

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION 7

2011 NOV 10 P 5:14

HODES & NAUSER, MDs, P.A.;)
HERBERT C. HODES, M.D.; and)
TRACI LYNN NAUSER, M.D.,)

Plaintiffs,)

v.)

Case No. 11 C 1298

ROBERT MOSER, M.D., in his official)
capacity as Secretary of the Kansas)
Department of Health and Environment;)
STEPHEN HOWE, in his official capacity)
as District Attorney for Johnson County,)
Kansas; and DEREK SCHMIDT, in his)
official capacity as Attorney General for)
the State of Kansas,)

Defendants.)

Order Granting Temporary Restraining Order
Pending Hearing on Application for Restraining Order
(Pursuant to K.S.A. Chapter 60)

Temporary Injunction

On this 10th day of November, 2011, this matter comes before the Court on Plaintiffs'

via telephone conference of record

Verified Petition and Application for Restraining Order/ Plaintiffs seek a Restraining Order on behalf of themselves and their patients, restraining, enjoining and prohibiting Defendants Robert Moser, M.D., Secretary of the Kansas Department of Health and Environment ("KDHE"), Stephen Howe, District Attorney of Johnson County, and Derek Schmidt, Kansas Attorney General, along with their offices, agencies, agents and successors, from enforcing K.A.R. § 28-34-126 - 144 (2011) (the "Permanent Regulations") regarding the licensing of facilities performing abortion, until such time as this Court rules on Plaintiffs' Application for a Temporary Injunction. The Court having reviewed Plaintiffs' Verified Petition and Application

for Restraining Order, and being fully advised in the premises, finds that Plaintiffs would sustain ^{potentially} irreparable harm were this Order not entered, and that Plaintiffs have no other adequate remedy at law. ^{or they presently} Based on review of Plaintiffs' Verified Petition and Application for Restraining Order, ^{because the administrative process is incomplete or} the Court also concludes that the issuance of this Order will merely maintain the status quo, and that Plaintiffs have alleged sufficient facts to make an initial showing that they are likely to succeed on the merits on one or more of their claims, ^{including the opportunity of} The Court makes the following findings ^{restricted by time} based on review of the Verified Petition and Application for Restraining Order. ^{through the administrative process of any licensure decision}

Findings of Fact

1. The Restraining Order is sought by Plaintiffs Hodes & Nauser, MDs, PA; Dr. Herbert Hodes; and Dr. Traci Nauser, who seek, on behalf of themselves and their patients, to temporarily restrain Defendants Robert Moser, M.D., Secretary of the Kansas Department of Health and Environment, Stephen Howe, District Attorney of Johnson County, and Derek Schmidt, Kansas Attorney General, along with their offices, agencies, agents and successors, from enforcing K.A.R. § 28-34-126 – 144 (2011) (the "Permanent Regulations") ^{on any question of its' non-licensure} until such time as this Court rules on Plaintiffs' Application for a Temporary Injunction.
2. Based on the allegations contained in the Verified Petition, the Court finds that absent immediate injunctive relief, the Permanent Regulations will take effect on November 14, 2011, and will cause irreparable harm to Plaintiffs and their patients. Specifically, the Permanent Regulations will force Plaintiffs to cease provide abortion services in their private obstetrics-gynecology practice, in which they have provided such services for decades. This cessation of services will cause irreparable harm to both Plaintiffs and women seeking abortion services from Plaintiffs, and monetary damages are inadequate to compensate Plaintiffs or their patients for harms that will ensue absent relief.

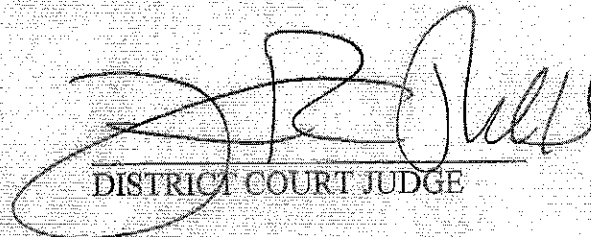
3. Based on the allegations contained in the Verified Petition, the Court finds that the threatened harm to Plaintiffs and their patients outweighs any potential harm to Defendants because the Restraining Order imposes no affirmative obligation, administrative burden, or cost upon Defendants and will merely maintain the status quo, allowing Plaintiffs to continue providing abortion services in their medical office, subject to multiple layers of government regulation and oversight (including by the Kansas Board of Healing Arts and KDHE), as they have for many years.

4. This Restraining Order is not adverse to the public interest in that it will protect Plaintiffs' current practice, and patients' access to the health services provided in that practice, and in that Plaintiffs' practice is already subject to government regulation and oversight by the Kansas state agencies referenced above.

Restraining Order

Based on the foregoing findings and for good cause shown, the Court does hereby enter a Restraining Order that:

Defendants Robert Moser, M.D., Secretary of the Kansas Department of Health and Environment, Stephen Howe, District Attorney of Johnson County, and Derek Schmidt, Kansas Attorney General, along with their offices, agencies, agents and successors, are hereby restrained, enjoined and prohibited from enforcing the Permanent Regulations, K.A.R. § 28-34-126 - 144 (2011) until further order of this Court. This Order will issue without bond as allowed pursuant to K.S.A. §§ 60-902 and 903. A hearing on Plaintiffs' Application for Temporary Injunction is scheduled for December 6, 2011 at 9:30 am.


DISTRICT COURT JUDGE