The Life Battle

Celebrating and Building on S353

written by:
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"The first thing she said to me was, 'I know it's a girl and I need your help to get it out of me....' With her arms tightly crossed along her abdomen, she explained that her husband and his parents expected a boy, and that Carpenter's help could change her life. 'I have a daughter,' Priya said. 'I don't need another one.'"[1]

"I first heard of the mifepristone abortion pill, on September 17, 2003, the worst day of my life. A nurse told me my daughter, Holly, was in the hospital and in very serious condition. I asked, 'What is wrong?' She responded, 'Mr. Patterson, we'll explain when you get here ... come as quickly as you can.' I sped to the hospital ... found her in the intensive care unit barely conscious ... and struggling to breathe.... The doctor came in and briskly explained, 'We are doing everything we can for her but she may not make it. Sometimes this happens as a result of the pill.' Holly Patterson died later that day of septic shock, from an incomplete chemical abortion."[2]

For years, efforts have been made to stop the holocaust of abortion. Yet, these two recent accounts, the first regarding a sex-selection abortion and the second a chemical abortion, show how much work still remains.

In the waning hours of the 2013 Legislative Session, North Carolina lawmakers passed what constitutes one of the few pieces of meaningful pro-life legislation enacted in this State in the past 100 years.[3] Upon signing this bill into law, Governor Pat McCrory underscored that, in his mind, the law was about insuring safer conditions for women seeking abortion.[4] While that is a laudable goal we should all support, we must also recognize that abortion directly impacts two lives: the life of the mother and the life of the unborn child.

With that in mind, this article examines Senate Bill 353–Health & Safety Law Changes, in order to understand exactly what the General Assembly accomplished through its passage in 2013 and what can be done in the future to further advance the health and safety of women and unborn children whose lives depend upon it.

Evaluating Senate Bill 353

Senate Bill 353 accomplishes several very important things:

- It expands North Carolina's health care conscience protection clause to ensure that not only doctors and nurses, but "any other health care provider" who objects to abortion on moral, ethical or religious grounds cannot be forced to participate in an abortion;
- It prohibits city and county governments from using taxpayer dollars to fund employee health insurance programs that include abortion coverage, except in cases of rape or incest or when the mother's life is in danger. A similar provision applies to health insurance plans offered through a health insurance exchange under the federal Affordable Care Act, commonly referred to as "Obamacare;"
- It seeks to prohibit sex-selection abortions by providing certain civil remedies when the sex of the unborn child is a "significant factor" in the woman seeking to have an abortion;
- It requires a physician who is performing a surgical abortion to be "physically present during the performance of the entire abortion procedure," or to be "physically present in the same room as the patient" when the first drug or chemical is administered to the patient during a chemical abortion; and
- It directs the North Carolina Department of Health and Human Services to amend its rules pertaining to abortion clinics to "ensure that standards for clinics certified by the Department address the on-site recovery phase of patient care at the clinic, protect patient privacy, provide quality assurance, and ensure that patients with complications receive the necessary medical attention, while not unduly restricting access."

Close examination of the bill shows that legislators and the Governor responded to the reveille to protect women's health, and while they made positive progress in that direction, more remains to be done. These new laws and regulations need to be properly implemented and vigorously enforced, and must be strengthened in the future in order to continue the efforts that were initiated in SB 353.

The Danger of Chemical Abortions

In September 2000, the Federal Drug Administration (FDA) approved the abortion pill RU-486 (mifeprex) for use in chemical abortions for pregnancies of 49 days or less.[5] Mifeprex has the effect of starving the unborn child by halting the growth of the uterine lining. Two days after administering mifiprex, under FDA protocol, misoprostol, an ulcer medication, is administered to the woman orally, in order to induce uterine contractions and expel the dead baby.[6] The patient is required to sign a Patient Agreement whereby the patient agrees to follow up with the doctor within 14 days to make sure the entire baby was expelled. Under FDA protocol, mifeprex should be administered only if the doctor has accurately assessed the age of the unborn child, has examined the patient to rule out an ectopic pregnancy, and has the ability to provide a surgical abortion or make arrangements to provide a surgical abortion if complications arise. According to the FDA protocol, the doctor, not the patient, should administer the second drug, misoprostol.[7] Despite these protocols, the National Abortion Federation (NAF) has recommended allowing women to take misoprostol vaginally at home for up to 69 days and in stronger doses than that recommended by the FDA.[8] The NAF recommendations are now commonly used in abortion clinics.[9]

Risk of Death. Chemical abortions, even when the initial dose has been provided by a physician, have proven far more dangerous than surgical abortions. In October 2006, the U.S. House of Representatives Government Reform Committee issued a report finding that the risk of death by infection from chemical abortion is at least 10 times that from surgical abortion.[10] Furthermore, the overall death rate for chemical abortions is 14 times greater than for surgical abortions. Moreover, a 2011 FDA report concluded that 16 women have died from chemical abortions, and 2,207 women have incurred complications, including infections, hemorrhaging, and ectopic pregnancies.[11] [12]

Tele-med or Webcam Abortions. Further jeopardizing women's health, in 2008, beginning in Iowa,[13] Planned Parenthood abortion doctors and others began administering chemical abortions via the Internet. Termed "tele-med abortions" (or webcam abortions), an abortion doctor, potentially hundreds of miles away, conducts a brief online conference with the woman, and then, from a remote location, presses a button that opens a drawer containing abortion inducing drugs. In violation of FDA protocol, the physician has neither examined the woman to determine the age of the unborn child, nor has the doctor ruled out a diagnosis of an ectopic pregnancy. The woman takes the first

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pill at that time and the second pill later, orally or vaginally at home. If problems arise, the doctor who conducted the online interview and administered the drug may not be available for follow-up or for assistance in the event of an emergency.

Senate Bill 353 on Webcam Abortions. Senate Bill 353 requires that a doctor in North Carolina be present during the entire surgical abortion procedure or for the initial dosage of medicine for a chemical abortion. While this provision intends to ban webcam abortions in North Carolina, it may not completely accomplish this goal. The reason is that the remedy for a violation of this law is a civil cause of action, as opposed to a criminal penalty.

Existing law, to which this provision was added, enables the woman "upon whom an abortion has been performed and any father of an unborn child that was the subject of an abortion" to "maintain an action for damages against the person who performed the abortion…." In addition, the law allows the woman seeking the abortion, her spouse or guardian, her parent (if the woman is a minor), her siblings, "a current or former licensed health care provider of the woman," or the Attorney General to petition the court for injunctive relief. The practical likelihood of any of these parties bringing an action against the doctor seems remote, especially since anonymity is not legislatively guaranteed in a court action. In the circumstances where an injunction is granted, the physician would be enjoined from performing abortions in violation of the statute in the future. Injunctive relief, however, will not undo the harm already done.

Suggested Improvements

To ensure women's safety, the legislature should amend the law as follows:

- For webcam abortions:
  - Create penalties that the Department of Health and Human Services must impose for violation of the ban on webcam abortions.
  - Upon a finding by the court that a physician has engaged in such practice, mandate suspension of his/her medical license, not just the ability to perform abortions.
- For all chemical abortions:
  - Require abortion clinics to comply with FDA protocols, including but not limited to prohibiting chemical abortions after 46 days of gestation; requiring the doctor to administer the second drug, misoprostol, in person; and requiring the patient to return to the facility within 14 days for a follow up appointment. (At the time of publication, the issue of requiring doctors to follow protocols for chemical abortions is currently before the United States Supreme Court.)[14]
  - Create mandatory penalties for non-compliance.
  - Require mandatory suspension of the physician's license if it is determined that the doctor did not comply with FDA protocol.

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Sex–Selection Abortions

In addition to not fully addressing problems related to webcam abortions, S353 falls short of an all out ban on sex-selection abortions, because it only creates grounds for a civil action, and not a criminal action, for violations of the law. The bill gives to the woman who obtained an abortion, her spouse or guardian, her parent (if she was a minor at the time of the abortion), or a former licensed health care provider a right to stop the doctor from performing future abortions based on sex-selection and provides these parties, except for the health care provider, an opportunity to sue the doctor for monetary damages. While civil penalties may be awarded in a successful legal action, the physician's license would not be in jeopardy of revocation.

In addition to North Carolina, there are at least five states that have enacted laws pertaining to sex–selection abortions. At least, four states—Arizona,[15] Pennsylvania,[16] Kansas,[17] and North Dakota[18] —have criminalized sex-selection abortion. The Arizona law, which requires a doctor to sign an affidavit that he/she is not aborting the baby due to race or sex and has no knowledge that the child to be aborted is being aborted because of race or sex, is under court challenge.[19] Oklahoma's law creates only a civil cause of action for injunctive relief, but it gives the State Attorney General and the District Attorney the authority to seek injunctive relief, provides statutorily guaranteed anonymity for the woman at trial, and upon a finding by the court that a doctor has performed an abortion based on sex selection, the law mandates suspension of that doctor's medical license.[20]

To truly ban sex–selection abortions, North Carolina's law needs to be amended to:

- **Criminalize sex-selection abortions.** Kermit Gosnell and his house of horrors serve as an example of why we need to impose crimi-

nal penalties. Gosnell was an abortionist in Philadelphia who in May 2013 was convicted of manslaughter of a patient and the murder of three aborted babies who were born alive. Evidence for these charges was discovered as a result of a raid by the federal Drug Enforcement Agency for suspected *criminal* drug violations, not a civil suit. That investigation prompted a state grand jury to investigate Gosnell for murder.

- **Add the District Attorney and Attorney General to the list of individuals who have the right to seek injunctive relief.** Expecting the woman who sought the abortion, or the parent who consented in the case of a minor, to then turn around and pursue an action against the doctor seems highly unlikely.
- **Statutorily mandate suspension of an abortionist's medical license if the court finds that the doctor performed an abortion knowing that the sex of the child was a significant factor in the pregnant woman seeking the abortion.** Simply imposing civil fines on a doctor could be treated as a "cost of doing business" and may not deter an abortionist from ignoring the court order.

Abortion Clinic Conditions

Traditionally, abortion clinics have escaped intensive oversight by the states, and clinic regulations are often weak and rarely enforced. As was the case with Kermit Gosnell's clinic,[21] health departments may know of the deplorable conditions but turn a blind eye while the abortion industry continues their business.

North Carolina's abortion clinics have many of the same problems that have been chronicled in headlines across the country. Regulations have not been updated in almost 20 years and require only that abortion clinics be inspected as the Department "deems necessary."[22] According to one news report, abortion clinics are inspected only every three to five years.[23] Other news reports have indicated even longer intervals between inspections.[24]

In the shadow of impending legislation requiring updated regulations, the N.C. Department of Health and Human Services (NCDHHS) suspended the certificate of operation for three abortion clinics in North Carolina. One, the Baker Clinic in Durham, which was shut down for blood testing and lab violations,[25] never reopened.[26] The other two clinics were temporarily closed for flagrant safety and health violations.

One clinic, the Femcare Medical Clinic in Asheville, had not been inspected in seven years.[27] Reportedly, inspectors found operating beds that were not properly cleaned, a dirty operating room, tape holding the anesthesia equipment together, no resuscitator available, no contract with an anesthetist or anesthesiologist, and no contract with a registered pharmacist to assure appropriate dispensing and administering of drugs. Less than a month later, the clinic reopened.[28]

Another clinic, the Preferred Women's Health Clinic in Charlotte has a very troubling track record. Reportedly, state regulators have documented over 40 problems at the clinic during the past 14 years.[29] The clinic has been closed twice, only to be reopened a few days later. The latest closure on May 10, 2013 lasted only five days, and the clinic reopened on May 15 after its medical director promised state regulators the clinic would not continue dispensing a chemical abortion drug incorrectly.[30]

The conditions at Preferred Women's Health Center in Raleigh were also shocking. The facility was investigated in 2010, and inspectors found 22 violations between 2008 and 2009. The State found the following:

- Several cases of the clinic failing to inform the patient of her risks in undergoing an abortion.
- Several cases where the clinic staff was not tested for tuberculosis.
- Staff members' required CPR certification had expired.
- Absence of emergency medications.
- Outdated medications.
- Several cases where the physician failed to insure that the abortion had been complete.
- Several cases where the clinic staff failed to properly monitor patients during recovery.
- One case where the patient returned three times because the first two "abortions" were incomplete.[31]

This Raleigh clinic has never been closed for violations.

Abortion Clinic Regulation

In the past few years, 26 states have legislatively mandated that abortion facilities meet the same standards as ambulatory surgical centers.[32] Al-

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though, early versions of S353 would have added North Carolina to that list, the final version of the bill did not. Instead, the bill directs the NCDHHS to "promulgate regulations that address on-site recovery, provide quality assurance, protect patient privacy and ensure that the patient with complications receives the necessary medical attention." This authority includes the ability to "apply any requirement for the licensure of ambulatory surgical centers to the standards applicable to" abortion clinics.

In compliance with the new law, DHHS should promulgate the following additional regulations:

- **Require annual inspections.** Currently, the regulations require only that the clinics be inspected as the Department "may deem appropriate."[33] North Carolina Animal Hospitals are inspected every two years.[34] Some abortion clinics have not been inspected in seven years. North Carolina women deserve better than pets in this State.
- **Require the Department to investigate every complaint relative to the care, treatment, or complication of any patient.** Currently, the regulations give authority to the Department to investigate complaints, but does not require the Department to conduct investigations.[35]
- **Require N.C. abortion clinics to have a written plan for the transfer of emergency cases to a nearby hospital for hospitalization.** Every abortion clinic should have a transfer agreement with a local hospital to accommodate these emergencies. Current regulations do not require a written plan or a transfer agreement.
- **Require the abortionist to have hospital privileges with a nearby hospital.** Currently, there is no such requirement.
- **Require the abortion clinic to have additional written policies and procedures for:**
  - storage, maintenance, and distribution of sterile supplies and equipment.
  - anesthesia services.
  - cleaning of operating and recovery rooms.
  - a schedule of preventive maintenance on all equipment and medicines.
  - obtaining, dispensing, and administering drugs.
- **Require every abortion clinic's governing authority to establish a quality assurance program to evaluate compliance with facility procedure and policies.** The committee implementing this program should consist of at least one physician, and other licensed health care professionals.
- **Require every abortion clinic to file their policies and procedures with DHHS as a tool for auditing.** Currently, the regulations require some policies to be established, but they are not required to be filed with the Department.
- **Impose strict monetary penalties for noncompliance and a minimum 30-day closure period.** Currently, there are no penalties, and clinics have been closed for a few days and reopened with a promise to make changes. Currently, there is no financial incentive for an abortion clinic to comply with any regulations.

If the Department refuses to enact strong regulations on abortion clinics, the General Assembly should legislate such changes.

Conclusion

Theologian Dr. J.I. Packer has been quoted as saying that myths are "stories made up to sanctify social patterns. They are lies, carefully designed to reinforce a particular philosophy or morality within a culture. They are instruments of manipulation and control."[36]

For over 60 years, the abortion industry has been the master of manipulation and control. It has created the myth that abortion is about freedom and a woman's right to control her own body; that abortion is a simple procedure with very little risk; and that an unborn child is a "product of pregnancy," and deserves to live only if the mother wants the child. The industry has poured millions of dollars into advancing these myths and they have successfully browbeaten policymakers into submission and controlled public policy, all to the detriment of women and their unborn children. These masters of manipulation have reaped the financial benefit as they have collected millions of dollars in revenue.

In truth, millions of boys and girls, living and breathing inside their mother's wombs have been slaughtered. Women have been physically and emotionally abused, and stripped of their dignity. Tens of thousands of women have been injured.[37] Hundreds have lost their lives.[38]

A new day has dawned in North Carolina. The lies have been exposed and North Carolina's legislators and Governor have listened. The only question remaining is whether lawmakers and our Governor will continue to reject these myths and win the battle to protect women and children, or fall prey, once again, to the manipulation and control of the abortion industry. North Carolinians are waiting and watching. ❖

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Endnotes

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