

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WEST ALABAMA WOMEN’S CENTER and
WILLIAM J. PARKER, MD, on behalf of
themselves and their patients,

Plaintiffs,

v.

DONALD E. WILLIAMSON, MD, in his
official capacity as State Health Officer,

Defendant.

CIVIL ACTION

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

STIPULATED ORDER

Come now the Parties and hereby stipulate to entry of an order by the court with the following terms:

1. Pursuant to Alabama Administrative Code, Rule 420-1-2-.09, Defendant Williamson has granted Plaintiff West Alabama Women’s Center a waiver from Ala. Admin. Code, Rule 420-5-1-.03(6)(b) (the “Regulation”) for a period of one year, expiring on August 24, 2016. A copy of the waiver is attached hereto as Ex. A.

2. Plaintiffs shall continue to abide by the policies and protocols submitted to the Court in connection with their Motion for a Temporary Restraining Order and/or Preliminary Injunction, docs. nos. 4, 18. Plaintiffs shall also continue to make reasonable, good faith efforts to comply with the Regulation while it remains in effect, as set forth in the Court’s August 13 Opinion, doc. no. 23-1.

3. The Alabama Department of Public Health (“DPH”) shall initiate the rulemaking process pursuant to the Alabama Administrative Procedure Act, §41-22-1, et seq., Code of Ala. 1975, as soon as possible to modify the Regulation so that it will meet DPH’s goal of ensuring

the health and safety of patients without creating an undue burden as discussed in the Court's August 13 Opinion, doc. no. 23-1.

4. Further litigation on the merits in this matter is stayed to allow DPH to engage in the rulemaking process as set forth above. If no changes to the rules are promulgated or the Alabama Legislature exercises its right under Alabama Code § 41-22-23 to disapprove the rule, then the Plaintiffs shall have up to 60 (sixty) days from the end of the process to move this Court to lift the Stay, amend the Complaint, and/or seek other appropriate relief.

5. Plaintiffs shall have up to 30 (thirty) days from the effective date of the final rule, in which to review the rule and move this Court to dismiss this action, lift the Stay, amend the Complaint, and/or seek other appropriate relief.

6. If a final rule does not become effective by 30 (thirty) days prior to the date of the expiration of the waiver, Defendant agrees that the waiver will be extended for an amount of time necessary to complete the rulemaking process, but no less than 30 (thirty) days after the effective date of a final rule.

7. The Stay of this litigation may be lifted at any time by order of the Court. Should a party move the Court to lift the stay in litigation, the other party will have no less than 30 (thirty) days to respond before the Court rules on the motion, provided however that this period will be shortened in accordance with Fed. Rule Civ. P. 65 should Plaintiffs seek to lift the stay in order to obtain emergency relief.

8. Nothing in this order precludes the parties from jointly requesting the court to modify any terms of this order.

9. The Court shall retain jurisdiction over this matter during the Stay and until such time as a dismissal or final judgment is issued.

SO ORDERED this ___ day of August, 2015.

UNITED STATES DISTRICT JUDGE

Agreed as to form and substance:

/s/ Alexa Kolbi-Molinas

Alexa Kolbi-Molinas*
New York State Bar No. 4477519
Andrew Beck*
New York State Bar No. 4740114
Jennifer Lee*
New York State Bar No. 4876272
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
akolbi-molinas@aclu.org
abeck@aclu.org
jlee@aclu.org
(212) 549-2633

Randall C. Marshall
ASB-3023-A56M
ACLU FOUNDATION OF ALABAMA, INC.
P.O. Box 6179
Montgomery, AL 36106-0179
rmarshall@aclualabama.org
(334) 420-1741

Attorneys for Plaintiffs
**admitted pro hac vice*

s/ Bethany L. Bolger

P. Brian Hale
Bethany L. Bolger
Carol R. Gerard
ALABAMA DEPARTMENT OF PUBLIC HEALTH
P.O. Box 303017
Montgomery, AL 36130-3017
T | (334) 206-5209
F | (334) 206-5873
brian.hale@adph.state.al.us
bethany.bolger@adph.state.al.us
carol.gerard@adph.state.al.us

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

Exhibit A



STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH

Donald E. Williamson, MD
State Health Officer

August 24, 2015

Gloria Gray
West Alabama Women's Center, Inc.
535 Jack Warner Pkwy., Ste. 1
Tuscaloosa, AL 35404

Dear Ms. Gray:

Re: Reconsideration of Request for Waiver of Abortion or Reproductive Health Center
Rule 420-5-1-.03, *Ala. Admin. Code*, for West Alabama Women's Center

Your request for a waiver of certain provisions of the State Board of Health ("Board") Rules for Abortion or Reproductive Health Centers on behalf of West Alabama Women's Center ("WAWC") has been reconsidered. The rule provisions sought to be waived relate to continuing medical care, specifically those requiring that:

- (1) Each abortion or reproductive health center have available to its patients a physician with admitting privileges at a local hospital to provide care for complications arising from an abortion twenty-four hours a day, seven days a week. If no physician at the center can meet this requirement, then the center must enter into a written contract with an outside physician who has local hospital privileges permitting that physician to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures necessary to treat abortion-related complications. The contract with the outside physician must require him or her to agree to be available to treat and manage all complications for the center's patients that may reasonably arise as a result of abortion. Rule 420-5-1-.03(6)(b), *Ala. Admin. Code*.
- (2) When the physician with local hospital admitting privileges (whether an outside or substitute physician meeting all the requirements) is not available to treat and manage complications for the center's abortion patients, the center must cease performing abortions 72 hours in advance of the physician unavailability. Rule 420-5-1-.03(6)(c), *Ala. Admin. Code*.

Your request for a waiver provided that the physician with local hospital admitting privileges long associated with WAWC retired in December of 2014 and that a replacement

Ms. Gray
Page 2
August 24, 2015

physician seeking full-time employment with WAWC had been denied privileges by the local hospital. Efforts to engage an outside covering physician with the required privileges were not successful. It further provided that, historically, both WAWC and the physician seeking full-time employment have excellent safety records and that complications from abortion are rare.

Your request was initially denied on May 18, 2015, based upon the position that granting the waiver would unreasonably increase the risk of harm to the public, or undermine the public health purpose furthered by the rule provisions involved; it further appeared that you requested a permanent waiver which is not allowed by the Board's rules. Since that time, litigation was filed in federal district court by WAWC and its physician to challenge the constitutionality of the rules you sought to have waived, as applied to your circumstances. On August 4, 2015, the federal district court entered a temporary restraining order enjoining me, in my capacity as State Health Officer, and those acting in concert with me, from enforcing these rules against WAWC. That was followed by an opinion from the federal district court on August 13, 2015, providing the reasoning for the court's decision for the entry of the temporary restraining order, including that while the rules are facially neutral, the available evidence demonstrated that the justifications for enforcement of the rules in your circumstances were outweighed by the burden caused to women due to the actions of others outside of the Board's control.

It is in the Board's interest to have a set of rules for abortion or reproductive health centers that may be uniformly applied to all centers; it is also in the Board's interest to have a rule that adequately addresses continuity of care and that is not subject to legal challenge as being an unconstitutional burden to a woman's access to abortion. Accordingly, WAWC is granted a waiver from complying with Rule 420-5-1-.03(6)(b), *Ala. Admin. Code*, for a period of one year. During this period, WAWC will be expected to follow the policies and procedures relating to continuity of care that were submitted as part of your waiver application. Also during this period, the Alabama Department of Public Health will study, formulate and propose a new rule relating to continuity of care for approval by the Board. This waiver is subject to extension in the event the rulemaking process has not been completed within one year.

Sincerely,



Donald E. Williamson, M.D.
State Health Officer

cc: W.T. Geary, Jr., M.D.
P. Brian Hale