

ENFORCEMENT OPTIONS FOR STATE ABORTION LAWS

In *Planned Parenthood v. Casey*, the U.S. Supreme Court validated abortion regulations that advanced a state’s “legitimate interest” in maternal health.¹ Such maternal health laws can take a variety of forms and include mandating that abortion clinics meet medically appropriate standards for patient care, requiring the informed consent and parental involvement, demanding that abortion clinic personnel report suspected child sexual abuse, ensuring that abortion-inducing drugs are administered safely, and prohibiting dangerous late-term abortions.

These and other abortion-related requirements vary widely from state to state, and the enforcement and potential penalties for violations of these laws also differ. Some states have no statutory penalties for violation of maternal health laws, some have penalties but no reliable methods of enforcement, and others have statutory or administrative penalties but decline to consistently or adequately enforce them.

How each state protects women from the negative impact of abortion and simultaneously ensures that abortion-related laws are properly enforced remains an important issue for state officials and the public. This collection of model statutory provisions provides a variety options to create or enhance enforcement and penalty options for violations of state abortion-related laws. These provisions may be enacted in whole, in part, or in combination and may be introduced as an amendment to existing abortion-related laws or as a component of any new related legislation.

Sample complaint forms are also provided for suspected professional, facility, or administrative violations of state abortion-related laws.

¹ *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992).

GENERAL CRIMINAL LIABILITY

(a) A *[person]* who intentionally, knowingly, or recklessly violates any provision of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]]*; OR insert specific reference(s) to state abortion-related statute(s) is guilty of a *[Insert appropriate penalty/offense classification]*. In this Section, “**intentionally**” is defined by Section *[Insert section number]* of the *[Penal Code]*.

(b) No criminal penalty may be assessed against the pregnant woman for a violation of any provision of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]]*; OR insert specific reference(s) to state abortion-related statute(s).

GENERAL CIVIL LIABILITY

Option 1: Civil Penalties Administered by State Authorities

(a) Any violation of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]]*; OR insert specific reference(s) to state abortion-related statute(s) may be subject to a civil penalty or fine up to *[Insert appropriate amount]* imposed by *[Insert name of appropriate state official(s), department(s), and/or agencies]*.

(b) No civil penalty may be assessed against the pregnant woman upon whom the abortion is performed.

(c) Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines.

(d) In deciding whether and to what extent to impose fines, by *[Insert name of appropriate state official(s), department(s), or agencies]* shall consider the following factors:

- (1) Gravity of the violation including the probability that death or serious physical harm to a patient or individual will result or has resulted;
- (2) Size of the population at risk as a consequence of the violation;
- (3) Severity and scope of the actual or potential harm;

- (4) Extent to which the provisions of the applicable statutes or regulations were violated;
- (5) Any indications of good faith exercised by [*abortion facility, physician, licensee, and/or other appropriate term*];
- (6) The duration, frequency, and relevance of any previous violations committed by the [*abortion facility, physician, licensee, and/or other appropriate term*]; and
- (7) Financial benefit to the [*abortion facility, physician, licensee, and or other appropriate term*] of committing or continuing the violation(s).

(e) Both the Office of the Attorney General and the Office of the District Attorney [*or other appropriate term*] for the county in which the violation(s) occurred may institute a legal action to enforce collection of civil penalties or fines.

Option 2: Statutory Cause of Action for Harmed Party

Any [*person*] who violates [*this Act [or Section] or any rules and regulations adopted under this Act [or Section]*] shall be civilly liable to the person or persons adversely affected by the violation(s). A court may award damages to the person or persons adversely affected by any violation(s) of [*this Act [or Section] or any rules and regulations adopted under this Act [or Section]*] including compensation for emotional, physical, and psychological harm; attorneys' fees, litigation costs, and punitive damages.

Option 3: Third-Party's Ability to Initiate Civil [*or Administrative*] Enforcement Actions²

(a) Except as provided in subsection (b) of this [*Section*], any person [*or class of persons*] with [*direct*] knowledge of the relevant facts may commence a civil [*or administrative*] action on his or her [*or their*] own behalf

- (1) Against any physician who is alleged to have violated or to be in violation of [*any provision of [this Act [or Section] or any rules and regulations adopted under this*

² Adapted from 42 U.S.C. § 7604 (2013).

Act [or Section]; OR insert specific reference(s) to state abortion-related statute(s);

- (2) Against *[staff member, employee, or volunteer]* at an *[abortion facility]* who is alleged to have violated or to be in violation of *[any provision of [this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statute(s);*
- (3) Against any *[abortion facility]*, including specifically its *[owner(s) and director(s)]*, that is alleged to have violated or to be in violation of *[any provision of [this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes];* or
- (4) Against any *[official, department, agency, or agent]* of the State of *[Insert name of State]*, in his, her, or its official capacity, who is alleged to have violated or to be in violation of *[any provision of [this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes]* or who is alleged to have improperly failed to enforce *[any provision of this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes]* as required by *[this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to enforcement provisions of state abortion-related statutes]*.

(b) No civil action may be commenced under subsection (a) prior to thirty (30) days after the plaintiff(s) has given notice of the violation(s) to the *[official, department, agency, or agent]* of the State of *[Insert name of State]* charged with enforcing *[any provision of this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes]*.

(c) Nothing in this *[Act [or Section]]* shall restrict any right which any person *[or class of persons]* may have under any statute or at common law to seek enforcement of *[any provision of this Act [or Section]] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes]* or to seek any other legal or equitable relief.

(d) Nothing in this *[Act [or Section]]* or in any other law of the State of *[Insert name of State]* shall be construed to prohibit, exclude, or restrict any person *[or class of persons]* from

- (1) Bringing any enforcement action or obtaining any judicial remedy or sanction in any state or local court; or
- (2) Bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any state or local administrative agency, department or instrumentality; any department, agency, or instrumentality thereof; or any officer, agent, or employee thereof under state or local law respecting *[any provision of this Act [or Section] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statutes]*.

ADMINISTRATIVE ACTION AGAINST FACILITY LICENSE

The *[Insert reference(s) to appropriate state official(s), department(s), and/or agencies]* may deny, suspend, revoke, or refuse to renew *[a license]* in any case in which it finds that there has been a substantial failure of the any *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term]* to comply with the requirements of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statute(s)]*. In such case, the *[Insert reference(s) to appropriate state official(s), department(s), and/or agencies]* shall furnish the *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term]* thirty (30) days notice specifying reasons for the action.

Any *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term]* who feels aggrieved by the action of the *[Insert reference(s) to appropriate state official(s), department(s), and/or agencies]* in *[denying, suspending, revoking, or refusing to renew a license]* may appeal the action in accordance with the *[delay, notice, and other]* procedures established *[Insert reference(s) to applicable agency or administrative appeal procedure(s)]*.

INJUNCTIVE REMEDY

In addition to any other penalty provided by law, whenever in the judgment of the *[Insert reference(s) to appropriate state official(s), department(s), and/or agencies]*, any *[person, physician, licensee, abortion facility, and/or other appropriate term]* has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statute(s)]*, the *[Insert reference(s) to appropriate state official(s), department(s), and/or agencies]* shall make application to any court of competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the *[Insert*

reference(s) to appropriate state official(s), department(s), and/or agencies] that such [person, physician, licensee, abortion clinic, and/or other appropriate term] has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

PROFESSIONAL AND DISCIPLINARY REMEDIES

In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of *[this Act [or Section] or any rules and regulations adopted under this Act [or Section]; OR insert specific reference(s) to state abortion-related statute(s)]* shall:

- (a) Provide a basis for a civil malpractice action for actual and punitive damages.
- (b) Provide a basis for a professional disciplinary action under *[state Medical Malpractice Act or other appropriate statutory and/or administrative authority]*.

SAMPLE COMPLAINT FORMS

Appendix A: Professional Complaint Form

Appendix B: Abortion Facility Complaint Form

Appendix C: Administrative Enforcement Complaint Form

APPENDIX A: PROFESSIONAL COMPLAINT FORM

[Drafter’s Note: Many state medical boards and other professional licensing bodies have complaint forms that can be submitted online directly through the agency website. This form can be adapted for online submission or used as a downloadable mail-in form.]

Sample Professional Complaint Form³

This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate statutory or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type of violation(s), and whether or not the incident was reported to clinic staff or another agency.

Please fill out this form completely and return to [Insert name and address of state medical board or other professional licensing board].

PERSONAL INFORMATION (OPTIONAL)		
Name: (Last)	(First)	(M.I.)
Address: (No. and Street)		City:
State:	Zip:	Telephone:
Email Address:		

PHYSICIAN INFORMATION	
Name:	
Practice Address: (No. and Street)	City:

³ Sample form is modeled after from Florida Health Care Facility Complaint Form, *available at* <http://apps.ahca.myflorida.com/hcfc/> (last visited Sept. 11, 2013); Arizona Election Grievance Complaint Form, *available at* http://www.azsos.gov/election/grievance/Grievance_Form.pdf (last visited Sept. 11, 2013); Oregon Medical Board Complaint Form, *available at* <http://www.oregon.gov/omb/pdf/forms/complaintform.pdf> (last visited Sept. 11, 2013); and Florida Healthcare Practitioner Complaint Form, *available at* http://doh.state.fl.us/mqa/enforcement/frm_general-medUCF.pdf (last visited Sept. 11, 2013).

State:	Zip:	Telephone:
License Number:		

ALLEGED VIOLATION(S)

Date of Incident(s):	Person(s) involved:
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Nature of Incident:
(check all that apply)

- § Quality of care
- § Misdiagnosis of condition
- § Patient abandonment/neglect
- § Failure to release patient records
- § Impairment/incompetence
- § Sexual contact with patient
- § Substance abuse
- § Unlicensed provider or aiding/abetting unlicensed practice
- § Misfilled prescription
- § Insurance fraud
- § Other

Description of Incident:

APPENDIX B: ABORTION FACILITY COMPLAINT FORM

[Drafter’s Note: Many state agencies maintain complaint forms that can be submitted online directly through the agency website. This form can be adapted for online submission or used as a downloadable mail-in form.]

Sample Abortion Facility Complaint Form⁴

This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate state statutory or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type of violation(s), and whether or not the incident was reported to clinic staff or another agency.

Please fill out this form completely and return to [Insert name and address of appropriate state department or agency].

PERSONAL INFORMATION (OPTIONAL)		
Name: (Last)	(First)	(M.I.)
Address: (No. and Street)		City:
State:	Zip:	Telephone:
Email Address:		

FACILITY INFORMATION		
Name:		
Address: (No. and Street)		City:
State:	Zip:	Telephone:

⁴ Sample form is modeled after Florida Health Care Facility Complaint Form, *available at* <http://apps.ahca.myflorida.com/hcfc/> (last visited Sept. 11, 2013); and Arizona Election Grievance Complaint Form, *available at* http://www.azsos.gov/election/grievance/Grievance_Form.pdf (last visited Sept. 11, 2013).

ALLEGED VIOLATION(S)

Date of Incident(s):

Person(s) involved:

Describe incident here:

APPENDIX C: ADMINISTRATIVE ENFORCEMENT COMPLAINT FORM

[**Drafter’s Note:** Many state agencies maintain complaint forms that can be submitted online directly through the agency website. This form can be adapted for online submission or used as a downloadable mail-in form and for a variety of administrative violations.]

Sample Administrative Enforcement Complaint Form⁵

This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate state statutory or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type of violation(s), and whether or not the incident was reported to clinic staff or another agency.

Please fill out this form completely and return to [Insert name and address of appropriate state department or agency].

PERSONAL INFORMATION (OPTIONAL)		
Name: (Last)	(First)	(M.I.)
Address: (No. and Street)		City:
State:	Zip:	Telephone:
Email Address:		

⁵ Sample form is modeled after Florida Health Care Facility Complaint Form, *available at* <http://apps.ahca.myflorida.com/hcfc/> (last visited Sept. 11, 2013); Arizona Election Grievance Complaint Form, *available at* http://www.azsos.gov/election/grievance/Grievance_Form.pdf (last visited Sept. 11, 2013); and New York Public Integrity Unit Complaint Form, *available at* http://www.ag.ny.gov/sites/default/files/pdfs/complaints/piu001_complaint_form.pdf (last visited Sept. 11, 2013).

FACILITY INFORMATION

Name:		
Address: (No. and Street)		City:
State:	Zip:	Telephone:

ALLEGED VIOLATION(S)

Date of Incident(s):	Person(s) involved:
Describe incident here:	