

By: Oliverson

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) "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.

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

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

(2) the patient or the patient's legally authorized representative gives informed consent for the pelvic examination as

1 provided by Subsection (b);

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

4 (4) a court orders the pelvic examination to be  
5 performed on the patient for the purpose of collecting evidence.

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

9 (1) provide the patient or the patient's legally  
10 authorized representative with a written or electronic informed  
11 consent form that:

12 (A) is provided separately from any other notice  
13 or agreement;

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

17 (C) specifies the nature and purpose of the  
18 pelvic examination;

19 (D) informs the patient or the patient's legally  
20 authorized representative that a medical student or resident may be  
21 present if the patient or the patient's legally authorized  
22 representative authorizes the student or resident to:

23 (i) perform the pelvic examination; or

24 (ii) observe or otherwise be present at the  
25 pelvic examination, either in person or through electronic means;

26 (E) allows the patient or the patient's legally  
27 authorized representative the opportunity to consent to or refuse

1 to consent to the pelvic examination; and

2 (F) allows a patient or a patient's legally  
3 authorized representative that consents to a pelvic examination  
4 under Paragraph (E) the opportunity to authorize:

5 (i) a medical student or resident to  
6 perform the pelvic examination; or

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

10 (2) obtain the signature of the patient or the  
11 patient's legally authorized representative on the informed  
12 consent form; and

13 (3) sign the informed consent form.

14 Sec. 167A.003. DISCIPLINARY ACTION. The appropriate  
15 licensing authority may take disciplinary action against a health  
16 care practitioner who violates Section 167A.002, including  
17 imposing an administrative penalty, as if the practitioner violated  
18 an applicable licensing law.

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

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

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

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

1           (3) commits fraud or deception in taking or passing an  
2 examination;

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

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

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

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

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

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

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

24                   (A) fraudulently purchased or issued;

25                   (B) counterfeited; or

26                   (C) materially altered;

27          (11) impersonates or acts as proxy for another person

1 in an examination required by this subtitle for a medical license;

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

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

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

11 (15) associates in the practice of medicine with a  
12 person:

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

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

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

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

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

27 (A) the abortion is necessary to prevent the

1 death of the woman;

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

4 (C) the woman is diagnosed with a significant  
5 likelihood of suffering imminent severe, irreversible brain damage  
6 or imminent severe, irreversible paralysis;

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

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

15 (21) performs or induces or attempts to perform or  
16 induce an abortion in violation of Subchapter C, F, or G, Chapter  
17 171, Health and Safety Code; [~~or~~]

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

22 (23) performs or delegates to another individual to  
23 perform a pelvic examination on an anesthetized or unconscious  
24 patient in violation of Section 167A.002, Health and Safety Code.

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

27 (b) A person is subject to denial of a license or to

1 disciplinary action under this subchapter for:

2 (1) a violation of this chapter, a rule or regulation  
3 not inconsistent with this chapter, or an order issued under this  
4 chapter;

5 (2) fraud or deceit in procuring or attempting to  
6 procure a license to practice professional nursing or vocational  
7 nursing;

8 (3) a conviction for, or placement on deferred  
9 adjudication community supervision or deferred disposition for, a  
10 felony or for a misdemeanor involving moral turpitude;

11 (4) conduct that results in the revocation of  
12 probation imposed because of conviction for a felony or for a  
13 misdemeanor involving moral turpitude;

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

17 (6) impersonating or acting as a proxy for another  
18 person in the licensing examination required under Section [301.253](#)  
19 or [301.255](#);

20 (7) directly or indirectly aiding or abetting an  
21 unlicensed person in connection with the unauthorized practice of  
22 nursing;

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

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

1           (10) unprofessional conduct in the practice of nursing  
2 that is likely to deceive, defraud, or injure a patient or the  
3 public;

4           (11) adjudication of mental incompetency;

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

8           (13) performing or delegating to another individual to  
9 perform a pelvic examination on an anesthetized or unconscious  
10 patient in violation of Section 167A.002, Health and Safety Code;  
11 or

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

16           SECTION 4. The changes in law made by this Act apply only to  
17 a pelvic examination performed on or after the effective date of  
18 this Act. A pelvic examination performed before the effective date  
19 of this Act is governed by the law in effect when the pelvic  
20 examination occurred, and the former law is continued in effect for  
21 that purpose.

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