

THE SIA LEGAL TEAM

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SELF-INDUCED ABORTION AND THE LAW:

What Emergency Room Staff Need to Know

Clinic-based abortion care is an essential component of full-spectrum reproductive health care and must continue to be protected and supported. While most people receive abortion care from medical professionals in clinical settings, some pregnant people seek abortions outside of the conventional healthcare system; they, too, deserve to be protected and supported. Once someone has decided to have an abortion, they should be able to do so safely, effectively, and with dignity. Tragically, throughout the United States, a small number of people have been arrested – and some even imprisoned – for ending their own pregnancies. These attacks on people who have abortions are clearly connected to attacks on abortion providers. As fetal rights have been elevated over pregnant people’s humanity and rights, abortion providers and people who have abortions are targets for arrest, criminal prosecution, and incarceration.

A number of E.R. doctors and staff have approached the SIA Legal Team with legal questions about self-induced abortion (“SIA”), including what to do when someone who has already ended a pregnancy shares information about the abortion during a medical examination. What follows is a list of the most common questions asked and answers summarizing our research to date on each subject. These answers are not a substitute for advice from one’s own lawyer, but they may provide some useful information to start a conversation with legal counsel.

WHAT IF A PATIENT DISCLOSES THEY HAVE SELF-INDUCED?

Our research has not uncovered any state or federal law that requires a medical professional to treat a patient who has self-induced an abortion differently than one who has had a spontaneous miscarriage. Some states require public health reporting of an abortion or registration of a fetal death with the appropriate state office. All of these laws either impose criminal penalties for disclosing a patient’s identity or, at a minimum, do not explicitly require that a provider disclose a patient’s identity. Unless one’s attorney advises otherwise, a patient presenting after SIA should be treated the same as any other patient.

ARE WE REQUIRED TO REPORT SIA TO THE AUTHORITIES?

No, medical personnel are not required to report patients known or believed to have self-induced

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abortion to law enforcement or any other state authority. In the 22 states researched to date,¹ there is no law that requires a provider to report when a patient has ended their own pregnancy. This includes public health reporting laws and mandated reporting laws for minors. Some states require reporting of fetal death – whether prompted or spontaneous – but do *not* require disclosure of patient identity; and, some impose criminal penalties for disclosure of patient information. While medical professionals should consult with their own legal counsel to confirm, this means they can follow standard procedure regarding patient privacy when treating a SIA patient. It also means medical professionals are not required to inquire about LMP, the method of SIA, or its source.² Nor are they required to document an attempted or completed SIA in a patient’s chart beyond what is necessary for proper treatment.

While there is no requirement to report a suspected self-induced abortion to law enforcement or other authorities, some patients may present with needs or concerns that could be addressed by social service providers. Health care providers should connect people with resources that would be helpful to them. However, it is important to remember that many people’s interaction with social service agencies is punitive in nature or involves intrusive investigations into their personal or family life, and sometimes leads to unnecessary reporting to law enforcement. Individuals are often the best judges of what resources they need, and of how they need to manage concerns about safety from the State.

WHAT IF THE PATIENT IS A MINOR?

There is no legal duty to treat minors differently than any other patient. Some states have laws regulating the medical treatment of minors without parental or guardian consent, or reporting of suspected sexual abuse. Additionally, it should be noted a fetus is not considered a “minor” or a “child” for the purposes of mandatory reporting of child abuse unless explicitly directed by statute. Clinics and medical professionals should, therefore, consult with an attorney or compliance officer for more information concerning the particular legal requirements for treating minors in a specific state.

WHAT HAPPENS IF WE TURN SOMEONE OVER TO POLICE?

Alerting law enforcement about a patient’s self-induced abortion is not required by law and may run afoul of patient privacy laws. When healthcare professionals have involved police in the past, patients have had to undergo the trauma of bedside interrogations without lawyers present, criminal investigations, arrests, prosecutions, and even incarceration. The patients’ families have suffered the public shaming that results from media coverage, lasting difficulty securing employment, and separation due to imprisonment. In no other medical context is someone threatened with jail for administering their own medical care. It may be helpful to know that our research has not turned up any case in which

¹ We focused our research on those states with laws that are most likely to directly criminalize self-induced abortion, as opposed to laws that might be used to criminalize ancillary conduct (such as improper disposal of human remains). We focused on these laws because there is no crime to report if the act of ending a pregnancy is not itself considered a crime.

² At the time of publication one state, Indiana recently expanded its public health reporting law to also request information on where a patient secured abortion pills. However, nothing in this law requires doctors to interrogate patients as to possible causes of a miscarriage, otherwise collect information for law enforcement purposes, or report patients to law enforcement. Nothing requires patients to disclose or answer questions about the possible causes of a miscarriage.

a health care provider was disciplined for protecting confidential patient information.

DO ANY LAWS PROHIBIT US FROM REPORTING AN ABORTION?

Keeping patient information private is critical to both maintaining patient trust in their medical providers and ensuring that people receive the health care services they need. For these reasons, state and federal health privacy laws protect patients by imposing civil and criminal penalties for sharing patient information unless it is requested by a law enforcement official or required by public health reporting laws. While each state has its own laws regarding patient privacy, the federal Health Insurance Portability and Accountability Act of 1996, commonly known as “HIPAA,” allows civil penalties for disclosing patient information of up to \$25,000 as well as penalties for criminal violations of the act of up to \$250,000 and 10 years in prison.

WHAT IF I WORK IN A RELIGIOUSLY AFFILIATED ORGANIZATION?

The reporting laws discussed in this FAQ also apply to medical professionals working at religiously affiliated facility. Many states allow religious entities to adopt policies regarding abortion, ectopic pregnancy, and miscarriage management -- including policies that allow individual providers to refuse to “participate in abortion.” Some religiously affiliated organizations may attempt to interpret these policies to prohibit or severely limit whether patients get the care they need. However, these religious refusal laws may not apply in all circumstances, including for existing patients or during emergency care. Medical professionals working at religiously affiliated entities with directives or informal policies that may impact the quality of care they provide after an abortion, attempted abortion, or miscarriage may wish to consult with an attorney for more information.

HOW SHOULD WE TALK ABOUT SIA?

Medical personnel should speak to people who have considered, attempted, or completed a self-induced abortion the way they would their other patients. Speak about SIA to others with compassion and respect for the people involved in the practice – many of whom may have no other abortion option due to financial and other barriers to clinic-based care. Try to avoid further stigmatizing SIA or perpetuating a hierarchy of “good” and “bad” abortions. Judgment or discouragement from someone in the medical profession may increase feelings of shame and deter people from seeking medical care in the rare event of a post-SIA complication.

Media references to SIA as dangerous or “back alley” feed into the overall narrative of all abortion being unsafe and enforces the false notion that severe legal restrictions on abortion provision are needed to keep people safe. This may normalize the idea that arresting someone for an abortion is supported by the law. Instead, medical professionals can try to reinforce the fact that even though abortion is legal in the U.S., people who have abortions outside the formal healthcare system may face unwarranted risk of arrest.

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