MEDICAL EXAMINER | HEALTH AND MEDICINE EXPLAINED. | OCT. 22 2003 7:17 PM

Did I Violate the Partial-Birth Abortion Ban?

A doctor ponders a new era of prosecution

By Warren M. Hern

As the misleadingly titled "Partial-Birth Abortion Ban" makes its way to the president's desk, anti-abortion groups are celebrating their public relations victory. But beneath the hoopla, the bill's medical consequences remain murky. Exactly which procedures will be banned, and which doctors prosecuted? Will the anti-abortion lobby be happier with the alternative methods to which doctors will resort? If not, which methods and doctors will be targeted next? Will this ban have a chilling effect on related procedures? If so, will it prevent abortions—or births?

I ask these questions because I am a potential target of this legislation. Almost exactly 30 years ago, shortly after *Roe v. Wade*, I started performing abortions on a full-time basis in Boulder, Colo., at the state's first free-standing nonprofit abortion clinic, where I was the founding medical director. In my private practice, I perform many abortions as late as the 26th week of pregnancy, and some as late as the 34th week.

I don't know the answers to the questions I've posed above, and neither does Congress. No physician expert on late abortion has ever testified in person before a congressional committee. No peer-reviewed articles or case reports have ever been published describing anything such as "partial-birth" abortion, "Intact D&E" (for "dilation and extraction"), or any of its synonyms. There have been no descriptions of its complication rates and no published studies comparing its complication rates with those of any other method of late abortion.

What I do know is that the political exploitation of this issue is confusing and frightening my patients. Recently, I received a call from a woman whose physician had discovered catastrophic genetic and developmental defects in the fetus she is carrying. The pregnancy was profoundly desired, and the diagnosis was devastating for her and her husband. She called me with great anxiety to find out whether passage of the "partial-birth" ban by the Senate would mean that she could not come to my office for help because my work would be illegal. She was also horrified by the images that she had seen and the terminology she had heard in the congressional debates.

I reassured her that I do not perform the "partial-birth" procedure and that there is no likelihood that the ban's passage would close my office and keep me from seeing her. The fetus cannot be delivered "alive" in my procedure—as the ban stipulates in defining prohibited procedures—because I begin by giving the fetus an injection that stops its heart immediately. I treat the woman's cervix to cause it to open during the next two days. On the third day, under anesthesia, the membranes are ruptured, allowing the amniotic fluid to escape. Medicine is given to make the uterus contract, and the dead fetus is delivered or removed with forceps. Many variations of this sequence are possible, depending on the woman's medical condition and surgical indications.

On the same day I got that call, I received a call from another woman who hoped to become pregnant but wanted to be reassured that, in spite of passage of the "partial-birth" ban, she would still be able to terminate the pregnancy if a serious genetic defect were discovered at, say, 20 weeks of pregnancy. Because of her history, she has an especially high risk of such a scenario. Without reassurance, she would avoid pregnancy entirely. Again, I reassured her that I would be here for her if she needs me.

But what if the people enforcing the "partial-birth" ban decide for some reason—because they doubt that my injection worked, for example—that it covers what I do? Or what if other doctors decide to follow the same procedure of causing fetal death by injection some time—even a day or two—before the extraction is performed? If the intact delivery of the living fetus (the "birth" imagery) is what bothers lawmakers, will they ban this method as well? Depending on the doctor, the alternative to intact extraction could be dismemberment of the fetus in the uterus, which may be more dangerous for the woman and no less troubling to look at. Is that what Congress wants? Who gets to decide what is safer for the woman: the expert physician or Congress?

Earlier this year, I began an abortion on a young woman who was 17 weeks pregnant. Because of the two days of prior treatment, the amniotic membranes were visible and bulging. I ruptured the membranes and released the fluid to reduce the risk of amniotic fluid embolism. Then I inserted my forceps into the uterus and applied them to the head of the fetus, which was still alive, since fetal injection is not done at that stage of pregnancy. I closed the forceps, crushing the skull of the fetus, and withdrew the forceps. The fetus, now dead, slid out more or less intact. With the next pass of the forceps, I grasped the placenta, and it came out in one piece. Within a few seconds, I had completed my routine exploration of the uterus and sharp curettage. The blood loss would just fill a tablespoon. The patient, who was awake, hardly felt the operation. She was relieved, grateful, and safe. She wants to have children in the future.

Did I do a "partial-birth" abortion? Will John Ashcroft prosecute me? Stay tuned.