



## MEMORANDUM

**To:** All Oklahoma Physicians

**From:** Oklahoma Attorney General<sup>1</sup>

**Date:** September 12, 2025

**Re:** Guidance for Oklahoma physicians following *Dobbs v. Jackson Women's Health Org.*, *OCRJ v. Drummond*, and *OCRJ v. Oklahoma*

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### INTRODUCTION

In *Dobbs v. Jackson Women's Health Organization*, the U.S. Supreme Court overruled *Roe v. Wade* and held that the U.S. Constitution “does not prohibit the citizens of each State from regulating or prohibiting abortion.” 597 U.S. 215, 302 (2022). Afterward, in *OCRJ v. Drummond*, 2023 OK 24, the Oklahoma Supreme Court upheld Oklahoma’s longstanding abortion prohibition found in OKLA. STAT. tit. 21, § 861 (“Section 861”). In its ongoing effort to help relevant individuals and organizations understand these decisions, the Office of the Attorney General offers the following guidance to physicians regarding Oklahoma’s abortion laws. This guidance should be read in conjunction with the Attorney General’s existing guidance to law enforcement on this same topic.

### ANALYSIS

#### 1. Abortion is prohibited when the pregnant woman’s life is not endangered.

Although Section 861 was deemed unenforceable due to the U.S. Supreme Court’s decision in *Roe v. Wade*, it was never repealed by Oklahoma’s Legislature. Thus, once the Supreme Court reversed *Roe* in 2022, Section 861 immediately became enforceable. Section 861 provides:

Every person who administers to any woman, or who prescribes for any woman, or advises or procures any woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than two (2) years nor more than five (5) years.

In sum, except for when a woman’s life is endangered, any person who intentionally and by any means causes or attempts to cause a woman to have an abortion can be criminally prosecuted. Importantly, the language of “miscarriage” in the statute (which dates to statehood) must be understood alongside the simultaneous requirement of “intent.” That is to say, the statute only prohibits *intentional* miscarriages, which has long been established in Oklahoma to mean abortion and not the tragic miscarriages that too often occur but are not desired or intentional in the least.

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<sup>1</sup> This is a simple guidance memorandum, not an official legal opinion from the Attorney General.

In Oklahoma, physicians are prohibited from providing or performing abortions, or attempting to provide or perform abortions, when the life of the mother cannot reasonably be said to be endangered. Within this framework, physicians have broad discretion to determine when a pregnant woman is experiencing or will experience life-threatening complications from her pregnancy. In *OCRJ v. Drummond*, the Oklahoma Supreme Court explained that a woman may obtain an abortion if her physician has made a reasonable medical determination that the pregnancy will endanger the woman's life. 2023 OK 24, ¶ 9. Thus, physicians are allowed to rely on their reasonable medical judgement so long as they do not abuse their professional status and discretion to offer elective abortions that they intentionally and falsely describe as necessary to preserve the mother's life.

Mere complications that are not life threatening and would still allow the pregnant woman to complete her pregnancy are not permissible situations for abortion. For example, if the unborn child has defects or genetic abnormalities that do not endanger the life of the mother, a physician could not legally offer the pregnant woman an abortion. Additionally, if the unborn child can survive to birth without endangering the mother's life, even if it is deemed highly likely that the child will not survive for long after birth, an abortion cannot be performed. Even in such instances, however, a physician's reasonable exercise of discretion in caring for the mother throughout the process of childbirth is protected, so long as an abortion is not intended.

Again, the only recognized exception to Oklahoma's abortion prohibition is preserving the life of the mother. Physicians cannot provide abortions to pregnant women solely because the unborn child was conceived by rape, sexual assault, or incest. Should a pregnancy by rape, sexual assault, or incest come to a physician's attention, that physician should follow the reporting requirements found in OKLA. STAT. tit. 10A, § 1-2-101 (addressing reporting requirements for victims under the age of 18) and OKLA. STAT. tit. 22, § 40.3A (addressing reporting requirements for victims over the age of 18).

It should also be emphasized that Oklahoma's abortion prohibition can be violated even if no abortion occurs, or if no abortion occurs within Oklahoma. This is because Section 861 prohibits not just the act, but also the "advis[ing]" of a woman "with intent thereby to procure" an abortion, as well as the inducing of a woman "to take any medicine, drug or substance," or using "other means whatever" with the "intent thereby to procure" an abortion. Put differently, attempts are also crimes, even if the attempt is unsuccessful.

## **2. Abortion is legal when the pregnant woman's life is endangered, and abortion laws do not apply if the woman has already suffered an unintentional miscarriage.<sup>2</sup>**

Preserving the life of the mother is the only exception to Oklahoma's prohibition of abortion expressly listed in the longstanding criminal prohibition. The applicability of this exception is left largely, but not entirely, to the professional discretion of individual physicians. In *OCRJ v. Drummond*, the Oklahoma Supreme Court explained that a woman may procure an abortion when:

the woman's physician has determined to a reasonable degree of medical certainty or probability that the continuation of the pregnancy will endanger the woman's life due

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<sup>2</sup> As used in this memo, an "unintentional miscarriage" is the spontaneous loss of a pregnancy before the fetus can survive outside the womb, occurring without any deliberate action to end the pregnancy.

to the pregnancy itself or due to a medical condition that the woman is either currently suffering from or likely to suffer from during the pregnancy.

2023 OK 24, ¶ 9. In short, physicians have discretion to determine when a mother’s life is endangered, within reason. Per the Supreme Court, “[a]bsolute certainty” that a woman’s life is endangered by the pregnancy “is not required, however, mere possibility or speculation is insufficient.” *OCRJ*, 2023 OK 24, ¶ 9.

Providing further guidance, the Oklahoma Supreme Court explained that physicians do not have to wait for a medical emergency to occur before providing treatment. *OCRJ*, 2023 OK 24, ¶ 12. Instead, a physician can act when a “harmful condition is known or probable to occur.” *OCRJ*, 2023 OK 24, ¶ 12. In other words, a pregnant woman does not need to be septic, bleeding out, or close to death for her physician to reasonably conclude that the pregnancy is a threat to the woman’s life. By holding that a pregnant woman need not be in a medical emergency for her physician to provide an abortion, the Oklahoma Supreme Court left physicians with broad professional discretion to determine whether continuation of a pregnancy will truly endanger the women’s life.

In addition, Oklahoma law holds that prescribing medication or taking other actions with the intent to remove an already dead unborn child, whose death was caused by miscarriage, is not considered an abortion at all. *See* OKLA. STAT. tit. 63, § 1-757.2. If a pregnant woman has suffered an unintentional miscarriage, then miscarriage management procedures should be conducted by her physician without any concern that abortion prohibitions are controlling. For example, the child’s body could be removed through a Dilation and Curettage (“D&C”) procedure without implicating Oklahoma’s abortion prohibition. These procedures should be provided as soon as is medically necessary and a physician should not wait for a medical emergency to occur before treating a woman after a miscarriage. Thus, if a woman has suffered a miscarriage, it is not necessary for a physician to wait for the woman to become septic or something similar in order to offer her the appropriate medical care. When a pregnant woman suffers an unintentional miscarriage, all medically necessary procedures can and should be provided, as these procedures are not conducted with the purpose of *causing* the death of a child. Oklahoma’s abortion laws are not relevant at that point.

Furthermore, if the pregnant woman’s life is threatened by the pregnancy or a current or likely medical condition, then a physician can provide any medically necessary treatment, as long as the treatment does not involve unnecessary harm to the unborn child. Some examples are spelled out in statute. For instance, if a physician acts “with the intent to . . . remove an ectopic pregnancy,” it is not considered an abortion. OKLA. STAT. tit. 63 § 1-757.2(1)(c). And the same statute clarifies that it is not an abortion if a physician “treat[s] a maternal disease or illness” with a “prescribed drug [] indicated” for that illness. OKLA. STAT. tit. 63, § 1-757.2(1)(d).

Finally, it is not an abortion under Oklahoma law for a physician to take action to “save the life or preserve the health of the unborn child,” even if that action unintentionally results in the child’s unfortunate death. OKLA. STAT. tit. 63 § 1-757.2(1)(a). Physicians should strive to protect both the mother and the child. This is true regardless of the situation or stage of pregnancy, as the Oklahoma Supreme Court has recognized that “a nonviable fetus is a human being” and that “[c]ontemporary scientific precepts accept as a given that human life begins at conception.” *Nealis v. Baird*, 1999 OK 98, ¶¶ 36, 38. As such, the unborn child at any age is “a patient to be cared for by the physician.” *Id.* ¶ 38 n.69 (citation omitted). Thus, in 1999, the Supreme Court held that an unborn child “is a person” for purposes of Oklahoma’s wrongful death statute “even if it has never drawn an independent

breath.” *Id.* ¶ 35. The Legislature has since codified this principle, stating that the provisions of the wrongful death statute “shall apply to acts which cause the death of an unborn person in utero.” OKLA. STAT. tit. 12§ 1053(F)(2). And physicians cannot be held liable under this statute if they “attempt[], in a reasonably prudent manner, to prevent the death of an unborn person or pregnant woman.” *Id.*

### **III. Oklahoma’s abortion prohibitions do not apply to fertility treatments such as IVF or the prescription of contraception.**

Oklahoma law does not expressly bar fertility treatments such as IVF.<sup>3</sup> Additionally, a physician can legally prescribe “drugs that may be known to cause an abortion” so long as they are prescribed “for other medical indications, such as chemotherapeutic agents and diagnostic drugs.” OKLA. STAT. tit. 63 § 1-757.2(2). Furthermore, the Oklahoma Freedom of Conscience Act explains that abortion does not include the prescription of contraceptives. *See* OKLA. STAT. tit. 63 § 1-728c(1). As a result, under Oklahoma law, a physician can legally prescribe a woman contraceptive medication and can provide a woman with medicines known to cause abortions if the physician does not intend to cause a pregnant woman to abort her unborn child when prescribing the medicine.

## **CONCLUSION**

In Oklahoma, physicians are entrusted with broad professional discretion to intervene when medically necessary to save a woman’s life, before the patient is in a serious, medically compromised situation. However, this broad latitude in medical discretion does not extend to elective abortion in situations where the care is not medically necessary to preserve the life of the mother. In all instances, the physician should strive to protect the mother and the child, if possible. As always, those who have good faith questions are welcome to contact the Attorney General’s Office.

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<sup>3</sup> Notably, however, Oklahoma’s abortion prohibition would apply to the process known as “selective reduction.” Unless a mother’s life is in danger, there is no carveout in Oklahoma law permitting abortion of an active pregnancy in the case of twins, triplets, or the like, to reduce the number of children. *See Differences between selective termination of pregnancy and fetal reduction in multiple pregnancy: a narrative review - Reproductive BioMedicine Online.*