

Abortion clinic lawsuit should be dismissed, defendants say



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on April 29, 2013 at 11:14 AM, updated May 13, 2013 at 5:07 PM

Original article found online at:

http://blog.al.com/spotnews/2013/04/abortion_clinic_lawsuit_should.html



Protesters recently outside Birmingham clinic, calling for its shutdown. FILE (Mike Oliver)

BIRMINGHAM, Alabama -- Four of the five parties being sued by the state trying to shut down what it says is an unlicensed abortion clinic have asked the judge to throw out the lawsuit against them.

An attorney representing Diane Derzis, Patrick Smith, Dipat LLC, and All Women's Inc., doing business as New Woman All Women's Health, filed the motions to dismiss on Friday, saying the State Board of Health "has no authority or jurisdiction" over any of those named.

Dr. Bruce Norman, also named in the lawsuit as the doctor practicing at the site, was not among those asking for dismissal.

The state board of health sued on March 26 to stop "an illegally operated abortion or reproductive health center" at the site of All Woman All Women's Health on Birmingham's Southside.

[In seeking an injunction to stop the clinic](#), the state says that All Women's Inc. is continuing to operate an abortion clinic under the name New Woman All Women's Health after its license was revoked March 16, 2012, due to "serious violations" related to health and safety.

The state's lawsuit, filed in Jefferson County Circuit Court, lists Derzis and Smith as president and secretary respectively of All Women's Inc. and as members of Dipat LLC, which owns the property.

The four motions for dismissal all state that the lawsuit offers no facts that the State Board of Health has any jurisdiction over those four parties. The motions contend that Norman operates the business under the name "Women's Center."

"On its face, the complaint is directed against Bruce E. Norman, M.D., doing business as the Women's Center," the four motions state.

The motions claim that the state has not offered up any allegations that Derzis, Smith, All Women's Inc. or Dipat are "related in any way to Dr. Norman, the Women's Center, or the activities being conducted at the 17th Street South facility."

Dipat does lease the building to Norman, it acknowledged in the motion to dismiss.

[Earlier, an attorney for Norman told AL.com](#) the doctor doesn't need an abortion provider license because he performs a number of abortions that is under the threshold the state requires to be licensed as an abortion or reproductive health center.

State laws says a facility that performs 30 or more abortions per month during any two months of a calendar year requires a license. The law also states a provider license is required if the "facility holds itself out to the public as an abortion provider by some public means."

[Derzis surrendered a license to perform abortions](#) at the clinic in a consent decree last year after revocation hearings began. The revocation hearings followed an investigation into problems which included two cases where patients were given an overdose of a drug and had to go to the hospital.

In 1998, the facility was thrust into the national spotlight when a bombing there killed an off-duty police officer serving as security guard and seriously injured a nurse. Eric Rudolph is serving life sentences for that and blasts in Atlanta, including one at Olympic Park during the 1996 Olympics.

Updated 6 p.m. to say state law requires a license if facility performs 30 or more abortions per month during any two months of calendar year.