

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

WEST ALABAMA WOMEN’S CENTER and  
WILLIAM J. PARKER, M.D., on behalf of  
themselves and their patients,

Plaintiffs,

v.

DONALD E. WILLIAMSON, M.D., in his  
official capacity as State Health Officer,

Defendant.

CIVIL ACTION

Case No.

**COMPLAINT**

Plaintiffs, by and through their undersigned attorneys, bring this Complaint against the above-named Defendant, his employees, agents, and successors in office, and in support thereof allege the following:

**PRELIMINARY STATEMENT**

1. Plaintiffs West Alabama Women’s Center (“WAWC” or “the Clinic”), the sole abortion clinic in Tuscaloosa and one of only two providers of abortions throughout the second trimester in the state, and William J. Parker, M.D., WAWC’s physician and Medical Director (“Dr. Parker”), bring this as-applied challenge under the U.S. Constitution and 42 U.S.C. § 1983, on behalf of themselves and their patients, to Ala. Admin. Code r. 420-5-1-.03(6)(b) (“the Regulation”). A copy of the Regulation is attached hereto as Exhibit A.

2. The Regulation requires that every physician who performs an abortion at a licensed abortion clinic have staff privileges at a local hospital or, in the alternative, that the clinic enter into a written agreement with a local physician who has such privileges to serve as the clinic’s outside covering physician. However, the only hospital in Tuscaloosa is unwilling to grant Dr. Parker privileges for reasons unrelated to his competency as an abortion provider. In

addition, no ob-gyn in the Tuscaloosa area is willing to serve as the Clinic's outside covering physician, due to anti-abortion sentiment and/or fear of being publicly associated with an abortion clinic. As a result, after more than two decades of providing safe and legal abortion care in Tuscaloosa, WAWC has been forced to suspend patient services.

3. WAWC's closure has caused and will continue to cause significant and irreparable harm to the health and safety and constitutional rights of women seeking abortion in Alabama. Having exhausted all other options to reopen the Clinic, absent injunctive relief from this Court, WAWC will be forced to close its doors for good. This will cause further harm to the health of Alabama women seeking abortions, and will deprive many women of their constitutional right to abortion. Plaintiffs therefore seek declaratory and injunctive relief from those constitutional deprivations.

4. Almost all of the factual and legal questions raised by this action were already decided by the Court in a related action currently pending in this district (the "PPSE litigation") in which the Court has enjoined a statutory (as opposed to regulatory) requirement that all physicians performing abortions in licensed abortion clinics have staff privileges at a local hospital. See *Planned Parenthood Southeast, Inc. v. Bentley*, No. 2:13-cv-00405-MHT-TFM ECF Nos. 49, 238 (hereinafter "PPSE docket").

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. § 1331 and 28 U.S.C. §§ 1343(a)(3)–(4).

6. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because the Defendant who is sued in his official capacity carries out his official duties at an office located in this district.

## **PARTIES**

### **A. Plaintiffs**

8. Plaintiff WAWC has provided safe and legal abortions for more than twenty years. In addition to abortions, WAWC also provides a range of high-quality reproductive health services, including contraceptive counseling and care, testing and treatment for sexually transmitted infections, pregnancy testing and options counseling, and referrals for prenatal care and adoption services.

9. Plaintiff WAWC is currently, and always has been, the sole licensed abortion or reproductive health center in Tuscaloosa. WAWC is also one of only two licensed clinics in Alabama that provides abortions throughout the second trimester. For at least the last two years for which statistics are available, if not longer, WAWC has been the highest-volume abortion provider in the state.

10. Plaintiff Dr. Parker is an experienced and highly-credentialed board-certified obstetrician/gynecologist (“ob-gyn”) and abortion provider, and is the sole physician and Medical Director of WAWC.

### **B. Defendant**

11. Defendant Donald E. Williamson, M.D., is the State Health Officer at the Alabama State Department of Public Health, located at 201 Monroe Street, Montgomery, Alabama. Among other things, he is responsible for supervising and directing all activities of the State Department of Public Health, pursuant to Ala. Code § 22-2-2 *et seq.*, including the licensing, inspecting, and disciplining of abortion or reproductive health care centers, *see* Ala. Code § 22-21-20 *et seq.*; Ala. Admin. Code r. 420-5-1-.01 *et seq.* As such, Defendant

Williamson is responsible for enforcing the staff privileges and covering physician requirements of the Regulation at issue in this case, Ala. Admin. Code r. 420-5-1-.03(6)(b). Defendant Williamson is sued in his official capacity.

## **REGULATORY AND STATUTORY FRAMEWORK**

### **A. Challenged Regulation**

12. Plaintiff WAWC is licensed as an “abortion or reproductive health center” by the Alabama Department of Public Health (“DPH”).

13. DPH has the authority to promulgate rules and regulations concerning the licensing of abortion clinics. *See* Ala. Admin. Code r. 420-5-1-.01. DPH also has the authority to grant a waiver or variance from any such rule, provided that the rule does not restate a statutory requirement or define any terms. *See* Ala. Admin. Code r. 420-1-2-.09.

14. Among these regulations governing the licensure of abortion clinics is the Regulation, *see* ¶ 1, *supra*, the provision at issue in this case. *See* Ala. Admin. Code r. 420-5-1-.03(6)(b).

15. The Regulation mandates, as a condition of licensure, that abortion clinics comply with either of the following requirements: (1) that “every physician that performs an abortion shall have staff privileges at an acute care hospital within the same standard metropolitan statistical area as the abortion or reproductive health center is located, that permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures reasonably necessary to treat abortion-related complications,” or (2) that a licensed abortion clinic obtain “a valid written contract” for “outside covering physician services” with a physician who “has staff privileges at a hospital within the same standard metropolitan statistical area that

permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures necessary to treat abortion-related complications.” *Id.*

16. Failure to comply with the Regulation can lead to suspension and/or revocation of a clinic’s license. *See* Ala. Code § 22-21-25.

**B. Staff Privileges Statute and Related Proceedings**

17. In April 2013, the Alabama Legislature passed Alabama House Bill 57, Reg. Sess., (2013) (“H.B. 57” or “the staff-privileges statute”), which would have required all physicians providing abortions at a licensed abortion clinic to obtain staff privileges to perform complex gynecological surgical procedures at a hospital within the same metropolitan statistical area as the clinic. *See* Ala. Code § 26-23E-4(c).

18. The staff-privileges statute thus expanded the preexisting regulatory requirement (the Regulation at issue in this lawsuit), eliminating the “outside covering physician” option.

19. On June 11, 2013, three of Alabama’s five licensed abortion clinics—Reproductive Health Services (“RHS”) in Montgomery and Planned Parenthood Southeast (“PPSE”) health centers in Birmingham and Mobile—filed a constitutional challenge to the staff-privileges statute in the Middle District of Alabama. *See PPSE* docket, Compl. (doc. no. 1).

20. Plaintiff WAWC was not a party to the *PPSE* litigation because, at the time of filing and through trial, the Clinic’s sole physician had staff privileges at the DCH Health System (“DCH”) in Tuscaloosa.

21. On June 28, 2013, the District Court granted the *PPSE* litigation plaintiffs’ motion for a temporary restraining order. *See PPSE* docket, June 28, 2013 Op. and Order (doc. no. 49). That order remains in effect today. *See PPSE* docket, Aug. 4, 2014 Op. (doc. no. 238).

22. From May to June 2014, the District Court held an eleven-day bench trial on the constitutionality of the staff privileges statute. At trial, the Court considered evidence and

testimony regarding, among other things, the following issues, all of which are relevant in this case as well:

- the availability of abortion in Alabama;
- the safety of abortions and the medical standard of care for management of complications;
- the obstacles that women in Alabama would face if clinics were forced to close and women were required to travel outside their home cities and/or longer distances to obtain abortions;
- the extreme difficulties clinics face in attempting to find doctors willing to provide abortions or serve as the clinics' outside covering physicians; and
- the inability of abortion providers in Alabama to obtain staff privileges at local hospitals.

23. On August 4, 2014 the Court issued an opinion declaring the staff-privileges statute unconstitutional as applied to the plaintiffs in that case. *See PPSE* docket, Aug. 4, 2014 Op. (doc. no. 238).

24. On August 4, the Court also requested further briefing as to the questions of facial relief, permanent injunctive relief, and severability. *See PPSE* docket, Briefs on the Scope of Final Relief (doc. nos. 250, 256, 257). The Court has not issued an order as to the scope of final relief, and the temporary restraining order remains in effect.

25. To the extent temporary restraining order remains in effect, the staff-privileges statute is unenforceable and WAWC is therefore subject to the Regulation, which allows clinics *either* to obtain staff privileges *or* a written contract with an outside covering physician. However, if the Court grants only as-applied relief in the *PPSE* litigation, WAWC will become subject to the staff-privileges statute and the requirements for licensure will change accordingly.

## PRESENT ACTION

### A. Abortion in Alabama

26. Dr. Louis Payne (who is now retired) and Ms. Gloria Gray founded WAWC in 1993.

27. As a licensed abortion clinic, WAWC is subject to extensive regulations, including but not limited to those relating to patient care, infection control, personnel, physician qualifications, fire evacuation plans, emergency communications, recordkeeping, and physical plant requirements (such as minimum doorway and room sizes, interior finishes and flooring material, and emergency exits). *See Ala. Admin. Code r. 420-5-1-.01 et seq.* DPH conducts extensive annual surveys of WAWC to ensure compliance with the regulations.

28. Today, WAWC is one of only five such licensed clinics in the state. The other clinics are: RHS in Montgomery, PPSE Birmingham, PPSE Mobile, and Alabama Women's Center in Huntsville.

29. WAWC and Alabama Women's Center are the only licensed clinics in Alabama that provide abortions throughout the second trimester. WAWC provides medication abortions through nine weeks of pregnancy and surgical abortions up to twenty-one weeks and six days (21.6) gestation, as measured from the woman's last menstrual period ("LMP"). None of the other licensed clinic in the states provides abortions past 15.0 weeks LMP.

30. On information and belief, WAWC provided more abortions than any other clinic in the state by a large margin for at least the last three years. According to published statistics, in 2013, WAWC performed approximately 39% of the abortions in Alabama (3,503 procedures), more than double the number of procedures performed by the clinic with the second-highest volume (1,451 procedures); and in 2012, WAWC performed approximately 44% of the abortions in Alabama (3,710 procedures), more than 2.5 times the number of procedures performed by the

clinic with the second-highest volume (1,469). Although published statistics are not yet available for 2014, WAWC's own records indicate the Clinic performed 4,723 abortions last year. This is over three times more than any other clinic in Alabama has ever performed in any prior year for which statistics are available.

31. WAWC also provided more second-trimester abortions than any other clinic in the state. In 2012 and 2013, WAWC performed more than 60% of the second-trimester abortions in the state, and performed nearly 80% of abortions between seventeen and 21.6 weeks LMP (the state's legal limit).

32. Approximately one in three women in this country will have an abortion by age 45. Most women having abortions (61%) already have at least one child, and 66% plan to have children when they are older, financially able to provide necessities for them, and/or are in a supportive relationship with a partner so their children will have two parents.

33. Women seek abortions for a variety of reasons, including familial, medical, financial, and personal reasons, including the desire to wait to have a child (or another child) until they are ready; to preserve their life or their health; because they have become pregnant as a result of rape; and/or because they choose not to have biological children.

34. While the vast majority (more than 80%) of the abortions performed at WAWC are performed in the first trimester, women who seek second-trimester abortions usually do so because of difficult circumstances. Many women are forced to obtain an abortion at later gestational ages because of issues related to poverty, intimate partner violence, and overall diminished access to abortion throughout the South. Others decide to have an abortion only after learning the fetus has been diagnosed with a severe, even lethal, anomaly (many of which cannot be diagnosed until later in pregnancy).

35. Most of WAWC's patients are low-income women. More than 82% are living at or below 110% of the federal poverty level. Many struggle to cover the cost of the abortion, as well as other costs related to the procedure (e.g., transportation, child care, lost wages).

**B. Plaintiffs' Inability to Comply with the Regulation**

36. Dr. Payne retired from the practice of medicine on December 31, 2014. Until that time, WAWC was in compliance with the Regulation because Dr. Payne held staff privileges to perform the requisite surgical procedures at DCH Regional Medical Center and Northport Medical Center (both operated by the DCH Health System) in Tuscaloosa.

37. DCH is the sole hospital system in Tuscaloosa.

38. Before Dr. Payne's retirement, Plaintiff Dr. Parker agreed to move to Tuscaloosa in order to apply for staff privileges and to succeed Dr. Payne as the Medical Director of WAWC and serve as its sole full-time physician. In December 2014, Dr. Parker began the process of applying for staff privileges to perform gynecological surgery at DCH.

39. By the beginning of April 2015, it became clear that, despite Dr. Parker's diligent efforts, he would not be able to obtain staff privileges. This is so not because of any issue related to Dr. Parker's competence as an abortion provider but because abortion is such a safe procedure.

40. DCH will not grant him privileges unless he can personally admit ten patients for hysterectomies and ten patients for laparoscopic procedures to the hospital and submit those cases for review in the next year. Because Dr. Parker has been, and will continue to be a full-time outpatient abortion provider and because abortion is extremely safe, Dr. Parker would not be able to admit anywhere near the twenty cases to the hospital necessary to satisfy DCH's requirements.

41. In fact, in the eight years he has provided abortions, none of Dr. Parker's abortion patients has ever experienced a complication that resulted in a hysterectomy, let alone 10 patients in a single year.

42. Thus, Plaintiffs cannot obtain staff privileges that will satisfy the Regulation.

43. Ms. Gray is not aware of any other physician in Tuscaloosa, or anywhere else in Alabama, who is willing and able to provide abortions at WAWC and who could meet DCH's criteria for staff privileges.

44. Nor can Plaintiff WAWC comply with the Regulation's covering physician requirement.

45. Ms. Gray has contacted, or tried to contact, every other known ob-gyn in the Tuscaloosa area with privileges at DCH who might be willing to serve as an outside covering physician. These physicians have either rejected Ms. Gray's request because of opposition to abortion or fear of personal, professional, and/or economic consequences of being associated with an abortion clinic, or have refused to speak to her outright.

46. Because compliance with the Regulation was impossible, on May 6, 2015, Plaintiff WAWC applied to DPH for a waiver from the Regulation, pursuant to Ala. Admin. Code r. 420-1-2-.09.

47. Defendant Williamson may grant a waiver from a licensing regulation "when such waiver or variance is based upon a compelling public health need . . . or the occurrence of an event or circumstance that makes strict compliance with a rule highly impractical or impossible." Ala. Admin. Code r. 420-1-2-.09(b).

48. In support of its application, WAWC submitted a statement from Plaintiff Dr. Parker (and his *curriculum vitae*) concerning abortion safety and his inability to obtain staff

privileges, as well as copies of WAWC's safety policies and protocols. On May 12, WAWC supplemented its application with a statement from Mr. Dalton Johnson, the owner and administrator of Alabama Women's Center in Huntsville. Mr. Johnson's statement provided data demonstrating that WAWC's closure is preventing some women from obtaining abortions, forcing others to obtain abortions later in pregnancy, and stretching the Huntsville clinic to its maximum capacity.

49. On May 22, Defendant Williamson denied the request for a waiver without any reference to the evidence that WAWC's closure has caused and continues to cause ongoing harm to Alabama women.

**C. Safety of Abortion and Treatment of Abortion Complications**

50. The Regulation is medically unnecessary because WAWC's policies and protocols ensure their patients would receive the same level and quality of care in the event of a complication as they would if the Clinic had an outside covering physician.

51. Legal abortion is one of the safest and most common procedures in contemporary medical practice.

52. A recent peer-reviewed study of first trimester abortions found that only 0.89% of abortion procedures performed by physicians resulted in any complication whatsoever; only .05% patients experienced complications that resulted in hospital admissions. Plaintiffs' hospitalization rates, including those for second-trimester abortions, are even lower.

53. Although abortion remains very safe throughout pregnancy, the risk of complications, as well as the cost of the procedure, increases as gestational age advances.

54. Of the very few complications that do occur, almost all are safely and appropriately managed in the clinic setting, either at the time of the procedure or in a follow-up

visit. The physician and clinical staff remain at the Clinic until every patient has been certified as fit for discharge.

55. In the extremely rare event of a complication that requires hospital-based treatment, WAWC's policies and protocols ensure that a woman will receive high-quality care.

56. Upon discharge, all of WAWC's patients are provided with a phone number for a 24-hour hotline (staffed by a registered nurse and Plaintiff Dr. Parker) that they can call regarding any complications, questions, and concerns that arise after they have left the clinic. In most cases, the patients' questions, concerns or complications can be addressed over the phone, or through a return visit to the clinic; many patients just need reassurance that their symptoms are normal and will subside. If a return visit is necessary, the patient is given an appointment on the next day that the Clinic is open.

57. If Dr. Parker determines that a patient who contacts the after-hours hotline should be treated or evaluated by a physician sooner, he will refer the patient to a local emergency room. If Dr. Parker knows where the woman intends to go, he will contact the treating emergency room physician prior to the patient's arrival to explain the patient's clinic treatment, complaint, and the reason for her referral to the emergency room. If the patient does not provide Dr. Parker with this information, he will instruct her to bring his phone number with her wherever she goes to give to the emergency room physician.

58. Many WAWC patients come from outside the Tuscaloosa area. Consistent with the standard of care, if any of these patients were to experience a complication after returning home, they would be referred to a local hospital in their area rather than a hospital near the clinic, making entirely irrelevant whether Dr. Parker has staff privileges or an arrangement with a covering physician at a local hospital.

59. In the exceedingly rare event that a patient needs to be transferred directly from the clinic to the hospital, Dr. Parker and WAWC staff would stabilize the patient and contact emergency medical services. To ensure continuity of care, Plaintiff Dr. Parker would communicate directly with the emergency room physician treating the patient. The emergency room physician would then involve on-call physicians at the hospital as is necessary and appropriate.

60. These policies and protocols are consistent with or exceed the standard of care for outpatient medical procedures.

61. There is an increasing divide between inpatient and outpatient medicine in contemporary practice, with inpatient care handled more and more often by physicians who regularly or even exclusively provide care in hospital settings.

62. It is outside the standard of care to require every physician that performs exclusively outpatient procedures (i.e., abortion) to obtain staff privileges at a local hospital, let alone staff privileges to perform complex surgical procedures, as is required by the Regulation.

63. In Alabama, physicians who perform outpatient procedures other than abortion in an office-based setting, even procedures that pose more risk than abortion, are not required to obtain staff privileges at a local hospital, let alone staff privileges to perform complex surgical procedures, as required by the Regulation.

64. On information and belief, the physicians at three of the five Alabama clinics (RHS, PPSE Birmingham, and PPSE Mobile) do not have staff privileges anywhere in Alabama. Instead, these clinics remain open by virtue of the temporary restraining order and declaration in the *PPSE* litigation. These clinics currently satisfy the Regulation because they have a prior written agreement with an outside covering physician who has staff privileges.

65. In Alabama, physicians who perform outpatient procedures other than abortion in an office-based setting, no matter how great the risk, are not required to obtain a prior written agreement with an outside covering physician.

66. There is nothing in the law that requires a licensed abortion clinic to involve, or even notify, its outside covering physician in a patient's treatment in the event of a complication that requires hospital-based care.

67. There is nothing in the law that requires an outside covering physician to give priority to a clinic's patients over his or her own patients.

68. Unless the outside covering physician is the patient's personal ob-gyn, that physician will have no prior relationship with the patient and will rely entirely on information provided by the clinic and/or the providing physician.

69. Nothing in the Regulation requires the outside covering physician to have any information about the procedure, or the clinic's policies and protocols.

70. Emergency room physicians and on-call ob-gyns are trained to treat any gynecological complications that may occur after an abortion procedure.

71. If a complication is not of a gynecological nature, neither the physician who provides the abortion nor the outside covering physician would be the appropriate physician to manage the patient's care in the hospital. In that case, the emergency room physicians and/or the appropriate on-call specialist should treat her.

72. Because WAWC's policies and protocols ensure communication (whenever possible) with the physician that assumes the patients' care in the event of a complication, WAWC's patients receive the same level and quality of care as do the patients of a clinic with a prior written agreement with an outside covering physician.

73. Requiring Dr. Parker to have hospital admitting privileges or requiring WAWC to contract with an outside covering physician does not increase patient safety and is medically unnecessary.

**D. Irreparable Injury Caused by the Regulation**

74. Enforcement of the Regulation has inflicted and will continue to inflict significant irreparable harm to Plaintiffs' patients.

75. Enforcement of the Regulation will lead to the permanent closure of WAWC. Because qualified, experienced personnel are so integral to the operation of an abortion clinic, WAWC has retained its staff in the hopes that it will be able to reopen. As a result, Ms. Gray has been paying the Clinic's operating expenses, including staff salaries, while the Clinic has been closed.

76. Ms. Gray has been financially maintaining the Clinic with money that would otherwise have gone to her retirement. Due to continuing financial strain, the loss of staff, and because additional payments become due at the beginning of August, absent an injunction by August 4, Ms. Gray fears she will have no option but to close the Clinic permanently.

77. Permanent closure of WAWC will cause Ms. Gray to lose her livelihood and the business she has maintained for more than twenty years.

78. Permanent closure of WAWC will prevent Dr. Parker from pursuing his chosen profession and practicing medicine as an abortion provider in Tuscaloosa.

79. If WAWC closes permanently, there will be only four licensed abortion clinics left in Alabama. There will be no licensed abortion clinics left in Tuscaloosa.

80. The forced closure of WAWC will impact the ability of thousands of women each year, many of whom are in dire circumstances, to obtain safe, legal abortion services in Alabama.

81. Women who would have obtained an abortion at WAWC will be forced to travel to the next nearest clinic. For women seeking abortions in the first trimester, this will likely be in Birmingham, which is almost sixty miles from Tuscaloosa. For women seeking abortions after 15.0 weeks LMP, their only option will be to travel to Alabama Women's Center in Huntsville, which is more than 150 miles from Tuscaloosa.

82. For many women, the increased travel will make it extremely difficult, and in many cases impossible, to obtain an abortion. It will cause delay, forcing some women to seek abortions later in pregnancy when the procedure is more risky and more expensive, and will prevent others from obtaining an abortion at all. Other women who are unable to surmount the travel burdens will resort to unsafe self-abortion methods, thereby jeopardizing their health.

83. There is already evidence that these harms are occurring. For example, in the first six months of 2015, the Montgomery clinic has seen more than a 100% increase in the number of patients who have sought care at the clinic but who are past the clinic's fifteen-week gestational cutoff, and has experienced a 50% increase in telephone calls from such women, as compared with the same period in 2014. These women must be referred to Huntsville, which is nearly 200 miles from Montgomery.

84. Since WAWC closed, the Alabama Women's Center in Huntsville has experienced a significant increase in the number of women calling from western Alabama. Many of these women have expressly stated that they were unable to travel to Huntsville.

85. Some callers who have stated that they cannot travel the long distance to Huntsville have asked Alabama Women's Center staff about the best way for a woman to take matters into her own hands to induce an abortion if she is unable to travel.

86. Since WAWC's closure, many women who have been able to reach the Huntsville clinic have experienced unwanted delay in obtaining an abortion due to the difficulty of traveling a long distance to reach the clinic.

87. Upon information and belief, the number of women who have obtained abortions in Alabama in the months since WAWC closed is significantly smaller than the number of women who obtained abortions in Alabama during the same period in 2014 when WAWC was open.

88. Even if all of the women who would have sought abortion services at WAWC were able to make the trip to one of the other providers in the state (which many cannot), the other providers would not be able to accommodate this substantial influx of patients. Both RHS in Montgomery and Alabama Women's Center in Huntsville are operating very close to, if not at, their maximum capacity.

89. Upon information and belief, PPSE's health centers in Birmingham and Mobile do not have the capacity to treat the thousands of women who seek abortion services at WAWC each year.

90. Enforcement of the Regulation will therefore cause Plaintiffs' patients to suffer irreparable harm by shutting down the highest-volume abortion provider in the state without medical justification, and severely limiting the availability of safe abortion care in the state, particularly in the second trimester of pregnancy, thereby jeopardizing women's health and forcing women to continue their pregnancies to term against their will.

91. Plaintiffs' patients will also suffer irreparable harm from the violation of their constitutional rights if the Regulation is not enjoined.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(Due Process – Patients’ Right to Privacy)**

92. The allegations of paragraphs 1 through 91 are incorporated as though fully set forth herein.

93. The Regulation violates the Plaintiff’s’ patients’ right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution. As applied to Plaintiffs, it is an unreasonable health regulation and imposes an undue burden on women’s right to choose abortion.

### **COUNT 2**

#### **(Due Process – Right to Pursue Profession)**

94. The allegations of paragraphs 1 through 91 are incorporated as though fully set forth herein.

95. The Regulation violates rights of Plaintiffs to due process under the Fourteenth Amendment to the U.S. Constitution. It makes Plaintiffs’ ability to maintain their businesses and pursue their chosen professions contingent entirely on the willingness of third parties to be publicly associated with an abortion clinic.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. declare Ala. Admin. Code r. 420-5-1-.03 unconstitutional under the Fourteenth Amendment to the United States Constitution as applied to Plaintiffs,
2. enjoin Defendant, his employees, agents, and successors in office from enforcing Ala. Admin. Code r. 420-5-1-.03 without bond;
3. award Plaintiffs costs and attorneys’ fees pursuant to 42 U.S.C. § 1988; and

4. grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Date: July 10, 2015

Respectfully submitted,

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*Attorneys for Plaintiffs*

*\*Pro hac vice motions to be filed*

**CERTIFICATE OF SERVICE**

I, Randall Marshall, do hereby certify that a true and correct copy of the foregoing will be perfected upon the following counsel of record via \_\_\_\_\_ on this \_\_\_\_ day of July, 2015:

P Brian Hale  
brian.hale@adph.state.al.us  
Alabama Department of Public Health  
P.O. Box 303017  
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Dated:

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# Exhibit A

Alabama Administrative Code Currentness  
Alabama State Board of Health—Department of Public Health  
Chapter 420-5-1. Abortion or Reproductive Health Centers

Ala. Admin. Code r. 420-5-1-.03

420-5-1-.03. Patient Care.

(1) **Patient Care.** All patient care must be rendered in accordance with all applicable federal, state, and local laws, these rules, and current standards of care, including all professional standards of practice. As with any surgical procedure, the physician performing the procedure is responsible for the procedure and for ensuring that adequate follow-up care is provided. In order to facilitate continuity of patient care, the facility physician shall contact and communicate with any physician rendering care for complications arising from the abortion as soon as he [or she] is informed of the existence of such complications. The facility shall develop and follow a policy and procedure for communication with outside physicians, such as emergency room physicians, so that all facility nurses and staff cooperate with any physician rendering care for complications arising from an abortion.

(2) **Policies and Procedures.** The facility shall develop and follow detailed written policies and procedures that are consistent with all applicable federal, state, and local laws, these rules, and current standards of care, including all professional standards of practice. A comprehensive review of these policies and procedures shall be made annually, or whenever it appears that either a comprehensive or limited review is necessary to meet current legal requirements or standards of care. All necessary revisions shall be made and implemented promptly.

(3) **Patients' Rights.**

- (a) The facility shall have written policies and procedures to ensure the patient the rights to dignity, privacy, and safety.
- (b) The telephone number to register complaints with the Alabama Department of Public Health, Division of Health Care Facilities shall be posted in a prominent location and shall be included in the written material given to the patient upon discharge.

(4) **Admission and Examination Procedures.**

- (a) **Pre-admission for Abortion.** Every woman seeking to have an abortion shall be registered by the facility and shall be seen by a physician or a qualified staff member for a history, physical examination, and laboratory tests.
- (b) **Verification of Pregnancy.** Pregnancy testing shall be available to the patient and may precede actual registration by the facility. No abortion shall be performed unless the examining physician verifies that the patient is pregnant. Pregnancy test results shall be filed in the patient's medical record.

(c) History and Physical Examination. Prior to the abortion, a medical history shall be obtained and recorded. The patient shall be given an appropriate physical examination, as determined by the physician, which may include testing for sexually transmitted diseases, as indicated below. The facility shall report positive test results for sexually transmitted diseases to the Department of Public Health. Provided that if such results are reported within two business days after receipt to the Department of Public Health, then the Department, and not the abortion clinic, shall be responsible for follow-up and counseling of patients with test results which are positive for sexually transmitted diseases.

(d) Laboratory Tests.

1. The following laboratory tests are required prior to an abortion procedure: hematocrit or hemoglobin, Rh typing, urinalysis as directed by the treating physician, and pregnancy test. Testing for syphilis, gonorrhea, chlamydia, and HIV shall be performed if such tests are properly consented to by the patient.

2. If a prophylactic course of antibiotic medications is not administered or dispensed to a patient in connection with the abortion procedure, then an abortion shall not be performed until the results from the gonorrhea testing have been obtained or a waiver of such treatment is signed by the patient. In the case of a medical emergency, as defined in these rules, laboratory tests are not required prior to the procedure.

3. If the above tests are performed by the facility, the facility's laboratory personnel shall meet any requirements which are in effect and which apply to the facility under Rules promulgated by the Centers for Medicare and Medicaid Services under the Clinical Laboratory Improvement Act Amendments of 1988. If the tests are referred, they shall be referred to a hospital, to a pathologist certified, or deemed Board eligible by the American Board of Pathology, who is currently licensed to practice medicine in Alabama, or who holds an equivalent license in another state, or to an independent clinical laboratory. If the tests are sent to an independent clinical laboratory in Alabama, such laboratory must be licensed by the State to perform clinical and anatomical work. If the tests are referred to a laboratory outside the State, the laboratory must hold an interstate license or letter or exemption under the 1988 Clinical Laboratory Improvement Act (CLIA). When specimens are collected on premises, a record must be maintained to reflect the apparent condition of the specimen, time and date collected, and name of the patient. All personnel collecting specimens shall be adequately and appropriately trained and, where otherwise required by law shall be licensed, and their personnel files shall reflect such training and licensure.

4. Each abortion and reproductive health center must develop and retain on file a written quality assurance plan governing the performance of all laboratory procedures performed on-premises. Facilities will be subject to unannounced inspections by the Department of Public Health to determine that on-premises laboratory procedures are being correctly and accurately performed.

(e) Provision for Transfusion. Blood transfusions shall not be administered in an abortion facility.

(f) Informed consent. Except in the case of a medical emergency, as defined in these rules, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, as defined in these rules, consent to an abortion is voluntary and informed if and only if:

1. At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed and provided the woman in person, or by return receipt certified mail restricted delivery, and if by mail, again in person prior to the abortion, a copy of the printed materials developed by the Department of Public Health which list agencies that offer assistance, adoption agencies, development of the fetus, methods and risks of abortion and childbirth, father's obligations, alternatives to abortion and available methods of birth control. Mailing of the printed materials may be arranged by telephone.

2. Prior to an abortion, the physician who is to perform the abortion, the referring physician, or a qualified counselor has informed the woman in person:

(i) The name of the physician who will perform the abortion in writing or a business card.

(ii) The nature of the proposed abortion method and associated risks and alternatives that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(iii) The probable gestational age of the embryo or fetus at the time the abortion is to be performed, and the probable anatomical and physiological characteristics of the embryo or fetus at the time the abortion is to be performed. If the fetus is viable or has reached a gestational age, as defined in these rules, of more than 19 weeks, that:

(I) The fetus may be able to survive outside the womb. The person giving this information may advise the patient fully and in good faith of his or her understanding of these terms, and of the nature of any such survival, including that survival may be merely a possibility or may be of extremely limited duration.

(II) The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the child, provided such abortion is not otherwise prohibited by law.

(III) If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

(IV) If at the time of the counseling an ultrasound has been performed and it is the physician's good faith clinical judgment that the fetus is not viable, then the physician need not inform the woman of the information described in (I), (II), and (III).

3. The physician who is to perform the abortion or the referring physician is required to perform an ultrasound before the abortion. The woman has right to view the ultrasound before an abortion. The woman shall complete a required form to acknowledge that she either saw the ultrasound image or that she was offered the opportunity and rejected it.

4. She has the right to view a video program prepared by the Department of Public Health and the ultrasound.

5. Any need for anti-Rh immune globulin therapy, and if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

6. She cannot be forced or required by anyone to have an abortion. She is free to withhold or withdraw her consent for an abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

(i) The patient shall complete and sign the form in Appendix A to these rules.

(ii) Prior to the performance of an abortion, the physician who is to perform the abortion or his or her agent shall receive the signed receipt of the certified mail dated 24 hours before the abortion, if mailed, and the signed forms that she has received the information of subsections (1) and (2) before the abortion, had the opportunity to view the video and the ultrasound, and provided her informed consent for an abortion. The abortion or reproductive health center shall retain the signed receipt, signed forms, and a printed copy of the ultrasound image in the woman's medical file for the time required by law, but not less than four years.

7. When a physician using good faith clinical judgment determines that some specific information required to be given under above informed consent provisions would cause a woman severe non-temporary psychological harm, the physician may forego providing this specific information to the woman. This conclusion does not, however, exempt the physician from otherwise complying with these informed consent provisions or the 48 hour waiting period.

8. Consent for Unemancipated and Emancipated Minors. Prior to performing an abortion on a minor, whether unemancipated or emancipated, the physician or his or her agents shall obtain and complete all legally required forms for consent and attach supporting documentation. Forms to be utilized for these purposes are located in Appendix C to these rules and when executed shall, with the supporting documents, be retained as required by these rules as a part of the patient's medical record.

#### **(5) Operative Procedures.**

(a) Medical Services. Only physicians duly licensed in the State of Alabama, shall order diagnostic work or medications or perform abortions. Pelvic examinations and other medical procedures shall be performed only by the physician performing the abortion. The governing authority or medical director shall delineate surgical privileges for each physician performing abortions, and shall also establish written criteria setting forth the specific procedures permitted to be performed in the facility, and including general and specific procedures that may not be performed by the various non-physician staff members. Such written criteria shall be placed on file within the facility and shall be available for inspection by the Board of Health.

(b) Patients shall not be admitted for the performance of abortion procedures for which the expected time for surgery and recovery exceeds twelve hours.

(c) Before a physician performs an abortion, the physician shall examine the fetus by use of ultrasound and by such other techniques as to produce a reasonably accurate method of determining the gestational age, viability of the fetus and

the intrauterine location. After such examination, the physician shall enter into the patient's medical record the tests or examinations performed, and his findings regarding viability and intrauterine location. If the physician determines that the fetus is viable, the pregnancy shall not be terminated at the abortion or reproductive health center except when an immediate abortion is necessary to preserve the life or physical health of the mother.

(d) Anesthesia. Anesthesia shall be administered to patients only by a Certified Registered Professional Nurse Anesthetist or by a physician deemed qualified by the facility's medical director. The anesthesia must be administered only under the direct physical supervision of a licensed physician. After the administration of an anesthesia, patients shall remain under the physical observation of a Physician, Registered Professional Nurse, or Licensed Practical Nurse (the LPN must be directly supervised by an RN) until the patient is sufficiently alert and able to summon aid.

(e) Examination of Tissue Removed. Tissue removed during an abortion shall be examined by a pathologist certified, or deemed Board eligible, by the American Board of Pathology, in anatomical pathology and, if sent to a physician in Alabama, currently licensed to practice medicine and surgery in Alabama, or if sent to a physician in another state, currently licensed to practice medicine in such state. A report of the examination shall be placed in the patient's medical record. If the examination reveals that no fetal tissue was removed during the abortion, the patient shall be contacted by the facility and she shall be offered or referred for appropriate medical treatment. All medical waste, except such tissue as is sent to a pathologist and not returned to the facility, shall be disposed of in accordance with procedures set forth in the Rules of the Alabama Department of Environmental Management governing medical waste.

(f) Anti-Rh immune globulin therapy with required laboratory procedures shall be given to all Rh negative abortion patients within 72 hours of completion of the termination procedure when, in the professional judgment of the physician performing the abortion, lack of such treatment will have an adverse effect on the patient's future childbearing potential. If the treating physician does not consider the treatment necessary, a signed statement to this effect shall be entered in the patient's medical record. Women seeking abortions, if Rh negative, shall be counseled about the necessity or likely necessity of obtaining such therapy, the likely consequences of refusing such therapy, and the cost of such therapy, prior to undergoing the abortion procedure. If for any reason a patient refuses the administration of such treatment when recommended by the physician, the refusal shall be entered in the clinical record, documented and supported by the patient's signature on an appropriate release or waiver form.

#### **(6) Post Operative Procedures.**

(a) Post Operative Observation. After an abortion procedure, patients shall be observed until a determination can be made whether any immediate post operative complications are present. Patients shall either be discharged within twelve hours of admission in an ambulatory condition without need for further observation or acute care, or shall be offered transportation to a local hospital for further treatment. During and after an abortion procedure performed at an abortion or reproductive health center, a physician shall remain on the premises until all patients are discharged. The discharge order must be signed by the physician. Prior to discharge from the facility, the patient shall be provided with the name and telephone number of the physician who will provide care in the event of complications, and the name of the medications given at the abortion clinic.

(b) Responsibility for Continuing Medical Care: The physician who performs an abortion procedure is responsible for ensuring that all patients receive adequate follow-up care and must be available to provide care for complications arising from an abortion twenty-four hours a day, seven days a week. Every physician that performs an abortion shall have staff privileges at an acute care hospital within the same standard metropolitan statistical area as the abortion or reproductive

health center is located, that permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures reasonably necessary to treat abortion-related complications. Enforcement of this requirement is stayed until such time that the restraining order is lifted or there has been a final disposition allowing for enforcement of this requirement in *Planned Parenthood Southeast, et al. v. Strange, et al., Civil Action No. 2:13-cv-405-MHT*, before the United States District Court for the Middle District of Alabama. Until that time, all licensed abortion or reproductive health centers may comply with these rules if, at a minimum, outside covering physician services are obtained through a valid written contract. The contract with the outside covering physician shall include:

1. a requirement that the outside covering physician shall be available to treat and manage all complications that may reasonably arise as a result of an abortion;
2. the protocol for communication between the facility, the facility physicians, and the outside covering physician so that at least one of the facility physicians shall be available to communicate and consult with the outside covering physician at all times;
3. the outside covering physician's fees;
4. a requirement that the outside covering physician has staff privileges at a hospital within the same standard metropolitan statistical area that permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures necessary to treat abortion-related complications; and
5. A requirement that the outside covering physician notify the facility not less than 72 hours in advance of any absences during which neither the outside covering physician nor a substitute physician meeting all the requirements of subsections (b)(1) and (b)(4) will be available to provide care.

(c) Necessity of Physician with Admitting Privileges: A facility may not perform abortions unless the outside covering physician described in subsection b or a substitute physician with the qualifications described in subsections (b)(1) and (b)(4) is available to provide patient care. If a facility receives notice that no facility physician or outside covering physician will be available, it must stop performing abortions no later than 72 hours before the physician's unavailability.

(d) Post-Operative Policies and Procedures: A facility must develop and follow written policies and procedures detailing the sequence of post-operative care. The facility must have a 24 hour answering service that immediately refers all calls related to post abortion problems to a qualified registered nurse, nurse practitioner, physician assistant, or physician. If a registered nurse, nurse practitioner, or physician assistant will be the initial medical contact, clear protocols must be developed and approved by the medical director, all facility physicians, and any outside covering physicians to establish when a physician will be contacted, which physician will be initially contacted, how the outside covering physician will be contacted if immediate care is needed, and how the patient will be contacted and receive the physician's instructions.

(e) Call Records: In addition to the infection control record required by these rules, a facility must keep a record of all calls taken by the registered nurse, nurse practitioner, physician assistant, or physician. The call record should include the patient's name, time and date of call, a brief description of the reason for the call, and any action taken in response. A full description of any adverse conditions and the instructions or treatment given in response must be noted in the patient's medical record.

(f) Post-Operative Instructions: Written instructions shall be issued to all patients upon discharge and shall include at least:

1. A list of possible complications, the signs and symptoms for each complication, and recommended procedures to be followed in the event of such complication.
2. Activities to be avoided, and the period of time during which the activities should be avoided.
3. A telephone number to call with questions or concerns. If the telephone numbers during and after hours are different, both shall be included, along with the times each will be staffed.
4. Date and time for a follow-up or return visit, with information regarding the importance of keeping the follow-up appointment.
5. The name and telephone number of the physician who will provide care in the event of complications, and the name of the medications given at the abortion clinic.

(g) Reports to the Center for Health Statistics. The administrator of each abortion or reproductive health center shall report each abortion to the Center for Health Statistics no later than 10 days after the last day of the month during which the procedure was performed. A copy of the report shall be kept in the patient's medical record. All reports shall be in a format prescribed by the State Registrar. In no event shall the information reported to the Center for Health Statistics contain the name or the address of the patient whose pregnancy was terminated or any other information identifying the patient. Individual reports shall not be available for public inspection and the information shall be maintained in strict confidence by the Center for Health Statistics. The Center for Health Statistics shall annually make available to the public aggregate data about the number of abortions performed in clinical settings statewide. The Director of the Center for Health Statistics may authorize the release of other aggregate statistical data for official government use. In no event shall the Center release the names of individual physicians or other staff members employed by abortion or reproductive health centers.

#### **(7) Pharmaceutical Services.**

(a) Safety. Drug rooms shall be provided with safeguards to prevent entrance of unauthorized persons, including bars on accessible windows and locks on doors. Controlled drugs and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable Federal and State laws.

(b) Administering, Dispensing, and Prescribing Drugs and Medicines. Only physicians and properly credentialed nurse practitioners and physician assistants may prescribe or order medications. Nurse practitioners and physician assistants may prescribe only those medications described in their individual collaborative agreements. Except for standing orders as permitted below, medications shall be prescribed for patients of the facility by patient name after an appropriate medical evaluation. Oral and telephone orders shall be received only by a physician, nurse practitioner, physician assistant, registered professional nurse, licensed practical nurse, or a pharmacist. Oral and telephone orders shall be immediately documented in writing by the individual receiving the order. Prescribing, dispensing, and administration of medications shall meet all standards required by law and by regulations of the State Board of Medical Examiners and the State Board

of Pharmacy. Abortifacient medications shall be prescribed only by a physician. Only a physician may give, sell, dispense, administer, or otherwise prescribe an abortion-inducing drug. The physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug shall first examine the pregnant woman in person and document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

(c) Standing Orders. When permitted by a policy of the facility reduced to writing and approved by the facility's current medical director, limited standing orders may be directed to a nurse practitioner, physician assistant, registered professional nurse or licensed practical nurse. All post-operative complications must be immediately referred to a qualified registered nurse, nurse practitioner, physician assistant, or physician, in accordance with the requirements for post-operative policies and procedures specified in section 420-5-1-.03(6)(d). Standing orders may not be used to prescribe controlled substances or abortifacient medications. Prescriptions or medication orders called or faxed to a pharmacy pursuant to a standing order shall be immediately documented by the nurse practitioner, physician assistant, registered professional nurse or licensed practical nurse, in the same manner required for oral or telephone orders. All oral orders, telephone orders, and records of prescriptions called or faxed pursuant to standing orders shall be verified by the prescribing physician's signature within 48 hours. Such verification may be undertaken by fax. Drugs and medications may not be dispensed except by or under the direct supervision of a physician or pharmacist.

(d) Controlled Substances Permit. Each abortion clinic shall procure a controlled drug permit from the Drug Enforcement Agency if a stock of controlled drugs is to be maintained. The permit shall be displayed in a prominent location.

(e) Records. Records shall be kept of all stock controlled substances giving an account of all items received and administered. Records shall be kept in a manner which allows accurate reconciliation.

(f) Poisonous Substances. All poisonous substances must be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration.

(g) Emergency Kit or Emergency Drugs.

1. Each abortion clinic shall maintain upon the advice and written approval of the facility's medical director an emergency kit or stock supply of drugs and medicines for treating the emergency needs of patients.

2. The kit or medicine shall be stored in such a manner as to be inaccessible to unauthorized personnel while allowing quick retrieval by authorized personnel.

3. Each emergency kit or stock supply of drugs shall contain a written list of its contents, approved by the medical director, including the name and strength of each drug (with generic equivalents, where appropriate), and amounts to be maintained.

4. At all times when patients are in the facility, there shall be at least one staff member on the premises who has the knowledge, skills and abilities to operate the emergency equipment. Protocols shall be in place to ensure ongoing training of staff in the use of emergency equipment, the management of emergencies and the indications for emergency transport.

5. Emergency kits and the stock supply of drugs shall be inspected with sufficient frequency to permit the removal of all outdated drugs. Each kit shall contain a log documenting such inspections.

(h) Drug Reference Sources. Each abortion clinic shall maintain reference sources for identifying and describing drugs and medicines.

**(8) Infection Control.**

(a) Infection Control Committee.

1. There shall be an infection control committee composed of a physician and registered professional nurse who shall be responsible for investigating, controlling, and preventing infections in the facility.

2. There shall be procedures to govern the use of sterile and aseptic techniques in all areas of the facility.

3. There shall be continuing education provided to all staff on causes, effects, transmission, prevention, and elimination of infection at least annually.

(b) Sterilization. Definitive written procedures governing sterilization techniques shall be developed. All equipment must be sterilized either by pressurized steam sterilization or gas sterilization. Procedures are to include:

1. Technique to be used for a particular instrument or group of instruments.

2. Length of time to accomplish sterilization.

3. Prohibition against re-use of one-time-use (disposable) items.

4. Temperature, time and pressure for steam sterilization.

5. Proper methods of preparation of items for sterilization (cleaning, wrapping and dating).

6. Shelf storage time for sterile items.

7. Use of sterilizer indicators.

(c) Abortion or reproductive health centers shall adhere to regulations of the United States Occupational Safety and Health Administration for handling medical waste, and regulations of the Alabama Department of Environmental Management

and other applicable federal regulations for disposal of medical waste (medical waste includes, but is not limited to disposable gowns, soiled dressings, sponges, surgical gloves, bacteriological cultures, blood and blood products, excretions, secretions, other bodily fluids, catheters, needles, IV tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers).

(d) Investigation of Infections.

1. Reports of infections observed during any follow-up or return visit of the patient shall be made and kept as a part of the patient's medical record. Each facility shall maintain a surveillance logbook recording all follow-up visits and telephone inquiries in which infections or other complaints are reported or observed. This logbook shall be reviewed at least quarterly by the facility's medical director. The facility's medical director may specify certain patient complaints, such as mild cramps, which, in his professional opinion and judgment, do not warrant being recorded in the logbook. The logbook shall in all events contain documentation of the following:

(i) Any report by a patient of severe cramps;

(ii) Any report by a patient of passage of a blood clot as large or larger than three centimeters, or one and one fourth inches, in diameter (the approximate size of a fifty cent piece);

(iii) Any report by a patient that she has passed tissue;

(iv) Any report by a patient of foul-smelling discharge;

(v) Any report by a patient that she has soaked two or more sanitary pads in one hour;

(vi) Any report by a patient of a body temperature of 100 degrees Fahrenheit or more;

(vii) Any diagnosis of perforation of the uterus; and

(viii) Any hospitalization of a patient for adverse conditions resulting from a procedure performed at the facility.

2. Efforts shall be made to determine the origin of any infection and if the abortion procedure was found to be related to acquiring the infection, remedial action shall be taken to prevent recurrence. In the event of sustained numbers of infections (three or more patients in one week), the State Health Department shall be immediately notified. Upon order of the Health Department, operation of the facility shall be discontinued until approval for continuation of operation is granted by the State Health Department.

3. If the facility wishes to contest such closure, the Health Department shall provide an opportunity for a hearing under the contested case provisions of the Alabama Administrative Procedures Act. Such hearing shall be held not more than two working days after notice of appeal is given to the Health Department, unless the facility agrees otherwise.

The facility shall be entitled to full rights of appeal from any adverse decision rendered as a result of the hearing, as set forth by law.

(e) Environment. The abortion facility shall provide a safe and sanitary environment, and shall be properly constructed, equipped, and maintained to protect the health and safety of patients and staff.

(9) **Mandatory Reporting.** The abortion facility shall have in place a policy and procedure to obtain the following information:

(a) Any minor child under the age of 16 seeking an abortion from an abortion or reproductive health care facility shall be asked by the physician performing the abortion or his or her agent to state the name and age of the individual who is believed to be the father of the unborn child. While the minor child may refuse to provide the father's name and age, she should be encouraged to do so by the physician or agent consistent with the physician's legal obligation to reduce the incidence of child abuse when there is a reason to suspect that it has occurred.

(b) In addition to any other abuse reporting requirements that may apply to the staff of an abortion or reproductive health center, if the reported age of the father is two or more years greater than the age of the minor child, the facility shall report the names of the pregnant minor child and the father to both local law enforcement and the county Department of Human Resources. If the pregnant minor child is less than 14 years old, the name of the minor child shall be reported to the Department of Human Resources, regardless of whether the father is two or more years older than the minor child. The receipt of reportable information by any member of a facility staff shall trigger the requirement for the facility to report such information.

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