



Abortion from the Medico-Legal Perspective

Media Module 2

Facilitator's Guide

Contributors

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Overview

The popular media frequently reports on current events and policy relevant to women's reproductive healthcare and reproductive psychiatry, such as reproductive rights, access to contraception, and access to safe and legal abortion.

The ability to respond to patient questions about current policy regarding their reproductive rights is an important professional skill for physicians to develop. In particular, psychiatrists should have a basic understanding of reproductive healthcare policy and ethical practice, recognize areas of legal liability, and be able to communicate about reproductive rights in an accurate, reassuring, and clinically relevant manner. Thus, the goal of this module is to have participants build communication skills that enable them to serve as knowledgeable, thoughtful, and ethical representatives of reproductive psychiatry to a lay audience.

This session consists of three parts: 1) Reviewing and critiquing items about abortion policy from the media; 2) Appraising comparable literature from reliable sources; 3) Small and large group discussion.

The aim of the session is to compare media items with literature from reliable sources, such as medical databases, governmental websites, and reputable organizations. The purpose of critically appraising the media items is to show that in the post-*Dobbs* era, the legal landscape surrounding abortion is changing rapidly. News articles and social media may not always reflect the most up-to-date information and may contain inflammatory rhetoric from political figures and activists, spreading misinformation and stoking uncertainty and fear in patients and psychiatrists alike. Psychiatrists should be able to help patients contextualize their own situation as abortion policy evolves.

Sessions usually last 50 minutes but can be modified, depending on the number of media items and articles selected. The media conference is tailored for PGY-4 psychiatry residents but can be modified for any resident trainee group. A small group setting with time and space to work within break-out groups is recommended. After review of the media items and the medical literature, the group will divide into small groups of 2-3 participants to discuss the articles and answer the questions. The group leader will then facilitate a large group discussion.

Learning Objectives

1. Demonstrate the ability to analyze ethical and medico-legal issues related to pregnancy termination, as portrayed in the lay media.
2. Locate and analyze relevant medical literature as it relates to the mental health of pregnancy termination.
3. Recognize potential areas of legal risk, warranting involvement of legal counsel.
4. Communicate thoughtfully and accurately with a lay audience (e.g. a patient in a reproductive psychiatry consultation).

Media Items

1. News Article: “Alabama can prosecute those who help women travel for abortion, attorney general says.” Published by AL.com on August 30, 2023. <https://www.al.com/news/2023/08/alabama-can-prosecute-those-who-help-women-travel-for-abortion-attorney-general-says.html>
2. Youtube Video: “A warning from Alabama clinics on abortion: 'this is coming for blue states.'” Published by MSNBC on September 10, 2023. <https://youtu.be/pc3U0MBPqJ0?si=61niWtxk-zMmY1P0>
3. Governmental Press Release (Optional): “Justice Department Files Statement of Interest in Case on Right to Travel to Access Legal Abortions.” Nov 9, 2023. <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-case-right-travel-access-legal-abortion>
4. News Article: “Nebraska mom gets prison time for giving daughter abortion pills.” Published by The Cut, Updated September 22, 2023. <https://www.thecut.com/2023/09/nebraska-mom-daughter-charges-illegal-abortion-facebook-chat.html>
5. News Article (Optional): “Medical exceptions to abortion bans often exclude mental health conditions.” Published by New Jersey Monitor on October 23, 2023. <https://newjerseymonitor.com/2023/10/23/medical-exceptions-to-abortion-bans-often-exclude-mental-health-conditions/>

Pre-Assessment Learning

Evolving Abortion Law and Forensic Psychiatry. Susan Hatters Friedman, Jacqueline Landess, Nina Ross, Aimee Kaempf. Journal of the American Academy of Psychiatry and the Law Online Dec 2022, 50 (4) 494-501; DOI:10.29158/JAAPL.220076-22 <https://jaapl.org/content/50/4/494>

Pages 21 – 34. Huss L, Diaz-Tello F, Samari G. (2023). **Self-Care, CriminalizedI: The Criminalization of Self-Managed Abortion from 2000 to 2020.** If/When/ How: Lawyering for Reproductive Justice. <https://www.ifwhenhow.org/resources/selfcare-criminalized/>

Optional Supplemental Reading

Verma N, Grossman D. **Self-Managed Abortion in the United States.** Curr Obstet Gynecol Rep. 2023;12(2):70-75. doi: 10.1007/s13669-023-00354-x. Epub 2023 Mar 7. PMID: 37305376 <https://link.springer.com/article/10.1007/s13669-023-00354-x>

Mabel Felix, Laurie Sobel, and Alina Salganicoff. **A Review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services.** Published May 18, 2023 <https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortion-bans-implications-for-the-provision-of-abortion-services/#:~:text=Exceptions%20to%20state%20abortion%20bans,lethal%20anomalies%20incompatible%20with%20life>

Additional Resources

- <https://www.abortionfinder.org>
- <https://reproductiverights.gov>
- <https://www.reprolegalhelpline.org>

Presentation of Media Items

Present Media Items #1 & #2: (20 minutes for media presentation: 20 minutes discussion)

- 1) News Article: “Alabama can prosecute those who help women travel for abortion, attorney general says.”
- 2) YouTube Video: “A warning from Alabama clinics on abortion: ‘this is coming for blue states.’”

Elicit the following responses:

What are the ethical and medico-legal issues covered in these pieces of media?

- Following the *Dobbs* decision, Alabama banned abortion with exceptions for only the life of the pregnant person (but no exceptions for rape or incest).
- This type of ban brings up ethical concerns about restricting abortion access for all people, including pregnant people facing special circumstances, such as a life threatening condition during pregnancy, pregnancy as a product of rape or incest, or severe perinatal mental illness.
- The Attorney General also stated that they would consider investigating and prosecuting groups that promote or assist people with accessing out-of-state abortions.
- While women may cross state lines to pursue an abortion in another state, people assisting with out of state abortions could be charged with conspiracy or other criminal charges.
- Physicians should be aware of what constitutes “promoting or assisting” access to abortions in these circumstances.
- The YouTube video describes how states may use laws that do not directly ban abortion to prosecute people who help pregnant women seek abortions.
- Examples found in some states include “trafficking laws,” which attempt to criminalize individuals for transporting pregnant patients seeking abortions and “bounty laws,” which allow private citizens to sue individuals who “aid and abet” those seeking abortions.
- These types of anti-abortion laws are often passed, even when they are unconstitutional, because they are difficult to challenge in courts.

How might the claims made in these media pieces influence the pregnant person considering abortion or their family members?

- The claims in these media items are likely to incite fear and feelings of hopelessness in the patient who is considering or seeking an abortion and in their family members who are attempting to help them.
- It might make patients reluctant to share information with their healthcare provider.
- The criminalization of individuals who assist, fund, or counsel people who seek out abortions results in reduced access to abortion services for patients.
- In the YouTube video, the Director of Operations of the women’s clinic described examples of patients who are calling the clinic, expressing hopelessness and ideas of self-harm, underscoring how restricting abortion access may impact mental health.
- With a lot of grey areas, media can be confusing, underscoring the importance of empathy.

How might the claims made in these media items influence clinicians or psychiatrists who are treating pregnant persons considering abortion?

- Similar to the women’s clinic in West Alabama described in the YouTube video, clinicians and psychiatrists may fear legal liability if they even counsel pregnant patients about the option of out-of-state abortion.
- Psychiatrists may see women in treatment who are proceeding with an unwanted pregnancy, with associated mental health issues that are precipitated or worsened by this stressor.

(Optional) Present Media Item #3: (10 minutes presentation: 20 minutes discussion)

- 3) Governmental Press Release: “Justice Department Files Statement of Interest in Case on Right to Travel to Access Legal Abortions.” Nov 9, 2023

Elicit the following responses:

What are the ethical and medico-legal issues covered in these pieces of media?

- The Department of Justice (DOJ) responded to two lawsuits in Alabama that are attempting to protect interstate travel after the Attorney General threatened to prosecute individuals assisting patients with securing legal out-of-state abortions
- The DOJ asserts that the “Constitution protects the right to travel across state lines and engage in conduct that is lawful where it is performed and that states cannot prevent third parties from assisting others in exercising that right.”

Are the statements made by the Department of Justice legally binding? Do they protect patients seeking abortion avoid criminalization? Do they protect clinicians from counseling patients about how to seek legal abortions out of state?

- No. While this may be the DOJ's position, this is not necessarily a 100% percent accurate statement of law, because a court could reach a different conclusion. Furthermore, the DOJ's position may change if the administration changes.
- Patients should consult with an attorney or legal aid service to find the most up-to-date information about their legal liability when seeking legal out-of-state abortions when they reside in states that ban abortion.
- Similarly, clinicians should consult with their risk management team.

How might the claims made in this media piece influence the pregnant person considering abortion?

- The press release may create confusion or a false sense of certainty about whether they or those who assist them will be subject to criminalization.

How might the claims in this media item influence clinicians or psychiatrists who are treating pregnant persons considering abortion?

- This press release may cause clinicians confusion or a false sense of certainty about whether they or their patients will be subject to criminalization.
- It may also give clinicians the false impression that they will not be subject to criminalization if they provide counseling or assistance to their patients seeking out-of-state abortion.

Present Media Items #4: (10 minutes presentation: 15 minutes discussion)

- 4) News Article: “Nebraska mom gets prison time for giving daughter abortion pills.” Published by The Cut, Updated September 22, 2023.

Elicit the following responses:

What are the ethical and medico-legal issues covered in this piece of media?

- The news article describes a mother in Nebraska who was prosecuted and sentenced to 2 years in prison for assisting her 17-year-old daughter with self-managing her abortion
- The mother was criminally charged with false reporting, performing an abortion after 20 weeks, and concealing, removing, or abandoning a dead body.
- The daughter, Celeste, was also prosecuted for concealing or abandoning a dead body and sentenced to 90 days in jail.

- Celeste sought out an abortion because she did not want to raise a child with the father who was abusive. This underscores how socioeconomic factors, such as exposure to intimate partner violence, compounded by abortion bans can result in reduced access to legal abortions.
- Reduced access leads to patients turning to self-manage their abortions and seeking out abortions later in the pregnancy. This demonstrates how women from lower socioeconomic strata are disproportionately criminalized for self-managed abortions.
- She was charged prior to the overturning of *Roe*, demonstrating how pregnant people were criminalized even before the *Dobbs* decision. The article argues there is likely to be an increase in criminalization post-*Dobbs*.
- Celeste was prosecuted by laws other than the abortion ban (which generally applies to abortion providers).
- Meta (formerly Facebook) released the women's correspondence on the platform to law enforcement, which raises privacy concerns on social media.

How might the claims made in this media piece influence the pregnant person considering abortion?

- Criminalizing self-managed abortions will likely deter some patients from considering medication induced abortions, even under the supervision of a licensed healthcare provider.
- They may hamper open communication between the patient and the provider.
- Patients who have complications from self-managed medication abortions may not seek out medical care for fear of being reported to authorities, placing their health at risk.
- Readers who read about criminalization of self-managed abortions may incorrectly believe that most abortion bans include provisions that outlaw self-managed abortions, when this is not always the case.
- Patients may fear that their private correspondence may be shared with law enforcement if they discuss abortion on social media platforms.

How might the claims in this media item influence clinicians or psychiatrists who are treating pregnant persons considering abortion?

- Clinicians and psychiatrists in states with abortion bans might incorrectly believe they need to report instances of self-managed abortions to authorities.

(Optional) Present Media Item #5: (10 minutes presentation; 15 minutes discussion)

- 5) News Article: Medical exceptions to abortion bans often exclude mental health conditions. Published by New Jersey Monitor on October 23, 2023.

Elicit the following responses:

What are the ethical and medico-legal issues covered in this piece of media?

- Several states have abortion bans. Some bans include medical exceptions to protect the life or health of the patient.
- Some states allow mental health conditions as exceptions. However, at the time of this article, 10 states explicitly excluded mental health conditions as exceptions and many others have exceptions that are written so narrowly that they appear to apply only to physical conditions.
- In states where it is allowed, psychiatrists may be called to evaluate pregnant patients to determine if there is a reasonable mental health condition that could lead to the patient's death or other serious outcomes, such as pregnancy loss.

How might abortion bans described in this media piece influence the pregnant patient who has a mental health condition that seriously threatens her health or the health of the fetus and resides in a state without a mental health exception?

- Poorer health outcomes due to worsening mental health.
- Higher risk for peripartum and postpartum depression.
- Higher risk for maternal and infant mortality.
- Higher risk of postpartum psychosis relapse in patients with a history of PPP.

- They may be required to travel out of state for a legal abortion, which may place them or their friends and family at risk for being criminalized, and which has financial implications.

What problems does excluding mental illness as exceptions to abortion bans pose?

- It might perpetuate the stigma that mental illness is not as “serious” as physical illness
- It might erase the experience of pregnant people who have life-threatening mental health conditions

Appraisal of Resources

Resource #1 - Medical Literature (15 minutes presentation: 30 minutes discussion)

Evolving Abortion Law and Forensic Psychiatry. Susan Hatters Friedman, Jacqueline Landess, Nina Ross, Aimee Kaempf. Journal of the American Academy of Psychiatry and the Law Online Dec 2022, 50 (4) 494-501; DOI:10.29158/JAAPL.220076-22

Elicit the following responses:

How were psychiatrists involved in abortion care in the pre-Roe era when illegal abortion was common in the United States?

- Most states allowed for legal abortions when the life of the pregnant person was threatened.
- Psychiatrists would provide certifications for abortions if the pregnant person was, for example, imminently suicidal.
- Many states expanded psychiatric exceptions. For example, from 1967 through 1970 most of California’s legal abortions were performed for a mental health reason.
- These laws had the effect of causing clinicians to serve in a gatekeeping role, deciding which abortions were and were not medically and legally appropriate.

What type of ethical dilemmas are psychiatric certifications for abortions likely to pose for psychiatrists?

- Concern that patients may exaggerate or malingering symptoms to procure an abortion.
- Certifying that a patient is “imminently suicidal” and in need of an abortion, but not seeking out psychiatric hospitalization.
- Mental state may call into question decision-making capacity.
- Unease about certifying pregnant women who do not meet legal criteria.
- Unease about certifying pregnant persons when there is uncertainty about the meaning of the legal criteria

What are laws that have been used historically to criminalize pregnant individuals and those that have given birth?

- Feticide
- Child abuse
- Chemical endangerment
- Child endangerment
- Abuse of a corpse
- Improper disposal of a body
- Delivery of drugs to a minor
- Murder

What was the original intention of feticide laws and how are they used to criminalize pregnant women?

- Feticide laws were intended to punish perpetrators who harmed or killed pregnant people and their fetuses.
- Most feticide laws exclude the pregnant person, clinicians, and individuals seeking abortion from punishment.
- They have been used to prosecute women for a variety of reasons, including pregnancy loss, self-induced abortions, and fetal loss following suicide attempt.

In what circumstances, if any, might a pregnant person with mental illness benefit from an abortion to protect their life?

- A patient with a history of postpartum psychosis, especially in cases that were treatment refractory or resulted in poor outcomes, such as loss of custody of the infant
- A pregnant person with severe depression who has attempted suicide due to unwanted pregnancy
- A pregnant woman with severe bipolar disorder who has only responded well to medications with significant teratogenic risks refractory or intolerant to treatment with other mood stabilizers or antipsychotics.

How would you approach the situation in which a patient requests psychiatric certification for abortion care?

- Determine the reason for the request for an abortion. Is she concerned about the risk of postpartum psychosis? Is she acutely suicidal related to the stress of an unwanted pregnancy?
- Stay up to date with the abortion laws in your state. Recognize that most states that allow medical exceptions to the abortion ban **exclude** mental health conditions.
- In states where it is unclear if mental health conditions constitute exceptions to abortion bans, check with your risk management team.
- Point the patient to resources that might help her access a safe, legal abortion.
- Some psychiatrists may feel comfortable certifying abortions for patients they believe are candidates.
- Other psychiatrists may not feel comfortable certifying abortions, for a number of reasons, such as personal beliefs, concern about maintaining objectivity, concerns over tarnishing rapport over unfavorable opinions, and preference to avoid legal liability.
- If you are uncomfortable with providing abortion certification, it is appropriate to decline the request and consider recommending the patient seek the services of a forensic psychiatrist for an independent medical examination or seek out resources that will assist in obtaining a legal abortion.

In what ways have physicians and psychiatrists been required to participate in the surveillance and reporting of pregnant and postpartum people to legal authorities?

- Physicians and psychiatrists are mandated reporters of child abuse
- In some states, physicians must report suspected prenatal drug use and/or require that patients submit to drug testing
- Some states have required that physicians report “adverse physical or psychological conditions” arising from abortion

Resource #2 - Legal Report (15 minutes presentation; 25 minutes discussion)

Pages 21 – 34. Huss L, Diaz-Tello F, Samari G. (2023). **Self-Care, Criminalized: The Criminalization of Self-Managed Abortion from 2000 to 2020.** If/When/ How: Lawyering for Reproductive Justice.

Elicit the following responses:

According to the report, how many pregnant people were criminally investigated or arrested from 2000 to 2020 for self-managing (or assisting with) abortions?

- 61

What was the demographic breakdown? What are the implications of this distribution?

- The distribution was 74% adult. Average age was 28.3 years.
- The racial/ethnic breakdown was 44% white, 19% Hispanic, 17% Black, and 4% Asian. Race was unknown in 15% of cases.
- Individuals from minoritized racial and ethnic groups were disproportionately represented.

What was the primary method of self-managed abortion?

- Abortion-inducing medication

Which trimester was the most common for self-managed abortions?

- Second or third trimester

Where these individuals charged under statutes that prohibited self-managed abortions?

- 83% of the cases were charged for crimes not directly related to self-managed abortion bans.
- The other 17% were charged under Fetal Harm Statutes, Criminal Abortion Law, and Self-Managed Abortion Bans. 36 of the cases involved felony charges.

What were the outcomes of the cases? Of those found Guilty, what type of sentencing did they receive?

- In 4 cases, they were found Guilty at trial. In 19 cases, they were found Guilty by plea bargain. 12 of the cases were dismissed.
- Sentences included incarceration ranging from three months to 20 years, probation, house arrest, fines, community service, submission of DNA, submission to drug and alcohol testing, parenting classes, or counseling.

What was the most common way the cases came to the attention of law enforcement?

- The largest group of reporters to law enforcement was healthcare professionals (39% were healthcare providers and 6% were social workers).

What are reasons that healthcare providers perceive the need to report self-managed abortions to law enforcement (whether or not there is a true necessity to report)?

- Abortion stigma
- Perception that there is a need to report abortion complications and/or fetal harm/demise
- Other co-occurring reporting requirements, such as substance use, domestic violence, child maltreatment
- Provider's personal ideology

How might implicit bias play a role in reporting self-managed abortion to law enforcement?

- Individuals from lower socioeconomic status or minoritized populations are more likely to be criminalized/reported.

What should physicians and healthcare professionals consider if they perceive that a pregnant or postpartum person should be reported to law enforcement or some other state authority?

- Consider reaching out to your hospital legal team for clarification if the issue is not clear
- Consider if your state has a statute that requires reporting. For instance, in some states, clinicians are required to report substance use in pregnancy. In other states, there is no such requirement.
- Consider that HIPAA may **not require** that protected health information about self-managed abortion be reported to law enforcement
- Consider that, as a mandated reporter, you are required to report suspected child abuse or neglect; however, fetal harm/demise from self-managed abortion most likely **does not** be constitute child abuse in your state. Seek out supervision and check with your hospital legal team for clarification.
- Consider if you are allowing bias or personal ideology cloud your judgement, rather than adhering to clinical, ethical, and legal guidelines