

1 AN ACT relating to assisted reproduction.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) For purposes of this section:*

6 *(a) "Assisted reproduction" means a method of causing pregnancy other than*  
7 *through sexual intercourse, including but not limited to:*

8 *1. Intrauterine insemination;*

9 *2. In vitro fertilization and transfer of embryos; and*

10 *3. Intracytoplasmic sperm injection.*

11 *(b) "Health care provider" means an individual licensed by the Kentucky*  
12 *Board of Medical Licensure or the Kentucky Board of Nursing, pursuant to*  
13 *KRS Chapters 311 and 314; and*

14 *(c) "Human reproductive material" means a human sperm or ovum, or a*  
15 *human organism at any stage of development from reutilized ovum to*  
16 *embryo.*

17 *(2) A person is guilty of fraudulent assisted reproduction when he or she is a health*  
18 *care provider performing an assisted reproduction procedure on a patient and:*

19 *(a) Knowingly causes the use of human reproductive material from a donor*  
20 *whom the patient did not give written consent to receive it from; or*

21 *(b) Intentionally causes the use of his or her own human reproductive material*  
22 *without the patient's knowledge and written consent.*

23 *(3) Fraudulent assisted reproduction is a Class D felony.*

24 *(4) Any of the following persons may bring a cause of action for compensatory or*  
25 *punitive damages against any health care provider that violated subsection (2) of*  
26 *this section, the health care provider's employer, or both:*

27 *(a) The patient who becomes pregnant through assisted reproduction as a*

1                    result of a violation of subsection (2) of this section; or  
 2                    (b) A child conceived through assisted reproduction as a result of a violation of  
 3                    subsection (2) of this section.

4                    (5) An action under subsection (4) of this section must be commenced within five (5)  
 5                    years after the victim knew or should have known about the fraudulent assisted  
 6                    reproduction, or, if the victim is a child, within five (5) years after the child turns  
 7                    eighteen (18), whichever is later.

8                    ➔Section 2. KRS 311.597 is amended to read as follows:

9                    As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a  
 10                    character likely to deceive, defraud, or harm the public or any member thereof" shall  
 11                    include but not be limited to the following acts by a licensee:

- 12                    (1) Prescribes or dispenses any medication:
  - 13                    (a) With the intent or knowledge that a medication will be used or is likely to be  
 14                    used other than medicinally or for an accepted therapeutic purpose;
  - 15                    (b) With the intent to evade any law with respect to sale, use, or disposition of the  
 16                    medication;
  - 17                    (c) For the licensee's personal use or for the use of his immediate family when the  
 18                    licensee knows or has reason to know that an abuse of a controlled substance  
 19                    is occurring, or may result from such a practice;
  - 20                    (d) In such amounts that the licensee knows or has reason to know, under the  
 21                    attendant circumstances, that said amounts so prescribed or dispensed are  
 22                    excessive under accepted and prevailing medical practice standards; or
  - 23                    (e) In response to any communication transmitted or received by computer or  
 24                    other electronic means, when the licensee fails to take the following actions to  
 25                    establish and maintain a proper physician-patient relationship:
    - 26                    1. Verification that the person requesting medication is in fact who the  
 27                    patient claims to be;

- 1           2.   Establishment of a documented diagnosis through the use of accepted
- 2                    medical practices; and
- 3           3.   Maintenance of a current medical record.

4           For the purposes of this paragraph, an electronic, on-line, or telephonic  
5           evaluation by questionnaire is inadequate for the initial evaluation of the  
6           patient or for any follow-up evaluation.

7 (2) Issues, publishes, or makes oral or written representations in which grossly  
8           improbable or extravagant statements are made which have a tendency to deceive or  
9           defraud the public, or a member thereof, including but not limited to:

10          (a) Any representation in which the licensee claims that he can cure or treat  
11            diseases, ailments, or infirmities by any method, procedure, treatment, or  
12            medicine which the licensee knows or has reason to know has little or no  
13            therapeutic value;

14          (b) Represents or professes or holds himself out as being able and willing to treat  
15            diseases, ailments, or infirmities under a system or school of practice:

16            1.   Other than that for which he holds a certificate or license granted by the  
17                board, or

18            2.   Other than that for which he holds a degree or diploma from a school  
19                otherwise recognized as accredited by the board, or

20            3.   Under a school or system which he professes to be self-taught.

21           For purposes of this subsection, actual injury to a patient need not be established.

22 (3) A serious act, or a pattern of acts committed during the course of his medical  
23           practice which, under the attendant circumstances, would be deemed to be gross  
24           incompetence, gross ignorance, gross negligence, or malpractice.

25 (4) Conduct which is calculated or has the effect of bringing the medical profession  
26           into disrepute, including but not limited to any departure from, or failure to conform  
27           to the standards of acceptable and prevailing medical practice within the

1 Commonwealth of Kentucky, and any departure from, or failure to conform to the  
2 principles of medical ethics of the American Medical Association or the code of  
3 ethics of the American Osteopathic Association. For the purposes of this subsection,  
4 actual injury to a patient need not be established.

5 (5) Failure by a licensee to report a known or observed violation of KRS Chapter 311  
6 by another licensee as described in KRS 311.606.

7 (6) Violation by a licensee of KRS 304.39-215 or Section 1 of this Act.

8 (7) Conduct by a licensee that is subject to the penalties under KRS 304.99-060(4) or  
9 (5).