1974 WL 27793 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 29, 1974

***1 Re: Present Status of South Carolina's Abortion Laws**

Dr. Bugh H. Wells
Seneca, South Carolina

Dear Dr. Wells:
During our recent telephone conversation you posed several questions with regard to the laws governing therapeutic abortions in the State of South Carolina. Although this area of the law is now in a state of flux, I shall attempt to advise you, insofar as is possible, as to how these changes affect doctors and hospitals.

As the enclosed copy of my letter to Dr. B. E. Coggeshall, Jr., explains in detail, the existing State abortion statutes have been rendered unenforceable by the invalidation of the principal punishment provision (Section 16-83) by the South Carolina Supreme Court in the case of State v. Lawrence, 261 S.C. 18, 198 S.E.2d 253 (1973). That decision applied the holdings of the United States Supreme Court in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) and Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973) to our State statutes. As a result, doctors of medicine or osteopathy licensed to practice in this State can now perform an abortion on a consenting fenale at any stage of her pregnancy. The provisions of Section 16-87 as to conditions, residency and consultation are inapplicable because there is no longer an enforceable penalty section supporting them.

In State v. Lawrence, supra., the South Carolina Supreme Court properly concluded that '. . . if the State is to effectively assert such authority as the inited States Supreme Court will apparently permit, legislation is reeded.' As of this date, no such legislation has been enacted. Therefore, it is difficult to formulate policies or to advise doctors and hospitals with regard to the legal prerequisites to the performance of an abortion.

It can be said that, until such time as appropriate legislation is passed, an attending physician, in consultation with his patient, is free to determine that in his best medical judgment the patient's pregnancy should be terminated and he may perform the abortion without State interference.

Neither Roe nor Doe considered the question of hospital policies and practices on the performance of abortions. Although this is an unsettled area of the law, there have been some indications that Roe and Doe are being applied so as to prohibit 'governmental' hospitals from barring the use of their facilities for the performance of abortions. Hathaway v. Worcester City Hospital, 475 F.2d 701 (1st Cir. 1973). Rather than invite litigation, it would probably be advisable for such hospitals to steer clear of such a policy. 'Private' hospitals, on the other hand, are free to prohibit the performance of certain surgical procedures on their premises as they see fit.

A copy of H. 2481, the abortion legislation now pending before the South Carolina General Assembly, is enclosed for your information. In drafting it this office attempted to adhere as closely as possible to the dictates of the United States Supreme Court's decisions while incorporating the best parts of statutes from other states.

***2** The subject matter of this letter requires a great deal more explanation than I have been able to give. If you have any additional questions, please fee free to contact me.
Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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