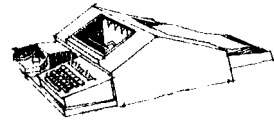


Medicolegal News

UPDATE



More Decisions Forthcoming on Abortion

Abortion Cases Heard by Supreme Court

The subject of abortion may once again become the basis of several important decisions by the United States Supreme Court. In late March, the high Court heard arguments on several cases which have been followed closely by abortion proponents, right-to-life groups and health care personnel in general.

The most significant of these cases appears to be *Planned Parenthood v. Danforth* (No. 74-1151), which will ultimately test the validity of a Missouri abortion statute imposing a number of controversial restrictions and conditions on the medical procedure. Among the restrictions, the statute requires consent of a husband if the abortion is to be performed on a married woman, parental consent for a minor female, written consent by the woman, termination of parental rights when the aborted fetus survives and an absolute prohibition of a saline amniocentesis-abortion after twelve weeks gestational age of the fetus.

According to *Law Reports*, a publication of the Catholic Hospital Association's Department of Legal Services, the Missouri Attorney General has urged the Supreme Court to consider that the state has a legitimate interest in safeguarding the family unit and the marriage. In lower court testimony, it was stressed that marriages would suffer by independent decisions to abort. The State also points to the lack of adequate counseling in many abortions and that parents for the most part have the children's best interest in mind, and that the state has a legitimate duty to facilitate a parent's exercise of control over a child.

The State has also argued that a saline amniocentesis after 12 weeks gestation would result in harm to the woman's health. However, plaintiff contends that the law impermissibly restricts the doctors' right to practice medicine. Plaintiff also contends that the law would require efforts to save

fetuses during an abortion procedure. The lower court ruling pointed out that there may be constitutional problems with a requirement that reasonable measures be taken to safeguard the life of an aborted fetus. The lower court found the statute too broad in not referring to particular stages of pregnancy.

The U.S. Supreme Court also heard arguments on the case of *Baird v. Belotti*, 3 Mass Lawyers Weekly 462. The outcome of this appeal may ultimately determine the constitutionality of Massachusetts General Law Chapter 112, Section 12P which forbids the performance of an abortion on a minor without the consent of both parents. A U.S. District Court in April, 1975 enjoined enforcement of the statute and found nothing about abortions that requires the minor's interest to be treated differently from other medical and surgical procedures to which, customarily, only one parent is required to give legal consent.

"Except to assert that such rights exist," states the lower court, "defendants . . . do little to demonstrate why parents should be granted individual rights independent of the minor's best interests."

However, in a dissenting opinion by U.S. District Court Judge Julian, it was suggested that the parents are being deprived of their rights without due process of law and that these parental rights are recognized and guaranteed by the Constitution as necessary to the welfare of the minor children, as well as the family of which they are a part.

Edelin Manslaughter Case on Appeal to Massachusetts SJC

The Massachusetts Supreme Judicial Court heard arguments this month on the manslaughter case of Dr. Kenneth Edelin, convicted on criminal charges related to a hysterotomy-abortion performed on a patient at Boston City Hospital. Although there are numerous abortion issues related to that case, the Commonwealth nonetheless relies on the argument that the Boston physician terminated the life of an infant

who was "born," and that therefore the "legality" of abortion is not the issue.

Supreme Court Refuses to Hear Billings, Montana Case

The U.S. Supreme Court refused to grant certiorari in the well publicized case of *Taylor v. St. Vincent's Hospital* and allowed to stand a 9th Circuit Court decision upholding the right of a private, religious hospital to refuse the performance of morally objectionable services, regardless of whether it is a single hospital in a particular area. The original 1972 Circuit Court decision had ordered the Catholic Hospital to permit the plaintiff to be sterilized at the institution. However, the court later reversed its position in August, 1975, noting passage of the Senator Frank Church Conscience Clause legislation, 24 USC Sec 401b. The Circuit Court at that time recognized the constitutionality of the statute and noted that the First Amendment right to freedom of religion outweighs an individual's right to privacy.

The Circuit Court also failed to recognize under the circumstances the receipt of Hill Burton funds and other government monies as constituting state action.

New Jersey Supreme Court Rules on Quinian Matter

In a decision that is likely to prove as controversial as the original U.S. Supreme Court abortion decisions, the Supreme Court of New Jersey has ruled in *In the Matter of Karen Quinian* (March 31, 1976), that her guardian and family may authorize the disconnection of her respirator if her attending physicians conclude that "there is no reasonable possibility of Karen's ever emerging from her present comatose condition to a cognitive, sapient state"; and if this conclusion is concurred with by a hospital "ethics committee" none of the participants in the decision may be held either civilly or criminally liable for their role in it.

—James F. Holzer, J.D.—
—George J. Annas, J.D., M.P.H.