

By: Oliverson, Hull

H.B. No. 1434

Substitute the following for H.B. No. 1434:

By: Klick

C.S.H.B. No. 1434

A BILL TO BE ENTITLED

AN ACT

relating to limitations on pelvic examinations; authorizing disciplinary action, including an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 167A to read as follows:

CHAPTER 167A. PELVIC EXAMINATIONS

Sec. 167A.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means a physician, physician assistant, or advanced practice registered nurse licensed to practice in this state.

(2) "Patient's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of a patient, if the patient is a minor;

(B) a guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(C) an agent of the patient authorized under a durable power of attorney for health care.

(3) "Pelvic examination" means a physical examination by a health care practitioner of a patient's external and internal reproductive organs, genitalia, or rectum.

Sec. 167A.002. LIMITATIONS ON CERTAIN PELVIC EXAMINATIONS.

1 (a) A health care practitioner may not perform or delegate to
2 another individual, including a student training to become a health
3 care practitioner, the performance of a pelvic examination on an
4 anesthetized or unconscious patient unless:

5 (1) the pelvic examination is within the standard
6 scope of a procedure or diagnostic examination scheduled to be
7 performed on the patient;

8 (2) the patient or the patient's legally authorized
9 representative gives informed consent for the pelvic examination as
10 provided by Subsection (b);

11 (3) the pelvic examination is necessary for diagnosis
12 or treatment of the patient's medical condition; or

13 (4) the pelvic examination is for the purpose of
14 collecting evidence.

15 (b) To obtain informed consent to perform a pelvic
16 examination on an unconscious or anesthetized patient, a health
17 care practitioner must:

18 (1) provide the patient or the patient's legally
19 authorized representative with a written or electronic informed
20 consent form that:

21 (A) may be included as a distinct or separate
22 section of a general informed consent form;

23 (B) contains the following heading at the top of
24 the form in at least 18-point boldface type: "CONSENT FOR
25 EXAMINATION OF PELVIC REGION";

26 (C) specifies the nature and purpose of the
27 pelvic examination;

1 (D) informs the patient or the patient's legally
2 authorized representative that a medical student or resident may be
3 present if the patient or the patient's legally authorized
4 representative authorizes the student or resident to:

- 5 (i) perform the pelvic examination; or
6 (ii) observe or otherwise be present at the
7 pelvic examination, either in person or through electronic means;

8 (E) allows the patient or the patient's legally
9 authorized representative the opportunity to consent to or refuse
10 to consent to the pelvic examination; and

11 (F) allows a patient or a patient's legally
12 authorized representative that consents to a pelvic examination
13 under Paragraph (E) the opportunity to authorize or refuse to
14 authorize:

15 (i) a medical student or resident to
16 perform the pelvic examination; or

17 (ii) a medical student or resident to
18 observe or otherwise be present at the pelvic examination, either
19 in person or through electronic means;

20 (2) obtain the signature of the patient or the
21 patient's legally authorized representative on the informed
22 consent form; and

23 (3) sign the informed consent form.

24 Sec. 167A.003. DISCIPLINARY ACTION. The appropriate
25 licensing authority may take disciplinary action against a health
26 care practitioner who violates Section 167A.002, including
27 imposing an administrative penalty, as if the practitioner violated

1 an applicable licensing law.

2 SECTION 2. Section 164.052(a), Occupations Code, is amended
3 to read as follows:

4 (a) A physician or an applicant for a license to practice
5 medicine commits a prohibited practice if that person:

6 (1) submits to the board a false or misleading
7 statement, document, or certificate in an application for a
8 license;

9 (2) presents to the board a license, certificate, or
10 diploma that was illegally or fraudulently obtained;

11 (3) commits fraud or deception in taking or passing an
12 examination;

13 (4) uses alcohol or drugs in an intemperate manner
14 that, in the board's opinion, could endanger a patient's life;

15 (5) commits unprofessional or dishonorable conduct
16 that is likely to deceive or defraud the public, as provided by
17 Section 164.053, or injure the public;

18 (6) uses an advertising statement that is false,
19 misleading, or deceptive;

20 (7) advertises professional superiority or the
21 performance of professional service in a superior manner if that
22 advertising is not readily subject to verification;

23 (8) purchases, sells, barter, or uses, or offers to
24 purchase, sell, barter, or use, a medical degree, license,
25 certificate, or diploma, or a transcript of a license, certificate,
26 or diploma in or incident to an application to the board for a
27 license to practice medicine;

1 (9) alters, with fraudulent intent, a medical license,
2 certificate, or diploma, or a transcript of a medical license,
3 certificate, or diploma;

4 (10) uses a medical license, certificate, or diploma,
5 or a transcript of a medical license, certificate, or diploma that
6 has been:

7 (A) fraudulently purchased or issued;

8 (B) counterfeited; or

9 (C) materially altered;

10 (11) impersonates or acts as proxy for another person
11 in an examination required by this subtitle for a medical license;

12 (12) engages in conduct that subverts or attempts to
13 subvert an examination process required by this subtitle for a
14 medical license;

15 (13) impersonates a physician or permits another to
16 use the person's license or certificate to practice medicine in
17 this state;

18 (14) directly or indirectly employs a person whose
19 license to practice medicine has been suspended, canceled, or
20 revoked;

21 (15) associates in the practice of medicine with a
22 person:

23 (A) whose license to practice medicine has been
24 suspended, canceled, or revoked; or

25 (B) who has been convicted of the unlawful
26 practice of medicine in this state or elsewhere;

27 (16) performs or procures a criminal abortion, aids or

1 abets in the procuring of a criminal abortion, attempts to perform
2 or procure a criminal abortion, or attempts to aid or abet the
3 performance or procurement of a criminal abortion;

4 (17) directly or indirectly aids or abets the practice
5 of medicine by a person, partnership, association, or corporation
6 that is not licensed to practice medicine by the board;

7 (18) performs an abortion on a woman who is pregnant
8 with a viable unborn child during the third trimester of the
9 pregnancy unless:

10 (A) the abortion is necessary to prevent the
11 death of the woman;

12 (B) the viable unborn child has a severe,
13 irreversible brain impairment; or

14 (C) the woman is diagnosed with a significant
15 likelihood of suffering imminent severe, irreversible brain damage
16 or imminent severe, irreversible paralysis;

17 (19) performs an abortion on an unemancipated minor
18 without the written consent of the child's parent, managing
19 conservator, or legal guardian or without a court order, as
20 provided by Section 33.003 or 33.004, Family Code, unless the
21 abortion is necessary due to a medical emergency, as defined by
22 Section 171.002, Health and Safety Code;

23 (20) otherwise performs an abortion on an
24 unemancipated minor in violation of Chapter 33, Family Code;

25 (21) performs or induces or attempts to perform or
26 induce an abortion in violation of Subchapter C, F, or G, Chapter
27 171, Health and Safety Code; [~~or~~]

1 (22) in complying with the procedures outlined in
2 Sections 166.045 and 166.046, Health and Safety Code, wilfully
3 fails to make a reasonable effort to transfer a patient to a
4 physician who is willing to comply with a directive; or

5 (23) performs or delegates to another individual the
6 performance of a pelvic examination on an anesthetized or
7 unconscious patient in violation of Section 167A.002, Health and
8 Safety Code.

9 SECTION 3. Section 301.452(b), Occupations Code, is amended
10 to read as follows:

11 (b) A person is subject to denial of a license or to
12 disciplinary action under this subchapter for:

13 (1) a violation of this chapter, a rule or regulation
14 not inconsistent with this chapter, or an order issued under this
15 chapter;

16 (2) fraud or deceit in procuring or attempting to
17 procure a license to practice professional nursing or vocational
18 nursing;

19 (3) a conviction for, or placement on deferred
20 adjudication community supervision or deferred disposition for, a
21 felony or for a misdemeanor involving moral turpitude;

22 (4) conduct that results in the revocation of
23 probation imposed because of conviction for a felony or for a
24 misdemeanor involving moral turpitude;

25 (5) use of a nursing license, diploma, or permit, or
26 the transcript of such a document, that has been fraudulently
27 purchased, issued, counterfeited, or materially altered;

1 (6) impersonating or acting as a proxy for another
2 person in the licensing examination required under Section 301.253
3 or 301.255;

4 (7) directly or indirectly aiding or abetting an
5 unlicensed person in connection with the unauthorized practice of
6 nursing;

7 (8) revocation, suspension, or denial of, or any other
8 action relating to, the person's license or privilege to practice
9 nursing in another jurisdiction or under federal law;

10 (9) intemperate use of alcohol or drugs that the board
11 determines endangers or could endanger a patient;

12 (10) unprofessional conduct in the practice of nursing
13 that is likely to deceive, defraud, or injure a patient or the
14 public;

15 (11) adjudication of mental incompetency;

16 (12) lack of fitness to practice because of a mental or
17 physical health condition that could result in injury to a patient
18 or the public; ~~or~~

19 (13) performing or delegating to another individual
20 the performance of a pelvic examination on an anesthetized or
21 unconscious patient in violation of Section 167A.002, Health and
22 Safety Code; or

23 (14) failure to care adequately for a patient or to
24 conform to the minimum standards of acceptable nursing practice in
25 a manner that, in the board's opinion, exposes a patient or other
26 person unnecessarily to risk of harm.

27 SECTION 4. The changes in law made by this Act apply only to

1 a pelvic examination performed on or after the effective date of
2 this Act. A pelvic examination performed before the effective date
3 of this Act is governed by the law in effect when the pelvic
4 examination occurred, and the former law is continued in effect for
5 that purpose.

6 SECTION 5. This Act takes effect September 1, 2021.