

Clinical Guidance to Assist in Medical Decision and/or Documentation of Abortion-Related Care Under Texas Law

UPDATED JANUARY 20, 2023. THE LAW IS CHANGING RAPIDLY. THIS INFORMATION WILL BE REVIEWED ON A WEEKLY BASIS AND UPDATED AS NEEDED TO REFLECT ANY SIGNIFICANT CHANGES.

Understanding the Guidance

1. The guidance on the slides that follow is merely guidance; all patient care decisions are made by clinicians.
2. The material on these slides is dense. The guidance has been written with intention, to provide clarity to the extent possible. Please read and consider carefully.
3. If concerns arise regarding patient safety, as a clinician, your first priority is the care of your patient. Clinicians should continue to prioritize appropriate patient care by adhering to commonly understood Medical Standards of Care, consistent with applicable law.

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When a potentially pregnant patient presents in the hospital:

STEP 1: Is the patient pregnant?



- If the patient is **NOT** pregnant, there is **NO** criminal or civil liability for appropriate medical care.
 - There is **NO** civil or criminal liability for miscarriage care.
 - There is **NO** civil or criminal liability for contraceptive measures, including post-sexual assault prophylaxis.

STEP 2: What type of pregnancy?

Intrauterine Pregnancy

- **Criminal liability, at any gestational stage**, unless the abortion is medically advised for the purpose of *saving the life of the mother*.
 - There is no exception from criminal liability for preserving the mother's health or in cases of rape or incest.
 - Abortion is permitted if a physician determines, in reasonable medical judgment, that
 - It is medically necessary "for the purpose of saving the life of the mother," **and**
 - The mother "has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places [her] at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced."
- Where the physician detects a fetal heartbeat, **civil liability** unless the physician believes a "medical emergency" exists.
 - Physician must determine whether the fetus has a detectable heartbeat using a test which is consistent with standard medical practice and appropriate for the estimated gestational age of the fetus and the condition of the patient and record in the patient's medical record gestational age, the method used to estimate gestational age, and the test used for detecting fetal heartbeat, including the date, time, and results of the test..
 - In a case of "medical emergency," the physician must document their belief that a medical emergency necessitated the abortion, and the physical condition of the pregnant woman that necessitated the abortion. "Medical emergency" is not defined.

Ectopic Pregnancy

- **NO** criminal liability. Texas law criminalizes aborting a fetus that is "in the woman's womb." The definition of abortion does not include "an act done with intent to remove an ectopic pregnancy."
- **NO** civil liability **if** the physician (a) has determined that there is no fetal heartbeat, **or** (b) believes a "medical emergency" exists due to the ectopic pregnancy and documents the medical emergency.

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STEP 2: What type of pregnancy? *(Continued)*

Heterotopic Pregnancy

- There may be criminal liability for medical care that ***intentionally*** aborts the intrauterine fetus, unless such care is necessary to save the life of the mother. Medical care that ***unintentionally*** results in loss of the intrauterine fetus does not give rise to criminal liability.
- Where the intrauterine fetus has a detectible heartbeat, there may be civil liability for medical care that ***knowingly*** aborts the intrauterine fetus unless, in the exercise of reasonable medical judgment, abortion of the intrauterine fetus is necessary to avoid a risk of death or substantial impairment of a major bodily function of the pregnant patient. Medical care that ***unknowingly*** results in loss of the intrauterine fetus does not give rise to civil liability.