) Date of last live birth;	102
(k) Method of contraception at the time of conception;	103
(l) Date of the first day of the last menstrual period;	104
(m) Medical condition at the time of the abortion;	105
(n) Rh-type;	106
(o) The number of weeks of gestation at the time of the abortion.	107 108
(6) The type of abortion procedure performed;	109
(7) Complications by type;	110
(8) Written acknowledgment by the attending physician that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the following:	111 112 113
(a) A test result indicating Down syndrome in an unborn child;	114 115
(b) A prenatal diagnosis of Down syndrome in an unborn child;	116 117
(c) Any other reason to believe that an unborn child has Down syndrome.	118 119
(9) Type of procedure performed after the abortion;	120
(10) Type of family planning recommended;	121
(11) Type of additional counseling given;	122
(12) Signature of attending physician.	123

(D) The physician who completed the abortion report under 124
division (C) of this section shall submit the abortion report to 125
the department within fifteen days after the woman is 126
discharged. 127

(E) The appropriate vital records report or certificate 128
shall be made out after the twentieth week of gestation. 129

(F) A copy of the abortion report shall be made part of 130
the medical record of the patient of the facility in which the 131
abortion was performed. 132

(G) Each hospital shall file monthly and annual reports 133
listing the total number of women who have undergone a post- 134
twelve-week-gestation abortion and received postabortion care. 135
The annual report shall be filed following the conclusion of the 136
state's fiscal year. Each report shall be filed within thirty 137
days after the end of the applicable reporting period. 138

(H) Each case in which a physician treats a post abortion 139
complication shall be reported on a postabortion complication 140
form. The report shall be made upon a form prescribed by the 141
department, shall be signed by the attending physician, and 142
shall be confidential. 143

(I) (1) Not later than the first day of October of each 144
year, the department shall issue an annual report of the 145
abortion data reported to the department for the previous 146
calendar year as required by this section. The annual report 147
shall include at least the following information: 148

(a) The total number of zygotes, blastocytes, embryos, or 149
fetuses that were aborted; 150

(b) The number of abortions performed on Ohio and out-of- 151
state residents; 152

(c) The number of abortions performed, sorted by each of the following:	153 154
(i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;	155 156 157 158 159 160 161
(ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;	162 163
(iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;	164 165 166 167
(iv) The marital status of the woman on whom the abortion was performed;	168 169
(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;	170 171 172
(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;	173 174 175 176
(vii) The county in which the abortion was performed;	177
(viii) The type of abortion procedure performed;	178
(ix) The number of zygotes, blastocytes, embryos, or fetuses previously aborted by the woman on whom the abortion was	179 180

performed;	181
(x) The type of facility in which the abortion was	182
performed;	183
(xi) For Ohio residents, the county of residence of the	184
woman on whom the abortion was performed.	185
(2) The report also shall indicate the number and type of	186
the abortion complications reported to the department either on	187
the abortion report required under division (C) of this section	188
or the postabortion complication report required under division	189
(H) of this section.	190
(3) In addition to the annual report required under	191
division (I)(1) of this section, the department shall make	192
available, on request, the number of abortions performed by zip	193
code of residence.	194
(J) The director of health shall implement this section	195
and shall apply to the court of common pleas for temporary or	196
permanent injunctions restraining a violation or threatened	197
violation of its requirements. This action is an additional	198
remedy not dependent on the adequacy of the remedy at law.	199
<u>Sec. 3701.792. (A) The director of health shall develop a</u>	200
<u>child survival form to be submitted to the department of health</u>	201
<u>in accordance with division (B) of this section each time a</u>	202
<u>child is born alive after an abortion or attempted abortion. In</u>	203
<u>developing the form, the director may consult with</u>	204
<u>obstetricians, maternal-fetal specialists, or any other</u>	205
<u>professionals the director considers appropriate. The form shall</u>	206
<u>include areas for all of the following to be provided:</u>	207
<u>(1) The patient number for the woman on whom the abortion</u>	208
<u>was performed or attempted;</u>	209

<u>(2) The name, primary business address, and signature of</u>	210
<u>the attending physician described in section 3701.79 of the</u>	211
<u>Revised Code who performed or attempted to perform the abortion;</u>	212
<u>(3) The name and address of the facility in which the</u>	213
<u>abortion was performed or attempted, and whether the facility is</u>	214
<u>a hospital, ambulatory surgical facility, physician's office, or</u>	215
<u>other facility;</u>	216
<u>(4) The date the abortion was performed or attempted;</u>	217
<u>(5) The type of abortion procedure that was performed or</u>	218
<u>attempted;</u>	219
<u>(6) The gestational age of the child who was born;</u>	220
<u>(7) Complications, by type, for both the woman and child;</u>	221
<u>(8) Any other information the director considers</u>	222
<u>appropriate.</u>	223
<u>(B) The attending physician who performed or attempted an</u>	224
<u>abortion in which a child was born alive after that event shall</u>	225
<u>complete a child survival form developed under division (A) of</u>	226
<u>this section. The physician shall submit the completed form to</u>	227
<u>the department of health not later than fifteen days after the</u>	228
<u>woman is discharged from the facility.</u>	229
<u>A completed child survival form is confidential and not a</u>	230
<u>public record under section 149.43 of the Revised Code.</u>	231
<u>(C) A copy of the child survival form completed under this</u>	232
<u>section shall be made part of the medical record maintained for</u>	233
<u>the woman by the facility in which the abortion was performed or</u>	234
<u>attempted.</u>	235
<u>(D) Each facility in which an abortion was performed or</u>	236

attempted and in which a child was born alive after that event 237
shall submit monthly and annual reports to the department of 238
health listing the total number of women on whom an abortion was 239
performed or attempted at the facility and in which a child was 240
born alive after that event, delineated by the type of abortion 241
procedure that was performed or attempted. The annual report 242
shall be submitted following the conclusion of the state's 243
fiscal year. Each monthly or annual report shall be submitted 244
not later than thirty days after the end of the applicable 245
reporting period. 246

(E) Not later than the first day of October of each year, 247
the department shall issue an annual report of the data 248
submitted to the department for the previous calendar year as 249
required by this section. At a minimum, the annual report shall 250
specify the number of women on whom an abortion was performed or 251
attempted and in which a child was born alive after that event, 252
delineated by the type of abortion procedure that was performed 253
or attempted and the facility in which the abortion was 254
performed or attempted. The report shall not contain any 255
information that would permit the identity of a woman on whom an 256
abortion was performed or attempted or any child to be 257
ascertained. 258

(F) No person shall purposely fail to comply with the 259
child survival form submission requirement described in division 260
(B) of this section or the copy maintenance requirement 261
described in division (C) of this section. 262

(G) No person shall purposely fail to comply with the 263
monthly or annual report submission requirements described in 264
division (D) of this section. 265

(H) A woman on whom an abortion is performed or attempted 266

may file a civil action against a person who violates division 267
(F) or (G) or this section. A woman who prevails in an action 268
filed under this division shall receive both of the following 269
from the person who committed the violation: 270

(1) Damages in the amount of ten thousand dollars; 271

(2) Court costs and reasonable attorney's fees. 272

Sec. 3701.99. (A) Whoever violates division (C) of section 273
3701.23, division (C) of section 3701.232, division (C) of 274
section 3701.24, division (D) (2) of section 3701.262, or 275
sections 3701.46 to 3701.55 of the Revised Code is guilty of a 276
minor misdemeanor on a first offense; on each subsequent 277
offense, the person is guilty of a misdemeanor of the fourth 278
degree. 279

(B) Whoever violates section 3701.82 of the Revised Code 280
is guilty of a misdemeanor of the first degree. 281

(C) Whoever violates section 3701.352 or 3701.81 of the 282
Revised Code is guilty of a misdemeanor of the second degree. 283

(D) Whoever violates division (F) or (G) of section 284
3701.792 of the Revised Code is guilty of a felony of the third 285
degree. 286

Sec. 4731.22. (A) The state medical board, by an 287
affirmative vote of not fewer than six of its members, may 288
limit, revoke, or suspend a license or certificate to practice 289
or certificate to recommend, refuse to grant a license or 290
certificate, refuse to renew a license or certificate, refuse to 291
reinstate a license or certificate, or reprimand or place on 292
probation the holder of a license or certificate if the 293
individual applying for or holding the license or certificate is 294
found by the board to have committed fraud during the 295

administration of the examination for a license or certificate 296
to practice or to have committed fraud, misrepresentation, or 297
deception in applying for, renewing, or securing any license or 298
certificate to practice or certificate to recommend issued by 299
the board. 300

(B) The board, by an affirmative vote of not fewer than 301
six members, shall, to the extent permitted by law, limit, 302
revoke, or suspend a license or certificate to practice or 303
certificate to recommend, refuse to issue a license or 304
certificate, refuse to renew a license or certificate, refuse to 305
reinstate a license or certificate, or reprimand or place on 306
probation the holder of a license or certificate for one or more 307
of the following reasons: 308

(1) Permitting one's name or one's license or certificate 309
to practice to be used by a person, group, or corporation when 310
the individual concerned is not actually directing the treatment 311
given; 312

(2) Failure to maintain minimal standards applicable to 313
the selection or administration of drugs, or failure to employ 314
acceptable scientific methods in the selection of drugs or other 315
modalities for treatment of disease; 316

(3) Except as provided in section 4731.97 of the Revised 317
Code, selling, giving away, personally furnishing, prescribing, 318
or administering drugs for other than legal and legitimate 319
therapeutic purposes or a plea of guilty to, a judicial finding 320
of guilt of, or a judicial finding of eligibility for 321
intervention in lieu of conviction of, a violation of any 322
federal or state law regulating the possession, distribution, or 323
use of any drug; 324

(4) Willfully betraying a professional confidence. 325

For purposes of this division, "willfully betraying a 326
professional confidence" does not include providing any 327
information, documents, or reports under sections 307.621 to 328
307.629 of the Revised Code to a child fatality review board; 329
does not include providing any information, documents, or 330
reports to the director of health pursuant to guidelines 331
established under section 3701.70 of the Revised Code; does not 332
include written notice to a mental health professional under 333
section 4731.62 of the Revised Code; and does not include the 334
making of a report of an employee's use of a drug of abuse, or a 335
report of a condition of an employee other than one involving 336
the use of a drug of abuse, to the employer of the employee as 337
described in division (B) of section 2305.33 of the Revised 338
Code. Nothing in this division affects the immunity from civil 339
liability conferred by section 2305.33 or 4731.62 of the Revised 340
Code upon a physician who makes a report in accordance with 341
section 2305.33 or notifies a mental health professional in 342
accordance with section 4731.62 of the Revised Code. As used in 343
this division, "employee," "employer," and "physician" have the 344
same meanings as in section 2305.33 of the Revised Code. 345

(5) Making a false, fraudulent, deceptive, or misleading 346
statement in the solicitation of or advertising for patients; in 347
relation to the practice of medicine and surgery, osteopathic 348
medicine and surgery, podiatric medicine and surgery, or a 349
limited branch of medicine; or in securing or attempting to 350
secure any license or certificate to practice issued by the 351
board. 352

As used in this division, "false, fraudulent, deceptive, 353
or misleading statement" means a statement that includes a 354

misrepresentation of fact, is likely to mislead or deceive 355
because of a failure to disclose material facts, is intended or 356
is likely to create false or unjustified expectations of 357
favorable results, or includes representations or implications 358
that in reasonable probability will cause an ordinarily prudent 359
person to misunderstand or be deceived. 360

(6) A departure from, or the failure to conform to, 361
minimal standards of care of similar practitioners under the 362
same or similar circumstances, whether or not actual injury to a 363
patient is established; 364

(7) Representing, with the purpose of obtaining 365
compensation or other advantage as personal gain or for any 366
other person, that an incurable disease or injury, or other 367
incurable condition, can be permanently cured; 368

(8) The obtaining of, or attempting to obtain, money or 369
anything of value by fraudulent misrepresentations in the course 370
of practice; 371

(9) A plea of guilty to, a judicial finding of guilt of, 372
or a judicial finding of eligibility for intervention in lieu of 373
conviction for, a felony; 374

(10) Commission of an act that constitutes a felony in 375
this state, regardless of the jurisdiction in which the act was 376
committed; 377

(11) A plea of guilty to, a judicial finding of guilt of, 378
or a judicial finding of eligibility for intervention in lieu of 379
conviction for, a misdemeanor committed in the course of 380
practice; 381

(12) Commission of an act in the course of practice that 382
constitutes a misdemeanor in this state, regardless of the 383

jurisdiction in which the act was committed;	384
(13) A plea of guilty to, a judicial finding of guilt of,	385
or a judicial finding of eligibility for intervention in lieu of	386
conviction for, a misdemeanor involving moral turpitude;	387
(14) Commission of an act involving moral turpitude that	388
constitutes a misdemeanor in this state, regardless of the	389
jurisdiction in which the act was committed;	390
(15) Violation of the conditions of limitation placed by	391
the board upon a license or certificate to practice;	392
(16) Failure to pay license renewal fees specified in this	393
chapter;	394
(17) Except as authorized in section 4731.31 of the	395
Revised Code, engaging in the division of fees for referral of	396
patients, or the receiving of a thing of value in return for a	397
specific referral of a patient to utilize a particular service	398
or business;	399
(18) Subject to section 4731.226 of the Revised Code,	400
violation of any provision of a code of ethics of the American	401
medical association, the American osteopathic association, the	402
American podiatric medical association, or any other national	403
professional organizations that the board specifies by rule. The	404
state medical board shall obtain and keep on file current copies	405
of the codes of ethics of the various national professional	406
organizations. The individual whose license or certificate is	407
being suspended or revoked shall not be found to have violated	408
any provision of a code of ethics of an organization not	409
appropriate to the individual's profession.	410
For purposes of this division, a "provision of a code of	411
ethics of a national professional organization" does not include	412

any provision that would preclude the making of a report by a 413
physician of an employee's use of a drug of abuse, or of a 414
condition of an employee other than one involving the use of a 415
drug of abuse, to the employer of the employee as described in 416
division (B) of section 2305.33 of the Revised Code. Nothing in 417
this division affects the immunity from civil liability 418
conferred by that section upon a physician who makes either type 419
of report in accordance with division (B) of that section. As 420
used in this division, "employee," "employer," and "physician" 421
have the same meanings as in section 2305.33 of the Revised 422
Code. 423

(19) Inability to practice according to acceptable and 424
prevailing standards of care by reason of mental illness or 425
physical illness, including, but not limited to, physical 426
deterioration that adversely affects cognitive, motor, or 427
perceptive skills. 428

In enforcing this division, the board, upon a showing of a 429
possible violation, may compel any individual authorized to 430
practice by this chapter or who has submitted an application 431
pursuant to this chapter to submit to a mental examination, 432
physical examination, including an HIV test, or both a mental 433
and a physical examination. The expense of the examination is 434
the responsibility of the individual compelled to be examined. 435
Failure to submit to a mental or physical examination or consent 436
to an HIV test ordered by the board constitutes an admission of 437
the allegations against the individual unless the failure is due 438
to circumstances beyond the individual's control, and a default 439
and final order may be entered without the taking of testimony 440
or presentation of evidence. If the board finds an individual 441
unable to practice because of the reasons set forth in this 442
division, the board shall require the individual to submit to 443

care, counseling, or treatment by physicians approved or 444
designated by the board, as a condition for initial, continued, 445
reinstated, or renewed authority to practice. An individual 446
affected under this division shall be afforded an opportunity to 447
demonstrate to the board the ability to resume practice in 448
compliance with acceptable and prevailing standards under the 449
provisions of the individual's license or certificate. For the 450
purpose of this division, any individual who applies for or 451
receives a license or certificate to practice under this chapter 452
accepts the privilege of practicing in this state and, by so 453
doing, shall be deemed to have given consent to submit to a 454
mental or physical examination when directed to do so in writing 455
by the board, and to have waived all objections to the 456
admissibility of testimony or examination reports that 457
constitute a privileged communication. 458

(20) Except as provided in division (F) (1) (b) of section 459
4731.282 of the Revised Code or when civil penalties are imposed 460
under section 4731.225 of the Revised Code, and subject to 461
section 4731.226 of the Revised Code, violating or attempting to 462
violate, directly or indirectly, or assisting in or abetting the 463
violation of, or conspiring to violate, any provisions of this 464
chapter or any rule promulgated by the board. 465

This division does not apply to a violation or attempted 466
violation of, assisting in or abetting the violation of, or a 467
conspiracy to violate, any provision of this chapter or any rule 468
adopted by the board that would preclude the making of a report 469
by a physician of an employee's use of a drug of abuse, or of a 470
condition of an employee other than one involving the use of a 471
drug of abuse, to the employer of the employee as described in 472
division (B) of section 2305.33 of the Revised Code. Nothing in 473
this division affects the immunity from civil liability 474

conferred by that section upon a physician who makes either type 475
of report in accordance with division (B) of that section. As 476
used in this division, "employee," "employer," and "physician" 477
have the same meanings as in section 2305.33 of the Revised 478
Code. 479

(21) The violation of section 3701.79 of the Revised Code 480
or of any abortion rule adopted by the director of health 481
pursuant to section 3701.341 of the Revised Code; 482

(22) Any of the following actions taken by an agency 483
responsible for authorizing, certifying, or regulating an 484
individual to practice a health care occupation or provide 485
health care services in this state or another jurisdiction, for 486
any reason other than the nonpayment of fees: the limitation, 487
revocation, or suspension of an individual's license to 488
practice; acceptance of an individual's license surrender; 489
denial of a license; refusal to renew or reinstate a license; 490
imposition of probation; or issuance of an order of censure or 491
other reprimand; 492

(23) The violation of section 2919.12 of the Revised Code 493
or the performance or inducement of an abortion upon a pregnant 494
woman with actual knowledge that the conditions specified in 495
division (B) of section 2317.56 of the Revised Code have not 496
been satisfied or with a heedless indifference as to whether 497
those conditions have been satisfied, unless an affirmative 498
defense as specified in division (H)(2) of that section would 499
apply in a civil action authorized by division (H)(1) of that 500
section; 501

(24) The revocation, suspension, restriction, reduction, 502
or termination of clinical privileges by the United States 503
department of defense or department of veterans affairs or the 504

termination or suspension of a certificate of registration to 505
prescribe drugs by the drug enforcement administration of the 506
United States department of justice; 507

(25) Termination or suspension from participation in the 508
medicare or medicaid programs by the department of health and 509
human services or other responsible agency; 510

(26) Impairment of ability to practice according to 511
acceptable and prevailing standards of care because of habitual 512
or excessive use or abuse of drugs, alcohol, or other substances 513
that impair ability to practice. 514

For the purposes of this division, any individual 515
authorized to practice by this chapter accepts the privilege of 516
practicing in this state subject to supervision by the board. By 517
filing an application for or holding a license or certificate to 518
practice under this chapter, an individual shall be deemed to 519
have given consent to submit to a mental or physical examination 520
when ordered to do so by the board in writing, and to have 521
waived all objections to the admissibility of testimony or 522
examination reports that constitute privileged communications. 523

If it has reason to believe that any individual authorized 524
to practice by this chapter or any applicant for licensure or 525
certification to practice suffers such impairment, the board may 526
compel the individual to submit to a mental or physical 527
examination, or both. The expense of the examination is the 528
responsibility of the individual compelled to be examined. Any 529
mental or physical examination required under this division 530
shall be undertaken by a treatment provider or physician who is 531
qualified to conduct the examination and who is chosen by the 532
board. 533

Failure to submit to a mental or physical examination 534
ordered by the board constitutes an admission of the allegations 535
against the individual unless the failure is due to 536
circumstances beyond the individual's control, and a default and 537
final order may be entered without the taking of testimony or 538
presentation of evidence. If the board determines that the 539
individual's ability to practice is impaired, the board shall 540
suspend the individual's license or certificate or deny the 541
individual's application and shall require the individual, as a 542
condition for initial, continued, reinstated, or renewed 543
licensure or certification to practice, to submit to treatment. 544

Before being eligible to apply for reinstatement of a 545
license or certificate suspended under this division, the 546
impaired practitioner shall demonstrate to the board the ability 547
to resume practice in compliance with acceptable and prevailing 548
standards of care under the provisions of the practitioner's 549
license or certificate. The demonstration shall include, but 550
shall not be limited to, the following: 551

(a) Certification from a treatment provider approved under 552
section 4731.25 of the Revised Code that the individual has 553
successfully completed any required inpatient treatment; 554

(b) Evidence of continuing full compliance with an 555
aftercare contract or consent agreement; 556

(c) Two written reports indicating that the individual's 557
ability to practice has been assessed and that the individual 558
has been found capable of practicing according to acceptable and 559
prevailing standards of care. The reports shall be made by 560
individuals or providers approved by the board for making the 561
assessments and shall describe the basis for their 562
determination. 563

The board may reinstate a license or certificate suspended 564
under this division after that demonstration and after the 565
individual has entered into a written consent agreement. 566

When the impaired practitioner resumes practice, the board 567
shall require continued monitoring of the individual. The 568
monitoring shall include, but not be limited to, compliance with 569
the written consent agreement entered into before reinstatement 570
or with conditions imposed by board order after a hearing, and, 571
upon termination of the consent agreement, submission to the 572
board for at least two years of annual written progress reports 573
made under penalty of perjury stating whether the individual has 574
maintained sobriety. 575

(27) A second or subsequent violation of section 4731.66 576
or 4731.69 of the Revised Code; 577

(28) Except as provided in division (N) of this section: 578

(a) Waiving the payment of all or any part of a deductible 579
or copayment that a patient, pursuant to a health insurance or 580
health care policy, contract, or plan that covers the 581
individual's services, otherwise would be required to pay if the 582
waiver is used as an enticement to a patient or group of 583
patients to receive health care services from that individual; 584

(b) Advertising that the individual will waive the payment 585
of all or any part of a deductible or copayment that a patient, 586
pursuant to a health insurance or health care policy, contract, 587
or plan that covers the individual's services, otherwise would 588
be required to pay. 589

(29) Failure to use universal blood and body fluid 590
precautions established by rules adopted under section 4731.051 591
of the Revised Code; 592

(30) Failure to provide notice to, and receive	593
acknowledgment of the notice from, a patient when required by	594
section 4731.143 of the Revised Code prior to providing	595
nonemergency professional services, or failure to maintain that	596
notice in the patient's medical record;	597
(31) Failure of a physician supervising a physician	598
assistant to maintain supervision in accordance with the	599
requirements of Chapter 4730. of the Revised Code and the rules	600
adopted under that chapter;	601
(32) Failure of a physician or podiatrist to enter into a	602
standard care arrangement with a clinical nurse specialist,	603
certified nurse-midwife, or certified nurse practitioner with	604
whom the physician or podiatrist is in collaboration pursuant to	605
section 4731.27 of the Revised Code or failure to fulfill the	606
responsibilities of collaboration after entering into a standard	607
care arrangement;	608
(33) Failure to comply with the terms of a consult	609
agreement entered into with a pharmacist pursuant to section	610
4729.39 of the Revised Code;	611
(34) Failure to cooperate in an investigation conducted by	612
the board under division (F) of this section, including failure	613
to comply with a subpoena or order issued by the board or	614
failure to answer truthfully a question presented by the board	615
in an investigative interview, an investigative office	616
conference, at a deposition, or in written interrogatories,	617
except that failure to cooperate with an investigation shall not	618
constitute grounds for discipline under this section if a court	619
of competent jurisdiction has issued an order that either	620
quashes a subpoena or permits the individual to withhold the	621
testimony or evidence in issue;	622

(35) Failure to supervise an oriental medicine practitioner or acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for providing that supervision;	623 624 625 626
(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;	627 628 629
(37) Assisting suicide, as defined in section 3795.01 of the Revised Code;	630 631
(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;	632 633
(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;	634 635 636
(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;	637 638 639 640
(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;	641 642 643 644
(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;	645 646 647 648
(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised Code, unless the state board	649 650

of pharmacy no longer maintains a drug database pursuant to 651
section 4729.75 of the Revised Code; 652

(44) Failure to comply with the requirements of section 653
2919.171, 2919.202, or 2919.203 of the Revised Code or failure 654
to submit to the department of health in accordance with a court 655
order a complete report as described in section 2919.171 or 656
2919.202 of the Revised Code; 657

(45) Practicing at a facility that is subject to licensure 658
as a category III terminal distributor of dangerous drugs with a 659
pain management clinic classification unless the person 660
operating the facility has obtained and maintains the license 661
with the classification; 662

(46) Owning a facility that is subject to licensure as a 663
category III terminal distributor of dangerous drugs with a pain 664
management clinic classification unless the facility is licensed 665
with the classification; 666

(47) Failure to comply with any of the requirements 667
regarding making or maintaining medical records or documents 668
described in division (A) of section 2919.192, division (C) of 669
section 2919.193, division (B) of section 2919.195, or division 670
(A) of section 2919.196 of the Revised Code; 671

(48) Failure to comply with the requirements in section 672
3719.061 of the Revised Code before issuing for a minor a 673
prescription for an opioid analgesic, as defined in section 674
3719.01 of the Revised Code; 675

(49) Failure to comply with the requirements of section 676
4731.30 of the Revised Code or rules adopted under section 677
4731.301 of the Revised Code when recommending treatment with 678
medical marijuana; 679

(50) Practicing at a facility, clinic, or other location 680
that is subject to licensure as a category III terminal 681
distributor of dangerous drugs with an office-based opioid 682
treatment classification unless the person operating that place 683
has obtained and maintains the license with the classification; 684

(51) Owning a facility, clinic, or other location that is 685
subject to licensure as a category III terminal distributor of 686
dangerous drugs with an office-based opioid treatment 687
classification unless that place is licensed with the 688
classification; 689

(52) A pattern of continuous or repeated violations of 690
division (E) (2) or (3) of section 3963.02 of the Revised Code; 691

(53) Failure to take the steps specified in section 692
4731.90 of the Revised Code following an abortion or attempted 693
abortion in an ambulatory surgical facility or other location 694
that is not a hospital when a child is born alive. 695

(C) Disciplinary actions taken by the board under 696
divisions (A) and (B) of this section shall be taken pursuant to 697
an adjudication under Chapter 119. of the Revised Code, except 698
that in lieu of an adjudication, the board may enter into a 699
consent agreement with an individual to resolve an allegation of 700
a violation of this chapter or any rule adopted under it. A 701
consent agreement, when ratified by an affirmative vote of not 702
fewer than six members of the board, shall constitute the 703
findings and order of the board with respect to the matter 704
addressed in the agreement. If the board refuses to ratify a 705
consent agreement, the admissions and findings contained in the 706
consent agreement shall be of no force or effect. 707

A telephone conference call may be utilized for 708

ratification of a consent agreement that revokes or suspends an 709
individual's license or certificate to practice or certificate 710
to recommend. The telephone conference call shall be considered 711
a special meeting under division (F) of section 121.22 of the 712
Revised Code. 713

If the board takes disciplinary action against an 714
individual under division (B) of this section for a second or 715
subsequent plea of guilty to, or judicial finding of guilt of, a 716
violation of section 2919.123 of the Revised Code, the 717
disciplinary action shall consist of a suspension of the 718
individual's license or certificate to practice for a period of 719
at least one year or, if determined appropriate by the board, a 720
more serious sanction involving the individual's license or 721
certificate to practice. Any consent agreement entered into 722
under this division with an individual that pertains to a second 723
or subsequent plea of guilty to, or judicial finding of guilt 724
of, a violation of that section shall provide for a suspension 725
of the individual's license or certificate to practice for a 726
period of at least one year or, if determined appropriate by the 727
board, a more serious sanction involving the individual's 728
license or certificate to practice. 729

(D) For purposes of divisions (B) (10), (12), and (14) of 730
this section, the commission of the act may be established by a 731
finding by the board, pursuant to an adjudication under Chapter 732
119. of the Revised Code, that the individual committed the act. 733
The board does not have jurisdiction under those divisions if 734
the trial court renders a final judgment in the individual's 735
favor and that judgment is based upon an adjudication on the 736
merits. The board has jurisdiction under those divisions if the 737
trial court issues an order of dismissal upon technical or 738
procedural grounds. 739

(E) The sealing of conviction records by any court shall 740
have no effect upon a prior board order entered under this 741
section or upon the board's jurisdiction to take action under 742
this section if, based upon a plea of guilty, a judicial finding 743
of guilt, or a judicial finding of eligibility for intervention 744
in lieu of conviction, the board issued a notice of opportunity 745
for a hearing prior to the court's order to seal the records. 746
The board shall not be required to seal, destroy, redact, or 747
otherwise modify its records to reflect the court's sealing of 748
conviction records. 749

(F) (1) The board shall investigate evidence that appears 750
to show that a person has violated any provision of this chapter 751
or any rule adopted under it. Any person may report to the board 752
in a signed writing any information that the person may have 753
that appears to show a violation of any provision of this 754
chapter or any rule adopted under it. In the absence of bad 755
faith, any person who reports information of that nature or who 756
testifies before the board in any adjudication conducted under 757
Chapter 119. of the Revised Code shall not be liable in damages 758
in a civil action as a result of the report or testimony. Each 759
complaint or allegation of a violation received by the board 760
shall be assigned a case number and shall be recorded by the 761
board. 762

(2) Investigations of alleged violations of this chapter 763
or any rule adopted under it shall be supervised by the 764
supervising member elected by the board in accordance with 765
section 4731.02 of the Revised Code and by the secretary as 766
provided in section 4731.39 of the Revised Code. The president 767
may designate another member of the board to supervise the 768
investigation in place of the supervising member. No member of 769
the board who supervises the investigation of a case shall 770

participate in further adjudication of the case. 771

(3) In investigating a possible violation of this chapter 772
or any rule adopted under this chapter, or in conducting an 773
inspection under division (E) of section 4731.054 of the Revised 774
Code, the board may question witnesses, conduct interviews, 775
administer oaths, order the taking of depositions, inspect and 776
copy any books, accounts, papers, records, or documents, issue 777
subpoenas, and compel the attendance of witnesses and production 778
of books, accounts, papers, records, documents, and testimony, 779
except that a subpoena for patient record information shall not 780
be issued without consultation with the attorney general's 781
office and approval of the secretary and supervising member of 782
the board. 783

(a) Before issuance of a subpoena for patient record 784
information, the secretary and supervising member shall 785
determine whether there is probable cause to believe that the 786
complaint filed alleges a violation of this chapter or any rule 787
adopted under it and that the records sought are relevant to the 788
alleged violation and material to the investigation. The 789
subpoena may apply only to records that cover a reasonable 790
period of time surrounding the alleged violation. 791

(b) On failure to comply with any subpoena issued by the 792
board and after reasonable notice to the person being 793
subpoenaed, the board may move for an order compelling the 794
production of persons or records pursuant to the Rules of Civil 795
Procedure. 796

(c) A subpoena issued by the board may be served by a 797
sheriff, the sheriff's deputy, or a board employee or agent 798
designated by the board. Service of a subpoena issued by the 799
board may be made by delivering a copy of the subpoena to the 800

person named therein, reading it to the person, or leaving it at 801
the person's usual place of residence, usual place of business, 802
or address on file with the board. When serving a subpoena to an 803
applicant for or the holder of a license or certificate issued 804
under this chapter, service of the subpoena may be made by 805
certified mail, return receipt requested, and the subpoena shall 806
be deemed served on the date delivery is made or the date the 807
person refuses to accept delivery. If the person being served 808
refuses to accept the subpoena or is not located, service may be 809
made to an attorney who notifies the board that the attorney is 810
representing the person. 811

(d) A sheriff's deputy who serves a subpoena shall receive 812
the same fees as a sheriff. Each witness who appears before the 813
board in obedience to a subpoena shall receive the fees and 814
mileage provided for under section 119.094 of the Revised Code. 815

(4) All hearings, investigations, and inspections of the 816
board shall be considered civil actions for the purposes of 817
section 2305.252 of the Revised Code. 818

(5) A report required to be submitted to the board under 819
this chapter, a complaint, or information received by the board 820
pursuant to an investigation or pursuant to an inspection under 821
division (E) of section 4731.054 of the Revised Code is 822
confidential and not subject to discovery in any civil action. 823

The board shall conduct all investigations or inspections 824
and proceedings in a manner that protects the confidentiality of 825
patients and persons who file complaints with the board. The 826
board shall not make public the names or any other identifying 827
information about patients or complainants unless proper consent 828
is given or, in the case of a patient, a waiver of the patient 829
privilege exists under division (B) of section 2317.02 of the 830

Revised Code, except that consent or a waiver of that nature is 831
not required if the board possesses reliable and substantial 832
evidence that no bona fide physician-patient relationship 833
exists. 834

The board may share any information it receives pursuant 835
to an investigation or inspection, including patient records and 836
patient record information, with law enforcement agencies, other 837
licensing boards, and other governmental agencies that are 838
prosecuting, adjudicating, or investigating alleged violations 839
of statutes or administrative rules. An agency or board that 840
receives the information shall comply with the same requirements 841
regarding confidentiality as those with which the state medical 842
board must comply, notwithstanding any conflicting provision of 843
the Revised Code or procedure of the agency or board that 844
applies when it is dealing with other information in its 845
possession. In a judicial proceeding, the information may be 846
admitted into evidence only in accordance with the Rules of 847
Evidence, but the court shall require that appropriate measures 848
are taken to ensure that confidentiality is maintained with 849
respect to any part of the information that contains names or 850
other identifying information about patients or complainants 851
whose confidentiality was protected by the state medical board 852
when the information was in the board's possession. Measures to 853
ensure confidentiality that may be taken by the court include 854
sealing its records or deleting specific information from its 855
records. 856

(6) On a quarterly basis, the board shall prepare a report 857
that documents the disposition of all cases during the preceding 858
three months. The report shall contain the following information 859
for each case with which the board has completed its activities: 860

(a) The case number assigned to the complaint or alleged violation; 861
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(b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed; 863
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(c) A description of the allegations contained in the complaint; 866
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(d) The disposition of the case. 868

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code. 869
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(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license or certificate to practice or certificate to recommend without a prior hearing: 873
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(1) That there is clear and convincing evidence that an individual has violated division (B) of this section; 877
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(2) That the individual's continued practice presents a danger of immediate and serious harm to the public. 879
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Written allegations shall be prepared for consideration by the board. The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license or certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension. 881
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The board shall issue a written order of suspension by 888

certified mail or in person in accordance with section 119.07 of 889
the Revised Code. The order shall not be subject to suspension 890
by the court during pendency of any appeal filed under section 891
119.12 of the Revised Code. If the individual subject to the 892
summary suspension requests an adjudicatory hearing by the 893
board, the date set for the hearing shall be within fifteen 894
days, but not earlier than seven days, after the individual 895
requests the hearing, unless otherwise agreed to by both the 896
board and the individual. 897

Any summary suspension imposed under this division shall 898
remain in effect, unless reversed on appeal, until a final 899
adjudicative order issued by the board pursuant to this section 900
and Chapter 119. of the Revised Code becomes effective. The 901
board shall issue its final adjudicative order within seventy- 902
five days after completion of its hearing. A failure to issue 903
the order within seventy-five days shall result in dissolution 904
of the summary suspension order but shall not invalidate any 905
subsequent, final adjudicative order. 906

(H) If the board takes action under division (B) (9), (11), 907
or (13) of this section and the judicial finding of guilt, 908
guilty plea, or judicial finding of eligibility for intervention 909
in lieu of conviction is overturned on appeal, upon exhaustion 910
of the criminal appeal, a petition for reconsideration of the 911
order may be filed with the board along with appropriate court 912
documents. Upon receipt of a petition of that nature and 913
supporting court documents, the board shall reinstate the 914
individual's license or certificate to practice. The board may 915
then hold an adjudication under Chapter 119. of the Revised Code 916
to determine whether the individual committed the act in 917
question. Notice of an opportunity for a hearing shall be given 918
in accordance with Chapter 119. of the Revised Code. If the 919

board finds, pursuant to an adjudication held under this 920
division, that the individual committed the act or if no hearing 921
is requested, the board may order any of the sanctions 922
identified under division (B) of this section. 923

(I) The license or certificate to practice issued to an 924
individual under this chapter and the individual's practice in 925
this state are automatically suspended as of the date of the 926
individual's second or subsequent plea of guilty to, or judicial 927
finding of guilt of, a violation of section 2919.123 of the 928
Revised Code. In addition, the license or certificate to 929
practice or certificate to recommend issued to an individual 930
under this chapter and the individual's practice in this state 931
are automatically suspended as of the date the individual pleads 932
guilty to, is found by a judge or jury to be guilty of, or is 933
subject to a judicial finding of eligibility for intervention in 934
lieu of conviction in this state or treatment or intervention in 935
lieu of conviction in another jurisdiction for any of the 936
following criminal offenses in this state or a substantially 937
equivalent criminal offense in another jurisdiction: aggravated 938
murder, murder, voluntary manslaughter, felonious assault, 939
kidnapping, rape, sexual battery, gross sexual imposition, 940
aggravated arson, aggravated robbery, or aggravated burglary. 941
Continued practice after suspension shall be considered 942
practicing without a license or certificate. 943

The board shall notify the individual subject to the 944
suspension by certified mail or in person in accordance with 945
section 119.07 of the Revised Code. If an individual whose 946
license or certificate is automatically suspended under this 947
division fails to make a timely request for an adjudication 948
under Chapter 119. of the Revised Code, the board shall do 949
whichever of the following is applicable: 950

(1) If the automatic suspension under this division is for 951
a second or subsequent plea of guilty to, or judicial finding of 952
guilt of, a violation of section 2919.123 of the Revised Code, 953
the board shall enter an order suspending the individual's 954
license or certificate to practice for a period of at least one 955
year or, if determined appropriate by the board, imposing a more 956
serious sanction involving the individual's license or 957
certificate to practice. 958

(2) In all circumstances in which division (I)(1) of this 959
section does not apply, enter a final order permanently revoking 960
the individual's license or certificate to practice. 961

(J) If the board is required by Chapter 119. of the 962
Revised Code to give notice of an opportunity for a hearing and 963
if the individual subject to the notice does not timely request 964
a hearing in accordance with section 119.07 of the Revised Code, 965
the board is not required to hold a hearing, but may adopt, by 966
an affirmative vote of not fewer than six of its members, a 967
final order that contains the board's findings. In that final 968
order, the board may order any of the sanctions identified under 969
division (A) or (B) of this section. 970

(K) Any action taken by the board under division (B) of 971
this section resulting in a suspension from practice shall be 972
accompanied by a written statement of the conditions under which 973
the individual's license or certificate to practice may be 974
reinstated. The board shall adopt rules governing conditions to 975
be imposed for reinstatement. Reinstatement of a license or 976
certificate suspended pursuant to division (B) of this section 977
requires an affirmative vote of not fewer than six members of 978
the board. 979

(L) When the board refuses to grant or issue a license or 980

certificate to practice to an applicant, revokes an individual's 981
license or certificate to practice, refuses to renew an 982
individual's license or certificate to practice, or refuses to 983
reinstate an individual's license or certificate to practice, 984
the board may specify that its action is permanent. An 985
individual subject to a permanent action taken by the board is 986
forever thereafter ineligible to hold a license or certificate 987
to practice and the board shall not accept an application for 988
reinstatement of the license or certificate or for issuance of a 989
new license or certificate. 990

(M) Notwithstanding any other provision of the Revised 991
Code, all of the following apply: 992

(1) The surrender of a license or certificate issued under 993
this chapter shall not be effective unless or until accepted by 994
the board. A telephone conference call may be utilized for 995
acceptance of the surrender of an individual's license or 996
certificate to practice. The telephone conference call shall be 997
considered a special meeting under division (F) of section 998
121.22 of the Revised Code. Reinstatement of a license or 999
certificate surrendered to the board requires an affirmative 1000
vote of not fewer than six members of the board. 1001

(2) An application for a license or certificate made under 1002
the provisions of this chapter may not be withdrawn without 1003
approval of the board. 1004

(3) Failure by an individual to renew a license or 1005
certificate to practice in accordance with this chapter or a 1006
certificate to recommend in accordance with rules adopted under 1007
section 4731.301 of the Revised Code shall not remove or limit 1008
the board's jurisdiction to take any disciplinary action under 1009
this section against the individual. 1010

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

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

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

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

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

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

(2) Select providers of educational and assessment

services, including a quality intervention program panel of case reviewers; 1040
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(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program. 1042
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(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate; 1047
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(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program. 1051
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An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program. 1054
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Sec. 4731.90. (A) As used in this section: 1057

(1) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code. 1058
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(2) "Hospital" means a hospital registered with the department of health under section 3701.07 of the Revised Code. 1060
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(B) A physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive shall immediately take the following steps upon the child's birth: 1062
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(1) Provide post-birth care to the newborn in accordance with prevailing and acceptable standards of care; 1066
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<u>(2) Call for assistance from an emergency medical services</u>	1068
<u>provider;</u>	1069
<u>(3) Arrange for the transfer of the newborn to a hospital.</u>	1070
Section 2. That existing sections 2919.13, 3701.79,	1071
3701.99, and 4731.22 of the Revised Code are hereby repealed.	1072