

## 2023 Kansas Statutes

**65-6716. Same; required notice to patients receiving medication abortion; signage in certain facilities; contents; criminal penalty for violation; fines; civil actions against physicians.** (a) As used in this section:

- (1) "Abortion" means the same as defined in K.S.A. 65-6701, and amendments thereto.
- (2) "Medication abortion" means the use or prescription of any drug for the purpose of inducing an abortion.
- (3) "Medical emergency" means the same as defined in K.S.A. 65-6701, and amendments thereto.

(b) (1) Any private office, freestanding surgical outpatient clinic, hospital or other medical care facility or clinic or any pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post a conspicuous sign that is clearly visible to patients and customers, that is printed with lettering that is legible and at least 3/4 of an inch boldfaced type and that reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources."

The notice shall also include information about the department of health and environment website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) (A) Any private office or freestanding surgical outpatient clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in each patient waiting room and patient consultation room used by patients seeking medication abortions.

(B) A hospital or other medical care facility or clinic where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion that is not a private office or freestanding surgical outpatient clinic shall post the sign required by paragraph (1) in each patient admission area used by patients seeking medication abortions that use mifepristone.

(C) A pharmacy where mifepristone is prescribed, dispensed or administered for the purpose of inducing a medication abortion shall post the sign required by paragraph (1) in the area inside the premises where customers are provided prescription medications and on the exterior of the premises in the area where customers are provided prescription medications via a drive-through window.

(c) (1) Except in the case of a medical emergency, no physician shall provide, induce or attempt to provide or induce a medication abortion that use mifepristone without informing the woman, in writing, in the manner prescribed by K.S.A. 65-6709, and amendments thereto, and also either by telephone or in person, at least 24 hours prior to the medication abortion:

(A) That it may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and

(B) information on reversing the effects of a medication abortion that uses mifepristone is available on the department of health and environment's website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(2) After a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of performing a medication abortion, the physician or an agent of the physician shall provide a legible, written notice to the patient that

includes the same information as required under subsection (b)(1).

(d) When a medical emergency compels the performance of a medication abortion that use mifepristone, the physician shall inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

(e) Within 90 days after the effective date of this section, the department of health and environment shall cause to be published, in English and in each language that is the primary language of 2% or more of the state's population, in print and on the website required to be maintained under K.S.A. 65-6710, and amendments thereto, comprehensible materials designed to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The website shall also include other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

(f) Upon a first conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

(g) The department of health and environment shall assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital or other clinic or facility that fails to post a sign required by subsection (b). Each day that a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant woman, is performed in any private office, freestanding surgical outpatient clinic, hospital or other facility or clinic when the required sign is not posted during a portion of that day's business hours when patients or prospective patients are present shall be a separate violation. The department of health and environment shall remit all moneys received from fines under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state general fund.

(h) (1) If a physician provides a medication abortion using mifepristone in violation of this section, the following individuals may bring a civil action in a court of competent jurisdiction against the physician for actual damages, exemplary and punitive damages and any other appropriate relief:

- (A) A woman to whom such medication abortion has been provided;
- (B) the father of the unborn child who was subject to such medication abortion; or
- (C) any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

(2) Notwithstanding any other provision of law, any action commenced in accordance with this subsection shall be filed within two years after the later of:

- (A) The date of the discovery of the violation under this section; or
- (B) the conclusion of a related criminal case.

(3) In any action brought under this section, the court shall award reasonable attorney fees and costs to:

- (A) A prevailing plaintiff; or
- (B) a prevailing defendant upon a finding that the action was frivolous and brought in bad faith.

(4) Except for the woman to whom the medication abortion was provided, no action may be brought by any person whose criminal conduct resulted in the pregnancy, and any such person shall not be awarded any damages in any action brought pursuant to this section.

(i) In any civil or criminal proceeding or action brought under this section, the court shall rule whether the anonymity of any woman to whom a medication abortion has been provided, induced or attempted to be provided or induced shall be preserved from public disclosure, if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the

woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced or attempted to be provided or induced, any person, other than a public official, who brings an action under this section shall do so under a pseudonym. This subsection shall not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

(j) If any provision of this section, or any application thereof to any person or circumstance, is held invalid by court order, then such invalidity shall not affect the remainder of this section and any application thereof to any person or circumstance that can be given effect without such invalid provision or application, and to this end, the provisions of this section are declared to be severable.

(k) The provisions of this section shall be a part of and supplemental to the woman's-right-to-know act.

**History:** L. 2023, ch. 88, § 1; July 1.