

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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|---------------------------------|---|-----------------------|
| ARTHUR L. HERBST, M.D., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 84 C 5602 |
| |) | |
| JACK O'MALLEY, et al., |) | Hon. John A. Nordberg |
| |) | |
| Defendants. |) | |

CONSENT DECREE

I. HISTORY OF THE LITIGATION

This class action litigation was commenced as a civil rights case on July 1, 1984, by a class of physicians and their women patients under 42 U.S.C. sections 1983 and 1988, and 28 U.S.C. sections 2201 et seq. Plaintiffs claimed that the amendments to the Illinois Abortion Law of 1975 contained in Public Act 83-1128 (also known as HB 1399 and hereinafter referred to as "the Law") impermissibly restricted the performance of abortions and pregnancy terminations in the State of Illinois, restricted the rights of plaintiff-physicians to practice medicine in accordance with the highest professional standards, impermissibly restricted their patients' ability to effectuate their decision to have an abortion, and were unconstitutionally vague, and thus violated rights secured by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. In addition, plaintiffs contended that sections 2(7) and 11(3) of Public Act 83-1128 were preempted by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. sec. 301 et seq., and by the federal regulations

promulgated thereunder and thus violated Article VI of the United States Constitution.

A. Parties

1. Plaintiffs

Plaintiff Arthur L. Herbst, M.D., received an M.D. degree cum laude in 1959 from the Harvard Medical School and is a registered and licensed physician in the State of Illinois. He is actively engaged in the practice of obstetrics and gynecology and is currently the Joseph Bolivar DeLee Distinguished Service Professor and Chairman of the Department of Obstetrics and Gynecology at the University of Chicago Pritzker School of Medicine. He is a Diplomate of the American Board of Obstetrics and Gynecology and has been certified by that Board of "Special Competence" in the field of gynecology.

Plaintiff David Zbaraz, M.D., received an M.D. degree in 1965 from the University of Illinois College of Medicine and is a registered and licensed physician in the State of Illinois. He is actively engaged in the practice of obstetrics and gynecology and is a Clinical Professor of Obstetrics and Gynecology at Northwestern University Medical School. He is a Diplomate of the American Board of Obstetrics and Gynecology and a Fellow of the American College of Obstetrics and Gynecology. He is a member of the American Medical Association, the Illinois State Medical Society, and the Chicago Medical Society.

Plaintiff Richard Ragsdale, M.D., received his medical degree in 1959 from the University of Wisconsin Medical School and is a registered and licensed physician in the State of Illinois. He is actively engaged in the practice of obstetrics

and gynecology at his own clinic in Rockford, Illinois, and is affiliated with Rockford Memorial Hospital and Swedish Covenant Hospital. He is a Diplomate of the American Board of Obstetrics and Gynecology and has been certified by that Board in the field of obstetrics and gynecology.

The plaintiff class of patients includes every woman of child-bearing age in the State of Illinois who now or at some time in the future may want to terminate a pregnancy, or who seeks or may seek family planning services from their physicians.

Plaintiff-physicians presently offer, provide, render and perform abortions or pregnancy terminations as part of their medical practice and intend to continue said medical services in the best interest of their patients. Plaintiff-physicians also provide family planning services to their patients, including intrauterine devices, and also other appropriate treatment to prevent undesired pregnancy.

The plaintiff-physicians brought this lawsuit on their own behalf, on behalf of a class of physicians who perform or desire to perform abortions or pregnancy terminations in the State of Illinois, and who administer family planning or other medical services to prevent pregnancy, and on behalf of a class of all women who desire pregnancy termination or family planning services. Simultaneous with the filing of the class action complaint, plaintiffs filed the appropriate motion, pursuant to Rule 23(b) of the F.R.Civ.P., for certification of a plaintiff class of physicians, a plaintiff class of women and a defendant class of state's attorneys.

The two plaintiff classes are defined as follows:

- (a) A plaintiff class consisting of all duly licensed physicians and surgeons who perform or desire to perform abortions or pregnancy terminations in the State of Illinois and who provide family planning services to their patients within the State of Illinois;
- (b) A plaintiff class consisting of all Illinois women of child-bearing age who desire or may desire abortions or pregnancy terminations or family planning services within the State of Illinois sometime in the future.

2. Defendants

Defendant Jack O'Malley is the State's Attorney of Cook County, Illinois, and, as such, is charged with the enforcement, implementation, administration and defense of the Law.

Defendant Roland W. Burris, Attorney General of the State of Illinois, was sued in his official capacity as the chief legal officer of the State of Illinois, in which he is charged with the defense of this Law. In addition, as chief legal officer of the State, the Attorney General represents the directors of state agencies, and upon referral by these agencies, has certain enforcement responsibilities on behalf of these agencies.

Defendant John Lumpkin, M.D., is the Director of the Department of Public Health of the State of Illinois (hereinafter "IDPH"), the state agency charged with the responsibility of prescribing various forms and materials and enacting regulations pursuant to the Law, and, as such, is charged with the

implementation and administration of certain provisions of the Law.

By motion and pursuant to Rule 25(d), Fed.R.Civ.P., State's Attorney Jack O'Malley, Attorney General Roland W. Burris, and John Lumpkin, M.D., Director of the Illinois Department of Public Health, were substituted as defendants for their predecessors in office.

As State's Attorney of Cook County, defendant Jack O'Malley, was sued in his official capacity, and, pursuant to Rule 23(b)(1), Fed.R.Civ.P., as the representative of the defendant class of all state's attorneys of the 102 counties of the State of Illinois. Plaintiffs moved for class certification and that motion was granted on August 25, 1992, with the defendant class defined as follows:

A defendant class of all state's attorneys,
of the 102 Illinois counties, represented by
Jack O'Malley, State's Attorney of Cook
County, pursuant to Rule 23(b)(1),
Fed.R.Civ.P.

B. Jurisdiction

This Court concludes that it has jurisdiction of this action under 28 U.S.C. sections 1331 and 1343. Venue is proper in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. section 1391.

C. The Claims

In their Complaint¹, plaintiffs alleged that the challenged Law impermissibly restricts the ability of plaintiff-physicians to perform and the ability of plaintiff women to secure abortions or pregnancy terminations and family planning services.

Plaintiffs also alleged that the Law is a comprehensive criminal statute regulating plaintiff-physicians' practice of medicine.

Plaintiffs contended that the Law:

(1) Restricts the prescription of contraceptives and the performance of abortions and pregnancy terminations needed by the class of women patients, and as such, violates the class patients' rights guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution and the penumbra of the Bill of Rights, and also violates plaintiff-physicians' own rights under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution; and

(2) Deprives plaintiff-physicians of their asserted right to practice medicine free from vague, arbitrary, irrational burdensome regulations, in violation of the Fourteenth Amendment to the United States Constitution; and,

(3) Violates Article VI of the United States Constitution because sections 2(7) and 11(3) of the law

¹ Plaintiffs filed an Amended Complaint on October 19, 1984, a Second Amended Complaint on January 20, 1988, and amendments to that Second Amended Complaint on April 26, 1991. All references to the Complaint include the amendments thereto.

are preempted under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 301, et seq.

Plaintiffs sought declaratory and injunctive relief from the enforcement of the challenged provisions. No damages were sought on behalf of any of the plaintiffs or plaintiff classes.

Defendants filed an Answer which denied each and every allegation of the Complaint, except as otherwise responded to. Defendants specifically denied each and every allegation that the Law violated any of plaintiffs' rights guaranteed by the United States Constitution.

D. The Temporary Restraining Order

The temporary restraining order was entered on July 1, 1984, by the Honorable Nicholas Bua, Presiding Emergency Judge, United States District Court for the Northern District of Illinois, Eastern Division. By agreement of the parties, this temporary restraining order was continued and remained in effect at the time that this Consent Decree was negotiated.

E. Discovery

Subsequent to the filing of the Complaint, and prior to the negotiations that resulted in the parties' proposed Consent Decree, the parties engaged in substantial discovery, including the production of documents, the submission of interrogatories, and the taking of numerous depositions of both party and non-party deponents. The deponents included: Marilyn Connors Frederiksen, M.D., Associate Professor of Obstetrics, and Gynecology, Northwestern University Medical School (plaintiffs'

proposed expert in high risk obstetrics and late-term pregnancy terminations); Norbert Gleicher, M.D., Chairman, Department of Obstetrics and Gynecology, Mount Sinai Medical Center, and Professor of Obstetrics and Gynecology, Rush Medical College, Chicago (plaintiffs' proposed expert in fertilization, conception and the developmental stages of the embryo and fetus); L. Michael Newman, M.D., Director, Obstetrical Anesthesia, Rush-Presbyterian St. Luke's Hospital, Chicago, and Assistant Professor of Anesthesia and Obstetrics and Gynecology, Rush Medical College, Chicago (plaintiffs' proposed expert in anesthesiology and pain); Richard M. Ragsdale, M.D., Clinical Assistant Professor, University of Illinois Rockford College of Medicine (plaintiff and proposed expert in pregnancy terminations and family planning services); David Zbaraz, M.D., Clinical Professor of Obstetrics and Gynecology, Northwestern University Medical School, Chicago, (plaintiff and expert in practice of obstetrics and gynecology, including pregnancy terminations and family planning services); Richard T. Schmidt, M.D., Clinical Professor of Obstetrics and Gynecology, Western Reserve University and Director of the Department of Obstetrics and Gynecology, Good Samaritan Hospital, (defendants' proposed expert in obstetrics and gynecologic pathology), Micheline Matthews-Roth, M.D., Associate Professor of Medicine, Harvard Medical School and Associate Physician, Brigham and Women's Hospital, (defendants' proposed expert in fertilization and developmental stages of the embryo and fetus); Thomas J. Considine, M.D., Assistant Clinical Professor, Department of Obstetrics and Gynecology and Department of Pathology, Northwestern University Medical School and Attending

Staff, Northwestern Memorial Hospital, (defendants' proposed expert in pathology); Kathryn Moseley, M.D., Director of Neonatology, Central Maine Medical Center and Assistant Professor of Pediatrics and Adolescent Medicine, St. Louis University Medical School, (defendants' proposed expert in neonatology and obstetrics); and, Watson B. Bowes, M.D., Professor, Department of Obstetrics and Gynecology, University of North Carolina School of Medicine, (defendants' proposed expert in obstetrics and maternal and fetal medicine).

The extensive and wide-ranging discovery focused on a number of issues, including: medical conditions necessitating late-term pregnancy terminations; the physiology of fertilization and conception; the working mechanisms of several methods of contraception; methods of abortion and pregnancy termination and considerations that help physicians determine the most appropriate technique or method of termination; the risks associated with various methods of termination; viability of the fetus, and medical considerations that contribute to the assessment of viability; use of anesthesia during delivery and pregnancy termination and its risk to the fetus and newborn; development of the nervous system; accepted medical practices in terminating a pregnancy; reasons women seek abortions or pregnancy terminations; genetic anomalies affecting the fetus; methods of genetic diagnosis; impact of reporting requirements on women and physicians; pathology examinations of fetal tissue; and the impact of this criminal abortion law on physicians, their women patients, and the practice of medicine.

II. NEGOTIATED RESOLUTION OF DISPUTED ISSUES

The parties are desirous of avoiding further protracted and costly litigation and therefore have agreed that this controversy should be resolved by settlement. This Consent Decree is the result of a negotiation and settlement process that was arduous and adversary. Counsel for all named plaintiffs and all named defendants participated in the settlement negotiations and vigorously advocated their positions. Nothing herein shall be considered an admission of fault of any kind by the defendants, nor shall anything herein be considered a reflection of any weakness of proof by the plaintiffs. Nearly every line and paragraph of this Consent Decree, and, in many cases, individual words, are the product of intense negotiation and reflect compromise by the parties.

Plaintiff-physicians are desirous of continuing to provide the full range of obstetrical, gynecological, and reproductive health care services to their patients, including abortions, pregnancy terminations and contraception; plaintiff-patients are desirous of continuing to receive these essential medical services, many of which are necessary to protect the patients' lives and health.

In section 1 of the Illinois Abortion Law, Ill.Rev.Stat. ch. 38, §1-21, the Illinois General Assembly stated that one of its purposes was to "assure and protect the woman's health and the integrity of the woman's decision whether or not to continue to bear a child," and "to gather data for establishing criteria for medical decisions."

Defendants recognize that legislative purpose and sought to further it in the negotiation of this Consent Decree. Defendants also recognize that a purpose of the 1984 amendments to the Law was to regulate post-viability pregnancy terminations to protect the fetus, albeit without increasing risks to the life and health of the pregnant woman, the protection of which remains the preeminent concern of defendants and plaintiffs. Accordingly, defendants' purposes in negotiating the Consent Decree were to expeditiously protect the State's authority to regulate post-viability pregnancy terminations, to protect the health of women who obtain abortions or pregnancy terminations, and to gather statistical data about the number and type of abortions or pregnancy terminations performed in Illinois, so as to better protect the health of women undergoing these procedures. This Consent Decree also contains specific agreements with respect to the future enforcement of portions of the challenged Law and regulations promulgated by IDPH pursuant thereto.

In negotiating this Consent Decree, the parties were fully aware of the state of the law involving the constitutional right of privacy, including the decision by the United States Supreme Court in Planned Parenthood v. Casey, ___ U.S. ___, 112 S.Ct. 2791 (1992), the decisional law governing in the Seventh Circuit, and Illinois state law.

As indicated by the signatures below, the parties have agreed to the entry of this Consent Decree. This Consent Decree shall constitute a final resolution of all of the claims for declaratory and injunctive relief asserted in the complaint, with the reservation of plaintiffs' claims for attorneys' fees, costs,

and expenses. The plaintiffs' entitlement to, and the amount of, any counsel fees and reimbursement of costs and expenses shall be determined by the Court upon proper application by the plaintiffs after entry of this Decree. Defendants retain their right to object to such application submitted by plaintiffs. The parties also may resolve the plaintiffs' claim to fees, costs and expenses by agreement.

Plaintiffs and defendants agree to the entry of this Consent Decree as a final resolution of this matter.

III. FINDING OF FAIRNESS, REASONABLENESS, AND ADEQUACY

The Court, having held a hearing pursuant to court-ordered notice to the plaintiff and defendant classes in accordance with Rule 23(e) of the Fed.R.Civ.P., hereby finds that the terms of this Consent Decree provide for a fair, adequate, and reasonable settlement of the claims for declaratory and injunctive relief asserted in the complaint, with the exception of plaintiffs' claims for attorney's fees, costs and expenses. The Court thereby dissolves the Temporary Restraining Order and enters this Consent Decree, permanently enjoining certain sections of the Law and dismissing plaintiffs' facial challenge to other sections of the Law, as explained more completely in section IV, below.

IV. JUDGMENT AND PERMANENT INJUNCTION

NOW, THEREFORE, upon the consent of the parties and approval of this Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendants in their official capacities, their successors in office, their officers, agents, servants, contractors, employees and attorneys, and those people in active

concert and participation with them, are hereby enjoined from initiating any prosecution, including but not limited to criminal proceedings, or imposing any sanction for violation of, or enforcing in any way, any of the provisions of the Illinois Abortion Law of 1975, as amended by Public Act 83-1128 and as codified at Ill. Rev. Stat. ch. 38, par. 81-21, et seq. (1991), set forth in subparagraphs (A)-(N), below, against any physician offering or performing abortions or pregnancy terminations.

(A) Par. 81-22(5) (referred to as section 2(5)) (enjoined to extent it defines "conception");

(B) Par. 81-22(6) (referred to as section 2(6)) (definition of "fetus" and "unborn child");

(C) Par. 81-22(7) (referred to as section 2(7)) (definition of "abortifacient");

(D) Par. 81-22(8) (referred to as section 2(8)) (definition of "born alive", "live born", and "live birth");

(E) Par. 81-25(2) (referred to as section 5(2)) (certification of why abortion was necessary);

(F) Par. 81-26(1)(b) (referred to as section 6(1)(b)) (certification of method of abortion);

(G) Par. 81-26(2)(a) (referred to as section 6(2)(a)) (enjoined only to extent that section 6(2)(a) requires physician to describe basis for judgment that medical emergency existed);

(H) Par. 81-26(3) (referred to as section 6(3)) (subjects physicians who perform abortions to prosecution under the Criminal Code of 1961);

(I) Par. 81-26(4)(a), (b), (c) (referred to as section 6(4)) (imposed certain obligations upon plaintiff-physicians who

performed abortions when there was a "reasonable possibility" of sustained survival of the fetus);

(J) Par. 81-26(6) (referred to as section 6(6)) (requires physician to advise woman about use of anesthetic or analgesics to alleviate alleged "organic pain caused to fetus");

(K) Par. 81-26(8) (referred to as section 6(8)) (enjoined only to extent that it subjects physicians to criminal liability for performing certain pre-viability abortions);

(L). Par. 81-30 (referred to as section 10)) (reporting requirements) subsections 10(1)-10(12), and every other provision except to the extent that the following provisions remain enforceable:

"A report of each abortion performed shall be made to the Department on forms prescribed by it. Such report forms shall not identify the patient by name[;]" and, "[s]uch form shall be completed. . . and transmitted to the Department not later than 10 days following the end of the month in which the abortion was performed."

"In the event that a complication of an abortion occurs or becomes known after submission of such form, a correction. . . shall be submitted to the Department within 10 days of its becoming known."

"The Department may prescribe rules and regulations regarding the administration of this Law and shall prescribe regulations to secure the confidentiality of the woman's identity in the information to be provided under the 'Vital Records Act.' All reports received by the Department shall be treated as confidential and the Department shall secure the woman's anonymity. Such reports shall be used only for statistical purposes."

(M) Par. 81-31(3) (referred to as section 11(3)) (imposes criminal penalties for not advising patients that state considers certain drugs and devices abortifacient);

(N) Par. 81-32 (referred to as section 12) (enjoined only to extent that "[a]ny evidence of live birth or of viability shall be reported within 7 days, if possible, to the Department by the pathologist. Intentional failure of the pathologist to report any evidence of live birth or of viability to the Department is a class B Misdemeanor.")

2. Defendants, in their official capacities, their successors in office, their officers, agents and servants, and those people in active concert and participation with them:

(A) Will not, in enforcing sections 6(2)(a) and 6(2)(b), incorporate, use, or rely upon, the definition of "live birth" set forth in the Vital Records Act, Ill. Rev. Stat. ch.111 1/2, ¶73-1(5) (1991).

(B) Will not, in enforcing sections 6(1) and 6(2), require plaintiff-physicians, or the class of physicians they represent, to employ any medical technique that could increase medical risk to the pregnant woman, or to forego using any technique that could decrease medical risk to the pregnant woman. Consistent with prior case law and accepted medical standards, medical risk includes psychological risk.

(C) Will, in enforcing sections 5(1), 6(1) and 6(2), use the specific intent scienter elements of "intentional" or "knowing" incorporated into sections 5(1), 6(1)(a) and 6(2)(a),(b) to govern any prosecutions under these provisions rather than the other scienter requirements incorporated into sections 5(1), 6(1)(c) and 6(2)(a),(b).

(D) Will not, in enforcing section 11(4), require plaintiff-physicians or the class of physicians they represent, to employ any pregnancy test or other technique to determine pregnancy that is inconsistent with accepted medical standards.

3. Plaintiffs shall dismiss, with prejudice, their facial challenge to the following provisions of the Illinois Abortion Law of 1975, as amended by Public Act 83-1128 and as codified at Ill. Rev. Stat. ch. 38, par. 81-21, et seq., and as set forth in subparagraphs (A)-(P), below:

- (A) Par. 81-22(1) (referred to as section 2(1))
(definition of "viability");
- (B) Par. 81-22(2) (referred to as section 2(2))
(definition of "physician");
- (C) Par. 81-22(3) (referred to as section 2(3))
(definition of "Department" of Public Health) (hereafter referred to as the Department);
- (D) Par. 81-22(4) (referred to as section 2(4))
(definition of "abortion");
- (E) Par. 81-22(5) (referred to as section 2(5)) (but only to extent it defines "fertilization" as meaning "the fertilization of a human ovum by a human sperm");
- (F) Par. 81-23.1(a), (b) (referred to as section 3.1))
(no physician shall perform an abortion unless it is necessary);
- (G) Par. 81-25(1) (referred to as section 5(1)) (no physician shall perform a post-viability pregnancy termination

unless it is necessary to preserve the life or health of the woman);

(H) Par. 81-26(1)(a),(c) (referred to as sections 6(1)(a),(c)) (when performing a post-viability pregnancy termination the physician shall utilize method which is most likely to preserve the life and health of the fetus, unless that method increases the risk to the woman);

(I) Par. 81-26(2)(a), (referred to as section 6(2)(a)) (requirement that second physician be in attendance when post-viability pregnancy termination is performed, except to extent that certification requirement is enjoined, as set forth in paragraph 1, above);

(J) Par. 81-26(2)(b) (referred to as section 6(2)(b)) (physician is to treat child born alive with requisite degree of professional skill, care and diligence);

(K) Par. 81-26(5) (referred to as section 6(5)) (physician not required to use any method of abortion that would increase risk to the woman);

(L) Par. 81-26(8) (referred to as section 6(8)) (except to extent that provision subjects physicians to criminal liability for performing certain pre-viability abortions);

(M) Par. 81-30 (referred to as section 10) (to extent not specifically enjoined pursuant to paragraph 1, above);

(N) Par. 81-31(1),(2), (4) (referred to as sections 11(1),(2), (4)) (liability provisions);

(O) Par. 81-32 (referred to as section 12)) (pathology requirement, except to extent that provision requiring reporting

of live birth or viability is enjoined, as set forth in paragraph 1, above);

(P) Par. 81-34(1),(2) (referred to as section 14) (severability provision and effectiveness date).

4. Following the entry of the Consent Decree: (a) defendants may enforce those specific provisions of the Illinois Abortion Law of 1975, as amended by Public Act 83-1128 not enjoined herein; and (b) defendants' future regulation under and enforcement of the Illinois Abortion Law of 1975, as amended by Public Act 83-1128, shall be consistent with the injunctions and specifications in paragraphs 1 and 2 above. Defendants are authorized to further enforce the Law as follows:

(A) With respect to the requirement set forth in section 10 of the Law that "[a] report of each abortion performed shall be made to the Department on forms prescribed by it[;]", the Department may, if it chooses, promulgate and enforce regulations that, while preserving the anonymity of each woman who has received an abortion, require the reporting of:

- (1) a number identifying the physician who performed the abortion and a randomly-selected number for each patient, so long as that number does not permit the individual identification of the patient;
- (2) the state and county in which the patient resides, and, for those women living in Chicago, the zip code of their residence;
- (3) the facility name and county in which it is located;

- (4) the patient's age;
- (5) the patient's race/ethnicity;
- (6) the patient's marital status (married or not);
- (7) the number of prior pregnancies and outcomes;
- (8) education
- (9) the gestational duration of the pregnancy at the time of termination;
- (10) the type of abortion or pregnancy termination procedure[s] performed;
- (11) complications and whether hospitalization is required;
- (12) RH determinations and whether anti-RH given;
- (13) date termination was performed;
- (14) whether the reason for termination was the woman's request or some other reason.

(B) In promulgating the regulations referenced in paragraph (A)(1)-(12), above, the Department may prescribe rules and regulations regarding the administration of section 10 reporting requirements and shall prescribe regulations to secure the anonymity of the identity of each woman undergoing an abortion. The Department also shall prescribe rules and regulations and create a Public Use Tape for the dissemination of aggregate data reported to the Department. The Department may disseminate aggregate data generated from the Public Use Tape to public

health officials, physicians, the General Assembly and the public.

(C) With respect to any additional regulations the Department may wish to promulgate and enforce under the Illinois Abortion Law of 1975, as Amended by Public Act 83-1128, it may do so by agreement of the parties and with leave of Court. Otherwise it may do so only when a change in medical or scientific knowledge requires such future regulations in order to insure against or gather information about a significant health or safety risk to the welfare of a woman undergoing an abortion or pregnancy termination; and further provided that no section 10 future regulation shall: (1) identify the woman undergoing the procedure; (2) impose such a burden on the reporting physician so as to result in (i) a material increase in the cost of the procedure, or (ii) a reduction in the number of physicians willing to offer abortion procedures; (3) interfere with the safety of the procedure as determined by accepted medical practice; or, (4) prevent a physician from exercising medical discretion, within accepted medical practice, to provide a patient with appropriate care given the unique circumstances presented by her health situation.

V. COMPLIANCE

Within 60 days from the date of approval of this Consent Decree, the Department of Public Health shall issue regulations pursuant to this Consent Decree. The Department shall make available all forms required under Section 10 within 60 days of the issuance of the regulations. No requirement that any person


report any information to the Department shall become effective until the Department promulgates and makes available the necessary forms.

VI. CONTINUING JURISDICTION


The Court retains jurisdiction to enforce compliance with the provisions of this Consent Decree.

ORDERED THIS 30th day of March, 1993.

Approved:
One of the Attorneys for
the Plaintiff Class:


UNITED STATES DISTRICT COURT JUDGE
John Lumpkin, M.D.
Director, Illinois
Department of Public Health

Roland W. Burris,
Attorney General of Illinois


Jack O'Malley, State's Attorney
of Cook County and the
representative of the defendant
class of State's Attorneys