

By: Krause

H.B. No. 3302

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of abortion procedures; providing penalties.

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

SECTION 1. Section 33.001, Family Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (3-a), (3-b), (4-a), (4-b), (4-c), and (4-d) to read as follows:

(1) "Abortion" has the meaning assigned by Section 171.002, Health and Safety Code ~~[means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant, with the intention that the termination of the pregnancy by those means will with reasonable likelihood cause the death of the fetus. This definition, as applied in this chapter, applies only to an unemancipated minor known by the attending physician to be pregnant and may not be construed to limit a minor's access to contraceptives].~~

(2) "Attempt to perform an abortion" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in this state. ~~["Fetus" means an individual human organism from fertilization until birth.]~~

(3-a) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a

pregnancy that, in reasonable medical judgment, places the pregnant woman in danger of death or at serious risk of substantial impairment of a major bodily function unless the abortion is performed immediately. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(3-b) "Perform" with respect to an abortion includes to induce the abortion.

(4-a) "Positive proof of age" means a government-issued document, including a birth certificate or driver's license or similar state-issued or federal government-issued identification card, that indicates a person's age.

(4-b) "Positive proof of identification" means a government-issued photo identification card, including a driver's license or similar state-issued or federal government-issued identification card, that a reasonable person would believe is the identification card of the person presenting the card.

(4-c) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about a patient's case and the treatment possibilities for the patient related to the medical conditions related to the case.

(4-d) "Unborn child" means an individual human organism from fertilization until live birth.

SECTION 2. Chapter 33, Family Code, is amended by adding Section 33.0011 to read as follows:

Sec. 33.0011. POSITIVE PROOF OF AGE. (a) Except in the case of a medical emergency or as provided by this chapter, a physician may not perform or attempt to perform an abortion on any pregnant woman unless the physician has obtained:

(1) positive proof of age demonstrating that the pregnant woman is not a minor; or

(2) a certified copy of the court order proving that the pregnant woman is an emancipated minor.

(b) A copy of the positive proof of age submitted under Subsection (a) must be kept in the woman's medical record until the later of:

(1) the woman's 25th birthday; or

(2) the seventh anniversary of the date of the certification.

SECTION 3. Section 33.002, Family Code, is amended by amending Subsections (a), (d), (e), and (g) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (g-1) to read as follows:

(a) Subject to Sections 33.003 and 33.004, a [A] physician may not perform an abortion or attempt to perform an abortion on a pregnant unemancipated minor unless written consent of the minor's parent, managing conservator, or legal guardian is obtained under Section 164.052(a)(19), Occupations Code, and:

(1) a parent of the minor or the managing conservator or guardian of the minor provides, in person, positive proof of identification and the certified statement described by Section

1 33.0021(a) to the physician who is to perform the abortion;

2 (2) 48 hours have elapsed since the time written  
3 notice of the pending abortion was personally delivered by the  
4 physician who is to perform or attempt to perform the abortion, or  
5 an agent of the physician, to the usual place of residence of a  
6 parent of the minor or the managing conservator or guardian of the  
7 minor and the parent, managing conservator, or guardian provided  
8 positive proof of identification to the delivering physician or  
9 agent;

10 (3) 48 hours have elapsed since the attending  
11 physician who is to perform the abortion sent a written notice of  
12 the physician's intent to perform an abortion on a pregnant  
13 unemancipated minor to the last known address of the minor's  
14 parent, managing conservator, or guardian by certified mail,  
15 restricted delivery, return receipt requested ~~[the physician~~  
16 ~~performing the abortion gives at least 48 hours actual notice, in~~  
17 ~~person or by telephone, of the physician's intent to perform the~~  
18 ~~abortion to:~~

19 ~~[(A) a parent of the minor, if the minor has no~~  
20 ~~managing conservator or guardian; or~~

21 ~~[(B) a court-appointed managing conservator or~~  
22 ~~guardian;~~

23 ~~[(2) the judge of a court having probate jurisdiction,~~  
24 ~~the judge of a county court at law, the judge of a district court,~~  
25 ~~including a family district court, or a court of appellate~~  
26 ~~jurisdiction issues an order authorizing the minor to consent to~~  
27 ~~the abortion as provided by Section 33.003 or 33.004;~~

1           ~~[(3) a probate court, county court at law, district~~  
2 ~~court, including a family district court, or court of appeals, by~~  
3 ~~its inaction, constructively authorizes the minor to consent to the~~  
4 ~~abortion as provided by Section 33.003 or 33.004]; or~~

5           (4) the physician who is to perform ~~[performing]~~ the  
6 abortion:

7           (A) concludes that a medical emergency exists as  
8 described by Section 33.001(3-a) ~~[on the basis of the physician's~~  
9 ~~good faith clinical judgment, a condition exists that complicates~~  
10 ~~the medical condition of the pregnant minor and necessitates the~~  
11 ~~immediate abortion of her pregnancy to avert her death or to avoid a~~  
12 ~~serious risk of substantial and irreversible impairment of a major~~  
13 ~~bodily function]; [and]~~

14           (B) certifies in writing to the ~~[Texas]~~  
15 Department of State Health Services and in the patient's medical  
16 record the medical indications supporting the physician's judgment  
17 that a medical emergency exists as required by Subsection (e) and  
18 Section 33.0022(c); and

19           (C) provides the notice required under Section  
20 33.0022 ~~[the circumstances described by Paragraph (A) exist].~~

21           (a-1) A physician, an agent of the physician, the facility,  
22 or any agent of or person at the facility may not accept any form of  
23 payment, deposit, or exchange during a minor's initial visit to the  
24 physician's office or facility to provide the positive proof of  
25 identification and certified statement required under Subsection  
26 (a)(1).

27           (a-2) The physician who performs the abortion on the minor

1 must certify in writing that the notice required by Subsection  
2 (a)(2) was delivered to the parent of the minor or the managing  
3 conservator or guardian of the minor. The written certification  
4 must be kept in the minor's medical record for the period specified  
5 by Subsection (a-4).

6 (a-3) A physician may rely on the last known address  
7 information described by Subsection (a)(3) if a reasonable and  
8 prudent person, under similar circumstances, would rely on the  
9 information as sufficient evidence that the parent, managing  
10 conservator, or guardian resides at that address. The physician  
11 must keep for the period specified by Subsection (a-4) in the  
12 minor's medical record:

13 (1) the return receipt from the written notice; or  
14 (2) if the notice was returned as undeliverable, the  
15 notice.

16 (a-4) The documentation required under Subsections (a-2)  
17 and (a-3) must be kept in the minor's medical record until the later  
18 of:

19 (1) the minor's 25th birthday; or  
20 (2) the seventh anniversary of the date of the  
21 certification.

22 (d) A physician shall ~~[may]~~ execute for inclusion in the  
23 minor's medical record an affidavit stating that, according to the  
24 best information and belief of the physician, notice ~~[or~~  
25 ~~constructive notice]~~ has been provided as required by this section.  
26 ~~[Execution of an affidavit under this subsection creates a~~  
27 ~~presumption that the requirements of this section have been~~

1 ~~satisfied.]~~

2 (e) The [~~Texas~~] Department of State Health Services shall  
3 prepare a form to be used for making the certification required by  
4 Subsection (a)(4)(B) [~~(a)(4)~~]. The form must include:

5 (1) the following statement: "Under penalty of perjury  
6 as defined by Section 37.02, Penal Code, I, (insert name of  
7 physician performing abortion due to medical emergency), swear that  
8 a medical emergency as defined by Section 33.001(3-a), Family Code,  
9 existed at the time the unemancipated minor presented for an  
10 abortion.";

11 (2) a section for an explanation of the specific  
12 life-threatening physical condition of the minor that necessitated  
13 the immediate abortion; and

14 (3) a section for the physician who is to perform the  
15 abortion to indicate whether the medical emergency that  
16 necessitated the abortion placed the pregnant minor:

17 (A) in danger of imminent death; or

18 (B) at serious risk of substantial impairment of  
19 a major bodily function.

20 (g) A physician who with criminal negligence  
21 [~~intentionally~~] performs or attempts to perform an abortion on a  
22 pregnant unemancipated minor in violation of this section commits  
23 an offense. An offense under this subsection is punishable by a  
24 fine not to exceed \$10,000. In this subsection, "criminal  
25 negligence" [~~"intentionally"~~] has the meaning assigned by Section  
26 6.03(d) [~~6.03(a)~~], Penal Code.

27 (g-1) A physician performing an abortion and a pregnant

1 unemancipated minor seeking an abortion under this section are  
2 subject to the requirements established under Chapter 171, Health  
3 and Safety Code. The physician is also subject to the requirements  
4 under Section 164.052(a)(19), Occupations Code.

5 SECTION 4. Chapter 33, Family Code, is amended by adding  
6 Sections 33.0021 and 33.0022 to read as follows:

7 Sec. 33.0021. CERTIFIED STATEMENT; REQUIRED RECORDS. (a)  
8 The certified statement required under Section 33.002(a) must be  
9 signed and dated and be substantially similar to the following: "I  
10 certify that I, (insert name), am the parent, managing conservator,  
11 or guardian of (insert name of pregnant minor) and have been  
12 notified that (insert name of physician) intends to perform an  
13 abortion on (insert name of pregnant minor). I understand that any  
14 person who with criminal negligence makes a fraudulent statement in  
15 this regard commits a felony."

16 (b) The physician who receives the certified statement of  
17 the parent, managing conservator, or guardian required under  
18 Section 33.002(a) shall execute an affidavit for inclusion in the  
19 medical record of the minor stating: "I, (insert name of  
20 physician), certify that according to my best information and  
21 belief, a reasonable person under similar circumstances would rely  
22 on the positive proof of identification presented by both the minor  
23 and her parent, managing conservator, or guardian as belonging to  
24 the person represented on the identification and as sufficient  
25 evidence of the person's identity."

26 (c) A physician shall keep in the medical record of the  
27 minor a copy of the positive proof of identification of the parent,



1 managing conservator, or guardian required under Section  
2 33.002(a), the certified statement required under Section  
3 33.002(a), and the affidavit required under Subsection (b) until  
4 the later of:

5 (1) the minor's 25th birthday; or

6 (2) the seventh anniversary of the date of the  
7 certified statement.

8 (d) A person commits an offense if the person with criminal  
9 negligence makes a fraudulent statement in a certified statement  
10 under Subsection (a). An offense under this section is a state jail  
11 felony. If conduct constituting an offense under this subsection is  
12 also an offense under Section 37.10, Penal Code, the actor may be  
13 prosecuted under either provision or both provisions.

14 Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION. (a) If the  
15 attending physician concludes under Section 33.002(a)(4) that a  
16 medical emergency exists and that there is insufficient time to  
17 provide the notice required by Section 33.002, the physician shall  
18 verbally inform the parent, managing conservator, or guardian of  
19 the unemancipated minor within two hours after the time a medical  
20 emergency abortion is performed on the minor of:

21 (1) the performance of the abortion; and

22 (2) the basis for the physician's determination that a  
23 medical emergency existed, as defined by Section 33.001(3-a), that  
24 required the performance of a medical emergency abortion without  
25 fulfilling the requirements of Section 33.002.

26 (b) The attending physician shall send a written notice of  
27 the medical emergency abortion to the last known address of the

parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested. The physician may rely on last known address information if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician must keep for the period specified by Section 33.0021(c) in the minor's medical record:

(1) the return receipt from the written notice; or  
(2) if the notice was returned as undeliverable, the notice.

(c) The physician who performs the abortion on the minor shall execute for inclusion in the medical record of the minor an affidavit that:

(1) includes the following statement: "I, (insert name of physician), certify that a life-threatening physical condition aggravated by, caused by, or arising from the minor's pregnancy placed the minor in danger of death or at serious risk of substantial impairment of a major bodily function unless the abortion was performed.";

(2) explains the specific life-threatening condition of the minor that necessitated the immediate abortion; and

(3) indicates whether the medical emergency that necessitated the abortion placed the pregnant minor:

(A) in danger of imminent death; or

(B) at serious risk of substantial impairment of a major bodily function.

SECTION 5. Sections 33.003(a), (b), (c), (e), (f), (h), (i), and (j), Family Code, are amended to read as follows:

(a) A pregnant minor ~~[who wishes to have an abortion without notification to one of her parents, her managing conservator, or her guardian]~~ may file an application for a court order authorizing the minor to consent to the performance of an abortion without the consent of or notification to either of her parents or a managing conservator or guardian.

(b) If the minor resides in a county with a population of less than 50,000, the ~~[The]~~ application must ~~[may]~~ be filed in a ~~[any]~~ county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides or an adjacent county ~~[this state]~~. If the minor resides in a county with a population of 50,000 or more, the application must be filed in a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the minor resides.

(c) The application must be made under oath and include:

(1) a statement that the minor is pregnant;

(2) a statement that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31;

(3) a statement that the minor wishes to have an abortion without the notification or consent of either of her parents or a managing conservator or guardian; ~~[and]~~

(4) a statement as to whether the minor has retained an attorney and, if she has retained an attorney, the name, address,

1 and telephone number of her attorney; and

2 (5) a statement about the minor's current residence,  
3 including the minor's physical address, mailing address, and  
4 telephone number.

5 (e) The court shall appoint a guardian ad litem for the  
6 minor. If the minor has not retained an attorney, the court shall  
7 appoint an attorney to represent the minor. The ~~[If the]~~ guardian  
8 ad litem may not also ~~[is an attorney admitted to the practice of~~  
9 ~~law in this state, the court may appoint the guardian ad litem to]~~  
10 serve as the minor's attorney ad litem.

11 (f) The court may appoint to serve as guardian ad litem:

12 (1) a person who may consent to treatment for the minor  
13 under Sections 32.001(a)(1)-(3); or

14 (2) ~~[a psychiatrist or an individual licensed or~~  
15 ~~certified as a psychologist under Chapter 501, Occupations Code,~~

16 ~~[(3)]~~ an appropriate employee of the Department of  
17 Family and Protective Services~~+~~

18 ~~[(4) a member of the clergy, or~~

19 ~~[(5) another appropriate person selected by the~~  
20 ~~court]~~.

21 (h) The court shall rule on an application submitted under  
22 this section and shall issue written findings of fact and  
23 conclusions of law not later than 5 p.m. on the second business day  
24 after the date the application is filed with the court. On request  
25 by the minor, the court shall grant an extension of the period  
26 specified by this subsection. If a request for an extension is  
27 made, the court shall rule on an application and shall issue written

findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing. ~~[If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002.]~~ Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(i) The court shall determine by clear and convincing ~~[a preponderance of the]~~ evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without the consent of or notification to either of her parents or a managing conservator or guardian or ~~[ ]~~ whether consent or notification would not be in the best interest of the minor. The court shall determine by a preponderance of the evidence ~~[ ]~~ whether consent or notification may lead to physical or ~~[ ]~~ sexual ~~[ ] or emotional~~ abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that consent or notification would not be in the minor's best interest, or that consent or notification may lead to physical or ~~[ ]~~ sexual ~~[ ] or emotional~~ abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without the consent of or notification to either of her parents or a managing conservator or guardian and shall execute the required

1 forms.

2 (j) If the court finds that the minor does not meet the  
3 requirements of Subsection (i), the court may not authorize the  
4 minor to consent to an abortion without the consent required under  
5 Section 164.052(a)(19), Occupations Code, or notification  
6 authorized under Section 33.002(a)(1).

7 SECTION 6. Sections 33.004(b) and (f), Family Code, are  
8 amended to read as follows:

9 (b) The court of appeals shall rule on an appeal under this  
10 section not later than 5 p.m. on the second business day after the  
11 date the notice of appeal is filed with the court that denied the  
12 application. On request by the minor, the court shall grant an  
13 extension of the period specified by this subsection. If a request  
14 for an extension is made, the court shall rule on the appeal not  
15 later than 5 p.m. on the second business day after the date the  
16 minor states she is ready to proceed. ~~[If the court of appeals~~  
17 ~~fails to rule on the appeal within the period specified by this~~  
18 ~~subsection, the appeal is deemed to be granted and the physician may~~  
19 ~~perform the abortion as if the court had issued an order authorizing~~  
20 ~~the minor to consent to the performance of the abortion without~~  
21 ~~notification under Section 33.002.]~~ Proceedings under this section  
22 shall be given precedence over other pending matters to the extent  
23 necessary to assure that the court reaches a decision promptly.

24 (f) An expedited confidential appeal shall be available to  
25 any pregnant minor to whom a court of appeals denies an order  
26 authorizing the minor to consent to the performance of an abortion  
27 without the consent of or notification to either of her parents or a

1 managing conservator or guardian.

2 SECTION 7. Section 33.007, Family Code, is amended to read  
3 as follows:

4 Sec. 33.007. COSTS NOT PAID BY STATE. ~~[(a)]~~ A court acting  
5 under Section 33.003 or 33.004 may not issue an order requiring the  
6 state to pay:

7 (1) the cost of any attorney ad litem and any guardian  
8 ad litem appointed for the minor;

9 (2) notwithstanding Sections 33.003(n) and 33.004(e),  
10 the costs of court associated with the application or appeal; or  
11 ~~[and]~~

12 (3) any court reporter's fees incurred.

13 ~~[(b) An order issued under Subsection (a) must be directed~~  
14 ~~to the comptroller, who shall pay the amount ordered from funds~~  
15 ~~appropriated to the Texas Department of Health.]~~

16 SECTION 8. Section 33.008, Family Code, is amended to read  
17 as follows:

18 Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;  
19 INVESTIGATION AND ASSISTANCE. (a) If a minor claims to have been  
20 ~~[A physician who has reason to believe that a minor has been or may~~  
21 ~~be]~~ physically or sexually abused by a parent or the managing  
22 conservator or guardian of the minor, the physician or physician's  
23 agent ~~[person responsible for the minor's care, custody, or~~  
24 ~~welfare, as that term is defined by Section 261.001,]~~ shall  
25 immediately report the suspected abuse and the name of the abuser to  
26 the Department of Family and Protective Services and to a local law  
27 enforcement agency and shall refer the minor to the department for

services or intervention that may be in the best interest of the minor. The local law enforcement agency has a duty to respond and shall write a report within 12 hours of being notified of the alleged abuse. A report shall be made regardless of whether the responder knows or suspects that a report about the abuse may have previously been made.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted [appropriate], shall refer the case to the appropriate prosecuting authority ~~[assist the minor in making an application with a court under Section 33.003]~~.

(c) When the local law enforcement agency responds to the report of physical or sexual abuse as required under Subsection (b), a law enforcement officer or appropriate agent from the Department of Family and Protective Services may take emergency possession of the minor without a court order to protect the health and safety of the minor as described in Chapter 262.

SECTION 9. Section 33.010, Family Code, is amended to read as follows:

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other law, information obtained by the Department of Family and Protective Services or another entity under Section 33.008 ~~[or 33.009]~~ is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

SECTION 10. Chapter 33, Family Code, is amended by adding Sections 33.012 and 33.013 to read as follows:



1       Sec. 33.012. INJUNCTION; CIVIL LIABILITY. (a) A cause of  
2 action for injunctive relief may be brought against a person who  
3 intentionally, knowingly, recklessly, or negligently violates  
4 Section 33.0011, 33.002, or 33.008 to prevent the violation from  
5 continuing or occurring. The action may be maintained by:

6               (1) the minor on whom an abortion was performed or on  
7 whom the performance of an abortion was attempted;

8               (2) a parent or the managing conservator or guardian  
9 of the minor;

10              (3) a district attorney with appropriate  
11 jurisdiction; or

12              (4) the attorney general.

13       (b) A physician or abortion provider who intentionally,  
14 knowingly, recklessly, or negligently violates this chapter is  
15 liable for damages in a civil action brought under this section. A  
16 minor on whom an abortion has been performed or on whom the  
17 performance of an abortion has been attempted in violation of this  
18 chapter, or a parent or the managing conservator or guardian of an  
19 unemancipated minor, may seek actual and exemplary damages from the  
20 physician or abortion provider for any intentional, knowing,  
21 reckless, or negligent violation of this chapter.

22       (c) A person who intentionally, knowingly, recklessly, or  
23 negligently violates the terms of an injunction issued in  
24 accordance with this section is liable to this state for a civil  
25 penalty of:

26              (1) \$10,000 for the first violation;

27              (2) \$50,000 for the second violation;

1           (3) \$100,000 for the third violation; and

2           (4) an amount greater than \$100,000 that is sufficient  
3 to deter future violations for each succeeding violation.

4           (d) Each performance or attempted performance of an  
5 abortion in violation of the terms of an injunction is a separate  
6 violation.

7           (e) A civil penalty may not be assessed against a minor on  
8 whom an abortion is performed or attempted.

9           (f) A physician who is found guilty of a violation of this  
10 chapter by a court or who loses the physician's license to practice  
11 medicine for unprofessional conduct described by Section  
12 164.052(a)(19) or (20), Occupations Code, is liable for the legal  
13 fees of the minor or the person suing on the minor's behalf.

14           (g) It is not a defense to a claim brought under this section  
15 that the minor gave informed and voluntary consent.

16           Sec. 33.013. CAPACITY TO CONSENT. An unemancipated minor  
17 does not have the capacity to consent to any action that violates  
18 this chapter.

19           SECTION 11. Subchapter A, Chapter 22, Government Code, is  
20 amended by adding Section 22.018 to read as follows:

21           Sec. 22.018. PUBLIC INFORMATION REGARDING CERTAIN  
22 PETITIONS AND MOTIONS. (a) The supreme court shall adopt rules  
23 governing the collection of statistical information relating to  
24 applications and appeals granted under Sections 33.003(h) and  
25 33.004(b), Family Code. The information collected by the supreme  
26 court must include:

27           (1) the number of judicial bypass cases;

1           (2) the number of judicial bypass cases in which the  
2 court appointed a guardian ad litem;

3           (3) the number of judicial bypass cases in which the  
4 court appointed an attorney;

5           (4) the number of judicial bypass cases in which the  
6 judge issued an order authorizing an abortion without consent or  
7 notification; and

8           (5) the number of judicial bypass cases in which the  
9 judge denied an order, the number of appeals filed as a result of a  
10 denial, the number of denials that were affirmed, and the number of  
11 denials that were reversed.

12           (b) The information collected under this section must be  
13 available to the public in aggregate form by county.

14           (c) Identifying information about a minor collected under  
15 this section is confidential and is not subject to disclosure under  
16 Chapter 552.

17           SECTION 12. Section 164.052(a), Occupations Code, is  
18 amended to read as follows:

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

21               (1) submits to the board a false or misleading  
22 statement, document, or certificate in an application for a  
23 license;

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

26               (3) commits fraud or deception in taking or passing an  
27 examination;

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

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

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

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

11           (8) purchases, sells, barters, or uses, or offers to  
12 purchase, sell, barter, or use, a medical degree, license,  
13 certificate, or diploma, or a transcript of a license, certificate,  
14 or diploma in or incident to an application to the board for a  
15 license to practice medicine;

16           (9) alters, with fraudulent intent, a medical license,  
17 certificate, or diploma, or a transcript of a medical license,  
18 certificate, or diploma;

19           (10) uses a medical license, certificate, or diploma,  
20 or a transcript of a medical license, certificate, or diploma that  
21 has been:

22                   (A) fraudulently purchased or issued;

23                   (B) counterfeited; or

24                   (C) materially altered;

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

27           (12) engages in conduct that subverts or attempts to

1 subvert an examination process required by this subtitle for a  
2 medical license;

3 (13) impersonates a physician or permits another to  
4 use the person's license or certificate to practice medicine in  
5 this state;

6 (14) directly or indirectly employs a person whose  
7 license to practice medicine has been suspended, canceled, or  
8 revoked;

9 (15) associates in the practice of medicine with a  
10 person:

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

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

15 (16) performs or procures a criminal abortion, aids or  
16 abets in the procuring of a criminal abortion, attempts to perform  
17 or procure a criminal abortion, or attempts to aid or abet the  
18 performance or procurement of a criminal abortion;

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

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

25 (A) the abortion is necessary to prevent the  
26 death of the woman;

27 (B) the viable unborn child has a severe,

1 irreversible brain impairment; or

2 (C) the woman is diagnosed with a significant  
3 likelihood of suffering imminent severe, irreversible brain damage  
4 or imminent severe, irreversible paralysis; ~~[or]~~

5 (19) performs an abortion on an unemancipated minor  
6 without the written consent of the child's parent, managing  
7 conservator, or legal guardian or without a court order, as  
8 provided by Section 33.003 or 33.004, Family Code; or

9 (20) otherwise performs an abortion on an  
10 unemancipated minor in violation of Chapter 33, Family Code [  
11 ~~authorizing the minor to consent to the abortion, unless the~~  
12 ~~physician concludes that on the basis of the physician's good faith~~  
13 ~~clinical judgment, a condition exists that complicates the medical~~  
14 ~~condition of the pregnant minor and necessitates the immediate~~  
15 ~~abortion of her pregnancy to avert her death or to avoid a serious~~  
16 ~~risk of substantial impairment of a major bodily function and that~~  
17 ~~there is insufficient time to obtain the consent of the child's~~  
18 ~~parent, managing conservator, or legal guardian].~~

19 SECTION 13. Section 164.055(b), Occupations Code, is  
20 amended to read as follows:

21 (b) The sanctions provided by Subsection (a) are in addition  
22 to any other grounds for refusal to admit persons to examination  
23 under this subtitle or to issue a license or renew a license to  
24 practice medicine under this subtitle. ~~[The criminal penalties~~  
25 ~~provided by Section 165.152 do not apply to a violation of Section~~  
26 ~~170.002, Health and Safety Code.]~~

27 SECTION 14. The following provisions of the Family Code are

1 repealed:

- 2 (1) Sections 33.002(b), (c), (f), (h), and (i);
- 3 (2) Section 33.003(k);
- 4 (3) Section 33.004(c); and
- 5 (4) Section 33.009.

6 SECTION 15. If any court enjoins, suspends, or delays the  
7 implementation of the changes in law made by this Act to Chapter 33,  
8 Family Code, and Section 164.052, Occupations Code, the former law,  
9 as the law existed immediately before the effective date of this  
10 Act, becomes or remains in effect and continues in effect. At the  
11 time a temporary or permanent restraining order or injunction  
12 described by this section is stayed or dissolved, or otherwise  
13 ceases to have effect, the changes in law made by this Act become  
14 immediately effective.

15 SECTION 16. If any provision of this Act or its application  
16 to any person or circumstance is finally held to be  
17 unconstitutional, the entire Act is invalid, and to this end the  
18 provisions of this Act are declared to be nonseverable.

19 SECTION 17. The changes in law made by this Act apply only  
20 to an offense committed or conduct that occurs on or after the  
21 effective date of this Act. An offense committed or conduct that  
22 occurs before the effective date of this Act is governed by the law  
23 in effect when the offense was committed or the conduct occurred,  
24 and the former law is continued in effect for that purpose. For  
25 purposes of this section, an offense is committed or conduct occurs  
26 before the effective date of this Act if any element of the offense  
27 or conduct occurs before the effective date.

1           SECTION 18. Information obtained before the effective date  
2 of this Act by the Department of Family and Protective Services or  
3 another entity under Section 33.009, Family Code, as it existed  
4 before the effective date of this Act, remains confidential to the  
5 extent provided by Section 33.010, Family Code, as it existed  
6 before the effective date of this Act.

7           SECTION 19. This Act takes effect immediately if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section 39, Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for immediate  
11 effect, this Act takes effect September 1, 2013.