

1973 S.C. Op. Atty. Gen. 286 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3615, 1973 WL 21069

Office of the Attorney General

State of South Carolina

Opinion No. 3615

September 5, 1973

***1 Doctors of medicine or osteopathy licensed to practice in this State can perform an abortion on a consenting female at any stage of her pregnancy.**

Secretary

Chesterfield County Memorial Hospital

Your inquiry with regard to the present status of the therapeutic abortion laws has been directed to me for reply.

On July 16, 1973, the South Carolina Supreme Court ruled that Section 16–83, South Carolina Code of Laws (1962), as amended, which prescribed the punishment for causing or procuring an abortion was unconstitutional. *State v. Lawrence*, Opinion No. 19662. In doing so, the Court examined the South Carolina statute in the light of the United States Supreme Court decisions of *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). No effort was made to determine the validity of any of the remaining provisions of the South Carolina abortion laws including those specifically providing for therapeutic abortions. (Section 16–87).

Section 16–87, as drafted, constitutes an exception to the general statutory scheme prohibiting abortions. With the invalidation of the principal punishment section (Section 16–83), Section 16–87 also loses its utility because it cannot operate as an exception to legislation which is enforceable. In other words, one is no longer restricted to performing therapeutic abortions under the conditions specified in Section 16–87 because there is no valid penal provision under which punishment can be imposed for such conduct. *Roe v. Wade* and *Doe v. Bolton* also conclusively indicate that many of the limitations contained in Section 16–87 would not pass constitutional muster if examined on an individual basis. As a result, doctors of medicine or osteopathy licensed to practice in this State can perform an abortion on a consenting female at any stage of her pregnancy. Laymen who attempt such a procedure, although not punishable under Section 16–83, would run the risk of prosecution for practicing medicine without a license.

There are no additional rulings or decisions with regard to this matter at the present. As the South Carolina Supreme Court concluded ‘. . . if the State is to effectively assert such authority as the United States Supreme Court will apparently permit, legislation is needed.’

Dudley Saleeby, Jr.

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