

January 27, 2020

To whom it may concern:

We are both physicians with board certifications in obstetrics and gynecology and addiction medicine.¹ The case of Ms. Becker has come to our attention,² and we are gravely concerned that medical misinformation may be the reason she is currently in jail, including the unsupported assumption that substance use disorders should be treated as dangerous criminal activities and/or the unfounded supposition that methamphetamine use causes stillbirths. As we explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, the “assumption that women who use drugs are impaired in their ability to mother displays a complex and deep bias in our society.”

Ms. Becker’s arrest also seems to assume that pregnant women can guarantee healthy birth outcomes and therefore may be held criminally responsible if they do not. That is simply not true. Increasingly, research shows that pregnancy outcomes have far more to do with economic, social and environmental conditions experienced in the course of one’s life, rather than anything one does or does not do while pregnant.³

Substance use disorders are medical conditions, not dangerous crimes.

¹ See <https://www.vcuhealth.org/for-providers/education/virginia-opioid-addiction-echo/virginia-opioid-addiction-echo-our-team>; <https://profiles.ucsf.edu/tricia.wright>.

² Anna North, *She had a stillborn baby. Now she’s being charged with murder*, Vox, Nov. 8, 2019, <https://www.vox.com/identities/2019/11/8/20954980/stillbirth-miscarriage-murder-abortion-chelsea-becker-news>.

³ See World Health Organization, *Social Determinants of Health*, 2017, http://www.who.int/social_determinants/sdh_definition/en/ (“social determinants of health are the conditions in which people are born, grow, live, work and age.”); Kim Krisberg, American Public Health Association, *Transforming Public Health Works: Targeting Causes of Health Disparities*, 46 *The Nation’s Health*, July 2016 (“at least 50% of health outcomes are due to the social determinants . . .”).

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Most people stop using drugs when they become pregnant, but some can't. And people who can't stop using a drug during pregnancy, most likely have an addiction – a statement that is supported by position papers from both the American Society of Addiction Medicine and the American Congress of Obstetrician Gynecologists.⁴ Medical experts have long recognized that “addiction is a chronic illness” not a “moral weakness” and it is best addressed through healthcare not incarceration.⁵ Pregnant women with substance use disorders care about the health of their pregnancies, as do women with other chronic health conditions such as epilepsy, diabetes, hypertension, asthma, etc. The supposition that women with addiction are willfully harming their fetuses and don't care about their children is absurd and in complete conflict with established medical science. The hypothesis that threat of arrest positively influences maternal behavior and improves birth outcomes is contradicted by decades of empirical evidence.

Professional medical society recommendations are universal in their support of treatment for individuals with addiction and in their opposition to incarceration.⁶ Published data confirm that criminal prosecution has not reduced the rate of substance use or misuse in the United States.⁷ Nor does the risk of prosecution serve to dissuade people, including pregnant women, from using

⁴ American Society of Addiction Medicine Public Policy Statement on Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids (2017), https://www.asam.org/docs/default-source/public-policy-statements/substance-use-misuse-and-use-disorders-during-and-following-pregnancy.pdf?sfvrsn=644978c2_4; Committee on Obstetric Practice, The American College of Obstetricians and Gynecologists, Committee Opinion Number 711: Opioid Use and Opioid Use Disorder in Pregnancy (2017, Reaffirmed 2019).

⁵ Jillian Hardee, *Science Says: Addiction is a Chronic Disease, Not a Moral Failing*, University of Michigan Health News (May, 2017), <https://healthblog.uofmhealth.org/brain-health/science-says-addiction-a-chronic-disease-not-a-moral-failing>.

⁶ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction – Issues in Care and Prevention* (2009); American Academy of Family Physicians, Position Statement, *Substance Abuse and Addiction: Pregnant Women, Substance Use and Abuse by* (2014); American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid use in Pregnancy* (2017).

⁷ Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, 68 *Social Research* 835 (2001).

drugs.⁸ Punitive policies at the state level related to substance use during pregnancy are not associated with any reduction in use (or improvement in birth outcomes) at the population level.⁹

Methamphetamine use and pregnancy

There is a commonly held misconception that any amount of substance use, including methamphetamine, is uniquely and fatally dangerous to a pregnant woman and her baby. That is simply not true.¹⁰ As we have explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, “Although much remains unknown about the effects of in utero methamphetamine exposure, no consistent teratological effects on the developing human fetus have been identified.”¹¹

Stillbirths impact tens of thousands of women each year¹²

Pregnancy loss in the United States is common and the causes often unknown.¹³ At least 20 percent of all pregnancies end in miscarriages and stillbirths, whether or not a person smokes cigarettes, drinks alcohol, or uses criminalized substances.¹⁴ Yet this prosecution suggests that any

⁸ Association of Women’s Health Obstetrics and Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders*, 19 JOGNN 93, 93 (2015) (“the threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse”), available at [https://nwhjournal.org/article/S1751-4851\(15\)30046-5/pdf](https://nwhjournal.org/article/S1751-4851(15)30046-5/pdf).

⁹ *Id.*; see also Sara Roberts et al., *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 Maternal and Child Health Journal 333 (2011).

¹⁰ Mishka Terplan & Tricia Wright, *The Effects of Cocaine and Amphetamine Use during Pregnancy on the Newborn: Myth versus Reality*, 30 Journal of Addictive Diseases 1, (2011). See also American College of Obstetricians and Gynecologists, *Information About Methamphetamine Use In Pregnancy* (March 2006); Center for the Evaluation of Risks to Human Reproduction, *Report of the NTP-DERHR Expert Panel on the Reproductive and Developmental Toxicity of Amphetamine and Methamphetamine* 163, 174 (2015); Silver, et al., *Workup of Stillbirth: A Review of the Evidence*, 196 Amer. J. Obstetrics & Gynecology, 433, 438 (May 2007). See also American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, *Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician- Gynecologist* (2011, reaffirmed 2014) (“Drug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus. Incarceration and the threat of incarceration have proven to be ineffective in reducing the incidence of alcohol or drug abuse ...The use of the legal system to address perinatal alcohol and substance abuse is inappropriate.”)

¹¹ *Id.*; see also Tricia Wright et al., *Methamphetamines and Pregnancy Outcomes*, 9 Journal of Addiction Medicine 111 (2015).

¹² See R.L. Goldenberg et al., *Stillbirth: A Review*, 16 Journal of Maternal-Fetal & Neonatal Medicine 79, 79 (2004) (“in the year 2000, there were nearly 27,000 of these events.”)

¹³ Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 American Journal of Obstetrics and Gynecology 1923, 1925 (March 2005) (the majority of late stillbirths are unexplained).

¹⁴ *Id.*

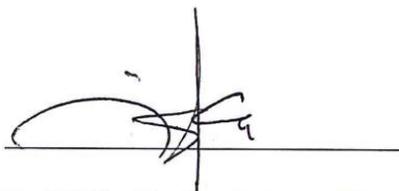
apparent stillbirth may be considered a crime and investigated in California as such. This would require a dramatic expansion of the role of police and prosecutors in pregnancy and birth outcomes. It would result in intrusions into a family's grief through interrogation of those who have experienced a pregnancy loss as well as potential privacy violations through the examination and dissemination of pregnant and post-partum women's medical records.

Public Health Impact

As physicians, we agree with every major medical and public health association, including the American Medical Association and the National Perinatal Association, that substance use is a health issue best addressed through health care, and that a criminal justice approach has negative consequences.¹⁵ Criminalizing and incarcerating women related to substance use completely inverts the principles of public health and medical practice and can be of dire consequence to maternal and fetal health, as fear of criminal prosecution deters people from obtaining prenatal and other health care.¹⁶

Therefore, we write to support Ms. Becker's request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mishka Terplan', is written over a horizontal line. The signature is stylized with a large loop and a vertical stroke.

Dr. Mishka Terplan, M.D., M.Ph.

¹⁵ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction-Issues in Care and Prevention* (2009) (“Transplacental drug transfer should not be subject to criminal sanctions or civil liability”); National Perinatal Association, Position Statement, *Substance Abuse Among Pregnant Women* (2012).

¹⁶ See e.g., American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid Use in Pregnancy* (2017); American Public Health Association, Policy Statement No. 9020, *Illicit Drug Use by Pregnant Women*, 8 Am. J. Pub. Health 240 (1990); American Nurses Association, Position Statement, *Non-Punitive Alcohol and Drug Treatment for Pregnant and Breast-feeding Women and their Exposed Children* (2011).

A handwritten signature in black ink, appearing to read "Tricia Wright", is centered at the top of the page. The signature is written in a cursive style with a large initial 'T'.

Dr. Tricia Wright, MD, MS
University of California, San Francisco School of Medicine