STATEMENT

of the

American Medical Association

to the

Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives

Roe Reversal:
The Impacts of Taking Away the Constitutional Right to an Abortion

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July 19, 2022

Division of Legislative Counsel
[redacted]

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The American Medical Association (AMA) appreciates the opportunity to provide testimony to the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce as part of its July 19, 2022 hearing entitled, "Roe Reversal: The Impacts of Taking Away the Constitutional Right to an Abortion." As the largest professional association for physicians and medical students, and the umbrella organization for state and national specialty medical societies, the AMA is deeply dismayed by the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* to overturn nearly a half century of precedent protecting patients' right to critical reproductive health care. We commend the Committee for holding this important hearing to explore the impact of the Supreme Court's ruling on patients and their physicians as we move forward in this new post-*Dobbs* environment.

The *Dobbs* decision has opened a deep political rift between states over access to reproductive health services that places sound medical practice and the health of patients at risk. In the three weeks since the Supreme Court's ruling, abortion has become illegal in at least 10 states, with more states expected to follow in the weeks ahead. State restrictions that intrude on the practice of medicine and interfere with the patient-physician relationship leave millions with little or no access to abortion services while criminalizing medical care. Physicians have been placed in an impossible situation—trying to meet their ethical duties to place patient health and well-being first, while attempting to comply with vague, restrictive, complex, and conflicting state laws that interfere in the practice of medicine and jeopardize the health of patients.

The foundation of the patient-physician relationship relies upon honest, open communication and trust, which is undermined by substituting lawmakers' views for a physician's expert medical judgment. It is each physician's ethical responsibility to help his or her patients choose the optimal course of treatment through shared decision-making that is fully informed by evidence-based medical science and definitively shaped by patient autonomy. Anything less puts patients at risk and undermines both the practice of medicine and our nation's health. The AMA Code of Medical Ethics states that "The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare." The AMA opposes any effort to undermine the basic medical principle that clinical assessments, such as viability of a pregnancy and safety of the pregnant person, are determinations to be made only by health care professionals with their patients.

While AMA policy recognizes that our members' *individual* views on abortion are determined by their own values and beliefs, we firmly and unequivocally support patients' access to the full spectrum of reproductive health care options, including abortion, as a right. Our policies are the result of a democratic process in which physicians representing every state and national specialty medical society come together in our House of Delegates. In alignment with our long-held position that the termination of a pregnancy is a medical matter between the patient and physician, subject only to the physician's clinical judgment, the patient's informed consent, and access to appropriate facilities, the AMA opposes any government or any other third-party interference that compromises or criminalizes patient access to safe, evidence-based medical care.

Our members across the country are looking to us for answers on a wide range of issues and are concerned about their patients' health and potential prosecution of their patients and themselves for actions taken in this post-*Dobbs* environment. We are trying to provide clarity and guidance in the midst of significant legal uncertainty in light of conflicting state laws and conflicts between state and federal laws. For example, the AMA has received questions about the potential conflict between physicians' obligations under the federal EMTALA law and state laws that ban or restrict access to stabilizing medical treatment, including abortion procedures and other treatments that may result in the termination of a pregnancy. We appreciate the recent clarification provided by the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) that EMTALA would preempt conflicting state law and be a defense for criminal prosecutions.

However, there remain uncertainties even with the new CMS guidance, particularly in the context of termination of ectopic pregnancies or patients experiencing intrauterine infections, pre-eclampsia, malignancies, or hemorrhage during pregnancy. Physicians must be the ones determining at what point a patient presenting to the hospital faces an emergency situation that requires medical intervention. These determinations often must be made under intense, very time-sensitive conditions where a delay of even a few minutes can become a life-threatening situation. Physicians are concerned that their clinical judgment will be second-guessed by other hospital staff or prosecutors. The AMA expects that many of these situations unfortunately will end up being litigated, so there will not be clear answers for some time. In fact, the state of Texas just brought a legal challenge against HHS asking that the EMTALA guidance be set aside as an abortion mandate.

The AMA is also aware of issues regarding access to medications such as methotrexate. Methotrexate is a commonly prescribed oncology and rheumatology drug that is widely used as an immune suppressant in the treatment of a variety of non-pregnancy, autoimmune conditions such as lupus, psoriasis, arthritis, and inflammatory bowel disease. Methotrexate is also commonly used as an alternative to surgery to treat ectopic pregnancies. Given its potential classification as an abortifacient, patients in several states, particularly those living where abortion is now illegal and in those where abortion laws are unclear or changing, are facing access challenges to methotrexate. The AMA is hearing that some pharmacies are refusing to stock the drug and some pharmacists are refusing to dispense it. In addition, it has been reported that some physicians are refusing to prescribe methotrexate to patients who may become pregnant given concerns about criminal prosecution despite these patients not being pregnant. Lack of access requires patients for which methotrexate is considered "gold standard" treatment to switch treatment regimens, resulting in delays in care and potential worse outcomes.

Another concern that our physicians have is ensuring continued access to mifepristone. When used in combination with the drug misoprostol, mifepristone can be used safely to terminate pregnancies and for medical management of miscarriages. Mifepristone (both brand and generic) is subject to a risk evaluation and mitigation strategy (REMS) program by the U.S. Food and Drug Administration (FDA). In late 2021, FDA conducted a review of the REMS program for mifepristone and ultimately removed

requirements for the drug to be dispensed in-person. However, the current REMS still requires the drug to be prescribed by a "certified health care provider" and dispensed by a "certified pharmacy," which may result in continued limitations on access for physicians and patients. The AMA supports revision or removal of the REMS, as there is adequate evidence of safety and efficacy and a lack of evidence demonstrating continued need for the current REMS program. While much of the debate around mifepristone access is centered around use to voluntarily terminate pregnancy as part of appropriate reproductive health care, mifepristone is also a critical tool in the medical management of miscarriage. Restrictions on access to this essential drug mean physicians lose the preferred treatment to help patients who have lost a pregnancy involuntarily. Limiting access to mifepristone has serious consequences for treatment of these conditions.

The AMA is also concerned that the *Dobbs* decision will worsen existing gaps in health disparities and outcomes, compounding the harm that under-resourced communities already experience. In those states that have already banned or severely restricted abortions and in other states that are expected to do so, access to legal reproductive care will be limited to those who have sufficient resources, circumstances, and financial means, thereby exacerbating health inequities by placing the heaviest burden on patients from Black, Hispanic, Indigenous, low-income, rural, and other historically disadvantaged communities that already face numerous structural and systemic barriers to accessing health care.

States that end legal abortion will not end abortion, they will end safe abortion, risking devastating consequences, including patients' lives. Many more people will resort to self-managed abortions without medical supervision, increasing maternal mortality and morbidity. Some who obtain abortions will get them far later in pregnancy, after traveling and waiting for longer. Evidence shows that others who carry unwanted pregnancies to term will experience worsening physical and mental health, more exposure to abusive partners, and far more economic distress.

We have only begun to assess the full impact of the *Dobbs* decision on our physicians and their patients. At this point, we have more questions than answers. The AMA is committed to its longtime opposition to criminalizing medical practice and will continue to challenge criminal or civil penalties on patients who receive reproductive health services, as well as physicians, other health professionals, health systems, and patient advocates for aiding, assisting, supporting, or providing reproductive health services or referrals to patients. We will also continue to protect the patient-physician relationship and access to evidence-based reproductive health care, including abortion.