

2/14/17

Members of the Senate Health & Human Services Committee:

Regarding Senate Bill 1367

Thank you very much for the opportunity to have this letter read before this committee. I am a neonatologist; a physician specialized in caring for the most critically ill and extremely preterm infants immediately after birth.

Many of my neonatology colleagues and I, who collectively represent a significant proportion of the neonatologists in the state of Arizona, wish to express our concern regarding specific aspects of SB 1367.

Primarily our concern is the apparent though unclear compulsion to provide “standards of care to satisfy the requirement that all available means and medical skills be used to promote, preserve, and maintain the life of the fetus or embryo pursuant to section 36-2301” referencing the “unborn child...of gestational age of twenty weeks or more”.

Currently under Arizona law the standard of care for decisions whether to resuscitate or not resuscitate borderline viable infants are made on the basis of determining in conjunction with the infant’s parents whether medical intervention is warranted or further intervention is futile. This decision-making affects infants of 22-23 weeks gestation.

Using our most recent statistics babies born at 20-21 weeks gestation have a zero percent chance of survival. At 22 weeks, the survival in a group of “optimal candidates” (meaning non-anomalous and with the “intent” to resuscitate) the survival is only 11% and survival without a specific set of severe morbidities is only 7%. When other severe morbidities are included the statistic would be undoubtedly significantly lower. At 23 weeks these numbers increase to 40% survival and 20% without this specific set of severe morbidity, again in an optimal group.

Section 36-2301 states that it is the duty of “any additional physician in attendance...to see that all available means and medical skills are used to promote, preserve, and maintain the life of such fetus or embryo.” Section 36-2301 does not include any reference to standards of medical practice or futility of these interventions. It is standard of care in the state of Arizona as well as the entire United States to provide comfort measures only for fetuses delivered at prior to 22 weeks gestation. Given the current state of medical technology and knowledge, it is unethical and against the physicians’ oath to “do no harm” to provide anything more

invasive or extensive than comfort measures. At 22-23 weeks gestation, it is standard of care to evaluate, utilizing our current knowledge and medical technology, in conjunction with discussions with the infant's parents, the viability or futility of pursuing resuscitation and invasive medical therapies for each individual infant. It is a gray area that cannot be, at this time, definitively applicable to all patients.

Secondarily, though importantly, we are concerned regarding Section 36-2301-C regarding actions to enforce this section being brought by the Attorney General or County Attorney, when no clarification of what "all available means and medical skills" refers to. It is feasible to assume that this can be interpreted in many different ways by reasonable individuals, though leaving the provider of care without a clear understanding of what is legal, regardless of whether he or she is clear on what is consistent with our Hippocratic oath and individual ethics and morality.

We recognize the standard of care regarding interventions for borderline viable infants has dramatically changed over the past few decades, and may continue to change, albeit likely at a much slower pace, over the next decades, but currently the standard of care is as described earlier. Neonatologists serve only to provide the optimal care for all infants and have been the driving force behind lower and lower gestational age viability as new technologies and knowledge are acquired. Physicians and the neonatal community will continue to provide guidance in the best interest of the patient. Compulsion or perceived compulsion to provide additional therapies which are futile and outside standard of care, and which only serve to cause pain and suffering to the fetus/infant, the family, and the providers, is unconscionable and counter-productive.

We urge the committee to consider the impacts on the fetus/infant and on the families when considering our concerns.

Thank you very much, sincerely,

Peter Stevenson, M.D.
PPA Neonatal Medical Director and PPA Unit Director, Scottsdale Healthcare NICU