

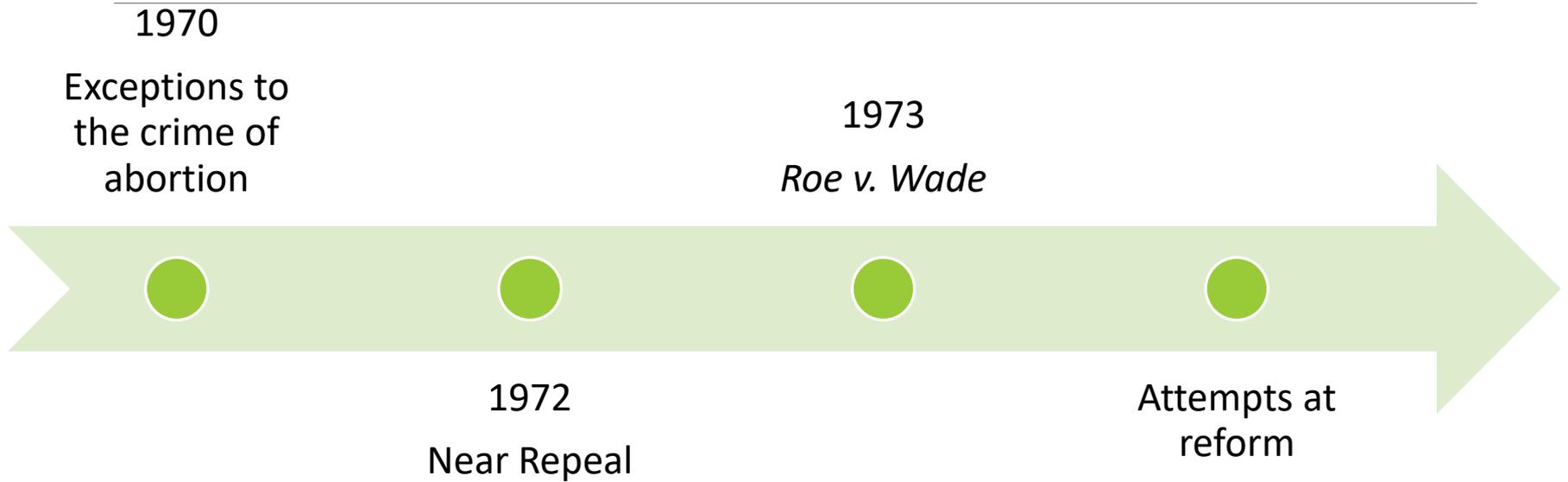
# New York Law and the Provision of Abortion Care

---

KATHARINE BODDE, SENIOR POLICY COUNSEL  
NEW YORK CIVIL LIBERTIES UNION



# History of NY Abortion Law



# Consequences of the 1970 Abortion Law

---

## Abortion Care Later in Pregnancy:

- New York State's previous law prohibited abortion care after 24 weeks from the commencement of pregnancy (COP) except when a patient's life was at risk.
- Hospitals in New York would not provide care to patients after 24 weeks COP; patients were referred out of state, often at great financial and emotional cost.

## Advanced Practice Clinicians:

- The prior statute defined “justifiable” abortion as abortion performed by a “duly licensed physician” thus discouraging competent APCs from providing abortion.
- APCs are critical to improving access for underserved communities.

# Reproductive Health Act of 2019

---

## Decriminalized abortion

- Providing care
- Seeking care
- Self-managing care

## Advance Practice Clinicians

- Removed physician language
- Determined by scope of practice and training

## Later care

- Clarified post 24 week care to include provisions for health and fetal non-viability

# RHA: Decriminalizing Abortion

---

RHA removed abortion from the penal code, including repealing the definition of “justifiable” abortion:

“committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy.”

# RHA: Affirmative Protections

---

- Moved the regulation of abortion from the penal code to the public health code
- Fundamental right to chose refuse contraception/sterilization
- Fundamental right to carry pregnancy to term, give birth to a child or to have an abortion
- Non-discrimination clause

# Regulation of Abortion in the Public Health Law

---

RHA established a new section in the Public Health Law

“A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner’s reasonable and good faith professional judgment based on the facts of the patient’s case: the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient’s life or health.”

*N.Y. Pub. Health Law § 2599-bb*

# When abortion may be performed

---

“..... Perform an abortion when according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case: **the patient is within twenty-four weeks from the commencement of pregnancy**, or there is **an absence of fetal viability**, or the **abortion is necessary to protect the patient's life or health**.

- The New York State Department of Health defines “commencement of pregnancy” as occurring “at conception,” usually two weeks after the first day of the last menstrual period (LMP).
- Interpreted as allowing abortion care - for any reason - through 26.0 weeks LMP.

# Legal meaning of health and viability

---

- § 2599-bb does not define “health” or “viability.”
- Determination explicitly left to the attending “practitioner’s reasonable and good faith professional judgment based on the facts of the patient’s case.”
- New York cannot bar care that the federal Constitution protects.
- Supreme Court has recognized that when making the “health” determination, a physician may exercise “*medical judgment ... in light of all factors – physical, emotional, psychological, familial, and the woman’s age – relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he [sic] needs to make his [sic] best medical judgment. And it is room that operates for the benefit, not the disadvantage, of the pregnant woman.*”

# RHA: Who may provide abortion care?

---

- RHA explicitly authorizes “health care practitioners licensed, certified, or authorized under title eight of the education law” to provide abortion when acting within their scope of practice.
- This authorization impacts the following Advanced Practice Clinicians (APCs): Physician Assistants, Nurse Practitioners, and Licensed Midwives.

# How is Scope of Practice Determined?

---

- The term “scope of practice” is not defined in the law; in practice it is determined by the relevant laws and regulations and corresponding professional board opinions.
- In making scope of practice determinations, the Boards consider:
  - the relevant laws;
  - evidence-based scientific literature;
  - statements, opinions, position papers from the relevant professional associations

# How is Scope of Practice Determined? (cont.)

---

- In addition, and as a prerequisite for providing any health care, an individual practitioner must:
  - be appropriately trained
  - have documented evidence of their current competence to safely perform the health care act
  - to the extent the law requires an APC to have a practice agreement with a doctor pertaining to collaboration or supervision, medical care must fall within the scope of that relationship.

# Methods of Abortion and Scope of Practice

---

- The appropriate method of abortion will vary depending on the patient's needs and preferences, and the gestational timing of the pregnancy.
- While some methods may be within a practitioner's scope of practice, others may not be.
- Three common methods of abortion include:
  - medication abortion
  - aspiration abortion
  - D&E

# APCs and Abortion Care

---

- An extensive body of medical literature confirms the safety and efficacy of the provision of both medication and aspiration abortion by APCs.
  - Leading medical and public health organizations, including ACOG, the APHA, and the WHO, endorse the provision of both medication and aspiration abortion care by APCs.
  - The National Academies of Sciences, Engineering, and Medicine released a report that concluded that APCs can safely and effectively provide medication and aspiration abortions.

# Physicians Assistants and Abortion Care

---

- In New York, a licensed PA may prescribe and provide medical care that is consistent with their training and competency, under the supervision of a physician, and when such care is within the supervising physician's scope of practice.
- The New York Department of Health has interpreted New York law to permit abortions performed by physicians' assistants, without limitation on the point in pregnancy or the method of termination.

# Nurse Practitioners and Abortion Care

---

- In New York, a licensed NP's scope of practice may include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice, as well as prescriptive authority.
- The New York State Board for Nursing has recognized that competent NPs may perform "abortion procedures as long as the procedure does not include surgery."

# Nurse Practitioners and Abortion Care (cont.)

---

- The National Association of Nurse Practitioners in Women's Health promulgated a resolution finding that NPs with "appropriate preparation and medical collaboration, are qualified to perform abortions."
- The National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties (NCC), the body that certifies NPs specializing in Neonatal or Women's Health Care, lists "induced abortion" among the subjects tested for NPs specializing in women's health care.

# Licensed Midwives and Abortion Care

---

Midwifery includes the management of normal pregnancies, child birth and postpartum care as well as primary preventive reproductive health care. In New York, licensed midwives' scope of practice includes the ability to prescribe and administer drugs.

# Licensed Midwives and Abortion Care (cont.)

---

- The American College of Nurse Midwives:
  - “aspiration abortion and medication abortion may be safely provided by trained advanced practice clinicians” including certified nurse-midwives and certified midwives.
- The International Confederation of Midwives (ICM):
  - “authorized and well-educated midwives can provide competent and safe abortion-related services” and includes medication and aspiration abortion up to 12-weeks of gestation as an essential competency for basic midwifery practice.

# RHA: Other Notable Legal Areas

---

- RHA repealed Public Health Law § 4164, including two provisions in particular:
  - unconstitutional requirement that abortion after the 12th week of pregnancy take place in a hospital on an in-patient basis;
  - provision requiring the presence of a second physician after the 20th week of pregnancy.
- RHA did not change minors' ability to access confidential abortion care in New York.

# Contact Info

---

## **Katharine Bodde**

Senior Policy Counsel

New York Civil Liberties Union

125 Broad St., New York, NY 10004

■ 212.607.3375 ■ [kbodde@nyclu.org](mailto:kbodde@nyclu.org)

[www.nyclu.org](http://www.nyclu.org)

