What is NOT an Abortion?

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Since the overturning of *Roe v. Wade*, there has been a flurry of new state laws restricting abortion and a reemergence of older state laws that restricted abortion. The media is filled with assertions that these laws will prevent physicians from providing medical care that is necessary to treat serious medical illnesses. Much of the confusion stems from the fact that the medical term abortion refers to any pregnancy that ends prior to 20 weeks. Such a pregnancy ending might be spontaneous or it might be induced. The medical procedure to intentionally end the pregnancy might involve medication, a surgical procedure, or both.

On the other hand, in our common language, the natural loss of a pregnancy is most commonly termed "miscarriage." In our common language, we typically use the word "abortion" to mean a procedure that was chosen in order to end a pregnancy that otherwise could have progressed to the delivery of a baby. As a Maternal Fetal Medicine physician, I occasionally recommend that a pregnancy be terminated in order to protect the mother's physical health. I tend to use terms such as "ending the pregnancy," "terminating the pregnancy," or "separating the fetus from the mother."

When a pregnancy is located outside the uterine cavity, when a fetus has already died, or when a fetus never formed, physicians typically have not thought of the treatment for these conditions being an abortion.

Miscarriage or fetal death can sometimes occur as a complication or side effect of medical or surgical treatments such as appendectomy, removal of ovarian cysts, cervical cone biopsy, chemotherapy, radiotherapy, hysterectomy for malignancy, etc. These unintended consequences are not thought of as an abortion.

Fetal death can sometimes occur as a complication of an intrauterine surgical procedure to treat a single fetus or to treat an abnormality such as twin to twin transfusion syndrome. Again, those occurrences are not viewed as abortions.

When a condition arises in pregnancy such as severe hemorrhage, uterine infection, or severely elevated blood pressure, some physicians might consider the procedures to end those pregnancies to be an abortion. However, they do not consider those procedures to be elective. They do not consider that type of pregnancy termination to be avoidable. Rather, they consider those procedures to be medically necessary procedures to save the life of one of the two patients that they are treating.

In those cases, the loss of the fetal life is a byproduct of the medical treatment necessary to save the life of the mother. This type abortion is ethically, medically, and morally distinct from an elective abortion that is done for social or economic reasons involving an otherwise healthy mother and fetus.

It is important to understand that medical diagnosis, and furthermore prognosis, is imprecise. Estimations of level of risk to a mother's life or her bodily function vary between physicians. Patients and physicians have a range of views regarding how much risk is acceptable. Two physicians may see the same patient and arrive at different diagnoses and then recommend substantially different treatments. On the other hand, the enforcement of a legal statute requires certainty beyond a reasonable doubt.

For example, Texas H.B. No. 1280 allows abortion for life -threatening physical conditions aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced. What conditions might meet that standard?

The reader should understand that I am not purporting to offer legal advice. I am offering the perspective of a prolife physician who has practiced Maternal Fetal Medicine for over three decades. I am considering what this law says and then suggesting which conditions might meet that standard.

The conditions listed below, in my opinion, meet the above-outlined legal criteria for justifying abortion. Conversely, this list does not represent a standard of care that requires that an abortion be performed. Any medical procedure requires consent of the maternal patient, and the physician's willingness to participate. Individual patients vary greatly in the level of risk they are willing to accept in order to have a child. Any physician has the right to decline to perform an abortion based on their own conscience.

The reader should understand that I am not purporting to define whether an act to end pregnancy is ethical or moral, only whether it is performed within the bounds of the regulation cited above as I understand the language.

No list of medical indications for any procedure can possibly include every potential diagnosis. Various medical organizations commonly publish such lists and generally indicate that limitation. Decisions regarding patient care require the physician's judgment regarding the entirety of the clinical circumstances. I recognize that any pregnancy involves some level of risk to the mother. In suggesting this list, I seek to identify a threshold that places the mother's risk of death or substantial impairment of major bodily function that seems to meet what the statute states.

- The presence of active hemorrhage into the peritoneal cavity, pelvic cavity, pelvic organs, or through the cervical canal associated with a maternal hemoglobin of less than 9.0 g/dL or hematocrit less than 27.0.
- Intrauterine infection as defined by 2 or more signs including: maternal fever greater than 100.4°, uterine tenderness, persistent maternal heart rate greater than 100, persistent fetal heart rate greater than 160, or foul smelling discharge through the cervical os.

- Premature rupture of the membranes prior to 24 weeks gestational age by LMP or 22 weeks post conception.
- Severe hyperemesis gravidarum as evidenced by 3 or more hospital stays for dehydration and hypokalemia (less than 3 mEq/L) unresolved by multiple medication therapy.
- Cardiovascular collapse associated with obstetric (ie amniotic fluid embolus) or non-obstetric conditions.
- Preeclampsia with severe features (includes HELLP syndrome or mirror syndrome) occurring prior to 24 weeks gestational age by LMP or 22 weeks post conception.
- Acute Fatty Liver of Pregnancy
- Partial molar pregnancy
- Hemolytic Uremic Syndrome or Thrombotic Thrombocytopenic Purpura
- Chronic or acute kidney disease with serum creatinine level of 1.4 or greater.
- Prior or planned solid organ transplant
- Current maternal malignancy
- Poorly controlled autoimmune disease (ie catastrophic antiphospholipid syndrome, scleroderma renal crisis, severe lupus nephritis)
- Substantial cardiovascular disease as defined by WHO Class III and IV.

This may seem to some to be a very long list. But, most of these diseases are very rare. The ones that are somewhat common rarely occur at a previable gestational age with a living fetus.

There is no doubt that the inaccurate and sometimes hysterical comments in the media have many physicians and others in healthcare fearing that they will violate a criminal statute. Most physicians spend their entire careers with some level of worry about malpractice litigation and/or what might happen if they violate any one of the numerous federal statutes that strictly govern the practice of medicine. In general, physicians and other healthcare workers are very much law-abiding citizens. It is not difficult to scare them. To make matters worse, they are not accustomed to reading the actual text of laws, and the majority are far too overworked to have time to look up and examine the laws themselves. I do not claim to have read every state statute regulating abortion. But, the ones I have read consistently allow medical treatments needed to treat physical illnesses. The laws use terminology that indicate that it is the physician's judgment that determines whether or not those treatments are legitimately needed. In my view, the laws empower the individual physician to use their medical knowledge and training to determine whether medication or a surgical procedure is needed to end the pregnancy in order to treat a serious medical illness. There is nothing unusual about a physician being required to use their judgment. A physician is responsible to use their best judgment in the evaluation and treatment of every single patient they ever see. These laws do not threaten physicians providing legitimate medical care.