

House Bill 4038

Sponsored by Representative LIVELY (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 amending ORS 677.190.

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

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

5 (1) **"Assisted reproduction" has the meaning given that term in ORS 109.239.**

6 (2) **"Donor" means an individual who provides human reproductive material intended for**
7 **use in assisted reproduction, whether or not the donation is made for consideration.**

8 (3) **"Health care facility" has the meaning given that term in ORS 442.015.**

9 (4) **"Human reproductive material" means:**

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

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

12 (5) **"Patient" means an individual who is under the care of a physician for the purpose**
13 **of assisted reproduction.**

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

15 **SECTION 2. (1) A person commits the crime of false representation in assisted reproduc-**
16 **tion if the person provides to a patient information related to any of the following, know-**
17 **ing or having reason to know that the information is false:**

18 (a) **An assisted reproduction procedure or treatment;**

19 (b) **The human reproductive material used or provided for the patient's assisted reproduc-**
20 **tion procedure or treatment;**

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

24 (d) **The medical history of the donor whose human reproductive material is used or pro-**
25 **vided for the patient's assisted reproduction, including but not limited to any illness that the**
26 **donor had at the time of donation, the donor's past illnesses or the social, genetic or family**
27 **history of the donor.**

28 (2) **A physician commits the crime of false representation in assisted reproduction if the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 physician uses or provides human reproductive material for assisted reproduction, knowing
 2 or having reason to know that the human reproductive material is other than the human
 3 reproductive material for which the patient provided consent.

4 (3) A health care facility commits the crime of false representation in assisted reproduc-
 5 tion if the health care facility:

6 (a) Provides a patient with human reproductive material other than the human repro-
 7 ductive material the patient provided consent to use in the patient’s assisted reproduction
 8 procedure or treatment; or

9 (b) Disregards any agreement or other form of consent related to the patient’s assisted
 10 reproduction procedure or treatment between the patient and the health care facility.

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

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

15 (a) A patient who gives birth to a child conceived through assisted reproduction that
 16 results from false representation in assisted reproduction;

17 (b) The spouse of a patient described in paragraph (a) of this subsection if the individual
 18 was the spouse at the time of the assisted reproduction procedure or treatment;

19 (c) A child conceived through assisted reproduction that results from false represen-
 20 tation in assisted reproduction; or

21 (d) A donor whose human reproductive material resulted in the birth of a child conceived
 22 through assisted reproduction that results from false representation in assisted reproduc-
 23 tion.

24 (2) An individual who brings a cause of action under subsection (1) of this section may
 25 bring a separate cause of action for each child born as a result of assisted reproduction that
 26 results from false representation in assisted reproduction.

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

30 (4) An action under this section must be commenced within six years after the commis-
 31 sion or discovery of the false representation in assisted reproduction, whichever is later.

32 **SECTION 4.** (1) A person commits the crime of unlawful use of human reproductive
 33 material if the person knowingly implants the person’s own human reproductive material
 34 into a patient through assisted reproduction without the patient’s prior knowledge and
 35 written informed consent to use that human reproductive material.

36 (2) Unlawful use of human reproductive material is a Class A misdemeanor.

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

38 677.190. The Oregon Medical Board may refuse to grant[,] or may suspend or revoke a license
 39 to practice for any of the following reasons:

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

41 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-
 42 self constitute unprofessional conduct. For purposes of this paragraph:

43 (A) “Alternative medical treatment” means:

44 (i) A treatment that the treating physician, based on the physician’s professional experience, has
 45 an objective basis to believe has a reasonable probability for effectiveness in its intended use even

1 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-
2 erally recognized or standard treatment or lacks the approval of the United States Food and Drug
3 Administration;

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

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

8 (B) "Alternative medical treatment" does not include use by a physician of controlled substances
9 in the treatment of a person for chemical dependency resulting from the use of controlled sub-
10 stances.

11 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-
12 ization, independent practice association, preferred provider organization or other medical service
13 provider organization may contract for patients on behalf of physicians.

14 (3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury
15 can be cured.

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

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

19 (6) Conviction of any offense punishable by incarceration in a Department of Corrections insti-
20 tution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified
21 to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

22 (7) Impairment as defined in ORS 676.303.

23 (8) Fraud or misrepresentation in applying for or procuring a license to practice in this state,
24 or in connection with applying for or procuring registration.

25 (9) Making statements that the licensee knows, or with the exercise of reasonable care should
26 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or
27 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-
28 ment of any disease or other condition of the human body or mind.

29 (10) Impersonating another licensee licensed under this chapter or permitting or allowing any
30 person to use the license.

31 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the
32 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-
33 son is not licensed.

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

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

38 (14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
39 the board may order a licensee to submit to a standardized competency examination. The licensee
40 shall have access to the result of the examination and to the criteria used for grading and evaluat-
41 ing the examination. If the examination is given orally, the licensee shall have the right to have the
42 examination recorded.

43 (15) Disciplinary action by another state of a license to practice, based upon acts by the licensee
44 similar to acts described in this section. A certified copy of the record of the disciplinary action of
45 the state is conclusive evidence thereof.

1 (16) Failing to designate the degree appearing on the license under circumstances described in
2 ORS 677.184 (3).

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

5 (18) Failing to report the change of the location of practice of the licensee as required by ORS
6 677.172.

7 (19) Imprisonment as provided in ORS 677.225.

8 (20) Making a fraudulent claim.

9 (21)(a) Performing psychosurgery.

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

15 (22) Refusing an invitation for an informal interview with the board requested under ORS
16 677.415.

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

18 (24) Prescribing controlled substances without a legitimate medical purpose, or prescribing
19 controlled substances without following accepted procedures for examination of patients, or pre-
20 scribing controlled substances without following accepted procedures for record keeping.

21 (25) Providing written documentation for purposes of ORS 475C.783 without having legitimately
22 diagnosed a debilitating medical condition, as defined in ORS 475C.777, or without having followed
23 accepted procedures for the examination of patients or for keeping records.

24 (26) Failure by the licensee to report to the board any adverse action taken against the licensee
25 by another licensing jurisdiction or any peer review body, health care institution, professional or
26 medical society or association, governmental agency, law enforcement agency or court for acts or
27 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
28 in this section.

29 (27) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the
30 staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the insti-
31 tution if that action occurs while the licensee is under investigation by the institution or a com-
32 mittee thereof for any reason related to medical incompetence, unprofessional conduct, physical
33 incapacity or impairment.

34 **(28) A conviction or finding of guilt for false representation in assisted reproduction un-**
35 **der section 2 of this 2022 Act or unlawful use of human reproductive material under section**
36 **4 of this 2022 Act.**

37