

1 Alice Clapman*
2 Helene I Krasnoff*
3 PLANNED PARENTHOOD FEDERATION OF
4 AMERICA
5 1110 Vermont Avenue NW, Suite 300
6 Washington, DC 20005
7 (202) 973-4800
8 alice.clapman@ppfa.org
9 helene.krasnoff@ppfa.org

10 *Attorneys for Planned Parenthood Arizona,*
11 *Inc*

12 Lawrence Rosenfeld
13 SQUIRE SANDERS (US) LLP
14 AZ Bar No. 004426
15 1 East Washington Street, Suite 2700
16 Phoenix, Arizona 85004
17 (602) 528-4000

18 *Attorney for Plaintiffs*

19 David Brown*
20 Julie Rikelman*
21 CENTER FOR REPRODUCTIVE RIGHTS
22 120 Wall Street
23 New York, NY 10005
24 (917) 637-6000
25 dbrown@reprorights.org
26 jrikelman@reprorights.org

27 *Attorneys for William Richardson, MD,*
28 *and William H Richardson MD, PC, doing*
business as Tucson Women's Center

** Applications for admission pro*
hac vice forthcoming

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Planned Parenthood Arizona, Inc.; William
Richardson, M.D.; and William H.
Richardson M.D., P.C., doing business as
Tucson Women's Center,

Plaintiffs,

v.

Will Humble, Director of the Arizona
Department of Health Services, in his
official capacity,

Defendant.

Case No.

Plaintiffs Planned Parenthood Arizona, Inc ("PPAZ"); William Richardson, M.D.;
and William H. Richardson M.D., P.C., doing business as Tucson Women's Center
(together, "Dr. Richardson"), by and through their attorneys, bring this Complaint against

1 the above-named Defendant, his employees, agents, delegates, and successors in office,
2 and in support thereof state the following:

3 **I. PRELIMINARY STATEMENT**

4 1. Plaintiffs are Arizona health care providers who bring this civil rights action,
5 seeking declaratory and injunctive relief, on behalf of themselves and their patients, under
6 the United States Constitution and 42 U.S.C. § 1983, to challenge portions of Arizona
7 House Bill 2036 of 2012 (“HB 2036”), Section 2, codified at A.R.S. § 36-449.03(E)(6)
8 (“the Act”) and its implementing regulation, A.A.C. R9-10-1508(G) (“the Regulation”)
9 (collectively, “the Arizona law”) which, unless enjoined by this Court, will impair the
10 health and safety of women seeking abortions in Arizona and violate their constitutional
rights¹

11 2. If the Arizona law is allowed to stand, physicians in Arizona will not be able
12 to care for their abortion patients according to the current standard of care recommended
13 by the American Medical Association (“AMA”) and the American College of
14 Obstetricians and Gynecologists (“ACOG”); instead, they will be forced to practice
15 medicine as it was practiced almost 20 years ago.

16 3. Under current law, Arizona women seeking to terminate an early pregnancy,
17 like women nationwide, have the option of choosing a safe, non-surgical method of
18 abortion using medications alone. This is referred to as “medication abortion.” The
19 medications used are mifepristone and misoprostol.

20 4. The U.S. Food and Drug Administration (“FDA”) approved mifepristone for
21 use in abortion in the United States in 2000. But medical research and physicians’ clinical
22 experiences do not stop after a medication is approved. Instead, as with other medications,
23 the way that physicians prescribe abortion medications continued to evolve based on new
24 medical research even before FDA approval, making medication abortion increasingly
25 safer, more effective, effective until later in pregnancy, more accessible, and with fewer
26 side effects. The practice of altering prescriptions to reflect clear, significant, generally

27
28 ¹ Copies of the Act and Regulation are annexed hereto as Exhibit 1.

1 accepted developments in medical research is referred to as “off-label” or “evidence-
2 based” medicine.

3 5. The current, evidenced-based regimen for medication abortion, which
4 Plaintiffs offer their patients, has been recognized by the AMA and ACOG as preferable
5 to the regimen that appears on the mifepristone label; it is safer, more effective, less
6 expensive, less burdensome, and may be used later in pregnancy. This evidenced-based
7 regimen is the standard of care.

8 6. The Arizona law, scheduled to take effect April 1, 2014, potentially bans
9 medication abortion in Arizona altogether. At the very least, and without any medical
10 justification, the law requires physicians to ignore decades of medical research, the
11 opinion of leading medical organizations, and their own clinical experience, and
12 administer medication abortion in an outdated and inferior manner.

13 7. Thus, however it is construed, the Arizona law unquestionably would prevent
14 at least some of Plaintiffs’ patients from obtaining a medication abortion, and any patients
15 who could still access the procedure would be deprived of years of improvements in the
16 standard of care. These effects would be harmful for Arizona women, particularly those
17 with medical conditions that make medication abortion significantly safer than surgical
18 abortion, as well as women who live outside of major metropolitan areas, low-income
19 women, and women who are victims of rape or abuse.

20 8. For these reasons, the Arizona law violates the constitutional rights guaranteed
21 to both Plaintiffs and their patients by the Fourteenth Amendment to the United States
22 Constitution. Preliminary and permanent injunctive relief is necessary to protect the health
23 of Arizona women and the constitutional rights of Plaintiffs and their patients.

23 **II. JURISDICTION AND VENUE**

24 9. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343(a)(3)
25 Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201
26 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general
27 legal and equitable powers of this Court.

28 10. Venue is appropriate under 28 U.S.C. §§ 1391(b)(1) and (2) because events
giving rise to this action occur in this District and Defendant is located in this District.

1 **III. THE PARTIES**

2 **A. Plaintiffs**

3 11. Plaintiff PPAZ is a not-for-profit corporation organized under the laws of
4 Arizona and is the largest provider of reproductive health services in Arizona, operating
5 11 health centers throughout the state and providing a broad range of reproductive and
6 sexual health services, including cervical cancer screening, breast exams, testing and
7 treatment for sexually transmitted infections, contraception, and surgical and medication
8 abortion.

9 12. PPAZ has been providing medication abortions since 2001, and provides the
10 evidence-based regimen recommended by AMA and ACOG through 63 days or nine
11 weeks of pregnancy, measured from the first day of a woman's last menstrual period
12 (LMP), which differs from the regimen that appears on the mifepristone label. This
13 regimen includes screening all patients for contraindications, including ectopic
14 pregnancies, before providing treatment. PPAZ currently provides medication abortions at
15 four centers: Glendale Health Center, Margaret Sanger Health Center (in Tucson), Tempe
16 Health Center, and Flagstaff Health Center. In 2013, PPAZ provided medication abortions
17 to 2511 patients; 38 percent of eligible patients chose this procedure. PPAZ brings this
18 action on behalf of itself, its patients, and the physicians it employs to provide services to
19 its patients.

20 13. Plaintiff William Richardson, M.D., is a licensed, board-certified
21 obstetrician-gynecologist in Tucson. He is the sole owner and director of Plaintiff Tucson
22 Women's Center. Dr. Richardson provides comprehensive family planning and women's
23 health services to over a thousand patients each year, from throughout southern Arizona
24 and beyond, including pregnancy testing, prenatal care, contraception, prenatal
25 ultrasounds, pregnancy options counseling, gynecological care, and surgical and
26 medication abortions.

27 14. Dr. Richardson provides abortion services to about 900 women per year,
28 nearly half of whom choose medication abortion. He opened Tucson Women's Center in
1999 and has been offering his patients medication abortion since 2001. He provides
medication abortion using an evidence-based regimen recommended by AMA and ACOG

1 through 63 days LMP that differs from the regimen that appears on the mifepristone label.
2 This regimen includes screening all patients for contraindications, including ectopic
3 pregnancies, before providing treatment. Dr. Richardson brings this action on behalf of
4 himself and his patients.

5 **B. Defendant**

6 15 Defendant Will Humble is the Director of the Arizona Department of Health
7 Services (“DHS”). DHS promulgated the Regulation, and has the authority to enforce it as
8 well as the Act. Defendant Humble is sued in his official capacity.

9 **IV. FACTUAL ALLEGATIONS**

10 **A. Challenged Provisions of the Arizona Law**

11 16 On April 10, 2012, the Arizona Legislature passed HB 2036, and on April 12,
12 2012, Governor Brewer signed it into law. Section 2 of that law, codified at A.R.S. § 36-
13 449.03(E)(6), mandates that the Director of DHS adopt rules requiring “[t]hat any
14 medication, drug or other substance used to induce an abortion is administered in
15 compliance with the protocol that is authorized by the United States Food and Drug
16 Administration and that is outlined in the final printing labeling instructions for that
17 medication, drug or substance.”

18 17 On November 21, 2013, pursuant to the legislative mandate in Section 2 of
19 the Act, DHS posted “Draft Rules Issued for Abortion Clinics” online, and on November
20 29, 2013, the Secretary of State published a Notice of Public Information in the *Arizona*
21 *Administrative Register*. The Online Survey was open for comments until December 19,
22 2013.

23 18 On January 27, 2014, without providing the two additional opportunities for
24 comment that its own policy requires, *see* Office of Administrative Counsel & Rules,
25 Rulemaking Process, Arizona Department of Health Services, Exempt Rulemaking
26 Process, available at <http://azdhs.gov/ops/oact/rules/rulemakings/process.htm> (click on
27 “Exempt Rulemaking”), DHS promulgated the Regulation.

28 19 The Regulation requires the medical director of a facility licensed as an
abortion clinic to “ensure that any medication, drug or other substance used to induce an
abortion is administered in compliance with the protocol that is authorized by the United

1 States food and drug administration and that is outlined in the final printing labeling
2 instructions for that medication, drug or substance.” The Regulation’s effective date is
3 April 1, 2014.

4 20. Any clinic that fails to comply with these requirements is subject to a civil
5 penalty, license suspension or revocation, or other enforcement actions by DHS. A.A.C. §
6 R9-10-1515.

7 21. The medical director of any abortion clinic that is subject to such a penalty
8 may also face disciplinary action against his or her medical license. *See* A.R.S. § 32-
9 1401(27)(a) (defining “unprofessional conduct” as including “[v]iolating any federal or
10 state laws, rules or regulations applicable to the practice of medicine”).

11 22. The Arizona law applies only to abortion clinics. It does not apply to
12 hospitals, regardless of how many abortions they perform, nor to independent physicians
13 who perform fewer than five first-trimester abortions per month. *See* A.R.S. § 36-449.03
14 (setting out requirements for abortion clinics, including medication abortion restrictions);
15 A.R.S. § 36-449.01(2) (defining “abortion clinic”).

16 **B. Existing Regulatory Framework for Abortion in Arizona**

17 23. Abortion clinics are already heavily regulated under A.R.S. § 36-449 et seq.
18 and A.A.C. R9-10-1501 et seq., and subject to regular inspections under A.R.S. § 36-425.

19 24. Women seeking an abortion, moreover, face a number of recently-enacted
20 legislative hurdles. Under A.R.S. § 36-449.03(D)(4), § 36-2153, and § 13-3603.02, a
21 woman must travel to a clinic at least 24 hours before her abortion, meet with a physician,
22 undergo an ultrasound, hear a description of “the probable anatomical and physiological
23 characteristics” of the fetus, discuss her reasons for choosing an abortion, and undergo
24 state-directed counseling.

25 25. Other recent restrictions control from which health professionals a woman
26 can obtain an abortion. Under A.R.S. § 36-449 et seq., A.R.S. § 32-2532, and A.A.C. R9-
27 10-1501 et seq., women can only obtain an abortion from a physician, even though major
28 medical associations have stated that physician assistants and registered nurse-
practitioners (“RNs”) can safely provide this care early in pregnancy (as they were
before the Arizona legislature banned these services).

1 26. Another provision of HB 2036, not challenged here, will require women to
2 find, and travel to, a physician provider who has admitting privileges (or a back-up
3 arrangement) at a hospital within 30 miles. HB 2036 § 2, codified at A.R.S. § 36-
4 449.03(C)(3).

5 27. Largely as a result of these restrictions, the number of licensed abortion
6 clinics in Arizona has shrunk over the past eight years from 16 to 10 (all of them
7 concentrated in a few metropolitan areas), and many women must travel long distances,
8 multiple times, to obtain an abortion.

9 **C. Medication Abortion Background**

10 28. Women seek abortions for a variety of medical, psychological, emotional,
11 familial, economic, and personal reasons.

12 29. Approximately one in three women in the United States will have an abortion
13 by age 45.

14 30. Most women having abortions (61 percent) already have at least one child,
15 and most (66 percent) also plan to have children in the future—many when they are older,
16 financially able to provide for them, and/or in a supportive relationship with a partner so
17 their children will have two parents.

18 31. Currently, and for over a decade, Arizona women in the first nine weeks of
19 pregnancy (through 63 days LMP) have had the option of choosing between a surgical
20 procedure that takes place in a health center (surgical abortion) or a procedure using
21 medications alone (medication abortion). Both are extremely safe and effective
22 procedures.

23 32. A medication abortion involves a combination of two prescription drugs:
24 mifepristone and misoprostol. Mifepristone, commonly known as “RU-486” or by its
25 commercial name Mifeprex, works by blocking the hormone progesterone, which is
26 necessary to maintain pregnancy. Misoprostol, sometimes known by its brand name
27 Cytotec, causes the uterus to contract and expel its contents.

28 33. Under current practice, a patient takes the mifepristone at her health care
facility and approximately 24 to 48 hours later, usually at home, she takes the misoprostol,
thereby completing the abortion.

1 34. Used together, the medications mifepristone and misoprostol provide an
2 extremely safe and effective method of abortion, one of the safest procedures in
3 contemporary medical practice. Major complications from medication abortion are
4 extremely rare, and far rarer than those associated with pregnancy and childbirth.

5 35. Nevertheless, Plaintiffs have health professionals available to speak with
6 medication abortion patients 24 hours a day, seven days a week, if needed.

7 36. For some women, medication abortion offers important advantages over
8 surgical abortion. In particular, some women have medical conditions that make
9 medication abortion a significantly safer option, with a lower risk of both complications
10 and failure than a surgical abortion. These conditions include extreme obesity, and
11 anomalies of the reproductive and genital tract, such as large uterine fibroids, vaginismus,
12 cervical stenosis, genital mutilation, or an extremely flexed uterus, which make it difficult
13 to access the pregnancy inside the uterus as part of a surgical abortion.

14 37. Many women choose medication abortion because they fear any procedure
15 with surgical instruments. Victims of rape, or women who have experienced sexual abuse
16 or molestation, may choose medication abortion to feel more in control of the experience
17 and to avoid the trauma of having instruments placed in their vagina.

18 38. Additionally, many women prefer medication abortion because it feels more
19 natural, like a miscarriage, and/or because they can complete a medication abortion in the
20 privacy of their homes, with the company of loved ones, and at a time of their choosing.

21 **D. Advantages Of the Current Regimen Over the One on the Mifepristone Label**

22 39. In 2000, the FDA approved Mifeprex for marketing as an abortion-inducing
23 drug in the United States. As part of that approval, as with all medications, the FDA
24 approved a Final Printed Labeling ("FPL"), which is an informational document that
25 provides physicians with guidance about the use for which the drug sponsor requested and
26 received FDA approval.

27 40. Based on the clinical trials submitted in support of the application for
28 approval (which were completed prior to 1996 and involved fewer than 3000 women), the
manufacturer proposed, and the FDA approved, an FPL for Mifeprex that reflects the
regimen used in those trials. (As with most drugs, the FDA did not test the drug itself.)

1 41. Under this regimen, the patient takes 600 mg of mifepristone orally, returns
2 to the health center approximately 36 to 48 hours later to take 400 µg of misoprostol
3 orally, and then returns approximately 14 days later for a follow-up visit. Those trials
4 found that regimen to be safe and effective through 49 days LMP, and the FPL therefore
5 reflects that regimen and that gestational age limit.

6 42 Mifepristone is the only medication that has received FDA approval for
7 marketing as an abortion-inducing drug, and therefore, the only medication with an FPL
8 describing an abortion regimen. Misoprostol was approved for the treatment of ulcers and
9 its FPL reflects only that use.

10 43. The FDA's regulatory authority with respect to drugs is limited to approving
11 them for marketing; it does not regulate the practice of medicine. In approving
12 mifepristone, the FDA did not authorize (or prohibit) the use of any particular regimen for
13 administering it. It has never required that prescribers of mifepristone follow any
14 particular regimen and has never imposed a gestational age limit on its use.

15 44. It is standard medical practice for physicians to prescribe FDA-approved
16 drugs in dosages and for indications that were not specifically approved or contemplated
17 by the FDA, particularly when supported by adequate study. The FDA has repeatedly
18 acknowledged that use of such evidence-based regimens that vary from an FPL is
19 common and is sometimes required by good medical practice.

20 45 By the time mifepristone was approved in 2000, newer research showed that
21 a lower dose of mifepristone (200 mg instead of 600 mg) combined with a different dose
22 and route of self-administered misoprostol was equally safe and was effective through at
23 least 63 days LMP. This research also showed that varying the route of misoprostol
24 administration decreased medication abortion's side effects.

25 46. Based on this research, from the time that mifepristone was approved, the
26 overwhelming majority of abortion providers in the United States offered their patients a
27 regimen different from the one on the FPL through at least 63 days LMP.

28 47. Today, the evidence-based regimen most commonly used across the country,
including in Arizona and by Plaintiffs, involves 200 mg of mifepristone taken orally at the
health center followed approximately 24 to 48 hours later by 800 micrograms ("µg") of

1 misoprostol which the woman self-administers buccally (dissolving the pills between her
2 cheek and gum) at a location of her choosing, most often at home.

3 48. Approximately two million American women, if not more, have now safely
4 used an alternative evidence-based mifepristone regimen to terminate their pregnancies,
5 compared to the fewer than 3000 women who participated in the clinical trials submitted
6 to the FDA in the mid-1990s.

7 49. ACOG, the AMA, the World Health Organization, and the Royal College of
8 Obstetricians and Gynecologists have all endorsed use of this alternative regimen through
9 63 days LMP.

10 50 Medication abortion with Mifeprex and misoprostol is also increasingly
11 prevalent, chosen by more women each year

12 51. The evidence-based regimen used by Plaintiffs has been shown to have a
13 higher rate of effectiveness and require fewer surgical interventions to complete the
14 procedure, as compared to the FPL regimen.

15 52. The evidence-based regimen has a number of other advantages when
16 compared to the FPL regimen

17 53. *First*, it is effective for longer in pregnancy, allowing medication abortions to
18 be performed through at least 63 days LMP, which in turn allows many more women to
19 avail themselves of that method. Those additional weeks are significant because many
20 women do not detect their pregnancies until close to 49 days LMP.

21 54. *Second*, self-administration of misoprostol eliminates a trip to the health
22 center, allows the woman greater control over the timing of the procedure, and ensures
23 that she experiences the bleeding and cramping that follow in a location of her choosing,
24 rather than in the car on the way home from the clinic

25 55. *Third*, the lower mifepristone dosage reduces the cost of the procedure
26 significantly

27 56. *Fourth*, it has a lower incidence of side effects than the regimen that appears
28 on the FPL.

57. Arizona does not mandate any drugs be used only as described on their
labels, except in the context of abortion. To the contrary, in contexts other than abortion,

1 Arizona law protects patients' access to evidence-based drugs regimens. *See, e.g.*, A.R.S. §
2 20-2326(A) (prohibiting health insurers from refusing to cover evidence-based
3 prescription of cancer drugs).

4 **E. The Impact of the Arizona Law**

5 58. The Arizona law prohibits the use of any abortion inducing medication
6 except as "outlined in the final printing label instructions *for that medication*" (emphasis
7 added).

8 59. As explained above, one of the drugs administered in the course of a
9 medication abortion, misoprostol, was approved for the treatment of ulcers; its FPL does
10 not mention any indication for abortion. Under one possible construction of the Arizona
11 law, then, abortion clinics could not permissibly prescribe misoprostol for abortions at all,
12 and therefore could not provide medication abortion (which requires that women take both
13 medications).

14 60. However, it is unclear whether the Arizona law even applies to misoprostol
15 in the first place. When misoprostol is taken, mifepristone has often, but by no means
16 always, terminated the pregnancy. It is thus uncertain whether misoprostol is being "used
17 to induce an abortion" when used following administration of mifepristone.

18 61. Moreover, the Arizona law requires abortion-inducing drugs to be
19 administered "in compliance with the protocol that is authorized by the [FDA]" But
20 because the FDA does not authorize drug protocols, it is unclear whether even
21 mifepristone could be provided in compliance with the Arizona law.

22 62. A complete ban on medication abortion would substantially burden Arizona
23 women, particularly those women described above who have important personal reasons
24 for choosing a medication abortion or have medical conditions that make medication
25 abortion a significantly safer option.

26 63. Some women with these medical conditions, moreover, could have other
27 health complications arising out of, or exacerbated by, their being forced to continue
28 unwanted pregnancies. Such complications could threaten the life or the health of these
women.

1 64. The Arizona law contains no exceptions from its restrictions for abortions
2 necessary, in appropriate medical judgment, to protect the life or health of a pregnant
3 woman.

4 65. Moreover, because surgical abortion services require certain staff and
5 facilities related to the provision of sedation and other aspects of that procedure, some
6 clinics are only able to provide medication abortion, not surgical abortion.

7 66. If these clinics are banned from providing medication abortion, women will
8 have to travel further to find an abortion provider.

9 67. PPAZ's clinic in Flagstaff is the only licensed abortion clinic in the Northern
10 half of Arizona, an area that includes over 60,000 square miles (larger than most states).
11 This clinic is only equipped to provide medication abortion services, not surgical.

12 68. If women cannot have an abortion in Flagstaff, the next closest clinic in
13 Arizona is 134 miles away, in Glendale. Thus, women traveling from the northernmost
14 parts of Arizona would be forced to travel up to 744 miles roundtrip to the next closest
15 clinic, in Glendale, in order to obtain an abortion in Arizona. And for the average patient
16 of the Flagstaff center, this would be a 321-mile roundtrip drive to Glendale, 202 miles
17 more than the current average roundtrip.

18 69. Arizona's 24-hour waiting period will force them to make that trip two to
19 four times, or remain away from home for an extended period.

20 70. Especially for low-income women, these obstacles may impose delays to
21 arrange the necessary funds, transportation, childcare, or time off work required. This in
22 turn may further delay their procedure, increasing the risk to their health.

23 71. Alternatively, the Arizona law might be construed to allow misoprostol to be
24 used in a medication abortion, but require that both medications be used as outlined on the
25 Mifeprex FPL.

26 72. This would allow medication abortion through 49 days LMP, but would
27 deprive Arizona women of many of medication abortion's benefits by forcing physicians,
28 against their best medical judgment, to adhere to an outdated, inferior regimen.

 73. This will impose substantial obstacles for all women seeking abortion.

1 74. These obstacles will be particularly burdensome for women who have
2 important personal reasons for choosing a medication abortion, and will be dangerous for
3 women who have medical conditions that make medication abortion a significantly safer
4 option than surgical abortion.

5 75. That is because, in order to have a medication abortion following the FPL
6 regimen, a woman will be required to make four separate trips to an abortion facility over
7 the course of two weeks: 1) for the state-mandated counseling and ultrasound at least 24-
8 hour before she takes the mifepristone; 2) for the mifepristone; 3) for the misoprostol; and
9 4) for the follow-up.

10 76. These extra trips, over longer distances, will require additional travel and
11 time away from home, children, and work, which will be particularly difficult for low-
12 income women, women who live in rural areas, women who have limited access to
13 transportation, and women who are victims of abuse.

14 77. Especially for low-income women, these obstacles may impose delays to
15 arrange the necessary funds, transportation, childcare, or time off work required. This in
16 turn may further delay their procedure, increasing the risk to their health, and possibly
17 delay them past the 49 day LMP limit, which would prevent them from having a
18 medication abortion altogether.

19 78. Moreover, requiring women to take misoprostol at the clinic forces them to
20 bleed and cramp either at the clinic or during their journey home, rather than (as is
21 currently the case) in a safe place with the support of family or friends.

22 79. The 600 mg of mifepristone required by the Mifeprex FPL, rather than the
23 200 mg taken under the evidence-based regimen, will be significantly more costly and
24 again will particularly burden low-income women. Each mifepristone pill costs
25 approximately \$90, meaning that the increased cost of the procedure will be about \$180,
26 not counting the staff time need for the extra visit to the health center and the time the
27 woman needs to take off from work or school or to get child care

28 80. Also, if the Act permitted medication abortion only under the Mifeprex FPL,
women 50-63 days LMP would be denied medication abortion entirely.

1 81. Additionally, given the new costs and burdens associated with the regimen,
2 and the likely consequence of fewer patients choosing this treatment, PPAZ is likely to be
3 forced to cease medication abortion services in some of its centers, including Flagstaff,
4 under this interpretation of the Arizona law. The effect on women in Northern Arizona
5 would thus be the same as if the Act imposed a total ban on medication abortion – even
6 for women under 50 days LMP.

7 82. All of these burdens will come with no medical benefit whatsoever. To the
8 contrary, they harm women's health by making women who choose or need medication
9 abortion to protect their health take three times as much medication as is necessary, and
10 follow an outdated regimen that is no longer the standard of care, is more burdensome,
11 and has been demonstrated to be less effective and have a greater risk of needing a
12 surgical procedure to complete the abortion.

13 83. These burdens will compound the severe, burdensome, and medically
14 unnecessary restrictions *already* in place in Arizona: namely, the requirement of a
15 separate trip for state-directed counseling and an ultrasound followed by a 24-hour
16 waiting period, and the prohibition on the provision of medication abortion by advanced-
17 practice nurses or by physicians through telemedicine.

18 **V. CLAIMS FOR RELIEF**

19 **COUNT I – RIGHT TO DUE PROCESS OF LAW**

20 **(Liberty/Privacy)**

21 84. Plaintiffs hereby reaffirm and reallege each and every allegation made in
22 paragraphs 1-83 above as if set forth fully herein.

23 85. The Arizona law violates Plaintiffs' patients' rights to liberty and privacy as
24 guaranteed by the Fourteenth Amendment to the United States Constitution by imposing
25 an unconstitutional burden on their right to choose abortion.

26 **COUNT II – RIGHT TO DUE PROCESS OF LAW**

27 **(Bodily Integrity)**

28 86. Plaintiffs hereby reaffirm and reallege each and every allegation made in
paragraphs 1-85 above as if set forth fully herein.

1 87. The Arizona law violates Plaintiffs' patients' right to bodily integrity
2 guaranteed by the Fourteenth Amendment to the United States Constitution by depriving
3 all women of access to a safe and medically accepted non-surgical abortion procedure.

4 88. Alternatively, the Arizona law violates Plaintiffs' patients' right to bodily
5 integrity by depriving some women of access to a safe and medically accepted non-
6 surgical abortion procedure, and by forcing others who obtain medication abortion to
7 ingest more medication than is required by the standard of care, thereby subjecting them
8 to increased side effects.

9 **COUNT III – RIGHT TO DUE PROCESS OF LAW**

10 **(Vagueness)**

11 89. Plaintiffs hereby reaffirm and reallege each and every allegation made in
12 paragraphs 1-88 above as if set forth fully herein

13 90. The Arizona law violates Plaintiffs' rights to due process as guaranteed by
14 the Fourteenth Amendment to the United States Constitution because it is impermissibly
15 vague, fails to give adequate notice of the procedures it proscribes, and encourages
16 arbitrary and discriminatory enforcement.

17 **COUNT IV – RIGHT TO EQUAL PROTECTION**

18 91. The allegations of paragraphs 1 through 90 are incorporated as though fully
19 set forth herein.

20 92. The Arizona Law violates Plaintiffs' right to equal protection of the laws
21 guaranteed by the Fourteenth Amendment to the United States Constitution, because it
22 discriminates between licensed abortion clinics (and their patients) and other abortion
23 providers (and their patients), as well as between abortion providers and other health care
24 providers, without adequate justification

25 **VI. REQUEST FOR RELIEF**

26 Plaintiffs respectfully request that this Court:

27 93. Issue a declaratory judgment that the Act and Regulation are unconstitutional
28 and unenforceable;

94. Issue preliminary and permanent injunctive relief restraining Defendant, and
his employees, agents, and successors in office from enforcing the Act and Regulation;

1 95. In the alternative, issue preliminary and permanent injunctive relief
2 restraining Defendant, and his employees, agents, and successors in office from enforcing
3 the Act and Regulation as applied to women for whom a banned medication abortion is
4 necessary, in appropriate medical judgment, to protect the life or health of the woman.

5 96 Grant Plaintiffs attorneys' fees, costs, and expenses pursuant to 42 U.S.C. §
6 1988; and;

7 97. Grant such other and further relief as this Court may deem just, proper, and
8 equitable.

9 Dated: March 4, 2014

10 Respectfully submitted,

11
12 Alice Clapman*
13 Helene T. Krasnoff*
14 PLANNED PARENTHOOD FEDERATION OF AMERICA
15 1110 Vermont Avenue NW, Suite 300
16 Washington, DC 20005
17 (202) 973-4800
18 alice.clapman@ppfa.org
19 helene.krasnoff@ppfa.org
20 *Attorneys for Planned Parenthood Arizona, Inc*

/s/ Lawrence Rosenfeld
Lawrence Rosenfeld
SQUIRE SANDERS (US) LLP
1 E. Washington Street, Ste 2700
Phoenix, Arizona 85004
(602) 528-4000
Attorney for Plaintiffs

21 David Brown*
22 Julie Rikelman*
23 CENTER FOR REPRODUCTIVE RIGHTS
24 120 Wall Street
25 New York, NY 10005
26 (917) 637-6000
27 dbrown@reprorights.org
28 jrikelman@reprorights.org
*Attorneys for William Richardson, MD; and William H Richardson MD, PC, doing
business as Tucson Women's Center*

**Application for admission pro hac vice forthcoming*

Planned Parenthood Arizona, Inc., et al. v. Will Humble

INDEX OF EXHIBITS

Exhibit 1: Arizona House Bill 2036 of, codified at A R S. § 36-449 03(E)(6) and its implementing regulation, A A C. R9-10-1508(G)

EXHIBIT 1

Senate Engrossed House Bill

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2036

AN ACT

AMENDING SECTIONS 36-449.01, 36-449.03, 36-2151, 36-2152, 36-2153 AND 36-2156, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-2158 AND 36-2159; AMENDING SECTION 36-2163, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-449.01, Arizona Revised Statutes, is amended to
3 read:

4 36-449.01. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abortion" means the use of any means with the intent to terminate
7 a woman's pregnancy for reasons other than to increase the probability of a
8 live birth, to preserve the life or health of the child after a live birth,
9 to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does
10 not include birth control devices or oral contraceptives.

11 2. "Abortion clinic" means a facility, other than a hospital, in which
12 five or more first trimester abortions in any month or any second or third
13 trimester abortions are performed.

14 3. "Director" means the director of the department of health services.

15 4. "MEDICATION ABORTION" MEANS THE USE OF ANY MEDICATION, DRUG OR
16 OTHER SUBSTANCE THAT IS INTENDED TO CAUSE OR INDUCE AN ABORTION.

17 ~~4.~~ 5. "Perform" includes the initial administration of any
18 medication, drug or other substance intended to cause or induce an abortion.

19 6. "SURGICAL ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION
20 36-2151.

21 ~~5.~~ 7. "Viable fetus" has the same meaning prescribed in section
22 36-2301.01.

23 Sec. 2. Section 36-449.03, Arizona Revised Statutes, is amended to
24 read:

25 36-449.03. Abortion clinics; rules; civil penalties

26 A. The director shall adopt rules for an abortion clinic's physical
27 facilities. At a minimum these rules shall prescribe standards for:

28 1. Adequate private space that is specifically designated for
29 interviewing, counseling and medical evaluations.

30 2. Dressing rooms for staff and patients.

31 3. Appropriate lavatory areas.

32 4. Areas for preprocedure hand washing.

33 5. Private procedure rooms.

34 6. Adequate lighting and ventilation for abortion procedures.

35 7. Surgical or gynecologic examination tables and other fixed
36 equipment.

37 8. Postprocedure recovery rooms that are supervised, staffed and
38 equipped to meet the patients' needs.

39 9. Emergency exits to accommodate a stretcher or gurney.

40 10. Areas for cleaning and sterilizing instruments.

41 11. Adequate areas for the secure storage of medical records and
42 necessary equipment and supplies.

43 12. The display in the abortion clinic, in a place that is conspicuous
44 to all patients, of the clinic's current license issued by the department.

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1 B. The director shall adopt rules to prescribe abortion clinic
2 supplies and equipment standards, including supplies and equipment that are
3 required to be immediately available for use or in an emergency. At a
4 minimum these rules shall:

5 1. Prescribe required equipment and supplies, including medications,
6 required for the conduct, in an appropriate fashion, of any abortion
7 procedure that the medical staff of the clinic anticipates performing and for
8 monitoring the progress of each patient throughout the procedure and recovery
9 period.

10 2. Require that the number or amount of equipment and supplies at the
11 clinic is adequate at all times to assure sufficient quantities of clean and
12 sterilized durable equipment and supplies to meet the needs of each patient.

13 3. Prescribe required equipment, supplies and medications that shall
14 be available and ready for immediate use in an emergency and requirements for
15 written protocols and procedures to be followed by staff in an emergency,
16 such as the loss of electrical power.

17 4. Prescribe required equipment and supplies for required laboratory
18 tests and requirements for protocols to calibrate and maintain laboratory
19 equipment at the abortion clinic or operated by clinic staff.

20 5. Require ultrasound equipment ~~in those facilities that provide~~
21 ~~abortions after twelve weeks' gestation.~~

22 6. Require that all equipment is safe for the patient and the staff,
23 meets applicable federal standards and is checked annually to ensure safety
24 and appropriate calibration.

25 C. The director shall adopt rules relating to abortion clinic
26 personnel. At a minimum these rules shall require that:

27 1. The abortion clinic designate a medical director of the abortion
28 clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

29 2. Physicians performing ~~surgery~~ ABORTIONS are licensed pursuant to
30 title 32, chapter 13 or 17, demonstrate competence in the procedure involved
31 and are acceptable to the medical director of the abortion clinic.

32 3. A physician with ~~admitting privileges at an accredited hospital in~~
33 ~~this state is available: —~~

34 (a) FOR A SURGICAL ABORTION WHO HAS ADMITTING PRIVILEGES AT A HEALTH
35 CARE INSTITUTION THAT IS CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO
36 SECTION 36-405, SUBSECTION B AND THAT IS WITHIN THIRTY MILES OF THE ABORTION
37 CLINIC.

38 (b) FOR A MEDICATION ABORTION WHO HAS ADMITTING PRIVILEGES AT A HEALTH
39 CARE INSTITUTION THAT IS CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO
40 SECTION 36-405, SUBSECTION B.

41 4. If a physician is not present, a registered nurse, nurse
42 practitioner, licensed practical nurse or ~~physician's~~ PHYSICIAN assistant is
43 present and remains at the clinic when abortions are performed to provide
44 postoperative monitoring and care, OR MONITORING AND CARE AFTER INDUCING A

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1 MEDICATION ABORTION, until each patient who had an abortion that day is
2 discharged.

3 5. Surgical assistants receive training in counseling, patient
4 advocacy and the specific responsibilities of the services the surgical
5 assistants provide.

6 6. Volunteers receive training in the specific responsibilities of the
7 services the volunteers provide, including counseling and patient advocacy as
8 provided in the rules adopted by the director for different types of
9 volunteers based on their responsibilities.

10 D. The director shall adopt rules relating to the medical screening
11 and evaluation of each abortion clinic patient. At a minimum these rules
12 shall require:

13 1. A medical history, including the following:

14 (a) Reported allergies to medications, antiseptic solutions or latex.

15 (b) Obstetric and gynecologic history.

16 (c) Past surgeries.

17 2. A physical examination, including a bimanual examination estimating
18 uterine size and palpation of the adnexa.

19 3. The appropriate laboratory tests, including:

20 (a) ~~For an abortion in which an ultrasound examination is not~~
21 ~~performed before the abortion procedure,~~ Urine or blood tests for pregnancy
22 performed before the abortion procedure.

23 (b) A test for anemia.

24 (c) Rh typing, unless reliable written documentation of blood type is
25 available.

26 (d) Other tests as indicated from the physical examination.

27 4. An ultrasound evaluation for all patients who ~~elect to have an~~
28 ~~abortion after twelve weeks' gestation.~~ The rules shall require that if a
29 person who is not a physician performs an ultrasound examination, that person
30 shall have documented evidence that the person completed a course in the
31 operation of ultrasound equipment as prescribed in rule. The physician or
32 other health care professional shall review, at the request of the patient,
33 the ultrasound evaluation results with the patient before the abortion
34 procedure is performed, including the probable gestational age of the fetus.

35 5. That the physician is responsible for estimating the gestational
36 age of the fetus based on the ultrasound examination and obstetric standards
37 in keeping with established standards of care regarding the estimation of
38 fetal age as defined in rule and shall write the estimate in the patient's
39 medical history. The physician shall keep original prints of each ultrasound
40 examination of a patient in the patient's medical history file.

41 E. The director shall adopt rules relating to the abortion procedure.
42 At a minimum these rules shall require:

43 1. That medical personnel is available to all patients throughout the
44 abortion procedure.

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1 2. Standards for the safe conduct of abortion procedures that conform
2 to obstetric standards in keeping with established standards of care
3 regarding the estimation of fetal age as defined in rule.

4 3. Appropriate use of local anesthesia, analgesia and sedation if
5 ordered by the physician.

6 4. The use of appropriate precautions, such as the establishment of
7 intravenous access at least for patients undergoing second or third trimester
8 abortions.

9 5. The use of appropriate monitoring of the vital signs and other
10 defined signs and markers of the patient's status throughout the abortion
11 procedure and during the recovery period until the patient's condition is
12 deemed to be stable in the recovery room.

13 6. THAT ANY MEDICATION, DRUG OR OTHER SUBSTANCE USED TO INDUCE AN
14 ABORTION IS ADMINISTERED IN COMPLIANCE WITH THE PROTOCOL THAT IS AUTHORIZED
15 BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND THAT IS OUTLINED IN THE
16 FINAL PRINTING LABELING INSTRUCTIONS FOR THAT MEDICATION, DRUG OR SUBSTANCE.

17 F. The director shall adopt rules that prescribe minimum recovery room
18 standards. At a minimum these rules shall require that:

19 1. FOR A SURGICAL ABORTION, immediate postprocedure care, OR CARE
20 PROVIDED AFTER INDUCING A MEDICATION ABORTION, consists of observation in a
21 supervised recovery room for as long as the patient's condition warrants.

22 2. The clinic arrange hospitalization if any complication beyond the
23 management capability of the staff occurs or is suspected.

24 3. A licensed health professional who is trained in the management of
25 the recovery area and is capable of providing basic cardiopulmonary
26 resuscitation and related emergency procedures remains on the premises of the
27 abortion clinic until all patients are discharged.

28 4. FOR A SURGICAL ABORTION, a physician with admitting privileges at
29 ~~an accredited hospital in this state~~ A HEALTH CARE INSTITUTION THAT IS
30 CLASSIFIED BY THE DIRECTOR AS A HOSPITAL PURSUANT TO SECTION 36-405,
31 SUBSECTION B AND THAT IS WITHIN THIRTY MILES OF THE ABORTION CLINIC remains
32 on the premises of the abortion clinic until all patients are stable and are
33 ready to leave the recovery room and to facilitate the transfer of emergency
34 cases if hospitalization of the patient or viable fetus is necessary. A
35 physician shall sign the discharge order and be readily accessible and
36 available until the last patient is discharged.

37 5. A physician discusses Rh0(d) immune globulin with each patient for
38 whom it is indicated and assures it is offered to the patient in the
39 immediate postoperative period or that it will be available to her within
40 seventy-two hours after completion of the abortion procedure. If the patient
41 refuses, a refusal form approved by the department shall be signed by the
42 patient and a witness and included in the medical record.

43 6. Written instructions with regard to postabortion coitus, signs of
44 possible problems and general aftercare are given to each patient. Each

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1 patient shall have specific instructions regarding access to medical care for
2 complications, including a telephone number to call for medical emergencies.

3 7. There is a specified minimum length of time that a patient remains
4 in the recovery room by type of abortion procedure and duration of gestation.

5 8. The physician assures that a licensed health professional from the
6 abortion clinic makes a good faith effort to contact the patient by
7 telephone, with the patient's consent, within twenty-four hours after ~~surgery~~
8 A SURGICAL ABORTION to assess the patient's recovery.

9 9. Equipment and services are located in the recovery room to provide
10 appropriate emergency resuscitative and life support procedures pending the
11 transfer of the patient or viable fetus to the hospital.

12 G. The director shall adopt rules that prescribe standards for
13 follow-up visits. At a minimum these rules shall require that:

14 1. FOR A SURGICAL ABORTION, a postabortion medical visit is offered
15 and, if requested, scheduled for three weeks after the abortion, including a
16 medical examination and a review of the results of all laboratory tests. FOR
17 A MEDICATION ABORTION, THE RULES SHALL REQUIRE THAT A POSTABORTION MEDICAL
18 VISIT IS SCHEDULED BETWEEN ONE WEEK AND THREE WEEKS AFTER THE INITIAL DOSE OF
19 A MEDICATION ABORTION TO CONFIRM THE PREGNANCY IS COMPLETELY TERMINATED AND
20 TO ASSESS THE DEGREE OF BLEEDING.

21 2. A urine pregnancy test is obtained at the time of the follow-up
22 visit to rule out continuing pregnancy. If a continuing pregnancy is
23 suspected, the patient shall be evaluated and a physician who performs
24 abortions shall be consulted.

25 H. The director shall adopt rules to prescribe minimum abortion clinic
26 incident reporting. At a minimum these rules shall require that:

27 1. The abortion clinic records each incident resulting in a patient's
28 or viable fetus' serious injury occurring at an abortion clinic and shall
29 report them in writing to the department within ten days after the incident.
30 For the purposes of this paragraph, "serious injury" means an injury that
31 occurs at an abortion clinic and that creates a serious risk of substantial
32 impairment of a major body organ AND INCLUDES ANY INJURY OR CONDITION THAT
33 REQUIRES AMBULANCE TRANSPORTATION OF THE PATIENT.

34 2. If a patient's death occurs, other than a fetal death properly
35 reported pursuant to law, the abortion clinic reports it to the department
36 not later than the next department work day.

37 3. Incident reports are filed with the department and appropriate
38 professional regulatory boards.

39 I. THE DIRECTOR SHALL ADOPT RULES RELATING TO ENFORCEMENT OF THIS
40 ARTICLE. AT A MINIMUM, THESE RULES SHALL REQUIRE THAT:

41 1. FOR AN ABORTION CLINIC THAT IS NOT IN SUBSTANTIAL COMPLIANCE WITH
42 THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE OR THAT IS IN
43 SUBSTANTIAL COMPLIANCE BUT REFUSES TO CARRY OUT A PLAN OF CORRECTION
44 ACCEPTABLE TO THE DEPARTMENT OF ANY DEFICIENCIES THAT ARE LISTED ON THE
45 DEPARTMENT'S STATE OF DEFICIENCY, THE DEPARTMENT MAY DO ANY OF THE FOLLOWING:

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- 1 (a) ASSESS A CIVIL PENALTY PURSUANT TO SECTION 36-431.01.
2 (b) IMPOSE AN INTERMEDIATE SANCTION PURSUANT TO SECTION 36-427.
3 (c) SUSPEND OR REVOKE A LICENSE PURSUANT TO SECTION 36-427.
4 (d) DENY A LICENSE.
5 (e) BRING AN ACTION FOR AN INJUNCTION PURSUANT TO SECTION 36-430.
6 2. IN DETERMINING THE APPROPRIATE ENFORCEMENT ACTION, THE DEPARTMENT
7 CONSIDERS THE THREAT OF THE HEALTH, SAFETY AND WELFARE OF THE ABORTION
8 CLINIC'S PATIENTS OR THE GENERAL PUBLIC, INCLUDING:
9 (a) WHETHER THE ABORTION CLINIC HAS REPEATED VIOLATIONS OF STATUTES OR
10 RULES.
11 (b) WHETHER THE ABORTION CLINIC HAS ENGAGED IN A PATTERN OF
12 NONCOMPLIANCE.
13 (c) THE TYPE, SEVERITY AND NUMBER OF VIOLATIONS.
14 ~~I.~~ J. The department shall not release personally identifiable
15 patient or physician information.
16 ~~J.~~ K. The rules adopted by the director pursuant to this section do
17 not limit the ability of a physician or other health professional to advise a
18 patient on any health issue.
19 Sec. 3. Section 36-2151, Arizona Revised Statutes, is amended to read:
20 36-2151. Definitions
21 In this article, unless the context otherwise requires:
22 1. "Abortion" means the use of any means to terminate the clinically
23 diagnosable pregnancy of a woman with knowledge that the termination by those
24 means will cause, with reasonable likelihood, the death of the unborn child.
25 Abortion does not include birth control devices, oral contraceptives used to
26 inhibit or prevent ovulation, conception or the implantation of a fertilized
27 ovum in the uterus or the use of any means to ~~increase the probability of a~~
28 ~~live birth~~ SAVE THE LIFE OR PRESERVE THE HEALTH OF THE UNBORN CHILD, to
29 preserve the life or health of the child after a live birth, to terminate an
30 ectopic pregnancy or to remove a dead fetus.
31 2. "Auscultation" means the act of listening for sounds made by
32 internal organs of the unborn child, specifically for a heartbeat, using an
33 ultrasound transducer and fetal heart rate monitor.
34 3. "Conception" means the fusion of a human spermatozoon with a human
35 ovum.
36 4. "Gestational age" means the age of the unborn child as calculated
37 from the first day of the last menstrual period of the pregnant woman.
38 5. "Health professional" has the same meaning prescribed in section
39 32-3201.
40 6. "Medical emergency" means a condition that, on the basis of the
41 physician's good faith clinical judgment, so complicates the medical
42 condition of a pregnant woman as to necessitate the immediate abortion of her
43 pregnancy to avert her death or for which a delay will create serious risk of
44 substantial and irreversible impairment of a major bodily function.

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1 7. "MEDICATION ABORTION" MEANS THE USE OF ANY MEDICATION, DRUG OR
2 OTHER SUBSTANCE THAT IS INTENDED TO CAUSE OR INDUCE AN ABORTION.

3 ~~7.~~ 8. "Physician" means a person who is licensed pursuant to title
4 32, chapter 13 or 17.

5 ~~8.~~ 9. "Pregnant" or "pregnancy" means a female reproductive condition
6 of having a developing unborn child in the body and that begins with
7 conception.

8 ~~9.~~ 10. "Probable gestational age" means the gestational age of the
9 unborn child at the time the abortion is planned to be performed and as
10 determined with reasonable probability by the attending physician.

11 ~~10.~~ 11. "Surgical abortion" means the use of a surgical instrument or
12 a machine to terminate the clinically diagnosable pregnancy of a woman with
13 knowledge that the termination by those means will cause, with reasonable
14 likelihood, the death of the unborn child. Surgical abortion does not
15 include the use of any means to increase the probability of a live birth, to
16 preserve the life or health of the child after a live birth, to terminate an
17 ectopic pregnancy or to remove a dead fetus. Surgical abortion does not
18 include patient care incidental to the procedure.

19 ~~11.~~ 12. "Ultrasound" means the use of ultrasonic waves for diagnostic
20 or therapeutic purposes to monitor a developing unborn child.

21 ~~12.~~ 13. "Unborn child" means the offspring of human beings from
22 conception until birth.

23 Sec. 4. Section 36-2152, Arizona Revised Statutes, is amended to read:

24 36-2152. Parental consent; exception; hearings; time limits;
25 violation; classification; civil relief; statute of
26 limitations

27 A. In addition to the OTHER requirements of ~~section 36-2153~~ THIS
28 CHAPTER, a person shall not knowingly perform an abortion on a pregnant
29 unemancipated minor unless the attending physician has secured the written
30 and notarized consent from one of the minor's parents or the minor's guardian
31 or conservator or unless a judge of the superior court authorizes the
32 physician to perform the abortion pursuant to subsection B of this section.
33 Notwithstanding section 41-319, the notarized statement of parental consent
34 and the description of the document or notarial act recorded in the notary
35 journal are confidential and are not public records.

36 B. A judge of the superior court, on petition or motion, and after an
37 appropriate hearing, shall authorize a physician to perform the abortion if
38 the judge determines that the pregnant minor is mature and capable of giving
39 informed consent to the proposed abortion. If the judge determines that the
40 pregnant minor is not mature or if the pregnant minor does not claim to be
41 mature, the judge shall determine whether the performance of an abortion on
42 her without the consent from one of her parents or her guardian or
43 conservator would be in her best interests and shall authorize a physician to
44 perform the abortion without consent if the judge concludes that the pregnant
45 minor's best interests would be served.

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1 C. If the pregnant minor claims to be mature at a proceeding held
2 pursuant to subsection B of this section, the minor must prove by clear and
3 convincing evidence that she is sufficiently mature and capable of giving
4 informed consent without consulting her parent or legal guardian based on her
5 experience level, perspective and judgment. In assessing the pregnant
6 minor's experience level, the court may consider, among other relevant
7 factors, the minor's age and experiences working outside the home, living
8 away from home, traveling on her own, handling personal finances and making
9 other significant decisions. In assessing the pregnant minor's perspective,
10 the court may consider, among other relevant factors, what steps the minor
11 took to explore her options and the extent to which she considered and
12 weighed the potential consequences of each option. In assessing the pregnant
13 minor's judgment, the court may consider, among other relevant factors, the
14 minor's conduct since learning of her pregnancy and her intellectual ability
15 to understand her options and to make an informed decision.

16 D. The pregnant minor may participate in the court proceedings on her
17 own behalf. The court shall appoint a guardian ad litem for her. The court
18 shall advise her that she has the right to court appointed counsel and, on
19 her request, shall provide her with counsel unless she appears through
20 private counsel or she knowingly and intelligently waives her right to
21 counsel.

22 E. Proceedings in the court under this section are confidential and
23 have precedence over other pending matters. Members of the public shall not
24 inspect, obtain copies of or otherwise have access to records of court
25 proceedings under this section unless authorized by law. A judge who
26 conducts proceedings under this section shall make in writing specific
27 factual findings and legal conclusions supporting the decision and shall
28 order a confidential record of the evidence to be maintained, including the
29 judge's own findings and conclusions. The minor may file the petition using
30 a fictitious name. For purposes of this subsection, public does not include
31 judges, clerks, administrators, professionals or other persons employed by or
32 working under the supervision of the court or employees of other public
33 agencies who are authorized by state or federal rule or law to inspect and
34 copy closed court records.

35 F. The court shall hold the hearing and shall issue a ruling within
36 forty-eight hours, excluding weekends and holidays, after the petition is
37 filed. If the court fails to issue a ruling within this time period, the
38 petition is deemed to have been granted and the consent requirement is
39 waived.

40 G. An expedited confidential appeal is available to a pregnant minor
41 for whom the court denies an order authorizing an abortion without parental
42 consent. The appellate court shall hold the hearing and issue a ruling
43 within forty-eight hours, excluding weekends and holidays, after the petition
44 for appellate review is filed. Filing fees are not required of the pregnant
45 minor at either the trial or the appellate level.

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1 H. Parental consent or judicial authorization is not required under
2 this section if either:

3 1. The pregnant minor certifies to the attending physician that the
4 pregnancy resulted from sexual conduct with a minor by the minor's parent,
5 stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or
6 foster parent or by a person who lives in the same household with the minor
7 and the minor's mother. The physician performing the abortion shall report
8 the sexual conduct with a minor to the proper law enforcement officials
9 pursuant to section 13-3620 and shall preserve and forward a sample of the
10 fetal tissue to these officials for use in a criminal investigation.

11 2. The attending physician certifies in the pregnant minor's medical
12 record that, on the basis of the physician's good faith clinical judgment,
13 the pregnant minor has a condition that so complicates her medical condition
14 as to necessitate the immediate abortion of her pregnancy to avert her death
15 or for which a delay will create serious risk of substantial and irreversible
16 impairment of major bodily function.

17 I. A person who performs an abortion in violation of this section is
18 guilty of a class 1 misdemeanor. A person is not subject to any liability
19 under this section if the person establishes by written evidence that the
20 person relied on evidence sufficient to convince a careful and prudent person
21 that the representations of the pregnant minor regarding information
22 necessary to comply with this section are true.

23 J. In addition to other remedies available under the common or
24 statutory law of this state, one or both of the minor's parents or the
25 minor's guardian may bring a civil action in the superior court in the county
26 in which the parents or the guardian resides to obtain appropriate relief for
27 a violation of this section, unless the pregnancy resulted from the criminal
28 conduct of the parent or guardian. The civil action may be based on a claim
29 that failure to obtain consent was a result of simple negligence, gross
30 negligence, wantonness, wilfulness, intention or any other legal standard of
31 care. THE CIVIL ACTION MAY BE BROUGHT AGAINST THE PERSON WHO PERFORMS THE
32 ABORTION IN VIOLATION OF THIS SECTION AND ANY PERSON WHO CAUSES, AIDS OR
33 ASSISTS A MINOR TO OBTAIN AN ABORTION WITHOUT MEETING THE REQUIREMENTS OF
34 THIS SECTION. Relief pursuant to this subsection includes the following:

35 1. Money damages for all psychological, emotional and physical
36 injuries that result from the violation of this section.

37 2. Statutory damages in an amount equal to five thousand dollars or
38 three times the cost of the abortion, whichever is greater.

39 3. Reasonable attorney fees and costs.

40 K. A civil action brought pursuant to this section must be initiated
41 within six years after the violation occurred.

42 L. THE CONSENT REQUIRED BY THIS SECTION MUST BE OBTAINED ON A FORM
43 PRESCRIBED BY THE DEPARTMENT OF HEALTH SERVICES. AT A MINIMUM, THE FORM
44 MUST:

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1 1. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH ANY SURGICAL,
2 MEDICAL OR DIAGNOSTIC PROCEDURE, INCLUDING THE POTENTIAL FOR INFECTION, BLOOD
3 CLOTS, HEMORRHAGE, ALLERGIC REACTIONS AND DEATH.

4 2. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH A SURGICAL
5 ABORTION, INCLUDING HEMORRHAGE, UTERINE PERFORATION, STERILITY, INJURY TO THE
6 BOWEL OR BLADDER, A POSSIBLE HYSTERECTOMY AS A RESULT OF A COMPLICATION OR
7 INJURY DURING THE PROCEDURE AND FAILURE TO REMOVE ALL PRODUCTS OF CONCEPTION
8 THAT MAY RESULT IN AN ADDITIONAL PROCEDURE.

9 3. LIST THE POSSIBLE MEDICAL RISKS THAT MAY OCCUR WITH A MEDICATION
10 ABORTION, INCLUDING HEMORRHAGE, INFECTION, FAILURE TO REMOVE ALL PRODUCTS OF
11 CONCEPTION THAT MAY RESULT IN AN ADDITIONAL PROCEDURE, STERILITY AND THE
12 POSSIBLE CONTINUATION OF THE PREGNANCY.

13 4. REQUIRE THE PREGNANT MINOR'S AND THE PREGNANT MINOR'S PARENT'S
14 INITIALS ON EACH PAGE OF THE FORM AND A FULL SIGNATURE ON THE FINAL PAGE OF
15 THE FORM.

16 5. INCLUDE A SPACE FOR THE NOTARY'S SIGNATURE AND SEAL ON THE FINAL
17 PAGE OF THE FORM.

18 M. THE PHYSICIAN MUST MAINTAIN THE FORM IN THE PREGNANT MINOR'S
19 RECORDS FOR SEVEN YEARS AFTER THE DATE OF THE PROCEDURE OR FIVE YEARS AFTER
20 THE DATE OF THE MINOR'S MATURITY, WHICHEVER IS LONGER.

21 Sec. 5. Section 36-2153, Arizona Revised Statutes, is amended to read:

22 36-2153. Informed consent; requirements; information; website;
23 signs; violation; civil relief; statute of
24 limitations

25 A. An abortion shall not be performed or induced without the voluntary
26 and informed consent of the woman on whom the abortion is to be performed or
27 induced. Except in the case of a medical emergency AND IN ADDITION TO THE
28 OTHER REQUIREMENTS OF THIS CHAPTER, consent to an abortion is voluntary and
29 informed only if all of the following are true:

30 1. At least twenty-four hours before the abortion, the physician who
31 is to perform the abortion or the referring physician has informed the woman,
32 orally and in person, of:

33 (a) The name of the physician who will perform the abortion.

34 (b) The nature of the proposed procedure or treatment.

35 (c) The immediate and long-term medical risks associated with the
36 procedure that a reasonable patient would consider material to the decision
37 of whether or not to undergo the abortion.

38 (d) Alternatives to the procedure or treatment that a reasonable
39 patient would consider material to the decision of whether or not to undergo
40 the abortion.

41 (e) The probable gestational age of the unborn child at the time the
42 abortion is to be performed.

43 (f) The probable anatomical and physiological characteristics of the
44 unborn child at the time the abortion is to be performed.

45 (g) The medical risks associated with carrying the child to term.

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1 2. At least twenty-four hours before the abortion, the physician who
2 is to perform the abortion, the referring physician or a qualified physician,
3 physician assistant, nurse, psychologist or licensed behavioral health
4 professional to whom the responsibility has been delegated by either
5 physician has informed the woman, orally and in person, that:

6 (a) Medical assistance benefits may be available for prenatal care,
7 childbirth and neonatal care.

8 (b) The father of the unborn child is liable to assist in the support
9 of the child, even if he has offered to pay for the abortion. In the case of
10 rape or incest, this information may be omitted.

11 (c) Public and private agencies and services are available to assist
12 the woman during her pregnancy and after the birth of her child if she
13 chooses not to have an abortion, whether she chooses to keep the child or
14 place the child for adoption.

15 (d) It is unlawful for any person to coerce a woman to undergo an
16 abortion.

17 (e) The woman is free to withhold or withdraw her consent to the
18 abortion at any time without affecting her right to future care or treatment
19 and without the loss of any state or federally funded benefits to which she
20 might otherwise be entitled.

21 (f) THE DEPARTMENT OF HEALTH SERVICES MAINTAINS A WEBSITE THAT
22 DESCRIBES THE UNBORN CHILD AND LISTS THE AGENCIES THAT OFFER ALTERNATIVES TO
23 ABORTION.

24 (g) THE WOMAN HAS A RIGHT TO REVIEW THE WEBSITE AND THAT A PRINTED
25 COPY OF THE MATERIALS ON THE WEBSITE WILL BE PROVIDED TO HER FREE OF CHARGE
26 IF SHE CHOOSES TO REVIEW THESE MATERIALS.

27 3. The information in paragraphs 1 and 2 of this subsection is
28 provided to the woman individually and in a private room to protect her
29 privacy and to ensure that the information focuses on her individual
30 circumstances and that she has adequate opportunity to ask questions.

31 4. The woman certifies in writing before the abortion that the
32 information required to be provided pursuant to paragraphs 1 and 2 of this
33 subsection has been provided.

34 B. If a medical emergency compels the performance of an abortion, the
35 physician shall inform the woman, before the abortion if possible, of the
36 medical indications supporting the physician's judgment that an abortion is
37 necessary to avert the woman's death or to avert substantial and irreversible
38 impairment of a major bodily function.

39 C. THE DEPARTMENT OF HEALTH SERVICES SHALL ESTABLISH A WEBSITE WITHIN
40 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION AND
41 SHALL ANNUALLY UPDATE THE WEBSITE. THE WEBSITE MUST INCLUDE A LINK TO A
42 PRINTABLE VERSION OF ALL MATERIALS LISTED ON THE WEBSITE. THE MATERIALS MUST
43 BE WRITTEN IN AN EASILY UNDERSTOOD MANNER AND PRINTED IN A TYPEFACE THAT IS
44 LARGE ENOUGH TO BE CLEARLY LEGIBLE. THE WEBSITE MUST INCLUDE ALL OF THE
45 FOLLOWING MATERIALS:

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1 1. INFORMATION THAT IS ORGANIZED GEOGRAPHICALLY BY LOCATION AND THAT
2 IS DESIGNED TO INFORM THE WOMAN ABOUT PUBLIC AND PRIVATE AGENCIES AND
3 SERVICES THAT ARE AVAILABLE TO ASSIST A WOMAN THROUGH PREGNANCY, AT
4 CHILDBIRTH AND WHILE HER CHILD IS DEPENDENT, INCLUDING ADOPTION AGENCIES.
5 THE MATERIALS SHALL INCLUDE A COMPREHENSIVE LIST OF THE AGENCIES, A
6 DESCRIPTION OF THE SERVICES THEY OFFER AND THE MANNER IN WHICH THESE AGENCIES
7 MAY BE CONTACTED, INCLUDING THE AGENCIES' TELEPHONE NUMBERS AND WEBSITE
8 ADDRESSES.

9 2. INFORMATION ON THE AVAILABILITY OF MEDICAL ASSISTANCE BENEFITS FOR
10 PRENATAL CARE, CHILDBIRTH AND NEONATAL CARE.

11 3. A STATEMENT THAT IT IS UNLAWFUL FOR ANY PERSON TO COERCE A WOMAN TO
12 UNDERGO AN ABORTION.

13 4. A STATEMENT THAT ANY PHYSICIAN WHO PERFORMS AN ABORTION ON A WOMAN
14 WITHOUT OBTAINING THE WOMAN'S VOLUNTARY AND INFORMED CONSENT OR WITHOUT
15 AFFORDING HER A PRIVATE MEDICAL CONSULTATION MAY BE LIABLE TO THE WOMAN FOR
16 DAMAGES IN A CIVIL ACTION.

17 5. A STATEMENT THAT THE FATHER OF A CHILD IS LIABLE TO ASSIST IN THE
18 SUPPORT OF THAT CHILD, EVEN IF THE FATHER HAS OFFERED TO PAY FOR AN ABORTION,
19 AND THAT THE LAW ALLOWS ADOPTIVE PARENTS TO PAY COSTS OF PRENATAL CARE,
20 CHILDBIRTH AND NEONATAL CARE.

21 6. INFORMATION THAT IS DESIGNED TO INFORM THE WOMAN OF THE PROBABLE
22 ANATOMICAL AND PHYSIOLOGICAL CHARACTERISTICS OF THE UNBORN CHILD AT TWO-WEEK
23 GESTATIONAL INCREMENTS FROM FERTILIZATION TO FULL TERM, INCLUDING PICTURES OR
24 DRAWINGS REPRESENTING THE DEVELOPMENT OF UNBORN CHILDREN AT TWO-WEEK
25 GESTATIONAL INCREMENTS AND ANY RELEVANT INFORMATION ON THE POSSIBILITY OF THE
26 UNBORN CHILD'S SURVIVAL. THE PICTURES OR DRAWINGS MUST CONTAIN THE
27 DIMENSIONS OF THE UNBORN CHILD AND MUST BE REALISTIC AND APPROPRIATE FOR EACH
28 STAGE OF PREGNANCY. THE INFORMATION PROVIDED PURSUANT TO THIS PARAGRAPH MUST
29 BE OBJECTIVE, NONJUDGMENTAL AND DESIGNED TO CONVEY ONLY ACCURATE SCIENTIFIC
30 INFORMATION ABOUT THE UNBORN CHILD AT THE VARIOUS GESTATIONAL AGES.

31 7. OBJECTIVE INFORMATION THAT DESCRIBES THE METHODS OF ABORTION
32 PROCEDURES COMMONLY EMPLOYED, THE MEDICAL RISKS COMMONLY ASSOCIATED WITH EACH
33 PROCEDURE, THE POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ABORTION AND THE
34 MEDICAL RISKS COMMONLY ASSOCIATED WITH CARRYING A CHILD TO TERM.

35 ~~C.~~ D. An individual who is not a physician shall not perform a
36 surgical abortion.

37 ~~D.~~ E. A person shall not write or communicate a prescription for a
38 drug or drugs to induce an abortion or require or obtain payment for a
39 service provided to a patient who has inquired about an abortion or scheduled
40 an abortion until the expiration of the twenty-four hour reflection period
41 required by subsection A OF THIS SECTION.

42 ~~E.~~ F. A person shall not intimidate or coerce in any way any person
43 to obtain an abortion. A parent, A guardian or any other person shall not
44 coerce a minor to obtain an abortion. If a minor is denied financial support
45 by the minor's parents, guardians or custodian due to the minor's refusal to

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1 have an abortion performed, the minor is deemed emancipated for the purposes
2 of eligibility for public assistance benefits, except that the emancipated
3 minor may not use these benefits to obtain an abortion.

4 G. AN ABORTION CLINIC AS DEFINED IN SECTION 36-449.01 SHALL
5 CONSPICUOUSLY POST SIGNS THAT ARE VISIBLE TO ALL WHO ENTER THE ABORTION
6 CLINIC, THAT ARE CLEARLY READABLE AND THAT STATE IT IS UNLAWFUL FOR ANY
7 PERSON TO FORCE A WOMAN TO HAVE AN ABORTION AND A WOMAN WHO IS BEING FORCED
8 TO HAVE AN ABORTION HAS THE RIGHT TO CONTACT ANY LOCAL OR STATE LAW
9 ENFORCEMENT OR SOCIAL SERVICE AGENCY TO RECEIVE PROTECTION FROM ANY ACTUAL OR
10 THREATENED PHYSICAL, EMOTIONAL OR PSYCHOLOGICAL ABUSE. THE SIGNS SHALL BE
11 POSTED IN THE WAITING ROOM, CONSULTATION ROOMS AND PROCEDURE ROOMS.

12 H. A PERSON SHALL NOT REQUIRE A WOMAN TO OBTAIN AN ABORTION AS A
13 PROVISION IN A CONTRACT OR AS A CONDITION OF EMPLOYMENT.

14 ~~F.~~ I. A physician who knowingly violates this section commits an act
15 of unprofessional conduct and is subject to license suspension or revocation
16 pursuant to title 32, chapter 13 or 17.

17 ~~G.~~ J. In addition to other remedies available under the common or
18 statutory law of this state, any of the following may file a civil action to
19 obtain appropriate relief for a violation of this section:

20 1. A woman on whom an abortion has been performed without her informed
21 consent as required by this section.

22 2. The father of the unborn child if married to the mother at the time
23 she received the abortion, unless the pregnancy resulted from the plaintiff's
24 criminal conduct.

25 3. The maternal grandparents of the unborn child if the mother was not
26 at least eighteen years of age at the time of the abortion, unless the
27 pregnancy resulted from the plaintiff's criminal conduct.

28 ~~H.~~ K. A civil action filed pursuant to subsection ~~G.~~ J OF THIS
29 SECTION shall be brought in the superior court in the county in which the
30 woman on whom the abortion was performed resides and may be based on a claim
31 that failure to obtain informed consent was a result of simple negligence,
32 gross negligence, wantonness, wilfulness, intention or any other legal
33 standard of care. Relief pursuant to subsection ~~G.~~ J OF THIS SECTION
34 includes the following:

35 1. Money damages for all psychological, emotional and physical
36 injuries resulting from the violation of this section.

37 2. Statutory damages in an amount equal to five thousand dollars or
38 three times the cost of the abortion, whichever is greater.

39 3. Reasonable attorney fees and costs.

40 ~~I.~~ L. A civil action brought pursuant to this section must be
41 initiated within six years after the violation occurred.

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1 (a) OF UP-TO-DATE, EVIDENCE-BASED INFORMATION CONCERNING THE RANGE OF
2 OUTCOMES FOR INDIVIDUALS LIVING WITH THE DIAGNOSED CONDITION, INCLUDING
3 PHYSICAL, DEVELOPMENTAL, EDUCATIONAL AND PSYCHOSOCIAL OUTCOMES.

4 (b) THAT THE DEPARTMENT OF HEALTH SERVICES MAINTAINS A WEBSITE THAT
5 LISTS INFORMATION REGARDING SUPPORT SERVICES, HOTLINES, RESOURCE CENTERS OR
6 CLEARINGHOUSES, NATIONAL AND LOCAL PEER SUPPORT GROUPS AND OTHER EDUCATION
7 AND SUPPORT PROGRAMS AVAILABLE TO ASSIST THE WOMAN AND HER UNBORN CHILD, ANY
8 NATIONAL OR LOCAL REGISTRIES OF FAMILIES WILLING TO ADOPT NEWBORNS WITH THE
9 NONLETHAL FETAL CONDITION AND CONTACT INFORMATION FOR ADOPTION AGENCIES
10 WILLING TO PLACE NEWBORNS WITH THE NONLETHAL FETAL CONDITION WITH FAMILIES
11 WILLING TO ADOPT.

12 (c) THAT THE WOMAN HAS A RIGHT TO REVIEW THE WEBSITE AND THAT A
13 PRINTED COPY OF THE MATERIALS ON THE WEBSITE WILL BE PROVIDED TO HER FREE OF
14 CHARGE IF SHE CHOOSES TO REVIEW THESE MATERIALS.

15 3. THE WOMAN CERTIFIES IN WRITING BEFORE THE ABORTION THAT THE
16 INFORMATION REQUIRED TO BE PROVIDED PURSUANT TO THIS SUBSECTION HAS BEEN
17 PROVIDED.

18 B. THE DEPARTMENT OF HEALTH SERVICES SHALL ESTABLISH A WEBSITE WITHIN
19 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND SHALL ANNUALLY
20 UPDATE THE WEBSITE. THE WEBSITE SHALL INCLUDE THE INFORMATION PRESCRIBED IN
21 SUBSECTION A, PARAGRAPH 1, SUBDIVISION (b) AND PARAGRAPH 2, SUBDIVISION (b)
22 OF THIS SECTION.

23 C. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF
24 UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION
25 PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

26 D. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR
27 STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING INDIVIDUALS MAY FILE A
28 CIVIL ACTION TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

29 1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED WITHOUT HER INFORMED
30 CONSENT AS REQUIRED BY THIS SECTION.

31 2. THE FATHER OF THE UNBORN CHILD IF THE FATHER IS MARRIED TO THE
32 MOTHER AT THE TIME SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED
33 FROM THE FATHER'S CRIMINAL CONDUCT.

34 3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT
35 AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE
36 PREGNANCY RESULTED FROM EITHER OF THE MATERNAL GRANDPARENT'S CRIMINAL
37 CONDUCT.

38 E. A CIVIL ACTION FILED PURSUANT TO SUBSECTION D OF THIS SECTION SHALL
39 BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE
40 ABORTION WAS PERFORMED RESIDES AND MAY BE BASED ON A CLAIM THAT FAILURE TO
41 OBTAIN INFORMED CONSENT WAS A RESULT OF SIMPLE NEGLIGENCE, GROSS NEGLIGENCE,
42 WANTONNESS, WILFULNESS, INTENTION OR ANY OTHER LEGAL STANDARD OF CARE.
43 RELIEF PURSUANT TO THIS SUBSECTION INCLUDES THE FOLLOWING:

44 1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL
45 INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

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1 2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR
2 THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

3 3. REASONABLE ATTORNEY FEES AND COSTS.

4 F. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED
5 WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

6 G. FOR THE PURPOSES OF THIS SECTION:

7 1. "LETHAL FETAL CONDITION" MEANS A FETAL CONDITION THAT IS DIAGNOSED
8 BEFORE BIRTH AND THAT WILL RESULT, WITH REASONABLE CERTAINTY, IN THE DEATH OF
9 THE UNBORN CHILD WITHIN THREE MONTHS AFTER BIRTH.

10 2. "NONLETHAL FETAL CONDITION" MEANS A FETAL CONDITION THAT IS
11 DIAGNOSED BEFORE BIRTH AND THAT WILL NOT RESULT IN THE DEATH OF THE UNBORN
12 CHILD WITHIN THREE MONTHS AFTER BIRTH BUT MAY RESULT IN PHYSICAL OR MENTAL
13 DISABILITY OR ABNORMALITY.

14 3. "PERINATAL HOSPICE" MEANS COMPREHENSIVE SUPPORT TO THE PREGNANT
15 WOMAN AND HER FAMILY THAT INCLUDES SUPPORTIVE CARE FROM THE TIME OF DIAGNOSIS
16 THROUGH THE TIME OF BIRTH AND DEATH OF THE INFANT AND THROUGH THE POSTPARTUM
17 PERIOD. SUPPORTIVE CARE MAY INCLUDE COUNSELING AND MEDICAL CARE BY
18 MATERNAL-FETAL MEDICAL SPECIALISTS, OBSTETRICIANS, NEONATOLOGISTS, ANESTHESIA
19 SPECIALISTS, CLERGY, SOCIAL WORKERS AND SPECIALTY NURSES WHO ARE FOCUSED ON
20 ALLEVIATING FEAR AND ENSURING THAT THE WOMAN AND HER FAMILY EXPERIENCE THE
21 LIFE AND DEATH OF THE CHILD IN A COMFORTABLE AND SUPPORTIVE ENVIRONMENT.

22 36-2159. Abortion; gestational age; violation; classification;
23 statute of limitations

24 A. EXCEPT IN A MEDICAL EMERGENCY, A PERSON SHALL NOT PERFORM, INDUCE
25 OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION UNLESS THE PHYSICIAN OR THE
26 REFERRING PHYSICIAN HAS FIRST MADE A DETERMINATION OF THE PROBABLE
27 GESTATIONAL AGE OF THE UNBORN CHILD. IN MAKING THAT DETERMINATION, THE
28 PHYSICIAN OR REFERRING PHYSICIAN SHALL MAKE ANY INQUIRIES OF THE PREGNANT
29 WOMAN AND PERFORM OR CAUSE TO BE PERFORMED ALL MEDICAL EXAMINATIONS, IMAGING
30 STUDIES AND TESTS AS A REASONABLY PRUDENT PHYSICIAN IN THE COMMUNITY,
31 KNOWLEDGEABLE ABOUT THE MEDICAL FACTS AND CONDITIONS OF BOTH THE WOMAN AND
32 THE UNBORN CHILD INVOLVED, WOULD CONSIDER NECESSARY TO PERFORM AND CONSIDER
33 IN MAKING AN ACCURATE DIAGNOSIS WITH RESPECT TO GESTATIONAL AGE.

34 B. EXCEPT IN A MEDICAL EMERGENCY, A PERSON SHALL NOT KNOWINGLY
35 PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION ON A PREGNANT
36 WOMAN IF THE PROBABLE GESTATIONAL AGE OF HER UNBORN CHILD HAS BEEN DETERMINED
37 TO BE AT LEAST TWENTY WEEKS.

38 C. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION COMMITS A CLASS 1
39 MISDEMEANOR.

40 D. A PHYSICIAN WHO KNOWINGLY VIOLATES THIS SECTION COMMITS AN ACT OF
41 UNPROFESSIONAL CONDUCT AND IS SUBJECT TO LICENSE SUSPENSION OR REVOCATION
42 PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

43 E. IN ADDITION TO OTHER REMEDIES AVAILABLE UNDER THE COMMON OR
44 STATUTORY LAW OF THIS STATE, ANY OF THE FOLLOWING INDIVIDUALS MAY FILE A
45 CIVIL ACTION TO OBTAIN APPROPRIATE RELIEF FOR A VIOLATION OF THIS SECTION:

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1 1. A WOMAN ON WHOM AN ABORTION HAS BEEN PERFORMED IN VIOLATION OF THIS
2 SECTION.

3 2. THE FATHER OF THE UNBORN CHILD IF THE FATHER IS MARRIED TO THE
4 MOTHER AT THE TIME SHE RECEIVED THE ABORTION, UNLESS THE PREGNANCY RESULTED
5 FROM THE FATHER'S CRIMINAL CONDUCT.

6 3. THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD IF THE MOTHER WAS NOT
7 AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION, UNLESS THE
8 PREGNANCY RESULTED FROM EITHER OF THE MATERNAL GRANDPARENT'S CRIMINAL
9 CONDUCT.

10 F. A CIVIL ACTION FILED PURSUANT TO SUBSECTION E OF THIS SECTION SHALL
11 BE BROUGHT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WOMAN ON WHOM THE
12 ABORTION WAS PERFORMED RESIDES. RELIEF PURSUANT TO THIS SUBSECTION INCLUDES
13 THE FOLLOWING:

14 1. MONEY DAMAGES FOR ALL PSYCHOLOGICAL, EMOTIONAL AND PHYSICAL
15 INJURIES RESULTING FROM THE VIOLATION OF THIS SECTION.

16 2. STATUTORY DAMAGES IN AN AMOUNT EQUAL TO FIVE THOUSAND DOLLARS OR
17 THREE TIMES THE COST OF THE ABORTION, WHICHEVER IS GREATER.

18 3. REASONABLE ATTORNEY FEES AND COSTS.

19 G. A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION MUST BE INITIATED
20 WITHIN SIX YEARS AFTER THE VIOLATION OCCURRED.

21 H. A WOMAN ON WHOM AN ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF
22 THIS SECTION MAY NOT BE PROSECUTED UNDER THIS SECTION OR FOR CONSPIRACY TO
23 COMMIT A VIOLATION OF THIS SECTION.

24 Sec. 8. Section 36-2163, Arizona Revised Statutes, is amended to read:
25 36-2163. Reports; confidentiality; annual statistical report;
26 violations; classification; unprofessional conduct

27 A. A report required by this article shall not contain the name of the
28 woman, common identifiers such as the woman's social security number, driver
29 license number or insurance carrier identification numbers or any other
30 information or identifiers that would make it possible to identify in any
31 manner or under any circumstances an individual who has obtained or seeks to
32 obtain an abortion.

33 B. The department of health services shall collect all abortion
34 reports and complication reports and prepare a comprehensive annual
35 statistical report based on the data gathered in the reports. The
36 statistical report shall not lead to the disclosure of the identity of any
37 person filing a report or about whom a report is filed. The department shall
38 make the statistical report available on its website and for public
39 inspection and copying.

40 C. The report prepared by the department pursuant to subsection B of
41 this section shall include statistics from the administrative office of the
42 courts containing the following information:

43 1. The number of petitions filed pursuant to section 36-2152,
44 subsection B.

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1 2. Of the petitions filed pursuant to section 36-2152, subsection B,
2 the number in which the judge appointed a guardian ad litem or
3 court-appointed counsel for the minor pursuant to section 36-2152,
4 subsection D.

5 3. Of the petitions filed pursuant to section 36-2152, subsection B,
6 the number in which the judge issued an order authorizing an abortion without
7 parental consent.

8 4. Of the petitions filed pursuant to section 36-2152, subsection B,
9 the number in which the judge issued an order denying the petition.

10 5. Of the petitions denied, the number appealed to the court of
11 appeals.

12 6. The number of those appeals that resulted in the denials being
13 affirmed.

14 7. The number of those appeals that resulted in the denial being
15 reversed.

16 D. Except for a statistical report as provided in subsection B of this
17 section, a report filed pursuant to this article is not a public record and
18 is not available for public inspection, except that disclosure may be made to
19 law enforcement officials on an order of a court after application showing
20 good cause. The court may condition disclosure of the information on any
21 appropriate safeguards it may impose.

22 E. Original copies of all reports filed pursuant to sections 36-2161
23 and 36-2162 shall be available to the Arizona medical board and the Arizona
24 board of osteopathic examiners in medicine and surgery for use in the
25 performance of their official duties. The Arizona medical board and the
26 Arizona board of osteopathic examiners in medicine and surgery shall maintain
27 the confidentiality of any reports obtained pursuant to this subsection.

28 F. An employee, agent or contractor of the department who wilfully
29 discloses any information obtained from reports filed pursuant to this
30 article, other than disclosure authorized under subsections B, D and E of
31 this section or as otherwise authorized by law, is guilty of a class 3
32 misdemeanor.

33 G. A person who is required by this article to file a report, keep any
34 records or supply any information and who wilfully fails to file that report,
35 keep records or supply information as required by law is guilty of
36 unprofessional conduct and is subject to discipline, including license
37 suspension or revocation.

38 H. A person who wilfully delivers or discloses to the department any
39 report, record or information known by that person to be false commits a
40 class 1 misdemeanor.

41 I. In addition to the penalties prescribed by subsections F, G and H
42 of this section, an organization or facility that wilfully violates the
43 reporting requirements of this article is subject to discipline by the
44 department including the ~~same~~ civil penalties ~~as~~ prescribed in section ~~36-126~~
45 36-431.01. IF AN ORGANIZATION OR FACILITY THAT IS LICENSED PURSUANT TO

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1 CHAPTER 4, ARTICLE 10 OF THIS TITLE WILFULLY VIOLATES THE REPORTING
2 REQUIREMENTS OF THIS ARTICLE, THE DEPARTMENT MAY ASSESS A CIVIL PENALTY
3 PURSUANT TO SECTION 36-431.01, IMPOSE AN INTERMEDIATE SANCTION PURSUANT TO
4 SECTION 36-427, SUSPEND OR REVOKE A LICENSE PURSUANT TO SECTION 36-427, DENY
5 A LICENSE OR BRING AN ACTION FOR AN INJUNCTION PURSUANT TO SECTION 36-430.

6 Sec. 9. Findings and purposes

7 A. The legislature finds that:

8 1. Abortion can cause serious both short-term and long-term physical
9 and psychological complications for women, including but not limited to
10 uterine perforation, uterine scarring, cervical perforation or other injury,
11 infection, bleeding, hemorrhage, blood clots, failure to actually terminate
12 the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory
13 disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory
14 arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta
15 previa in subsequent pregnancies, preterm delivery in subsequent pregnancies,
16 free fluid in the abdomen, organ damage, adverse reactions to anesthesia and
17 other drugs, psychological or emotional complications such as depression,
18 anxiety or sleeping disorders and death. See, e.g., P.K. Coleman, *Abortion
19 and Mental Health: Quantitative Synthesis and Analysis of Research Published
20 1995-2009*, *Brit. J. of Psychiatry* 199:180-86 (2011); P. Shah et al., *Induced
21 termination of pregnancy and low birth weight and preterm birth: a systematic
22 review and meta-analysis*, *B.J.O.G.* 116(11):1425 (2009); H.M. Swingle et al.,
23 *Abortion and the Risk of Subsequent Preterm Birth: A Systematic Review and
24 Meta-Analysis*, *J. Reprod. Med.* 54:95 (2009); R.H. van Oppenraaij et al.,
25 *Predicting adverse obstetric outcome after early pregnancy events and
26 complications: a review*, *Human Reprod. Update Advance Access* 1:1 (Mar. 7,
27 2009); R.E. Behrman, *Preterm Birth: Causes, Consequences, and Prevention* 519
28 (2006); J.M. Thorp et al., *Long-Term Physical and Psychological Health
29 Consequences of Induced Abortion: Review of the Evidence*, *Obstet. & Gynecol.
30 Survey* 58[1]:67, 75 (2003) J.M. Barrett, *Induced Abortion: A Risk Factor for
31 Placenta Previa*, *Am. J. Obstet. & Gynecol.* 141:7 (1981).

32 2. Abortion has a higher medical risk when the procedure is performed
33 later in pregnancy. Compared to an abortion at eight weeks of gestation or
34 earlier, the relative risk increases exponentially at higher gestations.
35 L. Bartlett et al., *Risk factors for legal induced abortion-related mortality
36 in the United States*, *Obstetrics & Gynecology* 103(4):729-737 (2004).

37 3. The incidence of major complications is highest after twenty weeks
38 of gestation. J. Pregler & A. DeCherney, *Women's Health: Principles and
39 Clinical Practice* 232 (2002).

40 4. The risk of death associated with abortion increases with the
41 length of pregnancy, from one death for every one million abortions at or
42 before eight weeks gestation to one per 29,000 abortions at sixteen to twenty
43 weeks and one per 11,000 abortions at twenty-one or more weeks. L. Bartlett
44 et al., *Risk factors for legal induced abortion-related mortality in the
45 United States*, *Obstetrics & Gynecology* 103(4):729-737 (2004). After the

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1 first trimester, the risk of hemorrhage from an abortion, in particular, is
2 greater, and the resultant complications may require a hysterectomy, other
3 reparative surgery or a blood transfusion.

4 5. The State of Arizona has a legitimate concern for the public's
5 health and safety. *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985);
6 *Cohen v. State*, 121 Ariz. 6, 10, 588 P.2d 299, 303 (1978).

7 6. The State of Arizona "has legitimate interests from the outset of
8 pregnancy in protecting the health of women." *Planned Parenthood of*
9 *Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992); *Planned*
10 *Parenthood Arizona, Inc. v. American Ass'n of Pro-Life Obstetricians &*
11 *Gynecologists*, 257 P.3d 181, 194 (Ariz. App. Div. 1, 2011). More
12 specifically, Arizona "has a legitimate concern with the health of women who
13 undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462
14 U.S. 416, 428-29 (1983).

15 7. There is substantial and well-documented medical evidence that an
16 unborn child by at least twenty weeks of gestation has the capacity to feel
17 pain during an abortion. K. Anand, Pain and its effects in the human neonate
18 and fetus, *New England Journal of Medicine*, 317:1321-29 (1987).

19 8. The United States Food and Drug Administration approved the drug
20 mifepristone, a first-generation (selective) progesterone receptor modulator
21 ([S]PRM), as an abortion-inducing drug with a specific gestation, dosage and
22 administration protocol.

23 9. As approved by the United States Food and Drug Administration, and
24 as outlined in the drug label, an abortion by mifepristone consists of three
25 200 mg tablets of mifepristone taken orally, followed by two 200 mcg tablets
26 of misoprostol taken orally, through forty-nine days LMP (a gestational
27 measurement using the first day of the woman's "last menstrual period" as a
28 marker). The patient is to return for a follow-up visit in order to confirm
29 that a complete termination of pregnancy has occurred. *Mifeprex Prescribing*
30 *Information*, Danco Laboratories (July 2005), available at
31 http://www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s0131b1.pdf;
32 *Mifeprex Medication Guide*, Danco Laboratories (June 8, 2011), available at
33 www.accessdata.fda.gov/drugsatfda_docs/label/2011/020687s0141b1.pdf.

34 10. The aforementioned treatment requires three office visits by the
35 patient, and the dosages may only be administered in a clinic, medical office
36 or hospital and under supervision of a physician.

37 11. Court testimony demonstrates that some abortion providers fail to
38 follow the mifepristone protocol as tested and approved by the United States
39 Food and Drug Administration, and as outlined in the drug label. See, e.g.,
40 *Planned Parenthood v. Goddard*, CV2009-029110, Declaration of Beth Otterstein
41 at 3 (Sept. 10, 2009); *Planned Parenthood v. Horne*, CV2010-030230,
42 Declaration of Paul D. Blumenthal, M.D., M.P.H. (June 29, 2011); and *Planned*
43 *Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626, 630 n. 7 (S.D. Oh.
44 2006).

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1 12.. The use of mifepristone presents significant medical risks to
2 women, including but not limited to *C. sordellii* bacterial infection, septic
3 shock, toxic shock syndrome, adult respiratory distress syndrome from sepsis,
4 *Escheria coli* sepsis, group B *Streptococcus* septicemia, disseminated
5 intravascular coagulopathy (DIC) with hepatic and renal failure, severe pelvic
6 infection and massive hemorrhage.

7 13.. Abortion-inducing drugs are associated with an increased risk of
8 complications relative to surgical abortion. The risk of complications
9 increases with increasing gestational age, and, in the instance of
10 mifepristone, with failure to complete the two-step dosage process.

11 14. Medical studies have indicated that 1 to 2 out of every 1,000
12 women who undergo mifepristone abortions will require emergency blood
13 transfusion for massive hemorrhage. By April 30, 2011, the United States
14 Food and Drug Administration reported that at least 339 women required blood
15 transfusions for massive bleeding after mifepristone abortions. A total of
16 612 United States women have been hospitalized due to complications, and
17 fourteen women in the United States have died following administration of
18 mifepristone. The majority of reported deaths in the United States were from
19 fatal infection. Mifepristone U.S. Postmarketing Adverse Events Summary
20 through 04/30/2011, United States Food and Drug Administration, available at
21 www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationfor
22 PatientsandProviders/UCM263353.pdf. This infection is atypical to the usual
23 presentation of sepsis and may occur without the typical signs of infection,
24 such as fever and tenderness. This atypical presentation requires that
25 mifepristone be dispensed only in a closely supervised clinical setting under
26 the direction of a licensed physician who has the direct ability to counsel
27 the patient regarding the risks, and also to examine the patient prior to and
28 after administration of mifepristone.

29 15.. The absence of proper follow-up care after mifepristone
30 abortions has resulted in at least 58 women having undetected
31 ectopic pregnancies, including two deaths from ectopic rupture.
32 Mifepristone U.S. Postmarketing Adverse Events Summary through 04/30/2011,
33 United States Food and Drug Administration, available at
34 www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationfor
35 PatientsandProviders/UCM263353.pdf.

36 B.. For these reasons, the legislature's purposes in promulgating this
37 act include to:

38 1.. Prohibit abortions at or after twenty weeks of gestation, except in
39 cases of a medical emergency, based on the documented risks to women's health
40 and the strong medical evidence that unborn children feel pain during an
41 abortion at that gestational age.

42 2.. Protect women from the dangerous and potentially deadly off-label
43 use of abortion-inducing drugs, such as, for example, mifepristone.

H.B. 2036

1 3. Ensure that physicians abide by the protocol tested and approved by
2 the United States Food and Drug Administration for such abortion-inducing
3 drugs, as outlined in the drug labels.

4 Sec. 10. Exemption from rule making

5 For the purposes of this act, the department of health services is
6 exempt from the rule making requirements of title 41, chapter 6, Arizona
7 Revised Statutes, for two years after the effective date of this act.

8 Sec. 11. Construction

9 This act does not establish or recognize a right to an abortion and
10 does not make lawful an abortion that is currently unlawful.

11 Sec. 12. Severability

12 If a provision of this act or its application to any person or
13 circumstance is held invalid, the invalidity does not affect other provisions
14 or applications of the act that can be given effect without the invalid
15 provision or application, and to this end the provisions of this act are
16 severable.

NOTICE OF EXEMPT RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 15. ABORTION CLINICS

SECRETARY OF STATE

2014 JAN 27 AM 9:53

FILED

PREAMBLE

- | <u>1. Article, Part or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R9-10-1501 | Amend |
| R9-10-1502 | Amend |
| R9-10-1503 | Amend |
| R9-10-1504 | Amend |
| R9-10-1505 | Amend |
| R9-10-1506 | Amend |
| R9-10-1507 | Amend |
| R9-10-1508 | Amend |
| R9-10-1509 | Amend |
| R9-10-1510 | Amend |
| R9-10-1511 | Amend |
| R9-10-1512 | Amend |
| R9-10-1513 | Amend |
| R9-10-1514 | Amend |
| R9-10-1515 | New Section |
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific) and the statute or session law authorizing the exemption:
- Authorizing statutes: A R S § 36-136(F)
- Implementing statutes: A R S §§ 36-132(A)(17), 36-405, 36-449 01 through 36-449 03, 36-2151 through 36-2153, 36-2156, 36-2158, and 36-2159
- Statute or session law authorizing the exemption: Laws 2012, Ch. 250, § 10
3. The effective date of the rule and the agency's reason it selected the effective date:
- April 1, 2014
- This date will provide abortion clinics with over two months after the date of filing for the

abortion clinics to implement changes required by the rules.

4. A list of all notices published in the *Register* as specified in R9-1-409(A) that pertain to the record of the exempt rulemaking:

Notice of Public Information 19 A.A.R. 3944, November 29, 2013

5. The agency's contact person who can answer questions about the rulemaking:

Name: Kathryn McCanna, Branch Chief
Address: Arizona Department of Health Services
Division of Licensing Services
150 N 18th Ave., Suite 405
Phoenix, AZ 85007
Telephone: (602) 364-2536
Fax: (602) 364-4764
E-mail: Kathryn.McCanna@azdhs.gov

or

Name: Robert Lane, Acting Manager
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
1740 W. Adams, Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) §§ 36-132(A)(17) and 36-405 authorize the Department to license and regulate health care institutions, including abortion clinics. The Department has implemented A.R.S. §§ 36-132(A)(17) and 36-405 for abortion clinics in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 15. On April 12, 2012, the Governor signed HB 2036, which changed requirements for abortion clinics. HB 2036 was effective August 2, 2012. HB 2036 gives the Arizona Department of Health Services (Department) exempt rulemaking authority to amend the rules for abortion clinics. After receiving an exception from the Governor's rulemaking moratorium, established by Executive Order 2012-03, for this rulemaking, the Department has revised the rules in 9 A.A.C. 10, Article 15 to delete unnecessary and obsolete provisions, address technical changes, and comply with the statutory changes. All

changes conform to current rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

Not applicable

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and final rulemaking package, (if applicable):

Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of the federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material and its location in the rules:

None

14. Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

The rule was not previously made, amended, repealed, or renumbered as an emergency rule

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 15. ABORTION CLINICS

- R9-10-1501. Definitions
- R9-10-1502. Application Requirements
- R9-10-1503. Administration
- R9-10-1504. Incident Reporting
- R9-10-1505. Personnel Qualifications
- R9-10-1506. Staffing Requirements
- R9-10-1507. Patient Rights
- R9-10-1508. Abortion Procedures
- R9-10-1509. Patient Transfer and Discharge
- R9-10-1510. Medications and Controlled Substances
- R9-10-1511. Medical Records
- R9-10-1512. Environmental and Safety Standards
- R9-10-1513. Equipment Standards
- R9-10-1514. Physical Facilities
- R9-10-1515. Enforcement

ARTICLE 15. ABORTION CLINICS

R9-10-1501. Definitions

In addition to the definitions in A.R.S. §§ 36-401, 36-449.01, 36-449.03, and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires specified:

1. *"Abortion" means the use of a surgical instrument or a machine with the intent to terminate a woman's pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives.*
2. *"Abortion clinic" means a facility, other than an accredited hospital, in which five or more first trimester abortions in any month or any second or third trimester abortions are performed.*
- 3.1. "Admission" means documented acceptance by a hospital of an individual as an inpatient as defined in R9-10-201 on the order of a physician.
- 4.2. "Admitting privileges" means permission extended by a hospital to a physician to allow admission of a patient:
 - a By the patient's own physician, or
 - b Through a written agreement between the patient's physician and another physician that states that the other physician has permission to personally admit the patient to a hospital in this state and agrees to do so.
5. *"Adverse reaction" means an unexpected occurrence that threatens the health and safety of a patient.*
6. *"Biohazardous medical waste" means cultures and stocks, waste human blood and blood products, bodily fluids, uterine contents, and discarded medical sharps.*
- 7.3. "Conspicuously posted" means placed at a location within an abortion clinic that is accessible and visible to patients and the public.
8. *"Controlled substance" means the same as defined in A.R.S. § 32-1901(12).*
- 9.4. "Course" means hands-on practice under the supervision of a physician, training, or education
10. *"Current" means up to date, extending to the present time.*
11. *"Department" means the same as defined in A.R.S. § 36-401.*
12. *"Direction" means the same as defined in A.R.S. § 36-401.*
- 13.5. "Discharge" means a patient no longer requires the medical services, nursing services, or health-related services provided by the abortion clinic.

- ~~14.~~ "Documentation" means written, supportive evidence.
- ~~15.6.~~ "Emergency" means a potentially life-threatening occurrence that requires an immediate response or medical treatment.
- ~~16.7.~~ "Employee" means an individual who receives compensation from a licensee, but does not provide medical services, nursing services, or health-related services
- ~~17.~~ "*Fetus*" means an individual human organism from fertilization until birth.
- ~~18.8.~~ "First trimester" means 1 through 14 weeks as measured from the first day of the last menstrual period or 1 through 12 weeks as measured from the date of fertilization.
- ~~19.~~ "Gestational age" means the number of completed weeks of the unborn fetus as calculated from the first day of the last menstrual period or the date of fertilization.
- ~~20.~~ "Health related services" means the same as defined in A.R.S. § 36-401.
- ~~21.~~ "Immediately" means without delay.
- ~~22.9.~~ "Incident" means an abortion related patient death or serious injury to a patient or viable fetus.
- ~~23.~~ "Infection control" means to identify, prevent, monitor, and minimize infections.
- ~~24.10.~~ "Licensee" means an individual, a partnership, an association, a limited liability company, or corporation authorized by the Department to operate an abortion clinic.
- ~~25.11.~~ "Local" means under the jurisdiction of a city or county in Arizona.
- ~~26.12.~~ "Medical director" means a physician who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an abortion clinic
- ~~27.13.~~ "Medical evaluation" means obtaining a patient's medical history, performing a physical examination of a patient's body, and conducting laboratory tests as provided in R9-10-1508.
- ~~28.~~ "Medical services" means the same as defined in A.R.S. § 36-401
- ~~29.~~ "Medication" means a prescription medication as defined in A.R.S. § 32-1901 or a nonprescription drug or over the counter drug as defined in A.R.S. § 32-1901.
- ~~30.14.~~ "Monitor" means to observe and document, continuously or intermittently, the values of certain physiologic variables on a patient such as pulse, blood pressure, oxygen saturation, respiration, and blood loss.
- ~~31.15.~~ "Nationally recognized medical journal" means any publication distributed nationally that contains peer-reviewed medical information, such as the *American Journal of Radiology* or the *Journal of Ultrasound in Medicine*.

- ~~32.~~ "Nurse" means an individual licensed and in good standing as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.
- ~~33.~~ "Nurse practitioner" means an individual licensed and in good standing as a registered nurse practitioner according to A.R.S. Title 32, Chapter 15.
- ~~34.~~ "Nursing services" means the same as defined in A.R.S. § 36-401.
- ~~35-16.~~ "Patient" means a female receiving medical services, nursing services, or health-related services related to an abortion
- ~~36-17.~~ "Patient care staff" means a physician, registered nurse practitioner, nurse, physician assistant, or surgical assistant who provides medical services, nursing services, or health-related services to a patient.
- ~~37-18.~~ "Patient Patient's representative" means a patient's legal guardian, an individual acting on behalf of a patient with the written consent of the patient, or a surrogate according to A.R.S. § 36-3201(~~13~~)
- ~~38-19.~~ "Patient transfer" means relocating a patient requiring medical services from an abortion clinic to another health care institution
- ~~39-20.~~ "Personally identifiable patient information" means:
- a. The name, address, telephone number, e-mail address, Social Security number, and birth date of:
 - i. The patient,
 - ii. The patient's representative,
 - iii. The patient's emergency contact,
 - iv. The patient's children,
 - v. The patient's spouse,
 - vi. The patient's sexual partner, and
 - vii. Any other individual identified in the patient's medical record other than patient care staff;
 - b. The patient's place of employment;
 - c. The patient's referring physician;
 - d. The patient's insurance carrier or account;
 - e. Any "individually identifiable health information" as proscribed in 45 CFR 164-514; and
 - f. Any other information in the patient's medical record that could reasonably lead to the identification of the patient.
- ~~40-21.~~ "Personnel" means patient care staff, employees, and volunteers

- ~~41-22.~~ "Physical facilities" means property that is:
- a. Designated on an application for a license by the applicant; and
 - b. Licensed to provide services by the Department according to A.R.S. Title 36, Chapter 4
- ~~42.~~ "Physician" means an individual licensed according to A.R.S. Title 32, Chapter 13 or 17.
- ~~43.~~ "Physician assistant" means an individual licensed according to A.R.S. Title 32, Chapter 25.
- ~~44.~~ "*Serious injury*" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ.
- ~~45.~~ "*Supervision*" means direct overseeing and inspection of the act of accomplishing a function or activity.
- ~~46-23.~~ "Surgical assistant" means an individual who is not licensed as a physician, physician assistant, registered nurse practitioner, or nurse who performs duties as directed by a physician, physician assistant, registered nurse practitioner or nurse
- ~~47.~~ "Viable fetus" means the same as defined in A.R.S. § 36-2301.01.
- ~~48-24.~~ "Volunteer" means an individual who, without compensation, performs duties as directed by a member of the patient care staff at an abortion clinic.

R9-10-1502. Application Requirements

An applicant shall submit an application for licensure that meets the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1.

R9-10-1503. Administration

- A. A licensee is responsible for the organization and management of an abortion clinic.
- B. A licensee shall:
- ~~1.~~ ~~Ensure compliance with federal and state laws, rules, and local ordinances;~~
 - ~~2-1.~~ Adopt policies and procedures for the administration and operation of an abortion clinic;
 - ~~3-2.~~ Designate a medical director who is licensed according to A.R.S. Title 32, Chapter 13, 17, or 29. The licensee and the medical director may be the same individual;
 - ~~4-3.~~ Ensure that the Department's director or director's ~~designee~~ representative is allowed access as follows:
 - a. For a complaint inspection, upon presentation of an administrative search warrant authorizing the inspection of the abortion clinic; or
 - b. For a licensing or compliance inspection, at a date and time agreed to by the licensee and the Department that is no later than 10 business days after the date

the Department submits a written request to the licensee to schedule the licensing or compliance inspection, unless the Department agrees to a later date and time;

- 5.4. Ensure the following documents are conspicuously posted at the physical facilities:
- a. Current abortion clinic license issued by the Department;
 - b. Current telephone number and address of the unit in the Department's Office of Medical Facilities Department responsible for licensing the abortion clinic;
 - c. Evacuation map; and
 - d. Signs that comply with A.R.S. § 36-2153(G).

- C. A medical director shall ensure written policies and procedures are ~~developed~~ established, documented, and implemented for:

1. Personnel qualifications, duties, and responsibilities;
2. Individuals qualified to provide counseling in the abortion clinic and the amount and type of training required for an individual to provide counseling;
3. Verification of the competency of the physician performing an abortion according to R9-10-1505;
4. The storage, administration, accessibility, disposal, and documentation of a medication, and a controlled substance;
5. Accessibility and security of patient medical records;
6. Abortion procedures including recovery and follow-up care; and the minimum length of time a patient remains in the recovery room or area based on:
 - a. The type of abortion performed;
 - b. The estimated gestational age of the fetus;
 - c. The type and amount of medication administered; and
 - d. The physiologic signs including vital signs and blood loss;
7. Infection control including methods of sterilizing equipment and supplies;
8. Medical emergencies; and
9. Patient discharge and patient transfer.

R9-10-1504. Incident Reporting

- A. A licensee shall ensure that the Department is notified of an incident as follows:
1. For the death of a patient, verbal notification the next working day; and
 2. For a serious injury, written notification within 10 calendar days ~~from~~ after the date of the serious injury.
- B. A medical director shall conduct an investigation of an incident and ~~develop a written document~~ an incident report that includes:

- 1 The date and time of the incident;
- 2 The name of the patient;
- 3 ~~Description~~ A description of the incident;
- 4 Names of individuals who observed the incident;
- 5 Action taken by patient care staff and employees during the incident ~~or~~ and immediately following the incident; and
- 6 Action taken by the patient care staff and employees to prevent the incident from occurring in the future

C. A medical director shall ensure that the ~~written~~ incident report is:

1. Submitted to the Department and, if the incident involved a licensed individual, the applicable a professional licensing board, ~~if applicable~~, within 10 calendar days ~~from~~ after the date of the notification in subsection (A); and
2. Maintained in the physical facilities for at least two years ~~from~~ after the date of the ~~report~~ incident

R9-10-1505. Personnel Qualifications and Records

A licensee shall ensure that:

1. A physician who performs an abortion demonstrates to the medical director that the physician is competent to perform an abortion by:
 - a. The submission of documentation of education and experience; and
 - b. Observation by or interaction with the medical director;
2. Surgical assistants and volunteers who provide counseling and patient advocacy receive training in these specific responsibilities and any other responsibilities assigned and that documentation is maintained in the individual's personnel file of the training received;
3. An individual who performs an ultrasound provides documentation that the individual is:
 - a. A physician;
 - b. A physician assistant, registered nurse practitioner, or nurse who completed a hands-on course in performing ultrasounds under the supervision of a physician; or
 - c. An individual who:
 - i. Completed a hands-on course in performing ultrasounds under the supervision of a physician, and
 - ii. Is not otherwise precluded by law from performing an ultrasound;
4. An individual has completed a course for the type of ultrasound the individual performs;

- 5 A personnel file for each member of the patient care staff and each volunteer is maintained either electronically or in writing and includes:
- a. The individual's name; ~~and~~ position title; ~~and~~
 - b. ~~the~~ The first and, if applicable, the last date of employment or volunteer service; ~~if applicable;~~
 - b. Verification of qualifications, training, or licensure, ~~if~~ as applicable;
 - c. Documentation of cardiopulmonary resuscitation certification, ~~if~~ as applicable;
 - d. Documentation of verification of competency, as required in subsection (1), and signed and dated by the medical director;
 - e. Documentation of training for surgical assistants and volunteers; and
 - f. Documentation of completion of a course as required in subsection (3), for an individual performing ultrasounds; and
6. Personnel files are maintained in the physical facilities for at least two years from the ending date of employment or volunteer service

R9-10-1506. Staffing Requirements

- A. A licensee shall ensure that there ~~are~~ is a sufficient number of patient care staff and employees to:
1. Meet the requirements of this Article;
 2. Ensure the health and safety of a patient; and
 3. Meet the needs of a patient based on the patient's medical evaluation.
- B A licensee shall ensure that:
1. A member of the patient care staff, except for a surgical assistant, who is current in cardiopulmonary resuscitation certification is in the physical facilities until all patients are discharged;
 2. A physician, with admitting privileges at ~~an accredited hospital in this state~~ a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B), remains on the premises of the abortion clinic until all patients who received a medication abortion are stable and ready to leave ~~the recovery room;~~ and
 3. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B) and that is within thirty miles of the abortion clinic by road, as defined in A.R.S. § 17-451, remains on the abortion clinic's premises until all patients who received a surgical abortion are stable and ready to leave the recovery room; and

3. 4. A physician, a nurse, a registered nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800 as applicable, a medical assistant under the direct supervision of the physician:
- a. Monitors each patient during the patient's recovery following the abortion; and
 - b. Remains in the ~~facility~~ abortion clinic until each patient is discharged by a physician

R9-10-1507. Patient Rights

A licensee shall ensure that a patient is afforded the following rights, and is informed of these rights:

1. To refuse treatment, or withdraw consent for treatment;
2. To have medical records kept confidential; and
3. To be informed of:
 - a. Billing procedures and financial liability before abortion services are provided;
 - b. Proposed medical or surgical procedures, associated risks, possible complications, and alternatives;
 - c. Counseling services that are provided in the physical facilities; and
 - d. ~~If an ultrasound is performed the,~~ The right to review the ultrasound results with a physician, a physician assistant, a registered nurse practitioner, or a registered nurse before the abortion procedure.

R9-10-1508. Abortion Procedures

A. A medical director shall ensure that a medical evaluation of a patient is conducted before performing an the patient's abortion is performed and that includes:

1. A medical history including:
 - a. Allergies to medications, antiseptic solutions, or latex;
 - b. Obstetrical and gynecological history;
 - c. Past surgeries;
 - d. Medication the patient is currently taking; and
 - e. Other medical conditions;
2. A physical examination performed by a physician that includes a bimanual examination to estimate uterine size and palpation of adnexa; and
3. The following laboratory tests:
 - a. A urine or blood test to determine pregnancy ~~if an ultrasound examination is not performed;~~
 - b. Rh typing unless the patient provides written documentation of blood type acceptable to the physician;

- c. Anemia screening; and
 - d. Other laboratory tests recommended by the physician or medical director on the basis of the physical examination.
- B. If the medical evaluation indicates a patient is Rh negative, a medical director shall ensure that:
1. The patient receives information from a physician on this condition;
 2. The patient is offered RhO(d) immune globulin within 72 hours after the abortion procedure;
 3. If a patient refuses RhO(d) immune globulin, the patient signs and dates a form acknowledging the patient's condition and refusing the RhO(d) immune globulin;
 4. The form in subsection (B)(3) is maintained in the patient's medical record; and
 5. If a patient refuses RhO(d) immune globulin or if a patient refuses to sign and date an acknowledgment and refusal form, the physician documents the patient's refusal in the patient's medical record.
- C. A physician estimates the gestational age of the fetus, and records the estimated age in the patient's medical record. The estimated age is based upon:
1. Ultrasound measurements of the biparietal diameter, length of femur, abdominal circumference, visible pregnancy sac, or crown-rump length or a combination of these; or
 2. The date of the last menstrual period or the date of fertilization and a bimanual examination of the patient.
- D. ~~If a physical examination or other information obtained from the patient or laboratory tests indicates the gestational age of the fetus is greater than 12 weeks, a~~ A medical director shall ensure that:
1. An ultrasound of a patient is performed by an individual who meets the requirements in R9-10-1505(3);
 2. An ultrasound estimate of gestational age of a fetus is performed using methods and tables or charts published in a nationally recognized medical journal;
 3. An original patient ultrasound print is:
 - a. Interpreted by a physician; and
 - b. Maintained in the patient's medical record in either electronic or paper form; and
 4. If requested by the patient, the ultrasound is reviewed with the patient by a physician, a physician assistant, a registered nurse practitioner, or a registered nurse.
- E. A medical director shall ensure that before an abortion is performed on a patient:
1. Written consent is signed and dated by the patient or the patient's ~~representative~~ legal guardian; and

2 Information is provided to the patient on the abortion procedure including alternatives, risks, and potential complications

F. A medical director shall ensure that an abortion is performed according to the abortion clinic's policies and procedures and this Article

G. A medical director shall ensure that any medication, drug, or substance used to induce an abortion is administered in compliance with the protocol authorized by the United States Food and Drug Administration and that is outlined in the final printing labeling instructions for that medication, drug, or substance.

~~G.H.~~ A medical director shall ensure that:

1. Patient care staff monitor the patient's vital signs throughout ~~the~~ an abortion procedure to ensure the patient's health and safety;
2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record; and
3. If a viable fetus shows signs of life:
 - a. Resuscitative measures are used to support life;
 - b. The viable fetus is transferred as required in R9-10-1509; and
 - c. Resuscitative measures and the transfer are documented.

~~H.I.~~ A medical director shall ensure that following the abortion procedure:

1. A patient's vital signs and bleeding are monitored by a physician, a nurse, a registered nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, as applicable, a medical assistant under the direct supervision of the physician to ensure the patient's health and safety; and
2. A patient remains in the recovery room or recovery area until a physician, a physician assistant, a registered nurse practitioner or a nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area.

~~I.J.~~ A medical director shall ensure that follow-up care includes:

1. With a patient's consent, a telephone call to the patient by a member of the patient care staff, except a surgical assistant, within 24 hours ~~of~~ after the patient's discharge following a surgical abortion to assess the patient's recovery. If the patient care staff is unable to

2 speak with the patient, for any reason, the attempt to contact the patient is documented in the patient's medical record; ~~and~~

2 A Following a surgical abortion, a follow-up visit offered and scheduled, if requested, no more than 21 days after the abortion. The follow-up visit shall include:

- a. A physical examination;
- b. A review of all laboratory tests as required in R9-10-1508(A)(3); and
- c. A urine pregnancy test; ~~and~~

3. Following a medication abortion, a follow-up visit offered and scheduled between seven and 21 days after the initial dose of a substance used to induce an abortion. The follow-up visit shall include:

- a. A urine pregnancy test; and
- b. An assessment of the degree of bleeding

J.K. If a continuing pregnancy is suspected as a result of the follow-up visit required in subsection ~~(H)(2)~~ (J)(2) or (J)(3), a physician who performs abortions shall be consulted

R9-10-1509. Patient Transfer and Discharge

A A medical director shall ensure that:

1. A patient is transferred to a hospital for an emergency involving the patient;
2. A viable fetus requiring emergency care is transferred to a hospital;
3. A patient transfer is documented in the patient's medical record; and
4. Documentation of a medical evaluation, treatment given, and laboratory; and diagnostic information is transferred with a patient

B A medical director shall ensure that before a patient is discharged:

1. A physician signs the patient's discharge order; and
2. A patient receives ~~written information~~ follow-up instructions at discharge that ~~includes~~ include:
 - a. Signs of possible complications;
 - b. When to access medical ~~care~~ services in response to complications;
 - c. A telephone number of an individual or entity to contact for medical emergencies;
 - d. ~~Instructions~~ Information and precautions for resuming vaginal intercourse after the abortion; and
 - e. ~~Instructions-Information~~ specific to the patient's abortion or condition.

R9-10-1510. Medications and Controlled Substances

A medical director shall ensure that:

- 1 The abortion clinic complies with the requirements for medications and controlled substances in A.R.S. Title 32, Chapter 18, and A.R.S. Title 36, Chapter 27;
- 2 A medication is administered in compliance with an order from a physician, physician assistant, registered nurse practitioner, or as otherwise provided by law;
3. A medication is administered to a patient by a physician or as otherwise provided by law;
4. Medications and controlled substances are maintained in a locked area in the physical facilities;
- 5 Only personnel designated ~~by in the abortion clinic's~~ policies and procedures have access to the locked area containing the medications and controlled substances;
- 6 Expired, mislabeled, or unusable medications and controlled substances are disposed of according to ~~the abortion clinic's~~ policies and procedures;
7. ~~Medication errors and adverse reactions~~ A medication error or an adverse reaction, including any actions taken in response to the medication ~~errors error~~ or adverse ~~reactions~~ reaction, ~~are~~ is immediately reported to the medical director and licensee, and recorded in the patient's medical record;
8. Medication information is maintained in a patient's medical record and contains:
 - a. The patient's name, age, and weight;
 - b. The medications the patient is currently taking; and
 - c. Allergies or sensitivities to medications, antiseptic solutions, or latex; and
9. If medication is administered to a patient, the following are documented in the patient's medical record:
 - a. The date and time of administration;
 - b. The name, strength, dosage form, amount of medication, and route of administration; and
 - c. The identification and signature of the individual administering the medication.

R9-10-1511. Medical Records

A. A licensee shall ensure that:

- 1 A medical record is established and maintained for a patient that contains:
 - a. Patient identification including:
 - i. The patient's name, address, and date of birth;
 - ii. The designated ~~patient~~ patient's representative, if applicable; and
 - iii. The name and telephone number of an individual to contact in an emergency;
 - b. The patient's medical history required in R9-10-1508(A)(1);

- c. The patient's physical examination required in R9-10-1508(A)(2);
 - d. The laboratory test results required in R9-10-1508(A)(3);
 - e. The physician's estimated gestational age of the fetus required in R9-10-1508(C);
 - f. The ultrasound results, ~~if applicable,~~ including the original print, as required in R9-10-1508(D);
 - g. Each consent form signed by the patient or the patient's ~~representative~~ legal guardian;
 - h. ~~A record of all orders~~ Orders issued by a physician, physician assistant or registered nurse practitioner;
 - i. A record of all medical services, nursing services, and health-related services provided to the patient; and
 - j. The patient's medication information;
- 2. A medical record is accessible only to the Department or personnel authorized by ~~the abortion clinic's~~ policies and procedures;
 - 3. Medical record information is confidential and released only with the written informed consent of a patient or the patient's representative or as otherwise permitted by law;
 - 4. A medical record is protected from loss, damage, or unauthorized use and is maintained and accessible for seven years ~~from~~ after the date of an adult patient's discharge or if the patient is a child, either for at least three years after the child's 18th birthday or for at least seven years after the patient's discharge, whichever date occurs last;
 - 5. A medical record is maintained at the abortion clinic for at least six months ~~from~~ after the date of the patient's discharge; and
 - 6. Vital records and vital statistics are retained according to A.R.S. § 36-343; and,
 - 7. ~~If an abortion clinic ceases operations, the Department is notified in writing, not less than 30 days before ceasing operations, of the location of the abortion clinic's medical records.~~
- B.** A licensee shall comply with Department requests for access to or copies of patient medical records as follows:
- 1. Subject to the redaction permitted in subsection (B)(5), for patient medical records requested for review in connection with a compliance inspection, the licensee shall provide the Department with the following patient medical records related to medical services associated with an abortion, including any follow-up visits to the ~~facility~~ abortion clinic in connection with the abortion:
 - a. Patient identification including:
 - i. The patient's name, address, and date of birth;

- ii. The designated ~~patient~~ patient's representative, if applicable; and
 - iii. The name and telephone number of an individual to contact in an emergency;
- b. The patient's medical history required in R9-10-1508(A)(1);
 - c. The patient's physical examination required in R9-10-1508(A)(2);
 - d. The laboratory test results required in R9-10-1508(A)(3);
 - e. The physician's estimated gestational age of the fetus required in R9-10-1508(C);
 - f. The ultrasound results, ~~if applicable, including the original print as~~ required in R9-10-1508(D);
 - g. Each consent form signed by the patient or the patient's representative;
 - h. ~~A record of all orders~~ Orders issued by a physician, physician assistant, or registered nurse practitioner;
 - i. A record of ~~all~~ medical services, nursing services, and health-related services provided to the patient; and
 - j. The patient's medication information.
2. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee is not required to produce for review by the Department any patient medical records created or prepared by a referring physician or any of that referring physician's medical staff.
3. The licensee is not required to provide patient medical records regarding medical services associated with an abortion that occurred before:
- a. The effective date of these rules, or
 - b. A previous licensing or compliance inspection of the abortion clinic.
4. The patient medical records may be provided to the Department in either paper or in an electronic format that is acceptable to the Department
5. When access to or copies of patient medical records are requested from a licensee by the Department, the licensee shall redact only personally identifiable patient information from the patient medical records before the disclosure of the patient medical records to the Department, except as provided in subsection (B)(8).
6. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee shall provide the redacted copies of the patient medical records to the Department within two business days of the Department's request for the redacted medical records if the total number of patients for whom patient medical records are requested by the Department is from one to ten patients, unless otherwise

agreed to by the Department and the licensee. The time within which the licensee shall produce redacted records to the Department shall be increased by two business days for each additional five patients for whom patient medical records are requested by the Department, unless otherwise agreed to by the Department and the licensee.

7. Upon request by the Department, in addition to redacting only personally identifiable patient information, the licensee shall code the requested patient medical records by a means that allows the Department to track all patient medical records related to a specific patient without the personally identifiable patient information
8. The Department shall have access to or copies of unredacted patient medical records only ~~pursuant~~ according to an administrative search warrant specifically authorizing the disclosure of unredacted patient medical records by the licensee.
9. If the Department obtains copies of unredacted patient medical records, the Department shall:
 - a. Allow the examination and use of the unredacted patient medical records only by those Department employees who need access to the patient medical records to fulfill their investigative responsibilities and duties;
 - b. Maintain all unredacted patient medical records in a locked drawer, cabinet, or file or in a password-protected electronic file with access to the secured drawer, cabinet, or file limited to those individuals who have access to the patient medical records ~~pursuant~~ according to subsection (B)(9)(a);
 - c. Destroy all unredacted patient medical records at the termination of the Department's investigation or at the termination of any administrative or legal action that is taken by the Department as the result of the Department's investigation, whichever is later;
 - d. If the unredacted patient medical records are filed with a court or other judicial body, including any administrative law judge or panel, file the records only under seal; and
 - e. Prevent access to the unredacted records by anyone except as provided in subsection (B)(9)(a) or subsection (B)(9)(d).

C. A medical director shall ensure that only personnel authorized by ~~an abortion clinic's policies and procedures,~~ records or signs an entry in a medical record and:

1. An entry in a medical record is dated and legible;
2. An entry is authenticated by:
 - a. A written signature;

- b. An individual's initials if the individual's written signature already appears in the medical record;
 - c. A rubber-stamp signature; or
 - d. ~~A computer code~~ An electronic signature;
3. An entry is not changed after it has been recorded but additional information related to an entry may be recorded in the medical record;
4. When a verbal or telephone order is entered in the medical record, the entry is authenticated within 21 days by the individual who issued the order;
5. If a rubber-stamp signature or ~~a computer code~~ an electronic signature is used:
- a. An individual's rubber stamp or ~~computer code~~ electronic signature is not used by another individual;
 - b. The individual who uses a rubber stamp or ~~computer code~~ electronic signature signs a statement that the individual is responsible for the use of the rubber stamp or the ~~computer code~~ electronic signature; and
 - c. The signed statement is included in the individual's personnel record; and
6. If an abortion clinic maintains medical records electronically, the medical director shall ensure the date and time of an entry is recorded by the computer's internal clock
- D As required by A.R.S. § 36-449 03(I), the Department shall not release any personally identifiable patient or physician information.

R9-10-1512. Environmental and Safety Standards

A licensee shall ensure that:

- 1. Physical facilities:
 - a. Provide lighting and ventilation to ensure the health and safety of a patient;
 - b. Are maintained in a clean condition;
 - c. Are free from a condition or situation that may cause a patient to suffer physical injury;
 - d. Are maintained free from insects and vermin; and
 - e. Are smoke-free;
- 2. A warning notice is placed at the entrance to a room or area where oxygen is in use;
- 3. Soiled linen and clothing are kept:
 - a. ~~in~~ In a covered container, ~~and in a~~
 - b. ~~separate area~~ Separate from clean linen and clothing;
- 4. Personnel wash hands after each direct patient contact and after handling soiled linen, soiled clothing, or biohazardous medical waste;

- 5 A written emergency plan is ~~developed~~ established, documented, and implemented that includes procedures for protecting the health and safety of patients and other individuals in a fire, natural disaster, loss of electrical power, or threat or incidence of violence; and
- 6 An evacuation drill is conducted at least once every six months that includes all personnel in the physical facilities the day of the evacuation drill. Documentation of the evacuation drill is maintained in the physical facilities for one year ~~from~~ after the date of the evacuation drill and includes:
- a. The date and time of the evacuation drill; and
 - b. The names of personnel participating in the evacuation drill.

R9-10-1513. Equipment Standards

A licensee shall ensure that:

- 1. Equipment and supplies are maintained in a quantity sufficient to meet the needs of all patients present in the abortion clinic;
- 2. Equipment to monitor vital signs is in each room in which an abortion is performed;
- 3. A surgical or gynecologic examination table is used for an abortion;
- 4. The following equipment and supplies are ~~provided~~ available in the abortion clinic:
 - a. Equipment to measure blood pressure;
 - b. A stethoscope;
 - c. A scale for weighing a patient;
 - d. Supplies for obtaining specimens; and cultures and ~~other~~ for laboratory tests; and
 - e. Equipment and supplies for use in a medical emergency including:
 - i. Ventilatory assistance equipment;
 - ii. Oxygen source;
 - iii. Suction apparatus; and
 - iv. Intravenous fluid equipment and supplies; and
 - f. Ultrasound equipment;
- 5. In addition to the requirements in subsection (4), the following equipment is available for an abortion procedure performed after the first trimester:
 - a. ~~Ultrasound equipment;~~
 - ~~b.a.~~ Drugs to support cardiopulmonary function; and
 - ~~e.b.~~ Equipment to monitor cardiopulmonary status;
- 6. Equipment and supplies are clean and, if applicable, sterile, ~~if applicable,~~ before each use;

7. Equipment required in this Section is maintained in working order, tested and calibrated at least once every 12 months or according to the manufacturer's recommendations, and used according to the manufacturer's recommendations; and
8. Documentation of each equipment test, calibration, and repair is maintained in the physical facilities for one year ~~from~~ after the date of the testing, calibration, or repair and provided to the Department for review within two hours ~~from the time~~ after the Department requests the documentation.

R9-10-1514. Physical Facilities

- A. A licensee shall ensure that an abortion clinic complies with all local building codes, ordinances, fire codes, and zoning requirements. If there are no local building codes, ordinances, fire codes, or zoning requirements, the abortion clinic shall comply with the applicable codes and standards incorporated by reference in A.A.C. R9-1-412 that were in effect on the date the abortion clinic's architectural plans and specifications were submitted to the Department for approval.
- B. A licensee shall ensure that an abortion clinic provides areas or rooms:
 1. That provide privacy for:
 - a. A patient's interview, medical evaluation, and counseling;
 - b. A patient to dress; and
 - c. Performing an abortion procedure;
 2. For personnel to dress;
 3. With a sink ~~in working order~~ and a flushable toilet in working order;
 4. For cleaning and sterilizing equipment and supplies;
 5. For storing medical records;
 6. For storing equipment and supplies;
 7. For hand washing before the abortion procedure; and
 8. For a patient recovering after an abortion.
- C. A licensee shall ensure that an abortion clinic has an emergency exit to accommodate a stretcher or gurney.

R9-10-1515. Enforcement

- A. For an abortion clinic that is not in substantial compliance or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the Department, the Department may:
 1. Assess a civil penalty according to A.R.S. § 36-431.01,
 2. Impose an intermediate sanction according to A.R.S. § 36-427,
 3. Suspend or revoke a license according to A.R.S. § 36-427,
 4. Deny a license, or

5. Bring an action for an injunction according to A.R.S. § 36-430.

B. In determining the appropriate enforcement action, the Department shall consider the threat to the health, safety, and welfare of the abortion clinic's patients or the general public, including:

1. Whether the abortion clinic has repeated violations of statutes or rules;

2. Whether the abortion clinic has engaged in a pattern of noncompliance; and

3. The type, severity, and number of violations.