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HOUSE BILL NO. 1079

Offered January 24, 2000

A BILL to amend and reenact § 18.2-76 of the Code of Virginia and to require the Board of Medicine to promulgate regulations governing certain practices of health care providers and the giving of information to women considering abortion.

Patrons—Marshall and Black

Referred to Committee on Health, Welfare and Institutions

Whereas, the General Assembly finds that:

Abortion is one of many options which a physician may call upon in treating a crisis pregnancy. "[T]he abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician." *Roe v. Wade*, 410 U.S. 113, 166 (1973). In forming a recommendation to abort, "[t]he attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated." *Roe* at 163. It is clear, furthermore, both in the law and in standard medical ethics, that patients are not allowed to prescribe their own treatments. *Roe* at 153. While a woman may initiate or request an abortion, it is the attending physician who is responsible for determining if an abortion is actually recommended as a form of care given each woman's individual needs and risks;

In forming a medical recommendation, the physician is obligated to develop this opinion "in light of all factors—physical, emotional, psychological, and the woman's age—relevant to the well-being of the patient." *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1975). And in all cases, the weighing of all the factors should operate "for the benefit, not the disadvantage, of the pregnant woman." *Doe v. Bolton*, 410 U.S. 179 (1973) at 192;

It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on her alternatives. This is especially so since "abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 325 (1980);

"The decision to abort, indeed, is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences." *Danforth* at 67. Furthermore, provision of this information "insures that the pregnant woman retains control over the discretions of her consulting physician." *Danforth* at 66;

"As the patient must bear the expense, pain and suffering of any injury from medical treatment, his right to know all material facts pertaining to the proposed treatment cannot be dependent upon the self-imposed standards of the medical profession." *Cooper v. Roberts*, 220 Pa. Super. Ct. 260, 267, 286 A.2d 647, 650 (1971). "True consent to what happens to one's self is the informed exercise of a choice, and that entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each." *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972) at 780. "What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so." *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2821 (1992);

"It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Casey* at 2822;

"If the pregnant girl elects to carry her child to term, the medical decisions to be made entail few—perhaps none—of the potentially grave emotional and psychological consequences of the decision to abort." *H.L. v. Matheson*, 450 U.S. 398, 412-413 (1980);

"The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician." *Matheson* at 411; and

Whereas, it is the purpose of this act to:

1. Ensure that every woman considering abortion receive complete information about her rights and her physician's obligations to safeguard both her health and her autonomy;

2. Ensure that every woman considering an abortion receive complete information on the reasons for her physician's recommendation, her alternatives, her risks, and any other information which may influence her decision to follow or reject a recommendation to abort;

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60 3. Ensure that every woman submitting to an abortion do so only after giving her voluntary and
61 informed consent to the abortion procedure and that her agreement to a recommendation to abort is not
62 the result of coercion or external pressures which are in conflict with her own personal moral beliefs or
63 desires to give birth to her unborn child;

64 4. Protect women from the loss of their unborn children due to uninformed choices concerning risks
65 and alternatives to an abortion recommendation;

66 5. Protect women from feeling pressured into unwanted abortions by other persons or by
67 circumstances which can be corrected;

68 6. Protect women from individuals or circumstances that would pressure them into a violation of
69 their consciences; and

70 7. Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating
71 psychological consequences, that her decision was not fully informed." *Casey at 2823* ; now, therefore,

72 **Be it enacted by the General Assembly of Virginia:**

73 **1. § 1. Board of Medicine to promulgate certain regulations.**

74 *A. The Board of Medicine shall promulgate regulations to ensure that, on and after January 1, 2001, a*
75 *woman considering abortion is fully and appropriately informed of the alternatives available to her, the*
76 *medical indications and risks to her, and the services available to her both during and after her*
77 *pregnancy and after an abortion and that her consent to the abortion is freely and voluntarily given.*
78 *The Board's regulations shall also require every physician to obtain such consent at least 24 hours*
79 *prior to performing the abortion.*

80 *B. Further, on and after January 1, 2001, every abortion performed or induced in the*
81 *Commonwealth shall be performed by a health care provider who has in effect a liability insurance*
82 *policy covering the abortion services being provided or who has admitting privileges at a hospital at*
83 *which health care services sufficient to meet the patient's health care needs can be provided.*

84 **2. That § 18.2-76 of the Code of Virginia is amended and reenacted as follows:**

85 § 18.2-76. Informed consent required.

86 Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided
87 for in §§ 18.2-72, 18.2-73 or § 18.2-74, the physician shall obtain the informed written consent of the
88 pregnant woman; provided, however, if such woman has been adjudicated incapacitated by any court of
89 competent jurisdiction or if the physician knows or has good reason to believe that such woman is
90 incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in
91 writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may
92 the physician perform the abortion or otherwise terminate the pregnancy.

93 The physician shall inform the pregnant woman of the nature of the proposed procedure to be
94 utilized and the risks, if any, in her particular case to her health in terminating or continuing the
95 pregnancy and shall otherwise conform to applicable regulations of the Board of Medicine prescribing
96 the requirements for securing the woman's informed consent.

97 **3. That the Board of Medicine shall promulgate regulations to implement the provisions of this act**
98 **to be effective within 280 days of its enactment.**