

From the UMHS ObGyn Program in Sexual Rights and Reproductive Justice



**University of Michigan
Health System**

Editor:

Ed Goldman, J.D.
Department of ObGyn
egoldman@umich.edu

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New State Laws

Michigan's New Apology "I'm Sorry" Law

In April 2011, the Michigan legislature passed a law that makes expressions of sympathy or compassion in relation to the pain, suffering, or death of an individual that are conveyed to the individual or her family inadmissible as evidence of an admission of liability in an action for medical malpractice.

However, statements of fault, negligence or culpable conduct that are part of or made in addition to a statement, writing, or action expressing sympathy or compassion CAN be admitted into evidence as an admission of liability in an action for medical malpractice.

What's the difference? "I am so sorry for your loss" is NOT an admission of liability and cannot be used in court,

while "The reason you are sore is because I botched your stitches, and I am sorry for that" CAN be admitted into evidence in a medical malpractice case.

The law is consistent with UMHS' policy of full disclosure and compensation for medical errors.

Excerpt from p. 92 of the UMHS Medical-Legal Handbook for ObGyn Health Care Professionals, updated June 2011.

Proposed State Legislation in Michigan

Bill to Restrict Terminations of Fetuses of at Least 19 Weeks to Hospitals With Neonatal Units

Proposed legislation (House Bill 4715) states that, "A physician who determines that the probable gestational age of the fetus of a patient who is a pregnant woman is at 19 or more weeks shall perform an abortion on that patient only in a hospital that has a neonatal unit."

For information about abortion attempts that result in a live birth, see the Born Alive Infant Protection Act section of the UMHS Medical-Legal Handbook for ObGyn Health Care Professionals.

Please consult UMHS' Medical-Legal Handbook for ObGyn Health Care Professionals for more information about medical-legal issues: <http://www.med.umich.edu/obgyn/research/ssrj/>

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Bill to Amend Parental Rights Restoration Act of Michigan Would Make It Harder for a Minor to Obtain a Judicial Bypass for an Abortion

For a minor to get an abortion, she must have either written consent of at least one parent or legal guardian or a judicial decree waiving the parental consent requirement. Senate Bill 0135 seeks to amend the Parental Rights Restoration Act of Michigan by giving the Family Division of Circuit Court jurisdiction over the minor and by enumerating a list of factors that

the court should consider in determining whether the minor has demonstrated a capacity to make a fully reasoned and responsible decision.

If this bill becomes law, it will be more difficult in Michigan for a minor to obtain a judicial bypass for two reasons: 1) The minor will have to file for a judicial waiver in her county of residence. If she lives in a county with a judge who opposes abortion, it is much less likely that she will get a bypass, and 2) The bill sets a much higher standard for the minor to meet in demonstrating her maturity and responsibility.

UPDATE: Partial-Birth Abortion Bills and the Right to Life Agenda

Senate Bills 0160-0161 and House Bill 4109 are among recent attempts by the Michigan legislature to prohibit partial-birth abortions. There is no exception to preserve the mother's health in the proposed partial-birth abortion ban, but there is an exception to save the mother's life.

Right to Life of Michigan and other opponents of partial-birth abortion claim that the aesthetic quality of the procedure itself promotes a disregard for infant life. The bill's findings section states that, "The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant

human life that can only be countered by a prohibition of the partial-birth abortion procedure."

Right to Life of Michigan's goals and priorities (according to their website as of August 23, 2011) include making it easier to "prosecute abortion doctors who perform this barbaric procedure." Of course, partial birth procedures are already illegal under federal law.

For more information on the history of partial-birth abortion legislation in Michigan and on the federal prohibition of partial-birth abortion, see the Spring 2011 edition of this newsletter (Volume 1, Issue 1) or the Partial-Birth Abortion section of the UMHS Medical-Legal Handbook for ObGyn Health Care Professionals.

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Bill to Prohibit Telemedicine for Medical Abortions

House Bill 4688 would prohibit physicians from remotely supervising administration of the drug RU-486 without first personally performing a physical exam. A woman seeking a medical abortion through telemedicine receives an ultrasound at the clinic to determine the gestational age of the fetus before consulting with a physician virtually. Medical abortions through the use of telemedicine or webcams benefit women who live in rural counties or otherwise have difficulty accessing an abortion provider.

The relevant language in the proposed bill states that "A physician shall not diagnose and prescribe a medical abortion for a patient who is or is presumed to be pregnant without first personally performing a physical examination of the patient. A physician shall not utilize other means including, but not limited to, an internet web camera, to diagnose and prescribe a medical abortion." According to the Guttmacher Institute, five states—Arizona, Kansas, North Dakota, Nebraska and Tennessee—currently have laws that limit telemedicine abortions.

DID YOU KNOW...That, in Michigan, a health insurance company cannot require authorization for a woman to see an in-network ObGyn?

Michigan law (M.C.L. 500.3406m) addresses access by insured to ObGyns, stating that a health insurer "that requires an insured to designate a participating primary care provider and provides for annual well-woman examinations and routine obstetrical and gynecologic services shall permit a female insured to access an [ObGyn] for annual well-woman examinations and routine obstetrical and gynecologic services." The insurer "shall not require prior authorization or referral for access...to an [ObGyn] who is participating with the insurer. An insurer may require prior authorization or referral for access to a nonparticipating [ObGyn]."

BREAKING NEWS: New Health Insurance Requirements For Women's Preventative Health Services

In early August, the U.S. Department of Health and Human Services announced new guidelines for women's health care. Beginning August 1, 2012, all private insurance plans will be required to cover birth control, voluntary sterilization, HPV screening, breastfeeding support, an annual well-woman physical, and sexually-transmitted infection counseling without a co-pay or deductible.

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Proposed Federal Legislation

Child Interstate Abortion Notification Act

The Child Interstate Abortion Notification Act proposes to prohibit taking minors across state lines for the purpose of avoiding parental involvement in abortion decisions. The bill would criminalize the act of transporting a minor across a state line to obtain an abortion, but it contains an exception for an abortion necessary to save the minor's life. Under the Act, a physician who performs or induces an abortion on an out-of-state minor in violation of parental notification requirements could be subjected to a fine and/or a prison term of up to one year.

BREAKING NEWS: Court Ruling Allows for Federal Funding of Human Embryonic Stem Cell Research

On July 27, 2011, U.S. Federal Judge Royce Lamberth reluctantly ruled that federal funding of hESC research does not violate the Dickey-Wicker Amendment. Lamberth noted that the April appellate decision "*constrains this court*" and obligated him to find that the Dickey-Wicker Amendment is ambiguous enough to allow for NIH funding of hESC research: "*While it may be true that by following the Court of Appeals' conclusion as to the ambiguity of 'research,' this Court has become a grudging partner in a bout of 'linguistic jujitsu,' such is life for an antepenultimate court.*"

Mini Timeline of the *Sherley v. Sebelius* Stem Cell Research Case

March 2009	President Obama signs executive order overturning President Bush's limitation of federal funding to preexisting hESC lines.
August 2009	Two researchers, religious groups, and others opposed to hESC research file lawsuit to enjoin NIH funding of hESC research pursuant to the new NIH guidelines.
August 2010	Judge Lamberth rules that the NIH guidelines violate the Dickey-Wicker Amendment and issues a preliminary injunction enjoining the NIH from funding hESC research.
September 2010	Judge Lamberth denies motion to stay the preliminary injunction. Following an appeal by the NIH, appellate court stays the injunction and allows NIH to resume hESC funding pending its decision on appeal of the preliminary injunction.
April 2011	U.S. Court of Appeals in D.C. vacates the preliminary injunction finding that research involving privately derived hESC lines does not violate the Dickey-Wicker Amendment.
July 2011	Judge Lamberth rules that NIH funding of hESC research does not violate the Dickey-Wicker Amendment.

