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**Doc Charged for Late-Term Abortion**

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By Lisa M. Collins

In a case drawing attention from both sides of the abortion debate, a doctor faces possible jail time for performing a third-trimester abortion on a healthy woman.

Under a state law that predates the U.S. Supreme Court's legalization of abortion, Michigan prosecutors have charged Dr. Jose Higuera with felonious abortion.

Higuera is the first doctor in Michigan, and may be the first in the country, to be criminally prosecuted for abortion since the U.S. Supreme Court's landmark 1973 decision in Roe vs. Wade.

The 61-year-old gynecologist says the 1994 abortion was protected by doctor-patient privacy and that Michigan's statute is unconstitutional. No trial date has been set.

Michigan and 39 other states prohibit late-term abortions except to preserve the health or life of the mother, a decision usually left to the doctor.

No Clear Reason?

Although Michigan law technically prohibits abortion, the U.S. Supreme Court's ruling only allows bans on abortions during the third trimester. Michigan's highest court subsequently banned abortion after "viability," but the wording of the state law outlawing abortion never changed.

"Viability" is the point when the fetus can be expected to survive outside the womb. The meaning of viability has changed over time, as technology allows premature babies to survive at younger ages. Viability also depends on the pregnancy.

Today, the earliest point of viability is considered at 24.5 weeks. The state claims the fetus aborted by Higuera was 28 weeks.

Higuera's crime, according to state prosecutor Mark Blumer, is that he did not have a clear medical or health reason to perform the late abortion.

"Had the mother's health been jeopardized by the pregnancy, there would not be a criminal prosecution. There's no doubt about that," Blumer said.

"What we've got is the classic gray area. A woman went in to the doctor's office and wanted an abortion for no good reason. And we have a doctor who was willing to give it. That's why this case is so different."

State Court Reinstates Charges

Doctors in Arizona and New York have been convicted on charges related to botched late-term abortions — but not for the procedure itself. If convicted, Higuera faces up to four years in prison.

In the case, the woman who underwent the procedure testified she wanted to end her pregnancy because she was no longer married to the father and had other children.

Two lower-court rulings had previously struck down the charges against Higuera, claiming Michigan's criminal abortion statute to be unconstitutional.

But in a 2-1 decision in February, the state Court of Appeals reinstated the charges, ruling Michigan's criminal abortion statute is constitutional as long as U.S. Supreme Court decisions are taken into account.

Higuera's attorney said he was saddened by the ruling.

"Our argument was the Michigan abortion statute, because it doesn't have any guidance and doesn't recognize Roe vs. Wade, is unconstitutional," Max Hoffman said. "It states all abortions are crimes."

Health Clause Is Key

Under the appeals court ruling, the state will have to prove Higuera knew he was performing a third-trimester abortion and that the mother didn't need it for a health or medical reason, Hoffman said.

It is rare to see a case that tests abortion after viability because of the law's health requirement, said Pam Sherstad, spokeswoman for Right to Life of Michigan.

"Women can have an abortion up to nine months pregnancy with the health exception," she said, adding that's why anti-abortion activists lobby to remove the health requirement from laws.

But abortion rights supporters say the health clause is key because late-term abortions almost always happen for extreme medical reasons, such as to save the mother's life or because a fetus has a fatal abnormality.

Only a handful of doctors will provide the procedure, "which is why what happened in Michigan is very much an anomaly," said Vicki Saporta, executive director of the National Abortion Federation.

Doctor’s License Suspended

In 1997, there were 9,985 abortions nationwide at 21 weeks or later into the pregnancy — from midway through the second trimester on — accounting for 1.4 percent of all abortions that year, according to the latest data available from the Centers for Disease Control and Prevention. The agency doesn't compile data on third-trimester abortions.

Higuera also is accused by the state of altering medical records to show the abortion in question was done on a 24-week-old fetus, instead of 28 weeks. Felony alteration carries up to a four-year sentence upon conviction.

Early in 1999, the state suspended Higuera's medical license, finding he was "negligent, incompetent and lacked good moral character," for reusing syringes and IV bags and for altering a medical record.

Blumer said the case against Higuera is not meant as an anti-abortion stance by Michigan or its attorney general.

"We're not declaring open season on abortion clinics. We're not out looking for more abortion cases," Blumer said. "This case should be judged on its own set of facts."

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