The Supreme Court Joins the Multispecialty Group Practice of the Congress and the President

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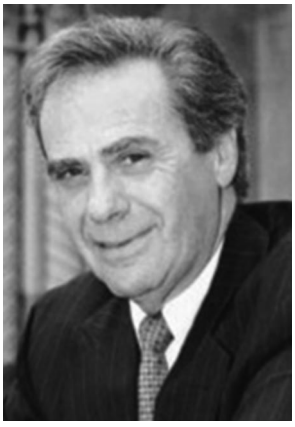

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Financial Disclosure
The authors have no potential conflicts of interest to disclose.

ISSN: 0029-7844/07

Until recently, the practice of medicine has been supervised and guided by licensing bodies such as the American Council on Graduate Medical Education, the American Board of Medical Specialties, and professional organizations like our own American College of Obstetricians and Gynecologists. In the past, the government has taken a role in the protection of the health of its citizens and in general ethical issues–not in the details of medical care. However, the United States Supreme Court has lately joined the two other branches of government, the legislative and the executive, in dictating medical practice by outlawing a particular, although rarely used, technique of uterine evacuation without regard to the health consequences for patients, using language that is more ideological than medical. From now on, we physicians can anticipate that all three branches of government will help us decide how to care for our patients.

The Supreme Court should send referring physicians an engraved notice of its intent to engage in a practice limited, for now, to obstetrics and gynecology. Board certified or not, five of the nine justices want to hang out a shingle. Justice Kennedy, writing for the majority, made clear his rejection of evidence-based practice by failing to include a single medical reference in support of his opinion. Paradoxically, Justice Ginsburg, writing for those who doubted their qualifications in our specialty, cited several (including some from this journal) in the minority's more scholarly statement of their lack of interest in joining the Congress' and the President's practice of medicine.

After consultation with retired thoracic surgeon, Dr. Frist, a now-retired senator who has also retired his presidential hopes, the 108th Congress and the President opened their practice of neurology specifically for the case of Terry Schiavo. Ignorant of the tenets of modern medicine, they violated the 80-hour work rule by making rounds on Ms. Schiavo in the darkest hours of a Palm Sunday night. Dr. G. W. Bush, who currently limits his practice to neurology and obstetrics and gynecology, flew from his Crawford, Texas, office to make Monday morning rounds and put his signature (no DEA number required) in the chart, enacting the only law ever in American history to diagnose a patient's medical condition and dictate her care. Thanks to lower courts, the Supreme Court did not get a referral in the Schiavo case, but, since they reject evidence-based medical practice, we can speculate that their neurological diagnosis and plan of care would have agreed with that of their practice partners, Drs. Frist and Bush.

In the case of the "Partial Birth Abortion Ban," the court received a referral from its multispecialty partners, the 108th Congress and the

President, and decided that, when similar cases arise, they want all of us to consult them or risk a substantial fine and imprisonment. Theirs is certainly a forceful approach to garnering referrals.

Our Congress has shown little interest in addressing the health care needs of women in their reproductive years, 21% of whom have no health insurance, the spiraling administrative costs of health care, or the liability insurance crisis that drives obstetricians away from treating even those who do have insurance. But in December 2006, shortly before it disbanded, the 109th Congress courageously took on one more obstetrics and gynecology practice problem that it judged our Fellows were likely, without governmental consultation, to mismanage. That would be the pain fetuses might, but according to a recent analysis in *Journal of the American Medical Association*, in fact do not, experience during abortions. Again eschewing "evidence-based practice," the 109th Congress passed the "Fetal Pain Awareness Act."

At our recent Annual Clinical Meeting in San Diego, I asked several colleagues if they intended to make referrals to the Supreme Court. All said "No" because the Court is not available for telephone consultations and makes rounds infrequently. My colleagues insisted that in obstetrics and gynecology, unlike in neurology, the other specialty currently practiced by the executive, legislative, and judicial branches of our government, we must often decide quickly on the best course of treatment. Instead, my colleagues planned a wide range of practices in accordance with what they, like residents hoping to please the attending, but not having time to call him or her, thought their Washington-based consultants might advise. These ranged from "practice as usual" to risky measures that would offer their patients no benefit but would avoid the criticism of their Supreme Court attendings, whose disapproval, in the partial-birth abortion ban situation, might land them in federal prison, not just give them a low "evidence-based practice" score. Suggestions for avoiding the Supreme Court attendings' powerful wrath included the injection of hazardous potassium chloride and completing second-trimester abortions with inadequate dilation. Who comes first, our governmental consultants or our patients?

REFERENCE

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