South Dakota Section of the
American College of Obstetricians and Gynecologists

September 26, 2006

Position Statement of the South Dakota Section of The American College of Obstetricians and Gynecologists Opposing H.B. 1215/ Referred Law 6

The South Dakota Section of The American College of Obstetricians and Gynecologists (ACOG) opposes H.B. 1215/Referred Law 6, a bill that not only bans abortion but also restricts basic reproductive health services in South Dakota.

We oppose this reproductive health ban that is not based on science, strips women of their legal rights, and criminalizes essential aspects of women's health care. The intervention of the legislature into medical decision-making is inappropriate, ill advised, and dangerous. We urge repeal of the ban, for the sake of women's health in South Dakota and for the protection of medical decision-making within our state.

ACOG is the leading professional association of physicians who specialize in the health care of women, with more than 51,000 members. The 69 ACOG board-certified obstetrician-gynecologists in our South Dakota Section provide care for many women in the state and manage most of the 11,000 births in South Dakota each year.

The position of the South Dakota Section of ACOG reflects ACOG's national policy on abortion (attached), which recognizes that the issue of support for or opposition to abortion is a matter of profound moral conviction to its members. Like National ACOG, we respect the need and responsibility of our members in South Dakota to determine their individual positions on abortion based on personal values or beliefs. We note that, like other Americans in communities across the country, ob-gyns in South Dakota have diverse personal beliefs on abortion. As an organization, ACOG opposes unnecessary regulations that limit or delay women's access to needed medical care, including abortion, and that subject physicians to criminal charges for practicing according to accepted medical standards.

Our major objections to the ban are as follows:

1. The reproductive health ban cruelly withdraws long-standing rights of South Dakota women.

H.B. 1215/R.L. 6, by criminalizing almost all abortions, is the harshest abortion bill passed in the US in the last 33 years, taking away rights that have been available to women for over three decades.

The ban forbids a woman from having an abortion under any circumstance except when her life is in danger.

Rape and Incest

The ban includes no exception for rape victims, even though an estimated one in six US women has been the victim of attempted or completed rape. Approximately 340 forcible rape cases per year were reported in South Dakota in 2003 and 2004, according to state and federal statistics, or nearly one case a day. No doubt many other cases of rape occur but go unreported each year.

The ban includes no exception for victims of incest, often girls and young teens. Studies show that when young teens or girls are pregnant, the cause is often sexual abuse or incest.

Under this harsh ban, if any pregnant girl or woman comes to us for help in terminating a pregnancy forced upon her through incest or rape, we could not aid her, not even to refer her to a qualified physician in another state.

Emergency Contraception and Rape/Incest

Some supporters of this ban are claiming that the lack of a rape or incest exception is insignificant, because victims could take emergency contraception. Even if the ban is interpreted to allow the important option of emergency contraception (and, as discussed further below, that is not a certainty) no one should forget that access to emergency contraception can be difficult in South Dakota. The state was one of the first to have stiff rules allowing pharmacists to refuse to dispense emergency contraception. In this largely rural state, sometimes one pharmacy serves several towns. If the pharmacist in that area refuses to dispense emergency contraception, women for miles around will have no access to it.

In addition, emergency contraception will only work if taken within a short period after unprotected sex. Also called the morning-after pill, emergency contraception is a higher dosage of hormones found in ordinary birth control pills. (Methods of emergency contraception include progestin-only or combination estrogen-progestin oral contraceptives. The most common and effective form of hormonal emergency contraception contains levonorgestrel, a progestin. It is sold in the United States under the brand name Plan B.) Emergency contraception is highly effective in reducing a woman's chance of pregnancy after a contraceptive failure or unprotected sex. This can include rape. If taken within 72 hours of unprotected sex, EC prevents up to 89% of pregnancies; it is most effective if taken within 24 hours. However, incest or rape victims may be unable to find or take emergency contraception within that time frame.

In sum, access to emergency contraception -- claimed by some of the ban's supporters, yet questionable in our state, where pharmacists can outright refuse to fill prescriptions -- does not minimize or lessen this ban's impact on rape and incest victims.

Lethal Birth Defects

The ban includes no exception for lethal congenital birth defects. These are severe conditions in the fetus that, if they do not result in miscarriage, almost always lead to certain infant death -- usually upon or shortly after birth. Under this ban, South Dakota women will be forced to carry these doomed pregnancies for nine months, only to watch the predicted fatal outcome.

Examples of lethal congenital birth defects include: *Anencephaly* (where portions of the brain are missing or reduced to small matter attached to the base of the skull); *Iniencephaly* (severe abnormality of the spine and vertebrae, with the brain and much of the spinal cord occupying a single cavity); *Hydranencephaly* (complete or near complete absence of the hemispheres of the brain); *Infantile Polycystic Kidney Disease with anhydramnios* (a lack of amniotic fluid during development); and *Triploidy* (the presence of three full sets of chromosomes).

Other examples include congenital birth defects known as: *Pentalogy of Cantrell*; *Limb-Body Wall Complex*; *Bilateral Renal Agenesis*; *Sirenomelia*; *Achondrogenesis*; *Severe Amniotic Band Syndrome*; *Jeune's Thoracic Dystrophy—Asphyxiating Thoracic Dystrophy*; *Thanatophoric Dysplasia*; *Meckel-Gruber Syndrome*; and *Pena-Shokeir Phenotype*. And these are not the only severe life threatening and life altering anomalies.

Today, with advances in prenatal screening, many South Dakota women and couples understandably choose not to carry to term a pregnancy with lethal fetal birth defects. This ban takes that private decision away from them.

2. The reproductive health ban recklessly endangers the health of South Dakota women, by outlawing physicians' ability to make essential and timely medical decisions.

The ban includes no exception to protect a woman's health, permitting only an abortion "designed or intended to prevent the death of a pregnant mother."

Section 4 states that the physician "shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with conventional medical practice."

This section creates impossibly conflicting mandates for physicians. Under "conventional medical practice," our obligation as physicians is to protect both the life *and* the health of the patient. Yet this ban requires us to make "reasonable efforts" to protect patient life only, but not patient health -- an impossible dictum.

Where a condition is not life-threatening but compromises or worsens a woman's health, physicians' hands are tied by this broad ban. For example, the ban could prohibit pregnancy termination for a woman who has cardiac problems or high blood pressure that has not yet reached life-threatening stages. It is unclear whether the ban's "life only"

exception applies to conditions that we doctors believe are likely to cause death, conditions that are possibly -- but not definitely -- fatal, or conditions that are certain to cause death, just not immediately.

By forbidding a woman's health exception, the ban also shows a dangerous misunderstanding of medical practice. We physicians cannot always predict what course medical complications will take in a given emergency situation or how quickly they may lead to mild health problems, severe injury, or even death. By requiring us to "wait and see" if a condition deteriorates into a clearly life-threatening situation before permitting us to provide medically indicated treatment, this ban indefensibly jeopardizes patients' health.

There are a number of medical conditions that, based on the physician's judgment in consultation with the patient, may require the termination of pregnancy to protect the pregnant woman's health or life. We note the following examples:

- **Diabetes with renal disease and retinopathy**: Pregnant women with these serious diabetic complications risk a worsening of their condition if they carry their pregnancy to term. They could face blindness or the need for dialysis. Yet, under the ban, these severe health conditions would be immaterial: a doctor's hands are tied unless death is the threatened outcome.

- **Preterm, premature rupture of membranes before fetal viability**: This condition is commonly seen in ob-gyn practice. At this stage, the fetus cannot survive outside the womb, yet under this ban a physician is forbidden to intervene until a woman is at risk of death -- such as when she is infected or hemorrhaging to death. By then, the intervention may be too late.

- **Cervical cancer first diagnosed in early pregnancy.** This malignancy is likely to be diagnosed in the first trimester, when pregnancy terminations are safer but the risk of maternal death from cancer is not yet high. The appropriate treatment may involve hysterectomy or radiation or both. Although the woman's life is not immediately threatened, if the cancer is not treated until after the nine-month pregnancy her life span could be shortened. Under this ban, any oncologist would be hesitant to treat the patient and yet could not refer her out of state.

Other medical conditions in the pregnant woman, which may require pregnancy termination depending on the physician's medical judgment in consultation with the patient, include:

- *Chorioamnionitis*: an inflammation of embryonic membranes
- *Unrelenting vaginal bleeding with anemia*
- *Cancer*
- *Severe preeclampsia before 24 weeks of pregnancy*: this involves high blood pressure, swelling, and excessive protein in the woman's urine

- *HELLP syndrome before 24 weeks*: a severe form of preeclampsia, with elevated liver enzymes and low platelet count
- *Severe pulmonary hypertension*: increased pressure within the lung's circulation system
- *A history of peripartum cardiomyopathy*: a disease of the heart muscle that occurred in prior pregnancies. The mortality rate for this disease is nearly 100% if a pregnancy is carried to term. The risk of getting this disease again, even if it has not appeared yet, could warrant pregnancy termination.
- *Eisenmenger's syndrome*: a pre-existing defect in blood flow, with pulmonary hypertension, which has a 50% mortality rate in pregnancy
- *Marfan's Syndrome with dilated aortic root greater than 40 mm*: a congenital disorder of connective tissue characterized by abnormally long extremities, heart abnormalities, and other deformities, with a 50% mortality rate in pregnancy
- *Prior myocardial infarction*: a history of a circulation obstruction in the heart
- *A high grade mitral valve stenosis*: an abnormal closing of a heart valve
- *Untreated cerebrovascular malformation or berry aneurysm*: obstructions or clots in the brain or blood vessels
- *Severe lupus flare*: a sudden worsening of a connective tissue disorder

All of the medical conditions mentioned here illustrate why physicians, not prosecutors, should be making the medical judgments necessary to protect not only the life, but also the health, of a patient.

3. The reproductive health ban forces South Dakota physicians to violate our professional and ethical obligations to our patients.

In scenarios such as those given above, we physicians are placed in the unconscionable position of either treating our patients in a medically appropriate fashion and being prosecuted as criminals under this ban, or not treating appropriately and not only facing claims of negligence but, worse, seeing our patients suffer.

The ban dangerously impedes the day-to-day medical decisions that we practicing physicians must make in caring for our patients. The ban requires us to compromise our medical judgment on what information or treatment is in the best interest of the patient. As stated in the Code of Professional Ethics of ACOG, "the welfare of the patient must form the basis of all medical judgments" and "the obstetrician-gynecologist should exercise all reasonable means to ensure that the most appropriate care is provided to the patient."

The ban deprives our patients of their fundamental right to optimal medical care without government interference. And by impeding day-to-day medical decisions, the reproductive health ban will undoubtedly reduce the number of new ob-gyns willing to practice in South Dakota, further jeopardizing women's health care in the state.

4. The reproductive health ban could obstruct women's access to contraceptives in South Dakota.

The vague and ambiguous language of the reproductive health ban raises a troubling question: Will South Dakota women, our patients, continue to have access to standard methods of birth control? There is a real possibility they won't.

Although the ban appears to exempt the dispensing of contraception from prosecution under abortion laws, the ban could be interpreted by a zealous prosecutor as prohibiting certain types of hormonal contraceptives such as IUDs or emergency oral contraceptives. And, even if the ban did permit one type of emergency oral contraception, it could disallow others.

This ambiguity is illustrated by the contradictions in how the ban treats pregnancy testing versus how it defines pregnancy itself (and thus contraception).

For example, Section 3 of the bill would allow

> [the] sale, use, prescription, or administration of a ***contraceptive*** measure, drug or chemical, if it is administered prior to the time ***when a pregnancy could be determined through conventional medical testing*** **a**nd if the ***contraceptive measure*** is sold, used, prescribed, or administered ***in accordance with manufacturer instructions*.** (Emphasis added.)

Conventional Medical Testing
The ban permits contraception administered "prior to the time when a pregnancy can be determined through conventional medical testing." According to both conventional medical pregnancy tests and conventional medical definitions of pregnancy, this would mean contraception administered before a fertilized egg has implanted in a woman's uterus (the definition of pregnancy). Hormonal forms of contraception such as emergency oral contraception and IUDs -- which can work by preventing ovulation, fertilization or implantation -- would appear to be exempt from the ban.

Medical Definitions of Pregnancy and Contraception
Contrary to established medical definitions, the ban also defines pregnancy in Section 5 as beginning at fertilization [union of sperm and egg], and it defines an "unborn child" as existing upon fertilization. In some cases, hormonal contraception such as emergency oral contraception and IUDs prevent pregnancy by working after fertilization but before implantation. Under this ban, both emergency oral contraception and IUDs could be considered -- incorrectly -- abortifacients, and therefore not "contraceptive measures" exempt under the ban's medical testing clause of Section 3.

Even if the ban is interpreted or enforced to permit emergency oral contraception, it may permit only one type. Section 3 refers to contraceptive measures "sold, used, prescribed, or administered ***in accordance with manufacturer instructions***." (Emphasis added.) A product like Plan B, specifically designated by the manufacturer for use as an emergency

contraceptive, might be permissible under this clause. But if Plan B is not available, there is another long-standing way physicians can provide emergency oral contraception to women after incidents of unprotected intercourse, such as rape -- by combining different types of ordinary birth control pills. Under this ban, however, this method of dispensing emergency contraception might be considered inconsistent with "manufacturer instructions" and thus a prosecutable offense.

The ban's ambiguous language and the threat of prosecution could inhibit many doctors from prescribing birth control for their patients, further restricting women's access to contraception in South Dakota.

Summary

In conclusion, as physicians who provide reproductive health care in South Dakota, we urge repeal of this ban that harms the women of South Dakota, jeopardizes health care within our state, and strips South Dakota residents of their fundamental right to appropriate and safe medical care without harmful government interference. We urge the citizens of South Dakota to overturn this ban.

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