



**Board of Medical Licensure and Supervision
State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105**

January 21, 2020

Voluntary and Informed Consent

The State Board of Medical Licensure and Supervision is required to notify each physician who becomes newly licensed to practice in this state and notify all physicians currently licensed to practice in this state of the statutes below on an annual basis ([63 O.S. §§ 1-738.2\(C\), 1-738.3](#)).

- **63 O.S. § 1-738.2 - Voluntary and Informed Consent - Compliance by Physicians - Confirmation of Receipt of Medical Risk Information**

According to Oklahoma Law, except in the case of a medical emergency, “[n]o abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.” ([63 O.S. § 1-738.2](#)).

Oklahoma Law also states that

“[n]ot less than seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:”

1. The name of the physician who will perform the abortion,
2. The medical risks associated with the particular abortion procedure to be employed,
3. The probable gestational age of the unborn child at the time the abortion is to be performed,
4. The medical risks associated with carrying her child to term, and
5. That ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the web site and printed materials described in Section [1-738.3](#) of title 63, contain phone numbers and addresses for facilities that offer such services at no cost

This same law also states,

"Not less than seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:"

a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,

b. That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,

c. That:

1. She has the option to review the printed materials described in Section [1-738.3](#) of the title,

2. Those materials have been provided by the State Board of Medical Licensure and Supervision, and

3. They describe the unborn child and list agencies that offer alternatives to abortion and

d. 1. if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or

2. if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least seventy-two (72) hours before the abortion of the specific web www.awomansright.org where the material can be accessed.

3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section [1-738.3](#) of this title; and

4. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 3 of this subsection.

- **63 O.S. § 1-738.3 - Publication and Availability of Printed Informational Materials**

D. Any facility performing abortions that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the Board's website, www.awomansright.org that provides informed consent materials under the Woman's Right-to-Know Act. Such link shall read: "The State Board of Medical Licensure and Supervision maintains a website containing information about the development of the

unborn child, as well as video of ultrasound images of the unborn child at various stages of development. The Board's website can be reached by clicking here: www.awomansright.org." (63 O.S. § 1-738.3).

- **63 O.S. § 1-738.8 - Provision of Information Prior to Abortion - Written Certification of Receipt**

A. Except in the case of a medical emergency, at least seventy-two (72) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section [1-738.10](#) of this title, that these materials are available on a state-sponsored website, and the web address of that website. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the website, the materials shall either be given to the female at least seventy-two (72) hours before the abortion, or received by the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section [1-738.10](#) of this title. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt. ([O.S. 63 § 1-738.8](#)).

- **63 O.S. § 1-738.3f - Civil Action Against Abortion Provider and Others for Negligent Violations of State Statutes**

It is important to note that if a physician who performs abortions, prescribes any drug or chemical intended to induce abortion, or refers a woman to an abortion provider or prescriber, and knew or reasonably should have known that the abortion provider or prescriber acted in violation of the Oklahoma Statutes, may be liable in a civil action

brought by the woman or parent or legal guardian for actual damages and, in the case of gross negligence, for punitive damages ([63 O.S. § 1-738.3f](#)).

The State Board of Medical Licensure and Supervision has prepared, according to [63 O.S. § 1-738.3](#), Printed Informational Materials and a stable Internet web site. As a referring physician or agent of such physician, you are able to receive the printed materials that refer the woman to the Internet web site.

As the Woman's Right to Know consultant for the State Medical Board, I would like to work with you in being a resource for your agency, in providing such materials.

Sincerely,

Terri Cleveland
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Informed Consent Statutes

63 O.S. § 1-738.2 - 1-738.2 - Voluntary and Informed Consent - Compliance by Physicians - Confirmation of Receipt of Medical Risk Information

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. not less than seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:

(1) the name of the physician who will perform the abortion,

(2) the medical risks associated with the particular abortion procedure to be employed,

(3) the probable gestational age of the unborn child at the time the abortion is to be performed,

(4) the medical risks associated with carrying her child to term, and

(5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in Section 1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,

b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,

c. the information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,

d. if a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion, and

e. nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,

- b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,
- c. that:
 - (1) she has the option to review the printed materials described in Section 1-738.3 of this title,
 - (2) those materials have been provided by the State Board of Medical Licensure and Supervision, and
 - (3) they describe the unborn child and list agencies that offer alternatives to abortion, and
- d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or
 - (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least seventy-two (72) hours before the abortion of the specific address of the Internet website where the material can be accessed.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

- 3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section 1-738.3 of this title; and
- 4. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

- 1. The medical risks associated with the particular abortion procedure to be employed;
- 2. The probable gestational age of the unborn child at the time the abortion is to be performed; and
- 3. The medical risks associated with carrying the unborn child to term.

Laws 2005, HB 1686, c. 200, § 7, emerg. eff. May 20, 2005; Amended by Laws 2006, SB 1742, c. 185, § 3, eff. November 1, 2006 ; Amended by Laws 2015, HB 1409, c. 255, § 1, eff. November 1, 2015.

63 O.S. § 1-738.3 - Publication and Availability of Printed Informational Materials

- A. Within one hundred twenty (120) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in Spanish, and shall update on an annual basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

- a. geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies and services that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:
 - (1) a comprehensive list of the agencies available,
 - (2) a description of the services they offer, including which agencies offer, at no cost to the pregnant woman, ultrasound imaging that enables a pregnant woman to view the unborn child or heart tone monitoring that enables the pregnant woman to listen to the heartbeat of the unborn child, and
 - (3) a description of the manner, including telephone numbers, in which they might be contacted, or
 - b. at the option of the Board a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies in the locality of the caller and of the services they offer; and
 - a. materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including:
 - (1) any relevant information on the possibility of the survival of the unborn child, and
 - (2) pictures or drawings representing the development of unborn children at two-week gestational increments, provided that the pictures or drawings shall describe the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted,
 - b. the materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages, and
 - c. the material shall also contain objective information describing:
 - (1) the methods of abortion procedures commonly employed,
 - (2) the medical risks commonly associated with each of those procedures,
 - (3) the possible detrimental psychological effects of abortion and of carrying a child to term, and
 - (4) the medical risks commonly associated with carrying a child to term, and
 - d. the material shall contain the statement "Abortion shall terminate the life of a whole, separate, unique, living human being."
- B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.
2. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.
- C. 1. The Board shall provide on its stable Internet website the information described under subsection A of this section.

2. The website provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.

D. Any facility performing abortions that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the Board's website, www.awomansright.org, that provides informed consent materials under the Woman's Right-to-Know Act. Such link shall read: "The State Board of Medical Licensure and Supervision maintains a website containing information about the development of the unborn child, as well as video of ultrasound images of the unborn child at various stages of development. The Board's website can be reached by clicking here: www.awomansright.org."

Laws 2005, HB 1686, c. 200, § 8, emerg. eff. May 20, 2005; Amended by Laws 2006, SB 1742, c. 185, § 4, eff. November 1, 2006 ; Amended by Laws 2015, HB 1409, c. 255, § 2, eff. November 1, 2015.

63 O.S. § 1-738.3f (OSCN 2015), Voluntary and Informed Consent - Civil Action Against Abortion Provider and Others for Negligent Violations of State Statutes

A woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider, against the prescriber of any drug or chemical intended to induce abortion, and against any person or entity which referred the woman to the abortion provider or prescriber and which knew or reasonably should have known that the abortion provider or prescriber had acted in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual damages and, in cases of gross negligence, for punitive damages. The measure of damages shall include damages for the mental anguish and emotional distress of the plaintiff, in addition to all damages available for the wrongful death of the child whose life was aborted in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, notwithstanding any exception for abortion provided in Section 1053 of Title 12 of the Oklahoma Statutes. Whether the individual or entity committed an abortion in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be determined by the trier of fact in the civil action by the greater weight of the evidence. Unless the defendant can prove to the trier of fact by the greater weight of the evidence that the abortion was performed on a child who was already dead from natural causes before the abortion, and that the defendant informed the plaintiff that the child was already dead at the time of the abortion, it shall be a rebuttable presumption that if an abortion was performed, that the child whose life was aborted was alive until the abortion was performed, and was capable eventually of living a normal human lifespan had the abortion not occurred.

Laws 2012, HB 2561, c. 198, § 1, eff. September 1, 2012.

63 O.S. § 1-738.8 - Provision of Information Prior to Abortion - Written Certification of Receipt

A. Except in the case of a medical emergency, at least seventy-two (72) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 1-738.10 of this title, that these materials are available on a state-sponsored website, and the web address of that website. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the

materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the website, the materials shall either be given to the female at least seventy-two (72) hours before the abortion, or received by the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section 1-738.10 of this title. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

Laws 2006, SB 1742, c. 185, § 8, eff. November 1, 2006;
Amended by Laws 2015, HB 1409, c. 255, § 4, eff. November 1, 2015