

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

DR. ALLEN PALMER,)
)
Plaintiff,)
)
v.) Case No. 08AC-CC00408
)
DEPARTMENT OF HEALTH AND SENIOR)
SERVICES; and)
JEREMIAH W. NIXON, Attorney General of Missouri,)
in his official capacity.)
)
Defendants.)
_____)

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff hereby moves for summary judgment pursuant to Rule 74.04 of the Missouri Rules of Civil Procedure. The grounds for Plaintiff's motion are set forth in the accompanying Memorandum in Support of Plaintiff's Motion for Summary Judgment, Affidavit of Allen S. Palmer D.O., and Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment.

As set forth in the Memorandum, and further supported by the Statement of Undisputed Facts, there are no genuine issues as to any material facts regarding Plaintiff's claim for declaratory judgment that (1) Missouri's ambulatory surgical center licensing law, set forth in Mo. Rev. Stat. § 197.200, requires that abortion facilities in operation prior to the adoption of DHSS's regulations governing abortion facilities, set forth at 19 CSR 30-30.050-30.070, are required to meet the physical standards for existing abortion facilities set forth in 19 CSR 30-30.070(3) in order to be licensed, and/or (2) that Defendants' threatened application of the regulatory scheme to abortion

providers violates the rights of Plaintiff as protected by Article I, Section 2 of the Missouri Constitution; and Plaintiff's claim for injunctive relief, without bond, restraining Defendants from the enforcement, operation, and execution of the physical standards for new abortion facilities, set forth in set forth in 19 CSR 30-30.070(2), against Plaintiff. Plaintiff therefore is entitled to judgment as a matter of law and respectfully requests that this Court grant its Motion for Summary Judgment.

Respectfully submitted, this ___ of September 2008,

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* Application for Admission *Pro Hac*
Vice Pending

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