

State charging doctor in abortion

Late-term procedure without good medical reason against the law

By Lisa M. Collins
Associated Press

DETROIT — In what may be the nation's first such case since the U.S. Supreme Court legalized abortion in 1973, Michigan is pressing criminal charges against a doctor accused of performing a third-trimester abortion without a good medical reason.

Michigan and 39 other states prohibit such abortions except to preserve the health or life of the mother, a decision usually left to the doctor.

Under a state law that predates 1973's Roe v. Wade ruling, Attorney General Jennifer Granholm is charging Dr. Jose Higuera with felonious abortion.

The 61-year-old gynecologist is charged for a 1994 procedure

on a woman who the state says was nearly seven months pregnant. Higuera says the abortion was protected by doctor-patient privacy and that Michigan's abortion statute is unconstitutional. If convicted, he faces up to four years in prison.

Higuera is the first doctor in Michigan, and may be the first in the country, to be criminally prosecuted for abortion since Roe overturned the state's 130-year-old abortion ban. Doctors in Arizona and New York have been convicted on charges related to botched late-term abortions — but not for the procedure itself.

Higuera's crime, according to state prosecutor Mark Blumer, is that he did not have a clear medical or health reason to perform the late abortion, as mandated by Michigan law.

"Had the mother's health been jeopardized by the pregnancy, there would not be a criminal prosecution. There's no doubt about that," said Blumer, who says he supports

abortion rights.

"What we've got is the classic gray area. A woman went in to the doctor's office and wanted an abortion for no good reason."

In the case, a woman underwent a \$3,000, two-day procedure. She was not harmed. Higuera's nurse brought the case to the state's attention.

The woman who got the abortion testified for the prosecution that she wanted to end her pregnancy because she was no longer married to the father and had other children.

Higuera has been retired and out of state for several years, his attorney Max Hoffman said. Early in 1999, the state suspended Higuera's medical license, finding he was "negligent, incompetent and lacked good moral character," for reusing syringes and IV bags and for altering a medical record.

The doctor, who operated clinics in the Detroit suburbs of Highland Park and Bloomfield

Hills, also is accused by the state of altering medical records to show the abortion in question was done on a 24-week-old fetus, instead of 28 weeks. Felony alteration carries up to four years upon conviction.

Higuera's case never has been to trial. A Highland Park district court found Michigan's criminal abortion statute to be unconstitutional. A Wayne County Circuit Court agreed and threw out an appeal.

But in a 2-1 decision in February, the state Court of Appeals reinstated the charges against Higuera, ruling that Michigan's criminal abortion statute is constitutional as long as U.S. Supreme Court decisions are taken into account.

Higuera's attorney said he was saddened by the ruling.

"Our argument was the Michigan abortion statute, because it doesn't have any guidance and doesn't recognize Roe v. Wade, is unconstitutional," Hoffman said.