

1 AN ACT

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

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

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

7 CHAPTER 167A. PELVIC EXAMINATIONS

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

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

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

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

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

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

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

24 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.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1434 was passed by the House on April 28, 2021, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1434 was passed by the Senate on May 19, 2021, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor