



PHYSICIAN'S INDUCED ABORTION REPORTING FORM VOLUNTARY AND INFORMED CONSENT

South Dakota Codified Law § 34-23A-37
(also 45 C.F.R. §§ 164.512(b)(1)(i) and 164.514(e)(3)(i))

Name of Hospital, Clinic, or Physician's Office:
Date of Report (Month/Day/Year):
Patient ID Number:
SDCL 34-23A-43 (verification purposes) Complete the appropriate categories regarding informed consent information supplied to pregnant mothers. This includes information described in SDCL 34-23A-10.1(1), information described in SDCL 34-23A-10.1(2), printed educational materials described in SDCL 34-23A-10.3, and opportunity to view sonogram in SDCL 34-23A-37(4).
<input type="checkbox"/> Pregnant mother was timely provided the information as described in SDCL 34-23A-10.1(1). Information was provided: <input type="checkbox"/> in person (face-to-face) <input type="checkbox"/> during telephone conversation Information was provided by: <input type="checkbox"/> referring physician <input type="checkbox"/> physician performing induced abortion
<input type="checkbox"/> Pregnant mother was timely provided the information as described in SDCL 34-23A-10.1(2). Information was provided: <input type="checkbox"/> in person (face-to-face) <input type="checkbox"/> during telephone conversation Information was provided by: <input type="checkbox"/> referring physician <input type="checkbox"/> agent of referring physician <input type="checkbox"/> physician performing induced abortion <input type="checkbox"/> agent of physician performing induced abortion
<input type="checkbox"/> Pregnant mother was offered the printed materials as described in SDCL §§ 34-23A-10.3. <input type="checkbox"/> Pregnant mother accepted the printed materials on public and private assistance agencies. <input type="checkbox"/> Pregnant mother did not accept the printed materials on public and private assistance agencies. AND <input type="checkbox"/> Pregnant mother accepted the Fetal Growth and Development booklet. <input type="checkbox"/> Pregnant mother did not accept the Fetal Growth and Development booklet.
<input type="checkbox"/> Pregnant mother was offered the DOH website address for "Information on Fetal Development, Birth, Abortion and Adoption." <input type="checkbox"/> Pregnant mother accepted the DOH website address. <input type="checkbox"/> Pregnant mother did not accept the DOH website address.



Pregnant mother was offered the opportunity to view a sonogram of her unborn child prior to the procedure as described in SDCL 34-23A-37(4) and 34-23A-52.

Pregnant mother accepted the opportunity to view a sonogram of her unborn child.

OR

Pregnant mother did not accept the opportunity to view a sonogram of her unborn child.

Pregnant mother was offered the opportunity to hear the heartbeat of her unborn child prior to the procedure as described in SDCL 34-23A-37(4) and 34-23A-52.

Pregnant mother accepted the opportunity to hear the heartbeat of her unborn child.

OR

Pregnant mother did not accept the opportunity to hear the heartbeat of her unborn child.

Pregnant mother obtained induced abortion: Yes No Unknown
SDCL 34-23A-37(3), 34-23A-37(4), and 34-23A-52.

Pregnant mother obtained induced abortion. **Pregnant mother was not provided the information** described in SDCL §§ 34-23A-10.1(1) or 34-23A-10.1(2) **because of a medical emergency** which so complicated the medical condition of the pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death, on the basis of the physician's good faith clinical judgment. SDCL §§ 34-23A-10.1 (introductory paragraph) and 34-23A-7(1), and 34-23A-56. Report of Induced Abortion Form DOH-PO66 must be submitted to Department of Health.

Pregnant mother obtained induced abortion. **Pregnant mother was not provided the information** described in SDCL §§ 34-23A-10.1(1) or 34-23A-10.1(2) **because a delay would have created a serious risk of substantial and irreversible impairment of a major bodily function**, in the physician's good faith clinical judgment. SDCL §§ 34-23A-10.1 (introductory paragraph) and 34-23A-7(1), and 34-23A-56. Report of Induced Abortion Form DOH-PO66 must be submitted to Department of Health.

Return completed
report to:
South Dakota
Department of Health
615 East 4th Street
Pierre, South Dakota 57501-2536



34-23A-10.1. VOLUNTARY AND INFORMED CONSENT REQUIRED--MEDICAL EMERGENCY EXCEPTION--INFORMATION PROVIDED.

No abortion may be performed unless the physician first obtains a voluntary and informed written consent of the pregnant woman upon whom the physician intends to perform the abortion, unless the physician determines that obtaining an informed consent is impossible due to a medical emergency and further determines that delaying in performing the procedure until an informed consent can be obtained from the pregnant woman or her next of kin in accordance with chapter 34-12C is impossible due to the medical emergency, which determinations shall then be documented in the medical records of the patient. A consent to an abortion is not voluntary and informed, unless, in addition to any other information that must be disclosed under the common law doctrine, the physician provides that pregnant woman with the following information:

1. A statement in writing providing the following information:
 - a. The name of the physician who will perform the abortion;
 - b. That the abortion will terminate the life of a whole, separate, unique, living human being;
 - c. That the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;
 - d. That by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated; (e) A description of all known medical risks of the procedure and statistically significant risk factors to which the pregnant woman would be subjected, including:
 - i. Depression and related psychological distress; (ii) Increased risk of suicide ideation and suicide;
 - ii. A statement setting forth an accurate rate of deaths due to abortions, including all deaths in which the abortion procedure was a substantial contributing factor;
 - iii. All other known medical risks to the physical health of the woman, including the risk of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
 - e. The probable gestational age of the unborn child at the time the abortion is to be performed, and a scientifically accurate statement describing the development of the unborn child at that age; and
 - f. The statistically significant medical risks associated with carrying her child to term compared to undergoing an induced abortion.
 - g. That even after a pregnant mother takes Mifepristone it is still possible to discontinue a drug-induced abortion by not taking the prescribed Misoprostol; and
 - h. That information on discontinuing a drug-induced abortion is available on the Department of Health website.



The disclosures set forth above shall be provided to the pregnant woman in writing and in person no later than two hours before the procedure is to be performed. The physician shall ensure that the pregnant woman signs each page of the written disclosure with the certification that she has read and understands all of the disclosures, prior to the patient signing a consent for the procedure. If the pregnant woman asks for a clarification or explanation of any particular disclosure, or asks any other question about a matter of significance to her, the explanation or answer shall be made in writing and be given to the pregnant woman before signing a consent for the procedure and shall be made part of the permanent medical record of the patient;

2. A statement by telephone or in person, by the physician who is to perform the abortion, or by the referring physician, or by an agent of both, at least twenty-four hours before the abortion, providing the following information:
 - a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
 - b. That the father of the unborn child is legally responsible to provide financial support for her child following birth, and that this legal obligation of the father exists in all instances, even in instances in which the father has offered to pay for the abortion;
 - c. The name, address, and telephone number of a pregnancy help center in reasonable proximity of the abortion facility where the abortion will be performed; and
 - d. That she has a right to review all of the material and information described in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3, and the website described in § 34-23A-10.4. The physician or the physician's agent shall inform the pregnant woman, orally or in writing that the materials have been provided by the State of South Dakota at no charge to the pregnant woman. If the pregnant woman indicates, at any time, that she wants to review any of the materials described, such disclosures shall be either given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

Prior to the pregnant woman signing a consent to the abortion, she shall sign a written statement that indicates that the requirements of this section have been complied with. Prior to the performance of the abortion, the physician who is to perform the abortion shall receive a copy of the written disclosure documents required by this section, and shall certify in writing that all of the information described in those subdivisions has been provided to the pregnant woman, that the physician is, to the best of his or her ability, satisfied that the



pregnant woman has read the materials which are required to be disclosed, and that the physician believes she understands the information imparted. (SL 2005, ch 186, §§ 10 and 11 provide: "Section 10. If any court of law enjoins, suspends, or delays the implementation of the provisions of section 7 of this Act, the provisions of § 34-23A-10.1, as of June 30, 2005, are effective during such injunction, suspension, or delayed implementation." "Section 11. If any court of law finds any provisions of section 7 of this Act to be unconstitutional, the other provisions of section 7 are severable. If any court of law finds the provisions of section 7 of this Act to be entirely or substantially unconstitutional, the provisions of § 34-23A-10.1, as of June 30, 2005, are immediately reeffective.")

34-23A-10.3. PUBLICATION OF EDUCATIONAL MATERIALS.

The health department shall publish, in culturally sensitive languages, within one hundred eighty days after July 1, 2005, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Materials designed to inform the pregnant woman of all the disclosures enumerated in § 34-23A-10.1;
2. Materials designed to inform the pregnant woman of public and private agencies and services available to assist a pregnant woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a list of the agencies available and a description of the services they offer; and
3. Materials designed to inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a pregnant woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures or drawings representing the development of unborn children at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

The materials shall be printed in a typeface large enough to be clearly legible and shall be available at no cost from the Department of Health upon request and in appropriate number to any person, facility or hospital.

34-23A-37. INFORMATION COLLECTION FORM.

The Department of Health shall prepare a reporting form for physicians which shall provide for the collection of the following information:

1. The number of pregnant mothers to whom the physician provided the information described in subdivision 34-23A-10.1(1) and of those pregnant mothers, the number to whom the physician provided information in the capacity of a referring physician and the number to whom the physician provided information in the



- capacity of a physician who is to perform the abortion;
2. The number of pregnant mothers to whom the physician provided the information described in subdivision 34-23A-10.1(2); of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;
 3. The number of pregnant mothers who availed themselves of the opportunity to obtain a copy of the printed information described in § 34-23A-10.3, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion;
 4. The number of pregnant mothers who availed themselves of the opportunity to view a sonogram image, hear the heartbeat of the unborn child, or both, pursuant to § 34-23A-52, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion;
 5. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four hours before the abortion was not provided because an immediate abortion was necessary to avert the pregnant mother's death, and the number of abortions in which such information was not so provided because a delay would have created a serious risk of substantial and irreversible impairment of a major bodily function;
 6. The name of the hospital or physician office;
 7. The month, day, and year of the report; and
 8. A unique patient number that can be used to link the report under this section to the medical report for inspection, clarification, and correction purposes, but which cannot, of itself, reasonably lead to the identification of any pregnant mother obtaining an abortion.

34-23A-52. OPPORTUNITY TO VIEW SONOGRAM REQUIRED.

No physician may take a consent for an abortion from a pregnant mother without first offering the pregnant mother an opportunity to view a sonogram and hear the heartbeat of her unborn child. The physician shall offer to describe the images on the sonogram if the pregnant mother consents. The pregnant mother's response to the offer under this section shall be documented by the physician in the patient's medical records, including the date and time of the offer and the pregnant mother's signature to her response to the offer.