

TITLE 22                    EXAMINING BOARD  
PART 9                        TEXAS MEDICAL BOARD  
CHAPTER 165                MEDICAL RECORDS

§165.7. Definitions.

The following words and terms, when used in this section, shall have the following meanings:

(1) “Abortion” means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- (A) save the life or preserve the health of an unborn child;
- (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

This definition is found at Chapter 245, Section 245.002(1) of the Texas Health and Safety Code.

(2) “Reasonable medical judgment” means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, Section 170A.001(4) of the Texas Health and Safety Code.

(3) “Medical emergency” means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, Section 171.002(3) of the Texas Health and Safety Code.

(4) “Major bodily function” includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, Section 21.002(11-a) of the Texas Labor Code.

§165.8. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must document in the patient’s medical record:

- (1) that the abortion is performed in response to a medical emergency;

- (A) that places the woman in danger of death unless the abortion is performed or induced; or
  - (B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;
  - (2) the major bodily function(s) at serious risk of substantial impairment;
  - (3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;
  - (4) how the danger of death or serious risk was determined;
  - (5) if applicable, the rationale on why the abortion was performed pursuant to Texas Health and Safety Code Chapter 170A.002 (b)(3); and
  - (6) if applicable, that the treatment was in response to an ectopic pregnancy at any location or a previable premature rupture of membranes, as those terms are used in Section 74.552, Texas Civil Practice and Remedies Code.
- (c) The above documentation must be made before and/or after performing the procedure, but the initial documentation must be made within 7 days of the procedure.
- (d) Imminence of the threat to life or impairment of a major bodily function is not required.

#### §165.9. Complaints Regarding Abortions Performed.

- (a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.
- (b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in Texas Occupations Code, Section 154.0561, to review the available information, including the patient's medical record.
  - (b-1) As done in other complaints, the independent expert physicians may review all relevant information including one or more of the following:
    - (1) how the decision was made to proceed with an abortion based on reasonable medical judgement including:
      - (A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and
      - (B) what alternative treatments were attempted and failed or were ruled out; and
    - (2) whether there was adequate time to transfer the patient to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

(c) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

(d) The Board shall not take any disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by section 74.552 of the Texas Civil Practice and Remedies Code.