

Board of Medical Licensure and Supervision State of Oklahoma

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In 2015, the Oklahoma Legislature passed HB1409, with the Governor signing it into law. This law has made some changes to responsibilities of abortion providers, referring physicians, or an agent of either physician. Below is the updated information concerning Informed Consent in the State of Oklahoma. These will go in effect November 1, 2015.

- **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 site 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. § 1-738.8 - 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.

- **63 O.S. § 1-746.2 - Informed and Voluntary Consent - Duty to Provide Information to Female Seeking Abortion - Certification of Receipt**

No abortion shall be performed or induced or attempted to be performed or induced without the voluntary and informed consent of the female upon whom the abortion is to be performed or induced or attempted to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, at least seventy-two (72) hours before the abortion:

1. In the case of a female seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life, the female is informed, by telephone or in person, by the physician who is to perform the abortion or the physician's agent:

- a. that perinatal hospice services are available,
- b. this service is an alternative to abortion,
- c. that she has the right to review the printed materials described in this section,
- d. that these materials are available on a state-sponsored website, and
- e. what the website address is where she can access this information.

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 female does or does not choose to have the printed materials given or mailed to her;

2. The physician or the physician's agent shall orally inform the female that the materials have been provided by the State of Oklahoma and that they list the places which offer perinatal hospice services both in her state and nationally. If the female chooses to view the materials other than on the website, they shall either be given to her at least seventy-two (72) hours before the abortion, or received by her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

3. The female certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by paragraph 3 of this section. This certification shall be maintained in the female patient's file for not less than five (5) years.

- **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. § 1-783.3, 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
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