

The Legal Right to Abortion in Puerto Rico

Is abortion legal in Puerto Rico? Yes, abortion is legal in Puerto Rico, if it is performed by a physician to protect the pregnant woman's life or health.¹ Health in this context means not only physical health, but also mental health, and socio-emotional well-being.²

However, Puerto Rico has a criminal abortion statute on the books that prohibits performing or undergoing an abortion for reasons other than protecting the woman's life or health.³ That statute violates the U.S. Constitution, which applies to Puerto Rico, and which protects a woman's right to choose an abortion for any reason up to the time of viability.⁴ Nonetheless, the statute has yet to be declared invalid by any court.

Is parental consent required for minors in Puerto Rico? No, the Puerto Rico courts have stated that a minor (defined as a person under the age of 21 under Puerto Rico law⁵) does not need parental consent in order to obtain an abortion in Puerto Rico.⁶ Unlike many states, Puerto Rico does not have a statute requiring parental consent or notice prior to an abortion. In states where such laws do exist, they must include a confidential, expeditious means by which a minor can bypass that parental notice requirement.⁷

Who is authorized to perform abortions in Puerto Rico? Physicians. An abortion may be legally performed only by a physician who is authorized to practice medicine in Puerto Rico.⁸

Physicians that provide abortions must comply with a number of additional requirements imposed by the Department of Health ("DOH"). For example, the DOH requires abortion providers to have completed a residency in obstetrics and gynecology (OB/GYN); however, DOH officials have stated that this residency requirement will be waived for any

licensed physician who requests such a waiver until the DOH adopts new regulations.⁹ The DOH also requires abortion providers to take annual courses in cardiopulmonary resuscitation, to have a valid state and federal narcotics license, and to register with the DOH Registry of Health Professionals.¹⁰

Are there restrictions on where an abortion may be performed in Puerto Rico? Yes, the DOH requires abortion providers to be licensed as ambulatory service centers and to renew this license every two years.¹¹ In order to be licensed by the DOH, a health care provider must pass an inspection by the DOH.¹²

Are there limitations on when an abortion may be performed in Puerto Rico? Under federal constitutional law, which applies in Puerto Rico, abortion may not be banned prior to viability, and post-viability abortions must be permitted when needed to preserve the woman's life or health.¹³ Puerto Rican statutory schemes allow abortion in accordance with these principles.¹⁴

Similarly, the highest court of the State of California rejected a challenge by a faith-based organization to a California contraceptive-equity statute.³² The court held that the California statute did not violate either the U.S. Constitution or the California Constitution.

Are public funds available to pay for abortions in Puerto Rico? Under the current version of the Hyde Amendment, an amendment to the federal Medicaid statute that has been renewed by the U.S. Congress, with slight variations, every year since the amendment originally passed in 1976, public funds are available to Medicaid-eligible women to pay for abortions in cases of rape, incest, or endangerment of the life of the mother.¹⁵

ENDNOTES

- 1 See 33 L.P.R.A. §§ 4739, 4740 (2005).
- 2 See *People v. Duarte Mendoza*, 109 D.P.R. 596, 607 (1980) (holding that U.S. Supreme Court decision in *Roe v. Wade*, affirming women's right to choose to have an abortion, applies to Puerto Rico); *People v. Najul Baez*, 111 D.P.R. 417 (1981) (affirming women's right to have an abortion performed during the first trimester of pregnancy, and recognizing the "broadest notions of physical, mental or socio-emotional well-being" in the health exception to the criminal statutory prohibition of abortion).
- 3 See 33 L.P.R.A. §§ 4739, 4740 (2005).
- 4 See, e.g., *Duarte Mendoza*, 109 D.P.R. at 507; *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 170 (1973).
- 5 31 L.P.R.A. § 971.
- 6 See *Barreto v. Woman's Medical Pavillion*, 2003 WL 2104774, at *9 (P.R. Cir. 2003) (a minor's consent to an abortion is valid even absent the consent of her parents); *Pueblo v. Duarte Mendoza*, 109 D.P.R. 596, 610 (1980) (the Puerto Rico legislature may not grant parents the authority to veto the decision of their minor child to have an abortion); *Bellotti v. Baird*, 443 U.S. 622, 643-44 (1979) (plurality opinion).
- 7 *Bellotti*, 443 U.S. at 643-644.
- 8 See *Pueblo v. Duarte Mendoza*, 109 D.P.R. 596, 606 (1980); June 18, 2004 Act No. 149 Art. 111, repealing P.R. LAWS ANN. tit. 33 § 4010 (1980).
- 9 Notes on meeting between DOH officials and Bonnie Scott Jones, Yamila Azize, and Mary Rivera on Proposed Regulation for the Licensing, Operation and Maintenance of Ambulatory Health Facilities (Family Planning and Pregnancy Termination Centers) (March 16, 2007) (on file with Bonnie Scott Jones).
- 10 See Regulation of the Secretary of Health No. 99 for the Operation and Function of the Health Facilities in Puerto Rico (Dep't of Health Nov. 7, 1999) ("Reg. No. 99").
- 11 See Reg. No. 99, at ch. II, art. A, §1(e), ch. III, art. A.
- 12 See Reg. No. 99, at ch. II, art. A, §§ 1(a)-(b), 4(a), ch. IV, art. A.
- 13 See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 879 (1992) (joint opinion) ("[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability."); *Roe v. Wade*, 410 U.S. 113, 164-165 ("[S]ubsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.")
- 14 See *People v. Najul Baez*, 111 D.P.R. 417, 421-22 (1981); P.R. Op. Sec. Just. 1987-18.
- 15 See Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1998, Public Law Number 105-78, §§ 509-510 (effective Nov. 13, 1997); Center for Reproductive Rights, Portrait of Injustice: Abortion Coverage under the Medicaid Program (May 1, 2004), available at <http://reproductiverights.org/en/document/portrait-of-injustice-abortion-coverage-under-the-medicaid-program>.