

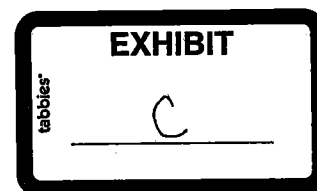
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

PLANNED PARENTHOOD OF GREATER TEXAS	)	
SURGICAL HEALTH SERVICES, and on behalf of	)	
its patients and physicians, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	
	)	CASE NO. 1:13-cv-862
GREGORY ABBOTT, Attorney General of Texas, in	)	
his official capacity, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF ANDREA FERRIGNO**

Andrea Ferrigno declares and states the following:

1. I am the Corporate Vice President of Whole Woman’s Health (“WWH”), where I have worked since January 2004.
2. Whole Woman’s Health provides a range of reproductive health care services, including contraception and medication and surgical abortions at its licensed abortion facilities in Austin, Beaumont, Fort Worth, and McAllen, and at its licensed abortion facility and licensed ambulatory surgical center in San Antonio.
3. I am familiar with the requirements of Texas House Bill No. 2 and specifically the requirements that all physicians who perform an abortion “have active admitting privileges at a hospital that . . . is located not further than 30 miles from the location at which the abortion is performed or induced [] and provides obstetrical or gynecological health care services” (the “admitting privileges requirement”) and that “abortion-inducing drugs” may only be given, dispensed, provided, and administered by a physician in a way that “satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final



printed label of the abortion-inducing drug” and/or “in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013” (the “medication abortion restrictions”).

4. I provide this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction against enforcement of Texas House Bill No. 2’s admitting privileges requirement and medication abortion restrictions.

5. My primary job responsibility at Whole Woman’s Health is to ensure compliance with all regulations relating to the provision of abortion and other services provided by WWH. I work closely with the Director of Medical Services to ensure that WWH meets performance standards. I also help to manage the San Antonio ambulatory surgical center, and am responsible for the recruitment of physicians to work at WWH’s clinics in Texas.

6. In addition to my regular job responsibilities, I am now taking primary responsibility for ensuring compliance with the admitting privileges requirement, including identifying appropriate hospitals and preparing and submitting applications on behalf of WWH’s physicians.

7. WWH currently has a roster of eleven physicians in total for all its clinics in Texas. In San Antonio, we have three physicians who provide abortions, none of whom have admitting privileges at a local hospital. In Fort Worth, we have two physicians who provide abortions, and none of them have admitting privileges. In McAllen we have one physician who provides abortions and he does not have admitting privileges at any local hospital. In Austin we have three regular physicians who provide abortions, only two of whom currently have admitting privileges at local hospitals (deemed “courtesy admitting” and “active medical staff” respectively). Of those two physicians, one of them only provides medication abortions and

therefore will have a significantly reduced case load or will not provide any abortions at all if the medication abortion restrictions go into effect, as very few women will then choose medication abortions over surgical abortions. In Beaumont we have one physician who provides abortions and he has admitting privileges at a local hospital (deemed "active admitting"). If none of our physicians receive admitting privileges by October 29, 2013, we will be forced to close the clinics at Fort Worth and McAllen, and both the San Antonio abortion facility and the ambulatory surgical center in San Antonio would be unable to provide abortion services on weekdays. We are determining whether we can add a physician who currently has admitting privileges at a local hospital (deemed "active staff") to our San Antonio clinic. This physician could only work on weekends in San Antonio and could therefore only see a limited number of patients, and would not address our need for a physician with admitting privileges who could work in San Antonio during the weekdays.

8. After the passage of Texas House Bill No. 2, I immediately began the process of complying with the admitting privileges requirement. I identified all of the hospitals within 30 miles of each of our clinics, using, among other sources, information available from the Internet. In my experience, most hospitals do not provide information on their website about how to obtain an application for admitting privileges or about their requirements for credentialing and privileges. Therefore, it is necessary to either call or email the hospital and try to reach an individual in either a credentialing department or in the obstetrics/gynecology department.

9. After identifying the relevant local hospitals for each WWH clinic, I contacted all of them by telephone. Many of the hospitals never returned my telephone call requesting application information. Some of them returned my telephone calls only after I called multiple times.

10. Of the hospitals that did return my telephone call, many referred me to another individual or department. Others provided me with what could be called an "application request form" or a "pre-application" which I was required to complete and submit before receiving the actual application for admitting privileges. Some of the hospitals I contacted use an external credentialing agency. In one such case, the hospital requested that I send the CVs of the physicians seeking privileges to them so they could conduct a background check, which took them about four days. Only after the background check was complete did they pass on the physicians' information to the external credentialing agency, which in turn sent me an application for admitting privileges. In the case of at least three hospitals, I have been verbally discouraged from pursuing an application by a hospital staff member because of hostility against abortion providers among members of the hospital's governing board. Each of the initial steps of contacting a hospital, having my call or email returned, submitting "pre-applications" or initial information for background checks, and then receiving the application for admitting privileges itself can take several days. In total, it has in some cases taken weeks from the time I first contact a hospital to the time when I receive the application form for admitting privileges.

11. Some of the delay in preparing applications for admitting privileges has been caused by hospital staff members refusing to provide information about the credentialing requirements or the hospital's by-laws along with the application form. Without this information, I have no way to know whether our physicians seeking privileges will even meet the hospital's requirements. For example, some hospitals require that a physician live within a certain distance of the hospital, or that the physician be board certified. Others require a certain minimum number of hospital admissions or in-hospital procedures per year. Not all of our physicians can satisfy these requirements in every case. Many of our physicians are not board certified because

they completed their medical training at a time when board certification was not a common practice. Thus, those of our physicians seeking admitting privileges who are not board certified will not qualify at any hospital requiring board certification before granting privileges. It is therefore impossible to prepare an application for admitting privileges without first knowing the hospital's requirements as outlined in its by-laws.

12. For each application for admitting privileges that I have received from a hospital, the physician needs to specify the type of medical staff position sought (e.g. "active staff" or "courtesy staff with admitting privileges"), and the categories of medical staff vary by hospital. For example, some hospitals restrict their "active" category of medical staff to those physicians who will "regularly" use the hospital facilities and admit patients there—in other words, to those physicians whose practices are primarily conducted through the hospital. Several of the hospitals I have identified use the title "courtesy staff" or "courtesy staff with privileges" to describe those physicians whose practice is primarily conducted outside the hospital, but who still have the authority to admit patients to the hospital and provide them with care in the hospital. For example, one hospital in the San Antonio area requires physicians on their staff to have completed 100 deliveries in the past two years, and at least 25 major ob/gyn surgeries. Even for their "courtesy staff" who are able to admit patients, many hospitals require a certain minimum number of patient admissions per year. Most WWH physicians primarily provide abortions at WWH clinics and do not maintain a regular obstetrics and gynecological practice. Because the incidence of patient complications is so rare at WWH clinics, those physicians will not be able to meet any minimum admission requirements at hospitals that require them. At the time of application, most hospitals require that a physician submit a "case log" showing the number of hospital procedures a physician has completed in the last 24 months. Some hospitals have a

requirement that the case log consist of only those cases completed at a Joint Commission-accredited hospital, further limiting WWH physicians' ability to satisfy annual admission requirements.

13. Once I receive an application for admitting privileges from a hospital, it can take several days or longer to prepare each application before submitting it. The physician must submit the 20-page "Texas Standardized Credentialing Application" with each individual application for privileges, along with the specific hospital's application. These applications together require copies of licensing certificates, copies of the medical degree, copies of any board certification, copies of vaccination records, practice information, Continuing Medical Education information, and hospital affiliation information. I have had to schedule blood tests and vaccinations for WWH physicians who do not have vaccination records available. Each application also requires a peer reference, which can take substantial time to obtain because it comes from a third party. Lastly, for each application, there must be a specified "designated alternate" physician who will attend to the applicant's patients when the applying physician is unavailable. Most of the hospitals our physicians are applying to require that the designated alternate physician currently have admitting privileges at the same hospital. It can be difficult to identify a designated alternate physician at each hospital where we are seeking admitting privileges, because many physicians are unwilling to serve as the designated alternate, due to hostility towards abortion providers, or because of perceived pressure from conservative hospital governing boards against serving as a designated alternate to abortion providers. I have heard from some physicians that they are worried about having their admitting privileges taken away if they agree to serve as a designated alternate for any of our physicians.

14. The following is the current status of pending applications on behalf of WWH

physicians at each of our clinics. For each hospital, our physicians have submitted applications seeking the highest level of staff membership they are qualified for that will allow them to admit patients.

- a. In Fort Worth, one of our physicians does not meet the facial requirements of any of the local hospitals we have identified and is therefore not planning to apply for admitting privileges and is preparing to retire because of the admitting privileges requirement. The other two physicians who currently provide abortions in Fort Worth each meet the facial requirements for admitting privileges at two hospitals, and I have submitted those four applications, in addition to a fifth application for one of those two physicians. We do not have any other WWH physician available who would meet the facial requirements of the hospitals we have identified in the Fort Worth area. I have also submitted an application at one hospital in the Fort Worth area for a WWH physician who meets the facial requirements and who currently provides abortions in the San Antonio clinic. Two of the physicians in the WWH roster who would otherwise qualify for privileges in the Baylor Health Care System hospitals in Fort Worth will not be able to apply because we cannot find a doctor already in the Baylor system willing to serve as the designated alternate physician, as required.
- b. In San Antonio, two of our physicians have submitted applications for admitting privileges at the same three local hospitals, at each of which they meet the facial requirements. A third physician is in the process of submitting applications at two of those three hospitals, and at an additional hospital.
- c. In McAllen, we are not sure if any of our physicians meet the requirements for

admitting privileges at any local hospital but have nonetheless submitted applications for three physicians at the same local hospital.

15. Although WWH is seeking additional physicians that either have or could obtain privileges, I do not think that we will be able to recruit enough physicians to prevent discontinuing or reducing services. WWH already struggles to keep enough physicians to meet the needs of our patients. One reason for this is that several of the physicians travel long distances to work at more than one WWH clinic on different days of the week. Our physicians have to stay at a clinic location for at least two consecutive days because of the required 24-hour waiting period law in Texas, to enable them to see the same patients on two consecutive days. Several of the WWH physicians have retired from their practices and do not work full time. In addition, physicians without admitting privileges may be reluctant to apply for them. For example, one of the current WWH physicians is reluctant to apply for privileges to any hospital whose requirements he does not clearly meet because he is concerned that a denial will have to be disclosed on future applications and will have a negative effect on those applications.

16. I do not expect to be able to recruit local physicians who already have admitting privileges at local hospitals to work in any of WWH's clinics. It is difficult to recruit local physicians to perform abortions at our clinics, because of the hostility they can face from the community, such as protestors outside of their regular practice offices who may disrupt their other patients' appointments, and because of fears of violence directed against them and their families. One of the physicians we successfully recruited changed his mind about working with WWH after the murder of Dr. George Tiller by an anti-abortion activist. Some of WWH's vendors have been targeted by protestors in the past and have had their other business relationships put in jeopardy because of their decision to work with WWH. Some physicians are



fearful of having their hospital admitting privileges denied or revoked if they start performing abortions. For these reasons, it will likely be impossible to recruit local physicians if none of our existing physicians can satisfy the admitting privileges requirement. While I frequently seek to recruit doctors from out of state, even if I am successful, there is often a delay before the physician can begin work while he or she obtains a Texas medical license, a delay that will likely be increased by the need to secure admitting privileges.

17. WWH clinics have an emergency protocol in place to ensure the safety of our patients in the rare event of complications requiring hospitalization. If a patient requires a transfer to a hospital, the physician will direct a staff member to call for an ambulance and prepare the patient for the transfer. The staff member will also call the hospital where the patient is being taken—usually speaking with the obstetrics and gynecology emergency staff—to provide information, as dictated by the physician, about the patient's age, vitals, hemoglobin, and the reasons for the transfer. If appropriate, WWH staff will also establish an IV port. The physician will remain with the patient until the transfer is completed. The physician will then be placed on the telephone with the hospital emergency room admitting staff and with his or her backup physician (the physician with local admitting privileges with whom he or she is required to have a working relationship to assist with complications) and provide the backup physician with information about the patient. The backup physician can then meet the patient when she arrives at the hospital or will be asked to remain on call for the patient, as necessary. If the WWH physician does not have any other patients at the clinic that day, he or she will also travel to the hospital with the patient. Copies of the woman's medical records will be sent to the hospital with the emergency medical services team. If the physician does not go to the hospital, usually a WWH administrator or staff member will travel to the hospital with the woman to facilitate

communication between the hospital's attending physician and the WWH physician, and to explain the medical records as necessary.

18. In the last five years, from all WWH Texas licensed abortion clinics and the ambulatory surgical center combined, there have been approximately 8-10 patients transferred to a hospital. Most hospital transfer patients do not ultimately require surgery, but rather are kept for observation as a precaution. WWH also tracks how many patients our clinic staff or physicians refer to an emergency room after they have left a WWH clinic. In some cases, women will go to a hospital on their own after leaving a WWH clinic, because they do not realize that their symptoms are a normal part of the abortion procedure. In such cases, the hospital will usually refer the woman back to the WWH clinic for further treatment.

19. WWH clinics provide medication abortions through 63 days gestational age (as measured from the last menstrual period ("LMP")). Our physicians prescribe 200 mg of mifepristone, followed 24-48 hours later with the administration of misoprostol at home.

20. The Whole Woman's Surgical Center, WWH's ambulatory surgical center in San Antonio, currently provides surgical abortions up to 24.6 weeks LMP, although this practice will change once Texas House Bill No. 2 goes into effect, banning abortions after 22 weeks LMP (or after 20 weeks "probable post-fertilization age"). It is the only facility in the state south of Austin where women can get an abortion at this gestational age. Many of the patients at the San Antonio ambulatory surgical center seeking abortions at this gestational age come from the Rio Grande Valley; they may be referred from the WWH clinic in McAllen, from other abortion facilities, from oncology physicians (if they are patients who have cancer), or from maternal-fetal medicine. If we cannot staff any physician with admitting privileges at the San Antonio clinic, there will be no later abortion services for the women in this vast geographic region.

21. Our McAllen clinic currently serves the Rio Grande Valley. Dr. Lester Minto, who owns Reproductive Services of Harlingen, the only abortion clinic in Harlingen, has publicly stated that he will close that clinic on October 29 because of the admitting privileges requirement. If we are forced to close the McAllen clinic, therefore, there will be no abortion services for women at all in this region closer than Corpus Christi—a distance of approximately 150 miles. The clinic in Corpus Christi is not an ambulatory surgical center, and therefore women referred from maternal-fetal medicine physicians at gestational ages requiring that abortions be done in an ambulatory surgical center will not be able to access abortion services in this region at all.

22. In sum, if the admitting privileges requirement goes into effect on October 29, 2013, and none of our physicians who have applied for admitting privileges receive them by that date, we will have no physicians to serve our clinics in McAllen, Fort Worth, and San Antonio, except for possible weekend coverage in San Antonio. We will only be able to provide our patients with medication abortions through 49 days LMP, and those patients will have to return to the clinic to obtain misoprostol, imposing a hardship on those patients who live far from our clinics and do not have the financial resources to make separate trips.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 30, 2013

  
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Andrea Ferrigno