



# **MLCPC 206:**

***Abortion and the Law: Ethics,  
Liability, Client Rights,  
and Current Statutes***

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**Abstract**

This session will discuss the legal side of crisis pregnancy coaching. Participants will learn about how to protect themselves and their center while working with clients. Abortion laws will be discussed as well as the ethics and liability of coaching. Participants will learn how to apply this information to their interactions with clients.

**Learning Objectives**

1. Participants will study many abortion laws.
2. Participants will be able to apply the discussed legal information to their coaching sessions.
3. Participants will be able to articulate how they can legally protect themselves and their center when coaching clients.

## I. Disclaimer

The information provided and shared in this workshop is generic and for educational purposes only. For guidance and advice on specific situations, you should contact a local attorney.

## II. Clients' Rights and Current Statutes

- A. **22%** of all pregnancies in the United States (excluding miscarriages) end in abortion.<sup>1</sup>
- B. **1.21 million** abortions are performed every year.<sup>2</sup>
- C. Planned Parenthood is the country's largest abortion provider.<sup>3</sup>
- D. Planned Parenthood receives over **\$1.34 million** a day from the federal government.<sup>4</sup>
- E. **One in 10 women** will have an abortion by age 20, one in four by age 30 and four in 10 by age 45.<sup>5</sup>
- F. "Whether to have an abortion requires a difficult and painful moral decision" and is "fraught with emotional consequence." The Court also noted that "severe depression and loss of esteem can follow" an abortion.<sup>6</sup>

### G. Abortion Law

1. The United States is only **one of three** countries that allows abortion-on-demand (for any reason) after viability. The other two are China and Canada.<sup>7</sup>
2. States are allowed to place certain restrictions on abortion-on-demand:
  - Late-term abortion bans  
Arizona just passed ban after 20-weeks

- Parental Consent/Notification
    - At least 25 states require parental consent laws
    - At least 12 states require parental notification laws
  - Informed Consent
    - At least 32 states have informed consent laws
  - Abortion Clinic regulations
    - Unregulated industry** (only three states require ambulatory surgical center standards)
    - Seven states allow non-physicians** to perform abortions
3. Know your state law: Visit <http://www.aul.org/your-state/> for more information.
  4. “Do I have to refer for abortions?”

#### H. Abortion Coercion

1. **No one** has the legal right to force anyone to have an abortion.
2. At least **10 states** have adopted specific laws with heightened protection for pregnant women against abortion coercion.
3. Steps:
  - Assure client that it is **her choice** to make
  - Encourage the client to invite the parents to counseling
  - If parents continue to coerce, reemphasize the legal right of the child to determine the outcome of her pregnancy
  - The minor client should be informed of her rights
  - The client should be prepared for the possibility that the parents may take her to an abortion clinic and she will need to voice her objections

- The client can be given a letter to fax to abortion clinics indicating her lack of consent. Visit <http://thejusticefoundation.org/cafa/> to obtain this.
- The client can obtain legal counsel: **1-800-Tell-ADF**
- You can report the situation to child protective services or the police

### **III. Ethics and Liability**

#### **A. Why Care?**

1. Negligent Counseling
2. Negligent Infliction of Emotional Distress
  - Saying something to the client that is not true
  - Saying something to the client that is true
3. Assault and Battery
4. False Imprisonment
5. Consumer Protection Claims
6. Adoption Coercion

#### **B. Coverage**

1. The Most Important Liability Protection
2. Professional Liability Insurance
3. You can do everything 100% correctly and still get sued or accused of wrong doing.

4. It is critical that the counselor and the church/pregnancy center has proper malpractice or professional liability insurance.
  - Negligent Peer Counseling
  - Without it, you could be personally liable
  - Consider riders (sexual molestation, etc.)

## C. Competence

### 1. Training and Qualifications

- Unique situations
- Professionally trained counselors
- Lay counselors:
  - Do not go beyond your scope of training
  - Be honest about your qualifications and limits

### 2. Counseling with Honesty

- Why care? (Consumer Protection, negligent infliction of emotional distress)
- Counseling should be grounded on honesty and integrity

*“There are six things that the Lord hates, seven that are detestable to Him: haughty eyes, a lying tongue, hands that shed innocent blood.”—Proverbs 6:16-17*

*“Good people obtain favor from the Lord, be He condemns those who devise wicked schemes.”—Proverbs 12:2*

- Communication must be truthful and verifiable
- Services should be accurately described

- Do you provide or refer for abortion? **No.**

### 3. Information Accuracy

- Why care? (Consumer Protection claims, negligent infliction of emotional distress)
- All information you provide should be **scientifically** and **medically** accurate
- Care Net's *Before you Decide Brochure*
- Americans United for Life's *Defending Life*
- State Informed Consent documents
- When discussing abortion risks and procedures stick to the **facts** only. Avoid anecdotal stories or fillers.
- If the client has not requested to view fetal development material or educational products on abortion risks and procedures, **ask for signed written permission** before showing.
- Be sensitive to the emotional state prior to any educational presentation.

### 4. Avoiding Graphic Images

- Why care? Negligent Infliction of Emotional Distress
- There have been lawsuits
- Post-abortive women

### 5. The Adoption Option

- Why care? (Adoption Coercion, Negligent Referral, No Licensure)
- **Alliance** or a **Benefit**?
- **Maintain Independence** from adoption agencies
  - **No** meetings in office spaces

- **No** contractual agreements
- Give the client at least **three** referrals to qualified institutions
- Gain No Benefits
- **No** shared space with the adoption agency
- **Do not** take any substantial donation from an adoption agency

#### **D. Consent**

##### **1. Disclaimers:**

- Signed Client **Intake Form**
- Confidentiality: *All information shared by you during your relationship as a client will be kept confidential except as required by law or as required for the protection of you or others.*
- Medical: *Our services are not intended to be a substitute for professional counseling, medical, or prenatal care. (If applicable)*
- Abortion Services: *We do not offer abortion services or abortion referrals.*

##### **2. Physical Contact**

- Why care? Assault and Battery
- Ask permission first
- Never touch a hostile client

#### **IV. Special Confidentiality Situations**

##### **A. Policy and Disclaimer**

##### **B. Minors**

**C. Client Consent** (get it in writing)

**D. Threats of Harm to Self or Others**

**E. Subpoena** (call an attorney)

**F. Crime Against You or Your Organization** (reveal only as much information as needed)

**G. Minors**

1. Medical Services: 28 states specifically allow minors to seek prenatal care.

Remaining states simply have no law. Visit

<http://www.guttmacher.org/pubs/tgr/03/4/gr030404.pdf> for more information.

2. Reporting suspected child abuse (Statutory Rape)

- States have dramatically varying laws
- States do not call it “Statutory Rape”
- Am I, or is my organization, a mandatory reporter?

Sometimes only certain professions required to report

In at least 18 states, all persons must report

- Does the abuse qualify as *reportable* child abuse?

Look at reporting statutes

Many statutes classify reportable abuse if caused by parent or caretaker

Reasonable Suspicion

Sexual Penetration not required to trigger a mandatory reporting situation

- **Lewin Group Document:** Available at <http://aspe.hhs.gov/hsp/08/SR/StateLaws/report.pdf>

3. Do I have a moral obligation to report?

## H. Threats of Suicide/Homicide

### 1. Specificity

- How specific is the plan?
- Does the person have a plan?
- Has she thought through the process?
- Are the details vague or specific?

### 2. Lethality

- What is the likelihood that the method will lead to death/serious bodily injury?
- How quickly would the person die if she did what she planned to do?

### 3. Availability

- What is the availability of the proposed method?
- Does she have the means to carry out the plan

### 4. Proximity

- What is the proximity to helping resources?
- Could others easily reach her if necessary?

*When in doubt about the law, or uncertain about a situation, don't guess—ask an attorney!*

## Endnotes

<sup>1</sup>R.K. Jones and K. Kooistra, "Abortion Incidence and Access to Services in the United States: 2008," *Perspectives on Sexual and Reproductive Health* 43.1 (2011):41-50.

<sup>2</sup>Ibid.

<sup>3</sup>The Guttmacher Institute, a research policy organization formerly affiliated with PPFA and named after former PPFA President Alan Guttmacher, reports that "[i]n 2008, 1.21 million abortions were performed" in the United States. See Guttmacher Institute, "Facts on Induced Abortions in the United States" (Jan. 2011), available at [http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](http://www.guttmacher.org/pubs/fb_induced_abortion.html) (last visited Apr. 20, 2011). In 2008, Planned Parenthood reported that it had performed 324,008 abortions, or 26.8 percent of the abortions reported that year. See "Fact Sheet: Planned Parenthood Services" (Sept. 2010), available at [http://www.plannedparenthood.org/files/PPFA/fact\\_ppservices\\_2010-09-03.pdf](http://www.plannedparenthood.org/files/PPFA/fact_ppservices_2010-09-03.pdf) (last visited Apr. 20, 2011).

<sup>4</sup>"Planned Parenthood Federation of America, Annual Report 2009-2010," *Planned Parenthood Federation of America*, December 2011, accessed September 27, 2012, [http://issuu.com/actionfund/docs/ppfa\\_financials\\_2010\\_122711\\_web\\_vf?mode=window&viewMode=doublePage](http://issuu.com/actionfund/docs/ppfa_financials_2010_122711_web_vf?mode=window&viewMode=doublePage)

<sup>5</sup>S.K Henshaw, "Unintended Pregnancy in the United States," *Family Planning Perspectives* 30.1 (1998): 24-29, 46; R.K. Jones and M.L. Kavanaugh, "Changes in Abortion Rates Between 2000 and 2008 and Lifetime Incident of Abortion," *Obstetrics & Gynecology* 117.6 (2011): 1358-66.

<sup>6</sup>*Gonzales v. Carhart*, 550 U.S. 124 (2007), p. 28-29.

<sup>7</sup>Clarke Forsythe, "Commentary on a 40 Year Old Medical Opinion Misses Numerous Points," *Americans United for Life*, August 24, 2012, accessed September 7, 2012, <http://www.aul.org/2012/08/commentary-on-a-40-year-old-medical-opinion-misses-numerous-points/>

**Appendix A**

**Legal Resources**

**Books and Manuals**

*Legal Solutions: a Legal Resource for Life-affirming Pregnancy Help Organizations*,  
available for purchase at: [www.care-net.org](http://www.care-net.org)

*Defending Life: A State-by-State Legal Guide to Abortion, Bioethics, and the End of Life.*  
Electronic copies available for free at <http://www.aul.org/defending-life-2012-contents>

### **Abortion Law**

State Regulations: <http://www.aul.org/your-state/>

### **Abortion Coercion Materials**

The Justice Foundation Center Against Forced Abortions:  
<http://thejusticefoundation.org/cafa/>

### **The Lewin Group: State by State Laws on Statutory Rape**

[http://www.lewin.com/Lewin\\_Publications/Human\\_Services/StateLawsReport.htm](http://www.lewin.com/Lewin_Publications/Human_Services/StateLawsReport.htm)

**The Guttmacher Report on Public Policy: *Minors and the Right to Consent to Health Care***  
<http://www.guttmacher.org/pubs/tgr/03/4/gr030404.html>