DISCLAIMER

THIS PRESENTATION IS INTENDED SOLELY AS AN INFORMATIONAL RESOURCE AND DOES NOT QUALIFY FOR CME CREDIT WHEN VIEWED OUTSIDE OF MYTMB.

Course access and CME credit are available **exclusively through MyTMB to physicians in designated primary or secondary specialties** required to comply with SB 31.

Texas Medical Board

Texas Abortion Law

SB 31: The Life of the Mother Act Summary and Case Studies

Learning Objectives

By the end of this course, participants will be able to:

- Understand what does and does not constitute an abortion under state law.
- Describe the medical emergency exception to the abortion ban and understand how to apply it.
- Explain the state standard of reasonable medical judgment and how it applies to clinical decision-making.
- Appropriately apply state abortion laws to relevant clinical scenarios.

Course Outline

- Describe the Life of the Mother Act.
- Define key concepts in Texas abortion law, including the definitions of abortion, ectopic pregnancy, and reasonable medical judgment.
- Case-based learning for obstetric and emergency medicine settings, demonstrating how the medical emergency exception to the abortion ban can be applied in clinical settings.
- Documentation and reporting requirements.
- This CME is required as part of the passage of SB 31.

SB 31: Life of the Mother Act - Overview

The Life of the Mother Act:

- Defines “medical emergency” uniformly in abortion laws[1]
- Shields doctors from legal or license penalties when acting in a medical emergency
- Doctors are not required to delay or withhold necessary patient treatment to protect the fetus
- No “aiding and abetting” liability for a “medical emergency”[2]
- Imminent harm **not** required[3]
- State must prove **no reasonable doctor** would act

Texas Abortion Laws AFTER SB 31

Texas Abortion Law – Post SB 31: Key Clinical Guidance

- General Rule: Abortion is prohibited
- Exception: Allowed only for a medical emergency when the pregnancy poses a risk to the patient's life
- The following are NOT exceptions:
  - Fetal anomaly (even severe) alone[4]
  - Rape
  - Incest
  - Maternal mental health[5]
  - Elective abortion

Life of the Mother's Act – Burden of Proof

- **Before the Life of the Mother Act:** it was unclear if doctors had the burden to prove a medical emergency existed if the legality of an abortion in a particular case was questioned.
- **After The Life of the Mother Act:** the state must prove that NO reasonable doctor would have thought that the patient had a medical emergency, making the abortion legal.[6]
- **Bottom line:** if you are practicing evidence-based medicine, following standard emergency protocols, and documenting appropriately, the legal risk of prosecution is extremely low.

Defining Abortion

Abortion:

- Means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means ***with the intent to cause the death of an unborn child*** of a woman known to be pregnant.
- The term does not include birth control devices or oral contraceptives.

Post Pregnancy Loss Care

- Removal of products of conception is allowed regardless of how the pregnancy ended[11]
  - Circumstances leading to fetal demise are irrelevant
- A woman does not commit a crime by having an abortion or self-managing an abortion
  - Women should receive the universal standard of care, including post-abortion care, regardless of the circumstances leading to pregnancy termination
  - Patients cannot be held liable or prosecuted for terminating a pregnancy[12]
- It is legal to use mifepristone and misoprostol for pregnancy loss treatment
  - Best practice is to indicate “for miscarriage management” on prescription to avoid delays

Ectopic Pregnancy

An ectopic pregnancy is defined in Texas law as the implantation of a fertilized egg or embryo

A. Outside of the uterus; or

B. In an abnormal location in the uterus, or in a scarred portion of the uterus causing the pregnancy to be non-viable.[13]

Termination of any ectopic pregnancy is not considered an abortion under Texas law.

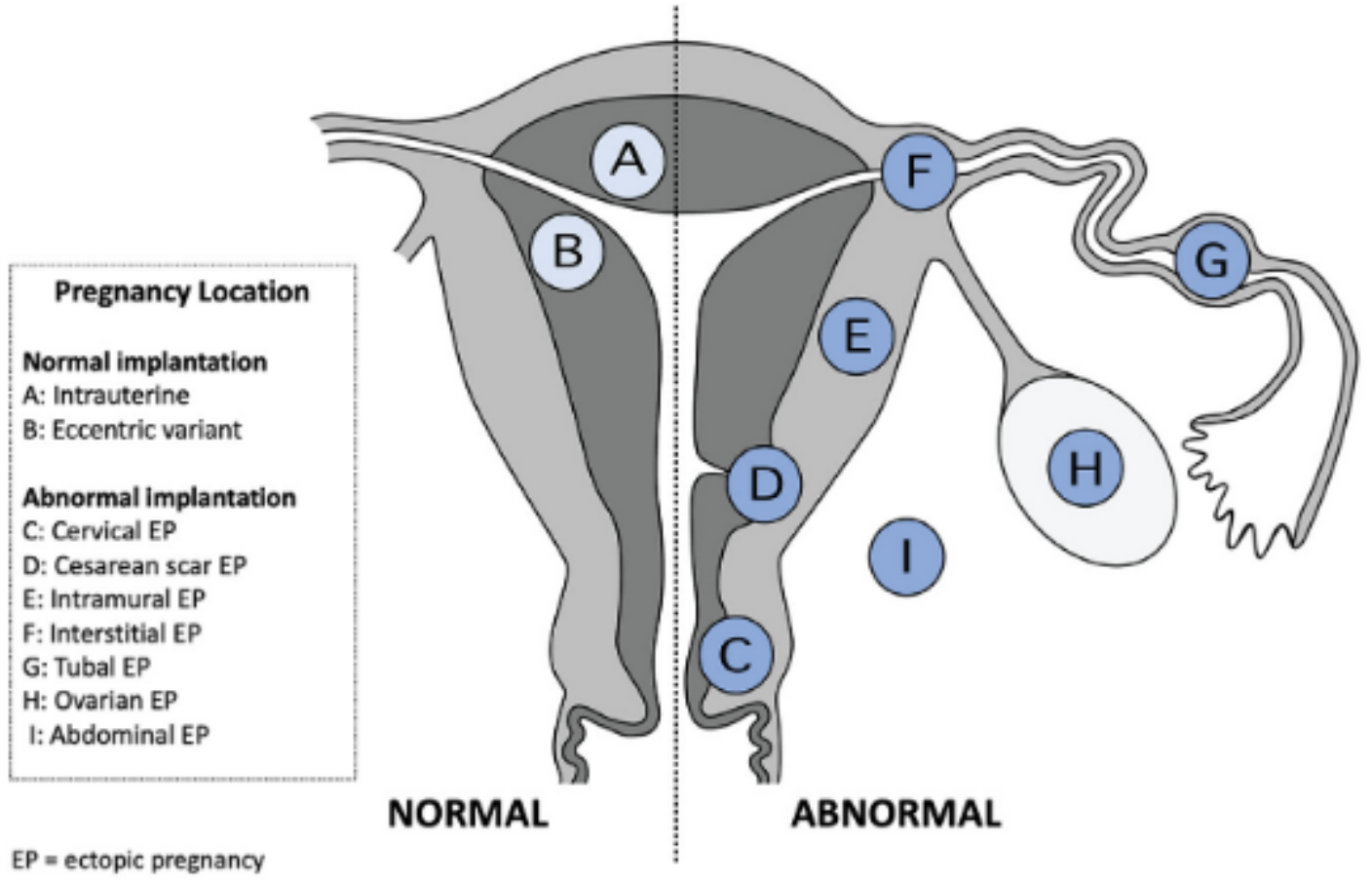
Not an Abortion

Six medical events that are not an abortion under Texas law:

1. Treatment of any ectopic pregnancy (see Slide 12)[7]
2. Deceased fetus removal – intrauterine fetal demise (IUFD)[8]
    - Includes D&E, induction, or medical management
3. Birth control and emergency contraception[9]
    - Includes “morning after” pills and devices like IUDs
4. Delivery to save the fetus's life
    - If performed with the intent to deliver a viable fetus
5. Unintentional fetal death from non-obstetric procedures[10]
6. Medical treatments not intended to end pregnancy
    - Chemotherapy, interventional cardiology procedures, etc.

Ectopic Pregnancy

FIGURE 7
Specific normal and abnormal pregnancy location sites



Strachowski et al. A Lexicon for First-Trimester US: Society of Radiologists in Ultrasound Consensus Conference Recommendations. AJOG 2025.

Medical Emergency Exception

To determine if there is a medical emergency as defined by the law, there are two questions that the treating doctor should consider:

1. Does the patient have a condition that is potentially fatal, capable of causing death, or likely to result in death, and does this condition either:[14]
   a. Place the patient at risk of death, **OR**
   b. Place the patient at serious risk of substantial impairment of a major bodily function?
2. Will terminating the pregnancy reduce or avert either of those risks?[15]

*If a **physician** answers "yes" to both questions, then the termination of pregnancy is legally allowed.*

Reasonable Medical Judgment

- Reasonable medical judgment is defined as medical judgment made by a reasonably prudent physician who is knowledgeable about a case and the treatment possibilities for the medical condition involved.[16]
- Reasonable medical judgment does not mean that every doctor would reach the same conclusion and does not mandate that a doctor in a true emergency await consultation with other doctors who may not be available.
- A physician exercising reasonable medical judgment is not held to a standard of medical certainty.
- Physicians do not have to agree in order for a decision to be considered reasonable.

Reasonable Medical Judgment

- The law permits a physician using reasonable medical judgment to address the risk that a life-threatening condition poses BEFORE a woman suffers the consequences of that risk.
- The law DOES NOT require that the woman's death be imminent OR that she suffer physical impairment before a physician may intervene.
- The law DOES NOT ask the doctor to wait to intervene until the mother is within an inch of death or her bodily impairment is fully manifest or practically irreversible.

Reasonable Medical Judgment

Treatment Affecting the Unborn Child[17]

- Physicians must provide treatment that offers the best opportunity for fetal survival, unless doing so creates a greater risk to the mother.
- There is no requirement to delay, alter, or withhold necessary care for the mother.

When to Report

Report filed for each induced abortion (not miscarriages or spontaneous abortions)[18]

- **No patient identifiers** allowed in reports
- Must include:
  - Facility licensure status
  - Patient demographics (year of birth, race, marital status, residence)
  - Procedure type and date
  - Patient survival and, if applicable, cause of death
  - Estimated gestational age (post-fertilization)
  - Date of last menstrual period (if known)
  - Patient's pregnancy history (prior births and abortions)
  - Compliance with required informed consent/sonogram materials (Ch. 171)
  - Method of disposing of embryonic/fetal tissue
  - If patient <18: details of parental consent, judicial bypass, or emergency circumstances
  - Pregnancy verification method
  - Type of anesthesia used
  - Whether procedure was due to medical emergency or to preserve the woman's health (including rationale)

When Not to Report

Not Reported/Exempt

- **Spontaneous abortions** (miscarriages) are not reported because they are not induced procedures.
- **Ectopic pregnancies** or procedures performed to treat life-threatening conditions (where the intent is not to terminate a pregnancy but to save the mother's life) are generally not classified as "induced abortions" under reporting law.
- Accidental or natural pregnancy losses are not reportable.

Privacy and Confidentiality

Confidentiality & Use of Data

- Reports are **confidential** and not subject to open records law.[19]
- HHSC may only release:
  - **Aggregate statistics** (no identifying info)
  - Data with consent of all identified parties
  - To courts, licensing boards, or treating medical personnel, when necessary

Privacy and Confidentiality

Confidentiality & Use of Data

- "[T]he HIPAA Privacy Rule [ ] protects reproductive healthcare information the same as all other sensitive medical information."[20]
- Physicians and health care providers are generally prohibited from disclosing protected health information unless required or permitted by law.
- Neither Texas nor federal law require a physician or other health care providers to disclose or report to law enforcement the identity of a woman for self-managing an abortion. [21]

Privacy and Confidentiality

Confidentiality & Use of Data

- HIPAA and state law contain exceptions allowing disclosure to a public health authority or health oversight agency, if the disclosure is required or authorized by law.[22]
- These exceptions allowed required reporting of protected health information to HHSC and DSHS for health oversight and public health activities.[23]
- Texas law requires that physicians and facilities provide certain information to HHSC when an abortion is performed, or when an abortion complication is treated.[24]
    - Forms for reporting the requisite information can be accessed through the HHSC website.[25]
    - None of the forms or underlying statutes include identification of the patient.

What is Not Aiding and Abetting

The Heartbeat Act (2021) allows a private citizen to sue someone who aids and abets an illegal abortion. An illegal abortion is one that does not meet the "medical emergency exception" definition.[14]

SB 31 clarified that the following do not count as aiding or abetting under the law:[15]

- **Communications**
  - Clinical discussions supporting whether a reasonable medical judgment abortion exception exists.
- **Patient Care & Counseling**
  - Speaking with or treating patients regarding a potential abortion exception.
- **Legal Guidance**
  - Consulting with an attorney about an exception to the abortion ban.
- **Support of Treating Physician**
  - Offering services/products when the treating physician has determined an exception applies.
- **Supplying Medical Products**
  - Providing medications or tools when an abortion is medically justified.

Framework for Analyzing Case Scenarios/Applying the Medical Emergency Exception

1. Would providing treatment/termination be considered an abortion under Texas law? If no, OK to treat/terminate (ectopic, miscarriage management, delivery to save fetus, unintentional fetal death, medical treatment not intended to end pregnancy).

2. If yes, does this situation qualify as a medical emergency that permits treatment under Texas law?
   a. Does the patient have a condition that is potentially fatal, capable of causing death, or likely to result in death, and does this condition either:
      i. Place the patient at any risk of death, **OR**
      ii. Place the patient at serious risk of substantial impairment of a major bodily function?
   b. Will terminating the pregnancy reduce or avert either of those risks?

If a **physician** answers “yes” to both (a) and (b), then the termination of pregnancy is legally allowed.

Case 1: PPROM

34-year-old G2P0010 at 18w0d presents with PPROM (confirmed via testing method of choice for rupture of membranes, ferning, anhydramnios). Patient states started leaking fluid this morning. On exam there is no evidence of labor (closed cervix) and no evidence of infection or bleeding.

Questions:

1) Would termination be considered an abortion in this case?
2) Is there a legal reason to delay intervention?
3) Must this case be reported to DSHS?

Case 1: PPROM Discussion

1. **Would termination be considered an abortion in this case?**

   YES. Termination would be considered an abortion but is subject to the abortion ban exception because of the risk to the mother.

2. **Is there a legal reason to delay treatment with this presentation?**

   NO. Although some women and their physicians may choose an observation care path, the threat of death or serious impairment of major organ function should this patient develop chorioamnionitis need not be imminent.

3. **Must this case be reported to DSHS?**

   YES. Both the delivering physician and the hospital must report to the state. Reason is treatment of PPROM.

Case 2: PPROM with Chorioamnionitis

34-year-old G2P0010 at 18w0d presents with PPROM (confirmed via testing method of choice for rupture of membranes, ferning, anhydramnios). Patient states started leaking fluid four days ago and now comes into the hospital due to abdominal pain, fever and foul-smelling discharge. On exam, the patient is febrile to 101.2F. She has a closed cervix, but purulent discharge is noted in the vaginal vault. Mild fundal tenderness is noted.

Questions:

1) Would termination be considered an abortion in this case?
2) Is there a legal reason to delay intervention?
3) Must this case be reported to DSHS?

Case 2: PPROM Discussion

1. **Would termination be considered an abortion in this case?**

   YES, as in the prior scenario.

2. **Is there a legal reason to delay treatment?**

   NO, as in the prior scenario.

3. **Must this case be reported to DSHS?**

   YES. Both the delivering physician and the hospital must report to the state. Reason is PPROM.

Case 3: Ectopic Pregnancy

25-year-old G4P1A2 presents with bleeding and positive home pregnancy test. The patient has abdominal pain. Patient has history of ruptured appendix and hemicolectomy due to abscess two years ago. BHCG 2100 and normal CBC. Ultrasound findings with thin endometrial lining without intrauterine pregnancy, complex adnexal mass, and free fluid in the cul-de-sac. Hgb 9 g/dL.

Questions:

1) What are the next steps in management of this patient?
2) Is surgical treatment in this case an abortion under Texas law?
3) Must this case be reported to DSHS?

Case 3: Ectopic Pregnancy Discussion

1. What are the next steps in management of this patient?

Follow appropriate evidence-based guidelines for management of ectopic pregnancy and maternal resuscitation for bleeding.

2. Is surgical treatment in this case an abortion under Texas law?

NO. Treatment of ectopic pregnancy is not considered an abortion under Texas law.

3. Must this case be reported to DSHS?

No. Management of an ectopic pregnancy is NOT an abortion under Texas law.

Case 4: Incomplete Early Pregnancy Loss

30-year-old G3P2 presents at nine weeks gestational age with bleeding and cramping. Patient has history of appendectomy and previous C-section for breech presentation. Ultrasound demonstrates early pregnancy loss with a fetal pole measuring 10mm without cardiac activity. Pelvic exam shows brisk vaginal bleeding and clot at the cervical os. Hgb 9.5 g/dL, maternal HR 115 bpm.

Questions:

1) Is standard management of this situation an abortion under Texas law?
2) Must this case be reported to DSHS?
3) Is it legal to use misoprostol and mifepristone to treat early pregnancy loss in Texas?

Case 4: Incomplete Early Pregnancy Loss Discussion

1. **Is standard management in this case an abortion under Texas law?**

   NO. Management of an incomplete early pregnancy loss is NOT an abortion under Texas law.

2. **Must this case be reported to DSHS?**

   YES. Both the delivering physician and the hospital must report to the state. Reason is PPROM.

3. **Is it legal to use misoprostol and mifepristone to treat early pregnancy loss in Texas?**

   YES. It is legal to treat early pregnancy loss with both mifepristone and misoprostol in Texas.

Case 5: Trisomy 18

24-year-old G3P2002 at 32w0d with a fetus that has known trisomy 18 (confirmed via amniocentesis). The fetus is found to have reverse end diastolic flow on umbilical artery Doppler studies and non-reactive fetal heart rate testing. MFM recommends delivery due to non-reassuring fetal status. The fetus is breech. After discussion, the patient has opted for an unmonitored induction due to the lethal prognosis and declines cesarean delivery for fetal distress.

Questions:

1) Is induction of labor in this case considered a termination of pregnancy?
2) Does this case have to be reported DSHS as a termination?

Case 5: Trisomy 18 Case Discussion

1. **Is induction of labor in this case considered a termination of pregnancy?**

   NO. Delivery for severe fetal growth restriction at 32 weeks with reversed end diastolic flow of the umbilical artery Doppler study is standard obstetrical management for non-reassuring fetal status. This delivery is occurring at viability and the goal is to preserve fetal life – i.e. prolonging pregnancy in this state would present further harm to the fetus.

2. **Does this case have to be reported to DSHS as a termination?**

   NO. When a patient declines fetal monitoring in the presence of a lethal condition, this does not equate with "termination." It is the patient's choice to decline a cesarean delivery in the presence of a life-limited anomaly. The intention is for a live birth, and the neonate will be cared for according to the patient's wishes. As above in #1, this is not considered a termination of pregnancy.

REMINDER

A fetal anomaly ***alone*** is not subject to the medical exception to the abortion ban.

The mother must have a life-threatening physical condition in order for the exception to apply.

Case 6: Anencephaly

A 29-year-old G2P1001 at 20w2d gestation without any prior prenatal visits presents for establishment of prenatal care. Prior obstetrical history is unremarkable for a prior vaginal delivery at term. A fetal anatomic survey is performed, noting a singleton live fetus with anencephaly.

Questions:

1) Is therapeutic termination of pregnancy (abortion) for lethal fetal anomalies legal in Texas?
2) If the patient develops preeclampsia with severe features at 33 weeks' gestation, is delivery considered an abortion under current state law?

Case 6: Anencephaly Discussion

1. **Is therapeutic termination of pregnancy (abortion) for lethal fetal anomalies legal in Texas?**

   NO. A lethal fetal abnormality does not meet the criteria set out in Texas state law for termination of pregnancy and therefore cannot be performed legally within the State of Texas.

2. **The patient subsequently develops preeclampsia with severe features at 33 weeks' gestation. Is this case considered an abortion under current state law?**

   NO. A medical/obstetrical indication for delivery in the presence of a life-limited fetal condition with concurrent maternal instability is not considered an abortion. It is appropriate to deliver this patient even if there is no expectation of long-term survival of the fetus.

Case 7: Maternal Malignancy

A 29-year-old G2P1001 at 12 weeks gestation presents with newly diagnosed acute myeloid leukemia. She requires immediate initiation of chemotherapy. The treating oncology and obstetric teams agree that delaying chemotherapy until after pregnancy would result in a high likelihood of maternal death or serious, permanent impairment of major organ function.

Questions:

1) Is there a legal reason to delay intervention?
2) Must this case be reported to DSHS?

Case 7: Maternal Malignancy Discussion

1. Is there a legal reason to delay intervention?

NO. The patient's cancer requires urgent chemotherapy, and pregnancy continuation makes treatment unsafe and life-threatening. Termination meets the medical exception.

2. Must this case be reported to DSHS?

YES. The hospital and the performing physician must report to the state.

Case 8: Retained Products After Abortion

A 35-year-old G3P3003 presents to an emergency department with a fever, lower abdominal pain, and vaginal bleeding after having a surgical abortion outside of Texas. Ultrasound demonstrates retained products of conception.

Questions:

1) Is it legal to empty the uterus of this patient?
2) If you perform a D&C, must this procedure be reported to DSHS?
3) Do you have to report the abortion complication of retained products with infection to DSHS as an abortion or as an abortion complication?

Case 8: Retained Products After Abortion Discussion

1. Is it legal to empty the uterus of this patient?

YES. The pregnancy has already ended, therefore ongoing treatment of any retained products is not an abortion and is not considered aiding and abetting an abortion.

2. If you perform a D&C, must this procedure be reported to DSHS as an abortion?

NO. A D&C in this situation is not an abortion and does not need to be reported.

3. Do you have to report the abortion complication of retained products with infection to DSHS?

YES. This must be reported through the abortion complication reporting form.

Case 9: Unintentional Fetal Demise After Non-Obstetric Surgery

A 27-year-old G2P1001 at 16 weeks gestation presents with acute appendicitis. She undergoes urgent laparoscopic appendectomy. The surgery is uncomplicated, but two days later, the patient is found to have no fetal cardiac activity on ultrasound.

Questions:

1) Does this case meet the legal definition of abortion in Texas?
2) Must this case be reported to DSHS as an abortion?

Case 9: Unintentional Fetal Demise After Non-Obstetric Surgery Discussion

1. Does this case meet the legal definition of abortion in Texas?

NO. Texas law explicitly requires “intent to cause the death of an unborn child” in definition of abortion and includes an exception for “death or injury of an unborn child result[ing] from treatment provided to a pregnant female based on a physician's reasonable medical judgment if the death of or injury to the unborn child was accidental or unintentional.” The intent of the surgery was to treat appendicitis, a non-obstetric emergency and the fetal death was an unintended complication.

2. Must this case be reported to DSHS as an abortion?

NO. Because this does not meet the statutory definition of abortion, it does not trigger mandatory abortion reporting requirements.

House Bill 7 – Pill Bill

(2nd Special Session) – Abortion-Inducing Drugs

- Prohibits the manufacture, distribution, mailing, transporting, delivering, prescribing, or providing an abortion-inducing drug in this state. However, this prohibition does not include these same drugs if they are used solely to treat medical emergencies, ectopic pregnancies, miscarriage, or are used for other medical reasons that are not elective abortion.[18]
- Enforced solely by a private qui tam “bounty hunter” cause of action.
- Qui tams can be brought against those that violate or intend to violate the prohibition.
- Statute of Limitations is six years.

House Bill 7 – Pill Bill

Blanket Exemption (Suits Cannot be Brought Against These Individuals & Entities)[16]

- Hospitals
- Health care facilities
- Physician Groups
- Internet service providers, internet search engines, cloud service providers.
- Texas licensed physicians for conduct while located in Texas.
- Texas licensed health providers for conduct while located in Texas.

Conditional Exemption (Suits Cannot be Brought if Person Meets the Condition)[17]

- Any “person” who is providing the drugs so long as they are doing so for a legal purpose.
- Texas licensed physicians located outside of Texas so long as they are prescribing for a legal purpose.
- Texas licensed providers (not physicians) located outside of Texas so long as they are providing for a legal purpose.

Endnotes

1) §171.002(3), H&S Code
2) §171.2011(b), H&S Code
3) In re State, 682 S.W.3d 890 (Tex. 2023)
4) §285.202(a-1), H&S Code
5) §170A.002(c), H&S Code; §171.046(b), H&S Code
6) In re State, 682 S.W.3d 890 (Tex. 2023)
7) § 245.002(4-a), H&S Code
8) §170A.0022(2), H&S Code
9) §245.002(1), H&S Code
10) §170A.0023(b), H&S Code
11) §170A.0022(2), H&S Code
12) §170A.003, H&S Code
13) §245.002(4-a)(B), H&S Code
14) §170A.002(b), H&S Code
15) In re State, 682 S.W.3d 890 (Tex. 2023)
16) §170A.001 (4), H&S Code
17) §170A.0021, H&S Code
18) §245.011, H&S Code
19) Tex. Gov't Code ch. 552
20) Purl v. United States Dep't of Health & Human Services, No. 2:24-CV-228-Z, (N.D. Tex. June 18, 2025).
21) Note: for an abortion involving a minor or adult with disabilities where abuse is suspected, a physician or healthcare provider would still be subject to the reporting requirements under Texas's abuse-reporting laws
22) §159.004, Occ. Code; 42 CFR §164.512.
23) See Texas Health and Human Services, HIPAA Privacy Standards - Submitters of PHI.
24) §§ 170.002, 171.006, 171.0124, 245.011, 285.202, H&S Code
25) See Texas Health and Human Services, Abortion Facilities, Abortion Reporting.

DISCLAIMER

THIS PRESENTATION IS INTENDED SOLELY AS AN INFORMATIONAL RESOURCE AND DOES NOT QUALIFY FOR CME CREDIT WHEN VIEWED OUTSIDE OF MYTMB.

Course access and CME credit are available **exclusively through MyTMB to physicians in designated primary or secondary specialties** required to comply with SB 31.