

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD OF KANSAS AND
MID-MISSOURI, INC., and
ORRIN MOORE, MD,

Plaintiffs,

v.

DEFENDANTS KIMBERLY J. TEMPLETON,
MD; EUSTAQUIO O. ABAY, II, MD;
MICHAEL J. BEEZLEY, MD; RAY N.
CONLEY, DC; GARY L. COUNSELMAN,
DC; ROBIN D. DURETT, DO; ANNE
HODGDON; JOEL HUTCHINS, MD; DAVID
LAHA, DPM; M. MYRON LEINWETTER,
DO; RICHARD MACIAS, JD; GAROLD O.
MINNS, MD; JOHN F. SETTICH, PHD;
CAROLINA M. SORIA, DO; AND TERRY L.
WEBB, DC, Members of the Kansas Board of
Healing Arts,
ROBERT MOSER, MD, Secretary of the Kansas
Department of Health and Environment,
DEREK SCHMIDT, Attorney General of the
State of Kansas, and
STEPHEN M. HOWE, District Attorney for
Johnson County, Kansas, in their official
capacities,

Defendants.

Case No. 2:13-cv-02302-KHV-KGG

**JOINT STIPULATION TO DISMISS WITHOUT PREJUDICE PLAINTIFFS’
SECOND AND THIRD CLAIMS CHALLENGING K.S.A. §§ 65-6709(b)(5) and (b)(6)**

WHEREAS, Plaintiffs filed this action challenging, *inter alia*, the requirement of K.S.A. § 65-6709(b)(5) that requires, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the physician who is to perform

the abortion (the referring physician or a qualified person) inform the woman in writing that “the abortion will terminate the life of a whole, separate, unique, living human being”;

WHEREAS, Plaintiffs filed this action challenging, *inter alia*, the requirement of K.S.A. § 65-6709(b)(6) that requires, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the physician who is to perform the abortion (the referring physician or a qualified person) inform the woman in writing that

by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery;

WHEREAS, K.S.A. § 65-6710 requires the Kansas Department of Health and the Environment to publish materials (KDHE materials) that contains the same information as is required under K.S.A. §§ 65-6709(b)(5) and (b)(6);

WHEREAS, K.S.A. § 65-6709(d) requires that, as a condition of a woman’s ability to give valid consent to an abortion, at least 24 hours before the performance of an abortion, the woman is given a copy of the KDHE materials;

WHEREAS, the Defendants agree that Plaintiffs’ obligations under K.S.A. §§ 65-6709(a) and (b) are fully satisfied by their compliance with K.S.A. § 65-6709(d) to the extent that the KDHE materials contain the same statements required to be provided by K.S.A. §§65-6709(a) and (b); and

WHEREAS, the parties agree that the KDHE materials presently contain the statements required by Kan. Stat. Ann. §§ 65-6709(b)(5) and (b)(6);

The parties stipulate as follows:

1. Plaintiffs' Second and Third Claims for Relief challenging K.S.A. §§ 65-6709(b)(5) and (b)(6) are hereby withdrawn without prejudice.
2. Plaintiffs may refile their withdrawn claims should the contents of the KDHE materials change in the future so as to no longer contain the same information as required to be provided by Plaintiffs pursuant to K.S.A. §§65-6709(b)(5) and (b)(6).
3. The Court may enter the attached order, dismissing Plaintiffs' Second and Third Claims for Relief challenging K.S.A. §§ 65-6709(b)(5) and (b)(6) without prejudice.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th of August, 2013, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send a notice of the electronic filing to the following parties: Jeffrey A. Chanay, Deputy Attorney General, Civil Litigation Division, Office of Kansas Attorney General Derek Schmidt, 120 SW 10th Avenue, 3rd Floor, Topeka, KS 66612-1597; Thompson Ramsdell & Qualseth, P.A., Todd N. Thompson, Stephen R. McAllister, Shon D. Qualseth, Sarah E. Warner, 333 W. 9th Street, P.O. Box 1264, Lawrence, KS 66044.

By s/ Arthur A. Benson II

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