

## COMPLIANCE AND BEST PRACTICES FOR AN ACT RELATING TO ABORTION

**Abortion:** means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child. [63 O.S. § 1-730\(A\)\(1\)](#).

**Saving the Life of a Pregnant Woman:** A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency. [63 O.S. §1-731.4\(B\)\(1\)](#); A medical emergency is a physical disorder, physical illness, or physical injury caused by or arising from the pregnancy and abortion is necessary to save the life of the pregnant woman. [63 O.S. §1-731.4\(A\)\(2\)](#). Written notation shall be made in the pregnant woman's medical record regarding the physician's belief that a medical emergency that necessitated the abortion. [63 O.S. §1-745.35](#) (i.e. "The diagnosis of [life threatening diagnosis] is a medical emergency that threatens the life of [patient]; therefore termination of the pregnancy is required to protect the life of [patient].") In regard to a patient with an underlying medical condition for which pregnancy carries a high risk of morbidity or mortality, best practice is to: (1) strive to preserve the life of both the pregnant woman and her unborn child; (2) monitor and wait until a manifestation of a medical emergency exists before attempting an abortion, should one be deemed necessary.

**Medical Scope:** An act is not an abortion if performed to remove a dead unborn child caused by spontaneous abortion or to remove an ectopic pregnancy. [63 O.S. §1-745.51\(1\)\(b\) and \(c\)](#)

**Rape & Incest Exceptions:** Although [63 O.S. §1-745.52](#) provides exceptions for a pregnancy that is the result of rape, sexual assault or incest that has been reported to law enforcement, those exceptions only apply to civil lawsuits filed by private individuals. Oklahoma's criminal abortion laws, 21 O.S. § 861 & 63 O.S. § 1-731.4 [63 O.S. §1-731.4](#), do not contain these exceptions. Therefore, the best practice is to operate as if the only exception under Oklahoma's abortion laws is to save the life of a pregnant woman in a medical emergency.

**Contraception:** Oklahoma abortion laws do not prohibit the sale, use, prescription or administration of a contraceptive measure, drug or chemical if the contraceptive is administered before the time when a pregnancy could be determined through conventional testing and is sold, used, prescribed or administered in accordance with manufacturer instructions. [63 O.S. §1-731.4\(B\)\(3\)\(b\)](#). "Abortion" in Oklahoma does not include the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception. [63 O.S. §1-745.51\(1\)](#). In short Oklahoma abortion laws on abortion do not apply to contraceptives, in vitro fertilization (IVF), Plan B pills, or treatment of a spontaneous abortion (i.e. miscarriage) provided the spontaneous abortion was not purposefully caused.

**Medications:** There is no limitation or restriction on medications to treat autoimmune conditions or other medical conditions in non-pregnant or pregnant women.

**Unborn Child:** A human fetus or embryo in any stage of gestation from fertilization until birth. [63 O.S. §1-745.51\(4\)](#)

**Fertilization:** The fusion of a human spermatozoon with a human ovum. [63 O.S. §1-745.51\(2\)](#)

**Accidental or Unintentional Injury or Death to the Unborn Child:** It is at minimum an affirmative defense to criminal prosecution if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child. [63 O.S. §1-731.4\(B\)\(4\)](#) An affirmative defense is a defense presented to the Court that if found credible will negate civil or criminal liability. Medications such as chemotherapy, that are for the purpose of treating the mother's cancer, but may cause unintentional injury or death to the unborn child, would likely fall under this category.

**Counseling:** A person may bring a civil action against any person who knowingly engages in conduct that aids or abets the performance or inducement of abortion. [63 O.S. §1-745.39\(2\)](#). Moreover, a person may be criminally liable for "advising" a woman to take an abortion-inducing drug or for employing "other means whatever" to procure an abortion. [21 O.S. § 861](#). The Oklahoma Supreme Court has indicated (in regard to a non-abortion statute) that speech that encourages "imminent lawless action" is not protected constitutionally, but that "mere advocacy" is protected speech. *Edmonson vs. Pearce*. 2004 OK 23 ¶ 61. As such, although general advocacy regarding abortion is not affected by Oklahoma's abortion laws, best practice is to avoid counseling or directing pregnant women toward an abortion (unless the life exception applies).

**Criminal Enforcement:** Currently, a person convicted of administering, prescribing, advising, or procuring a woman to take any medicine drug or substance, or a person convicted of using or employing any instruction or "other means whatever," with the intent to procure an abortion, shall be guilty of a felony punishable by two (2) to (5) years imprisonment. From August 27, 2022, forward, a person convicted of performing or attempting to perform an abortion shall be guilty of a felony punishable by a fine not to exceed One Hundred Thousand (\$100,000.00) and/or imprisonment not to exceed ten (10) years. [63 O.S. § 1-731.4\(B\)\(2\)](#) [21 O.S. § 861](#); [63 O.S. § 1-732](#); [63 O.S. § 1-734](#).

**Civil Enforcement:** Any person may bring a civil action against any person who performs, induces or knowingly engages in conduct that aids and abets the performance of an abortion, resulting in damages not less than Ten Thousand Dollars (\$10,000). [63 O.S. §1-745.39\(A\)\(1\)-\(B\)\(2\)](#).

**Persons Potentially Liable:** These laws do not authorize the charging or conviction of a woman with any criminal offense in the death of her unborn child. [63 O.S. §1-731.4\(B\)\(3\)\(a\)](#); [63 O.S. §1-745.37\(2\)](#); [63 O.S. §1-745.39\(K\)\(1\)](#) These laws only apply to persons who perform or attempt to perform abortions or persons who engage in conduct that aids or abets the performance or inducement of an abortion.

**Disclaimer:** This Best Practices document is subject to change without notice and is made available to facilitate understanding of Oklahoma's abortion prohibitions. This is not intended to be an official interpretation or commentary on the intent of the law, nor any suggestion of how this law would be applied by citizens, district attorneys, the attorney general, or any judge. Further, these guidelines have not been approved by any medical licensing board or medical association and shall not be considered binding. Revision 08/26/2022.