**Michigan Abortion Practitioner Charged With Illegal Late-Term Abortion**

Michigan Abortion Practitioner Charged With Illegal Late-Term Abortion *[Source: Associated Press; April 4, 2001]* Detroit, MI In what may be the nation's first such case since the U.S. Supreme Court legalized abortion in 1973, Michigan is pressing criminal charges against a doctor accused of performing a third-trimester abortion without a good medical reason. Michigan and 39 other states prohibit such abortions except to preserve the so-called health or the life of the mother, a decision usually left to the abortion practitioner. Under a state law that predates 1973's Roe vs. Wade ruling, State Attorney General Jennifer Granholm is charging Jose Higuera with felonious abortion. He is charged for a 1994 abortion on a woman who the state says was nearly seven months pregnant. Higuera says the abortion was protected by doctor-patient privacy and that Michigan's abortion statute is unconstitutional. If convicted, he faces up to four years in prison. Higuera is the first in Michigan, and may be the first in the country, to be criminally prosecuted for abortion since Roe overturned the state's 130-year-old abortion ban. Abortion practitioners in Arizona and New York have been convicted on charges related to botched late-term abortions but not for the abortion itself. 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, as mandated by Michigan law. "Had the mother's health been jeopardized by the pregnancy, there would not be a criminal prosecution. There's no doubt about that," said Blumer, who says he supports abortion. "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." In the case, a woman underwent a $3,000, two-day abortion. Higuera's nurse brought the case to the state's attention. The woman who got the abortion testified for the prosecution that she wanted to have the abortion because she was no longer married to the father and had other children. Higuera has been retired out of state for several years, said his attorney, Max Hoffman. 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. He is also accused by the state of altering medical records to show the abortion in question was done on a 24-week-old unborn child, instead of 28 weeks. Felony alteration carries up to four years upon conviction. Higuera's case has never been to trial. A Highland Park district court found Michigan's criminal abortion statute to be unconstitutional. Awayne County Circuit Court agreed and threw out an appeal. But in a 2-1 decision in February, the state Court of Appeals reinstated the charges against Higuera, ruling that Michigan's criminal abortion statute is constitutional as long as U.S. Supreme Court decisions are taken into account. Judge Kathleen Jansen dissented. 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," Hoffman said. "It states all abortions are crimes." No trial date has been set, but prosecutor Blumer said it will be soon. Under the appeals court ruling, the state will have to prove that Higuera knew he performed a third-term abortion and that the mother didn't need it for a health or medical reason, Hoffman said. Nationwide, there were 9,985 abortions in 1997 at 21 weeks or later into the pregnancy, accounting for 1.4 percent of all abortions that year, according to the latest data available from the Centers for Disease Control and Prevention. In Michigan in 1997, 221 such abortions occurred, said Katie Baer, spokeswoman for the CDC. Baer said the information is gathered by state health departments that normally rely on abortion facilities to report abortions. And though Michigan's statute technically prohibits abortion, the state Supreme Court ruled in 1973 to conform the law to Roe. That decision and others since say only abortion after "viability" can be banned, and that is what Michigan and 39 other states did. "Viability" is the point when the unborn child 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. Commonly today, the earliest point of viability is considered at 22-24 weeks. 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 pro-life advocates lobby to remove the health requirement from laws. The seven-year-old case also is unusual because it involves several people, like Blumer, who say they support abortion. His boss, Granholm, is a Democrat running for governor in 2002 who has said she supports abortion. Granholm declined comment for this story. But the state's action against Higuera should not be looked at as a political one, Blumer said. "This case does not establish policy for this office or the state. We're not declaring open season on abortion clinics. We're not out looking for more abortion cases. This case should be judged on its own set of facts," the assistant prosecutor said. "You have to draw the line somewhere." *[LifeNews.com April 5, 2001]* Reprinted with permission by *LifeNews.com*. LifeNews.com is a daily compilation of pro-life news and information. To subscribe, visit [LifeNews.com](http://www.lifenews.com).

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