

**If you do not respond to this document
within applicable time limits, judgment could
be entered against you as requested.**

Troy L. Booher (9419)
J. Frederic Voros, Jr. (3340)
Dick J. Baldwin (14587)
ZIMMERMAN BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111
tbooher@zbappeals.com
fvoros@zbappeals.com
dbaldwin@zbappeals.com
(801) 924-0200

John Mejia (13965)
Valentina De Fex (17785)
ACLU OF UTAH FOUNDATION, INC.
311 South State Street, Suite 310
Salt Lake City, UT 84111
jmejia@acluutah.org
vdefex@acluutah.org
(801) 521-9862

Hannah Swanson (pro hac vice)
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
hannah.swanson@ppfa.org
(202) 803-4030

Camila Vega (pro hac vice)
Emma Noftz Stern*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 William Street, 9th Floor
New York, NY 10038
camila.vega@ppfa.org
emma.stern@ppfa.org
(408) 655-8501

**Pro hac vice application forthcoming*

*Attorneys for Plaintiff Planned Parenthood
Association of Utah*

**THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

PLANNED PARENTHOOD
ASSOCIATION OF UTAH, on behalf of
itself and its patients, physicians, and staff,

Plaintiff,

v.

STATE OF UTAH; et al.,

Defendants.

**EXPEDITED MOTION FOR LEAVE
TO FILE FIRST SUPPLEMENTAL
COMPLAINT**

Case No. 220903886

Honorable Andrew H. Stone

EXPEDITED MOTION FOR LEAVE TO FILE
FIRST SUPPLEMENTAL COMPLAINT

Pursuant to Rule 15(d) of the Utah Rules of Civil Procedure, Plaintiff Planned Parenthood Association of Utah (“PPAU”), on behalf of itself and its patients, physicians, and staff, respectfully moves the Court for an order granting it leave to file a supplemental complaint, attached for the Court’s reference. In light of PPAU’s need for preliminary injunctive relief against portions of the legislation challenged in this new complaint before May 3, 2023, as explained below, PPAU requests expedited briefing and consideration of this motion.

INTRODUCTION

This case challenges Utah Senate Bill 174, 2020 Leg., Gen. Sess. (2020) (codified at Utah Code Ann. tit. 76, ch. 7A) (the “Trigger Ban”), which bans abortions in Utah at any point of pregnancy, with just a few narrow exceptions. Within days of the Trigger Ban taking effect last summer, this Court entered a preliminary injunction to preserve the fifty-year status quo of safe, legal abortion in Utah while this litigation proceeds to the merits of PPAU’s claims that the Trigger Ban violates multiple provisions of the Utah Constitution. That preliminary injunction is awaiting review by the Utah Supreme Court, which declined to stay the injunction pending appeal.

Meanwhile, however, the Utah Legislature has attempted to accomplish by other means what the Utah courts have prevented it from doing directly—ban abortion in Utah. House Bill 467, 2023 Leg., Gen. Sess. (Utah 2023) (“HB 467”), enacted in March 2023, amends the exceptions to the enjoined Trigger Ban, adds serious professional licensing consequences to the Trigger Ban’s existing penalties, and—most consequentially—prohibits all abortions provided outside of hospitals and eliminates Utah’s long-standing licensure category of abortion clinics. Because licensed abortion clinics provide over 95 percent of the abortions in Utah, and because Utah

hospitals provide abortions only in narrow circumstances, HB 467 will functionally ban abortion in Utah on May 3, 2023 if it takes effect on that date as scheduled.

Because HB 467 amounts to yet another total ban on abortion and results in the same irreparable harm to PPAU and its patients and staff as the Trigger Ban already under this Court's consideration, PPAU moves to supplement its complaint to challenge certain related provisions of HB 467 pursuant to Utah Rule of Civil Procedure Rule 15(d). Allowing supplementation of the complaint at this stage of the litigation would not be unjust and would facilitate the most efficient determination of the parties' rights and obligations under Utah law.¹

BACKGROUND

PPAU provides abortion through board-certified, licensed physicians at three of its eight health centers in Utah. All three of these health centers are licensed under Utah law as abortion clinics. PPAU is one of just two abortion providers in the state that offer appointments to the general public.

When the Trigger Ban went into effect after the United States Supreme Court overruled *Roe v. Wade* and its progeny in *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022), PPAU was forced to stop providing all abortion care other than as permitted by the Trigger Ban's narrow exceptions. PPAU brought suit the next day, alleging that the Trigger Ban violated

¹ Because the proposed supplemental complaint elaborates on the original Verified Complaint challenging the Trigger Ban by adding new allegations and claims regarding the newly-enacted HB 467, but does not displace that complaint, PPAU believes that supplementation under Rule 15(d) is the appropriate course. But should the Court prefer amendment under Utah Rule of Civil Procedure Rule 15(a), PPAU requests that in the alternative the Court grant that relief and accept the proposed supplemental complaint as a proposed amended complaint. *See Wells v. Wells*, 2 Utah 2d 241, 246, 272 P.2d 167, 170 (1954) ("It is the substance and not the name of a pleading which determines its character."); *Harvey v. Ute Indian Tribe of Uintah & Ouray Reservation*, 2017 UT 75, ¶ 56, 416 P.3d 401, 422 (amended pleadings and supplemental pleadings are closely akin to one another).

the Utah Constitution by depriving Utahns of their rights to equal protection, uniform operation of laws, bodily integrity, religious freedom, privacy, and to determine the composition of their families. After this Court entered a temporary injunction on June 27, 2022, PPAU resumed providing abortions up to 18 weeks of pregnancy. PPAU then sought a preliminary injunction, which the Court properly granted after further briefing and argument. In its decision, the Court held that PPAU, with its patients and staff, would suffer irreparable harm absent an injunction; that the balance of harms weighed in PPAU's favor; that a preliminary injunction would be in the public interest; and that PPAU had at least raised serious issues on the merits warranting further litigation. Order Granting Prelim. Inj. ("PI Order") ¶¶ 3–6.

The State petitioned the Utah Supreme Court for permission to appeal this interlocutory order and later filed a motion to stay the preliminary injunction. The Supreme Court granted the State permission to appeal but denied the stay motion. Briefing in the appeal concluded on February 21, 2023 and oral argument has not been scheduled. Under the injunction against the Trigger Ban, PPAU continues to provide abortions up to 18 weeks of pregnancy as permitted by provisions of Utah law not challenged in this litigation. Meanwhile, in the trial court proceedings, all case management deadlines have been vacated in light of the pending Supreme Court appeal. The State has served discovery requests on PPAU, with a response due in early May.

Despite this ongoing litigation over the constitutionality of banning abortion in Utah, the State renewed its attempt to ban abortions through passage of HB 467. HB 467 was signed by the Governor on March 15, 2023, and is poised to go into effect on May 3, 2023. When it does, PPAU will be forced to stop providing abortions under any circumstance, even as the Trigger Ban remains enjoined by order of this Court.

Given the substantial factual and legal overlap with this existing litigation challenging the Trigger Ban, PPAU now seeks leave to file a supplemental complaint, or in the alternative an amended complaint, reflecting HB 467’s amendments to the Trigger Ban and adding claims against HB 467’s hospital requirement, a new de facto abortion ban that replicates the Trigger Ban’s material and constitutional harms.

ARGUMENT

Rule 15 of the Utah Rules of Civil Procedure sets forth the standard for granting leave to amend or supplement a complaint. Utah R. Civ. P. 15(a), (d). Although Utah courts have not often had occasion to discuss supplemental pleadings at length, the Utah Supreme Court has endorsed a liberal policy in support of supplementing or amending pleadings so “cases may be fully and fairly decided on their merits.” *Richards v. Baum*, 914 P.2d 719, 723 (Utah 1996). Whether to grant permission to file a supplemental pleading is committed to the trial court’s discretion. *See Ute Indian Tribe*, 2017 UT 75, ¶ 55.

Supplemental pleadings are governed by Utah Rule of Civil Procedure 15(d), enabling parties to “set[] out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Utah R. Civ. P. 15(d). To be permitted, a motion to file a supplemental pleading need only be “on just terms.” *Id.*²

² The same analysis holds true for amended pleadings, which are governed by Utah Rule of Civil Procedure 15(a), which states “[a] party may amend its pleading . . . with the court’s permission” and that the “court should freely give permission when justice requires.” Utah R. Civ. P. 15(a)(1)–(2). Accordingly, “leave should be granted liberally.” *Hudgens v. Prosper, Inc.*, 2010 UT 68, ¶ 15, 243 P.3d 1275, 1279–80A. Utah’s Rule 15(a) parallels Federal Rule of Civil Procedure 15(a), through which parties may assert matters that were overlooked or unknown at the time the party interposed the original complaint and may add, substitute, or drop parties to the action. 6 Charles Allen Wright et al., *Federal Practice and Procedure* §§ 1473–4 (West 3d ed. 2022).

The fundamental purpose of Utah’s liberal policy in support of supplementing (or amending) pleadings is to serve judicial economy and afford parties “the privilege of presenting whatever legitimate contentions they have pertaining to their dispute.” *Cheney v. Rucker*, 381 P.2d 86, 91 (Utah 1963); *see Williams v. State Farm Ins. Co.*, 656 P.2d 966, 971 (Utah 1982); *Timm v. Dewsnap*, 851 P.2d 1178, 1182–83 (Utah 1993); *Bekins Bar V Ranch v. Huth*, 664 P.2d 455, 464 (Utah 1983). The goal is for the “real controversy between the parties [to be] presented, their rights determined, and the cause decided.” *Savage v. Utah Youth Vill.*, 2004 UT 102, ¶ 9, 104 P.3d 1242.

Courts should deny motions to supplement or amend a pleading only where “factors such as untimeliness, prejudice, bad faith, or futility of the amendment [or supplementation] would make such a grant unjust.” *Ute Indian Tribe*, 2017 UT 75, ¶ 56; *see Daniels v. Gamma W. Brachytherapy, LLC*, 2009 UT 66, ¶ 58, 221 P.3d 256, 272 (2009) (“Trial courts should liberally allow amendments unless the amendments include untimely, unjustified, and prejudicial factors.”).

Permitting supplementation (or amendment) here would promote judicial economy without prejudicing the Defendants. The Court should exercise its discretion to grant PPAU leave to file its supplemental or amended complaint challenging HB 467.

I. SUPPLEMENTATION PROMOTES JUDICIAL ECONOMY

Leave to supplement or amend pleadings is favored when it serves to promote judicial efficiency. *See Planned Parenthood of S. Ariz. v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997) (referring to the federal counterpart to Utah R. Civ. P. 15). Granting this motion will further judicial economy in multiple respects: (1) there is substantial legal and factual overlap between the claims in the Trigger Ban complaint and the proposed supplemental complaint; (2) PPAU’s proposed supplemental complaint challenges the State’s attempt to nullify the relief this Court granted with

its preliminary injunction against the Trigger Ban; and (3) granting leave avoids the unnecessarily duplicative alternative of consolidating the disputes.

First, there is substantial legal and factual overlap between the claims asserted in the original Verified Complaint concerning the Trigger Ban and the proposed supplemental complaint concerning HB 467's amendments to the Trigger Ban and related provisions of Utah law. Both pleadings allege the same violations of the Utah Constitution; specifically, that a near-total abortion ban deprives Utahns of their right to equal protection, uniform operation of laws, bodily integrity, religious freedom, privacy, and to determine the composition of their families. Complaint ¶¶ 60–92; Proposed Supplemental Complaint ¶¶ 137–86. The impacts of the Trigger Ban and HB 467 will also be the same—to functionally eliminate abortion access in Utah.

Moreover, as a result of the earlier proceedings in this case, the Court has significant familiarity with many of the facts that are relevant to the claims in PPAU's proposed supplemental complaint. For instance, these facts include the provision of abortion in Utah, the reasons patients seek abortion, the burdens faced by patients seeking abortion care, and the harms caused by denying or delaying abortion care. As a result of the Court's "familiarity with the subject matter," amendment and supplementation would "serv[e] the efficient administration of justice." *Ohio Valley Env't. Coal. v. U.S. Army Corps of Engineers*, 243 F.R.D. 253, 257 (S.D. W. Va. 2007).

Second, if HB 467 were permitted to take effect, it would effectively nullify the relief the Court granted with its preliminary injunction against the Trigger Ban. HB 467, if permitted to go into effect, would ban all abortions provided outside the hospital context and eliminate Utah's longstanding licensure category of abortion clinics—which currently provide more than 95 percent of abortions in Utah. Utah hospitals only provide abortions in narrow, exceptional circumstances, such as to terminate a pregnancy when there is a grave or lethal fetal anomaly or a severe maternal

medical complication of pregnancy. Because HB 467’s hospital requirement would functionally ban abortion in Utah, HB 467 would nullify the relief the Court granted with its preliminary injunction. Supplementation is therefore appropriate to prevent the State from circumventing the relief ordered by the Court earlier in this litigation.

Third, supplementation will prevent unnecessary duplication of efforts and conserve judicial resources by consolidating disputes between substantially the same parties, addressing many of the same facts, issues, and claims, into a single lawsuit. PPAU, the sole original plaintiff in this action, seeks relief in its proposed supplemental complaint against nearly all of the same defendants. PPAU’s supplemental complaint would add a single new party: the Utah Department of Health and Human Services (“DHHS”), reflecting DHHS’s responsibility for enforcing the facility licensing components of HB 467. Rule 15(d) “plainly permits supplemental amendments to cover events happening after suit, and it follows, of course, that persons participating in these new events may be added if necessary.” *Cf. Griffin v. Cty. Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 227 (1964) (applying the federal counterpart to Utah R. Civ. P. 15(d)).

For these reasons, if PPAU instead filed a new action, the two cases would clearly be related and worthy of consolidation pursuant to Utah Rule of Civil Procedure 42(a). Denying supplementation and requiring PPAU to file, then consolidate, a new, related action would be a pointless formality, which Rule 15 aims to avoid. *See Savage*, 2004 UT 102, ¶ 9, 104 P.3d 1242. Accordingly, under Utah’s liberal standard for allowing supplementation or amendment, PPAU’s motion should be granted.

II. SUPPLEMENTATION WILL NOT PREJUDICE DEFENDANTS

To justify denying a motion to supplement or amend a complaint, the nonmoving party must suffer “undue or substantial prejudice” that is “unavoidable.” *Kelly v. Hard Money Funding*,

Inc., 2004 UT App 44, ¶ 31, 87 P.3d 734 (first quoting 61B Noah J. Gordon et al., *American Jurisprudence* § 776 (West 2d ed. 2023)). Even in the event a motion to supplement or amend is filed shortly before trial, *Daniels*, 2009 UT 66, ¶ 15, or “the day fact discovery closed,” *DeLuca v. Winer Indus., Inc.*, 857 F.Supp. 606, 608 (N.D. Ill. 1994), prejudice “can be avoided with a reasonable, brief, and targeted extension.” *Evans v. B&E Pace Inv. Rsch.*, 2018 UT App 37, ¶ 18, 424 P.3d 963. “Mere inconvenience” to the nonmoving party is not enough. *Kelly*, 2004 UT App 44, ¶ 31 (quoting 61B Noah J. Gordon et al., *American Jurisprudence* § 776 (West 2d ed. 2023)).

The filing of the proposed supplemental complaint will not prejudice Defendants. All case management deadlines in the trial court proceedings have been vacated pending resolution of the State’s interlocutory appeal of the preliminary injunction to the Utah Supreme Court. While discovery is open and the State has served discovery requests, PPAU’s response is not due until May 8, 2023, and there has been no significant activity in the case since briefing completed on the State’s appeal of the court’s preliminary injunction. That appeal was fully briefed as of February 21, 2023, but argument is yet to be scheduled. Thus, supplementation will not prejudice Defendants and the Court should grant PPAU’s motion.

Moreover, PPAU brings this motion in good faith to preserve the full scope of the Court’s preliminary injunction, which protects PPAU’s patients’ constitutional rights. The filing of the proposed supplemental complaint is not futile, as it is not designed to correct any deficiencies in the original Verified Complaint but instead to reflect relevant factual and legal developments and to add new claims and a new defendant arising from those developments (and the factual allegations necessary for that purpose).

CONCLUSION

Good cause exists for an expedited ruling on this motion for leave to file a supplemental complaint, given PPAU's need for urgent relief on the claims raised in this new complaint. For the reasons set forth above, the Court should grant this motion.

Respectfully submitted,

/s/Troy L. Booher
Troy L. Booher (9419)
J. Frederic Voros, Jr. (3340)
Dick J. Baldwin (14587)
ZIMMERMAN BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111
tbooher@zbappeals.com
fvoros@zbappeals.com
dbaldwin@zbappeals.com
(801) 924-0200

/s/John Mejia
John Mejia (13965)
Valentina De Fex (17785)
ACLU OF UTAH FOUNDATION, INC.
311 South State Street, Suite 310
Salt Lake City, UT 84111
jmejia@acluutah.org
vdefex@acluutah.org
(801) 521-9862

/s/Hannah Swanson
Hannah Swanson (pro hac vice)
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
hannah.swanson@ppfa.org
(202) 803-4030

/s/Camila Vega
Camila Vega (pro hac vice)
Emma Noftz Stern*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 William Street, 9th Floor
New York, NY 10038
camila.vega@ppfa.org
emma.stern@ppfa.org
(408) 655-8501

**Pro hac vice application forthcoming*

Attorneys for Plaintiff Planned Parenthood Association of Utah

Dated: April 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd of April, 2023, I caused the foregoing to be electronically filed and served on the following via GreenFiling:

Melissa A. Holyoak (melissaholyoak@agutah.gov)
Utah Solicitor General
David N. Wolf (dnwolf@agutah.gov)
Lance F. Sorenson (lancesorenson@agutah.gov)
Assistant Utah Attorneys General
OFFICE OF THE UTAH ATTORNEY GENERAL

Tyler Green (tyler@consovoymccarthy.com)
CONSOVOY MCCARTHY PLLC

/s/ Troy L. Booher
Troy L. Booher

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:

utcourts.gov/motions



Scan QR code
to visit page

Finding help

The court's Finding Legal Help web page

(utcourts.gov/help)

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



Scan QR code
to visit page

Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios:

utcourts.gov/motions-span



Para acceder esta página
escanee el código QR

Cómo encontrar ayuda legal

La página de la internet del tribunal
Cómo encontrar ayuda legal

(utcourts.gov/help-span)

tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.



Para acceder esta página
escanee el código QR

Attachment

**If you do not respond to this document
within applicable time limits, judgment could
be entered against you as requested.**

Troy L. Booher (9419)
J. Frederic Voros, Jr. (3340)
Dick J. Baldwin (14587)
ZIMMERMAN BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111
tbooher@zbappeals.com
fvoros@zbappeals.com
dbaldwin@zbappeals.com
(801) 924-0200

John Mejia (13965)
Valentina De Fex (17785)
ACLU OF UTAH FOUNDATION, INC.
311 South State Street, Suite 310
Salt Lake City, UT 84111
jmejia@acluutah.org
vdefex@acluutah.org
(801) 521-9862

Hannah Swanson (pro hac vice)
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
hannah.swanson@ppfa.org
(202) 803-4030

Camila Vega (pro hac vice)
Emma Noftz Stern*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 William Street, 9th Floor
New York, NY 10038
camila.vega@ppfa.org
emma.stern@ppfa.org
(408) 655-8501

**Pro hac vice application forthcoming*

*Attorneys for Plaintiff Planned Parenthood
Association of Utah*

**THIRD JUDICIAL DISTRICT COURT FOR
SALT LAKE COUNTY, UTAH**

PLANNED PARENTHOOD ASSOCIATION OF
UTAH, on behalf of itself and its patients,
physicians, and staff,

Plaintiff,

v.

STATE OF UTAH; SEAN D. REYES, in his
official capacity as the Attorney General of the
State of Utah; SPENCER COX, in his official
capacity as the Governor of Utah; MARK B.
STEINAGEL, in his official capacity as the
Director of the Utah Division of Professional
Licensing; and the UTAH DEPARTMENT OF

**[PROPOSED] FIRST
SUPPLEMENTAL COMPLAINT
FOR DECLARATORY &
INJUNCTIVE RELIEF**

(Tier 2)

Case No. 220903886

Judge Andrew Stone

HEALTH AND HUMAN SERVICES,

Defendants.

1. Less than a year ago, this Court entered emergency relief enjoining Utah Senate Bill 174, 2020 Leg., Gen. Sess. (2020) (codified at Utah Code Ann. tit. 76, ch. 7A) (the “Trigger Ban”), which would have made the provision of abortion in this state at any point in pregnancy a crime, subject to just a few narrow exceptions. The Court concluded that there were at least serious questions as to whether the Trigger Ban violated several provisions of the Utah Constitution, and that allowing the Ban to take effect would cause irreparable harm to Plaintiff Planned Parenthood Association of Utah (“PPAU”), its patients, and its staff.

2. This ruling has allowed Utahns to continue to access abortion at up to 18 weeks of pregnancy while this litigation challenging the Trigger Ban under the Utah Constitution proceeds to final resolution on the merits, including an interlocutory appeal of the preliminary injunction, which is currently pending before the Utah Supreme Court.

3. Undeterred by this Court’s injunction and the pending Utah Supreme Court appeal, in March 2023, the Utah Legislature passed a new abortion ban, Utah House Bill 467, 2023 Leg., Gen. Sess. (2023) (“HB 467”), attached hereto as Exhibit A. HB 467 amends the exceptions to the Trigger Ban, making it even more restrictive than the Trigger Ban as originally enacted. HB 467 also bans all abortions not provided in hospitals and eliminates the longstanding facility licensure

category of “abortion clinic” (the “Clinic Ban”), despite the fact that licensed abortion clinics such as PPAU’s have provided abortions safely in Utah for many years.¹

4. HB 467 is scheduled to take effect on May 3, 2023. Assuming the injunction against the Trigger Ban remains in effect on May 3, 2023, the Trigger Ban, even as amended by HB 467, will have no operative force on that date.

5. But if the Clinic Ban is allowed to take effect on May 3, 2023, Utah’s outpatient abortion providers, including PPAU and its staff, will be forced to stop providing abortions under any circumstance. Because these outpatient abortion clinics provide over 95 percent of the abortions in Utah, and Utah hospitals provide abortions only in extraordinarily narrow circumstances, abortion will be functionally banned for the vast majority of Utahns, even as the original Trigger Ban remains enjoined.

6. As the Court already recognized in blocking the Trigger Ban, banning safe and legal abortion would inflict severe and irreparable harm on pregnant women in Utah.² In the absence of legal abortion in Utah, at least 2,200 Utahns each year will face a government-mandated trilemma:

¹ Collectively, the Clinic Ban appears at HB 467 § 17 (amending Utah Code Ann. § 76-7-302(3)) (“An abortion may be performed only in . . . a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.”); *id.* § 29 (amending Utah Code Ann. § 76-7a-201(2)(b)) (“An abortion may be performed only[] . . . in a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.”); *id.* § 16 (amending Utah Code Ann. § 76-7-301(6)) (defining “hospital”); *id.* § 28 (amending Utah Code Ann. § 76-7a-101(4)) (defining “hospital”); *id.* §§ 2, 5 (amending Utah Code Ann. §§ 26-21-6.5(1)(b), -11(2)) (barring licensed abortion clinics from providing abortions in violation of Utah law, including the Clinic Ban); *id.*, §§ 1–4, 6, 21, 24 (amending Utah Code Ann. §§ 26-21-2, -6.5, -7–8, -25; 76-7-305(2)(a), -314(7)) (eliminating the “abortion clinic” licensure category) HB 467 §§ 24–25 (amending Utah Code Ann. §§ 76-7-314; -314.5) (criminalizing violations of the Utah Criminal Code, Title 76, Chapter 7, Part 3, including HB 467’s hospital requirement as codified at Utah Code Ann. § 76-7-302(3)).

² References to “woman” or “women” are meant as shorthand for people who are or may become pregnant. However, people with other gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services. PPAU also uses “woman” or “women” when citing or quoting research that reports its results in terms of “women,” to preserve the accuracy of those results.

carry a pregnancy to term against their will, remain pregnant until they can amass the resources to travel out of state if they are even able to do so, or attempt to self-manage their abortions outside the medical system.

7. The Trigger Ban and Clinic Ban both violate the Utah Constitution. Although *Dobbs v. Jackson Women’s Health Organization* (“*JWHO*”), 142 S.Ct. 2228 (2022), revoked the right to abortion under the federal Constitution, the Utah Constitution serves as an independent source of rights, many of which have no analog under federal law. Moreover, even where the Utah Constitution’s provisions are similar or identical to their federal analogs, Utah courts do “not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state’s citizens.” *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 98, 250 P.3d 465 (quoting *State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546).

8. Through HB 467, the Utah Legislature has attempted to accomplish by other means what Utah courts have blocked it from doing directly: ban abortion in Utah. On behalf of itself, its staff, and its patients, PPAU therefore seeks a declaration that both the Trigger Ban and the Clinic Ban violate the Utah Constitution, as well as a temporary restraining order and preliminary and permanent injunctive relief to prevent Defendants from enforcing these unconstitutional laws.

PARTIES

A. Plaintiff

9. Plaintiff PPAU is a Utah non-profit corporation dedicated to ensuring Utahns’ access to affordable, quality sexual and reproductive health care and education. Each year, PPAU

provides well-person visits, contraceptive care, sexually transmitted infection (“STI”) testing, among numerous other forms of care, to approximately 37,000 Utahns at its eight health centers.

10. PPAU—through its board-certified physicians—also provides abortions at three health centers, two in Salt Lake City and one in Logan, each of which is licensed as an “abortion clinic” under Utah law and is authorized to perform abortions.

11. PPAU’s staff includes Utah-licensed physicians and other employees who are involved in the provision of abortion. PPAU also maintains a pharmacy license for in-clinic dispensing of medications, including medications used in an abortion.

12. PPAU’s abortion services—and its patients’ access to abortions—were abruptly disrupted in June 2022, when the Trigger Ban took effect. After this Court temporarily enjoined the Trigger Ban, PPAU resumed providing abortions in compliance with Utah’s law banning abortion at 18 weeks of pregnancy (the “18-Week Ban”). *See* Utah Code Ann. § 76-7-302.5 (2022).

13. If HB 467’s Clinic Ban goes into effect, PPAU will be forced to stop providing all abortions on May 3, 2023, to avoid exposure to severe criminal, civil, and licensing penalties for itself and its staff.

14. Granting declaratory and injunctive relief, however, will allow PPAU to continue providing abortions, in compliance with all other applicable provisions of Utah law. Under Utah law as amended by those portions of HB 467 *not* challenged here, PPAU would be allowed to provide abortions at its licensed abortion clinics up to 18 weeks of pregnancy, as it is currently doing and would continue to do unless either the Trigger Ban or the Clinic Ban takes effect.³

³ HB 467 incorporates the ban on most abortions after 18 weeks of pregnancy into the statute that previously banned most abortions after viability. *See* HB 467 § 17 (amending Utah Code Ann. § 76-7-302); *id.* § 30 (repealing Utah Code Ann. § 76-7-302.5). Through an apparent awkwardness in drafting, the amended statute both *generally* permits abortions before 18 weeks of pregnancy and *specifically* permits abortions before 18 weeks of pregnancy where the pregnancy is the result of reported rape or incest, or where the pregnant patient is under fourteen

15. PPAU sues on its own behalf, on behalf of its patients seeking abortions, and on behalf of its physicians and staff who provide abortions.

B. Defendants

16. Defendant the State of Utah is responsible for upholding the Utah Constitution. The State of Utah has enacted the Trigger Ban, followed by HB 467, and has authority through state and local officials to enforce the law.

17. Defendant Sean D. Reyes is the Attorney General of Utah, the state's chief legal officer. He exercises supervisory power over local prosecutors "in all matters pertaining to the duties of the district and county attorneys' offices," and, "when required by the public service or directed by the governor," he assists local prosecutors in the discharge of their duties. *Id.* §§ 67-5-1(f), (h). Mr. Reyes is sued in his official capacity.

18. Defendant Spencer Cox is the Governor of Utah. He may require the Attorney General to aid local prosecutors in the discharge of their prosecutorial duties. *Id.* § 67-1-1(7); *accord id.* § 67-5-1(h). Mr. Cox is sued in his official capacity.

19. Defendant Mark B. Steinagel is the Director of the Utah Division of Professional Licensing ("DOPL"), the state agency responsible for licensing physicians, nurses, pharmacists, and pharmacies, and enforcing disciplinary sanctions against licensees. *See id.* §§ 58-1-103, 106(1); *see also id.* tit. 58, chs. 17B, 31B, 67. DOPL used to be called the Utah Division of Occupational and Professional Licensing, as it was named in the original complaint in this case. Compl. Declaratory Injunctive Relief (the "Trigger Ban Complaint") ¶ 17. Mr. Steinagel performs

years of age. *Compare id.* § 17 (amending Utah Code Ann. § 76-7-302(2)(a)), *with id.* § 17 (amending Utah Code Ann. § 76-7-302(2)(c)). PPAU interprets this statute as amended to authorize abortions generally up to 18 weeks of pregnancy, even where patients do not qualify for the conditions in subsection (2)(c).

all “duties, functions, and responsibilities” of DOPL. Utah Code Ann. § 58-1-104(2). He is sued in his official capacity.

20. The Utah Department of Health and Human Services (“DHHS”) is the state agency responsible for licensing health care facilities and enforcing disciplinary sanctions against licensees. *Id.* §§ 26-21-6, -8, -11.

VENUE AND JURISDICTION

21. The Third Judicial District Court for Salt Lake County is the proper venue for this action because both the Trigger Ban and the Clinic Ban were adopted in this county, prohibit PPAU’s provision of abortion in this county, impinge on the constitutional rights of PPAU and PPAU’s patients who reside in this county, and because one or more Defendants reside in this county. *See id.* §§ 78B-3-302(3), -307(1).

22. The Third Judicial District Court for Salt Lake County has jurisdiction over the matter of this First Supplemental Complaint under Utah Code sections 78A-5-102(1)–(2) and 78B-6-401; article VIII, section 5, of the Utah Constitution; and Rules 57 and 65A of the Utah Rules of Civil Procedure.

23. This Court has power to grant declaratory and equitable relief pursuant to Utah’s Declaratory Judgment Act, Utah Code Ann. § 78B-6-401, *et seq.*, as well as through its general equitable powers to enforce the Utah Constitution.

FACTUAL ALLEGATIONS

A. Abortion Is Safe, Essential Health Care

24. Abortion is one of the safest and most common medical services performed in the United States today. Major complications, defined as those requiring hospital admission, surgery,

or blood transfusion, occur in just 0.23 percent of abortions performed in outpatient, office-based settings.

25. Indeed, legal abortion carries far fewer risks than childbirth. The risk of death from childbirth is more than 12 times higher than that from abortion.

26. Approximately one in four women in this country will have an abortion by age forty-five.

27. There are two general methods used to provide abortion: medication abortion and procedural abortion.

28. For early medication abortions, patients typically take a regimen of two prescription drugs approved by the U.S. Food and Drug Administration (FDA). In Utah, the patient usually takes the first medication at the health care facility and the second up to 48 hours later at a location of their choice, usually at home. Together, the medications cause the pregnancy to pass in a process similar to miscarriage.

29. This medication-abortion regimen is widely used to terminate pregnancies through 11 weeks of pregnancy, as measured from the first day of the patient's last menstrual period ("LMP"). After 11 weeks LMP, only procedural abortions are generally available.

30. For procedural abortions, a clinician uses instruments and/or medication to widen the patient's cervical opening and empty the uterus. Procedural abortion is a straightforward and brief procedure almost always performed in an outpatient setting. Although procedural abortion is sometimes referred to as "surgical" abortion, it involves no incisions and does not require general anesthesia.

31. In the first and early-second trimester, procedural abortion typically involves applying gentle suction to empty the uterus, using a flexible tube (a "cannula") inserted through

the natural openings of the patient's vagina and cervix. This is known as "aspiration abortion," "suction curettage," or "dilation and curettage."

32. Aspiration abortion is a straightforward, brief procedure. It typically takes approximately five minutes and does not require any incision. An analgesic such as ibuprofen, an anti-anxiety medication such as Ativan or Valium, a local anesthetic, and/or minimal sedation may be used during or prior to the procedure.

33. At approximately 13 weeks LMP—depending on the provider's practice and the patient's medical circumstances—abortion providers start using instruments in addition to suction, at which point the procedure is referred to as dilation and evacuation, or "D&E." Prior to the D&E procedure, the provider dilates the patient's cervix to ease and advance cervical dilation to assure clinical safety through medications such as misoprostol, which softens the cervix, and/or the placement of osmotic dilators in the cervix, which gradually swells as it absorbs moisture, causing the cervix to dilate. Mechanical dilators are another option. Like aspiration abortion, D&E is a quick procedure, typically lasting less than ten minutes and generally involving no more than moderate sedation.

34. Both aspiration abortion and D&Es are done through the natural opening of the vagina and cervix and therefore require no incisions. Both can be performed in an outpatient clinic by appropriately trained clinicians adhering to the widely-accepted medical standards of care. Indeed, both aspiration abortion and D&E are routinely and safely provided in outpatient, office-based settings nationwide.

35. Abortion by labor induction is the alternative to D&E in the second trimester. Unlike D&E, however, induction abortions are usually performed in hospitals. Induction abortion involves the use of medications to cause the uterus to contract and the patient to undergo labor.

Induction abortions typically last between eight and thirty-six hours, and entail contractions and the process of labor and delivery, which can be painful and require strong medications, sedatives, or anesthesia. Induction has a higher complication rate than D&E.

36. PPAU provides early medication abortion, aspiration abortion, and D&E. PPAU does not provide abortion by induction.

B. The Trigger Ban

37. In 2020, the Utah Legislature adopted the Trigger Ban, which bars abortion at any point in pregnancy with only three limited exceptions. As detailed in the Trigger Ban Complaint, the Trigger Ban provided that it would take effect only upon certification “that a court of binding authority ha[d] held that a state may prohibit the abortion of [a fetus] at any time during the gestational period.” 2020 Utah Laws Ch. 279, § 4(2).

38. This condition was met last year, soon after the U.S. Supreme Court held in *JWHO* that *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny were overruled, eliminating nearly fifty years of precedent protecting a federal substantive due process right to abortion until viability. Shortly thereafter, the Utah Senate announced that the Utah legislative general counsel had issued the certification required for the Trigger Ban to go into effect.

39. Upon certification of the Trigger Ban, PPAU was forced to stop providing abortions that did not meet the Ban’s limited exceptions. The next day, PPAU filed this litigation and sought emergency injunctive relief against the Trigger Ban. This Court granted a temporary restraining order on June 27, 2022, and PPAU was able to resume abortion services.

40. PPAU then moved for a preliminary injunction, alleging that the Trigger Ban violated Utahns’ rights under the Utah Constitution. After further briefing and oral argument, this Court preliminarily enjoined the Trigger Ban on July 11, 2022. In its Order, the Court found that

“PPAU ha[d] made a strong showing that, without a preliminary injunction, the [Trigger Ban would] cause irreparable harm to PPAU, its patients, and its staff,” that the balance of harms weighed in PPAU’s favor, and that a preliminary injunction would be in the public interest. Order Granting Prelim. Inj. (“PI Order”) ¶¶ 3–5. The Court further found that PPAU had raised “at least serious issues on the merits that should be the subject of further litigation.” *Id.* ¶ 6.

41. The State filed a petition before the Utah Supreme Court seeking permission to appeal the preliminary injunction, and moved to stay the preliminary injunction pending appeal. On October 3, 2022, the Supreme Court denied the motion to stay but granted the petition for interlocutory appeal. Briefing in that appeal was completed on February 21, 2023.

C. Utah House Bill 467

42. Despite the preliminary injunction recognizing the serious constitutional issues presented by the Trigger Ban and the Utah Supreme Court’s agreement to consider that injunction on interlocutory appeal, the Utah Legislature began devising ways to circumvent the orderly proceeding of the appellate process by functionally banning abortion in Utah even while the preliminary injunction remained in effect.

43. First, the Legislature passed House Joint Resolution 2, 2023 Leg., Gen. Sess. (2023) (“HJR 2”), which altered the standard for obtaining a preliminary injunction under Rule 65A of the Utah Rules of Civil Procedure. In particular, HJR 2 raised the burden for litigants seeking a preliminary injunction by requiring them to demonstrate “a substantial likelihood” of prevailing on the merits, not only a “serious issue” as to the merits of the underlying claim. HJR 2 also created a mechanism for parties enjoined under the previous Rule 65A “serious issues” standard to move to reconsider those injunctions. In enacting the change, legislators acknowledged that it was

tailored specifically to try to upend the Court’s injunction in this case. HJR 2 took effect on February 14, 2023.

44. Next, the Legislature passed HB 467, which, as detailed below, bans abortion by its practical effect. HB 467 was signed by the Utah Governor on March 15, 2023, and is set to take effect on May 3, 2023. On that date, abortion will be effectively banned in Utah, even as the original Trigger Ban remains enjoined by order of this Court.

45. In this supplemental complaint, PPAU primarily challenges HB 467’s requirement that all abortions be performed in a “hospital” and its elimination of the “abortion clinic” facility license category that allows outpatient abortion clinics to provide abortions in Utah. When these provisions take effect on May 3, 2023, they will force PPAU to stop providing abortion under any circumstance.

46. HB 467 also amends the scope of the Trigger Ban’s exceptions and requires abortions provided under those exceptions to be performed in a hospital. As long as the underlying Trigger Ban prohibition remains preliminarily enjoined by order of this Court, HB 467’s amendments to the Trigger Ban have no operative effect. But because those changes worsen the Trigger Ban’s constitutional defects, *see* Trigger Ban Complaint ¶¶ 60–92, PPAU maintains its claims against the Trigger Ban as amended by HB 467 in this supplemental complaint.

47. Finally, PPAU also challenges HB 467’s new professional licensing penalties, which add to the existing penalties for violations of Utah abortion law, including both the Trigger Ban and the Clinic Ban.

The Clinic Ban

48. The Clinic Ban has two components: a criminal prohibition against providing abortion anywhere other than at a hospital and facility licensing amendments that prohibit abortion clinics from providing abortions, eventually eliminating abortion clinics altogether.

49. First, HB 467 amends both the 18-Week Ban and Trigger Ban to require all abortions permitted under those Bans to be performed in a hospital, unless a medical emergency necessitates performing the abortion in another location. HB 467 §§ 17, 29 (amending Utah Code Ann. §§ 76-7-302(3); 76-7a-201(2)(b)). Providing abortion anywhere other than a hospital is punishable as a second-degree felony, which carries a minimum one-year and maximum fifteen-year prison term. *Id.* §§ 24–25, 29 (amending Utah Code Ann. §§ 76-7-314(3); 76-7-314.5(1); 76-7a-201(4)); Utah Code Ann. § 76-3-203. A second-degree felony also carries a potential \$10,000 fine for individuals and a \$20,000 fine for corporations. Utah Code Ann. §§ 76-3-301(1)(a), 302(1).

50. This means that if the Trigger Ban takes effect, any abortion provided under one of its exceptions must be performed in a hospital. And if the Trigger Ban remains enjoined but the Clinic Ban nonetheless goes into effect, all abortions—which would in those circumstances be permitted until 18 weeks LMP—would need to be performed in hospitals.

51. Second, HB 467 prohibits licensed abortion clinics from providing abortions and *requires* DHHS to revoke the license of any facility other than a hospital that provides an abortion. HB 467 §§ 2, 5 (amending Utah Code Ann. §§ 26-21-6.5(1)(b), -11(2)). HB 467 also prohibits DHHS from issuing any abortion clinic licenses after May 2, 2023, and it provides that all existing abortion clinic licenses will sunset when their license terms expire. *See id.* §§ 1–4, 6, 16, 21, 24, 28 (amending Utah Code Ann. §§ 26-21-2, -6.5(1)(a), (2), -7–8, -25; 76-7-301, -305, -314; 76-7a-101).

52. Collectively, these provisions ban abortion anywhere other than at a hospital, functionally making legal abortion inaccessible in Utah even if the Trigger Ban remains enjoined.

53. The Clinic Ban includes one definitional wrinkle that appears to—but in practice does not—soften its hard line against abortion clinics or other non-hospital healthcare facilities from providing abortion. Specifically, the Clinic Ban defines “hospital” to *include health care facilities other than general hospitals* where abortion at those facilities is provided (1) by physicians who are credentialed at a general hospital to provide abortion using the same procedure; and (2) as safely as it would be at a hospital. *Id.* §§ 16, 28 (amending Utah Code Ann. §§ 76-7-301; 76-7a-101).

54. PPAU’s licensed abortion clinics satisfy this definition of “hospital”: they provide abortion via physicians who are credentialed to perform the same procedures at general hospitals in Utah, and abortion is as safe at those clinics as it would be if performed at a hospital.

55. But DHHS has informed PPAU that to qualify as “hospitals” under HB 467, PPAU’s health centers would have to obtain licenses to operate as a general hospital, or operate as satellite clinics under a general hospital’s license.

56. PPAU’s licensed abortion clinics are outpatient health centers, not inpatient general hospital facilities. Meeting the general hospital licensure requirements under Title R432-100 is wholly unattainable for PPAU. As such, PPAU will not be able to satisfy HB 467’s definition of “hospital” as interpreted by DHHS, notwithstanding the plain language of HB 467 itself. In turn, it would be a crime to provide an abortion at one of PPAU’s licensed abortion clinics once the Clinic Ban takes effect.

57. Under the Clinic Ban, PPAU will also be unable to renew its existing abortion clinic licenses once they expire, and if PPAU provides an abortion after May 3, 2023, those licenses will be revoked.

58. Therefore, if the Clinic Ban takes effect on May 3, 2023, it will force PPAU to stop providing all abortions as of that date.

The Amended Trigger Ban

59. The Trigger Ban as amended by HB 467 largely has many of the same features of the original Trigger Ban that this Court preliminarily enjoined and enacts additional barriers making it even more difficult for Utahns to access legal abortion care.

60. Like the original Trigger Ban, the amended Trigger Ban makes it a second-degree felony to provide an abortion at any point in pregnancy, subject to just a few narrow exceptions. *Id.* § 29 (amending Utah Code Ann. § 76-7a-201).

61. Like the original Trigger Ban, the amended Trigger Ban permits abortion where necessary to save the life of the pregnant patient (the “Death Exception”). *Id.* (to be codified at Utah Code Ann. § 76-7a-201(1)(a)(i)).

62. Like the original Trigger Ban, the amended Trigger Ban includes an exception for abortions that are necessary to avert a serious risk of substantial bodily impairment, but it alters the standard for that exception. Under the original Trigger Ban, an abortion cannot be performed absent a “serious risk of substantial and irreversible impairment of a major bodily function.” Utah Code Ann. § 76-7a-201(1)(a)(ii). Under the amended Trigger Ban, an abortion cannot be performed unless the pregnant person faces a “serious *physical* risk of substantial impairment” (the “Serious Physical Impairment Exception”). HB 467 § 29 (amending Utah Code Ann. § 76-7a-201(1)(a)(ii)) (emphasis added).

63. Like the original Trigger Ban, the amended Trigger Ban includes an exception for grave fetal anomalies, requiring the concurrence in writing of two maternal-fetal medicine physicians. The original Trigger Ban authorizes abortions where the fetus either has a health condition that is “uniformly diagnosable and uniformly lethal” or “has a severe brain abnormality that is uniformly diagnosable.” Utah Code Ann. § 76-7a-201(1)(b)). The amended Trigger Ban now permits abortion only where the fetal abnormality is “incompatible with life” (the “Fatal Fetal Anomaly Exception”). HB 467 § 29 (amending Utah Code Ann. § 76-7a-201(1)(b)).

64. Furthermore, under the amended Trigger Ban, if the patient has received a diagnosis of a fetal abnormality qualifying for this exception, the physician must inform the patient—both verbally and in writing at the time of the diagnosis—“that perinatal hospice services and perinatal palliative care are available and are an alternative to abortion.” *Id.* (amending Utah Code Ann. § 76-7a-201(3)). The physician must give the patient this information regardless of the specific patient’s interest in perinatal hospice or perinatal palliative care and even if the physician has reason to believe that a discussion of these options will disturb or offend the patient. Abortion providers in Utah, including PPAU physicians, already discuss the availability of perinatal hospice or palliative care with patients who indicate an interest in or willingness to discuss these options, but this is a case-by-case determination based on the specific circumstances of the individual patient.

65. Like the original Trigger Ban, the amended Trigger Ban includes an exception where the pregnancy results from rape or incest that has been reported to law enforcement (the “Reported Rape Exception”). But the amended Trigger Ban now limits the availability of that exception to the first 18 weeks of pregnancy. *Id.* (amending Utah Code Ann. § 76-7a-201(1)(c)(i)).

66. The amended Trigger Ban also adds a new exception permitting abortion where the pregnant patient is a child aged thirteen or younger (the “Pregnant Child Exception”). *Id.* (amending Utah Code Ann. § 76-7a-201(1)(c)(i)(B)). This exception, however, does not apply to children aged fourteen or older and also excludes children whose pregnancies have reached at least 18 weeks LMP.

67. And, unlike the Trigger Ban, the amended Trigger Ban newly requires that all abortions provided under one of its exceptions be performed in a hospital, as discussed above. *Id.* § 29 (amending Utah Code Ann. § 76-7a-201(2)(b)).

68. Like the original Trigger Ban, the amended Trigger Ban authorizes DHHS to revoke the license of any health care facility where an abortion is performed in violation of the Ban. *Id.* (amending Utah Code Ann. § 76-7a-201(5)). License revocation is a penalty provided in addition to the risk of prosecution for committing a second-degree felony. *Id.* (amending Utah Code Ann. § 76-7a-201(4)).

69. As under the original Trigger Ban, Utah doctors who violate the amended Trigger Ban face one-to-fifteen-year prison terms, steep criminal fines, and loss of their professional licenses and their families’ livelihoods. *See id.* (amending Utah Code Ann. §§ 76-7a-201(3)–(5)); Utah Code Ann. §§ 76-3-203(2), -301(1)(a), -302(1).

The Professional Licensing Penalties

70. In addition to the professional penalties described above, HB 467 adds a layer of new professional licensing penalties for violations of either the Trigger Ban or the Clinic Ban. Specifically, it authorizes DOPL to deny or revoke the license of a Utah medical practitioner if the agency believes the practitioner has violated Utah criminal law—even if no court has found that practitioner guilty of such a crime. While Utah law already prohibits anyone other than a physician

from providing abortion, these new licensing penalties apply to nurses (including advanced practice registered nurses), certified nurse midwives, physicians, osteopathic physicians, physician assistants, and direct-entry midwives. *Id.* §§ 7–14 (amending Utah Code Ann. §§ 58-31b-502(1)(q); 58-44a-502(8); 58-67-304, -502(1)(e); 58-68-304, -502(1)(e); 58-70a-501; 58-77-603(6)).

71. These penalties go beyond existing Utah professional licensing statutes by removing the requirement that the licensee *first* be convicted of or plead guilty to a crime before DOPL can consider the licensee’s actions “unprofessional conduct” justifying adverse licensure action. *E.g.* Utah Code Ann. §§ 58-1-501(2)(c), (4)(a).

D. The Impact of HB 467 on PPAU, Its Patients, and Staff

72. If HB 467’s Clinic Ban takes effect on May 3, 2023, PPAU and its staff will be forced to stop performing abortions entirely, even as the Trigger Ban remains enjoined by order of this Court.

73. To PPAU’s knowledge, the only other outpatient provider in Utah will also stop performing all abortions on May 3, 2023.

74. Utah hospitals do not provide abortions other than in a narrow set of medical circumstances involving risks to the patient’s health or grave fetal anomalies. In 2020, less than five percent of all abortions in Utah were provided in a hospital.⁴

75. Accordingly, the Clinic Ban will functionally ban abortion in Utah, notwithstanding the preliminary injunction currently blocking enforcement of the first version of the Trigger Ban.

⁴ Jennifer Gerson, *Only 1 percent of abortions in Utah took place in a hospital. Soon, that’s the only place they’ll be allowed.*, The 19th News (March 21, 2023, 7:58 A.M.), available at <https://19thnews.org/2023/03/abortions-utah-percentage-hospitals-clinic-ban/>; *see also* Rachel K. Jones, *Abortion incidence and service availability in the United States, 2020*, 54 Persps. on Sexual & Reprod. Health 128, 134 (2022).

76. If it takes effect, the Clinic Ban will be catastrophic for Utahns, just like the Trigger Ban. Either Ban would force some Utahns seeking abortion to instead carry pregnancies to term against their will, with all the physical, emotional, and financial costs that this entails. Some Utahns will inevitably turn to self-managed abortion by buying pills or other items online and outside the U.S. healthcare system, which may be unsafe. And even people who are ultimately able to obtain an abortion—either because they have been able to scrape together enough resources to travel out of state or because they are one of the few patients who qualify for an abortion at a Utah hospital—will suffer grave harm. The Bans will also harm Utahns who want to expand their families but are afraid to become pregnant because of concerns that the limited exceptions will be insufficient to protect their health, should the pregnancy become complicated.

77. In each of these cases, Utahns who have relied on safe, legal access to abortion—access that has existed for at least five decades—will lose the right to determine the composition of their families; their freedom from discriminatory state laws that subordinate women and perpetuate stereotypes about women’s societal role; the right to bodily autonomy; and the right to make private health care decisions free from public scrutiny.

(i) *The Clinic Ban functionally bans abortion without any safety benefit*

78. Requiring abortions to be performed in a hospital does not make abortion safer. It only puts abortion out of reach for the vast majority of people in Utah.

79. As explained above, abortion is extremely safe. No scientific evidence indicates that abortions performed in a general hospital are safer than abortions performed with the same procedures at an appropriate outpatient clinic. Medical experts agree that early medication abortion, aspiration abortion, and D&E can all be performed as safely at an outpatient clinic as at

a general hospital, and they agree that requiring abortion to be performed in a hospital is not necessary for patient safety.

80. Indeed, the main driver of abortion safety is having skilled providers with extensive experience.

81. In 2020, over 95 percent of abortions in Utah were provided at four licensed abortion clinics, three of which are PPAU's health centers in Salt Lake City and Logan.

82. According to the Utah Hospital Association, no hospitals provided "elective" abortions in the state last year.⁵

83. In Utah, procedures with risks similar to the risks associated with abortion—including endometrial biopsy, colposcopy, hysteroscopy (scoping of the cervix and uterus), Loop Electrosurgical Excision Procedure ("LEEP") (removing pre-cancerous cells from the cervix), and dilation and curettage for miscarriage management—are routinely performed in outpatient clinics and physicians' offices rather than in hospitals.

84. Procedures with higher complication rates than abortion—including vasectomies, colonoscopies, wisdom teeth extractions, and surgical removal of the tonsils—are routinely performed in outpatient, office-based settings throughout Utah rather than in hospitals.

85. Similarly, despite the fact that the mortality rate from childbirth is approximately 12 times that of abortion, physicians and certified nurse-midwives are authorized in Utah to deliver babies in locations other than a hospital, including birthing centers and private homes.⁶

⁵ Sam Metz, *Utah Bans Abortion Clinics in New Wave of Restrictions*, PBS News Hour (March 16, 2023, 8:48 A.M.), available at <https://www.pbs.org/newshour/politics/utah-bans-abortion-clinics-in-new-wave-of-restrictions>.

⁶ Utah Code Ann. § 58-77-304 ("Nothing in this chapter abridges, limits, or changes in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.").

86. PPAU and Wasatch Women’s Center, located in Salt Lake City and the only other generally-available abortion provider in Utah, currently provide more than 95 percent of Utah abortions. According to a recent news report relying on data from the Guttmacher Institute, a nonpartisan research and policy organization that collects abortion statistics nationwide, as much as 99 percent of abortions performed in Utah in 2020 were provided in outpatient clinics.⁷

87. This is consistent with how abortion is provided nationwide. In published research, the Guttmacher Institute reports that, in 2020, 97 percent of abortions nationally were performed in outpatient clinics or physicians’ offices, and only 3 percent of abortions were performed in hospitals.⁸

88. Utah hospitals generally only perform abortion when a medical condition seriously threatens the patient’s life or health or when the patient has been diagnosed with a grave fetal anomaly. On an even less frequent basis, Utah hospitals also perform abortion in the case of rape or incest.

89. Utah law prohibits the use of state funds to pay for abortions other than in cases of rape or incest that have been reported to law enforcement, to protect the life of the patient, or to prevent significant damage to one of the patient’s major bodily functions.⁹

90. This funding restriction prevents public hospitals like the University of Utah Hospital from offering abortion appointments to the general public. Fewer than 30 pregnancy terminations are performed by University of Utah providers each year.¹⁰

⁷ Gerson, *supra* note 4.

⁸ Jones, *supra* note 4, at 134 tbl. 3.

⁹ Utah Code Ann. § 76-7-331(2).

¹⁰ *University of Utah Statement: U.S. Supreme Court’s overturn of Roe v. Wade*, Univ. of Utah (June 24, 2022), <https://attheu.utah.edu/facultystaff/university-of-utah-statement-u-s-supreme-courts-overturn-of-roe-v-wade/>

91. Additionally, Utah law allows medical facilities and providers to refuse to provide abortion on moral or religious grounds.¹¹

92. It would be extremely difficult or impossible for a Utah hospital to begin providing abortion in a wider range of circumstances due to hospitals' religious affiliations and funding streams.

93. Even if a Utah hospital agreed to expand its capabilities to provide abortions beyond narrow, exceptional circumstances, that hospital would be incapable of providing care to all the patients who will no longer be able to receive care at a Utah abortion clinic as a result of the Clinic Ban. Abortions performed in hospitals are usually performed by induction, requiring use of an operating room, extensive staffing, including an anesthesiologist, increased costs, increased patient pain, longer recovery periods, and a much longer investment of time for patients. These logistics, plus staffing shortage struggles and scheduling bottlenecks due to competing demands on available ORs, would make it extremely difficult for a hospital to offer more than five abortion appointments a day.

94. The few patients who could get an abortion at a hospital would be harmed by costs two to 20 times higher than at PPAU, lengthy wait times, added stress, complicated paperwork and other logistical requirements, loss of confidentiality, and increased medical risk from providers who likely provide abortion care infrequently. Particularly when general anesthesia is used, as is done for the vast majority of abortion patients at hospitals like the University of Utah, the total appointment time, post-procedure recovery time, staffing and facility requirements, costs, and procedure risks increase. D&E patients in a hospital must sit in the waiting room or pre-operative

¹¹ Utah Code Ann. § 76-7-306.

area potentially for hours, despite the fact the procedure itself typically takes no more than 10 minutes.

95. Though hugely variable, abortions in hospitals cost thousands of dollars. Because Utah law prohibits both private insurance and public insurance, including Medicaid, from being used toward paying for abortion care outside of a select few circumstances, many patients will be responsible for paying the entire cost of an abortion.¹²

96. Specifically, at PPAU, abortion costs \$450 at 12 weeks LMP and under; \$575 at 13 weeks LMP; \$750 at 14 weeks LMP; \$1200 at 15 weeks LMP; \$1500 at 16 weeks LMP; and \$1900 at 17 weeks LMP. At a hospital, abortion costs jump from \$700 for a medication abortion, to over \$6,700 for a first-trimester aspiration abortion with moderate sedation, to over \$7,000 for a D&E. Some hospital abortions can cost as much as \$20,000.¹³

97. Given that only one in three Americans can comfortably cover a \$400 emergency expense, the financial burden of an abortion at a hospital will be insurmountable for many people.¹⁴ In 2021, 45 percent of PPAU abortion patients reported earning less than 130% of the federal poverty level.

98. For all of these reasons, obtaining an abortion at a hospital will not be possible for the vast majority of people in Utah.

¹² Utah Code Ann. §§ 31A-22-726 (prohibiting insurance coverage for abortion through either private insurance or insurance through a public exchange under the Affordable Care Act, except in cases of reported rape or incest; fatal fetal anomalies; or grave threats to the patient's life or health);, 26-18-417(1)(a)(ii).

¹³ *Hearing on H.B. 467 before the S. Health and Hum. Servs. Comm.*, 2023 Leg., Gen. Sess., recording at 2:27:38 (Utah Feb. 22, 2023) (statement of witness Dr. Alexandra Eller, a Utah maternal fetal medicine physician), available at <https://le.utah.gov/av/committeeArchive.jsp?timelineID=227755>.

¹⁴ Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2021*, at 36 (May 2022), <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>.

(ii) The impact of forced pregnancy and parenting

99. Banning abortion in Utah—whether directly, through the Trigger Ban, or effectively, through the Clinic Ban—will force some pregnant Utahns to remain pregnant against their will, endure labor and delivery, and potentially assume a lifetime of parenting responsibility. Each of these things carries significant physical, personal, and financial consequences for the pregnant person.

100. Even in an uncomplicated pregnancy, an individual experiences a wide range of physiological challenges. Individuals experience a quicker heart rate, a substantial rise in their blood volume, digestive difficulties, increased production of clotting factors, significant weight gain, changes to their breathing, and a growing uterus. These and other changes increase a pregnant patient's risk of blood clots, nausea, hypertensive disorders, anemia, and other complications. Pregnancy can also exacerbate preexisting health conditions, including diabetes, obesity, autoimmune disorders, and other pulmonary disease. It can lead to the development of new and serious health conditions as well, such as hyperemesis gravidarum, preeclampsia, deep vein thrombosis, and gestational diabetes.

101. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy) are significantly more likely to seek emergency care. People who develop pregnancy-induced medical conditions are also at higher risk of developing the same condition in subsequent pregnancies.

102. Pregnancy can also induce or exacerbate mental health conditions. Some people with histories of mental illness experience a recurrence of their illness during pregnancy. Mental health risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on. In Utah, almost 20% of

pregnancies are unintended, and this percentage is much higher for Utahns who are Black or Hispanic/Latino due to historic and structural inequities in access to health care, including specifically sexual and reproductive health care.

103. Some pregnant patients also face an increased risk of intimate partner violence, with the severity of that violence sometimes escalating during or after pregnancy.

104. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. The risk of mortality from pregnancy and childbirth is more than 12 times greater than for legal abortion.

105. The health risks of childbirth also go beyond mortality. Complications during labor occur at a rate of over 500 per 1,000 hospital stays, and the vast majority of childbirth delivery stays have a complicating condition. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. Adverse events include hemorrhage, transfusion, ruptured uterus or liver, stroke, unexpected hysterectomy (the surgical removal of the uterus), and perineal laceration (the tearing of the tissue around the vagina and rectum). The most severe perineal tears involve tearing between the vagina through the anal sphincter and into the rectum and must be surgically repaired. These can result in long-term urinary and fecal incontinence and sexual dysfunction. Vaginal delivery may also lead to injury to the pelvic floor, urinary incontinence, fecal incontinence, and pelvic organ prolapse (the displacement of internal organs, resulting in some cases in their protrusion from the vagina). Anesthesia or epidural administered during labor also carries risks.

106. In Utah, more than one in five deliveries occur by cesarean section (“C-section”) rather than vaginally. A C-section is an open abdominal surgery that requires hospitalization for at least a few days and carries significant risks of hemorrhage, infection, blood clots, and injury to

internal organs. It can also have long-term risks, including an increased risk of placenta accreta in later pregnancies (when the placenta grows into and possibly through the uterine wall causing a need for complicated surgical interventions, massive blood transfusions, hysterectomy, and risk of maternal death), placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding and requiring bed rest), and bowel or bladder injury in future deliveries. Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness, which may go undiagnosed for months or even years.

107. Negative pregnancy and childbirth-related health outcomes are even greater for Utahns of color. Postpartum depression also disproportionately affects people of color in Utah.

108. In addition to these physical and mental injuries, the Bans will impinge on some of the most personal and consequential decisions of PPAU's patients: whether to become or remain pregnant.

109. Patients have a range of views on the morality of abortion, which depend not only on their unique circumstances but also on varying religious and spiritual views about when life begins.

110. Roughly half of abortion patients in Utah already have one or more children, and in 2021, 45% of PPAU abortion patients reported earning less than 130% of the federal poverty level.

111. If either the Trigger Ban or the Clinic Ban takes effect, it will dramatically impair the ability of Utah families to determine their own composition, free from state interference. And it will lead to long-term negative impacts for pregnant people forced to give birth, as well as their existing children. Research shows that only a small minority (14 percent) of patients who seek but are denied an abortion report that they are considering adoption as an alternative, and among those

who give birth after being denied an abortion, 91 percent parent the child. Patients who decide to place their infant for adoption face extensive medical, legal, and counseling expenses, as well as the physical consequences of a full-term pregnancy, labor, and delivery. Deciding whether to place an infant for adoption can also be extremely emotionally taxing. In 2020, just over 500 children were adopted in Utah at any age, with 686 children waiting for adoption and, as of the last day of Fiscal Year 2020, 2,373 children remained in foster care.

112. Ninety-five percent of women who obtain abortions report feeling it was the right decision for them three years later. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to lower their future goals and less likely to be able to exit abusive relationships. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. As compared to women who received an abortion, women denied an abortion are also less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs.

113. If denied an abortion, women whose pregnancies are the result of rape may be forced to share custody of or otherwise parent the child with the person that raped them, especially if the rape does not ultimately result in a conviction. *See* Utah Code Ann. § 76-5-414.

114. The economic impact of forced pregnancy, childbirth, and parenting will also have dramatic, negative effects on Utah families' financial stability. Some side-effects of pregnancy render patients unable to work or unable to work the same number of hours as they otherwise would. For example, some patients with hyperemesis gravidarum must adjust their work schedules because they vomit throughout the day. And other patients with preeclampsia must severely limit activity for a significant amount of time. These conditions may result in job loss, especially for

people who work jobs without predictable schedules, paid sick or disability leave, or other forms of job security. Even without these conditions, pregnancy-related discrimination can result in lower earnings for women both during pregnancy and over time. Further, Utah does not require employers to provide paid family leave, meaning that for many pregnant Utahns, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid. A typical Utahn who takes four weeks of unpaid leave could lose more than \$3,000 in income.

115. Pregnancy-related health care and childbirth are also some of the most expensive hospital-based health services, particularly for complicated or at-risk pregnancies.

116. This financial burden weighs most heavily on patients without insurance, who make up nearly 13 percent of all Utahns, including more than 36 percent of Hispanic/Latino Utahns, more than 26 percent of Black Utahns, more than 23 percent of Native Hawaiian/Pacific Islander Utahns, and more than 18 percent of American Indian/Alaska Native Utahns. More than one in nine women of childbearing age in Utah are uninsured. Even insured pregnant patients often pay for considerable costs for labor and delivery out of pocket. Of the 98.2 percent of commercially-insured women who had out-of-pocket expenses for their labor and delivery in 2015, the mean spending for all modes of delivery was \$4,569; the mean spending for that same group of women for vaginal birth was \$4,314; and the mean spending for that same group of women for C-section was \$5,161.

117. Beyond childbirth, raising a child is expensive, both in terms of direct costs and due to lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, which compounds the substantial costs of parenting. In Utah, the average cost of infant care is more than \$8,500 per year, and Utah is the second least affordable

state for infant and toddler care outside the home. These costs can be particularly onerous for people who do not have partners or other support systems in place.

(iii) **The impact of forcing patients to seek abortion services outside of Utah**

118. Although some pregnant individuals may eventually be able to obtain abortions out of state notwithstanding the Bans, they will be forced to remain pregnant against their will until they can obtain that care, likely later in pregnancy than if they had abortion access in Utah.

119. Delay of any kind is particularly concerning because, while abortion is very safe, its risks increase with gestational age, as does the invasiveness of the procedure and the need for deeper levels of sedation. Delay is especially problematic for people seeking abortion due to a serious medical condition or a diagnosis of fetal abnormality. Patients who need to terminate a pregnancy for health reasons are likely to see their medical conditions worsen while they wait to receive an abortion.

120. Additionally, these Utahns will suffer the additional costs and burdens of traveling many hundreds of miles out of state. At this time, the nearest Planned Parenthood health center providing abortion outside of Utah is located in Glenwood Springs, Colorado (a distance of 337 miles from Metro Health Center, one way).

121. For patients who need an abortion after the first trimester (i.e., after approximately 14 weeks LMP), the closest Planned Parenthood health center is located in Durango, Colorado (394 miles from Metro Health Center, one way). This health center only provides abortion to 17 weeks LMP. Beyond that point, patients would need to travel to Las Vegas, Nevada (423 miles from Metro Health Center, one way) or Boulder, Colorado (495 miles from Metro Health Center, one way) to visit a Planned Parenthood health center for an abortion.

122. In order to obtain transportation or child care while they have an abortion out of state, some pregnant Utahns may also be forced to compromise the confidentiality of their decision to have an abortion.

123. Pregnant minors who are fourteen or older and who therefore do not qualify for the amended Trigger Ban's Pregnant Child Exception will face especially daunting obstacles to obtaining care out of state. They are even less likely than a pregnant adult to have access to transportation, savings, or the wherewithal to navigate the logistics of accessing medical care in an unfamiliar place.

124. The Trigger Ban and the Clinic Ban would both deprive all pregnant Utahns seeking abortion of the availability of these services from a provider of their choice in their own community.

(iv) ***The impact on patients who can obtain abortion in Utah only by relying on the Trigger Ban's exceptions***

125. The Trigger Ban and Clinic Ban will harm even those patients who can satisfy the Trigger Ban's limited exceptions *and* are eligible for an abortion at a Utah hospital.

126. Those with rapidly worsening medical conditions who could have obtained an abortion before the Bans will now be forced to wait until their conditions become deadly or threaten a "serious physical risk of substantial impairment of a major bodily function" so as to meet the Trigger Ban's Death or Serious Physical Impairment Exception.

127. In order to qualify for the Trigger Ban's Fatal Fetal Anomaly Exception, patients facing devastating fetal diagnoses will be forced to prove, based on the written concurrence of "two physicians who practice maternal fetal medicine," that the pregnancy is "incompatible with life." HB 467 § 29 (amending Utah Code Ann. § 76-7a-201(1)(b)). There are fewer than 50 maternal fetal medicine specialists in Utah, and they are geographically concentrated.

Additionally, the process of obtaining this paperwork is likely to delay access to care and increase the expense and emotional toll of such a diagnosis.

128. And because the Trigger Ban now requires physicians providing an abortion due to diagnosis of a fetal anomaly to inform the patient about the availability of perinatal hospice and perinatal palliative care—regardless of the specific patient’s interest in discussing hospice or palliative care—patients obtaining an abortion under the Fatal Fetal Anomaly Exception may be forced to hear information that is deeply upsetting to them at what is likely already an extremely challenging time. Abortion providers in Utah already discuss the availability of perinatal palliative care with patients who wish to learn about it, but this involves a case-by-case determination based on the specific circumstances of each patient. Mandating this disclosure for *all* patients regardless of their wishes is just one more way in which HB 467 denies Utahns seeking abortion the full benefits of truly patient-centered medical care.

129. Sexual assault survivors in Utah—of whom up to 88 percent do not report their assaults and therefore could not meet the Trigger Ban’s Reported Rape Exception—will be faced with choosing between accessing abortion services and maintaining their privacy in deciding whether to come forward about the assault, a “choice” forced on no other autonomous patient in Utah’s medical system.

130. And pregnant children aged thirteen or younger, who qualify for the amended Trigger Ban’s Pregnant Child Exception, will still be required to obtain their abortion at a general hospital rather than in a more personal outpatient clinic setting. They may be required to wait for hours in a hospital waiting room alongside adult patients awaiting appointments for non-abortion care, including higher-risk procedures.

131. All patients who are able to obtain an abortion at a Utah hospital will likely be

forced to shoulder thousands of dollars in costs, up to twenty times more than the cost of the same treatment at a licensed abortion clinic. All hospital-based abortion patients will have to navigate complicated hospital bureaucracies to obtain their care, and all will have to make arrangements—for childcare coverage; for time away from work or school—to allow for appointments that will last several hours longer than an appointment at a licensed abortion clinic. Finally, depending on the hospital, abortion patients may be treated by hospital staff not specialized in abortion care, increasing the risk of complications.

(v) **The Bans' impact on PPAU, its physicians, and staff**

132. The Trigger Ban and Clinic Ban would each eliminate PPAU's ability to offer abortion services to the vast majority of Utahns who need them. This would harm PPAU's and its staff's mission of ensuring access for Utahns to affordable, quality sexual and reproductive health care and PPAU's reputation among Utahns as a provider of patient-centered, evidence-based care.

133. The Trigger Ban and HB 467 threaten PPAU and its staff with criminal and licensing penalties, reputational harm, and harm to their livelihoods. The threat of criminal prosecution and losing their license—and with it their livelihood—will likely create a chilling effect on physicians, leading some to avoid performing abortion, including abortion allowed under the Trigger Ban and HB 467. A similar chilling effect is already felt by physicians in other states with restrictive and punitive abortion laws, with dire consequences for patients in need of care.

134. Physicians who lack experience providing abortion and who, in turn, lack familiarity with the scope of the Trigger Ban's exceptions, will be even less comfortable taking on the criminal and professional risks that the Trigger Ban and HB 467 attach to performing abortion.

135. By drastically limiting when and where abortion can be provided in Utah, the Trigger Ban and Clinic Ban will discourage medical students and other physicians in training from

coming to Utah to build their practice, which in turn will impede PPAU’s ability to hire and retain clinicians to provide other forms of sexual and reproductive health care.

136. As a result of the Trigger Ban and HB 467, talented physicians will leave Utah to practice in states with fewer restrictions and less risk of criminal prosecution and professional licensure penalties. PPAU and Utah hospitals alike will be harmed in their ability to offer Utah patients the best obstetrical and gynecological care.

CLAIMS FOR RELIEF

First Cause of Action

Trigger Ban

Violation of Plaintiff’s Patients’ Right to Determine Family Composition and to Parent Under Article I, Sections 2, 25, and 27 of Utah’s Constitution

137. Plaintiff restates and reincorporates paragraphs 1–136.

138. The Utah Supreme Court has recognized that “[t]he rights inherent in family relationships—husband-wife, parent-child, and sibling—are the most obvious examples of rights retained by the people. They are ‘natural,’ ‘intrinsic,’ or ‘prior’ in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.” *In re J.P.*, 648 P.2d 1364, 1372–74 (Utah 1982) (recognizing a person’s right to maintain parental ties). It has also held that “the ideals of individual liberty which . . . protect the sanctity of one’s home and family” are “essential in a free society.” *In re Castillo*, 632 P.2d 855, 856 (Utah 1981). These fundamental rights are protected under article I, sections 2, 25, and 27 of the Utah Constitution.

139. The Trigger Ban—both as enacted and as amended by HB 467—violates these rights in two ways. First, it eliminates wholesale the fundamental right to determine one’s family composition. Second, it also affects existing parent-child relationships, as well as the relationship between potential parents. Many Utahns seeking abortions are already parents. Many seek an

abortion because they cannot afford another child or because having another child may negatively impact the welfare of their family, including any existing children.

140. Because the Trigger Ban prevents individuals from making fundamental decisions about how to arrange their family relationships, it violates families’ and individuals’ rights guaranteed under the Utah Constitution. Restrictions on these rights are subject to heightened scrutiny and are not afforded a presumption of constitutionality.

141. The Trigger Ban cannot survive under heightened scrutiny because it is not narrowly tailored to achieve a compelling state interest. Even if rational-basis review applied, the Ban could not survive because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Second Cause of Action

Trigger Ban

Violation of Plaintiff’s Patients’ Equal Protection Rights

Under Article IV, Section 1 of Utah’s Constitution

142. Plaintiff restates and reincorporates paragraphs 1–141.

143. The Trigger Ban—both as enacted and as amended by HB 467—violates Utahns’ right to equality between the sexes as guaranteed by the Utah Constitution’s Equal Rights Amendment, which provides that “[t]he rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.” Utah Const. art. IV, § 1.

144. The Equal Rights Amendment grants to Utahns a positive entitlement to “enjoy equally” the rights and privileges of citizenship and prohibits Utah from directly or indirectly relying on gender as a determining factor for the availability of rights or benefits. The Utah Equal

Rights Amendment forbids laws that result in either disparate treatment or disparate impact on women as compared to men.

145. The Trigger Ban—both as enacted and as amended by HB 467—singles out and categorically bars medical care for “*wom[er]n*,” Utah Code Ann. § 76-7a-201(1)(a), (c) (emphasis added); *see also* HB 467 § 29 (amending Utah Code Ann. § 76-7a-201), while leaving untouched the medical care available to men, and in operation, it disproportionately limits women’s bodily autonomy and liberty. It therefore discriminates against PPAU’s patients on the basis of sex.

146. Under Utah’s Equal Rights Amendment, government classifications are subject to heightened scrutiny and are presumptively unconstitutional.

147. The Trigger Ban cannot survive under heightened scrutiny and cannot survive even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Third Cause of Action

Trigger Ban

Violation of Plaintiff’s Patients’ Right to the Uniform Operation of Laws Under Article I, Sections 2, 24 of Utah’s Constitution

148. Plaintiff restates and reincorporates paragraphs 1–147.

149. The Utah Constitution, article I, section 24, states that “[a]ll laws of a general nature shall have uniform operation.” Article I, section 2 states that “[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.”

150. The Trigger Ban—both as enacted and as amended by HB 467—creates three unconstitutional classifications. First, it treats women differently and has a disparate impact on women as opposed to men. Second, within the class of pregnant people, it targets those who seek

to terminate their pregnancy versus those who seek to continue their pregnancy to childbirth. Finally, even within the class of pregnant people seeking abortions, the Act treats differently certain people seeking abortion for reasons deemed sympathetic—such as those who have reported to law enforcement that they have been raped; those whose fetuses have lethal abnormalities; those who need abortion to avert serious physical but not psychological harms; and pregnant children, but *only* if they are thirteen or younger.

151. Under Utah’s Uniform Operation of Laws provision, government classifications are subject to heightened scrutiny.

152. The Trigger Ban cannot survive heightened scrutiny or even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Fourth Cause of Action

Trigger Ban

Violation of Plaintiff’s Patients’ Substantive Due Process Right to Bodily Integrity Under Article I, Sections 1, 7, 11 of Utah’s Constitution

153. Plaintiff restates and reincorporates paragraphs 1–152.

154. The right to bodily integrity is recognized throughout the Utah Constitution. Article I, section 1 states that “[a]ll persons have the inherent and inalienable right to enjoy and defend their lives and liberties.” Article I, section 7 states that “[n]o person shall be deprived of life, liberty or property, without due process of law.” And Article I, section 11 states that “every person, for an injury done to the person in his or her person . . . shall have remedy by due course of law.” The rights to bodily integrity and its corollary, privacy, are fundamental and inalienable in Utah, with deep roots in early Utahns’ desires to remain free from unwarranted governmental intrusion. *See, e.g., Malan v. Lewis*, 693 P.2d 661, 674 n.17 (Utah 1984) (relying on article I, section 11 as protecting “a person’s bodily integrity”).

155. Bodily integrity is violated by nonconsensual physical intrusions. It includes not only risk of medical injury but any contact that is expressly unwanted.

156. Forcing Utahns to remain pregnant against their wishes and forcing them to endure increased physical risk violates their right to bodily integrity.

157. Infringements on the fundamental right to bodily autonomy are subject to heightened scrutiny and are presumptively unconstitutional.

158. The Trigger Ban—both in its original form and as amended by HB 467—cannot survive under heightened scrutiny or even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Fifth Cause of Action

Trigger Ban

Violation of Plaintiff's Patients' Rights of Conscience Under Article I, Section 4, of Utah's Constitution

159. Plaintiff restates and reincorporates paragraphs 1–158.

160. Article I, section 4 of the Utah Constitution provides that “[t]he rights of conscience shall never be infringed,” and “[t]he State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof.” Moreover, “[t]here shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions.” Utah Const. art. I, § 4.

161. Read together, these provisions have been interpreted to “protect religious exercise and freedom of conscience in general” and “to prevent the imposition of civil limitations based on one’s religious beliefs or lack thereof.” *Soc’y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 935 (Utah 1993).

162. The Trigger Ban—both as enacted and as amended by HB 467—violates these foundational precepts by imposing on Utahns a State-mandated view as to when life begins, which is an inherently religious and spiritual one. On the one hand, the Trigger Ban forces Utahns to act in conformity with a religious view of when human life begins that they may not share. On the other hand, it prevents Utahns from acting in conformity with the teachings of their chosen religious institution.

163. By imposing its determination of when life begins on all Utahns, regardless of their religious beliefs or specific moral beliefs about abortion, the State of Utah has taken on a religious role strictly prohibited by the Utah Constitution and deprived Utahns of the ability to approach their family-planning decisions in accordance with their own religious and moral beliefs. This infirmity of the Trigger Ban—both as enacted and as amended by HB 467—requires its invalidation.

Sixth Cause of Action
Trigger Ban
Violation of Plaintiff's Patients' Right to Privacy
Under Article I, Sections 1, 14 of Utah's Constitution

164. Plaintiff restates and reincorporates paragraphs 1–163.

165. Under the Utah Constitution, the right to privacy “should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one’s pride in keeping [] private affairs to [one]self.” *Redding v. Brady*, 606 P.2d 1193, 1195 (Utah 1980). It includes “those aspects of an individual’s activities and manner of living that would generally be regarded as being of such personal and private nature as to belong to” the individual “and to be of no proper concern to others.” *Id.*

166. The Trigger Ban—both as enacted and as amended by HB 467—intrudes on this right in two ways. First, it intrudes on the individual’s decisions about whether to remain pregnant. An individual’s pregnancy and the decision to form family relationships is “generally [] regarded as being of such personal and private nature as to belong to [one]self and to be of no proper concern to others.” *Id.* Second, the Trigger Ban intrudes on the decision by survivors of sexual assault of whether to report the assault. One of the few exceptions to the Ban requires individuals to report their rape or incest to the police, forcing them to create a public record of a private and personal event in order to access medical care. That requirement violates Utahns’ right to informational privacy. Both are prohibited under Utah’s Constitution.

Seventh Cause of Action

Clinic Ban

Violation of Plaintiff’s Patients’ Right to Determine Family Composition and to Parent Under Article I, Sections 2, 25, and 27 of Utah’s Constitution

167. Plaintiff restates and reincorporates paragraphs 1–166.

168. The Utah Supreme Court has recognized that “[t]he rights inherent in family relationships—husband-wife, parent-child, and sibling—are the most obvious examples of rights retained by the people. They are ‘natural,’ ‘intrinsic,’ or ‘prior’ in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.” *In re J.P.*, 648 P.2d at 1372–74 (recognizing a person’s right to maintain parental ties). It has also held that “the ideals of individual liberty which . . . protect the sanctity of one’s home and family” are “essential in a free society.” *In re Castillo*, 632 P.2d at 856. These fundamental rights are protected under article I, sections 2, 25, and 27 of the Utah Constitution.

169. By functionally banning abortion in Utah, the Clinic Ban violates these rights in two ways. First, it eliminates wholesale the fundamental right to determine one’s family composition. Second, it also affects existing parent-child relationships, as well as the relationship

between potential parents. Many Utahns seeking abortions are already parents. Many seek an abortion because they cannot afford another child or because having another child may negatively impact the welfare of their family, including any existing children.

170. Because the Clinic Ban prevents individuals from making fundamental decisions about how to arrange their family relationships, it violates families’ and individuals’ rights under the Utah Constitution. Restrictions on these rights are subject to heightened scrutiny and are not afforded a presumption of constitutionality.

171. The Clinic Ban cannot survive under heightened scrutiny because it is not narrowly tailored to achieve a compelling state interest. Even if rational-basis review applied, the Clinic Ban could not survive because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Eighth Cause of Action
Clinic Ban
Violation of Plaintiff’s Patients’ Equal Protection Rights
Under Article IV, Section 1 of Utah’s Constitution

172. Plaintiff restates and reincorporates paragraphs 1–171.

173. By functionally banning abortion in Utah, the Clinic Ban violates Utahns’ right to equality between the sexes as guaranteed by the Utah Constitution’s Equal Rights Amendment, which provides that “[t]he rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.” Utah Const. art. IV, § 1.

174. The Equal Rights Amendment grants to Utahns a positive entitlement to “enjoy equally” the rights and privileges of citizenship and prohibits Utah from directly or indirectly relying on gender as a determining factor for the availability of rights or benefits. The Utah Equal

Rights Amendment forbids laws that result in either disparate treatment or disparate impact on women as compared to men.

175. In operation, the Clinic Ban disproportionately limits women’s bodily autonomy and liberty. It therefore discriminates against Plaintiff’s patients on the basis of sex.

176. Under Utah’s Equal Rights Amendment, government classifications are subject to heightened scrutiny and are presumptively unconstitutional.

177. The Clinic Ban cannot survive heightened scrutiny or even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Ninth Cause of Action

Clinic Ban

Violation of Plaintiff’s Patients’ Substantive Due Process Right to Bodily Integrity Under Article I, Sections 1, 7, 11 of Utah’s Constitution

178. Plaintiff restates and reincorporates paragraphs 1–177.

179. The right to bodily integrity is recognized throughout the Utah Constitution. Article I, section 1 states that “[a]ll persons have the inherent and inalienable right to enjoy and defend their lives and liberties.” Article I, section 7 states that “[n]o person shall be deprived of life, liberty or property, without due process of law.” And Article I, section 11 states that “every person, for an injury done to the person in his or her person . . . shall have remedy by due course of law.” The rights to bodily integrity and its corollary, privacy, are fundamental and inalienable in Utah, with deep roots in early Utahns’ desires to remain free from unwarranted governmental intrusion. *See, e.g., Malan*, 693 P.2d at 674 n.17 (relying on article I, section 11 as protecting “a person’s bodily integrity”).

180. Bodily integrity is violated by nonconsensual physical intrusions. It includes not only risk of medical injury but any contact that is expressly unwanted.

181. By functionally banning abortion in Utah, the Clinic Ban forces Utahns to remain pregnant against their wishes and forces them to endure both increased physical risk from pregnancy and more invasive medical procedures during labor and delivery, violating their right to bodily integrity.

182. Infringements on the fundamental right to bodily integrity are subject to heightened scrutiny and are presumptively unconstitutional.

183. The Clinic Ban cannot survive heightened scrutiny or even rational basis review because it is not rationally related to any purported state interest.

Tenth Cause of Action
Clinic Ban
Violation of Plaintiff's Patients' Right to Privacy
Under Article I, Sections 1, 14 of Utah's Constitution

184. Plaintiff restates and reincorporates paragraphs 1–183.

185. Under the Utah Constitution, the right to privacy “should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one’s pride in keeping [] private affairs to [one]self.” *Redding*, 606 P.2d at 1195. It includes “those aspects of an individual’s activities and manner of living that would generally be regarded as being of such personal and private nature as to belong to” the individual “and to be of no proper concern to others.” *Id.*

186. The Clinic Ban intrudes on this right. An individual’s pregnancy and the decision to form family relationships is “generally [] regarded as being of such personal and private nature as to belong to [one]self and to be of no proper concern to others.” *Id.* By requiring Utahns seeking abortion to obtain this care at a general hospital even though they could get equally safe care in a more personal outpatient clinic setting, the Clinic Ban subjects Utah families’ private medical

decisions to improper government scrutiny and control and threatens their decision's confidentiality. This is prohibited under Utah's Constitution and requires invalidation of the Ban.

Eleventh Cause of Action

Clinic Ban

Violation of Plaintiff's and Plaintiff's Patients' Right to the Uniform Operation of Laws Under Article I, Sections 2, 24 of Utah's Constitution

187. Plaintiff restates and reincorporates paragraphs 1–186.

188. The Utah Constitution, article I, section 24, states that “[a]ll laws of a general nature shall have uniform operation.” Article I, section 2 states that “[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.”

189. The Clinic Ban creates three unconstitutional classifications. First, it has a disparate impact on women as opposed to men. Second, it unconstitutionally distinguishes between licensed Utah hospitals and licensed Utah abortion clinics, which are similarly situated for purposes of patient safety in that early medication abortion, aspiration abortion, and D&E are at least as safe in abortion clinics as in hospitals. Third, it unconstitutionally distinguishes between patients seeking abortion and patients seeking other health care of similar or greater medical risk, requiring only abortion patients to obtain care in a hospital.

190. Under Utah's Uniform Operation of Laws provision, government classifications are subject to heightened scrutiny.

191. The Clinic Ban cannot survive under heightened scrutiny or even rational basis review because it is not rationally related to any purported state interest.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court:

192. Declare that the Trigger Ban—both as enacted and as amended by HB 467—violates Plaintiff’s and its patients’ constitutional rights under the Utah Constitution and that the Trigger Ban is therefore invalid;

193. Declare that HB 467’s Clinic Ban and Professional Licensing Penalties violate Plaintiff’s and its patients’ constitutional rights under the Utah Constitution and are therefore invalid;

194. Issue a temporary restraining order and preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, and enforcing

(1) the Trigger Ban, both as enacted and as amended (Utah Code Ann. §§ 76-7a-101, -201, -301);

(2) the Clinic Ban (HB 467 §§ 1–6, 16–17, 21, 24–25, 28–29 (amending Utah Code Ann. §§ 26-21-2, -6.5, -7–8, -11, -25; 76-7-301(6), -302(3), -305(2)(a), -314(3), -314(7), -314.5(1); 76-7a-101(4), -201(2)(b))); and

(3) the Professional Licensing Penalties (HB 467 §§ 7–14 (amending Utah Code Ann. §§ 58-31b-502(1)(q); 58-44a-502(8); 58-67-304, -502(1)(e); 58-68-304, -502(1)(e); 58-70a-501(9); 58-77-603(6))),

with respect to any abortion provided during the temporary and permanent injunctions;

195. Waive any security requirement for any injunction issued under Utah Rule of Civil Procedure 65A;

196. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate;

197. Award Plaintiff’s costs and expenses; and

198. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/Troy L. Booher

Troy L. Booher (9419)
J. Frederic Voros, Jr. (3340)
Dick J. Baldwin (14587)
ZIMMERMAN BOOHER
341 South Main Street, Fourth Floor
Salt Lake City, UT 84111
tbooher@zbappeals.com
fvoros@zbappeals.com
dbaldwin@zbappeals.com
(801) 924-0200

/s/John Mejia

John Mejia (13965)
Valentina De Fex (17785)
ACLU OF UTAH FOUNDATION, INC.
311 South State Street, Suite 310
Salt Lake City, UT 84111
jmejia@acluutah.org
vdefex@acluutah.org
(801) 521-9862

/s/Hannah Swanson

Hannah Swanson (pro hac vice)
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
hannah.swanson@ppfa.org
(202) 803-4030

/s/Camila Vega

Camila Vega (pro hac vice)
Emma Noftz Stern*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 William Street, 9th Floor
New York, NY 10038
camila.vega@ppfa.org
emma.stern@ppfa.org
(408) 655-8501

**Pro hac vice application forthcoming*

Attorneys for Plaintiff Planned Parenthood Association of Utah

Dated: April 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd of April, 2023, I caused the foregoing to be electronically filed and served on the following via GreenFiling:

Melissa A. Holyoak (melissaholyoak@agutah.gov)
Utah Solicitor General
David N. Wolf (dnwolf@agutah.gov)
Lance F. Sorenson (lancesorenson@agutah.gov)
Assistant Utah Attorneys General
OFFICE OF THE UTAH ATTORNEY GENERAL

Tyler Green (tyler@consovoymccarthy.com)
CONSOVOY MCCARTHY PLLC

/s/ Troy L. Booher
Troy L. Booher

EXHIBIT A

ABORTION CHANGES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Daniel McCay

| | | |
|---------------------|----------------|--------------------|
| Cosponsors: | Katy Hall | Jefferson Moss |
| Cheryl K. Acton | Jon Hawkins | Susan Pulsipher |
| Carl R. Albrecht | Colin W. Jack | Mike Schultz |
| Kera Birkeland | Dan N. Johnson | Mark A. Strong |
| Brady Brammer | Trevor Lee | Jordan D. Teuscher |
| Walt Brooks | Steven J. Lund | |
| Jefferson S. Burton | A. Cory Maloy | |
| Joseph Elison | | |

LONG TITLE

General Description:

This bill modifies provisions related to abortion.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires abortions to be performed in a hospital, with some exceptions;
- ▶ prohibits licensing of abortion clinics after May 2, 2023, but allows licensing of certain clinics for providing an abortion if the clinic meets certain standards;
- ▶ removes certain references to abortion clinics;
- ▶ provides that inducing or performing an abortion contrary to statutory requirements is unprofessional conduct for a physician, osteopathic physician, physician assistant, advanced practice registered nurse, certified nurse midwife, and direct-entry midwife;

28 ▶ modifies provisions that govern what constitutes a medical emergency in relation to
29 an abortion;

30 ▶ modifies the conditions under which an abortion may be performed to protect the
31 life or health of the mother;

32 ▶ amends language related to medical defects of a fetus;

33 ▶ repeals the statute that established a prohibition on abortions after 18 weeks and
34 incorporates its contents into existing statute, replacing language that established
35 now-superseded viability standards;

36 ▶ standardizes language between various statutes that regulate abortion;

37 ▶ requires a physician, in the case of a diagnosis of a lethal fetal anomaly, to give
38 notice of the availability of perinatal hospice and perinatal palliative care services as
39 an alternative to abortion;

40 ▶ treats an individual who becomes pregnant at a certain age as having the same
41 access to abortion services as rape or incest situations;

42 ▶ prohibits the ability to receive an abortion due to rape or incest if the unborn child
43 has reached 18 weeks gestational age;

44 ▶ requires updates to abortion information modules to match current law;

45 ▶ modifies state of mind standards for criminal acts;

46 ▶ provides for severability;

47 ▶ provides for regulation of drugs that are known to be used in relation to an abortion;

48 ▶ creates a criminal offense for prescribing a drug for the purpose of causing an
49 abortion, unless the prescriber is licensed as a physician under the laws of this state;

50 and

51 ▶ makes technical changes.

52 **Money Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 None

Utah Code Sections Affected:

AMENDS:

26-21-2, as last amended by Laws of Utah 2022, Chapter 255
26-21-6.5, as last amended by Laws of Utah 2018, Chapter 282
26-21-7, as last amended by Laws of Utah 2019, Chapter 349
26-21-8, as last amended by Laws of Utah 2016, Chapter 74
26-21-11, as last amended by Laws of Utah 1997, Chapter 209
26-21-25, as last amended by Laws of Utah 2010, Chapter 218
58-31b-502, as last amended by Laws of Utah 2022, Chapter 290
58-44a-502, as last amended by Laws of Utah 2020, Chapter 25
58-67-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-67-502, as last amended by Laws of Utah 2021, Chapter 337
58-68-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-68-502, as last amended by Laws of Utah 2021, Chapter 337
58-70a-501, as last amended by Laws of Utah 2021, Chapter 312
58-77-603, as enacted by Laws of Utah 2005, Chapter 299
63I-2-276, as last amended by Laws of Utah 2022, Chapter 117
76-7-301, as last amended by Laws of Utah 2021, Chapter 262
76-7-302, as last amended by Laws of Utah 2022, Chapter 335
76-7-302.4, as enacted by Laws of Utah 2019, Chapter 124
76-7-304, as last amended by Laws of Utah 2018, Chapter 282
76-7-304.5, as last amended by Laws of Utah 2022, Chapter 287
76-7-305, as last amended by Laws of Utah 2022, Chapter 181
76-7-305.5, as last amended by Laws of Utah 2020, Chapter 251
76-7-313, as last amended by Laws of Utah 2019, Chapters 124, 208
76-7-314, as last amended by Laws of Utah 2019, Chapter 208
76-7-314.5, as last amended by Laws of Utah 2010, Chapter 13
76-7-317, as enacted by Laws of Utah 1974, Chapter 33

84 **76-7a-101**, as last amended by Laws of Utah 2021, Chapter 262

85 **76-7a-201**, as enacted by Laws of Utah 2020, Chapter 279

86 ENACTS:

87 **76-7-332**, Utah Code Annotated 1953

88 REPEALS:

89 **76-7-302.5**, as enacted by Laws of Utah 2019, Chapter 208

90

91 *Be it enacted by the Legislature of the state of Utah:*

92 Section 1. Section **26-21-2** is amended to read:

93 **26-21-2. Definitions.**

94 As used in this chapter:

95 (1) (a) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

96 (b) "Abortion clinic" does not mean a clinic that meets the definition of hospital under

97 Section 76-7-301 or Section 76-7a-101.

98 (2) "Activities of daily living" means essential activities including:

99 (a) dressing;

100 (b) eating;

101 (c) grooming;

102 (d) bathing;

103 (e) toileting;

104 (f) ambulation;

105 (g) transferring; and

106 (h) self-administration of medication.

107 (3) "Ambulatory surgical facility" means a freestanding facility, which provides

108 surgical services to patients not requiring hospitalization.

109 (4) "Assistance with activities of daily living" means providing of or arranging for the

110 provision of assistance with activities of daily living.

111 (5) (a) "Assisted living facility" means:

(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:

(A) require protected living arrangements; and

(B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and

(ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services.

(b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care;

(ii) administration of medication; and

(iii) support services promoting residents' independence and self sufficiency.

(6) "Birthing center" means a facility that:

(a) receives maternal clients and provides care during pregnancy, delivery, and immediately after delivery; and

(b) (i) is freestanding; or

(ii) is not freestanding, but meets the requirements for an alongside midwifery unit described in Subsection 26-21-29(7).

(7) "Committee" means the Health Facility Committee created in Section 26B-1-204.

(8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

(9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

(10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.

(12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.

(13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, a clinic that meets the definition of hospital under Section 76-7-301 or 76-7a-201, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.

(b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice, except that it does include an abortion clinic.

(14) "Health maintenance organization" means an organization, organized under the laws of any state which:

(a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

(b) (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;

(ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and

(iii) provides physicians' services primarily directly through physicians who are either

employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(15) (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.

(b) "Home health agency" does not mean an individual who provides services under the authority of a private license.

(16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.

(17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:

(a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;

(b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or

(c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.

(18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(19) "Resident" means a person 21 years old or older who:

(a) as a result of physical or mental limitations or age requires or requests services

provided in an assisted living facility; and

(b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.

(20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.

(21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.

(23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions, as defined in Section 76-7-301, after the first trimester of pregnancy.

(24) "Type II abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or

(b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

Section 2. Section 26-21-6.5 is amended to read:

26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee --

Licensing of a clinic meeting the definition of hospital.

(1) (a) No abortion clinic may operate in the state on or after January 1, 2024, or the last valid date of an abortion clinic license issued under the requirements of this section,

whichever date is later.

(b) Notwithstanding Subsection (1)(a), a licensed abortion clinic may not perform an abortion in violation of any provision of state law.

(2) The state may not issue a license for an abortion clinic after May 2, 2023.

(3) For any license for an abortion clinic that is issued under this section:

(a) A type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion clinic.

~~(2)~~ (b) A type II abortion clinic may not operate in the state without a license issued by the department to operate a type II abortion clinic.

~~(3)~~ (c) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:

~~(a)~~ (i) a type I abortion clinic; and

~~(b)~~ (ii) a type II abortion clinic.

~~(4)~~ (d) To receive and maintain a license described in this section, an abortion clinic shall:

~~(a)~~ (i) apply for a license on a form prescribed by the department;

~~(b)~~ (ii) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection ~~(3)~~ (3)(c) that relate to the type of abortion clinic licensed;

~~(c)~~ (iii) comply with the recordkeeping and reporting requirements of Section

76-7-313;

~~(d)~~ (iv) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition;

~~(e)~~ (v) pay the annual licensing fee; and

~~(f)~~ (vi) cooperate with inspections conducted by the department.

~~(5)~~ (e) The department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made

without providing notice to the abortion clinic.

~~[(6)]~~ (f) The department shall charge an annual license fee, set by the department in accordance with the procedures described in Section [63J-1-504](#), to an abortion clinic in an amount that will pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

~~[(7)]~~ (g) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

(4) (a) Notwithstanding any other provision of this section, the department may license a clinic that meets the definition of hospital under Section [76-7-301](#) or Section [76-7a-101](#).

(b) A clinic described in Subsection (4)(a) is not defined as an abortion clinic.

Section 3. Section **26-21-7** is amended to read:

26-21-7. Exempt facilities.

This chapter does not apply to:

(1) a dispensary or first aid facility maintained by any commercial or industrial plant, educational institution, or convent;

(2) a health care facility owned or operated by an agency of the United States;

(3) the office of a physician, physician assistant, or dentist whether it is an individual or group practice~~[, except that it does apply to an abortion clinic]~~;

(4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;

(5) any health care facility owned or operated by the Department of Corrections, created in Section [64-13-2](#); and

(6) a residential facility providing 24-hour care:

(a) that does not employ direct care staff;

(b) in which the residents of the facility contract with a licensed hospice agency to

receive end-of-life medical care; and

(c) that meets other requirements for an exemption as designated by administrative rule.

Section 4. Section **26-21-8** is amended to read:

26-21-8. License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.

(1) (a) A person or governmental unit acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a health care facility in this state without receiving a license from the department as provided by this chapter and the rules adopted pursuant to this chapter.

(b) This Subsection (1) does not apply to facilities that are exempt under Section **26-21-7**.

(2) A license issued under this chapter is not assignable or transferable.

(3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.

(4) (a) The department may issue a license for a period of time [~~not to exceed 12 months from the date of issuance for an abortion clinic and~~] not to exceed 24 months from the date of issuance for [~~other~~] health care facilities that meet the provisions of this chapter and department rules adopted pursuant to this chapter.

(b) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the department.

(c) The license shall be renewed upon completion of the application requirements, unless the department finds the health care facility has not complied with the provisions of this chapter or the rules adopted pursuant to this chapter.

(5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.

(6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this chapter shall be given a reasonable time for compliance as determined

by the committee.

Section 5. Section **26-21-11** is amended to read:

26-21-11. Violations -- Denial or revocation of license -- Restricting or prohibiting new admissions -- Monitor.

(1) If the department finds a violation of this chapter or any rules adopted pursuant to this chapter the department may take one or more of the following actions:

~~[(1)]~~ (a) serve a written statement of violation requiring corrective action, which shall include time frames for correction of all violations;

~~[(2)]~~ (b) subject to Subsection (2), deny or revoke a license if it finds:

~~[(a)]~~ (i) there has been a failure to comply with the rules established pursuant to this chapter;

~~[(b)]~~ (ii) evidence of aiding, abetting, or permitting the commission of any illegal act;

or

~~[(c)]~~ (iii) conduct adverse to the public health, morals, welfare, and safety of the people of the state;

~~[(3)]~~ (c) restrict or prohibit new admissions to a health care facility or revoke the license of a health care facility for:

~~[(a)]~~ (i) violation of any rule adopted under this chapter; or

~~[(b)]~~ (ii) permitting, aiding, or abetting the commission of any illegal act in the health care facility;

~~[(4)]~~ (d) place a department representative as a monitor in the facility until corrective action is completed;

~~[(5)]~~ (e) assess to the facility the cost incurred by the department in placing a monitor;

~~[(6)]~~ (f) assess an administrative penalty as allowed by Subsection **26-23-6(1)(a)**; or

~~[(7)]~~ (g) issue a cease and desist order to the facility.

(2) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.

Section 6. Section **26-21-25** is amended to read:

26-21-25. Patient identity protection.

(1) As used in this section:

(a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor Act.

(b) "Health professional office" means:

(i) a physician's office; or

(ii) a dental office.

(c) "Medical facility" means:

(i) a general acute hospital;

(ii) a specialty hospital;

(iii) a home health agency;

(iv) a hospice;

(v) a nursing care facility;

(vi) a residential-assisted living facility;

(vii) a birthing center;

(viii) an ambulatory surgical facility;

(ix) a small health care facility;

(x) an abortion clinic;

(xi) a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101;

~~[(xi)]~~ (xii) a facility owned or operated by a health maintenance organization;

~~[(xii)]~~ (xiii) an end stage renal disease facility;

~~[(xiii)]~~ (xiv) a health care clinic; or

~~[(xiv)]~~ (xv) any other health care facility that the committee designates by rule.

(2) (a) In order to discourage identity theft and health insurance fraud, and to reduce the risk of medical errors caused by incorrect medical records, a medical facility or a health professional office shall request identification from an individual prior to providing in-patient or out-patient services to the individual.

(b) If the individual who will receive services from the medical facility or a health professional office lacks the legal capacity to consent to treatment, the medical facility or a health professional office shall request identification:

(i) for the individual who lacks the legal capacity to consent to treatment; and
(ii) from the individual who consents to treatment on behalf of the individual described in Subsection (2)(b)(i).

(3) A medical facility or a health professional office:

(a) that is subject to EMTALA:

(i) may not refuse services to an individual on the basis that the individual did not provide identification when requested; and

(ii) shall post notice in its emergency department that informs a patient of the patient's right to treatment for an emergency medical condition under EMTALA;

(b) may not be penalized for failing to ask for identification;

(c) is not subject to a private right of action for failing to ask for identification; and

(d) may document or confirm patient identity by:

(i) photograph;

(ii) fingerprinting;

(iii) palm scan; or

(iv) other reasonable means.

(4) The identification described in this section:

(a) is intended to be used for medical records purposes only; and

(b) shall be kept in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Section 7. Section **58-31b-502** is amended to read:

58-31b-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know

because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;

(b) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(c) engaging in sexual relations with a patient during any:

(i) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and the patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;

(d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or

(ii) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;

(e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(f) unauthorized taking or personal use of nursing supplies from an employer;

(g) unauthorized taking or personal use of a patient's personal property;

(h) unlawful or inappropriate delegation of nursing care;

(i) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(j) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;

(k) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record

such a report;

(l) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;

(m) failure to pay a penalty imposed by the division;

(n) prescribing a Schedule II controlled substance without complying with the requirements in Section 58-31b-803, if applicable;

(o) violating Section 58-31b-801;

(p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(q) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the person licensed or certified under the provisions of this chapter is found guilty of a crime in connection with the violation;

~~[(q)]~~ (r) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1); or

~~[(r)]~~ (s) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act.

(2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, or acting as a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis.

(3) Notwithstanding Subsection (2), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

Section 8. Section 58-44a-502 is amended to read:

58-44a-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) disregard for a patient's dignity or right to privacy as to the patient's person, condition, possessions, or medical record;

(2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;

(3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;

(4) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;

(6) failure to pay a penalty imposed by the division;

(7) prescribing a schedule II-III controlled substance without a consulting physician;

(8) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation;

~~[(8)]~~ (9) (a) failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii); or

(b) representing that the certified nurse midwife is in compliance with Subsection ~~[(8)(a)]~~ (9)(a) when the certified nurse midwife is not in compliance with Subsection ~~[(8)(a)]~~ (9)(a); or

~~[(9)]~~ (10) falsely making an entry in, or altering, a medical record with the intent to conceal:

(a) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(b) conduct described in Subsections (1) through ~~[(8)]~~ (9) or Subsection 58-1-501(1).

Section 9. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i);

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) (a) An application to renew a license under this chapter shall:

~~[(a)]~~ (i) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

~~[(b)]~~ (ii) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious

physical risk of substantial ~~[and irreversible]~~ impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(b) The statement in Subsection (3)(a)(ii) shall be modified, if necessary, to ensure compliance with the definitions and requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition.

(4) In order to assist the Department of Health and Human Services in fulfilling ~~[its]~~ the department's responsibilities relating to the licensing of ~~[an abortion clinic]~~ a health care facility and the enforcement of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition, if a physician responds positively to the question described in Subsection ~~[(3)(a)]~~ (3)(a)(i) the division shall, within 30 days after the day on which ~~[it]~~ the division renews the physician's license under this chapter, inform the Department of Health and Human Services in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection ~~[(3)(a)]~~ (3)(a)(i).

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections 26-61a-106 and 26-61a-403.

Section 10. Section **58-67-502** is amended to read:

58-67-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7 or Section 58-67-302.8;

(c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

[~~or~~]

(e) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation; or

~~(f)~~ (f) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through ~~(f)~~ (e) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

(ii) administering the investigational drug to an eligible patient; or

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and

in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 11. Section **58-68-304** is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection **58-68-302**(1)(i);

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection **58-68-302**(1)(j); and

(d) if the licensee is an associate physician licensed under Section **58-68-302.5**, successfully complete the educational methods and programs described in Subsection **58-68-807**(4).

(2) If a renewal period is extended or shortened under Section **58-68-303**, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) (a) An application to renew a license under this chapter shall:

~~[(a)]~~ (i) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

~~[(b)]~~ (ii) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious

physical risk of substantial ~~[and irreversible]~~ impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(b) The statement in Subsection (3)(a)(ii) shall be modified, if necessary, to ensure compliance with the definitions and requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition.

(4) In order to assist the Department of Health and Human Services in fulfilling ~~[its]~~ the department's responsibilities relating to the licensing of ~~[an abortion clinic]~~ a health care facility and the enforcement of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition, if a physician responds positively to the question described in Subsection ~~[(3)(a)]~~ (3)(a)(i), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health and Human Services in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection ~~[(3)(a)]~~ (3)(a)(i).

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections [26-61a-106](#) and [26-61a-403](#).

Section 12. Section **58-68-502** is amended to read:

58-68-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section [58-1-501](#):

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(c) making a material misrepresentation regarding the qualifications for licensure under Section 58-68-302.5;

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act; [or]

(e) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation; or

~~(f)~~ (f) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through ~~(f)~~ (e) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

(ii) administering the investigational drug to an eligible patient; or

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and

in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 13. Section **58-70a-501** is amended to read:

58-70a-501. Scope of practice.

(1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are within the physician assistant's skills and scope of competence.

(2) A physician assistant shall consult, collaborate with, and refer to appropriate members of the health care team:

(a) as indicated by the patient's condition;

(b) based on the physician assistant's education, experience, and competencies;

(c) the applicable standard of care; and

(d) if applicable, in accordance with the requirements described in Section [58-70a-307](#).

(3) Subject to Section [58-70a-307](#), the degree of collaboration under Subsection (2):

(a) shall be determined at the physician assistant's practice, including decisions made by the physician assistant's:

(i) employer;

(ii) group;

(iii) hospital service; or

(iv) health care facility credentialing and privileging system; and

(b) may also be determined by a managed care organization with whom the physician assistant is a network provider.

(4) A physician assistant may only provide healthcare services:

(a) for which the physician assistant has been trained and credentialed, privileged, or authorized to perform; and

(b) that are within the physician assistant's practice specialty.

(5) A physician assistant may authenticate through a signature, certification, stamp, verification, affidavit, or endorsement any document that may be authenticated by a physician

and that is within the physician assistant's scope of practice.

(6) A physician assistant is responsible for the care that the physician assistant provides.

(7) (a) As used in this Subsection (7):

(i) "ALS/ACLS certification" means a certification:

(A) in advanced life support by the American Red Cross;

(B) in advanced cardiac life support by the American Heart Association; or

(C) that is equivalent to a certification described in Subsection (7)(a)(i)(A) or (B).

(ii) "Minimal sedation anxiolysis" means creating a drug induced state:

(A) during which a patient responds normally to verbal commands;

(B) which may impair cognitive function and physical coordination; and

(C) which does not affect airway, reflexes, or ventilatory and cardiovascular function.

(b) Except as provided in Subsections (c) through (e), a physician assistant may not administer general anesthetics.

(c) A physician assistant may perform minimal sedation anxiolysis if the procedure is within the physician assistant's scope of practice.

(d) A physician assistant may perform rapid sequence induction for intubation of a patient if:

(i) the procedure is within the physician assistant's scope of practice;

(ii) the physician assistant holds a valid ALS/ACLS certification and is credentialed and privileged at the hospital where the procedure is performed; and

(iii) (A) a qualified physician is not available and able to perform the procedure; or

(B) the procedure is performed by the physician assistant under supervision of or delegation by a physician.

(e) Subsection (7)(b) does not apply to anesthetics administered by a physician assistant:

(i) in an intensive care unit of a hospital;

(ii) for the purpose of enabling a patient to tolerate ventilator support or intubation; and

(iii) under supervision of or delegation by a physician whose usual scope of practice includes the procedure.

(8) (a) A physician assistant may prescribe or administer an appropriate controlled substance that is within the physician assistant's scope of practice if the physician assistant holds a Utah controlled substance license and a DEA registration.

(b) A physician assistant may prescribe, order, administer, and procure a drug or medical device that is within the physician assistant's scope of practice.

(c) A physician assistant may dispense a drug if dispensing the drug:

(i) is permitted under Title 58, Chapter 17b, Pharmacy Practice Act; and

(ii) is within the physician assistant's scope of practice.

(9) A physician assistant may not perform or induce an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the physician assistant is found guilty of a crime in connection with the violation.

~~[(9)]~~ (10) A physician assistant practicing independently may only perform or provide a health care service that:

(a) is appropriate to perform or provide outside of a health care facility; and

(b) the physician assistant has been trained and credentialed or authorized to provide or perform independently without physician supervision.

~~[(10)]~~ (11) A physician assistant, while practicing as a physician assistant:

(a) shall wear an identification badge showing the physician assistant's license classification as a physician assistant;

(b) shall identify themselves to a patient as a physician assistant; and

(c) may not identify themselves to any person in connection with activities allowed under this chapter other than as a physician assistant or PA.

Section 14. Section **58-77-603** is amended to read:

58-77-603. Prohibited practices.

A direct-entry midwife may not:

(1) administer a prescription drug to a client in a manner that violates this chapter;

(2) effect any type of surgical delivery except for the cutting of an emergency episiotomy;

(3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic analgesia;

(4) use forceps or a vacuum extractor;

(5) manually remove the placenta, except in an emergency that presents an immediate threat to the life of the client; or

(6) ~~[induce abortion]~~ perform or induce an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the direct-entry midwife is found guilty of a crime in connection with the violation.

Section 15. Section **63I-2-276** is amended to read:

63I-2-276. Repeal dates: Title 76.

(1) Subsection 76-5-102.7(2)(b), regarding assault or threat of violence against an owner, employee, or contractor of a health facility, is repealed January 1, 2027.

~~[(2) If Section 76-7-302.4 is not in effect before January 1, 2029, Section 76-7-302.4 is repealed January 1, 2029.]~~

~~[(3)]~~ (2) Section 76-7-305.7 is repealed January 1, 2023.

Section 16. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means~~[:]~~ the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant, except as permitted under this part.

~~[(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;]~~

~~[(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a~~

physician; or]

~~[(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.]~~

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and

(B) the physician is unable to obtain the consent due to a medical emergency.

~~[(2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.]~~

~~[(3)]~~ (2) "Abuse" means the same as that term is defined in Section 80-1-102.

~~[(4)]~~ (3) "Department" means the Department of Health and Human Services.

~~[(5)]~~ (4) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

~~[(6)]~~ (5) "Gestational age" means the age of an unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

~~[(7)]~~ (6) "Hospital" means:

(a) a general hospital licensed by the department according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility ~~[to the extent that such clinic or other medical facility is certified by the department as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the department]~~ that meets the following criteria:

(i) a clinician who performs procedures at the clinic is required to be credentialed to

perform the same procedures at a general hospital licensed by the department; and

(ii) any procedures performed at the clinic are done with the same level of safety for the pregnant woman and unborn child as would be available in a general hospital licensed by the department.

~~[(8)]~~ (7) "Information module" means the pregnancy termination information module prepared by the department.

~~[(9)]~~ (8) "Medical emergency" means ~~[that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life 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]~~ a life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced.

~~[(10)]~~ (9) "Minor" means an individual who is:

- (a) under 18 years old;
- (b) unmarried; and
- (c) not emancipated.

~~[(11)]~~ (10) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(ii) performs the overt act, other than completion of delivery, that kills the partially living fetus.

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction

aspiration procedure for abortion.

(11) "Perinatal hospice" means comprehensive support to the mother and her family from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's birth, and through the postpartum period, that:

(a) focuses on alleviating fear and ensuring that the woman and her family experience the life and death of a child in a comfortable and supportive environment; and

(b) may include counseling or medical care by:

(i) maternal-fetal medical specialists;

(ii) obstetricians;

(iii) neonatologists;

(iv) anesthesia specialists;

(v) psychiatrists, psychologists, or other mental health providers;

(vi) clergy;

(vii) social workers; or

(viii) specialty nurses.

(12) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act;

(b) an osteopathic physician licensed to practice osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(c) a physician employed by the federal government who has qualifications similar to ~~[a person]~~ an individual described in Subsection (12)(a) or (b).

(13) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

(ii) spina bifida;

(iii) cerebral palsy; or

(iv) any other malformation, defect, or condition that does not cause an individual to live in a mentally vegetative state.

Section 17. Section **76-7-302** is amended to read:

76-7-302. Circumstances under which abortion authorized.

~~[(1) As used in this section, "viable" means that the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.]~~

~~[(2)]~~ (1) An abortion may be performed in this state only by a physician.

~~[(3)]~~ (2) An abortion may be performed in this state only under the following circumstances:

(a) the unborn child ~~[is not viable; or]~~ has not reached 18 weeks gestational age;

(b) the unborn child ~~[is viable, if:]~~ has reached 18 weeks gestational age, and:

(i) the abortion is necessary to avert:

(A) the death of the woman on whom the abortion is performed; or

(B) a serious physical risk of substantial ~~[and irreversible]~~ impairment of a major bodily function of the woman on whom the abortion is performed; or

(ii) subject to Subsection (4), two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus[+] has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life; or

~~[(A) has a defect that is uniformly diagnosable and uniformly lethal; or]~~

~~[(B) has a severe brain abnormality that is uniformly diagnosable; or]~~

~~[(iii)(A)]~~

(c) the unborn child has not reached 18 weeks gestational age and:

(i) (A) the woman is pregnant as a result of:

(I) rape, as described in Section **76-5-402**;

(II) rape of a child, as described in Section **76-5-402.1**; or

(III) incest, as described in Subsection **76-5-406(2)(j)** or Section **76-7-102**; ~~[and]~~ or

(B) the pregnant child is under the age of 14; and

868 ~~[(B)]~~ (ii) before the abortion is performed, the physician who performs the abortion:

869 ~~[(H)]~~ (A) for an abortion authorized under Subsection (2)(c)(i)(A), verifies that the
870 incident described in Subsection ~~[(3)(b)(iii)(A)]~~ (2)(c)(i)(A) has been reported to law
871 enforcement; and

872 ~~[(H)]~~ (B) if applicable, complies with the requirements of Section 80-2-602.

873 ~~[(4)]~~ (3) An abortion may be performed only in ~~[an abortion clinic or]~~ a hospital, unless
874 it is necessary to perform the abortion in another location due to a medical emergency.

875 (4) If the unborn child has been diagnosed with a fetal abnormality that is incompatible
876 with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and
877 in writing, that perinatal hospice and perinatal palliative care services are available and are an
878 alternative to abortion.

879 Section 18. Section 76-7-302.4 is amended to read:

880 **76-7-302.4. Abortion restriction of an unborn child with Down syndrome.**

881 Notwithstanding any other provision of this part, an abortion may not be performed if
882 the pregnant mother's sole reason for the abortion is that the unborn child has or may have
883 Down syndrome, unless the abortion is permissible for a reason described in ~~[Subsection~~
884 ~~76-7-302(3)(b)]~~ Section 76-7-302.

885 Section 19. Section 76-7-304 is amended to read:

886 **76-7-304. Considerations by physician -- Notice to a parent or guardian --**
887 **Exceptions.**

888 (1) To enable the physician to exercise the physician's best medical judgment, the
889 physician shall consider all factors relevant to the well-being of a pregnant woman upon whom
890 an abortion is to be performed, including:

- 891 (a) her physical, emotional, and psychological health and safety;
- 892 (b) her age; and
- 893 (c) her familial situation.

894 (2) Subject to Subsection (3), at least 24 hours before a physician performs an abortion
895 on a minor, the physician shall notify a parent or guardian of the minor that the minor intends

896 to have an abortion.

897 (3) A physician is not required to comply with Subsection (2) if:

898 (a) subject to Subsection (4)(a):

899 (i) a medical condition exists that, on the basis of the physician's good faith clinical
900 judgment, so complicates the medical condition of a pregnant minor as to necessitate the
901 abortion of her pregnancy to avert:

902 (A) the minor's death; or

903 (B) a serious physical risk of substantial [~~and irreversible~~] impairment of a major
904 bodily function of the minor; and

905 (ii) there is not sufficient time to give the notice required under Subsection (2) before it
906 is necessary to terminate the minor's pregnancy in order to avert the minor's death or
907 impairment described in Subsection (3)(a)(i);

908 (b) subject to Subsection (4)(b):

909 (i) the physician complies with Subsection (5); and

910 (ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a
911 party; or

912 (B) the parent or guardian has abused the minor; or

913 (c) subject to Subsection (4)(b), the parent or guardian has not assumed responsibility
914 for the minor's care and upbringing.

915 (4) (a) If, for the reason described in Subsection (3)(a), a physician does not give the
916 24-hour notice described in Subsection (2), the physician shall give the required notice as early
917 as possible before the abortion, unless it is necessary to perform the abortion immediately in
918 order to avert the minor's death or impairment described in Subsection (3)(a)(i).

919 (b) If, for a reason described in Subsection (3)(b) or (c), a parent or guardian of a minor
920 is not notified that the minor intends to have an abortion, the physician shall notify another
921 parent or guardian of the minor, if the minor has another parent or guardian that is not exempt
922 from notification under Subsection (3)(b) or (c).

923 (5) If, for a reason described in Subsection (3)(b)(ii)(A) or (B), a physician does not

notify a parent or guardian of a minor that the minor intends to have an abortion, the physician shall report the incest or abuse to the Division of Child and Family Services within the Department of Health and Human Services.

Section 20. Section **76-7-304.5** is amended to read:

76-7-304.5. Consent required for abortions performed on minors -- Division of Child and Family Services as guardian of a minor -- Hearing to allow a minor to self-consent -- Appeals.

(1) In addition to the other requirements of this part, a physician may not perform an abortion on a minor unless:

(a) the physician obtains the informed written consent of a parent or guardian of the minor, in accordance with Sections [76-7-305](#) and [76-7-305.5](#);

(b) the minor is granted the right, by court order under Subsection (4)(b), to consent to the abortion without obtaining consent from a parent or guardian; or

(c) (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a [~~serious risk of substantial and irreversible impairment of a major bodily function of the minor~~] risk described in Subsection [76-7-302\(2\)\(b\)\(i\)\(B\)](#); and

(ii) there is not sufficient time to obtain the consent in the manner chosen by the minor under Subsection (2) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (1)(c)(i).

(2) (a) A minor who wants to have an abortion may choose:

(i) to seek consent from the minor's parent or guardian as described in Subsection (1);
or

(ii) to seek a court order as described in Subsection (1).

(b) Neither Subsection (1) nor this Subsection (2) require the minor to seek or obtain consent from the minor's parent or guardian if the circumstances described in Subsection

952 76-7-304(3)(b)(ii) exist.

953 (3) If a minor does not obtain the consent of the minor's parent or guardian, the minor
954 may file a petition with the juvenile court to obtain a court order as described in Subsection (1).

955 (4) (a) The juvenile court shall close the hearing on a petition described in Subsection
956 (3) to the public.

957 (b) After considering the evidence presented at the hearing, the court shall order that
958 the minor may obtain an abortion without the consent of a parent or guardian of the minor if
959 the court finds by a preponderance of the evidence that:

960 (i) the minor:

961 (A) has given her informed consent to the abortion; and

962 (B) is mature and capable of giving informed consent to the abortion; or

963 (ii) an abortion would be in the minor's best interest.

964 (5) The Judicial Council shall make rules that:

965 (a) provide for the administration of the proceedings described in this section;

966 (b) provide for the appeal of a court's decision under this section;

967 (c) ensure the confidentiality of the proceedings described in this section and the
968 records related to the proceedings; and

969 (d) establish procedures to expedite the hearing and appeal proceedings described in
970 this section.

971 Section 21. Section **76-7-305** is amended to read:

972 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
973 **-- Exceptions.**

974 (1) A person may not perform an abortion, unless, before performing the abortion, the
975 physician who will perform the abortion obtains from the woman on whom the abortion is to
976 be performed a voluntary and informed written consent that is consistent with:

977 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
978 Current Opinions; and

979 (b) the provisions of this section.

980 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
981 informed only if, at least 72 hours before the abortion:

982 (a) a staff member of ~~[an abortion clinic or]~~ a hospital, physician, registered nurse,
983 nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic
984 counselor, or physician's assistant presents the information module to the pregnant woman;

985 (b) the pregnant woman views the entire information module and presents evidence to
986 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
987 information module;

988 (c) after receiving the evidence described in Subsection (2)(b), the individual described
989 in Subsection (2)(a):

990 (i) documents that the pregnant woman viewed the entire information module;

991 (ii) gives the pregnant woman, upon her request, a copy of the documentation
992 described in Subsection (2)(c)(i); and

993 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
994 who is to perform the abortion, upon request of that physician or the pregnant woman;

995 (d) after the pregnant woman views the entire information module, the physician who
996 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
997 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
998 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
999 the woman of:

1000 (i) the nature of the proposed abortion procedure;

1001 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
1002 fetus;

1003 (iii) the risks and alternatives to the abortion procedure or treatment;

1004 (iv) the options and consequences of aborting a medication-induced abortion, if the
1005 proposed abortion procedure is a medication-induced abortion;

1006 (v) the probable gestational age and a description of the development of the unborn
1007 child at the time the abortion would be performed;

- 1008 (vi) the medical risks associated with carrying her child to term;
- 1009 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
- 1010 woman, upon her request; and
- 1011 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
- 1012 child has or may have Down syndrome, the [~~Department of Health website containing~~
- 1013 department's website, which contains the information described in Section 26-10-14, including
- 1014 the information on the informational support sheet; and
- 1015 (e) after the pregnant woman views the entire information module, a staff member of
- 1016 the [~~abortion clinic or~~] hospital provides to the pregnant woman:
- 1017 (i) on a document that the pregnant woman may take home:
- 1018 (A) the address for the department's website described in Section 76-7-305.5; and
- 1019 (B) a statement that the woman may request, from a staff member of the [~~abortion~~
- 1020 ~~clinic or~~] hospital where the woman viewed the information module, a printed copy of the
- 1021 material on the department's website;
- 1022 (ii) a printed copy of the material on the department's website described in Section
- 1023 76-7-305.5, if requested by the pregnant woman; and
- 1024 (iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the
- 1025 disposition of the aborted fetus.
- 1026 (3) Before performing an abortion, the physician who is to perform the abortion shall:
- 1027 (a) in a face-to-face consultation, provide the information described in Subsection
- 1028 (2)(d), unless the attending physician or referring physician is the individual who provided the
- 1029 information required under Subsection (2)(d); and
- 1030 (b) (i) obtain from the pregnant woman a written certification that the information
- 1031 required to be provided under Subsection (2) and this Subsection (3) was provided in
- 1032 accordance with the requirements of Subsection (2) and this Subsection (3);
- 1033 (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and
- 1034 (iii) ensure that:
- 1035 (A) the woman has received the information described in Subsections 26-21-33(3) and

(4); and

(B) if the woman has a preference for the disposition of the aborted fetus, the woman has informed the health care facility of the woman's decision regarding the disposition of the aborted fetus.

(4) When a ~~serious~~ 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 the physician's judgment that an abortion is necessary.

(5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified individual, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (5)(c), if the woman requests it.

(6) The information described in Subsections (2), (3), and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection ~~[76-7-302(3)(b)(i)]~~ 76-7-302(2)(b)(i), if the treating physician and one

other physician concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a ~~[serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed]~~ risk described in Subsection

76-7-302(2)(b)(i)(B); or

(b) Subsection ~~[76-7-302(3)(b)(ii)]~~ 76-7-302(2)(b)(ii).

(7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

and

(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a ~~[serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed]~~ risk described in Subsection

76-7-302(2)(b)(i)(B);

(c) the pregnancy was the result of rape or rape of a child, as described in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and Section 76-7-102; or

1092 (e) at the time of the abortion, the pregnant [~~woman~~] child was 14 years old or
1093 younger.

1094 (9) A physician who complies with the provisions of this section and Section
1095 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
1096 informed consent under Section 78B-3-406.

1097 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
1098 of Subsection (5)(b), at no expense to the pregnant woman.

1099 (b) A local health department shall refer a pregnant woman who requests an ultrasound
1100 described in Subsection (10)(a) to the department.

1101 (11) A physician is not guilty of violating this section if:

1102 (a) the information described in Subsection (2) is provided less than 72 hours before
1103 the physician performs the abortion; and

1104 (b) in the physician's professional judgment, the abortion was necessary in a case
1105 where:

1106 (i) a ruptured membrane, documented by the attending or referring physician, will
1107 cause a serious infection; or

1108 (ii) a serious infection, documented by the attending or referring physician, will cause a
1109 ruptured membrane.

1110 Section 22. Section 76-7-305.5 is amended to read:

1111 **76-7-305.5. Requirements for information module and website.**

1112 (1) In order to ensure that a woman's consent to an abortion is truly an informed
1113 consent, the department shall, in accordance with the requirements of this section, develop an
1114 information module and maintain a public website.

1115 (2) The information module and public website described in Subsection (1) shall:

1116 (a) be scientifically accurate, comprehensible, and presented in a truthful,
1117 nonmisleading manner;

1118 (b) present adoption as a preferred and positive choice and alternative to abortion;

1119 (c) be produced in a manner that conveys the state's preference for childbirth over

1120 abortion;

1121 (d) state that the state prefers childbirth over abortion;

1122 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

1123 (f) state that any physician who performs an abortion without obtaining the woman's

1124 informed consent or without providing her a private medical consultation in accordance with

1125 the requirements of this section, may be liable to her for damages in a civil action at law;

1126 (g) provide a geographically indexed list of resources and public and private services

1127 available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth,

1128 and while the child is dependent, including:

1129 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

1130 (ii) services and supports available under Section [35A-3-308](#);

1131 (iii) other financial aid that may be available during an adoption;

1132 (iv) services available from public adoption agencies, private adoption agencies, and

1133 private attorneys whose practice includes adoption; and

1134 (v) the names, addresses, and telephone numbers of each person listed under this

1135 Subsection (2)(g);

1136 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);

1137 (i) describe the persons who may pay the adoption related expenses described in

1138 Subsection (2)(h);

1139 (j) except as provided in Subsection (4), describe the legal responsibility of the father

1140 of a child to assist in child support, even if the father has agreed to pay for an abortion;

1141 (k) except as provided in Subsection (4), describe the services available through the

1142 Office of Recovery Services, within the Department of Human Services, to establish and

1143 collect the support described in Subsection (2)(j);

1144 (l) state that private adoption is legal;

1145 (m) describe and depict, with pictures or video segments, the probable anatomical and

1146 physiological characteristics of an unborn child at two-week gestational increments from

1147 fertilization to full term, including:

1148 (i) brain and heart function;
1149 (ii) the presence and development of external members and internal organs; and
1150 (iii) the dimensions of the fetus;
1151 (n) show an ultrasound of the heartbeat of an unborn child at:
1152 (i) four weeks from conception;
1153 (ii) six to eight weeks from conception; and
1154 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age;
1155 (o) describe abortion procedures used in current medical practice at the various stages
1156 of growth of the unborn child, including:
1157 (i) the medical risks associated with each procedure;
1158 (ii) the risk related to subsequent childbearing that are associated with each procedure;
1159 and
1160 (iii) the consequences of each procedure to the unborn child at various stages of fetal
1161 development;
1162 (p) describe the possible detrimental psychological effects of abortion;
1163 (q) describe the medical risks associated with carrying a child to term;
1164 (r) include relevant information on the possibility of an unborn child's survival at the
1165 two-week gestational increments described in Subsection (2)(m);
1166 (s) except as provided in Subsection (5), include:
1167 (i) information regarding substantial medical evidence from studies concluding that an
1168 unborn child who is at least 20 weeks gestational age may be capable of experiencing pain
1169 during an abortion procedure; and
1170 (ii) the measures that will be taken in accordance with Section [76-7-308.5](#);
1171 (t) explain the options and consequences of aborting a medication-induced abortion;
1172 (u) include the following statement regarding a medication-induced abortion,
1173 "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You
1174 may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but
1175 have not yet taken the second drug and have questions regarding the health of your fetus or are

1176 questioning your decision to terminate your pregnancy, you should consult a physician
1177 immediately.";

1178 (v) inform a pregnant woman that she has the right to view an ultrasound of the unborn
1179 child, at no expense to her, upon her request;

1180 (w) inform a pregnant woman that she has the right to:

1181 (i) determine the final disposition of the remains of the aborted fetus;

1182 (ii) unless the woman waives this right in writing, wait up to 72 hours after the
1183 abortion procedure is performed to make a determination regarding the disposition of the
1184 aborted fetus before the health care facility may dispose of the fetal remains;

1185 (iii) receive information about options for disposition of the aborted fetus, including
1186 the method of disposition that is usual and customary for a health care facility; and

1187 (iv) for a medication-induced abortion, return the aborted fetus to the health care
1188 facility for disposition; and

1189 (x) provide a digital copy of the form described in Subsection 26-21-33(3)(a)(i); and
1190 (y) be in a typeface large enough to be clearly legible.

1191 (3) The information module and website described in Subsection (1) may include a
1192 toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and
1193 description of services, agencies, and adoption attorneys in the locality of the caller.

1194 (4) The department may develop a version of the information module and website that
1195 omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of
1196 rape.

1197 (5) The department may develop a version of the information module and website that
1198 omits the information described in Subsection (2)(s) for a viewer who will have an abortion
1199 performed:

1200 (a) on an unborn child who is less than 20 weeks gestational age at the time of the
1201 abortion; or

1202 (b) on an unborn child who is at least 20 weeks gestational age at the time of the
1203 abortion, if:

- (i) the abortion is being performed for a reason described in Subsection ~~76-7-302(3)(b)(i)~~ 76-7-302(2)(b)(i) or (ii); and
- (ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (2)(s).
- (6) The department and each local health department shall make the information module and the website described in Subsection (1) available at no cost to any person.
- (7) The department shall make the website described in Subsection (1) available for viewing on the department's website by clicking on a conspicuous link on the home page of the website.
- (8) The department shall ensure that the information module is:
- (a) available to be viewed at all facilities where an abortion may be performed;
 - (b) interactive for the individual viewing the module, including the provision of opportunities to answer questions and manually engage with the module before the module transitions from one substantive section to the next;
 - (c) produced in English and may include subtitles in Spanish or another language; and
 - (d) capable of being viewed on a tablet or other portable device.
- (9) After the department releases the initial version of the information module, for the use described in Section 76-7-305, the department shall:
- (a) update the information module, as required by law; and
 - (b) present an updated version of the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before releasing the updated version for the use described in Section 76-7-305.
- Section 23. Section **76-7-313** is amended to read:
- 76-7-313. Department's enforcement responsibility -- Physician's report to department.**
- (1) In order for the department to maintain necessary statistical information and ensure enforcement of the provisions of this part:
- (a) any physician performing an abortion must obtain and record in writing:

1232 (i) the age, marital status, and county of residence of the woman on whom the abortion
1233 was performed;

1234 (ii) the number of previous abortions performed on the woman described in Subsection
1235 (1)(a)(i);

1236 (iii) the hospital or other facility where the abortion was performed;

1237 (iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

1238 (v) the pathological description of the unborn child;

1239 (vi) the given gestational age of the unborn child;

1240 (vii) the date the abortion was performed;

1241 (viii) the measurements of the unborn child, if possible to ascertain; and

1242 (ix) the medical procedure used to abort the unborn child; and

1243 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
1244 Administrative Rulemaking Act.

1245 (2) Each physician who performs an abortion shall provide the following to the
1246 department within 30 days after the day on which the abortion is performed:

1247 (a) the information described in Subsection (1);

1248 (b) a copy of the pathologist's report described in Section 76-7-309;

1249 (c) an affidavit:

1250 (i) indicating whether the required consent was obtained pursuant to Sections 76-7-305
1251 and 76-7-305.5;

1252 (ii) described in Subsection (3), if applicable; and

1253 (iii) indicating whether at the time the physician performed the abortion, the physician
1254 had any knowledge that the pregnant woman sought the abortion solely because the unborn
1255 child had or may have had Down syndrome; and

1256 (d) a certificate indicating:

1257 ~~[(i) whether the unborn child was or was not viable, as defined in Subsection~~
1258 ~~76-7-302(1), at the time of the abortion;]~~

1259 [(ii)] (i) whether the unborn child was older or younger than 18 weeks gestational age

at the time of the abortion; and

~~[(iii)] (ii) [if the unborn child was viable, as defined in Subsection 76-7-302(1), or older than 18 weeks gestational age at the time of the abortion,]~~ the reason for the abortion.

(3) If the information module or the address to the website is not provided to a pregnant woman, the physician who performs the abortion on the woman shall, within 10 days after the day on which the abortion is performed, provide to the department an affidavit that:

(a) specifies the information that was not provided to the woman; and

(b) states the reason that the information was not provided to the woman.

(4) All information supplied to the department shall be confidential and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

(5) The department shall pursue all administrative and legal remedies when the department determines that a physician or a facility has not complied with the provisions of this part.

Section 24. Section **76-7-314** is amended to read:

76-7-314. Violations of abortion laws -- Classifications.

(1) ~~[A willful]~~ An intentional violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

(2) A violation of Section 76-7-326 is a felony of the third degree.

(3) A violation of Section ~~[76-7-302.5 or]~~ 76-7-314.5 is a felony of the second degree.

(4) A violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c), and (e), is a class A misdemeanor.

(5) The ~~[Department of Health]~~ department shall report a physician's violation of any provision of this part to the Physicians Licensing Board, described in Section 58-67-201.

(6) Any person with knowledge of a physician's violation of any provision of this part may report the violation to the Physicians Licensing Board, described in Section 58-67-201.

(7) In addition to the penalties described in this section, the department may take any action described in Section 26-21-11 against ~~[an abortion clinic]~~ a health care facility if a violation of this chapter occurs at the ~~[abortion clinic]~~ health care facility.

1288 Section 25. Section **76-7-314.5** is amended to read:

1289 **76-7-314.5. Killing an unborn child.**

1290 (1) A person is guilty of killing an unborn child if the person intentionally causes the
1291 death of an unborn child by performing an abortion of the unborn child in violation of the
1292 provisions of Subsection [~~76-7-302(3)~~] 76-7-302(2).

1293 (2) A woman is not criminally liable for:

1294 (a) seeking to obtain, or obtaining, an abortion that is permitted by this part; or

1295 (b) a physician's failure to comply with Subsection [~~76-7-302(3)(b)(ii)~~]
1296 76-7-302(2)(b)(ii) or Section 76-7-305.

1297 Section 26. Section **76-7-317** is amended to read:

1298 **76-7-317. Severability clause.**

1299 If any one or more provision, section, subsection, sentence, clause, phrase, or word of
1300 this part or the application thereof to any person or circumstance is found to be
1301 unconstitutional, the same is hereby declared to be severable and the balance of this part shall
1302 remain effective notwithstanding such unconstitutionality. The legislature hereby declares that
1303 it would have passed this part, and each provision, section, subsection, sentence, clause, phrase,
1304 or word thereof, irrespective of the fact that any one or more provision, section, subsection,
1305 sentence, clause, phrase, or word be declared unconstitutional. This section applies to any
1306 provision, section, subsection, sentence, clause, phrase, or word of this part, regardless of the
1307 time of enactment, amendment, or repeal.

1308 Section 27. Section **76-7-332** is enacted to read:

1309 **76-7-332. Drugs known to be used for abortion -- Prescriber limitation --**

1310 **Criminal penalties -- Pharmacy presumption for other use.**

1311 (1) As used in the section, "abortion-related drug" means a drug or medication that is
1312 known to be used for the purpose of performing an abortion, and includes:

1313 (a) methotrexate, or methotrexate with misoprostol;

1314 (b) mifepristone, also known as mifeprex;

1315 (c) misoprostol, also known as cytotec; and

(d) RU-486.

(2) An individual may not prescribe an abortion-related drug for the purpose of causing an abortion, unless the individual is licensed as a physician in this state under:

(a) Title 58, Chapter 67, Utah Medical Practice Act; or

(b) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) (a) Any prescription or medical order for a drug that is known to possibly cause an abortion shall be presumed by a pharmacy to be for an indication other than for the termination of a pregnancy.

(b) A pharmacy dispensing a prescription or medical order for a drug that is known to possibly cause an abortion shall not be required to verify whether the prescription or medical order violates any provision of this chapter.

Section 28. Section **76-7a-101** is amended to read:

76-7a-101. Definitions.

As used in this chapter:

(1) (a) "Abortion" means[:] the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant, except as permitted under this chapter.

~~[(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;]~~

~~[(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or]~~

~~[(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.]~~

(b) "Abortion" does not include:

1344 (i) removal of a dead unborn child;
1345 (ii) removal of an ectopic pregnancy; or
1346 (iii) the killing or attempted killing of an unborn child without the consent of the
1347 pregnant woman, unless:
1348 (A) the killing or attempted killing is done through a medical procedure carried out by
1349 a physician or through a substance used under the direction of a physician; and
1350 (B) the physician is unable to obtain the consent due to a medical emergency.
1351 ~~[(2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II~~
1352 ~~abortion clinic licensed by the state.]~~
1353 ~~[(3)]~~ (2) "Department" means the Department of Health and Human Services.
1354 ~~[(4)]~~ (3) "Down syndrome" means a genetic condition associated with an extra
1355 chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.
1356 ~~[(5)]~~ (4) "Hospital" means:
1357 (a) a general hospital licensed by the department; ~~[or]~~ and
1358 (b) a clinic or other medical facility ~~[to the extent the clinic or other medical facility is~~
1359 ~~certified by the department as providing equipment and personnel sufficient in quantity and~~
1360 ~~quality to provide the same degree of safety to a pregnant woman and an unborn child as would~~
1361 ~~be provided for the particular medical procedure undertaken by a general hospital licensed by~~
1362 ~~the department.]~~ that meets the following criteria:
1363 (i) a clinician who performs procedures at the clinic is required to be credentialed to
1364 perform the same procedures at a general hospital licensed by the department; and
1365 (ii) any procedures performed at the clinic are done with the same level of safety for
1366 the pregnant woman and unborn child as would be available in a general hospital licensed by
1367 the department.
1368 ~~[(6) "Incest" means the same as that term is defined in Section 80-1-102.]~~
1369 ~~[(7)]~~ (5) "Medical emergency" means a ~~[condition which, on the basis of the~~
1370 ~~physician's good faith clinical judgment, so threatens the life of a pregnant woman as to~~
1371 ~~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] life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced.

(6) "Perinatal hospice" means comprehensive support to the mother and her family from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's birth, and through the postpartum period, that:

(a) focuses on alleviating fear and ensuring that the woman and her family experience the life and death of a child in a comfortable and supportive environment; and

(b) may include counseling or medical care by:

(i) maternal-fetal medical specialists;

(ii) obstetricians;

(iii) neonatologists;

(iv) anesthesia specialists;

(v) psychiatrists, psychologists, or other mental health providers;

(vi) clergy;

(vii) social workers; or

(viii) specialty nurses.

~~[(8)]~~ (7) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery in the state;

(b) an osteopathic physician licensed to practice osteopathic medicine in the state; or

(c) a physician employed by the federal government who has qualifications similar to an individual described in Subsection ~~[(8)(a) or (b)]~~ (7)(a) or (b).

~~[(9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.]~~

~~[(10)]~~ (8) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

- 1400 (ii) spina bifida;
1401 (iii) cerebral palsy; or
1402 (iv) any other malformation, defect, or condition that does not cause an individual to
1403 live in a mentally vegetative state.

1404 Section 29. Section **76-7a-201** is amended to read:

1405 **76-7a-201. Abortion prohibition -- Exceptions -- Penalties.**

1406 (1) An abortion may be performed in this state only under the following circumstances:

1407 (a) the abortion is necessary to avert:

1408 (i) the death of the woman on whom the abortion is performed; or

1409 (ii) a serious physical risk of substantial [~~and irreversible~~] impairment of a major
1410 bodily function of the woman on whom the abortion is performed;

1411 (b) subject to Subsection (3), two physicians who practice maternal fetal medicine
1412 concur, in writing, in the patient's medical record that the fetus[:] has a fetal abnormality that in
1413 the physicians' reasonable medical judgment is incompatible with life; or

1414 [~~(i) has a defect that is uniformly diagnosable and uniformly lethal; or~~]

1415 [~~(ii) has a severe brain abnormality that is uniformly diagnosable; or~~]

1416 (c) [~~(i)~~] the unborn child has not reached 18 weeks gestational age and:

1417 (i) (A) the woman is pregnant as a result of:

1418 [~~(A)~~] (I) rape, as described in Section 76-5-402;

1419 [~~(B)~~] (II) rape of a child, as described in Section 76-5-402.1; or

1420 [~~(C)~~] (III) incest[; and], as described in Subsection 76-5-406(2)(j) or Section 76-7-102;

1421 or

1422 (B) the pregnant child is under the age of 14; and

1423 (ii) before the abortion is performed, the physician who performs the abortion:

1424 (A) for an abortion authorized under Subsection (1)(c)(i)(A), verifies that the incident
1425 described in Subsection [~~(1)(c)(i)~~] (1)(c)(i)(A) has been reported to law enforcement; and

1426 (B) if applicable, complies with requirements related to reporting suspicions of or
1427 known child abuse.

1428 (2) An abortion may be performed only:

1429 (a) by a physician; and

1430 (b) in ~~[an abortion clinic or]~~ a hospital, unless it is necessary to perform the abortion in
1431 another location due to a medical emergency.

1432 (3) If the unborn child has been diagnosed with a fetal abnormality that is incompatible
1433 with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and
1434 in writing, that perinatal hospice services and perinatal palliative care are available and are an
1435 alternative to abortion.

1436 ~~[(3)]~~ (4) A person who performs an abortion in violation of this section is guilty of a
1437 second degree felony.

1438 ~~[(4)]~~ (5) In addition to the penalty described in Subsection ~~[(3)]~~ (4), the department
1439 may take appropriate corrective action against ~~[an abortion clinic]~~ a health care facility,
1440 including revoking the ~~[abortion clinic's]~~ health care facility's license, if a violation of this
1441 chapter occurs at the ~~[abortion clinic]~~ health care facility.

1442 ~~[(5)]~~ (6) The department shall report a physician's violation of any provision of this
1443 section to the state entity that regulates the licensing of a physician.

1444 Section 30. **Repealer.**

1445 This bill repeals:

1446 Section **76-7-302.5, Circumstances under which abortion prohibited.**