

**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, )**

**vs. )**

**Case No. 2:15-CV-497-MHT**

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

**DEFENDANT. )**

**ANSWER TO COMPLAINT**

**COMES NOW** the Defendant, Donald E. Williamson, M.D., and answers Plaintiffs’ Complaint (Doc. 2) as follows:

**PRELIMINARY STATEMENT**

1. Defendant admits that West Alabama Women’s Center (“WAWC”) is a licensed reproductive health center located in Tuscaloosa and that WAWC provides abortions for patients through the second trimester. Based on prior information sent by Plaintiffs to the Alabama Department of Public Health, Defendant believes that William J. Parker, M.D., (“Dr. Parker”) is currently WAWC’s physician and medical director. The remaining statements in Paragraph 1 of the Complaint are a recitation of the legal authorities under which Plaintiffs purport to bring this action; thus, no response is required by the Defendant.

2. The subject regulation speaks for itself. Defendant is without sufficient information to admit or deny the allegations in Paragraph 2 of the Complaint regarding Plaintiffs’ purported attempts to obtain staff privileges for Dr. Parker or, in the alternative, an

agreement with an outside covering physician. To the extent further response is required, Defendant would deny the allegations of Paragraph 2 of the Complaint.

3. Denied.

4. Denied as phrased, subject to later stipulations that the parties may agree to regarding relevant, specific issues that have already been resolved in the referenced prior litigation.

### **JURISDICTION AND VENUE**

5. Defendant does not contest subject matter jurisdiction.

6. Paragraph 6 of the Complaint is a recitation of the legal authority under which Plaintiffs purport to bring this action; therefore, no response is required by Defendant.

7. Defendant does not contest venue.

### **PARTIES**

#### **A. Plaintiffs**

8. Defendant admits that WAWC has been a licensed reproductive health center in Alabama for several years and that it is licensed to provide the services set forth in Paragraph 8 of the Complaint, all of which are also required for similar clinics in Alabama.

9. Defendant admits that WAWC is currently the only licensed reproductive health center located in Tuscaloosa. Defendant admits that WAWC is currently one of two licensed reproductive health centers in Alabama that choose to provide abortions through the patient's second trimester. Defendant admits that based on Alabama Department of Public Health ("ADPH") data for 2012 and 2013, WAWC provided more abortions annually than any other single Alabama licensed reproductive health center.

10. Defendant is without sufficient information to admit or deny the allegations of Paragraph 10 of the Complaint.

**B. Defendant**

11. Defendant admits that he is the State Health Officer for the State of Alabama and that his duties and responsibilities as the State Health Officer are set forth in Alabama's statutes, rules, and regulations. Defendant admits that he has been named as a proper party in this suit in his official capacity.

**REGULATORY AND STATUTORY FRAMEWORK**

**A. Challenged Regulation**

12. Admitted.

13. Defendant admits that the ADPH is authorized to promulgate rules and regulations concerning the licensing of reproductive health centers and that he, as State Health Officer on behalf of the State Board of Health, has the authority to grant a waiver or variance from such rules. Waivers and variances are not favored actions, are only granted under limited circumstances, and are not granted for an indefinite period of time. To the extent that the allegations of Paragraph 13 suggest otherwise, Defendant would deny said allegations.

14. Defendant admits that Ala. Admin. Code r. 420-5-1-.03(6)(b) applies to licensed reproductive health centers in Alabama.

15. No response required by this Defendant. The regulation at issue speaks for itself, and Defendant would respectfully refer the Court to the laws governing Alabama reproductive health centers in their entirety. Defendant would note that since this Court's ruling in the PPSE litigation, ADPH has enforced the subject regulation as it previously existed, requiring only one

physician who performs abortions at a clinic, or the outside covering physician, to have admitting privileges at a local hospital.

16. Defendant admits that adverse licensure action can occur if an Alabama-licensed reproductive health center fails to comply with Alabama law, as is true for any other health care provider licensed by ADPH.

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

17. The statute referenced in Paragraph 17 of the Complaint speaks for itself. No response required by this Defendant.

18. The statements in Paragraph 18 of the Complaint are a characterization of Alabama law. No response required by this Defendant.

19. Defendant admits that a lawsuit was filed in 2013 by certain Alabama reproductive health centers – none of which are parties in this matter – regarding the constitutionality of Alabama’s “Women’s Health and Safety Act,” a statute not at issue in the case at bar. Defendant would respectfully state that the Court is well aware of the filings in that litigation and would defer to the official record regarding those proceedings.

20. Defendant admits that Plaintiff WAWC has complied with the applicable staff privileges requirements under Alabama law in previous years and that Plaintiff WAWC has not previously challenged the constitutionality of Alabama’s staff privileges requirements applicable to reproductive health centers. Defendant is without sufficient information to know why WAWC chose not be a party in the “PPSE litigation” referenced in Paragraph 20 of the Complaint.

21. In response to Plaintiffs’ characterization of the “PPSE litigation” set forth in Paragraph 21 of the Complaint, Defendant would respectfully state that the Court is well aware

of the filings in that litigation and would defer to the official record regarding those proceedings. All other allegations are denied.

22. In response to Plaintiffs' characterization of the "PPSE litigation" set forth in Paragraph 22 of the Complaint, Defendant would respectfully state that the Court is well aware of the evidence and arguments submitted in that litigation and would defer to the official record regarding those proceedings. All other allegations are denied.

23. In response to Plaintiffs' characterization of the "PPSE litigation" set forth in Paragraph 23 of the Complaint, Defendant would respectfully state that the Court is well aware of the filings in that litigation and would defer to the official record regarding those proceedings. All other allegations are denied.

24. In response to Plaintiffs' characterization of the "PPSE litigation" set forth in Paragraph 24 of the Complaint, Defendant would respectfully state that the Court is well aware of the filings in that litigation and would defer to the official record regarding those proceedings. All other allegations are denied.

25. Defendant admits that WAWC is subject to Alabama law and that it must abide by any legal requirements currently in force in order to maintain its license. The remaining portions of Paragraph 25 are legal statements regarding Plaintiffs' interpretation of the "PPSE litigation"; thus, no response is required.

### **PRESENT ACTION**

#### **A. Abortion in Alabama**

26. Defendants are without sufficient information to admit or deny the allegations in Paragraph 26 of the Complaint.

27. Defendant admits that Plaintiff WAWC is a “hospital” as defined by Ala. Code §22-21-20 and that, as such, it is subject to regulations and compliance surveys by ADPH, as is true for all licensed health care facilities in Alabama. The regulations listed in Paragraph 27 of the Complaint are likewise generally applicable to all licensed health care facilities in Alabama.

28. Admitted.

29. Defendant admits that there are currently two licensed reproductive health centers in Alabama that choose to provide abortions through the patient’s second trimester. Defendant would further note that the regulations governing reproductive health centers in Alabama are the same regardless of whether a clinic provides abortions through the first or second trimester.

30. Defendant admits that based on ADPH data for 2012 and 2013, WAWC provided more abortions annually than any other single Alabama licensed reproductive health center. Defendant would note that the reproductive health centers in Birmingham and Huntsville were closed for a significant period of time in 2014 and that, as such, WAWC was either one of only two or the only clinic operating north of Montgomery in Alabama for much of that year. All other allegations denied.

31. Defendant admits that based on ADPH data for 2012 and 2013, WAWC provided more second-trimester abortions annually than any other single Alabama licensed reproductive health center. All other allegations denied.

32. Defendant is not able to verify the vague, general statistical information alleged in Paragraph 32 of the Complaint. Accordingly, the allegations of Paragraph 32 are denied.

33. Defendant does not know why women seek abortions and would further state that the vague, general statements in Paragraph 33 are not sufficiently limited to any particular

demographic (other than “women”) or any particular time period. Accordingly, the allegations of Paragraph 33 are denied.

34. Defendant is without sufficient information to admit or deny the allegations of Paragraph 34 of the Complaint.

35. Defendant is without sufficient information to admit or deny the allegations of Paragraph 35 of the Complaint.

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

36. Defendant admits that Dr. Payne held the requisite staff privileges while he was performing abortions at WAWC. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 36 of the Complaint.

37. Admitted.

38. Defendant is without sufficient information to admit or deny the allegations of Paragraph 38 of the Complaint.

39. Defendant is without sufficient information to admit or deny the allegations of Paragraph 39 of the Complaint.

40. Defendant is without sufficient information to admit or deny the allegations of Paragraph 40 of the Complaint. ADPH has had no involvement with any alleged communications between Dr. Parker and DCH, and Defendant has no knowledge of whether Dr. Parker would be able to satisfy DCH’s staff-privilege requirements. Defendant disagrees with Plaintiffs’ characterization of abortion as being “extremely safe”.

41. Defendant is without sufficient information to admit or deny the allegations of Paragraph 41 of the Complaint. Defendant would note that Dr. Parker’s medical practice has never been under the purview of ADPH.

42. Denied as phrased.

43. Defendant does not know what Ms. Gray is or is not “aware of”; accordingly, Defendant is without sufficient information to admit or deny the allegations of Paragraph 43 of the Complaint.

44. Denied as phrased.

45. Defendant is without sufficient information to admit or deny the allegations of Paragraph 45 of the Complaint.

46. Defendant admits that WAWC applied for a waiver but denies that compliance with the subject regulation is “impossible.”

47. Defendant admits that as State Health Officer on behalf of the State Board of Health, he has the authority to grant waivers and variances from ADPH’s administrative rules, although such actions are not favored, are only granted under limited circumstances, and are not granted for an indefinite period of time. Defendant would respectfully refer the Court to the regulations specifically dealing with waivers and variances. Defendant would further state that the waiver requested by WAWC earlier this year was for an indefinite period of time.

48. Defendant admits that WAWC’s waiver request included various supporting documentation. Such documentation speaks for itself, although Defendant does not admit the truth of the statements therein.

49. Defendant admits that the waiver request was denied and that the letter contained sufficient information to support the decision. The contents of the letter denying the request speak for themselves.

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

50. Denied.



51. Denied.

52. Defendant is not able to verify the statistical information alleged in Paragraph 52 of the Complaint. Accordingly, the allegations of Paragraph 52 are denied.

53. Defendant does not agree with Plaintiffs' characterization of abortion as "very safe throughout pregnancy", but does admit that the risk of complications increases with gestational age.

54. Defendant admits that certain complications arising from abortions can be addressed in the clinic setting. Defendant would further note that the physician is required by Alabama law to remain at the clinic until every patient has been certified as fit for discharge. All other allegations are denied.

55. Denied.

56. The statements set forth in Paragraph 56 of the Complaint appear to be a hypothetical discussion of how Plaintiffs anticipate they would likely respond in certain circumstances if Dr. Parker was allowed to perform abortions at WAWC. To the extent any response is required by the Defendant, the allegations of said paragraph are denied.

57. The statements set forth in Paragraph 57 of the Complaint appear to be a hypothetical discussion of how Dr. Parker anticipates he would likely respond in certain circumstances if he were allowed to perform abortions in Alabama without the requisite staff privileges. To the extent any response is required by the Defendant, the allegations of said paragraph are denied.

58. Defendant admits that some WAWC patients come from outside the Tuscaloosa area. Defendant further admits that some of those patients could potentially present to a hospital other than DCH should complications arise. Defendant denies that such a possible scenario

makes it “entirely irrelevant” whether Dr. Parker has staff privileges at DCH or an arrangement with a local covering physician. To the extent further response is required, all other allegations are denied.

59. The statements set forth in Paragraph 59 of the Complaint appear to be a hypothetical discussion of how Dr. Parker and WAWC staff anticipates they would likely respond in certain circumstances if Dr. Parker were allowed to perform abortions in Alabama without the requisite staff privileges. To the extent any response is required by the Defendant, the allegations of said paragraph are denied.

60. Defendant denies that Plaintiffs’ proposed plan to be exempt from certain provisions of the law meets or exceeds the standard of care.

61. The contents of Paragraph 61 of the Complaint are general statements of opinion with regard to the “contemporary practice” of medicine. Accordingly, no response is required. To the extent any response is required by the Defendant, the allegations of said paragraph are denied.

62. Denied.

63. The statements set forth in Paragraph 63 of the Complaint pertain to rules and requirements of the Board of Medical Examiners, which does not fall under the authority of the ADPH or the Defendant. To the extent any response is required, the allegations of said paragraph are denied.

64. Admitted, based on information and belief.

65. The statements set forth in Paragraph 65 of the Complaint pertain to rules and requirements of the Board of Medical Examiners, which does not fall under the authority of the

ADPH or the Defendant. To the extent any response is required, the allegations of said paragraph are denied.

66. Denied. Multiple provisions of the law require contact and communication with the outside covering physician in order to facilitate continuity of patient care in the event complications arise.

67. Defendant admits that an outside covering physician for a reproductive health center is not specifically required by law to give priority to a clinic's patients over his or her private-practice patients. Defendant would note, however, that the covering physician is required by contract to be available for the clinic's patients and that his/her professional and ethical duties as a physician further obligate him/her to provide appropriate care to all his/her patients, whether the patients are his/hers by contract or by virtue of his/her private practice.

68. Defendant admits that an outside covering physician would probably not have a prior relationship with a patient of the clinic unless he/she is already the patient's OB/GYN. Defendant would further note that, prior to performing the abortion, Dr. Parker would likewise probably not have an existing relationship with the patient unless she has previously been to the clinic for an abortion or other service provided by the clinic.

69. Denied. Multiple provisions of the law require contact and communication with the outside covering physician in order to facilitate continuity of patient care in the event complications arise.

70. Denied as phrased.

71. Denied as phrased. The physician who provided the abortion or the outside covering physician should continue to manage the care of the patient, even if other specialists are needed to treat certain complications that arise.

72. Denied.

73. Denied.

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

74. Denied.

75. Defendant is without sufficient information to admit or deny the allegations of Paragraph 75 of the Complaint.

76. Defendant is without sufficient information to admit or deny the allegations of Paragraph 76 of the Complaint.

77. Defendant is without sufficient information to admit or deny the allegations of Paragraph 77 of the Complaint.

78. Defendant is without sufficient information to admit or deny the allegations of Paragraph 78 of the Complaint.

79. Defendant admits that there are currently five licensed reproductive health centers in Alabama. Defendant has no way of knowing how many more (or less) will be open (or closed) in the future.

80. Defendant does not know the impact, if any, of the closure of WAWC, should such closure occur. To the extent any response is required, the allegations of Paragraph 80 of the Complaint are denied.

81. Defendant is without sufficient information to admit or deny the allegations of Paragraph 81 of the Complaint.

82. Defendant is without sufficient information to admit or deny the allegations of Paragraph 82 of the Complaint.

83. Defendant is without sufficient information to admit or deny the allegations of Paragraph 83 of the Complaint.

84. Defendant is without sufficient information to admit or deny the allegations of Paragraph 84 of the Complaint.

85. Defendant is without sufficient information to admit or deny the allegations of Paragraph 85 of the Complaint.

86. Defendant is without sufficient information to admit or deny the allegations of Paragraph 86 of the Complaint.

87. Defendant is without sufficient information to admit or deny the allegations of Paragraph 87 of the Complaint.

88. Defendant is without sufficient information to admit or deny the allegations of Paragraph 88 of the Complaint.

89. Defendant is without sufficient information to admit or deny the allegations of Paragraph 89 of the Complaint.

90. Denied.

91. Denied.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

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

92. Defendant adopts and incorporates by reference the foregoing paragraphs of this Answer.

93. Denied.

**COUNT 2**

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

94. Defendant adopts and incorporates by reference the foregoing paragraphs of this Answer.

95. Denied.

The unnumbered WHEREFORE paragraph immediately following Paragraph 95 does not require a response from Defendant. If a response were required, Defendant would deny that Plaintiffs are entitled to any relief in this matter.

**DEFENSES**

1. Defendant denies each and every material allegation of the Complaint not specifically admitted herein and demands strict proof thereof.

2. Plaintiffs lack standing.

3. Plaintiffs' claims fail to state a claim for which relief can be granted.

4. Plaintiffs failed to exhaust their administrative remedies.

5. Plaintiffs are not entitled to any relief in this case.

6. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, and/or laches.

7. Plaintiffs have failed to mitigate their damages.

8. Defendant avers that Plaintiffs are not entitled to the recovery of attorneys' fees in this case, regardless of the outcome.

9. Plaintiffs' claims are barred by the applicable statutes of limitations.

10. Defendant reserves the right to amend or supplement this Answer.

Respectfully submitted this the 31st day of July 2015.

s/ Bethany L. Bolger

P. Brian Hale

Bethany L. Bolger

Carol R. Gerard

*Assistant Attorneys General on behalf of Defendant,  
Donald E. Williamson, M.D.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 31st day of July 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve a copy of same upon the following counsel of record:

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s/ Bethany L. Bolger

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