

# D R A F T

## SUMMARY

Creates crime of false representation in assisted reproduction. Punishes by 364 days' imprisonment, \$6,250 fine, or both. Creates private right of action for specified individuals for false representation in assisted reproduction.

Creates crime of unlawful use of human reproductive material. Punishes by 364 days' imprisonment, \$6,250 fine, or both.

Authorizes Oregon Medical Board to impose discipline for false representation in assisted reproduction and unlawful use of human reproductive material.

## A BILL FOR AN ACT

1  
2 Relating to human reproductive material; creating new provisions; and  
3 amending ORS 677.190.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 4 of this 2022 Act:**

6 (1) **“Assisted reproduction” has the meaning given that term in ORS**  
7 **109.239.**

8 (2) **“Donor” means an individual who provides human reproductive**  
9 **material intended for use in assisted reproduction, whether or not the**  
10 **donation is made for consideration.**

11 (3) **“Health care facility” has the meaning given that term in ORS**  
12 **442.015.**

13 (4) **“Human reproductive material” means:**

14 (a) **A human spermatozoon or ovum; or**

15 (b) **A human organism at any stage of development from fertilized**  
16 **ovum to embryo.**

1 (5) "Patient" means an individual who is under the care of a phy-  
2 sician for the purpose of assisted reproduction.

3 (6) "Physician" means an individual licensed under ORS chapter 677.

4 **SECTION 2.** (1) A person commits the crime of false representation  
5 in assisted reproduction if the person provides to a patient information  
6 related to any of the following, knowing or having reason to know that  
7 the information is false:

8 (a) An assisted reproduction procedure or treatment;

9 (b) The human reproductive material used or provided for the  
10 patient's assisted reproduction procedure or treatment;

11 (c) Identifying information of the donor whose human reproductive  
12 material is used or provided for the patient's assisted reproduction,  
13 including but not limited to the donor's name, date of birth or physical  
14 address at the time of donation; or

15 (d) The medical history of the donor whose human reproductive  
16 material is used or provided for the patient's assisted reproduction,  
17 including but not limited to any illness that the donor had at the time  
18 of donation, the donor's past illnesses or the social, genetic or family  
19 history of the donor.

20 (2) A physician commits the crime of false representation in as-  
21 sisted reproduction if the physician uses or provides human reproduc-  
22 tive material for assisted reproduction, knowing or having reason to  
23 know that the human reproductive material is other than the human  
24 reproductive material for which the patient provided consent.

25 (3) A health care facility commits the crime of false representation  
26 in assisted reproduction if the health care facility:

27 (a) Provides a patient with human reproductive material other than  
28 the human reproductive material the patient provided consent to use  
29 in the patient's assisted reproduction procedure or treatment; or

30 (b) Disregards any agreement or other form of consent related to  
31 the patient's assisted reproduction procedure or treatment between

1 the patient and the health care facility.

2 (4) False representation in assisted reproduction is a Class A  
3 misdemeanor.

4 **SECTION 3.** (1) Any of the following individuals may bring a cause  
5 of action for compensatory and punitive damages against a person,  
6 physician or health care facility that commits false representation in  
7 assisted reproduction:

8 (a) A patient who gives birth to a child conceived through assisted  
9 reproduction that results from false representation in assisted re-  
10 production;

11 (b) The spouse of a patient described in paragraph (a) of this sub-  
12 section if the individual was the spouse at the time of the assisted  
13 reproduction procedure or treatment;

14 (c) A child conceived through assisted reproduction that results  
15 from false representation in assisted reproduction; or

16 (d) A donor whose human reproductive material resulted in the  
17 birth of a child conceived through assisted reproduction that results  
18 from false representation in assisted reproduction.

19 (2) An individual who brings a cause of action under subsection (1)  
20 of this section may bring a separate cause of action for each child born  
21 as a result of assisted reproduction that results from false represen-  
22 tation in assisted reproduction.

23 (3) In an action brought under subsection (1) of this section, the  
24 plaintiff may recover liquidated damages in the amount of \$250,000, or  
25 actual damages, whichever is greater. The plaintiff may also recover  
26 punitive damages, attorney fees and costs.

27 (4) An action under this section must be commenced within six  
28 years after the commission or discovery of the false representation in  
29 assisted reproduction, whichever is later.

30 **SECTION 4.** (1) A person commits the crime of unlawful use of  
31 human reproductive material if the person knowingly implants the

1 **person's own human reproductive material into a patient through as-**  
2 **sisted reproduction without the patient's prior knowledge and written**  
3 **informed consent to use that human reproductive material.**

4 **(2) Unlawful use of human reproductive material is a Class A**  
5 **misdemeanor.**

6 **SECTION 5.** ORS 677.190 is amended to read:

7 677.190. The Oregon Medical Board may refuse to grant[,] or may suspend  
8 or revoke a license to practice for any of the following reasons:

9 (1)(a) Unprofessional or dishonorable conduct.

10 (b) For purposes of this subsection, the use of an alternative medical  
11 treatment shall not by itself constitute unprofessional conduct. For purposes  
12 of this paragraph:

13 (A) "Alternative medical treatment" means:

14 (i) A treatment that the treating physician, based on the physician's pro-  
15 fessional experience, has an objective basis to believe has a reasonable  
16 probability for effectiveness in its intended use even if the treatment is out-  
17 side recognized scientific guidelines, is unproven, is no longer used as a  
18 generally recognized or standard treatment or lacks the approval of the  
19 United States Food and Drug Administration;

20 (ii) A treatment that is supported for specific usages or outcomes by at  
21 least one other physician licensed by the Oregon Medical Board; and

22 (iii) A treatment that poses no greater risk to a patient than the generally  
23 recognized or standard treatment.

24 (B) "Alternative medical treatment" does not include use by a physician  
25 of controlled substances in the treatment of a person for chemical depend-  
26 ency resulting from the use of controlled substances.

27 (2) Employing any person to solicit patients for the licensee. However, a  
28 managed care organization, independent practice association, preferred pro-  
29 vider organization or other medical service provider organization may con-  
30 tract for patients on behalf of physicians.

31 (3) Representing to a patient that a manifestly incurable condition of

1 sickness, disease or injury can be cured.

2 (4) Obtaining any fee by fraud or misrepresentation.

3 (5) Willfully or negligently divulging a professional secret without the  
4 written consent of the patient.

5 (6) Conviction of any offense punishable by incarceration in a Department  
6 of Corrections institution or in a federal prison, subject to ORS 670.280. A  
7 copy of the record of conviction, certified to by the clerk of the court en-  
8 tering the conviction, shall be conclusive evidence of the conviction.

9 (7) Impairment as defined in ORS 676.303.

10 (8) Fraud or misrepresentation in applying for or procuring a license to  
11 practice in this state, or in connection with applying for or procuring reg-  
12 istration.

13 (9) Making statements that the licensee knows, or with the exercise of  
14 reasonable care should know, are false or misleading, regarding skill or the  
15 efficacy or value of the medicine, treatment or remedy prescribed or admin-  
16 istered by the licensee or at the direction of the licensee in the treatment  
17 of any disease or other condition of the human body or mind.

18 (10) Impersonating another licensee licensed under this chapter or per-  
19 mitting or allowing any person to use the license.

20 (11) Aiding or abetting the practice of medicine or podiatry by a person  
21 not licensed by the board, when the licensee knows, or with the exercise of  
22 reasonable care should know, that the person is not licensed.

23 (12) Using the name of the licensee under the designation "doctor,"  
24 "Dr.," "D.O." or "M.D.," "D.P.M.," "Acupuncturist," "P.A." or any similar  
25 designation in any form of advertising that is untruthful or is intended to  
26 deceive or mislead the public.

27 (13) Gross negligence or repeated negligence in the practice of medicine  
28 or podiatry.

29 (14) Incapacity to practice medicine or podiatry. If the board has evidence  
30 indicating incapacity, the board may order a licensee to submit to a stand-  
31 ardized competency examination. The licensee shall have access to the result

1 of the examination and to the criteria used for grading and evaluating the  
2 examination. If the examination is given orally, the licensee shall have the  
3 right to have the examination recorded.

4 (15) Disciplinary action by another state of a license to practice, based  
5 upon acts by the licensee similar to acts described in this section. A certified  
6 copy of the record of the disciplinary action of the state is conclusive evi-  
7 dence thereof.

8 (16) Failing to designate the degree appearing on the license under cir-  
9 cumstances described in ORS 677.184 (3).

10 (17) Willfully violating any provision of this chapter or any rule adopted  
11 by the board, board order, or failing to comply with a board request pursuant  
12 to ORS 677.320.

13 (18) Failing to report the change of the location of practice of the licensee  
14 as required by ORS 677.172.

15 (19) Imprisonment as provided in ORS 677.225.

16 (20) Making a fraudulent claim.

17 (21)(a) Performing psychosurgery.

18 (b) For purposes of this subsection and ORS 426.385, “psychosurgery”  
19 means any operation designed to produce an irreversible lesion or destroy  
20 brain tissue for the primary purpose of altering the thoughts, emotions or  
21 behavior of a human being. “Psychosurgery” does not include procedures  
22 which may produce an irreversible lesion or destroy brain tissues when  
23 undertaken to cure well-defined disease states such as brain tumor, epileptic  
24 foci and certain chronic pain syndromes.

25 (22) Refusing an invitation for an informal interview with the board re-  
26 quested under ORS 677.415.

27 (23) Violation of the federal Controlled Substances Act.

28 (24) Prescribing controlled substances without a legitimate medical pur-  
29 pose, or prescribing controlled substances without following accepted proce-  
30 dures for examination of patients, or prescribing controlled substances  
31 without following accepted procedures for record keeping.

1 (25) Providing written documentation for purposes of ORS 475C.783 with-  
2 out having legitimately diagnosed a debilitating medical condition, as de-  
3 fined in ORS 475C.777, or without having followed accepted procedures for  
4 the examination of patients or for keeping records.

5 (26) Failure by the licensee to report to the board any adverse action  
6 taken against the licensee by another licensing jurisdiction or any peer re-  
7 view body, health care institution, professional or medical society or associ-  
8 ation, governmental agency, law enforcement agency or court for acts or  
9 conduct similar to acts or conduct that would constitute grounds for disci-  
10 plinary action as described in this section.

11 (27) Failure by the licensee to notify the board of the licensee's voluntary  
12 resignation from the staff of a health care institution or voluntary limitation  
13 of a licensee's staff privileges at the institution if that action occurs while  
14 the licensee is under investigation by the institution or a committee thereof  
15 for any reason related to medical incompetence, unprofessional conduct,  
16 physical incapacity or impairment.

17 **(28) A conviction or finding of guilt for false representation in as-**  
18 **sisted reproduction under section 2 of this 2022 Act or unlawful use**  
19 **of human reproductive material under section 4 of this 2022 Act.**

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