

POSITION OF FEDERATION OF STATE MEDICAL BOARDS

On Partial-Birth Abortion Ban Acts

As a national organization comprised of all state medical licensing authorities, the Federation of State Medical Boards of the United States is concerned with legislative initiatives at the federal or state level which have the potential to impact the role of state medical boards in protecting the public through effective regulation of the practice of medicine. Since 1997, the Federation has opposed language in federal and state legislation to ban partial-birth abortion which allows a defendant physician accused of an offense under the legislation to seek a hearing before the state medical board to determine whether or not the physician's conduct was necessary to save the life of the mother. Typical language reads:

- A defendant accused of an offense under this section may seek a hearing before the state medical board on whether the physician's conduct was necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

The board is required to make written copies of their findings available for admission as evidence in a civil or criminal trial alleging violation of the act.

The Federation has no formal position on abortion. However, the Federation opposes language allowing a physician accused of an alleged illegal abortion to request a hearing before the state medical board on the basis that it is contrary to the statutory function of the board.

The purpose of a medical board hearing is to determine whether a violation of the Medical Practice Act has occurred that indicates the need for disciplinary action against a physician's license in the interest of public protection. The outcome of a hearing held by the medical board may result in a range of actions taken against a physician's license, up to and including revocation. It is not appropriate for the board to act as a "panel" for the sole purpose of determining findings of fact admissible in future civil criminal proceedings in the absence of a formal charge against the physician by the board.

Additionally, a prior rendering of an opinion pertaining to the legality of a physician's actions would compromise the objectivity of any subsequent disciplinary hearing held by the board as a consequence of those actions. An eventual decision by the board to discipline a physician could be challenged on the basis that the board's decision was biased by the earlier hearing, thereby complicating the board's disciplinary process. The Federation opposes any action that weakens the Board's ability to effectively discipline a physician, because of the obvious threat to public safety.

While no states have approved legislation allowing an accused physician to request a hearing before the state medical board, a number of states have had such legislation introduced each year. Federal legislation containing the hearing language has been considered each year since 1997.

Due to the potential negative impact on the board's disciplinary process, the Federation requests that the hearing language be deleted or, at minimum, be modified to designate that a separate state health regulatory agency (i.e. the state Department of Health) be responsible for holding a hearing to determine whether the physician's conduct was necessary to save the life of the mother. The subsequent opinion could then be considered by the board in future deliberations, but would not inappropriately influence the board's objectivity. The Federation feels strongly that putting such hearings under the purview of the state medical board will adversely impact the state medical board's mission to maintain the quality, safety, and integrity of health care in their jurisdiction.

If you have questions regarding the Federation's position on this issue, please contact Bill Paxton at 817-868-4056 or bpaxton@fsmb.org.
