ARE PHYSICIANS AT RISK FOR PERFORMING ABORTIONS PERMITTED UNDER EXCEPTIONS TO STATE LAWS PROHIBITING ABORTION? WHAT THE RECORD SHOWS

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INTRODUCTION

On June 24, 2022, the Supreme Court, in *Dobbs v. Jackson Women's Health Organization*,[1] overruled *Roe v. Wade*[2] and *Planned Parenthood v. Casey*[3] and returned the issue of abortion to the states.[4] *Dobbs* allows states to enact and enforce statutes prohibiting abortion.[5] In response, dozens of lawsuits have been filed in state courts challenging these statutes, most of which remain in effect as of this writing.[6] While lawsuits have been brought in an effort to establish a broad state constitutional

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1 Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

2 Roe v. Wade, 410 U.S. 113 (1973), *overruled by*, *Dobbs*, 142 S. Ct. 2228.

3 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992), *overruled by*, *Dobbs*, 142 S. Ct. 2228.

4 *Dobbs*, 142 S. Ct. at 2284.

5 *Id.* at 2243.

6 *See* Maura K. Quinlan & Paul Benjamin Linton, *Medically Necessary Abortions After* Dobbs*: What, If Anything, Has Changed?*, 39 NOTRE DAME J.L. ETHICS & PUB. POL'Y 87, 90–91, 91 n.23 (2025).

right to abortion,[7] they also have been brought asserting that the statutes are unconstitutionally vague.[8] Physicians in these cases claim that they do not understand under what circumstances abortions are permitted under the applicable law, as a result of which they are unwilling to risk criminal prosecution and/or professional discipline for performing *any* abortions, even those that may fall within the scope of an exception for the pregnant woman's life or physical health.[9] How plausible are these claims?[10]

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7 *See, e.g.*, Planned Parenthood Great Nw. v. State, 532 P.3d 801 (Idaho 2022); Members of Med. Licensing Bd. v. Planned Parenthood Great Nw., Inc., 211 N.E.3d 957 (Ind. 2023); Members of Med. Licensing Bd. v. Planned Parenthood Great Nw., Inc., 214 N.E.3d 348, 348 (Ind. 2023) (mem.) (Rush, C.J., concurring); Wrigley v. Romanick, 988 N.W.2d 231 (N.D. 2023); Okla. Call for Reprod. Just. v. Drummond, 526 P.3d 1123 (Okla. 2023) (per curiam); Planned Parenthood S. Atl. v. State, 892 S.E.2d 121 (S.C. 2023); State v. Zurawski, 690 S.W.3d 644 (Tex. 2024).

8 *See infra* Appendix A (listing state court challenges alleging vagueness). In none of the cases listed has a state supreme court struck down an abortion statute on vagueness grounds. *See, e.g.*, Planned Parenthood Great Nw., 522 P.3d 1132, 1200–09 (Idaho 2023) (rejecting vagueness challenge); *Okla. Call for Reprod. Just.*, 526 P.3d at 1131–32 (same); *Planned Parenthood S. Atl.*, 892 S.E.2d at 130 n.8 (same).

9 Whether the exceptions in abortion prohibitions now on the books are vague or, properly understood, prevent physicians from performing medically necessary abortions is the subject of another article. *See* Quinlan & Linton, *supra* note 6. The present Article focuses on whether there is any evidence in either caselaw (pre-*Roe*) or abortion reporting data (post-*Roe*) that physicians have ever been prosecuted or disciplined for performing an abortion that falls within the scope of an exception (or affirmative defense) to a prohibition.

10 Although examination of the specific vagueness claims raised in these cases lies outside the scope of this Article, it should be noted that the overwhelming majority of both state and federal pre-*Roe* decisions (fourteen out of eighteen cases) rejected vagueness challenges to abortion statutes, finding the statutes to be clear with respect to what conduct was allowed by the applicable exception (life of the mother). *See* Nelson v. Planned Parenthood Ctr. of Tucson, Inc., 505 P.2d 580, 584–85 (Ariz. Ct. App.), *vacated and modified on reh'g*, 505 P.2d 590 (Ariz. Ct. App. 1973); People v. Fulton, 228 N.E.2d 203, 204–05 (Ill. App. Ct. 1967); Cheaney v. State, 285 N.E.2d 265, 270–72 (Ind. 1972); State v. Abodeely, 179 N.W.2d 347, 354 (Iowa 1970); Sasaki v. Commonwealth, 485 S.W.2d 897, 900–01 (Ky. 1972), *vacated and remanded*, 410 U.S. 951 (1973) (mem.); Rodgers v. Danforth, 486 S.W.2d 258, 259 (Mo. 1972) (en banc); State v. Munson, 201 N.W.2d 123, 127 (S.D. 1972), *vacated and remanded*, 410 U.S. 950 (1973) (mem.); Thompson v. State, 493 S.W.2d 913, 917–20 (Tex. Crim. App. 1971), *vacated and remanded*, 410 U.S. 950 (1973) (mem.); State v. Bartlett, 270 A.2d 168, 170–71 (Vt. 1970); Abele v. Markle, 342 F. Supp. 800, 801 n.4a (D. Conn. 1972), *vacated and remanded*, 410 U.S. 951 (1973) (mem.); Crossen v. Att'y Gen., 344 F. Supp. 587, 590 (E.D. Ky. 1972), *vacated and remanded*, 410 U.S. 950 (1973) (mem.); Steinberg v. Brown, 321 F. Supp. 741, 745 (N.D. Ohio 1970); Doe v. Rampton, No. 234-70, slip op. at 4–6 (D. Utah Sep. 29, 1971), *vacated and remanded*, 410 U.S. 950 (1973) (mem.); Babbitz v. McCann, 310 F. Supp. 293, 297–98 (E.D. Wis. 1970) (per curiam). *But see* People v. Belous, 458 P.2d 194, 197–206 (Cal. 1969) (in bank) (declaring law unconstitutional on vagueness grounds); State v. Barquet, 262 So. 2d 431, 434–38 (Fla. 1972) (same); Doe v. Scott, 321 F. Supp. 1385, 1388–89 (N.D. Ill. 1971) (same), *vacated and remanded sub nom.*, Heffernan v. Doe, 410 U.S. 950 (1973) (mem.); Roe v. Wade, 314 F. Supp. 1217, 1223 (N.D. Tex. 1970) (same), *aff'd in*

This Article attempts to answer that question by examining how abortion statutes have been enforced at three different stages in our history—before *Roe v. Wade* was decided in 1973; after *Roe* was decided and before *Dobbs* was decided in 2022; and after *Dobbs* was decided. As to the first stage—pre-*Roe*—there is little or no evidence that physicians were ever subjected to criminal prosecution or professional disciplinary proceedings for performing an abortion that even *arguably* fell within the scope of a medical exception to an abortion statute. As to the second stage—post-*Roe* and pre-*Dobbs*—there is a wealth of state abortion reporting data establishing that physicians understood when they could perform an abortion under an emergency medical exception to an enforceable statute *regulating* abortion (e.g., parental consent or notice, informed consent, or a waiting period) or under a medical exception (or affirmative defense) to an enforceable statute *prohibiting* abortions at or after twenty weeks gestation. As to the third stage—post-*Dobbs*—there is already a significant body of state abortion reporting data that physicians understand when they may perform abortions under medical exceptions (or affirmative defenses) to enforceable statutes *prohibiting* abortions. Taking into consideration both post-*Roe*, pre-*Dobbs* data, and post-*Dobbs* data, *more than 1,700 abortions* have been performed under either a medical emergency exception in a statute *regulating* abortion or a medical exception (or affirmative defense) in a statute *prohibiting* abortion. There is not a single reported instance in which a physician has been subjected to criminal prosecution or professional disciplinary proceedings for performing any of those abortions. That, in turn, suggests that physicians understand when abortions may be performed under these statutes and, further, that they are willing to perform such abortions. Before examining the relevant data, a few words discussing the applicable principles of criminal law and professional discipline are in order.

I. PRINCIPLES OF CRIMINAL LAW AND PROFESSIONAL DISCIPLINE

In any criminal prosecution, the State has the burden of proving beyond a reasonable doubt each and every element of the offense charged.[11] Generally, when a criminal statute provides an *exception* to the scope of the conduct prohibited by the statute, the State has the obligation to prove beyond a reasonable doubt that the exception does

part, rev'd in part, 410 U.S. 113 (1973), *overruled by*, *Dobbs*, 142 S. Ct. 2228. Modern abortion statutes have been drafted with much more precision than the pre-*Roe*, life-of-the-mother statutes. *See* Quinlan & Linton, *supra* note 6, at 119–21, 120 n.189.

11 *See In re* Winship, 397 U.S. 358, 361 (1970).

not apply.[12] Thus, in the case of the pre-*Roe* abortion statutes, which typically prohibited abortion except to "save" (or "preserve") the life of the mother,[13] the majority rule was that the State had the burden of proving beyond a reasonable doubt that the abortion was *not* performed for that reason,[14] while the minority rule was that the defendant had the burden of proving (by a preponderance of the evidence) that his conduct fell within the scope of the exception.[15] When a criminal statute provides for an *affirmative defense* to criminal liability, however,[16] it is the defendant's burden to raise the defense and to prove, by a preponderance of the evidence, that it applies in a given set of

12 For example, in *United States v. Vuitch*, the Court observed, "[i]t is a general guide to the interpretation of criminal statutes that when an exception is incorporated in the enacting clause of a statute, the burden is on the prosecution to plead and prove that the defendant is not within the exception." United States v. Vuitch, 402 U.S. 62, 70 (1971).

13 *See Roe*, 410 U.S. at 117–18, 118 n.2 (describing the state of the law at the time *Roe* was decided).

14 *See* State v. De Groat, 168 S.W. 702, 705–07 (Mo. 1914). In *De Groat*, the court held that "by the great weight of the ruled cases, and from the logic of the case, and for reasons to be deduced from rules on cognate matters, the burden is on the state to prove the nonnecessity of the abortion . . . ." *Id.* at 707.

15 *See* State v. Nossaman, 243 P. 326, 327–28 (Kan. 1926); *see also* Russo v. Commonwealth, 148 S.E.2d 820, 826 (Va. 1966). Of the seventeen states that presently have statutes on the books prohibiting abortion throughout pregnancy, eight followed the majority rule set out above with respect to exceptions set forth in their pre-*Roe* abortion laws, two followed the minority rule, and there does not appear to be any controlling caselaw in the other seven states (Alabama, Idaho, Louisiana, Mississippi, Tennessee, South Dakota, and Wyoming). *See* Whitehead v. State, 181 S.W. 154, 154 (Ark. 1915) (dicta); Diehl v. State, 62 N.E. 51, 59 (Ind. 1901); Fitch v. Commonwealth, 165 S.W.2d 558, 559 (Ky. 1942); *De Groat*, 168 S.W. at 705–07; State v. Shortridge, 211 N.W. 336, 341 (N.D. 1926) (on rehearing); Thacker v. State, 26 P.2d 770, 773 (Okla. Crim. App. 1933); State v. Wells, 100 P. 681, 683–84 (Utah 1909), *overruled on other grounds by*, State v. Crank, 142 P.2d 178 (Utah 1943); State v. Lewis, 57 S.E.2d 513, 521–22 (W. Va. 1949) (by implication). *But see* Veevers v. State, 354 S.W.2d 161, 166 (Tex. Crim. App. 1962) (Defendant has the burden of establishing, by a preponderance of the evidence, that he performed an abortion for a reason allowed by law.); Hatchard v. State, 48 N.W. 380, 382 (Wis. 1891) (same). The pre-*Roe* Texas and Wisconsin statutes permitted an abortion to be performed upon "medical advice," *Veevers*, 354 S.W.2d at 166, or the advice of "two physicians" that it was necessary to save the life of the mother, *Hatchard*, 48 N.W. at 382. Because of the practical impossibility of proving that *no* physician gave such advice, it made sense to place the burden of proving the exception on the person who performed the abortion, not the prosecution. It should be noted that all the foregoing cases were interpreting state abortion statutes enacted *before* (often long before) *Roe v. Wade* was decided. And, of the abortion prohibitions currently on the books, only three—those in Oklahoma, Texas, and Wisconsin—were enacted before *Roe*. *See infra* note 69. Accordingly, decisions interpreting exceptions under a subsequently repealed statute would not necessarily dictate the interpretation of an exception found in a later enacted statute.

16 An "affirmative defense" may be generally described as one that does not "negative any of the elements of the crime but instead go[es] to show some matter of justification or excuse which is a bar to the imposition of criminal liability." WAYNE R. LAFAVE, CRIMINAL LAW § 1.8(c), at 75 (6th ed. 2017).

circumstances.[17] No pre-*Roe* abortion statute used an affirmative defense[18] and, other than the Missouri statute,[19] which is no longer enforceable because of an amendment to Missouri Constitution adopted on November 5, 2024,[20] no post-*Roe* abortion statute prohibiting abortion throughout pregnancy does either. The statutes contain exceptions. Finally, regardless of who has the burden of proof with respect to an exception or affirmative defense, prosecutors would seldom, if ever, charge a physician with performing an illegal abortion where, under the circumstances of a given case, it was at least arguable that an exception or affirmative defense applied.

In the case of professional discipline, the applicable standard of proof is either a preponderance of the evidence or, less commonly, clear and convincing evidence,[21] not, as in a criminal prosecution, proof beyond a reasonable doubt. In a disciplinary hearing, a physician's conduct would be evaluated by other physicians and, as in the case of the criminal law, it is unlikely that such proceedings would be brought in a borderline case, where a plausible argument could be made that a physician performed an abortion for a reason allowed by an exception (or affirmative defense) in an abortion law.[22]

II. PRE-*ROE* PROHIBITIONS

Prior to *Roe v. Wade*, were physicians ever subjected to criminal prosecution or professional disciplinary proceedings for performing an abortion permitted by an exception in a statute prohibiting abortion? A definitive answer to this question is not possible. That is because there is no practical way of determining how many physicians were *acquitted* in a criminal trial or in a disciplinary hearing of having

17 The defendant's burden of proving an affirmative defense by a preponderance of the evidence is usually set forth either in a statute governing affirmative defenses generally, *see, e.g.*, N.D. CENT. CODE § 12.1-01-03(3) (2026) (providing that any defense "explicitly designated an 'affirmative defense' . . . must be proved by the defendant by a preponderance of evidence"), or in a statute dealing with a specific crime, *see, e.g.*, TENN. CODE ANN. § 39-17-502(b) (2026) (affirmative defense to charge of gambling).

18 *See* Quinlan & Linton, *supra* note 6, at 98–99, 99 n.56.

19 MO. ANN. STAT. § 188.017 (West 2026).

20 *See* MO. CONST. art. I, § 36 ("The Right to Reproductive Freedom Initiative"); *see also* Comprehensive Health of Planned Parenthood Great Plains v. State, No. 2416-cv31931, 2024 WL 5709712, at *5 (Mo. Cir. Ct. Dec. 20, 2024) (preliminarily enjoining, inter alia, Missouri's law prohibiting abortion throughout pregnancy, MO. ANN. STAT. § 188.017 (West 2026)), *vacated*, No. 2415-cv31931, 2025 WL 1605322 (Mo. Cir. Ct. May 28, 2025) (mem.).

21 *See* FED'N OF STATE MED. BDS., STANDARD OF PROOF: BOARD-BY-BOARD OVERVIEW (2024), https://www.fsmb.org/siteassets/advocacy/key-issues/standard-of-proof-by-state.pdf [https://perma.cc/3PCL-MAP6].

22 *See infra* notes 36–40 and accompanying text; *infra* Appendices B & C.

violated an abortion statute where the acquittal was based on evidence that the physician performed an abortion that was permitted by an exception in the statute. Yet, despite that limitation, an examination of (pre-*Roe*) reported state court opinions reviewing cases in which physicians were *convicted* or *disciplined* for performing abortions can give us some sense of how often physicians likely were *charged* in either a criminal prosecution or a disciplinary hearing with having performed an abortion that was permitted under an exception in an abortion statute.

A review of the reported caselaw discloses that there were only two cases in which a physician's conviction for abortion was reversed *solely* because of evidence that the physician performed the abortion for a reason permitted by an exception in an abortion law, one of which involved suicidal ideation, the other decided more than a hundred years ago.[23] There are a few other cases in which a conviction was reversed (or reversed and remanded) because the State failed to prove beyond a reasonable doubt that the abortion was not necessary to save the life of the mother (under statutes interpreted to require the State to make that showing), but those cases did *not* turn on any claim by the

23 *See* People v. Abarbanel, 48 Cal. Rptr. 336, 338–39 (Dist. Ct. App. 1965) (life-of-the-mother statute); State v. Shoemaker, 138 N.W. 381, 382–83 (Iowa 1912) (same). For a detailed discussion of the unusual facts of these cases, see Quinlan & Linton, *supra* note 6, at 132–34, 133 nn.262–69, 134 n.70. Four years after *Abarbanel* was decided, the Supreme Court of California rejected the court of appeal's construction of the statute, stating that such a construction—to allow abortion in cases of suicidal ideation—"would render the statute virtually meaningless." People v. Belous, 458 P.2d 194, 204 (Cal. 1969) (in bank). As previously noted, *see supra* note 10, *Belous* was one of very small minority of courts that struck down a life-of-the-mother statute on vagueness grounds.

Two other cases where abortion convictions were reversed should be mentioned. In *State v. Decker*, the defendant's conviction was reversed and the cause remanded for a new trial where the jury was not properly instructed as to the State's burden to prove beyond a reasonable doubt that the abortion was not necessary to save the life of the mother (the defendant testified that he had performed the abortion for that reason). State v. Decker, 104 S.W.2d 307, 311 (Mo. 1937). In *State v. Buck*, the defendant's conviction was reversed because the indictment failed to allege that the abortion was not performed "for the relief of a woman whose health appears in peril because of her pregnant condition." State v. Buck, 262 P.2d 495, 498 (Or. 1953) (in banc) (construing the Medical Practice Act and the Criminal Abortion Act *in pari materia*). The defendant himself did not testify. *Id.* at 516.

physician himself that he had performed the abortion for that purpose.[24] Rather, the State simply failed to meet its burden of proof.[25]

What about cases in which a physician's conviction was affirmed? In how many of those cases did a judge or jury *reject* defense testimony that the abortion was performed for a reason permitted by law (under most state laws at the time, to save the life of the mother[26])? According to a comprehensive survey of all pre-*Roe* abortion prosecutions, there were 230 cases in which a physician's conviction for performing an abortion (or an abortion-related offense[27]) was affirmed on appeal.[28] In only thirteen cases (barely five percent), however, did the physician-defendant argue *both* at trial *and* on appeal that he had performed the abortion for a reason allowed by law (or that he had done nothing more than remove a fetus that was already dead when he began the procedure).[29] And, in each of those cases, the appellate court cited compelling evidence for rejecting the physician's defense. That

24 *See, e.g.*, People v. Davis, 200 N.E. 334, 337 (Ill. 1936); State v. De Groat, 168 S.W. 702, 708 (Mo. 1914); State v. Goodson, 252 S.W. 389, 392 (Mo. 1923); State v. Smith, 76 S.W.2d 1077, 1079 (Mo. 1934); State v. Smith, 130 S.W.2d 550, 554 (Mo. 1939); State v. Wells, 100 P. 681, 686–87 (Utah 1909), *overruled on other grounds by*, State v. Crank, 142 P.2d 178 (Utah 1943). In *Davis*, *De Groat*, and both cases involving Dr. Annie Smith, the defendant physician denied that he (or she) had performed an abortion. *Davis*, 200 N.E. at 336; *De Groat*, 168 S.W. at 704; *Smith*, 76 S.W.2d at 1078; *Smith*, 130 S.W.2d at 553. In *Goodson*, the defendant presented only character evidence, *Goodson*, 252 S.W. at 391; in *Wells*, the defendant testified only regarding the voluntariness of his confession, *Wells*, 100 P. at 682.

25 The caselaw discussed in this paragraph (discussing reversals of criminal convictions of physicians for performing illegal abortions) was derived from an "all-States" database (Nexis Uni) search for the words "abortion," "physician" (or "doctor"), "conviction," and "reversed" for cases decided before January 1, 1973 (*Roe* was decided on January 22, 1973). That search yielded a total of approximately 800 cases, almost none of which addressed the precise issue discussed in the text, to wit, whether a physician's conviction for performing an abortion-related offense was reversed because of evidence the defendant presented tending to prove that his conduct came within the scope of an exception set forth in the law. Where a physician's conviction was reversed, it was almost always because of one or more trial errors (e.g., improper admission or exclusion of evidence, inflammatory closing arguments, or erroneous jury instructions) that had nothing to do with his guilt or innocence. NEXIS UNI, "abortion" + ("physician" or "doctor") + "conviction" + "reversed", 795 results (Aug. 30, 2025) (on file with the Notre Dame Law Review) (filtered by "All States", "before January 1, 1973").

26 *See supra* note 13 and accompanying text.

27 For purposes of the survey, an "abortion-related" offense would include attempted abortion, conspiracy to commit abortion, and homicide based upon the performance of an illegal abortion. *See* Paul Benjamin Linton, *Abortion Convictions Before* Roe, 36 ISSUES L. & MED. 77, 77 n.3, 80 (2021).

28 *See id.* at 80–108 (listing and describing cases). The article lists 693 cases in which a conviction of abortion (or an abortion-related offense) was affirmed, of which 230 involved physician defendants. *Id.* at 78. The list was based on a Nexis Uni search for the word "abortion" in each state database (for abortions performed before *Roe v. Wade* was decided).

29 *See infra* notes 30–35.

evidence included concealing, fabricating, or destroying evidence or engaging in other conduct evincing consciousness of guilt;[30] making incriminating statements to the police;[31] claiming in bad faith that the abortion was necessary to save the pregnant woman's life;[32] falsely representing that he had simply removed a dead fetus;[33] providing reasons for performing the abortion that were not compatible with other

30 *See* People v. Long, 103 P.2d 969, 973–74 (Cal. 1940) ("The method used by the defendant in his business; his actions in attempting to get [another physician] to sign the death certificate; his attempt at flight and concealment; his failure to notify the husband of the deceased; his failure to sign a death certificate—all lead to but one inference, and that is that [the defendant] thought he had performed an illegal operation and that the deceased had died as a result thereof. His actions all demonstrate a consciousness of guilt." (quoting People v. Long, 96 P.2d 354, 358 (Cal. Dist. Ct. App. 1939), *aff'd*, *Long*, 103 P.2d 969)); State v. Anderson, 33 N.W.2d 1, 7–8 (Iowa 1948) (citing, among other evidence, defendant's conduct in secretly disposing of the decedent's body in the Missouri River); State v. Shortridge, 211 N.W. 336, 340 (N.D. 1926) ("[T]he acts of the defendant are best accounted for by considering them as done to conceal a prior course of criminal conduct concerning the deceased," which "the jury may properly consider . . . as evidence of the crime charged.").

31 *See* People v. Nisonoff, 45 N.Y.S.2d 854, 856 (App. Div. 1944) ("Consciousness of guilt was established by proof of the conceded falsity of the statements first made by the defendants [two physicians] when they were questioned by the authorities concerning the girl's death and by proof that in their reports of the illness, treatment and death of deceased, they had made further false statements and had concealed material and incriminating facts.").

32 *See* Commonwealth v. Wheeler, 53 N.E.2d 4, 6 (Mass. 1944) (affirming trial judge's findings that an abortion the defendant performed on his wife "was unnecessary to preserve life or health, and that [he] did not perform the abortion in good faith believing that it was necessary"); State v. Powers, 283 P. 439, 441 (Wash. 1929) ("[T]he jury had a right to find from the evidence, as already indicated, and from other circumstances that might be pointed out, that the appellant did not exercise his best judgment and skill, *and did not conscientiously believe that the operation was necessary to save the life of the prosecuting witness.*" The jury had been instructed that, "if the [defendant] exercised his best judgment and skill founded upon his practice and knowledge in his profession, and conscientiously believed that the [abortion] was necessary to preserve the life of the prosecuting witness, then he would not be guilty of the crime charged." (emphasis added)).

33 *See* Fitch v. Commonwealth, 165 S.W.2d 558, 562 (Ky. 1942) (Based on the evidence presented, the jury was entitled to reject defendant's testimony that he performed an abortion to remove a dead fetus.); State v. Brandenburg, 58 A.2d 709, 711 (N.J. 1948) ("Obviously, and with ample support in the proofs, the jury did not give credence to the story," i.e., that defendants (a physician and three assistants, *id.* at 709) had performed an abortion to remove a dead fetus in order to save the life of the mother.).

expert and/or lay testimony;[34] or attempting to justify the abortion for a reason not allowed by law.[35]

As far as professional discipline is concerned, there is no evidence that physicians were ever subjected to disciplinary proceedings for performing an abortion that was permitted under an exception in an abortion statute. There are more than fifty reported cases in which a state reviewing court *affirmed* a disciplinary sanction against a physician for performing an illegal abortion or abortion-related offense.[36] In only

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34 *See* State v. Lemke, 290 N.W. 307, 309 (Minn. 1940) (affirming defendant's conviction for manslaughter, based on the performance of an illegal abortion, where accomplice's testimony "was adequately corroborated by others not connected with the crime, including a sister of the deceased, who accompanied her to defendant's office shortly before the operation, the medical experts [and another witness]"); Adams v. State, 21 P.2d 1075, 1076 (Okla. Crim. App. 1933) (The court held that evaluating conflicting expert witness testimony was for the jury to decide. The State's brief cited evidence that, after the patient died following the abortion, the defendant arranged for an ambulance to take the decedent's body to a funeral home and told the undertaker accompanying the ambulance "to say nothing about" what had happened, Brief of Defendant in Error at 2, *Adams*, 21 P.2d 1075 (No. A-8487); that the defendant claimed that the patient presented with angina pectoris, *id.*; that he treated her for "inevitable abortion," Brief of Plaintiff in Error at 22, *Adams*, 21 P.2d 1075 (No. A-8487), although there was no competent expert medical evidence to corroborate either claim; and that the defendant had performed a previous abortion on the same woman, Brief of Defendant in Error, *supra*, at 2–3.); State v. Martin, 34 P.2d 914, 916 (Wash. 1934) (The court concluded that "[t]here is ample competent evidence that appellant operated on a healthy woman, at her request, to procure an abortion, and that she died in consequence thereof. The inference is irresistible, and we are convinced, as was the jury, that the operation was not necessary to preserve the life of the mother."); *see also* State v. Boozer, 291 P.2d 786, 787–88 (Ariz. 1955) (The physician claimed at trial that he performed a therapeutic abortion but did not raise that defense on appeal. *See id.* at 790. In summarizing the evidence presented at trial, the court stated that "the jury was fully justified in finding that [the pregnant woman], accompanied by her husband, came to defendant for the purpose of procuring a criminal abortion, this without any regard to whether she needed it for the sake of her health," *id.* at 787, and that, "[b]y its verdict it obviously appears the jury disbelieved the defendant," *id.* at 788.); Anderson v. Commonwealth, 58 S.E.2d 72, 75 (Va. 1950) (In a case in which the defendant physician did not raise the sufficiency of the evidence on appeal, *id.* at 74, the court held that "the question of his good faith and his intent of saving [the pregnant woman's] life was placed squarely before the jury and they found adversely to that contention," *id.* at 75. The jury had been instructed that "if the action on the part of the accused was done in good faith, with the intention of saving the life of [the pregnant woman], or if they had a reasonable doubt that such action on the part of the accused was done in good faith with said intention, he should not be found guilty." *Id.*).

35 *See* People v. Wellman, 149 N.W.2d 908, 912 (Mich. Ct. App. 1967) (suicidal ideation); State v. Hunter, 154 N.W. 1083, 1083 (Minn. 1915) (observing that "the evidence is quite conclusive that the operation was not performed to save the life of the young woman or that of the unborn child, but rather . . . to save the name and reputation of the pregnant woman"); *Brandenburg*, 58 A.2d at 710 (rejecting proposition that "so broad a ground as 'well-being' may be considered by a jury as ground for causing a miscarriage").

36 The cases (and the discipline imposed) are listed in Appendix B, *infra*.

one of those cases, however, did the physician argue (insofar as the court opinion discloses) that he had performed the abortion for a reason allowed by an exception in an abortion statute.[37] In that case, the reviewing court simply held that the resolution of this evidentiary issue was a matter for the trier of fact (the applicable medical board) to decide.[38] And there are only *six* reported cases in which a reviewing court *reversed* a disciplinary sanction imposed upon a physician for performing an illegal abortion.[39] Not one of those cases was decided on the basis of an argument that the physician had performed an abortion for a reason allowed by an exception in the applicable statute.[40]

An examination of the reported pre-*Roe* appellate court cases reviewing the findings of trial judges, the verdicts of juries, or the judgment of state medical boards determining that a physician had performed an abortion in violation of an abortion statute is striking. Whether that review resulted in affirming or reversing a physician's criminal conviction or the imposition of professional discipline, there were almost no cases in which the physician plausibly claimed that he had performed the abortion for a reason allowed by the applicable statute. Based on the paucity of such evidence, there is no reason to believe that, prior to *Roe*, physicians were routinely forced to go through a criminal prosecution or a disciplinary proceeding in order to be exonerated for performing an abortion allowed by law.

III. POST-*ROE* PROHIBITIONS

After *Roe v. Wade* was decided in 1973, the authority of the states to prohibit abortion was severely limited. Abortions could not be prohibited before viability, regardless of reason,[41] and even after viability it was questionable whether any abortions could be prohibited.[42]

37 *See* Ganz v. Bd. of Regents, 47 N.Y.S.2d 863, 864 (App. Div. 1944) (per curiam) (affirming one-year suspension).

38 *Ganz*, 47 N.Y.S.2d at 863–64.

39 The cases are listed in Appendix C, *infra*.

40 The caselaw discussed in this paragraph was derived from an "all-States" database (Nexis Uni) search for the words "abortion," "license," and "physician" (or "doctor") for cases decided before January 1, 1973 (*Roe* was decided on January 22, 1973). That search yielded approximately 500 cases, the overwhelming majority of which did not involve either an affirmance or a reversal of professional discipline imposed on a physician for performing an illegal abortion. NEXIS UNI, "abortion" + "license" + ("physician" or "doctor"), 492 results (Aug. 30, 2025) (on file with the Notre Dame Law Review) (filtered by "All States", "before January 1, 1973").

41 Roe v. Wade, 410 U.S. 113, 153, 162–65 (1973), *overruled by*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 845–46, 853, 860–61, 871, 877–79 (1992), *overruled by*, *Dobbs*, 142 S. Ct. 2228.

42 *See* Paul Benjamin Linton & Maura K. Quinlan, *Does* Stare Decisis *Preclude Reconsideration of* Roe v. Wade*? A Critique of* Planned Parenthood v. Casey, 70 CASE W. RSRV. L. REV.

Nevertheless, there were a number of prohibitions of late-term abortions that were never challenged. Most were based on model legislation developed by the National Right to Life Committee (NRLC), the "Pain-Capable Unborn Child Protection Act," one version or another of which was enacted in sixteen states between 2010 and 2017.[43] These laws—both the ones developed by NRLC and several others drafted without input from NRLC—prohibited abortion at or after twenty weeks post-fertilization "unless, in reasonable medical judgment, the woman has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions."[44]

In those states where enforcement of twenty-week abortion bans was not enjoined,[45] how many abortions were performed at a stage of pregnancy when the abortion would have been illegal under the applicable state law unless it was performed for the reason set forth in the

283, 333–36 (2019) (surveying cases striking down state attempts to restrict the reasons for which post-viability abortions may be performed).

43 Dates of enactment and citations to these statutes may be found at National Right to Life Committee's (NRLC) website. *See State Legislation*, NAT'L RIGHT TO LIFE COMM., https://nrlc.org/statelegislation/ [https://perma.cc/V94K-BE57] (last visited Mar. 29, 2026). Mississippi enacted a twenty-week abortion ban in 2014, *see* MISS. CODE ANN. §§ 41-41-131 to -149 (2014). This statute was supplemented by a fifteen-week ban Mississippi enacted in 2018, *see* MISS. CODE ANN. § 41-41-191 (2018), which was the law upheld by the Supreme Court in *Dobbs v. Jackson Women's Health Organization*. *Dobbs*, 142 S. Ct. at 2284. In addition to the sixteen statutes based on NRLC's model legislation, nine other statutes were enacted with comparable provisions, all of which are listed in NRLC's fact sheet. *See* DEP'T STATE LEG., NAT'L RIGHT TO LIFE COMM., LAWS PROTECTING UNBORN CHILDREN: PAIN-CAPABLE UNBORN CHILD PROTECTION ACT AND GESTATIONAL AGE PROTECTIONS 3–4 (2024).

44 ALA. CODE § 26-23B-5(a) (2026). The language in the Alabama statute describing the circumstances under which a post-twenty-week abortion may be performed is substantially the same as the language that appears in most of the other "Pain-Capable Unborn Child Protection Acts" for which data is cited in the text. With the exception of the North Dakota and Wisconsin statutes, those circumstances are not limited to actual medical emergencies where the threat to the woman's life or physical health is imminent, necessitating an immediate abortion. *See* NAT'L RIGHT TO LIFE COMM., *supra* note 43, at 5–14. Finally, both the (subsequently repealed) South Carolina statute and the West Virginia statute (effectively superseded by a post-*Dobbs* enactment) allowed an abortion to be performed if the unborn child suffered from a lethal fetal anomaly. *Id.* at 12, 14. The data cited for those two states is limited to abortions performed for reasons relating to the mother's health, not her unborn child's condition.

45 *See* NAT'L RIGHT TO LIFE COMM., *supra* note 43, at 5, 7, 10, 11, 13 (listing Arizona, Idaho, Missouri, Montana, North Carolina, and Tennessee as states in which enforcement of twenty-week abortion bans was enjoined and providing citations to the cases). In addition, the laws in Georgia and Utah, although ultimately allowed to go into effect, were initially enjoined after they were enacted, and data from those states is not included in the text. *Id.* at 7, 14.

exception? Excluding those states where fewer than five reported abortions were performed at or after twenty weeks post-fertilization for the relevant time period when the laws were in effect, there were 5 in Indiana;[46] 6 each in North Dakota,[47] South Carolina,[48] and Wisconsin;[49] 9 in Kentucky;[50] 12 in Mississippi;[51] 16 in West Virginia;[52] 27 in Alabama;[53]

46 *See* E-mail from Angela Becker, Pub. Recs. Coordinator, Off. of Legal Affs., Ind. Dep't of Health, to author (Apr. 11, 2025, at 13:22 CT) (on file with author) (reporting eight abortions performed from 2012 through 2024); E-mail from Angela Becker, Pub. Recs. Coordinator, Off. of Legal Affs., Ind. Dep't of Health, to author (June 11, 2025, at 07:40 CT) (on file with author) (reporting three abortions performed after September 1, 2023). Indiana's law prohibiting abortion throughout pregnancy went into effect on August 21, 2023. *Abortion Information Center*, IND. DEP'T OF HEALTH, https://www.in.gov/health/cshcr/acute-and-continuing-care/abortion-information-center/ [https://perma.cc/8LMC-UDTF] (last visited Oct. 7, 2025). Based on the foregoing data, there were five abortions performed at or after twenty weeks post-fertilization in Indiana before the State's post-*Dobbs* abortion ban (prohibiting abortion throughout pregnancy) went into effect.

47 E-mail from Steve Denn, Data Processing Manager, Vital Recs., N.D. Dep't of Health & Hum. Servs., to author (Nov. 14, 2022, at 10:59 CT) (on file with author); E-mail from Steve Denn, Data Processing Manager, Vital Recs., N.D. Dep't of Health & Hum. Servs., to author (Nov. 14, 2022, at 11:12 CT) (on file with author).

48 S.C. DEP'T OF HEALTH & ENV'T CONTROL, A PUBLIC REPORT PROVIDING STATISTICS COMPILED FROM ALL ABORTIONS REPORTED TO DHEC, at tbl. 6 (2021) (reporting a total of six abortions performed at or after twenty weeks probable post-fertilization age for reasons related to the mother's health for the three years 2019, 2020, and 2021).

49 E-mail from Jennifer E. Feske, Vital Recs., Data Mgmt., Div. of Pub. Health, Wis. Dep't of Health Servs., to author (Jan. 17, 2023, at 14:23 CT) (on file with author).

50 *See* 2017 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 8 (one abortion); 2018 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 8 (zero abortions); 2019 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 8 (six abortions); 2020 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 8 (one abortion); 2021 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 8 (one abortion); 2022 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 13 (zero abortions).

51 *See* E-mail from Chassidy Bass, Data Analyst, Off. of Data Governance, Miss. State Dep't of Health, to author (May 28, 2025, at 14:57 CT) (on file with author) (for period from July 1, 2014 through March 31, 2018); E-mail from Miss. State Dep't of Health, to author (Mar. 13, 2025, at 09:04 CT) (on file with author) (summarizing data request).

52 *See* 2021 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 3 tbl. 1 (reporting thirty-two post-twenty-week abortions from May 25, 2015, the effective date of the Act, through December 31, 2021). Sixteen of the thirty-two abortions reported for this period were performed for reasons related to the pregnant woman's health, the other sixteen were performed because of a diagnosis of a lethal fetal anomaly. *See id.* at 4; 2020 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 4; 2019 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 4; 2018 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 4; 2017 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 3; 2016 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 3; 2015 W. VA. DEP'T OF HEALTH & HUM. RES. PAIN-CAPABLE UNBORN CHILD PROTECTION ACT REP. 3.

53 The Alabama Center for Health Statistics reported four abortions at or after twenty weeks post-fertilization age in 2012, two in 2013, three in 2014, four in 2015, three in 2016, two in 2017, four in 2018, two in 2019, zero in 2020, two in 2021, and one in 2022 (before

73 in Iowa;[54] 103 in Ohio;[55] 170 in Oklahoma;[56] and 201 in Texas.[57] In just these twelve states, 634 abortions were performed at a stage in pregnancy when the abortions would have been illegal unless they fell within the scope of the statute's narrow exception. And how many criminal prosecutions or professional disciplinary proceedings have been brought against the physicians who performed those abortions? There is no evidence of even one being reported.

IV. POST-*ROE* REGULATIONS

There is another source of data that provides perspective on whether physicians would likely be prosecuted or disciplined for performing abortions for reasons allowed by an exception (or affirmative defense) in a statute prohibiting abortion. That data may be found in the number of reported medical emergency abortions that excused compliance with various post-*Roe* statutes regulating abortion. These statutes include laws requiring the consent of or notice to one or both of a minor's parents or her legal guardian before she undergoes an abortion (subject to a judicial bypass option), mandating that certain

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the Supreme Court decided *Dobbs*). *See* 2012 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY OCCURRING ALABAMA 1; 2013 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY OCCURRING ALABAMA 1; 2014 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY OCCURRING ALABAMA 1; 2015 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2016 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2017 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2018 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2019 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2020 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2021 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2022 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4.

54 E-mail attach. from Josh Jungling, Mgmt. Analyst III, Bureau of Health Stat., Div. of Pub. Health, Iowa Dep't of Health & Hum. Servs., to author (Dec. 28, 2022, at 11:28 CT) (on file with author) (for period from 2018 through 2021).

55 2017 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 38 tbl. 19 (nine abortions); 2018 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 38 tbl. 19 (twenty-three abortions); 2019 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 38 tbl. 19 (seven abortions); 2020 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 38 tbl. 19 (twenty abortions); 2021 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 37 tbl. 19 (twenty-seven abortions); 2022 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 38 tbl. 19 (seven abortions); 2023 OHIO DEP'T OF HEALTH INDUCED ABORTIONS OHIO 41 tbl. 19 (ten abortions).

56 E-mail from Jennifer Harper, Admin. Program Manager – Data Acquisition, Ctr. for Health Stat., Okla. State Dep't of Health, to author (Jan. 12, 2023, at 15:51 CT) (on file with author) (reporting a total of 170 abortions performed at or after twenty weeks post-fertilization age, as measured by ultrasound).

57 E-mail attach. from Elaine Crease, Open Recs. Specialist, Legal Servs. Div., Off. of Chief Counsel, Tex. Dep't of Health & Hum. Servs., to author (Jan. 24, 2023, at 17:04 CT) (on file with author).

information be provided to the patient, or imposing a short waiting period.[58]

One study of the available statistical data discloses that, for the time periods covered, in just eight states—Alabama, Georgia, Idaho, Nebraska, Oklahoma, South Dakota, Texas, and Wisconsin—129 medical emergency abortions were reported to the respective state department of health.[59] An additional four were reported in Texas for 2015 through June 2022;[60] ten in South Dakota for 2014 through June 2022;[61] forty-nine in Nebraska for 2015 through 2024;[62] and a total of seventy-one in Oklahoma for 2019, 2020, and 2021.[63] In a ninth state

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58 *See, e.g.*, IND. CODE ANN. § 16-34-2-4 (West 2025) (parental consent and notice); LA. STAT. ANN. § 40:1061.17 (2025) (outlining requirements for informed consent);18 PA. STAT. AND CONS. STAT. ANN. § 3205 (West 2025) (twenty-four hour waiting period). The definition of "medical emergency" in Pennsylvania law is a

> condition which, 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 major bodily function.

18 PA. STAT. AND CONS. STAT. ANN. § 3203 (West 2025). This law, which was upheld by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 879–80 (1992), provided the template for the definition of "medical emergency" in many other states. *See* Paul Benjamin Linton, *Medical Emergency Exceptions in State Abortion Statutes: The Statistical Record*, 31 ISSUES L. & MED. 29, 30–31 (2016).

59 *See* Linton, *supra* note 58, at 34–35, 37, 39–40, 42, 44–45 (reporting data).

60 E-mail attach. from Courtney Ebeier, Att'y, Open Recs. Dep't, Legal Servs. Div., Tex. Dep't of Health & Hum. Servs., to author (May 13, 2025, at 15:20 CT) (on file with author) (medical emergencies reported under parental notice law).

61 E-mail from Howard Pallotta, Gen. Couns., S.D. Dep't of Health, to author (Apr. 9, 2025, at 08:27 CT) (on file with author).

62 The data for the number of medical emergencies reported to have excused compliance with the informed consent statute may be found in Table 14 of each report. 2015 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (three abortions); 2017 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (one abortion); 2018 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (two abortions); 2019 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (one abortion); 2020 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (eight abortions); 2021 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 7 tbl. 14 (five abortions); 2022 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 7 tbl. 14 (two abortions); 2023 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 7 tbl. 14 (twelve abortions). No medical emergencies were reported for 2016. 2016 NEB. DEP'T OF HEALTH & HUM. SERVS. STAT. REP. ABORTIONS 8 tbl. 14 (zero abortions). Nebraska changed its format for reporting abortions in 2024. *Abortion Dashboard*, NEB. DEP'T OF HEALTH & HUM. SERVS., https://app.powerbigov.us/view?r=eyJrIjoiN2U4NzFkYjItYzU5OS00ZmIyLTkwOTUtN2E1NjQxNzY4ZTQwIiwidCI6IjA0MzIwN2RmLWU2ODktNGJmNi05MDIwLTAxMDM4ZjExZjBiMSJ9 [https://perma.cc/M9D2-3PUM] (last visited Aug. 28, 2025) (listing fifteen medical emergencies).

63 *See* 2019 OKLA. STATE DEP'T OF HEALTH ABORTION SURVEILLANCE OKLAHOMA 31 (twenty abortions); 2020 OKLA. STATE DEP'T OF HEALTH ABORTION SURVEILLANCE

(West Virginia), fifty-four medical emergencies were reported between 2004 and 2021.[64] In a tenth state (Minnesota), sixteen medical emergencies were reported between 2008 and 2021.[65] Because of the presence of a medical emergency, the physician was excused from complying with a regulatory law in 333 instances.[66] These laws, it must be noted, carry criminal penalties for their violation.[67] Were any physicians who failed to comply with one of these laws because of a medical emergency ever subjected to criminal prosecution or professional disciplinary proceedings? Again, as in the case of the twenty-week abortion bans, the answer is no, there is no evidence of any reported prosecutions or disciplinary hearings.

V. POST-*DOBBS* PROHIBITIONS

Finally, what has been the experience in the states with respect to abortion prohibitions that went into effect after June 24, 2022, when the Supreme Court, in *Dobbs v. Jackson Women's Health Organization*, overruled *Roe v. Wade* and *Planned Parenthood v. Casey*?[68] At the time *Dobbs* was decided, approximately one-third of the states had enacted laws prohibiting abortion throughout pregnancy, subject to narrow

OKLAHOMA 31 (2d version) (eighteen abortions); 2021 OKLA. STATE DEP'T OF HEALTH ABORTION SURVEILLANCE OKLAHOMA 30 (thirty-three abortions). The data for the number of medical emergencies reported to have excused compliance with the informed consent statute may be found under "Requirement 24" in each report.

64 2021 W. VA. DEP'T OF HEALTH & HUM. RES. WOMEN'S RIGHT KNOW ACT 2–4.

65 *See* 2008 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25 (three abortions); 2009 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 30 tbl. 25 (two abortions); 2011 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25 (two abortions); 2012 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25 (three abortions); 2014 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25 (one abortion); 2017 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 22 tbl. 21 (one abortion); 2018 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 26 tbl. 21 (one abortion); 2020 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 26 tbl. 21 (one abortion); 2021 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 42 tbl. 21 (two abortions). No medical emergency abortions were reported to have excused compliance with Minnesota's informed consent statute for 2010, 2013, 2015, 2016, or 2019. 2010 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25; 2013 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25; 2015 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25; 2016 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 31 tbl. 25; 2019 MINN. DEP'T OF HEALTH INDUCED ABORTIONS MINNESOTA 25 tbl. 21.

66 The total number would be even higher, perhaps significantly higher, if all states with such laws collected and reported medical emergencies excusing compliance with their laws.

67 *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. § 171.018 (West 2025) (informed consent and waiting period); TEX. FAM. CODE ANN. § 33.002(g) (West 2025) (parental consent and notice).

68 *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2228 (2022).

exceptions.[69] Because of the delay in state public health departments collecting and publishing abortion data, complete and up-to-date abortion reporting data is not available for all of these states. The partial data that is available, however, strongly suggests that physicians have not been reluctant to perform abortions that fall within the scope of a narrow exception to an abortion prohibition.[70] For those states for which at least some data is available, and excluding states where fewer than eight abortions have been reported to have been performed, there have been 8 in Mississippi,[71] 10 in Alabama,[72] 12 in Idaho,[73] 35 in

69 *See* ALA. CODE §§ 26-23H-1 to -8 (2026); ARIZ. REV. STAT. ANN. § 13-3603 (2023) (repealed 2024); ARK. CODE ANN. §§ 5-61-301 to -304 (2025) (as amended post-*Dobbs*); IDAHO CODE § 18-622 (2026) (as amended post-*Dobbs*); KY. REV. STAT. ANN. § 311.772 (West 2025); LA. STAT. ANN. § 40:1061 (2025); MICH. COMP. LAWS ANN. § 750.14 (West 2022) (repealed 2023); MISS. CODE ANN. § 41-41-45 (2026); MO. ANN. STAT. § 188.017 (West 2026); N.D. CENT. CODE § 12.1-31-12 (2022), *repealed and replaced by*, 2023 N.D. LAWS 122 (codified as N.D. CENT. CODE §§ 12.1-19.1-01 to -03 (2026)); OKLA. STAT. tit. 21, § 861 (2026); S.D. CODIFIED LAWS § 22-17-5.1 (2026); TENN. CODE ANN. § 39-15-213 (2026) (as amended post-*Dobbs*); TEX. REV. CIV. STAT. ANN. arts. 4512.1–.6 (West 2025); TEX. HEALTH & SAFETY CODE ANN. §§ 170A.001–.007 (West 2025); UTAH CODE ANN. §§ 76-7a-101 to -301 (LexisNexis 2026) (as amended post-*Dobbs*); W. VA. CODE ANN. § 61-2-8 (LexisNexis 2026) (passed with W. VA. CODE ANN. §§ 16-2R-1 to -9 (LexisNexis 2026)); WIS. STAT. ANN. § 940.04 (West 2025); WYO. STAT. ANN. § 35-6-102 (2022) (as amended post-*Dobbs*), *repealed and replaced by*, 2023 Wyo. Sess. Laws 432 (codified as WYO. STAT. §§ 35-6-120 to -128 (2026)). The Arizona, Michigan, Oklahoma, Texas (first Texas statutes cited), West Virginia, and Wisconsin statutes were pre-*Roe* laws. The Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, South Dakota, Tennessee, Texas (second Texas statute cited), Utah, and Wyoming statutes were contingency statutes drafted to go into effect upon the overruling of *Roe v. Wade*. The Alabama statute, a pre-*Dobbs* enactment, was not a contingency statute. Shortly after *Dobbs* was decided, Indiana enacted a statute prohibiting abortion throughout pregnancy, subject to certain exceptions. *See* IND. CODE ANN. § 16-34-2-1 (West 2026). Unlike the regulatory statutes discussed in the previous two paragraphs, the circumstances under which an abortion may be performed under these statutes are not limited to medical emergencies where the threat to the woman's life or physical health is imminent. And, as previously noted, *see supra* note 20, the Missouri statute is no longer enforceable.

70 The data that follows comes from states whose abortion prohibitions have not been enjoined or declared unconstitutional.

71 *See* OFF. OF VITAL RECS. & PUB. HEALTH STAT., MISS. STATE DEP'T OF HEALTH, PROVISIONAL INDUCED TERMINATION OF PREGNANCY COUNTS, MISSISSIPPI RESIDENTS, 2020–2024 (2024) (seven abortions performed on Mississippi residents in Mississippi between October 1, 2022, and December 31, 2023); E-mail from Joseph S. Miller, Off. Dir. of Pub. Health Stat., Off. of Vital Recs. & Pub. Health Stat., Miss. State Dep't of Health, to author (Sep. 11, 2025, at 10:49 CT) (on file with author) (reporting one abortion to have been performed in Mississippi between January 1, 2024, and September 11, 2025).

72 The Alabama Center for Health Statistics reported seven abortions were performed in Alabama in 2023 and three in 2024. 2023 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4; 2024 ALA. DEP'T OF PUB. HEALTH INDUCED TERMINATIONS PREGNANCY STAT. 4.

73 *See* 2023 IDAHO DEP'T OF HEALTH & WELFARE SUMMARY INDUCED ABORTION IDAHO 3 (reporting five abortions performed in 2023); E-mail from Pam Harder, Rsch. Analyst

Kentucky,[74] 70 in West Virginia,[75] 82 in Missouri,[76] 122 in Tennessee,[77] and 305 in Texas.[78] In just these eight states, 644 abortions were

Supervisor, Div. of Pub. Health, Idaho Dep't of Health & Welfare, to author (Mar. 7, 2025, at 11:34 CT) (on file with author) (reporting provisional data of two abortions to have been performed in Idaho in 2024); E-mail from Pam Harder, Rsch. Analyst Supervisor, Div. of Pub. Health, Idaho Dep't of Health & Welfare, to author (Sep. 2, 2025, at 14:14 CT) (on file with author) (reporting provisional data of five abortions to have been performed in Idaho in 2025).

74 *See* 2022 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 4 tbl. 2, 16 tbl. 14, 17 tbl. 15 (reporting three medically necessary abortions performed in 2022 after their contingency law went into effect); 2023 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 4, 18, 21 (reporting twenty-three medically necessary abortions performed in 2023 and specifying the reasons therefore); 2024 KY. DEP'T FOR PUB. HEALTH ANN. ABORTION REP. 4, 18, 21 (reporting nine medically necessary abortions performed and specifying the reasons).

75 *See* 2022 W. VA. DEP'T OF HEALTH & HUM. RES. INDUCED TERMINATION PREGNANCY (ITOP) REP. 3 tbl. 1 (reporting six abortions performed in the last quarter of 2022); W. VA. DEP'T OF HEALTH & HUM. RES. INDUCED TERMINATION PREGNANCY (ITOP) REP., Oct.–Dec. 2023, at 3 tbl. 1 (reporting sixteen abortions performed from January through December 2023); W. VA. DEP'T OF HEALTH INDUCED TERMINATION PREGNANCY (ITOP) REP., Oct.–Dec. 2024, at 3 tbl. 1 (reporting twenty-six abortions performed during calendar year 2024); W. VA. DEP'T OF HEALTH & HUM. RES. INDUCED TERMINATION PREGNANCY (ITOP) REP., Oct.–Dec. 2025, at 3 tbl. 1 (reporting twenty-two abortions performed from January through December 2025).

76 E-mail from Evan Mobley, Rsch. Manager, Bureau of Health Care Analysis & Data Dissemination, Mo. Dep't of Health & Senior Servs., to author (Mar. 27, 2024, at 10:43 CT) (on file with author) (reporting thirty-two abortions to have been performed in Missouri between September 1, 2022, and June 30, 2023, and another fifteen between July 1, 2023 and December 31, 2023); E-mail from Evan Mobley, Rsch. Manager, Bureau of Health Care Analysis & Data Dissemination, Mo. Dep't of Health & Senior Servs., to author (Feb. 14, 2025, at 14:36 CT) (on file with author) (reporting provisional data of thirty-five abortions to have been performed in Missouri so far in 2024 through November). It should be noted that, pursuant to article XII, section 2(b) of the Missouri Constitution, the Missouri "Right to Reproductive Freedom Initiative" adopted on November 5, 2024, *see* MO. CONST. art. I, § 36, which effectively overturned Missouri's abortion prohibition, did not become effective until thirty days after the election. *See id.* art. XII, § 2(b).

77 E-mail from Pub. Rec. Request Coordinator, Dep't of Health, Off. of Gen. Couns., State of Tenn., to Will Brewer, Legal Couns. and Dir. of Gov. Rels., Tenn. Right to Life (Nov. 19, 2025, at 16:45 ET) (on file with author).

78 TEX. HEALTH & HUM. SERVS. COMM'N, DRROC #1162562, SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY (2022) (reporting eighteen abortions performed on Texas residents in Texas between August and December 2022); TEX. HEALTH & HUM. SERVS. COMM'N, DRROC #1303662, SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY (2023) (reporting sixty-two abortions performed on Texas residents in Texas during calendar year 2023); TEX. HEALTH & HUM. SERVS. COMM'N, DRROC #1420165, SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY (2024) (reporting seventy-six abortions performed on Texas residents in Texas during calendar year 2024); TEX. HEALTH & HUM. SERVS. COMM'N, DRROC #1498553, SELECTED CHARACTERISTICS OF INDUCED TERMINATIONS OF PREGNANCY YEAR-TO-DATE, MARCH 2026 (reporting 118 abortions performed on Texas residents in Texas between January and December 2025); TEX. HEALTH & HUM. SERVS. COMM'N, DRROC # 1498533, SELECTED

performed at a time when abortions were generally permitted only to save the life of the mother or to prevent serious physical injury to her health.[79] Finally, a ninth state—Indiana—reported ninety-seven abortions performed during the twenty-seven month period, October 2023 through December 2025, for the same two reasons (saving the life of the mother or preventing serious physical injury to her health).[80] In these nine states, more than 700 abortions have been performed pursuant to an exception or affirmative defense to a law prohibiting abortion throughout pregnancy.[81] Nevertheless, there is no report of any physician having been subjected to criminal prosecution or professional disciplinary proceedings for performing any of those abortions. As additional data for all of the states with enforceable prohibitions on the books becomes available, the numbers of reported abortions may be expected to increase.

CHARACTERISTICS OF INDUCED TERMINATION OF PREGNANCY YEAR-TO-DATE, MAY 2026 (reporting thirty-one abortions performed on Texas residents in Texas between January and March 2026).

79 Mississippi also permits abortions in cases of rape. MISS. CODE ANN. § 41-41-45(2) (2025). Idaho permits abortions in cases of rape and incest. IDAHO CODE § 18-622(2)(b) (2026). West Virginia permits abortion in cases of rape, incest, and lethal fetal anomaly. W. VA. CODE ANN. § 16-2R-3(a)–(c) (LexisNexis 2026). To date, ninety abortions have been reported in these three states, most of which were performed for reasons of medical necessity. *See supra* note 71 (reporting eight abortions performed in Mississippi); *supra* note 73 (reporting twelve abortions performed in Idaho); *supra* note 75 (reporting seventy abortions performed in West Virginia).

80 For the twenty-seven month period covered by the fourth-quarter report for 2023, the amended annual report for 2024, the amended first-quarter report for 2025, the second-quarter report for 2025, and the third-quarter report for 2025, and the fourth-quarter report for 2025, there were a total of 97 abortions performed to save the life of or prevent serious physical injury to the mother, 194 where the unborn child was diagnosed with a fatal fetal anomaly, and 27 where the pregnancy resulted from rape or incest. *See* IND. DEP'T OF HEALTH TERMINATED PREGNANCY REP., Oct. 1–Dec. 31, 2023, at 16 tbl. 14; 2024 IND. DEP'T OF HEALTH ANN. TERMINATED PREGNANCY REP. (AMENDED) 16 tbl. 12; IND. DEP'T OF HEALTH TERMINATED PREGNANCY REP. (AMENDED), Jan. 1–Mar. 31, 2025, at 14 tbl. 13; IND. DEP'T OF HEALTH TERMINATED PREGNANCY REP., Apr. 1–June 30, 2025, at 15 tbl. 13; IND. DEP'T OF HEALTH TERMINATED PREGNANCY REP., July 1–Sep. 30, 2025, at 15 tbl. 13; IND. DEP'T OF HEALTH TERMINATED PREGNANCY REP., Oct. 1–Dec. 31, 2025, at 15 tbl. 13.

81 In light of the foregoing data—that, since *Dobbs*, *more than 700* abortions have been performed pursuant to an exception in an enforceable statute prohibiting abortion throughout pregnancy—it is difficult to take seriously claims made by some commentators that physicians have a reasonable, justifiable fear of being prosecuted or disciplined for performing such abortions. *See, e.g.*, Yvonne Lindgren & Michelle Oberman, *Recalibrating Risk Under* Dobbs, 94 FORDHAM L. REV. 627 (2025). Lindgren and Oberman do not appear to be familiar with the abortion reporting data discussed herein. Moreover, they do not believe that it is possible to draft a prohibition that would provide sufficient clarity to physicians as to when they could perform an abortion pursuant to an exception in the law. *Id.* at 634–36. Accordingly, in the authors' view, all "abortion bans" should be "overturned." *Id.* at 684, 683–84.

CONCLUSION

There is little or no evidence that physicians have been subjected to criminal prosecution or professional disciplinary proceedings for performing an abortion that even *arguably* falls within the scope of an exception (or affirmative defense) to a statute prohibiting or regulating abortion. Examination of the pre-*Roe* caselaw discloses only *two* cases in which a physician's abortion conviction was reversed because of evidence the physician presented at trial that the abortion was performed pursuant to an exception in the applicable statute—one of those cases recognizing a novel (and subsequently repudiated) suicidal ideation exception to the state's life-of-the-mother statute—and only *six* cases where, without any testimony presented by the physician as to the necessity of an abortion, a conviction was reversed because the State failed to meet its burden of proving beyond a reasonable doubt that the abortion was not performed for a reason allowed by law.

The post-*Roe* data reveals that *more than 1,700* abortions have been performed since *Roe v. Wade* was decided, including *more than 700* since the Supreme Court overruled *Roe* in 2022, under exceptions (or affirmative defenses) to enforceable statutes regulating or prohibiting abortion, all without a single physician having been subjected to criminal prosecution or professional disciplinary proceedings for performing the abortion. This suggests that, notwithstanding some of the claims made in state court cases challenging state abortion statutes, physicians understand when they may legally perform abortions and have been willing to perform such abortions. In sum, physicians do not have a rational, justifiable fear of being prosecuted or disciplined for performing an abortion for a reason allowed by an exception (or affirmative defense) in a statute prohibiting abortion.

APPENDIX A

LIST OF STATE COURT COMPLAINTS ALLEGING VAGUENESS IN STATE ABORTION STATUTES

	Idaho	
1	Verified Petition for Writ of Prohibition and Application for Declaratory Judgment at ¶¶ 45–51	Planned Parenthood Great Nw. v. State, 522 P.3d 1132 (Idaho 2023) (No. 49817-2022)
	Indiana	
2	Complaint for Preliminary Injunction and Declaratory Relief at ¶¶ 7, 49–52, 65–66	Members of Med. Licensing Bd. v. Planned Parenthood Great Nw., Inc., 211 N.E.3d 957 (Ind. 2023) (No. 53c06-2208-pl-001756)
	North Dakota	
3	Amended Complaint at ¶¶ 4, 35–41, 43, 70–71, 76	Access Indep. Health Servs., Inc. v. Wrigley, 28 N.W.3d 850 (N.D. 2025) (No. 08-2022-cv-01608) (per curiam)
	Oklahoma	
4	Application for Original Jurisdiction and Petition for Declaratory and Injunctive Relief and/or a Writ of Prohibition at ¶ 90	Okla. Call for Reprod. Just. v. Drummond, 526 P.3d 1123 (Okla. 2023) (No. 120543) (per curiam)
	South Carolina	
5	Complaint for Declaratory and Injunctive Relief at ¶¶ 159–71, 195–202	Planned Parenthood S. Atl. v. State, 892 S.E.2d 121 (S.C. 2023) (No. 2023-cp-40-002745)
	Tennessee	
6	Plaintiffs' First Amended Complaint for Declaratory Judgment and Permanent Injunction at ¶¶ 9–10, 172–73, 178–79, 234–41, 246, 248, 273–75, 297	Blackmon v. State, No. 231196-IV(I), Oct. 10, 2024 (Tenn. Chancery Court)
	Wyoming	

7	Amended Complaint for Declaratory Judgment and Injunctive Relief at ¶¶ 23, 25, 109, 116–17	Johnson v. State, No. 18853 (Wyo. Dist. Ct. 9th Dist. Mar. 21, 2023)

APPENDIX B

STATE COURT DECISIONS AFFIRMING PROFESSIONAL DISCIPLINARY SANCTIONS (SUSPENSION OR REVOCATION OF LICENSE) IMPOSED UPON PHYSICIANS FOR PERFORMING OR ATTEMPTING TO PERFORM AN ILLEGAL ABORTION, CONSPIRACY TO COMMIT ABORTION OR FOR CAUSING THE DEATH OF A PREGNANT WOMAN IN THE COURSE OF PERFORMING OR ATTEMPTING TO PERFORM AN ILLEGAL ABORTION

	California	
1	Lanterman v. Anderson, 172 P. 625 (Cal. Dist. Ct. App. 1918)	Revocation of license
2	Suckow v. Bd. of Med. Exam'rs, 187 P. 965 (Cal. 1920)	One-year suspension
3	Jordan v. Alderson, 192 P. 170 (Cal. Dist. Ct. App. 1920)	Revocation of license
4	Minaker v. Adams, 203 P. 806 (Cal. Dist. Ct. App. 1921)	Revocation of license
5	Grisso v. Bd. of Med. Exam'rs, 242 P. 912 (Cal. Dist. Ct. App. 1925)	Revocation of license
6	Tapley v. Abbott, 295 P. 911 (Cal. Dist. Ct. App. 1931)	Revocation of license
7	Bold v. Bd. of Med. Exam'rs, 23 P.2d 826 (Cal. Dist. Ct. App. 1933)	Revocation of license
8	Bold v. Bd. of Med. Exam'rs, 26 P.2d 707 (Cal. Dist. Ct. App. 1933)	Revocation of license
9	Traxler v. Bd. of Med. Exam'rs, 26 P.2d 710 (Cal. Dist. Ct. App. 1933)	Revocation of license
10	Tobinski v. Bd. of Med. Exam'rs, 121 P.2d 861 (Cal. Dist. Ct. App. 1942)	Revocation of license
11	Rinker v. State Bd. of Med. Exam'rs of Dep't of Pro. & Vocational Standards, 138 P.2d 403 (Cal. Dist. Ct. App. 1943)	Reovcation of license
12	Murphy v. Bd. of Med. Exam'rs, 170 P.2d 510 (Cal. Dist. Ct. App. 1946)	Revocation of license
13	Bogart v. Bd. of Med. Exam'rs, 233 P.2d 100 (Cal. Dist. Ct. App. 1951)	Revocation of license
14	Marlo v. State Bd. of Med. Exam'rs of Dep't of Pro. Standards, 246 P.2d 69 (Cal. Dist. Ct. App. 1952)	Revocation of license

15	Schoenen v. Bd. of Med. Exam'rs, 54 Cal. Rptr. 364 (Dist. Ct. App. 1966)	Revocation of license
	Colorado	
16	Thompson v. State Bd. of Med. Exam'rs, 151 P. 436 (Colo. 1915)	Revocation of license
	Illinois	
17	Rutledge v. Dep't of Registration & Educ., 222 N.E.2d 195 (Ill. App. Ct. 1966)	Revocation of license
	Iowa	
18	State v. Knight, 216 N.W. 104 (Iowa 1927)	Revocation of license
	Kansas	
19	Kan. State Bd. of Healing Arts v. Foote, 436 P.2d 828 (Kan. 1968)	Revocation of license
	Louisiana	
20	Knight v. La. State Bd. of Med. Exam'rs, 211 So. 2d 433 (La. Ct. App. 1968)	Five-year suspension
	Massachusetts	
21	Lawrence v. Briry, 132 N.E. 174 (Mass. 1921)	Revocation of license
22	Kudish v. Bd. of Registration in Med., 248 N.E.2d 264 (Mass. 1969)	Revocation of license
	Mississippi	
23	Miss. State Bd. of Health v. Johnson, 19 So. 2d 445 (Miss. 1944)	Revocation of license
	Missouri	
24	State *ex rel.* Hurwitz v. North, 264 S.W. 678 (Mo. 1924)	Revocation of license
25	Younge v. State Bd. of Registration for Healing Arts, 451 S.W.2d 346 (Mo. 1969)	Revocation of license
	Nebraska	

26	Munk v. Frink, 116 N.W. 525 (Neb. 1908)	Revocation of license
27	Mathews v. Hedlund, 119 N.W. 17 (Neb. 1908)	Revocation of license
	Nevada	
28	State *ex rel.* Kassabian v. State Bd. of Med. Exam'rs, 235 P.2d 327 (Nev. 1951)	Revocation of license
	New Jersey	
29	Blumberg v. State Bd. of Med. Exam'rs, 115 A. 439 (N.J. 1921)	Revocation of license
	New York	
30	Minton v. Bd. of Regents, 287 N.Y.S. 502 (App. Div. 1936)	Revocation of license
31	Reiner v. Bd. of Regents, 6 N.Y.S.2d 356 (App. Div. 1938)	One-year suspension
32	Kahn v. Bd. of Regents, 23 N.E.2d 16 (N.Y. 1939) (per curiam)	Revocation of license
33	Neshamkin v. Bd. of Regents, 23 N.E.2d 16 (N.Y. 1939) (per curiam)	One-year suspension
34	*In re* Kasha, 36 N.Y.S.2d 19 (App. Div. 1942) (per curiam)	Revocation of license
35	Weinstein v. Bd. of Regents, 56 N.E.2d 104 (N.Y. 1944) (per curiam)	Two-year suspension
36	Ganz v. Bd. of Regents, 47 N.Y.S.2d 863 (App. Div. 1944) (per curiam)	One-year suspension
37	*In re* Herschman, 56 N.Y.S.2d 241 (App. Div. 1945) (per curi-am)	Revocation of license
38	Epstein v. Bd. of Regents, 65 N.E.2d 756 (N.Y. 1946)	Revocation of license
39	Newman v. Regents of Univ. of State of N.Y., 61 N.Y.S.2d 841 (App. Div. 1946) (per curiam)	Two-year suspension
40	Neshamkin v. Bd. of Regents, 66 N.E.2d 124 (N.Y. 1946) (per curiam)	Revocation of license
41	Friedel v. Bd. of Regents, 73 N.E.2d 545 (N.Y. 1947)	Six-month suspension
42	Genova v. Bd. of Regents, 74 N.Y.S.2d 729 (App. Div. 1947) (per curiam)	One-year suspension

43	Robinson v. Bd. of Regents, 164 N.Y.S.2d 863 (App. Div. 1957)	Revocation of license
44	Ciofalo v. Bd. of Regents, 258 N.Y.S.2d 881 (App. Div. 1965) (per curiam)	Revocation of license
45	Scardaccione v. Allen, 280 N.Y.S.2d 716 (App. Div. 1967)	Revocation of license
46	Zimmerman v. Bd. of Regents, 294 N.Y.S.2d 435 (App. Div. 1968)	One-year suspension
47	Mascitelli v. Bd. of Regents, 299 N.Y.S.2d 1002 (App. Div. 1969) (per curiam)	Revocation of license
	North Dakota	
48	*In re* Shortridge, 207 N.W. 442 (N.D. 1926)	Revocation of license
	Oregon	
49	*In re* Mintz, 378 P.2d 945 (Or. 1963)	Revocation of license
50	*In re* Buck, 258 P.2d 124 (Or. 1953) (en banc)	Revocation of license
	Texas	
51	Martinez v. Tex. State Bd. of Med. Exam'rs, 476 S.W.2d 400 (Tex. Civ. App. 1972)	Revocation of license
	Utah	
52	Baker v. Dep't of Registration, 3 P.2d 1082 (Utah 1931)	Revocation of license
	Washington	
53	State Bd. of Med. Exam'rs v. Harrison, 159 P. 769 (Wash. 1916)	Revocation of license

APPENDIX C

STATE COURT DECISIONS REVERSING PROFESSIONAL DISCIPLINARY SANCTIONS IMPOSED ON PHYSICIANS FOR PERFORMING OR ATTEMPTING TO PERFORM AN ILLEGAL ABORTION

	Massachusetts	
1	Ott v. Bd. of Registration in Med., 177 N.E. 542 (Mass. 1931)	Reversed order of revocation because evidence was not sufficient to outweigh prejudicial manner in which hearing was conducted
	Missouri	
2	State *ex rel.* Johnson v. Clark, 232 S.W. 1031 (Mo. 1921) (in banc)	Reversed order of suspension because of the admission of prejudicial testimony
	New Jersey	
3	Schireson v. State Bd. of Med. Exam'rs, 33 A.2d 911 (N.J. 1943)	State board could not revoke physician's license to practice based on a plea of *nolo contendere* in criminal court without conducting an evidentiary hearing
	New York	
4	Rothenberg v. Bd. of Regents, 44 N.Y.S.2d 926 (App. Div. 1943)	Reversed order of revocation and remanding for further proceedings because of trial errors
5	Shapiro v. Bd. of Regents, 209 N.E.2d 821 (N.Y. 1965)	Reversed order of revocation because evidence was insufficient to prove that physician had offered to perform an illegal abortion
	Oregon	
6	Bd. of Med. Exam'rs v. Eisen, 123 P. 52 (Or. 1912)	Reversed order of revocation and remanding for further proceedings because of defective complaint and the admission of prejudicial testimony