



The Supreme Court of Texas

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Chambers of
Justice Nathan L. Hecht

March 7, 2006

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney #1900
Houston TX 77010

Re: Changes in Parental Notification Rules
in response to SB 419

Dear Chip:

Effective September 1, 2005, Senate Bill 419 prohibits a Texas physician from performing an abortion on an unemancipated minor absent parental consent or a court order. Act of May 30, 2005, 79th Leg., R.S., ch. 269, §1.42 (codified at TEX. OCC. CODE §164.052(a)(19)). The Supreme Court has tentatively concluded that this change in the law does not require amendments to the Parental Notification Rules. No procedural problems have been reported since the change took effect. Nevertheless, the Court requests the Advisory Committee for any counsel it may offer on the matter.

As you know, since the adoption of Chapter 33 of the Family Code effective January 1, 2000, except in certain emergencies, a Texas physician generally may not perform an abortion on an unemancipated minor without 48 hours' notice to the minor's parent, court-appointed managing conservator, or guardian, or a court order. TEX. FAM. CODE §33.002. To grant a minor's application for an order bypassing the notice requirement, a court must find either (1) that the minor is sufficiently mature and well-informed to obtain an abortion without notice to her parents, (2) that notification would not be in her best interests, or (3) that notification may lead to her physical, sexual, or emotional abuse. *Id.* §33.003(i). A minor may appeal from a decision denying her application, but a decision granting a minor's application is not appealable. *Id.* §33.004. The Parental Notification Rules provide for trial and appellate proceedings under Chapter 33.

SB 419 adds a requirement of parental consent but also provides a judicial bypass. It does so, however, not by amending Chapter 33, but by amending Section 64.052 of the Occupations Code and referencing Chapter 33. Section 64.052(a)(19) prohibits a Texas physician from performing an abortion on an unemancipated minor absent either (1) “the written consent of the child’s parent, managing conservator, or legal guardian,” or (2) “a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion,” unless the minor’s medical condition necessitates immediate abortion to avoid death or a serious risk of impairing a major bodily function. Thus, Section 64.052(a)(19) uses parental-*notification* bypass grounds and procedures to bypass the parental-*consent* requirement.

The fit is not perfect. For example, if parents have the notice required by statute but will not give consent, one could argue that the notification-bypass procedure to which Section 64.052(a)(19) refers is mooted. I am not aware of any indication that the Legislature did not intend the parental-consent requirement to apply in such a situation, but it is not clear how the three grounds in Section 33.003(i) would be used to determine whether to allow an abortion with notice but without consent. One possibility might be that the Legislature intended “consent” to be substituted for “notice” and “notification” in Section 33.003(i). But this is sheer speculation. I do not mean to suggest how the question might be decided should it arise.

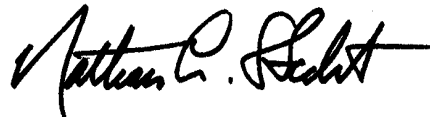
Rather, the issue is whether the Parental Notification Rules should be amended to address such situations or others that are now different because of the change in the law. The Court’s tentative conclusion is that any difficulties in applying SB 419 inhere more in the statute than in the rules. The procedural framework for bypassing the parental-notification requirement appears to be equally well-suited to proceedings to bypass the parental-consent requirement.

The Court’s Rules Attorney, Mr. Jody Hughes, has consulted with the offices of the principal legislators involved in the passage of SB 419, including: Senator Jane Nelson, the author of SB 419; Representative Burt Solomons, the House sponsor; Representative Will Hartnett, who sponsored the House amendment adding the parental-consent requirement; and Representative Phil King, who sponsored an amendment to Representative Hartnett’s amendment adding the judicial bypass provision. None has suggested that the Legislature intended the Parental Notification Rules to be amended in response to SB 419. While individual legislators’ views are not conclusive, they are helpful in the rules process.

The Committee may consider that the anomaly raised above, or the possibility of other situations that may be problematic, may warrant further study. The development of the Parental Notification Rules was aided in large part by the work of a subcommittee that included members from outside the Committee, some non-lawyers, who were familiar with the dynamics of the bypass process. The Committee may decide that such input would, or would not, be useful.

As always, the Court is grateful for the Committee's dedication to its work and for your leadership.

Sincerely,

A handwritten signature in black ink, reading "Nathan L. Hecht". The signature is fluid and cursive, with the first name "Nathan" being the most prominent.

Nathan L. Hecht
Justice