

1-1 By: Oliverson, et al. (Senate Sponsor - Zaffirini) H.B. No. 1434
1-2 (In the Senate - Received from the House April 28, 2021;
1-3 May 4, 2021, read first time and referred to Committee on Health &
1-4 Human Services; May 14, 2021, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; May 14, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>X</u>			
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to limitations on pelvic examinations; authorizing
1-20 disciplinary action, including an administrative penalty.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
1-23 amended by adding Chapter 167A to read as follows:

1-24 CHAPTER 167A. PELVIC EXAMINATIONS

1-25 Sec. 167A.001. DEFINITIONS. In this chapter:

1-26 (1) "Health care practitioner" means a physician,
1-27 physician assistant, or advanced practice registered nurse
1-28 licensed to practice in this state.

1-29 (2) "Patient's legally authorized representative"
1-30 means:

1-31 (A) a parent, managing conservator, or guardian
1-32 of a patient, if the patient is a minor;

1-33 (B) a guardian of the patient, if the patient has
1-34 been adjudicated incompetent to manage the patient's personal
1-35 affairs; or

1-36 (C) an agent of the patient authorized under a
1-37 durable power of attorney for health care.

1-38 (3) "Pelvic examination" means a physical examination
1-39 by a health care practitioner of a patient's external and internal
1-40 reproductive organs, genitalia, or rectum.

1-41 Sec. 167A.002. LIMITATIONS ON CERTAIN PELVIC EXAMINATIONS.

1-42 (a) A health care practitioner may not perform or delegate to
1-43 another individual, including a student training to become a health
1-44 care practitioner, the performance of a pelvic examination on an
1-45 anesthetized or unconscious patient unless:

1-46 (1) the pelvic examination is within the standard
1-47 scope of a procedure or diagnostic examination scheduled to be
1-48 performed on the patient;

1-49 (2) the patient or the patient's legally authorized
1-50 representative gives informed consent for the pelvic examination as
1-51 provided by Subsection (b);

1-52 (3) the pelvic examination is necessary for diagnosis
1-53 or treatment of the patient's medical condition; or

1-54 (4) the pelvic examination is for the purpose of
1-55 collecting evidence.

1-56 (b) To obtain informed consent to perform a pelvic
1-57 examination on an unconscious or anesthetized patient, a health
1-58 care practitioner must:

1-59 (1) provide the patient or the patient's legally
1-60 authorized representative with a written or electronic informed
1-61 consent form that:

2-1 (A) may be included as a distinct or separate
 2-2 section of a general informed consent form;
 2-3 (B) contains the following heading at the top of
 2-4 the form in at least 18-point boldface type: "CONSENT FOR
 2-5 EXAMINATION OF PELVIC REGION";
 2-6 (C) specifies the nature and purpose of the
 2-7 pelvic examination;
 2-8 (D) informs the patient or the patient's legally
 2-9 authorized representative that a medical student or resident may be
 2-10 present if the patient or the patient's legally authorized
 2-11 representative authorizes the student or resident to:
 2-12 (i) perform the pelvic examination; or
 2-13 (ii) observe or otherwise be present at the
 2-14 pelvic examination, either in person or through electronic means;
 2-15 (E) allows the patient or the patient's legally
 2-16 authorized representative the opportunity to consent to or refuse
 2-17 to consent to the pelvic examination; and
 2-18 (F) allows a patient or a patient's legally
 2-19 authorized representative that consents to a pelvic examination
 2-20 under Paragraph (E) the opportunity to authorize or refuse to
 2-21 authorize:
 2-22 (i) a medical student or resident to
 2-23 perform the pelvic examination; or
 2-24 (ii) a medical student or resident to
 2-25 observe or otherwise be present at the pelvic examination, either
 2-26 in person or through electronic means;
 2-27 (2) obtain the signature of the patient or the
 2-28 patient's legally authorized representative on the informed
 2-29 consent form; and
 2-30 (3) sign the informed consent form.
 2-31 Sec. 167A.003. DISCIPLINARY ACTION. The appropriate
 2-32 licensing authority may take disciplinary action against a health
 2-33 care practitioner who violates Section 167A.002, including
 2-34 imposing an administrative penalty, as if the practitioner violated
 2-35 an applicable licensing law.
 2-36 SECTION 2. Section 164.052(a), Occupations Code, is amended
 2-37 to read as follows:
 2-38 (a) A physician or an applicant for a license to practice
 2-39 medicine commits a prohibited practice if that person:
 2-40 (1) submits to the board a false or misleading
 2-41 statement, document, or certificate in an application for a
 2-42 license;
 2-43 (2) presents to the board a license, certificate, or
 2-44 diploma that was illegally or fraudulently obtained;
 2-45 (3) commits fraud or deception in taking or passing an
 2-46 examination;
 2-47 (4) uses alcohol or drugs in an intemperate manner
 2-48 that, in the board's opinion, could endanger a patient's life;
 2-49 (5) commits unprofessional or dishonorable conduct
 2-50 that is likely to deceive or defraud the public, as provided by
 2-51 Section 164.053, or injure the public;
 2-52 (6) uses an advertising statement that is false,
 2-53 misleading, or deceptive;
 2-54 (7) advertises professional superiority or the
 2-55 performance of professional service in a superior manner if that
 2-56 advertising is not readily subject to verification;
 2-57 (8) purchases, sells, barter, or uses, or offers to
 2-58 purchase, sell, barter, or use, a medical degree, license,
 2-59 certificate, or diploma, or a transcript of a license, certificate,
 2-60 or diploma in or incident to an application to the board for a
 2-61 license to practice medicine;
 2-62 (9) alters, with fraudulent intent, a medical license,
 2-63 certificate, or diploma, or a transcript of a medical license,
 2-64 certificate, or diploma;
 2-65 (10) uses a medical license, certificate, or diploma,
 2-66 or a transcript of a medical license, certificate, or diploma that
 2-67 has been:
 2-68 (A) fraudulently purchased or issued;
 2-69 (B) counterfeited; or

3-1 (C) materially altered;

3-2 (11) impersonates or acts as proxy for another person

3-3 in an examination required by this subtitle for a medical license;

3-4 (12) engages in conduct that subverts or attempts to

3-5 subvert an examination process required by this subtitle for a

3-6 medical license;

3-7 (13) impersonates a physician or permits another to

3-8 use the person's license or certificate to practice medicine in

3-9 this state;

3-10 (14) directly or indirectly employs a person whose

3-11 license to practice medicine has been suspended, canceled, or

3-12 revoked;

3-13 (15) associates in the practice of medicine with a

3-14 person:

3-15 (A) whose license to practice medicine has been

3-16 suspended, canceled, or revoked; or

3-17 (B) who has been convicted of the unlawful

3-18 practice of medicine in this state or elsewhere;

3-19 (16) performs or procures a criminal abortion, aids or

3-20 abets in the procuring of a criminal abortion, attempts to perform

3-21 or procure a criminal abortion, or attempts to aid or abet the

3-22 performance or procurement of a criminal abortion;

3-23 (17) directly or indirectly aids or abets the practice

3-24 of medicine by a person, partnership, association, or corporation

3-25 that is not licensed to practice medicine by the board;

3-26 (18) performs an abortion on a woman who is pregnant

3-27 with a viable unborn child during the third trimester of the

3-28 pregnancy unless:

3-29 (A) the abortion is necessary to prevent the

3-30 death of the woman;

3-31 (B) the viable unborn child has a severe,

3-32 irreversible brain impairment; or

3-33 (C) the woman is diagnosed with a significant

3-34 likelihood of suffering imminent severe, irreversible brain damage

3-35 or imminent severe, irreversible paralysis;

3-36 (19) performs an abortion on an unemancipated minor

3-37 without the written consent of the child's parent, managing

3-38 conservator, or legal guardian or without a court order, as

3-39 provided by Section 33.003 or 33.004, Family Code, unless the

3-40 abortion is necessary due to a medical emergency, as defined by

3-41 Section 171.002, Health and Safety Code;

3-42 (20) otherwise performs an abortion on an

3-43 unemancipated minor in violation of Chapter 33, Family Code;

3-44 (21) performs or induces or attempts to perform or

3-45 induce an abortion in violation of Subchapter C, F, or G, Chapter

3-46 171, Health and Safety Code; ~~or~~

3-47 (22) in complying with the procedures outlined in

3-48 Sections 166.045 and 166.046, Health and Safety Code, wilfully

3-49 fails to make a reasonable effort to transfer a patient to a

3-50 physician who is willing to comply with a directive; or

3-51 (23) performs or delegates to another individual the

3-52 performance of a pelvic examination on an anesthetized or

3-53 unconscious patient in violation of Section 167A.002, Health and

3-54 Safety Code.

3-55 SECTION 3. Section 301.452(b), Occupations Code, is amended

3-56 to read as follows:

3-57 (b) A person is subject to denial of a license or to

3-58 disciplinary action under this subchapter for:

3-59 (1) a violation of this chapter, a rule or regulation

3-60 not inconsistent with this chapter, or an order issued under this

3-61 chapter;

3-62 (2) fraud or deceit in procuring or attempting to

3-63 procure a license to practice professional nursing or vocational

3-64 nursing;

3-65 (3) a conviction for, or placement on deferred

3-66 adjudication community supervision or deferred disposition for, a

3-67 felony or for a misdemeanor involving moral turpitude;

3-68 (4) conduct that results in the revocation of

3-69 probation imposed because of conviction for a felony or for a

4-1 misdemeanor involving moral turpitude;
4-2 (5) use of a nursing license, diploma, or permit, or
4-3 the transcript of such a document, that has been fraudulently
4-4 purchased, issued, counterfeited, or materially altered;
4-5 (6) impersonating or acting as a proxy for another
4-6 person in the licensing examination required under Section 301.253
4-7 or 301.255;
4-8 (7) directly or indirectly aiding or abetting an
4-9 unlicensed person in connection with the unauthorized practice of
4-10 nursing;
4-11 (8) revocation, suspension, or denial of, or any other
4-12 action relating to, the person's license or privilege to practice
4-13 nursing in another jurisdiction or under federal law;
4-14 (9) intemperate use of alcohol or drugs that the board
4-15 determines endangers or could endanger a patient;
4-16 (10) unprofessional conduct in the practice of nursing
4-17 that is likely to deceive, defraud, or injure a patient or the
4-18 public;
4-19 (11) adjudication of mental incompetency;
4-20 (12) lack of fitness to practice because of a mental or
4-21 physical health condition that could result in injury to a patient
4-22 or the public; [~~or~~]
4-23 (13) performing or delegating to another individual
4-24 the performance of a pelvic examination on an anesthetized or
4-25 unconscious patient in violation of Section 167A.002, Health and
4-26 Safety Code; or
4-27 (14) failure to care adequately for a patient or to
4-28 conform to the minimum standards of acceptable nursing practice in
4-29 a manner that, in the board's opinion, exposes a patient or other
4-30 person unnecessarily to risk of harm.
4-31 SECTION 4. The changes in law made by this Act apply only to
4-32 a pelvic examination performed on or after the effective date of
4-33 this Act. A pelvic examination performed before the effective date
4-34 of this Act is governed by the law in effect when the pelvic
4-35 examination occurred, and the former law is continued in effect for
4-36 that purpose.
4-37 SECTION 5. This Act takes effect September 1, 2021.

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