



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

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THIRTEENTH DISTRICT

Regulation of First Trimester Abortions in Doctor's Offices

COMMITTEE ASSIGNMENTS:
COUNTIES, CITIES AND TOWNS
FINANCE
SCIENCE AND TECHNOLOGY

Q. Can the Commonwealth of Virginia regulate first trimester abortions done in doctor's offices?

A. Yes. Attorney General Cuccinelli wrote (8/20/10) to Del. Bob Marshall that: "It is my opinion that the Commonwealth has the authority to promulgate regulations for facilities in which first trimester abortions are performed as well as for providers of first trimester abortions ..."

Q. Which state agencies did the Attorney General say could regulate abortion and to what extent?

A. The VA Board of Health can regulate abortion facilities and the Board of Medicine can regulate doctors "including providing guidelines for certain procedures and the ability to license, investigate, and discipline physicians, including those who perform abortions."

Q. Why did the AG say Virginia has the authority to regulate abortion in doctors' offices?

A. "The General Assembly has afforded certain agencies broad authority to regulate in the area of health ... Regulations would be appropriate when medical procedures carry certain risks. The potential complications of abortion procedures include hemorrhage, cervical laceration, uterine perforation, injury to bowels or bladder and pulmonary complications. Furthermore, these complications 'must be immediately and adequately treated.' Regulatory boards may distinguish between abortion and other procedures because 'abortion is inherently different from other medical procedures,' and for the purpose of regulation, abortion services are rationally distinct from other routine medical services if for no other reason than the particular gravitas of the moral, psychological, and familial aspects of the abortion decision."

Q. Did Virginia previously regulate abortion in doctors' offices?

A. Yes, the AG noted that from November 12, 1981 through 1984 the Virginia Board of Health adopted Rules and regulated doctor's offices where first trimester abortions were performed.

Q. Do federal court decisions back up the conclusion of Attorney General Cuccinelli?

A. The AG cited the Supreme Court case of *Planned Parenthood vs. Casey* (1992) that a state has "legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus." He also cited the *Greenville Women's Clinic* decisions from the Fourth Federal Circuit Court of Appeals in Richmond which ruled that South Carolina's Health Department could regulate abortion clinics. Virginia is in the Fourth Circuit, so the *Greenville* decisions apply to Virginia abortionists if state agencies so act.

Q. Which regulations were upheld in the Greenville Women's Clinic cases that apply to Virginia?

A. South Carolina's Health Department derived its regulations in part from the American College of Obstetricians and Gynecologists, Planned Parenthood's Medical Standards, the National Abortion Federation and the American Institute of Architects, which provides "model standards" for "constructing and equipping new medical facility projects." Standards "promote high quality care for all women seeking abortions" and "serve as a useful resource for local and state agencies charged with safeguarding the public's health."

Areas addressed: abortion clinics are defined as providing five or more first trimester abortions per month; clinics must be inspected, penalized for non compliance; employees must have TB tests and CPR/other training; RN must supervise all nursing care; patient rights must be publicly posted; only licensed MD's with hospital admitting privileges can perform abortions; lab tests must include urine and STD screening; safety policies/procedures must be written; insects/pests must be controlled; fire equipment must be in place; proper operating field sterilization, infection control & waste disposal procedures must be followed; building design must ensure emergency transport/recovery of patients; non-expired drugs must be available for seven specific conditions; medical records must be retained for 10 years; dressing rooms must be well lit and ventilated.

Q. Can Virginia regulate abortions if abortion costs increase and more record keeping is required?

A. The *Greenville* cases held that: "Both Casey and pre-Casey decisions support the conclusion that predicted costs to raise medical standards do not amount to an undue burden on a woman's choice to obtain an abortion."

In *Casey*, the Court considered a mandatory 24-hour waiting period ... the Supreme Court upheld the provision, stating that "on the record before us, and in the context of this facial challenge, we are not convinced that the 24-hour waiting period constitutes an undue burden." ... The *Casey* Court also upheld a recordkeeping and reporting provision, under which every facility that performed abortions had to file with the State a detailed report on every abortion, as well as quarterly statistical data. Because this information was a "vital element of medical research," it could not "be said that the requirements serve no purpose other than to make abortions more difficult," even though the provision "might increase the cost of some abortions by a slight amount." ... in *Ashcroft*, the Court upheld a reporting requirement because, "[o]n its face and in effect," it was reasonably related to accepted medical standards and constituted common medical practice ... even though the provision raised the cost of an abortion ..."

Q. Why is abortion record keeping important?

A. Decriminalizing abortion by the Supreme Court in 1973 largely depended upon public health claims that abortion was safer for women than childbirth. The US Public Health Establishment reached that "conclusion" by limiting abortion reporting complications to those known/reported by abortionists while the woman was literally on the operating table. If a complication was not documented as starting there, it was never recorded.

The US Standard Certificate of Live Birth used in Virginia requires a record of pregnancy events such as: Abruptio Placenta, Placenta Previa, Diabetes, Hypertension, Eclampsia, Incompetent Cervix, Premature Rupture of Membranes, Prolonged Labor, Uterine Bleeding, STD's; Infertility Treatment, Prior Live Births, Low Birthweight Baby, current pregnancy weight, gestation, Alcohol-Drug Use/Abuse, smoking, Apgar Scores, Malformation.

Regarding induced abortion, any information is too much information. The USPHS and Virginia's Health Department ***do not want to know*** how many individual ectopic pregnancies, individual induced abortions or individual spontaneous abortions women giving birth may experience. The forms place all three events in a single category. Virginia's birth certificate is thus precluded from becoming a "paper trail" for medical, labor or birth problems, deaths, or complications that would point to legal, induced abortion as a contributing or causal factor.

Q. How can Virginia implement abortion regulations referenced by the Attorney General?

A. Please contact Governor Bob McDonnell. Ask him to direct the Virginia Board of Health and the Virginia Board of Medicine to publish appropriate regulations for performing abortions, qualifications of abortionists, and appropriate reporting so health officials can learn the true complications of so-called, "safe, legal abortion" to Virginia women and their children. Pursuant to VA Code (2.2-4007) "Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation." These regulations would then go through the normal regulatory process.

If Board members refuse to consider and promulgate regulations which have been sustained as constitutional, and which have been prepared by professional medical and trade agencies which favor a "woman's right to an abortion," then the VA Code provides (2.2-108), "the Governor may remove from office for ... incompetence, misconduct, neglect of duty ... or refusal to carry out a lawful directive of the Governor any member of any board ... The Governor shall set forth in a written public statement his reasons for removing any member pursuant to this section at the time the removal occurs. The Governor shall be the sole judge of the sufficiency of the cause for removal as set forth in this section."

Governor McDonnell may be contacted at: P.O. Box 1475 Richmond, Virginia 23218; (804) 786-2211 Fax: (804) 371-6351 TTY/TDD (For the Hearing Impaired): 1-800-828-1120, or 711, or E-Mail form at <http://www.governor.virginia.gov/AboutTheGovernor/contactGovernor.cfm>

Ask your state legislators to also contact Governor McDonnell. Find your state delegate and senator at <http://conview.state.va.us/whosmy.nsf/main?openform>.

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