

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 454

BY: HENDRICK

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY;
REQUIRING INFORMED CONSENT FOR AN ABORTION;
TREATING CONSENT AS CONFIDENTIAL; REQUIRING
PREGNANT WOMAN BE ORALLY INFORMED OF CERTAIN STATED
INFORMATION; REQUIRING DISCLOSURE OF REQUIRED
INFORMATION ON AN INDIVIDUAL BASIS; REQUIRING
WAITING PERIOD BEFORE CONSENT FORM CAN BE SIGNED;
REQUIRING PREGNANT WOMAN BE GIVEN DUPLICATE COPY OF
CONSENT FORM; REQUIRING PREGNANT WOMAN VERIFY
CERTAIN INFORMATION; MAKING PRESUMPTION OF VALID
CONSENT SUBJECT TO REBUTTAL; DEFINING VALID
CONSENT; LIMITING PERSONS WHO CAN PROVIDE CERTAIN
INFORMATION; REQUIRING CERTAIN PERSONS MEET CERTAIN
EDUCATIONAL REQUIREMENTS; LIMITING APPLICATION OF
PROVISIONS OF SECTION OF LAW; STATING PENALTY;
ALLOWING ACTION FOR MEDICAL MALPRACTICE FOR
VIOLATION OF REQUIREMENTS OF SECTION OF LAW;
STATING PERSONS AGAINST WHOM MEDICAL MALPRACTICE
ACTION CAN BE BROUGHT UPON CERTAIN SHOWING;
PROVIDING FOR CODIFICATION; AND PROVIDING AN
EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An abortion otherwise permitted by law shall not be performed or induced except with the informed written consent of the pregnant woman, given freely without coercion. Such consent shall be treated as confidential.

B. In order to ensure that a consent for an abortion is truly informed consent, an abortion shall not be performed or induced upon a pregnant woman unless she has been orally informed by her attending physician, or a qualified person assisting the physician, of the following facts and has signed a consent form acknowledging that she has been informed as follows:

1. That according to the best judgment of her attending physician she is pregnant;

2. That she is free to withhold or withdraw consent to the procedure at anytime before the abortion without affecting the right to future care or treatment and without loss or withdrawal of any state or federally funded program benefits to which she might be otherwise entitled;

3. The number of weeks elapsed from the probable time of conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

4. In layman's language and in a language understood by the woman, the anatomical and physiological characteristics of the unborn child that she is carrying, based upon the information available to the physician, or a qualified person assisting the physician. The physician, or a qualified person assisting the physician, shall offer the woman the opportunity to view a picture

or a fetal model of an unborn child at the approximate gestational age of the unborn child she is carrying. There shall be no requirement that the woman view the picture or the fetal model, only that she be offered the opportunity to do so;

5. That if more than twenty (20) weeks have elapsed from the time of conception, her child may be viable, that is, capable of surviving outside of the womb, and that if such child is prematurely born alive in the course of an abortion, her attending physician has a legal obligation to take steps to preserve the life and health of the child;

6. That abortion is a surgical procedure that can result in physical and psychological harm, depending upon the circumstances in which the patient might find herself. The physician, or a qualified person assisting the physician, shall be required to explain these factors to the best of his ability and knowledge of the circumstances involved. Such information shall inform the pregnant woman of the particular risks, if any, associated with her pregnancy and abortion, and shall include, but not be limited to:

- a. percentage risk of retained tissue of conception,
- b. percentage risk to the cervix,
- c. percentage risk of hemorrhage,
- d. percentage risk of infection,
- e. percentage risk of perforation of the uterus,
- f. percentage risk of sterility,
- g. percentage risk of complications of future pregnancies,
- h. percentage risk of increased possibility of birth defects in future pregnancies,
- i. percentage risk of death,
- j. percentage risk of post traumatic stress disorder,
- k. percentage risk of severe depression,
- l. percentage risk of anniversary syndrome,

- m. percentage risk of sexual dysfunction,
- n. percentage risk of suicidal thoughts,
- o. percentage risk of interference with personal relationships, and
- p. percentage risk of increased anxieties for the welfare of future wanted pregnancies;

7. A general description of the medical instructions to be followed subsequent to the abortion in order to ensure her safe recovery;

8. That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place her child for adoption, and that her physician will provide her with a list of such agencies and the services available if she so requests.

C. The disclosure of information required by this section shall be made to the woman on an individual basis, in order to protect her confidentiality and ensure that the information she receives focuses on her individual circumstances.

D. There shall be a one (1) day waiting period after the physician, or a qualified person assisting the physician, provides the required information required by this section before the abortion may be performed. On the day following the day such information was given, the patient may return to the physician and sign a consent form.

E. Prior to performing the abortion, the attending physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her and shall verify that all information required to be given the woman was provided her if such information was provided by a qualified person assisting the physician.

F. A written consent which meets the standards required by this section and is signed by the woman or other authorized person by law shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal upon proof that such consent was obtained by fraud, deception, misrepresentation or omission of a material fact.

G. A valid consent is one which is given by a woman who, under all the surrounding circumstances, is psychologically and physically competent to give consent.

H. Information required to be given the woman required by this section shall be provided only by a physician, psychologist, licensed social worker, or licensed professional counselor. In addition to the normal licensing requirements, the person assisting the physician shall have completed the following:

1. The equivalent of four (4) college credit hours in fetal development;

2. The equivalent of four (4) college credit hours in abortion procedures and technology, including the potential risks and complications (both immediate and long-term) of abortion; and

3. The equivalent of twelve (12) college credit hours in psychology and counseling.

I. The provisions of this section shall not apply when the attending physician, utilizing his experience, judgment, and professional competence, determines that any waiting period would endanger the life of the pregnant woman. Such determination made by the attending physician shall be in writing and shall state the medical reasons upon which he bases his opinion that the waiting period would endanger the life of the pregnant woman. This subsection shall not relieve the physician of his duty to the pregnant woman to inform her of the information required by the provisions of this section.

J. A violation of this section by a physician is a felony.

K. Failure to comply with the requirements of this section shall constitute a separate cause of action and may give rise to an action for medical malpractice. Any such action shall be brought against the responsible physician or the qualified person assisting the physician, any hospital, any abortion clinic, professional corporation, or partnership of which the physician, or the qualified person assisting the physician is an employee or partner and which is responsible for the acts of the physician or the qualified person assisting the physician, or both, upon a showing that:

1. The woman suffered an injury, either physical or psychological, which was proximately caused by the abortion;
2. That information concerning the possibility of the injury actually suffered was not disclosed as required by this section; and
3. That this patient would have refused the abortion if such information had been disclosed.

SECTION 2. This act shall become effective September 1, 1991.

43-1-514

CJ