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STATEMENT FROM THE ATTORNEY GENERAL CORRECTING DISINFORMATION ON LOUISIANA ABORTION LAWS

Certain members of the media, political organizations and candidates, and pro-abortion organizations have attempted to sow confusion and doubt regarding our laws to further their own financial and/or political agendas. These organizations profit from misinformation they perpetuate.

To address this directly, Attorney General Liz Murrill has issued the following statement:

During the 2024 Regular Session, Louisiana State Senator Thomas Pressley's sister Catherine Herring testified regarding her ex-husband's attempts to induce the termination of her pregnancy at approximately 8 weeks by lacing her drinks with abortion-inducing drugs. Thankfully, she was able to save her pregnancy and gave birth to a beautiful, cherished daughter. The Legislature, in response, increased the criminal penalties that would attach to such conduct and added Mifepristone and Misoprostol to the list of Schedule IV Controlled Substances in Louisiana. Ms. Herring's courageous testimony illustrated that easy access to these drugs can be dangerous to pregnant women and exposes women to the risks of coercion, abuse, and criminal behavior.

This legislation does not limit a healthcare provider's ability to use, prescribe, or fill these medications for legitimate health purposes nor does it impose restrictive burdens on access for emergency purposes. To further clarify that these drugs may continue to be quickly accessible for use in emergencies, the Louisiana Department of Health has issued additional guidance, which may be accessed at <https://ldh.la.gov/assets/medicaid/LDH-Guidance-Act-246-La-Reg-Session-2024.pdf>

Providers who adhere to LDH and Louisiana Pharmacy Board regulations concerning scheduled drugs generally, or these drugs specifically, will not have exposure to fines, adverse licensing actions, or prosecution. I appreciate the healthcare providers who have appropriately directed their questions to the Department of Health and who have taken steps to proactively prepare for the October 1, 2024, effective date of Act 246.

The term "secure" used by LDH in its regulation is not vague. Its commonly accepted meaning is "to relieve from exposure to danger: act to make safe against adverse contingencies," according to Meriam-Webster (last accessed Sept. 11, 2024). LDH's use of this term provides hospitals and other providers dealing with emergent situations, such as a miscarriage or bleeding, maximum flexibility to access these medications if they are needed. The guidance is clear that "securing" the medications need not impede access as long as the provider has adequate policies to ensure the drugs are safely and responsibly stored and accounted for.

Louisiana's Pro-Life laws in General

The intent of Louisiana's pro-life law is to protect unborn babies from elective abortion. The treatment of conditions such as an ectopic pregnancy or miscarriage care do not fall within the legal definition of abortion, which requires an intent to terminate a viable pregnancy where no other exceptions apply. Additionally, Louisiana law does not define the termination of a medically futile pregnancy, as diagnosed by two qualified doctors exercising reasonable medical judgment, as abortion.

These laws do not restrict qualified, ethical doctors from caring for mothers and their babies. Louisiana laws and regulations *ensure, expect, and empower* physicians to use reasonable medical judgment to care for pregnant women – including those facing emergencies, miscarriages, ectopic pregnancies, and fetal abnormalities.

And to be clear: nothing in Louisiana laws stands in the way of a doctor providing care that stabilizes and treats emergency conditions. Any statements to the contrary are flatly incorrect. Any hospital or doctor at any hospital or emergency room who refuses to treat and stabilize a woman having a miscarriage or suffering with an ectopic pregnancy could be committing both medical malpractice and violating federal law. Louisiana law should not be read as requiring hospital or emergency room staff to refuse such emergency care.

When would a physician violate the Louisiana law?

As Louisiana’s Attorney General, I will never seek to criminalize the conduct of a doctor using reasonable medical judgment within the confines of the law who, to the extent possible, endeavors to care for both mothers and babies. Doctors, in fact, have been doing their best to do so for decades.

Louisiana law specifically identifies actions that are not considered a prohibited abortion when performed by a physician. In summary, a physician only violates the law if he or she *intentionally* takes action to terminate a pregnancy knowing that it will likely cause the death of the unborn child and when that action does not otherwise meet the definition of permissible procedures. *See* La. R.S. 14:87.1 (1)(a).

The law is not violated if intentional medical treatment accidentally or unintentionally causes the death of an unborn child *or* if the physician performs an act in good faith that is not considered an abortion under the law. *See* La. R.S. 40:1061 (G) and La. R.S. 14:87.1 (1) (b)(i-vi).

Act 246 – Misoprostol and Mifepristone

Regardless of the reason for their use, misoprostol and mifepristone should only be used in Louisiana under the care of a Louisiana-licensed healthcare provider. As controlled substances, misoprostol and mifepristone should only be possessed by a person with a valid prescription for the drugs. In no case should they be prescribed, sold, or distributed by a person lacking the credentials required for the prescription, sale, or distribution of Schedule IV substances.

The use of misoprostol and mifepristone to induce an elective abortion has been prohibited in Louisiana since 2022.

The intentional delivery of these drugs by organizations operating through the internet or other networks is illegal. Such conduct will be prosecuted and can also lead to civil liability for all those who assist in the procurement or delivery of these drugs to cause or induce an illegal abortion.

Miscarriage

The Human Life Protection Act clearly separates miscarriage management from elective abortion. The law states that the following is *not* a prohibited abortion:

The removal of a deceased unborn child or the inducement or delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman’s medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended *or is in the unavoidable and untreatable process of ending* due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion,

missed abortion, inevitable abortion, incomplete abortion, or septic abortion *is not prohibited*. La. R.S. 14:87.1 (1) (b)(ii).

Additionally, Louisiana law specifically clarifies that termination of a pregnancy is not prohibited when a licensed physician determines in his or her “reasonable medical judgment” that it is necessary to protect the life of a pregnant mother. La. R.S. 14:87.1 (1) (b)(V) AND La. R.S. 40:1061(F). A licensed physician can perform any medical procedure to prevent a pregnant mother’s death, substantial risk of death due to a physical condition, or a serious, permanent impairment to a life-sustaining organ. Under this provision, the legal obligation is that a licensed physician make *reasonable medical efforts to preserve both the life of the mother and the unborn child in a manner consistent with reasonable medical practice*.

Refusal by a hospital to treat a woman presenting with an emergent conditions could violate the federal Emergency Treatment and Active Labor Act. *Treating, stabilizing, and referring* to the woman’s regular provider does not violate that law.

The Legislature, while prohibiting abortion-on-demand, recognized the need to defer to the reasonable medical judgment of licensed doctors endeavoring to protect mother and child to the extent that is possible.

Ectopic Pregnancy

Louisiana law is absolutely clear that the removal of an ectopic pregnancy, whether through surgery or the use of methotrexate, is legal and not considered a prohibited abortion. *See* La R.S.14:87.1(1)(b)(iii-iv). Moreover, because an ectopic pregnancy poses a substantial threat to the life of the mother, physicians can lawfully remove an ectopic pregnancy under La. R.S. 14:87.1(1) (b) (v) and La. R.S. 40:1061(F).

There have been questions regarding molar pregnancies. While the term “molar pregnancy” is not found in the Human Life Protection Act, it is generally accepted that a rare molar pregnancy threatens the life of the mother *or* falls under the definition of medical futility.

Medical Futility

Louisiana law is also absolutely clear that “the removal of an unborn child who is deemed to be medically futile” is not a prohibited abortion. *See* La. R.S. 14:87.1 (1)(b)(vi). The Louisiana Department of Health has issued a list of specific conditions that fall under the medical futility definition.

To address these situations that may fall outside that list, two qualified doctors can certify the condition. Institutions or physicians who choose not to provide this service in medically futile circumstances outside of an emergency context are not required to do so and are protected under the law.

For those mothers who choose to carry a child with a life-limiting diagnosis to term, I support private and public institutions offering resources and referrals to assist those mothers and families.

Birth Control

The law does not prohibit prescribing, selling, filling prescriptions for, or using a “contraceptive device, measure, drug, chemical, or product” according to the manufacturer’s instructions before a pregnancy can be clinically diagnosed. La. R.S. 14.87.1(2)(b); La. R.S. 14.87.1(6);La. 40:106(E).

CONCLUSION

My office is not aware of a single Louisiana doctor who has declined emergency care. I invite physicians and providers to share any questions or concerns with LDH or my office. I am committed to working together to improve the care provided to mothers and babies in this State.

Liz Murrill

Louisiana Attorney General

FREQUENTLY ASKED QUESTIONS

1. Does the Human Life Protection Act prohibit birth control or emergency contraception?

No. The law does not prohibit contraceptives used to prevent pregnancy when they are sold, prescribed, or administered according to manufacturer instructions. The law prohibits abortion-inducing drugs which do not include contraceptives or emergency contraceptives according to the law. See La. R.S. 14:87.7(E) and La. R.S. 40:1061(E).

2. Can a pregnant mother be penalized for receiving an abortion?

No. Louisiana law makes clear that a pregnant woman upon whom an abortion is committed or performed shall not be held criminally or civilly liable under the Human Life Protection Act. See La. R.S. 14:87.7(D); La. R.S. 14:87.9(C)(3); and La. R.S. 40:1061(H).

3. Does Louisiana law allow for abortion to save the life of the mother?

Yes. Louisiana law makes clear that procedures performed to save the life of the pregnant mother are not prohibited abortions under the law. See La. R.S. 14:87.1(b)(v) and La. R.S. 40:1061 (F).

4. Must a pregnant mother be on the brink of death before a physician can perform an abortion to save her life?

No. The law requires a physician to make a reasonable effort consistent with reasonable medical practice to save both the life of the mother and baby. In the unfortunate situation that the child cannot be saved using reasonable medical practice, it is patently unreasonable for a doctor to wait until the mother is near death before taking action. See La. R.S. 14:87.1(1)(b)(b) and La. R.S. 40:1061(F).

5. Does Louisiana law prohibit doctors from treating miscarriages?

No. Louisiana law clearly states that procedures performed by physicians to treat miscarriages are not prohibited abortions under the law. See La. R.S. 14:87.1(1)(b)(ii).

6. Does Louisiana law prohibit physicians from treating or removing an ectopic pregnancy?

No. As a general matter, the removal or treatment of an ectopic pregnancy is not a prohibited abortion under the law. See La. R.S. 14:87.1(1)(b)(iii-iv)). Additionally, because an ectopic pregnancy can be a life-threatening condition for the mother, a physician may treat or remove an ectopic pregnancy under La. R.S. 14:87.1(1)(b)(v).

7. Does Louisiana law prohibit physicians from treating life-threatening conditions like preeclampsia or preterm premature rupture of membranes (PPROM)?

No. The law is clear that a physician can take action to save the life of the mother when necessary in his or her reasonable medical judgment. See La. R.S. 14:87.1(1)(b)(v) and La. R.S. 40:1061 (F). The law requires a physician to make reasonable effort to save the life of both the mother and the baby consistent with reasonable medical practice. Thus, under the circumstances, if the doctor can make reasonable medical efforts to continue the pregnancy and save the life of the child, the physician should take that course of action. Inversely, if the physician cannot make reasonable medical efforts to continue the pregnancy due to the physical condition of the mother, the physician can take action under the law to end the pregnancy. Ultimately, the law defers to the reasonable medical judgment of the physician.

8. Does Louisiana's Human Life Protection Act impose a hardship on doctors?

No. Louisiana's laws on abortion impose the same duty of care that is placed on every physician in every medical field. Physicians are always obligated to use reasonable medical judgment in treating patients, and it is no different in the context of pregnancy.