

Pennsylvania

18 PA. C. S. A. § 3203 Definitions

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Abortion.” The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.

“Born alive.” When used with regard to a human being, means that the human being was completely expelled or extracted from her or his mother and after such separation breathed or showed evidence of any of the following: beating of the heart, pulsation of the umbilical cord, definite movement of voluntary muscles or any brain-wave activity.

“Complication.” Includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration and retained products. The department may further define complication.

“Conscience.” A sincerely held set of moral convictions arising from belief in and relation to a deity or which, though not so derived, obtains from a place in the life of its possessor parallel to that filled by a deity among adherents to religious faiths.

“Department.” The Department of Health of the Commonwealth of Pennsylvania.

“Facility” or **“medical facility.”** Any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center or other institution or location wherein medical care is provided to any person.

“Fertilization” and **“conception.”** Each term shall mean the fusion of a human spermatozoon with a human ovum.

“First trimester.” The first 12 weeks of gestation.

“Gestational age.” The age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

“Hospital.” An institution licensed pursuant to the provisions of the law of this Commonwealth.

“In vitro fertilization.” The purposeful fertilization of a human ovum outside the body of a living human female.

“Medical emergency.” That condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

“Medical personnel.” Any nurse, nurse's aide, medical school student, professional or any other person who furnishes, or assists in the furnishing of, medical care.

“Physician.” Any person licensed to practice medicine in this Commonwealth. The term includes medical doctors and doctors of osteopathy.

“Pregnancy” and **“pregnant.”** Each term shall mean that female reproductive condition of having a developing fetus in the body and commences with fertilization.

“Probable gestational age of the unborn child.” What, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

“Unborn child” and **“fetus.”** Each term shall mean an individual organism of the species homo sapiens from fertilization until live birth.

“Viability.” That stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him and in light of the most advanced medical technology and information available to him, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

18 Pa.C.S.A. § 3204 Medical consultation and judgment

(a) Abortion prohibited; exceptions.--No abortion shall be performed except by a physician after either:

- (1) he determines that, in his best clinical judgment, the abortion is necessary; or
- (2) he receives what he reasonably believes to be a written statement signed by another physician, hereinafter called the “referring physician,” certifying that in this referring physician's best clinical judgment the abortion is necessary.

(b) Requirements.--Except in a medical emergency where there is insufficient time before the abortion is performed, the woman upon whom the abortion is to be performed shall have a private medical consultation either with the physician who is to perform the abortion or with the referring physician. The consultation will be in a place, at a time and of a duration reasonably sufficient to enable the physician to determine whether, based on his best clinical judgment, the abortion is necessary.

(c) Factors.--In determining in accordance with subsection (a) or (b) whether an abortion is necessary, a physician's best clinical judgment may be exercised in the light of all factors (physical, emotional, psychological, familial and the woman's age) relevant to the well-being of the woman. No abortion which is sought solely because of the sex of the unborn child shall be deemed a necessary abortion.

(d) Penalty.--Any person who intentionally, knowingly or recklessly violates the provisions of this section commits a felony of the third degree, and any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts.

18 Pa.C.S.A. § 3205 Informed consent

(a) General rule.--No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician has orally informed the woman of:

(i) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(ii) The probable gestational age of the unborn child at the time the abortion is to be performed.

(iii) The medical risks associated with carrying her child to term.

(2) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician, or a qualified physician assistant, health care practitioner, technician or social worker to whom the responsibility has been delegated by either physician, has informed the pregnant woman that:

(i) The department publishes printed materials which describe the unborn child and list agencies which offer alternatives to abortion and that she has a right to review the printed materials and that a copy will be provided to her free of charge if she chooses to review it.

(ii) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the department.

(iii) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted.

(3) A copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials.

(4) The pregnant woman certifies in writing, prior to the abortion, that the information required to be provided under paragraphs (1), (2) and (3) has been provided.

(b) Emergency.--Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(c) Penalty.--Any physician who violates the provisions of this section is guilty of "unprofessional conduct" and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts. Any physician who performs or induces an abortion without first obtaining the

certification required by subsection (a)(4) or with knowledge or reason to know that the informed consent of the woman has not been obtained shall for the first offense be guilty of a summary offense and for each subsequent offense be guilty of a misdemeanor of the third degree. No physician shall be guilty of violating this section for failure to furnish the information required by subsection (a) if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

(d) Limitation on civil liability.--Any physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent to the abortion within the meaning of that term as defined by the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.³

18 Pa.C.S.A. § 3206 Parental consent

(a) General rule.--Except in the case of a medical emergency, or except as provided in this section, if a pregnant woman is less than 18 years of age and not emancipated, or if she has been adjudged an incapacitated person under [20 Pa.C.S. § 5511](#) (relating to petition and hearing; independent evaluation), a physician shall not perform an abortion upon her unless, in the case of a woman who is less than 18 years of age, he first obtains the informed consent both of the pregnant woman and of one of her parents; or, in the case of a woman who is an incapacitated person, he first obtains the informed consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only their child's or ward's best interests. In the case of a pregnancy that is the result of incest where the father is a party to the incestuous act, the pregnant woman need only obtain the consent of her mother.

(b) Unavailability of parent or guardian.--If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman's guardian or guardians shall be sufficient. If the pregnant woman's parents are divorced, consent of the parent having custody shall be sufficient. If neither any parent nor a legal guardian is available to the physician within a reasonable time and in a reasonable manner, consent of any adult person standing in loco parentis shall be sufficient.

(c) Petition to court for consent.--If both of the parents or guardians of the pregnant woman refuse to consent to the performance of an abortion or if she elects not to seek the consent of either of her parents or of her guardian, the court of common pleas of the judicial district in which the applicant resides or in which the abortion is sought shall, upon petition or motion, after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion, and has, in fact, given such consent.

(d) Court order.--If the court determines that the pregnant woman is not mature and capable of giving informed consent or if the pregnant woman does not claim to be mature and capable of giving informed consent, the court shall determine whether the performance of an abortion upon her would be in her best interests. If the court determines that the performance of an abortion would be in the best interests of the woman, it shall authorize a physician to perform the abortion.

(e) Representation in proceedings.--The pregnant woman may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem to assist her. The court shall, however, advise her that she has a right to court appointed counsel, and shall provide her with such counsel unless she wishes to appear with private counsel or has knowingly and intelligently waived representation by counsel.

(f) Proceedings.--

(1) Court proceedings under this section shall be confidential and shall be given such precedence over other pending matters as will ensure that the court may reach a decision promptly and without delay in order to serve the best interests of the pregnant woman. In no case shall the court of common pleas fail to rule within three business days of the date of application. A court of common pleas which conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting its decision and shall, upon the initial filing of the minor's petition for judicial authorization of an abortion, order a sealed record of the petition, pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material to be maintained which shall include its own findings and conclusions.

(2) The application to the court of common pleas shall be accompanied by a non-notarized verification stating that the information therein is true and correct to the best of the applicant's knowledge, and the application shall set forth the following facts:

(i) The initials of the pregnant woman.

(ii) The age of the pregnant woman.

(iii) The names and addresses of each parent, guardian or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the minor.

(iv) That the pregnant woman has been fully informed of the risks and consequences of the abortion.

(v) Whether the pregnant woman is of sound mind and has sufficient intellectual capacity to consent to the abortion.

(vi) A prayer for relief asking the court to either grant the pregnant woman full capacity for the purpose of personal consent to the abortion, or to give judicial consent to the abortion under subsection (d) based upon a finding that the abortion is in the best interest of the pregnant woman.

(vii) That the pregnant woman is aware that any false statements made in the application are punishable by law.

(viii) The signature of the pregnant woman. Where necessary to serve the interest of justice, the orphans' court division, or, in Philadelphia, the family court division, shall refer the pregnant woman to the appropriate personnel for assistance in preparing the application.

(3) The name of the pregnant woman shall not be entered on any docket which is subject to public inspection. All persons shall be excluded from hearings under this section

except the applicant and such other persons whose presence is specifically requested by the applicant or her guardian.

(4) At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the pregnant woman, the fact and duration of her pregnancy, the nature, possible consequences and alternatives to the abortion and any other evidence that the court may find useful in determining whether the pregnant woman should be granted full capacity for the purpose of consenting to the abortion or whether the abortion is in the best interest of the pregnant woman. The court shall also notify the pregnant woman at the hearing that it must rule on her application within three business days of the date of its filing and that, should the court fail to rule in favor of her application within the allotted time, she has the right to appeal to the Superior Court.

(g) Coercion prohibited.--Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor or incapacitated woman to undergo an abortion. Any minor or incapacitated woman who is threatened with such coercion may apply to a court of common pleas for relief. The court shall provide the minor or incapacitated woman with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

(h) Regulation of proceedings.--No filing fees shall be required of any woman availing herself of the procedures provided by this section. An expedited confidential appeal shall be available to any pregnant woman whom the court fails to grant an order authorizing an abortion within the time specified in this section. Any court to which an appeal is taken under this section shall give prompt and confidential attention thereto and shall rule thereon within five business days of the filing of the appeal. The Supreme Court of Pennsylvania may issue such rules as may further assure that the process provided in this section is conducted in such a manner as will ensure confidentiality and sufficient precedence over other pending matters to ensure promptness of disposition.

(i) Penalty.--Any person who performs an abortion upon a woman who is an unemancipated minor or incapacitated person to whom this section applies either with knowledge that she is a minor or incapacitated person to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or incapacitated person to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of "unprofessional conduct" and his license for the practice of medicine and surgery shall be suspended in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts, for a period of at least three months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of exemplary damages or damages for emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

18 Pa.C.S.A. § 3207 Abortion facilities

(a) Regulations.--The department shall have power to make rules and regulations pursuant to this chapter, with respect to performance of abortions and with respect to facilities in which abortions are performed, so as to protect the health and safety of women having abortions and of premature infants aborted alive. These rules and regulations shall include, but not be limited to, procedures, staff, equipment and laboratory testing requirements for all facilities offering abortion services.

(b) Reports.--Within 30 days after the effective date of this chapter, every facility at which abortions are performed shall file, and update immediately upon any change, a report with the department, containing the following information:

- (1) Name and address of the facility.
- (2) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations.
- (3) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations having contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility.

The information contained in those reports which are filed pursuant to this subsection by facilities which receive State-appropriated funds during the 12-calendar-month period immediately preceding a request to inspect or copy such reports shall be deemed public information. Reports filed by facilities which do not receive State-appropriated funds shall only be available to law enforcement officials, the State Board of Medicine and the State Board of Osteopathic Medicine for use in the performance of their official duties. Any facility failing to comply with the provisions of this subsection shall be assessed by the department a fine of \$500 for each day it is in violation hereof.

18 Pa.C.S.A. § 3209 Determination of gestational age

(a) Spousal notice required.--In order to further the Commonwealth's interest in promoting the integrity of the marital relationship and to protect a spouse's interests in having children within marriage and in protecting the prenatal life of that spouse's child, no physician shall perform an abortion on a married woman, except as provided in subsections (b) and (c), unless he or she has received a signed statement, which need not be notarized, from the woman upon whom the abortion is to be performed, that she has notified her spouse that she is about to undergo an abortion. The statement shall bear a notice that any false statement made therein is punishable by law.

(b) Exceptions.--The statement certifying that the notice required by subsection (a) has been given need not be furnished where the woman provides the physician a signed statement certifying at least one of the following:

- (1) Her spouse is not the father of the child.
- (2) Her spouse, after diligent effort, could not be located.

(3) The pregnancy is a result of spousal sexual assault as described in section 3128 (relating to spousal sexual assault), which has been reported to a law enforcement agency having the requisite jurisdiction.

(4) The woman has reason to believe that the furnishing of notice to her spouse is likely to result in the infliction of bodily injury upon her by her spouse or by another individual.

Such statement need not be notarized, but shall bear a notice that any false statements made therein are punishable by law.

(c) Medical emergency.--The requirements of subsection (a) shall not apply in case of a medical emergency.

(d) Forms.--The department shall cause to be published forms which may be utilized for purposes of providing the signed statements required by subsections (a) and (b). The department shall distribute an adequate supply of such forms to all abortion facilities in this Commonwealth.

(e) Penalty; civil action.--Any physician who violates the provisions of this section is guilty of "unprofessional conduct," and his or her license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts. In addition, any physician who knowingly violates the provisions of this section shall be civilly liable to the spouse who is the father of the aborted child for any damages caused thereby and for punitive damages in the amount of \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of costs.

18 Pa.C.S.A. § 3210. Determination of gestational age

(a) Requirement.--Except in the case of a medical emergency which prevents compliance with this section, no abortion shall be performed or induced unless the referring physician or the physician performing or inducing it has first made a determination of the probable gestational age of the unborn child. In making such determination, the physician shall make such inquiries of the patient and perform or cause to be performed such medical examinations and tests as a prudent physician would consider necessary to make or perform in making an accurate diagnosis with respect to gestational age. The physician who performs or induces the abortion shall report the type of inquiries made and the type of examinations and tests utilized to determine the gestational age of the unborn child and the basis for the diagnosis with respect to gestational age on forms provided by the department.

(b) Penalty.--Failure of any physician to conform to any requirement of this section constitutes "unprofessional conduct" within the meaning of the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts. Upon a finding by the State Board of Medicine or the State Board of Osteopathic Medicine that any physician has failed to conform to any requirement of this section, the board shall not fail to suspend that physician's license for a period of at least three months. Intentional, knowing or reckless falsification of any report required under this section is a misdemeanor of the third degree.

18 Pa.C.S.A. § 3211. Abortion on unborn child of 24 or more weeks gestational age

(a) Prohibition.--Except as provided in subsection (b), no person shall perform or induce an abortion upon another person when the gestational age of the unborn child is 24 or more weeks.

(b) Exceptions.--

(1) It shall not be a violation of subsection (a) if an abortion is performed by a physician and that physician reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. No abortion shall be deemed authorized under this paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of a major bodily function.

(2) It shall not be a violation of subsection (a) if the abortion is performed by a physician and that physician reasonably believes, after making a determination of the gestational age of the unborn child in compliance with section 3210 (relating to determination of gestational age), that the unborn child is less than 24 weeks gestational age.

(c) Abortion regulated.--Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this subsection, no abortion which is authorized under subsection (b)(1) shall be performed unless each of the following conditions is met:

(1) The physician performing the abortion certifies in writing that, based upon his medical examination of the pregnant woman and his medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(2) Such physician's judgment with respect to the necessity for the abortion has been concurred in by one other licensed physician who certifies in writing that, based upon his or her separate personal medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(3) The abortion is performed in a hospital.

(4) The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive, unless the physician determines, in his or her good faith medical judgment, that termination of the pregnancy in that manner poses a significantly greater risk either of the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman than would other available methods.

(5) The physician performing the abortion arranges for the attendance, in the same room in which the abortion is to be completed, of a second physician who shall take control of the child immediately after complete extraction from the mother and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

(d) Penalty.--Any person who violates subsection (a) commits a felony of the third degree. Any person who violates subsection (c) commits a misdemeanor of the second degree for the first offense and a misdemeanor of the first degree for subsequent offenses.

18 Pa.C.S.A. § 3212 Infanticide

(a) Status of fetus.--The law of this Commonwealth shall not be construed to imply that any human being born alive in the course of or as a result of an abortion or pregnancy termination, no matter what may be that human being's chance of survival, is not a person under the Constitution and laws of this Commonwealth.

(b) Care required.--All physicians and licensed medical personnel attending a child who is born alive during the course of an abortion or premature delivery, or after being carried to term, shall provide such child that type and degree of care and treatment which, in the good faith judgment of the physician, is commonly and customarily provided to any other person under similar conditions and circumstances. Any individual who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

(c) Obligation of physician.--Whenever the physician or any other person is prevented by lack of parental or guardian consent from fulfilling his obligations under subsection (b), he shall nonetheless fulfill said obligations and immediately notify the juvenile court of the facts of the case. The juvenile court shall immediately institute an inquiry and, if it finds that the lack of parental or guardian consent is preventing treatment required under subsection (b), it shall immediately grant injunctive relief to require such treatment.

18 Pa.C.S.A. § 3213 Prohibited acts

(a) Payment for abortion.--Except in the case of a pregnancy which is not yet clinically diagnosable, any person who intends to perform or induce abortion shall, before accepting payment therefor, make or obtain a determination that the woman is pregnant. Any person who intentionally or knowingly accepts such a payment without first making or obtaining such a determination commits a misdemeanor of the second degree. Any person who makes such a determination erroneously either knowing that it is erroneous or with reckless disregard or negligence as to whether it is erroneous, and who either:

(1) thereupon or thereafter intentionally relies upon that determination in soliciting or obtaining any such payment; or

(2) intentionally conveys that determination to any person or persons with knowledge that, or with reckless disregard as to whether, that determination will be relied upon in any solicitation or obtaining of any such payment;

commits a misdemeanor of the second degree.

(b) Referral fee.--The payment or receipt of a referral fee in connection with the performance of an abortion is a misdemeanor of the first degree. For purposes of this section, "referral fee" means the transfer of anything of value between a physician who performs an abortion or an operator or employee of a clinic at which an abortion is performed and the person who advised the woman receiving the abortion to use the services of that physician or clinic.

(c) Regulations.--The department shall issue regulations to assure that prior to the performance of any abortion, including abortions performed in the first trimester of pregnancy, the maternal Rh status shall be determined and that anti-Rh sensitization prophylaxis shall be provided to each patient at risk of sensitization unless the patient refuses to accept the treatment. Except when there exists a medical emergency or, in the judgment of the physician, there exists no possibility of Rh sensitization, the intentional, knowing, or reckless failure to conform to the regulations issued pursuant to this subsection constitutes "unprofessional conduct" and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,¹ the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,² or their successor acts.

(d) Participation in abortion.--Except for a facility devoted exclusively to the performance of abortions, no medical personnel or medical facility, nor any employee, agent or student thereof, shall be required against his or its conscience to aid, abet or facilitate performance of an abortion or dispensing of an abortifacient and failure or refusal to do so shall not be a basis for any civil, criminal, administrative or disciplinary action, penalty or proceeding, nor may it be the basis for refusing to hire or admit anyone. Nothing herein shall be construed to limit the provisions of the act of October 27, 1955 (P.L. 744, No. 222), known as the "Pennsylvania Human Relations Act."³ Any person who knowingly violates the provisions of this subsection shall be civilly liable to the person thereby injured and, in addition, shall be liable to that person for punitive damages in the amount of \$5,000.

(e) In vitro fertilization.--All persons conducting, or experimenting in, in vitro fertilization shall file quarterly reports with the department, which shall be available for public inspection and copying, containing the following information:

- (1) Names of all persons conducting or assisting in the fertilization or experimentation process.
- (2) Locations where the fertilization or experimentation is conducted.
- (3) Name and address of any person, facility, agency or organization sponsoring the fertilization or experimentation except that names of any persons who are donors or recipients of sperm or eggs shall not be disclosed.
- (4) Number of eggs fertilized.
- (5) Number of fertilized eggs destroyed or discarded.
- (6) Number of women implanted with a fertilized egg.

Any person required under this subsection to file a report, keep records or supply information, who willfully fails to file such report, keep records or supply such information or who submits a false report shall be assessed a fine by the department in the amount of \$50 for each day in which that person is in violation hereof.

(f) Notice.--

- (1) Except for a facility devoted exclusively to the performance of abortions, every facility performing abortions shall prominently post a notice, not less than eight and one-half inches by eleven inches in size, entitled "Right of Conscience," for the exclusive purpose of informing medical personnel, employees, agents and students of such facilities

of their rights under subsection (d) and under section 5.2 of the Pennsylvania Human Relations Act. The facility shall post the notice required by this subsection in a location or locations where notices to employees, medical personnel and students are normally posted or, if notices are not normally posted, in a location or locations where the notice required by this subsection is likely to be seen by medical personnel, employees or students of the facility. The department shall prescribe a model notice which may be used by any facility, and any facility which utilizes the model notice or substantially similar language shall be deemed in compliance with this subsection.

(2) The department shall have the authority to assess a civil penalty of up to \$5,000 against any facility for each violation of this subsection, giving due consideration to the appropriateness of the penalty with respect to the size of the facility, the gravity of the violation, the good faith of the facility and the history of previous violations. Civil penalties due under this subsection shall be paid to the department for deposit in the State Treasury and may be collected by the department in the appropriate court of common pleas. The department shall send a copy of its model notice to every facility which files a report under section 3207(b) (relating to abortion facilities). Failure to receive a notice shall not be a defense to any civil action brought pursuant to this subsection.

18 Pa.C.S.A. § 3214 Reporting

(a) General rule.--For the purpose of promotion of maternal health and life by adding to the sum of medical and public health knowledge through the compilation of relevant data, and to promote the Commonwealth's interest in protection of the unborn child, a report of each abortion performed shall be made to the department on forms prescribed by it. The report forms shall not identify the individual patient by name and shall include the following information:

(1) Identification of the physician who performed the abortion, the concurring physician as required by section 3211(c)(2) (relating to abortion on unborn child of 24 or more weeks gestational age), the second physician as required by section 3211(c)(5) and the facility where the abortion was performed and of the referring physician, agency or service, if any.

(2) The county and state in which the woman resides.

(3) The woman's age.

(4) The number of prior pregnancies and prior abortions of the woman.

(5) The gestational age of the unborn child at the time of the abortion.

(6) The type of procedure performed or prescribed and the date of the abortion.

(7) Pre-existing medical conditions of the woman which would complicate pregnancy, if any, and, if known, any medical complication which resulted from the abortion itself.

(8) The basis for the medical judgment of the physician who performed the abortion that the abortion was necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman, where an abortion has been performed pursuant to section 3211(b)(1).

(9) The weight of the aborted child for any abortion performed pursuant to section 3211(b)(1).

(10) Basis for any medical judgment that a medical emergency existed which excused the physician from compliance with any provision of this chapter.

(11) The information required to be reported under section 3210(a) (relating to determination of gestational age).

(12) Whether the abortion was performed upon a married woman and, if so, whether notice to her spouse was given. If no notice to her spouse was given, the report shall also indicate the reason for failure to provide notice.

(b) Completion of report.--The reports shall be completed by the hospital or other licensed facility, signed by the physician who performed the abortion and transmitted to the department within 15 days after each reporting month.

(c) Pathological examinations.--When there is an abortion performed during the first trimester of pregnancy, the tissue that is removed shall be subjected to a gross or microscopic examination, as needed, by the physician or a qualified person designated by the physician to determine if a pregnancy existed and was terminated. If the examination indicates no fetal remains, that information shall immediately be made known to the physician and sent to the department within 15 days of the analysis. When there is an abortion performed after the first trimester of pregnancy where the physician has certified the unborn child is not viable, the dead unborn child and all tissue removed at the time of the abortion shall be submitted for tissue analysis to a board eligible or certified pathologist. If the report reveals evidence of viability or live birth, the pathologist shall report such findings to the department within 15 days and a copy of the report shall also be sent to the physician performing the abortion. Intentional, knowing, reckless or negligent failure of the physician to submit such an unborn child or such tissue remains to such a pathologist for such a purpose, or intentional, knowing or reckless failure of the pathologist to report any evidence of live birth or viability to the department in the manner and within the time prescribed is a misdemeanor of the third degree.

(d) Form.--The department shall prescribe a form on which pathologists may report any evidence of absence of pregnancy, live birth or viability.

(e) Statistical reports; public availability of reports.--

(1) The department shall prepare a comprehensive annual statistical report for the General Assembly based upon the data gathered under subsections (a) and (h). Such report shall not lead to the disclosure of the identity of any person filing a report or about whom a report is filed, and shall be available for public inspection and copying.

(2) Reports filed pursuant to subsection (a) or (h) shall not be deemed public records within the meaning of that term as defined by the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law,¹ and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court of common pleas after application showing good cause therefor. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

(3) Original copies of all reports filed under subsections (a), (f) and (h) shall be available to the State Board of Medicine and the State Board of Osteopathic Medicine for use in the performance of their official duties.

(4) Any person who willfully discloses any information obtained from reports filed pursuant to subsection (a) or (h), other than that disclosure authorized under paragraph (1), (2) or (3) hereof or as otherwise authorized by law, shall commit a misdemeanor of the third degree.

(f) Report by facility.--Every facility in which an abortion is performed within this Commonwealth during any quarter year shall file with the department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. Any report shall be available for public inspection and copying only if the facility receives State-appropriated funds within the 12-calendar-month period immediately preceding the filing of the report. These reports shall be submitted on a form prescribed by the department which will enable a facility to indicate whether or not it is receiving State-appropriated funds. If the facility indicates on the form that it is not receiving State-appropriated funds, the department shall regard its report as confidential unless it receives other evidence which causes it to conclude that the facility receives State-appropriated funds.

(g) Report of maternal death.--After 30 days' public notice, the department shall henceforth require that all reports of maternal deaths occurring within the Commonwealth arising from pregnancy, childbirth or intentional abortion in every case state the cause of death, the duration of the woman's pregnancy when her death occurred and whether or not the woman was under the care of a physician during her pregnancy prior to her death and shall issue such regulations as are necessary to assure that such information is reported, conducting its own investigation if necessary in order to ascertain such data. A woman shall be deemed to have been under the care of a physician prior to her death for the purpose of this chapter when she had either been examined or treated by a physician, not including any examination or treatment in connection with emergency care for complications of her pregnancy or complications of her abortion, preceding the woman's death at any time which is both 21 or more days after the time she became pregnant and within 60 days prior to her death. Known incidents of maternal mortality of nonresident women arising from induced abortion performed in this Commonwealth shall be included as incidents of maternal mortality arising from induced abortions. Incidents of maternal mortality arising from continued pregnancy or childbirth and occurring after induced abortion has been attempted but not completed, including deaths occurring after induced abortion has been attempted but not completed as the result of ectopic pregnancy, shall be included as incidents of maternal mortality arising from induced abortion. The department shall annually compile a statistical report for the General Assembly based upon the data gathered under this subsection, and all such statistical reports shall be available for public inspection and copying.

(h) Report of complications.--Every physician who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications resulting, in the good faith judgment of the physician, from having undergone an abortion or attempted abortion shall prepare a report thereof and file the report with the department within 30 days of the date of his first examination of the woman, which report shall be on forms prescribed by the department, which forms shall contain the following information, as received,

and such other information except the name of the patient as the department may from time to time require:

- (1) Age of patient.
- (2) Number of pregnancies patient may have had prior to the abortion.
- (3) Number and type of abortions patient may have had prior to this abortion.
- (4) Name and address of the facility where the abortion was performed.
- (5) Gestational age of the unborn child at the time of the abortion, if known.
- (6) Type of abortion performed, if known.
- (7) Nature of complication or complications.
- (8) Medical treatment given.
- (9) The nature and extent, if known, of any permanent condition caused by the complication.

(i) Penalties.--

(1) Any person required under this section to file a report, keep any records or supply any information, who willfully fails to file such report, keep such records or supply such information at the time or times required by law or regulation is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act,² the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985,³ or their successor acts.

(2) Any person who willfully delivers or discloses to the department any report, record or information known by him to be false commits a misdemeanor of the first degree.

(3) In addition to the above penalties, any person, organization or facility who willfully violates any of the provisions of this section requiring reporting shall upon conviction thereof:

- (i) For the first time, have its license suspended for a period of six months.
- (ii) For the second time, have its license suspended for a period of one year.
- (iii) For the third time, have its license revoked.

18 Pa.C.S.A. § 3216 Fetal experimentation

(a) Unborn or live child.--Any person who knowingly performs any type of nontherapeutic experimentation or nontherapeutic medical procedure (except an abortion as defined in this chapter) upon any unborn child, or upon any child born alive during the course of an abortion, commits a felony of the third degree. “Nontherapeutic” means that which is not intended to preserve the life or health of the child upon whom it is performed.

(b) Dead child.--The following standards govern the procurement and use of any fetal tissue or organ which is used in animal or human transplantation, research or experimentation:

(1) No fetal tissue or organs may be procured or used without the written consent of the mother. No consideration of any kind for such consent may be offered or given. Further, if the tissue or organs are being derived from abortion, such consent shall be valid only if obtained after the decision to abort has been made.

(2) No person who provides the information required by section 3205 (relating to informed consent) shall employ the possibility of the use of aborted fetal tissue or organs as an inducement to a pregnant woman to undergo abortion except that payment for reasonable expenses occasioned by the actual retrieval, storage, preparation and transportation of the tissues is permitted.

(3) No remuneration, compensation or other consideration may be paid to any person or organization in connection with the procurement of fetal tissue or organs.

(4) All persons who participate in the procurement, use or transplantation of fetal tissue or organs, including the recipients of such tissue or organs, shall be informed as to whether the particular tissue or organ involved was procured as a result of either:

- (i) stillbirth;
- (ii) miscarriage;
- (iii) ectopic pregnancy;
- (iv) abortion; or
- (v) any other means.

(5) No person who consents to the procurement or use of any fetal tissue or organ may designate the recipient of that tissue or organ, nor shall any other person or organization act to fulfill that designation.

(6) The department may assess a civil penalty upon any person who procures, sells or uses any fetal tissue or organs in violation of this section or the regulations issued thereunder. Such civil penalties may not exceed \$5,000 for each separate violation. In assessing such penalties, the department shall give due consideration to the gravity of the violation, the good faith of the violator and the history of previous violations. Civil penalties due under this paragraph shall be paid to the department for deposit in the State Treasury and may be enforced by the department in the Commonwealth Court.

(c) Construction of section.--Nothing in this section shall be construed to condone or prohibit the performance of diagnostic tests while the unborn child is in utero or the performance of pathological examinations on an aborted child. Nor shall anything in this section be construed to condone or prohibit the performance of in vitro fertilization and accompanying embryo transfer.

18 Pa.C.S.A. § 3218 Criminal penalties

(a) Application of chapter.--Notwithstanding any other provision of this chapter, no criminal penalty shall apply to a woman who violates any provision of this chapter solely in order to perform or induce or attempt to perform or induce an abortion upon herself. Nor shall any woman who undergoes an abortion be found guilty of having committed an offense, liability for

which is defined under section 306 (relating to liability for conduct of another; complicity) or Chapter 9 (relating to inchoate crimes), by reason of having undergone such abortion.

(b) False statement, etc.--A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function under this chapter, such person:

- (1) makes any written false statement which he does not believe to be true; or
- (2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity.

(c) Statements “under penalty”.--A person commits a misdemeanor of the third degree if such person makes a written false statement which such person does not believe to be true on a statement submitted as required under this chapter, bearing notice to the effect that false statements made therein are punishable.

(d) Perjury provisions applicable.--Section 4902(c) through (f) (relating to perjury) apply to subsections (b) and (c).