



Arizona State Legislature

1700 W. Washington Street
Phoenix, AZ 85007-2890

June 11, 2024

Sent via Email

The Honorable Kris Mayes
Attorney General
Arizona Attorney General's Office
2005 North Central Avenue
Phoenix, AZ 85004

Re: Request for an Expedited Attorney General Opinion

Dear Attorney General Mayes:

We are writing your office to request an expedited Attorney General Opinion. We have been hearing from concerned constituents that pregnant people throughout the state may be denied medical treatment and turned away from obtaining an abortion after the 15-week gestational age limit established in Arizona law. These pregnant people face, while in the midst of a medical emergency, a situation in which their future reproductive health is being threatened as well as a potentially life-threatening situation wherein the life of a pregnant person would be endangered or even lost due to confusion by doctors as to what constitutes a medical emergency under state law. *See* A.R.S. § 36-2322 (allowing an abortion after the 15th week of pregnancy only "in a medical emergency"). Because this is a situation that is faced daily by pregnant people across the state, and because there is an urgent need to inform practitioners as to what is legally appropriate under current state law, we would respectfully ask that an opinion be issued by your office to answer the questions below no later than 30 days from the date of this request. Medical doctors should not have to put their medical license or their personal freedom at risk for performing an abortion that they deem to be medically appropriate to avert death or "for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function." *See* A.R.S. § 36-2321(7).

The Issue:

There is currently no case law to help guide medical providers to determine what is or is not a medical emergency, which is required before an abortion can be obtained after the 15th week of pregnancy. This request for guidance for medical professionals should not be viewed as our support of the current law. To the contrary, we strongly oppose the arbitrary deadline of 15 weeks of pregnancy to obtain a lawful abortion in this state. By placing such a restriction on reproductive healthcare, the state is threatening the lives of pregnant people, sending a signal that the state does not trust them with their

healthcare decisions. We trust our constituents to make medical decisions that are best for their situations. And we trust medical professionals in this state to provide appropriate guidance and care to their patients. But the 15-week provision is current law, and our constituents desperately need legal guidance on what constitutes a medical emergency after 15 weeks of gestation.

Can the Attorney General help articulate to both pregnant persons and medical practitioners how to determine what it means for a pregnant person to be experiencing a "medical emergency" under A.R.S. § 36-2322 (A) and (B)? What are the medical implications (*see* A.R.S. § 36-2322 (C)) that a medical provider could use to form a good faith clinical judgment that would satisfy the A.R.S. § 36-2322(B) requirement that a pregnant person in a medical emergency to be allowed to have an abortion past the 15-week mark? To put it another way, at what point does a medical emergency allow for an immediate abortion under state law?

Relevant Legal Authority:

A.R.S. § 36-2321(6) defines "major bodily function" to include "functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions."

A.R.S. § 36-2321(7) provides that a "medical emergency" is "a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."

A.R.S. § 36-2322 states:

A. Except in a medical emergency, a physician may not perform, induce or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn human being and documented that gestational age in the maternal patient's chart and, if required, in a report required to be filed with the department as set forth in subsection C of this section. The determination of probable gestational age shall be made according to standard medical practices and techniques used in the medical community.

B. Except in a medical emergency, a physician may not intentionally or knowingly perform, induce or attempt to perform or induce an abortion if the probable gestational age of the unborn human being has been determined to be greater than fifteen weeks.

C. In every case in which a physician performs or induces an abortion on an unborn human being whose gestational age is greater than fifteen weeks, the physician, within fifteen days after the abortion, shall file with the department, on a form supplied by the department, a report containing all of the following:

1. The date the abortion was performed.
2. Specific method of abortion used.
3. The probable gestational age of the unborn human being and the method used to calculate gestational age.

4. A statement that the abortion was necessary because of a medical emergency.
5. The specific medical indications supporting the determination that a medical emergency existed.
6. The probable health consequences of the abortion.
7. The physician's signature as the physician's attestation under oath that the information stated is true and correct to the best of the physician's knowledge.

Conclusion:

It is imperative that your office grant this request for an expedited opinion so that medical practitioners throughout the state are not threatened with possible jailtime for using their best clinical judgment. We would respectfully ask that a response be issued within 30 days of the receipt of this letter. If there is any additional information needed from our offices, please do not hesitate to contact us.

Sincerely,



Eva Burch
State Senator
District 9



Judy Schwiebert
State Representative
District 2



Christine Marsh
State Senator
District 4



Stephanie Stahl Hamilton
State Representative
District 21