EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

MKB MANAGEMENT CORP, D/B/A RED RIVER WOMEN'S CLINIC, AND KATHRYN L. EGGLESTON, M.D.,	)	Civil No: 1:13-CV-071
Plaintiffs,	)	
-vs-	)	
BIRCH BURDICK, in his official capacity as State Attorney for Cass County; WAYNE STENEHJEM, in his official capacity as Attorney General for the State of North Dakota; and LARRY JOHNSON, M.D.; ROBERT TANOUS, D.O.; KATE LARSON, P.A.C.; NORMAN BYERS, M.D.; CORY MILLER, M.D.; KAYLEEN WARDNER; GAYLORD KAVLIE, M.D.; KENT MARTIN, M.D.; KENT HOERAUF, M.D.; BURT RISKEDAHL; JOHNATHAN HAUG, M.D.; AND ROBERT J. OLSON, M.D., in their official capacities as members of the North Dakota Board of Medical Examiners,	)	
Defendants.	)	

D E P O S I T I O N

of

TAMMI KROMENAKER

November 26, 2013

12:30 p.m.

Taken at: JOE TURMAN OFFICES
505 North Broadway, Suite 207
Fargo, North Dakota

REPORTER: KRISTEN M. KEEGAN

APPEARANCES

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EXHIBITS

WHEREUPON,
the following proceedings were had
to-wit:

TAMMI KROMENAKER, a witness, called by the Defense, being first duly sworn, testified on her oath as follows:

BY MR. GAUSTAD: EXAMINATION

Q. Will you state your name.
A. Tammi Kromenaker.
Q. Okay. I may mispronounce the name --
A. That's fine.
Q. -- and I apologize for that. My name is Dan Gaustad. I represent the state defendants in this action. As I understand, you're here as the designated -- corporate designee for -- is it MKB?
A. MKB Management, yes.
Q. Yes. You were here during the deposition of Dr. Eggleston --
A. Yes.
Q. -- correct? So you kinda understand what the rules are? I don't think I need to go through them again unless there's some confusion?
A. Nope. That's fine.
Q. Have you been deposed before?

A. No, I have not.
Q. For today's deposition, what did you do to prepare? Who did you speak to?
A. My attorneys.
Q. Anybody else?
A. No.
Q. Did you review anything?
A. No, I did not.
Q. Okay. Your involvement in any other litigation and I'm talking just anything as a witness, as a plaintiff, defendant, if you've been involved in litigation before?
A. With MKB in other cases, yes.
Q. Okay. And one was a State Court case that's still going on, right?
A. Correct.
Q. Any other cases with MKB?
A. Yes. Well, that case which S.B. 2305 has been added to, and in 2001, there was a case, a false advertising case.
Q. That was brought by who?
A. A citizen of North Dakota.
Q. Do you remember who that was?
A. Amy Jo Matson.
Q. She brought it against the clinic?

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A. Yes.
Q. Tell me -- I don't understand. False advertising?
A. We had a brochure that stated an abortion does not cause breast cancer, and she disagreed with that and accused us of false advertising.
Q. Okay. What was the outcome?
A. We prevailed at the North Dakota Supreme Court.
Q. Okay. Any other -- you were -- you're the director at that time, right?
A. Yes.
Q. Okay. And so your involvement would have been kinda like a witness or representing the clinic in that case? Were you actually a named party?
A. I was not a named party.
Q. Okay. Do you know who else besides the clinic was the named party in that action?
A. No.
Q. And was Amy Jo, I didn't get the last name. I didn't write it down.
A. Matson.
Q. Matson. Was she the only plaintiff?

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A. Yes.
Q. You were successful at the North Dakota Supreme Court. What happened at the trial court level?
A. We prevailed at the trial court as well.
Q. On both levels?
A. Yes.
Q. Okay. Was there -- so you prevailed at both the Trial Court and the Supreme Court level?
A. Yes.
Q. Okay. Any other litigation you've been involved with? We've talked about this one obviously and --
A. Yes. In 2009, the State of North Dakota passed a bill regarding ultrasounds that we challenged and were able to come to a settlement, I believe is the proper term with the State on that.
Q. Okay. What was the statute that -- what was the problem in your estimation?
A. It was a confusing statute that we weren't sure how to implement at the clinic.
Q. Okay. What was the statute? I mean,

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as a result of the settlement, did you clear up -- you got some clarity?
A. Yes. We were able to clarify what the statute called for and what we were supposed to do at the clinic.
Q. Okay. And that deals with ultrasounds?
A. Correct.
Q. Tell me what it is then that you have to -- the clarity.
A. We have to offer women the opportunity to receive and view an active ultrasound of her pregnancy at least 24 hours in advance.
Q. Of the abortion?
A. Of the abortion. It's part of the informed, 24 hour informed consent process.
Q. Okay. And it is a 24 hour process, right? That before the woman can have an abortion, there's a 24 hour kinda waiting period?
A. That's correct.
Q. 'Cause I thought Dr. Eggleston thought it was 24 to 48 hours, but it is just 24 hours, right?
A. The waiting period in North Dakota is

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a 24 hour waiting period.
Q. Okay. Any other litigation that you've been involved in?
A. Not that I can recall.
Q. How about any -- have you been involved or the clinic been involved in any type of complaints with any type of medical boards?
A. No.
Q. Your education. Do you have a degree? Post high school degree?
A. Yes. I have a bachelor's degree in social work.
Q. When did you get that?
A. 1994.
Q. Where?
A. Moorhead State University.
Q. Did you ever use -- I mean, in a -- like a social services -- an agency, did you ever work for a social services agency?
A. Yes, I did.
Q. Where?
A. Becker County Social Services.
Q. And what did you do there?
A. I was a child support officer.
Q. And when was that?

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A. 1995 and 1996.
Q. So right out of college?
A. About a year later.
Q. What did you do between that year you graduated before you came to social services?
A. I worked at another -- the former abortion clinic in Fargo part time, and I also worked at the YWCA Women's Shelter part time.
Q. And that was that interim period between when you graduated from MSU and this Becker County Social Services?
A. Yes. I worked at both of those places.
Q. In that one year period of time roughly?
A. Yeah.
Q. Okay. And why did you decide to go to Becker County Social Services?
A. It was full-time employment.
Q. How long did you work there?
A. Approximately nine months.
Q. Why'd you leave?
A. I had a baby.
Q. And then what did you do after you -- Becker County?

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A. Then I became a full-time staff person at Fargo Women's Health Organization.
Q. Is that the former clinic that was before this MKB?
A. Yes.
Q. And what did you do there?
A. I was the assistant administrator.
Q. And as an assistant administrator, what did you -- what were your duties?
A. Much of what I do now just overseeing day-to-day operations.
Q. So what you did for the Fargo Women's Health Organization is similar to what you're doing today?
A. Similar, yes.
Q. Okay. Tell me a difference.
A. I had less responsibility when I first started there --
Q. Okay.
A. -- at the Fargo Women's Health Organization.
Q. How long did you work for Fargo Women's Health Organization?
A. I began part time there in November of 1993, full time 1996, and I left there in July

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of 1998.
Q. Why?
A. To start working at Red River Women's Clinic.
Q. And that Fargo Women's Health Organization, that doesn't exist anymore, right?
A. No. It has closed.
Q. When did it close?
A. I believe the end of January 2001.
Q. And was there a problem that you decided to go to the Fargo Women's Clinic versus the Fargo Women's Health Organization that caused you to make the transfer?
A. I liked my boss better.
Q. Over at the clinic -- the clinic you're at now?
A. Correct.
Q. It was a lateral move though wasn't it? From a professional standpoint?
A. Basically yes.
Q. And you've been at the Fargo Women's Clinic since '98 then?
A. I've been at Red River Women's --
Q. Excuse me.
A. -- Clinic since July of 1998, yes.

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Q. Yeah. Let's talk about what your position was when you first came over in '98. What was --
A. I was the clinic director at that time and have been the clinic director since that time.
Q. Okay. So you became the clinic director all the way from '98 forward?
A. Correct.
Q. Okay. We'll get into that in a little bit. Any type of post-graduate degrees that you've got?
A. No.
Q. How about any type of licenses?
A. I had a social work license at one time, and I have not renewed it.
Q. When was it last renewed?
A. I got it right out of college, and I honestly don't remember how long they're active for. I probably renewed it -- I know I took continuing education, so I probably renewed it at least once. So it may have been a year or two or up to four. I honestly don't remember how long Minnesota licenses for.
Q. Okay. You've never been licensed in

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North Dakota as a social worker?
A. No, I have not.
Q. And so it's been a number of years since you've had your social work license; is that fair?
A. Correct.
Q. Probably more then ten years?
A. Correct.
Q. Any other licenses that you -- driver's license obviously, right?
A. Yes. I have a driver's license.
Q. Any other -- and I think you understand what I'm -- any other type of --
A. I have no other professional licenses.
Q. How about any type of designations? Professional designations? Special designations that you might hold?
A. What do you mean by designations?
Q. Something more than just a licensed social worker. You've attained some board certification or anything like that?
A. No, I have not.
Q. Have you served on any type of boards or organizations?

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A. Yes. I'm currently on the board of The Abortion Care Network.
Q. And how long have you been on that?
A. Approximately three to four years.
Q. How do you get -- does somebody nominate you or how do you get on that board?
A. You make an application and you gain board approval.
Q. How many members are on that board?
A. Approximately a dozen.
Q. Is this a national organization?
A. Yes, it is.
Q. What does it do?
A. The Abortion Care Network is an organization that represents independent abortion providers.
Q. What do you mean by independent abortion providers?
A. Independent abortion providers are providers like Red River Women's Clinic that have no national affiliate.
Q. And I'm gonna ask you: What national affiliate? Give me an example of that.
A. For an example, Planned Parenthood is part -- is a, you know, the Planned Parenthood

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Clinic in Sioux Falls that Dr. Eggleston referenced, is part of the affiliate of Planned Parenthood which has a national organization Planned Parenthood Federation of America. So an independent abortion provider is a doctor in their solo practice, a clinic like Red River Women's Clinic, or a hospital that has no -- basically not Planned Parenthood.
Q. Does it belong to this National Abortion Federation though?
A. Does what?
Q. The Fargo clinic.
A. Red River Women's Clinic is a member of the National Abortion Federation, yes.
Q. Okay. And how is that different than between that Planned Parenthood and National Abortion Federation?
A. NAF is a professional membership organization and Planned Parenthood is a corporation.
Q. Okay. And so Planned Parenthood runs the clinics? Is that -- and the National Abortion --
A. I don't work for Planned Parenthood so I'm not exactly sure how that works. That's

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my understanding.
Q. Okay. That's your understanding that they actually operate the clinics?
A. Yes.
Q. Okay. And the National Abortion Federation, they don't run the clinics? They evidently provide some protocol but --
A. They do not run clinics. Correct.
Q. Any other boards?
A. I'm also on the board of The North Dakota Women in Need Abortion Access Fund.
Q. And how long have you been on that?
A. 14 years.
Q. And how many board members are there?
A. Approximately a dozen.
Q. And how does one get on that board?
A. Makes an application and the board determines if that person will be on the board or not.
Q. Okay. And that's just within the State of North Dakota, right?
A. Yes.
Q. What does this organization do?
A. The North Dakota Women Abortion Access Fund is a 501c3 charitable fund that helps

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women seeking reproductive healthcare services at Red River Women's Clinic afford those services.
Q. So they pay the fees then?
A. They assist with grants for services.
Q. Do they issue the grants themselves?
A. The Red River Women's Clinic bills the WIN Fund for the grants given to women.
Q. Okay. And so the funds come from this access fund organization that you're involved with, correct?
A. Yes.
Q. So there's a -- I'm gonna put it in laymen's terms. If the cost is let's say $500, the woman comes up with $200, this access fund would then make up the $300 difference?
A. Not every time.
Q. No. But to the extent that they do, is that kind of the way it works? Just as kind of an example?
A. If the woman meets the guidelines set out by the board of the WIN Fund to receive grant money, it will be designated towards her, yes.
Q. Okay. Any other boards?
A. Yes. The North Dakota Planned Parenthood Advisory Council.

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Q. And what is that?
A. It is a board for the local Planned Parenthood affiliate, and we advise the Planned Parenthood public affairs office and provide support.
Q. That I don't understand. What do you mean provide support? It's a lot of words that didn't say much to me that candidly.
A. I sit on the advisory committee of somebody who is knowledgeable about reproductive health in North Dakota, and I provide that information and -- to the Planned Parenthood affiliate.
Q. And that's I think Dr. Eggleston talked about some advocacy -- Planned Parenthood advocacy that she was involved with that. Is that the Planned Parenthood you're referring to?
A. I don't think Dr. Eggleston is involved in the advocacy. There's a public affairs office of the affiliate that she works for that is located here in Fargo, North Dakota.
Q. Okay. And is this Planned Parenthood Advisory Council kinda part of the Planned Parenthood National Organization?
A. It's associated with the St. Paul

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affiliate which is associated with Planned Parenthood Federation of America.
Q. So the answer is yes?
A. Yes.
Q. Okay. Any other organizations or boards you're -- you're on?
A. I was recently asked to join the Social Workers for Reproductive Justice Advisory Council. I don't think that's really considered a board though.
Q. Are you on that?
A. It's newly formed. That's all I can -- that's all I know about it at this point.
Q. Okay. You've been asked but you don't know if you're on it or not?
A. I know I'm on it. It's a very new organization. We have not even had a meeting.
Q. Okay. Do you know what the purpose of this organization is?
A. I don't think that's been -- I don't think the mission statement has been created.
Q. Okay. Any other boards?
A. Not that I can think of, no.
MR. GAUSTAD: Would you mark this, please.

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(Deposition Exhibit No. 8 was marked for identification.)
Q. Ms. Kromenaker, (phonetic) did I say that right?
A. Kromenaker.
Q. Kromenaker. Sorry. You have Exhibit Number 8 in front of you?
A. Yes, I do.
Q. And looking at the last page, that's your signature?
A. It is.
Q. Okay. We talked about you becoming clinic director in 1998, and I'm looking at paragraph 3. "As director, I am responsible for overseeing the Clinic's day-to-day operations." Do you see that?
A. Yes, I do.
Q. And then you describe what that means. As I understand, it includes personnel matters?
A. Correct.
Q. Tell me what you do with personnel matters.
A. I hire and schedule staff.
Q. You schedule Dr. Eggleston?

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A. I work with Dr. Eggleston on her schedule, yes.
Q. Is that -- and what about the other physicians that perform abortions? Are they scheduled through you?
A. Yes.
Q. Are those other physicians, are they OB/GYN or are they just in the family practice that Dr. Eggleston has?
A. All of our physicians are board certified family medicine.
Q. Okay. So are they OB/GYN or not?
A. No. They are family -- they are board certified in family medicine.
Q. Okay. And then you -- part of your day-to-day operations is the clinic's business affairs. Tell me what that means.
A. It means I run the pay roll, I pay the bills, oversee ordering supplies.
Q. Anything else that would fall within that business affair?
A. No, I don't think so.
Q. And then you say, "serving patients in virtually all non-medical capacities, including education, counseling, and billing."

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Do you see that?
A. Yes.
Q. Tell me what you do as far as the non-medical education.
A. I often make appointments, and when patients are in the clinic, I answer questions and provide them information.
Q. What type of information do you provide them?
A. Information about the services that Red River Women's Clinic offers.
Q. Are patients in there for only one reason to get an abortion?
A. No.
Q. Okay. How much of your -- of the Red River Clinic is abortion? Percentage wise.
A. Over 90 percent.
Q. Would that be, you know, the revenue stream too? Is that what you're -- be 90 percent of the revenue is from abortions?
A. Yes.
Q. So tell me what the other ten percent comprises of.
A. We do walk-in pregnancy tests, sexual transmitted infection screenings, and provide

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birth control to non, you know, patients who are not having an abortion that day.
Q. And so you're providing the information primarily on the abortion services, correct?
A. No. I'm providing information on all of the services that we offer at the clinic.
Q. Okay. But if 90 percent of your services are abortion, it would be about 90 percent of the information you're providing would be about abortion?
A. That's correct.
Q. Is this information in written form or --
A. It's in various forms.
Q. Okay. Is it in written form that the State of North Dakota requires?
A. Yes.
Q. Okay. And you provide that information --
A. Yes.
Q. -- that's part of your day-to-day operations, correct?
A. Yes.
Q. Is there information that the clinic

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has prepared itself?
A. On our website we have information.
Q. But that's -- do you provide that then to the women when they come in? Is that part of your day-to-day operations?
A. Well, I maintain the clinic's website, so I believe that women receive information from us in a variety of ways --
Q. Okay.
A. -- both with the state required materials, verbally over the phone asking questions, they may visit our website ahead of time to get some of that information, and then when they're physically in the building, we provide them information both, you know, verbally, written, however they --
Q. When the patient comes in, are you the designated go-to person then to say if there's some question they have it's talk to Tammi?
A. What do you mean by when they come in?
Q. When they walk into your clinic and they're looking for information, are you the go-to person?

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A. No. We have many staff who are trained to provide information.
Q. Okay. And when you say trained, what training do they go to to provide that information?
A. We train our staff.
Q. Okay. How? Tell me what you do to train your staff.
A. We train our staff on Red River Women's Clinic protocols and how we conduct, you know, our services at our clinic. Many of our staff are also nurses so they've received training through their nursing course of -- course of education.
Q. Okay. Do they have any other special type of training that they go to so that they know what type of information, what type of responses should be given to patients?
A. Many staff go to professional conferences and we have ongoing, you know, staff meetings that Dr. Eggleston will be present at so that staff can ask questions of her.
Q. And she's the one that sets the protocols to the procedures for abortions, correct?

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A. Yes.
Q. What about as far as your non-medical counseling. What do you do there?
A. We educate --
Q. I'm asking about you. 'Cause you -- I'm talking about your day-to-day operations. And you say you serve virtually -- patients in virtually all non-medical capacities. And you've said counseling. So I'm asking about you.
A. I make many of the appointments, and I speak to many patients when they're in our building.
Q. So what is it that you do as far as counseling? I understand you make the appointments and you talk to them, but what is it that you're doing as far as this counseling is concerned?
A. It's part of our patient education process of talking with the woman about her circumstances and her situation and providing her information on what she needs from us that day.
Q. How many people are providing this non-medical counseling besides you?
A. Most of our staff are cross-trained in many areas, so it -- there's approximately

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five to seven people who, when I'm answering that question, I'm thinking of who knows how to be part of the patient education session.
Q. And these five to seven people are they -- are they all RNs? Do you know?
A. Well, I think I'm gonna -- say -- elaborate a little more that all or our staff are, you know, trained and educated to answer questions throughout the day whatever station a patient might, you know, be at at that time.
Q. And that training is through the clinic?
A. And in addition to some of our staff are nurses, part of their nursing education.
Q. How many nurses do you have on staff?
A. Approximately five to six.
Q. How many social workers do you have on staff?
A. I don't know that I can at this moment tell you every single person's educational degree. I know for a fact I have a social work degree and as I think about our staff, I don't know -- memorized what all of their, you know, degrees are.
Q. Have you ever advertised -- you're

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the clinic director, have you ever advertised saying hey we're hiring social workers?
A. No. I don't believe we've ever run a specific add for a social worker.
Q. How about like psychiatrist or a psychologist? How many are on staff?
A. Zero.
Q. Do you know if you have any licensed counselors on staff?
A. I do not have any licensed counselors on staff at this time, no.
Q. Have you ever had any licensed counselors on staff?
A. Yes, I have.
Q. When?
A. Sometime in the past decade.
Q. Okay. Do you know for a length of time they were employed?
A. I had a staff person who was getting her master's and licensing. I don't recall the exact dates when she was from master's to licensed and, you know, she worked at our clinic throughout that time.
Q. And she's no longer with the clinic, correct?

A. Correct.
Q. Do you know why she left?
A. She needed full-time employment.
Q. The billing is pretty self-explanatory I suspect? You send out the bills and you receive payments. Or is there something more to the billing?
A. No. It's a very straight forward. We don't bill patients. The patients pay the day that they receive their services.
Q. Before --
A. But billing --
Q. -- is that before they walk in? Do they come to the desk and say here's my money?
A. No.
Q. When is it in the process that they cut the check?
A. We don't take checks. Patients pay --
Q. It's an analogy. I'm sorry.
A. -- patients pay after we've determined how far along they are, what their blood type is, if they want STI testing or not, and what method of birth control they want or not.

Q. And -- 'cause that's all factored in to what the fees are going to be then?
A. That is correct.
Q. How much is it for an abortion?
A. An abortion in the first trimester is $550.
Q. And that's the first -- how many weeks of lmp is that?
A. Up to 12 weeks.
Q. Okay. And then after 12 weeks is it more?
A. Yes.
Q. How much?
A. 12 to 13 weeks is $600, 14 weeks is $750, 15 weeks is $850.
Q. And how long have you -- that fee structure been in place? Have there been changes?
A. There's been changes in the 15 years that we've been open. I believe the fee structure that's in place right now has been in place for at least the last -- we've not raised our prices in three to five years.
Q. Do you have any other responsibilities at the clinic other than what's

shown in Exhibit Number 3 -- or excuse me, paragraph 3 of Exhibit Number 8?
A. No.
Q. Why is it your fees, as far as the 12 to 13, why does it go up?
A. We have to pay the physician more.
Q. Do you know why that is?
A. My understanding it's standard to pay the physician more after the first trimester.
Q. But do you know why that's standard?
A. Because of their skill and expertise and the procedure may take a little bit more of their time.
Q. Okay. Any other reason that you know as to why it costs more?
A. No.
Q. Is there -- does the National Abortion Federation kinda set the standard?
A. No, they do not.
Q. In paragraph 4, of your declaration, which is Exhibit Number 8, you say the clinic is only open one day per week, correct?
A. That's what it says, yes, and that is generally true.
Q. Is there a time when it's open more

then one day per week? Or excuse me, performs abortions more then one day per week?
A. Yes.
Q. How often does that happen?
A. Once every couple of months.
Q. Okay. And how many days does -- every couple of months does it occur? Is it two days? Three days? Four days?
A. Two days per week.
Q. So the maximum is two days per week?
A. That is generally the practice, yes.
Q. And why is it that you're only performing abortions one day per week?
A. That's our physician availability and our patient demand.
Q. And you're talking doctor -- the three physicians that you've got? Those are -- they can only come in one day a week?
A. Correct.
Q. Have you ever advertised to bring a physician on full time?
A. No.
Q. Why not?
A. We don't have the capacity to provide a physician with full-time work.

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Q. Just not enough patients?
A. Correct.
Q. Any other reason why you wouldn't bring on a physician more then just one day per week to do abortions?
A. No.
Q. Is there any other reason why you're not open more then one day a week other than we don't have enough patients?
A. We're only open to perform abortions one day a week due to patient demand and our physician schedule.
Q. Okay. And the physician schedule, that's based upon patient demand too, isn't it?
A. Yes.
Q. So ultimately it's, we just don't have enough patients to warrant more then one day per week?
A. That's correct.
Q. Any other reason why you don't perform abortions more then one day per week?
A. None that I can think of.
Q. And there's nothing in the state statutes that you're aware of that would preclude you from being open or offering abortions more

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then one day a week, right?
MR. BROWN: I'm gonna object to that. That's a legal question. She doesn't have any familiarity. She's talking about the practices not the law.
Q. Are you -- thank you. Are you aware of anything that would preclude you from being -- from providing abortions more then one day per week?
MR. BROWN: You can answer the question.
THE WITNESS: I don't know of any law, no.
Q. How about anything that would preclude you other than the number of patients that want to have an abortion is -- are there any other reasons why you couldn't offer abortions more then one day per week?
A. None that I can think of.
Q. Then looking at paragraph 5 of your declaration. Do you have that in front of you?
A. Yes.
Q. Okay. In that paragraph you set out the reasons why women seek abortion services. Do you see that?

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A. Yes, I do.
Q. You say, "Fifty-eight percent of the clinic's patients already have children and many do not feel they can adequately parent and support additional children." Do you see that?
A. Yes.
Q. Where would I look to get this information to support that?
A. From the North Dakota Department of Health reports.
Q. And where would that show me that they do not feel they can adequately parent and support additional children?
A. That's from information that patients provide to us.
Q. And where would I look to find that type of information then?
A. Patients have a form that they fill out plus they also tell us that verbally.
Q. Okay. So I'd look to those forms, correct?
A. Yeah. There's forms that the patients tell us about their reasons plus they also, when they make their appointment, when they're at the clinic, will say why they are not

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going to continue this pregnancy.
Q. And is that type of information then put into their medical records?
A. The patient fills out a form.
Q. Okay. But when they're at the clinic does that -- do they tell you why they're seeking an abortion? Does that then show up in their medical records?
A. You know, if I'm making an appointment for somebody and she tells me her story over the phone, no, I do not write that story down on the appointment sheet.
Q. Do you know if others write this type of information in those medical records?
A. Not when a patient tells us information over the phone.
Q. How about in person?
A. There are times where a patient will tell us things that we may record but it's not -- there's not a specific form that -- I'm imagining a checkbox form where we, you know, write down this, that, or the other that the patient said.
Q. What about a non checkbox? Tell me the comments the patients made that you would include within their medical records.

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A. Yeah. We may write down some of what they share with us.
Q. So that fifty-eight percent that you're referring to in paragraph 5, that only relates to the clinic's patients having children. Does that fifty-eight percent also mean -- that's -- I'm trying to connect the dots here with the -- fifty-eight percentage is only with respect to the patients that already have children, correct?
A. Fifty-eight percent of our patients already have had at least one child, yes. That is correct.
Q. Going on in that sentence, that fifty-eight percent doesn't necessarily reflect the -- that they do not feel that they can adequately parent and support additional children. You haven't done that math calculation, have you?
A. I don't calculate or tabulate patients' reasons.
Q. Okay. But do you follow what I'm saying is you've got a 50- -- you've got a specified percentage of -- in paragraph 5. That specified percentage only relates to your patients that already have children, correct?

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A. Fifty-eight percent of the clinic's patients already have children. That is correct.
Q. Okay. And you haven't done that same type of tabulation with respect to those that do not feel they can adequately parent and support additional children, correct?
A. That is correct. I have not tabulated that.
Q. You make reference to younger patients. Do you see that in paragraph 5?
A. Yes.
Q. About their education and development and ability to provide for children in the future. Are -- what percentage of your patients are minors?
A. Approximately five percent.
Q. And you also make reference to, they seek abortions because they are pregnant as a result or rape, or domestic violence. How many of your patients do you know are pregnant because of a rape or -- do you know?
A. No. I don't tabulate that.
Q. Do you do any tabulation as to how many patients are subject to domestic violence?
A. No, I do not.

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Q. How about with respect to -- that the pregnancy threatens their health?
A. No, I do not.
Q. Does the clinic -- does the clinic calculate that at all?
A. No.
Q. But that's something as far as the pregnancy threatens their health, you would certainly see that in the medical records, wouldn't we?
A. I'm not a physician and can't -- can you rephrase the question?
Q. Well, if the pregnancy threatens the health, and they're in there -- they're seeking an abortion because -- you said it threatens their health. Wouldn't I expect to see that in their medical records?
A. It's possible.
Q. Have you ever seen -- you don't know -- poorly worded question. Are you aware of an instance where an abortion was performed because of -- the pregnancy threatens the health and it didn't appear in the medical records?
A. I have instances where patients have been recommended not to continue their pregnancy.

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And we have, at times, received records of their current health condition from their referring provider.
Q. And that -- those records would then be within your records for that patient, correct?
A. If we had -- yes. Yes.
Q. And if the patient talked to you about I've been the subject of domestic violence, you'd expect to see that in their records too, wouldn't you?
A. Not necessarily. Domestic violence is very common and we hear it many times from patients so it's not something that is -- that would always be written down or there's not a checkbox for that.
Q. Okay. How about if they were the subject of rape? Would we expect to see that in their medical records? That they've disclosed to you I was raped and I became pregnant?
A. If a patient discloses it, it's possible it would show up in her medical record.
Q. And so you're telling me it's possible it may not show up as well?
A. That is correct.
Q. And then you go on to say that

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patients are informed of the risks associated with abortion and childbirth, and this is not the only thing that women consider in deciding whether or not to have an abortion. Do you see that?
A. Yes, I do.
Q. What risks are you referring to as far as associated with abortion?
A. As part of the required 24 hour informed consent statements that we read to a woman, we list the risks of abortion.
Q. That's it? Is there anything else that you're aware of?
A. We read quite a bit to the patient as part of that informed consent process.
Q. Okay. And that's coming from the State of North Dakota?
A. It is the requirement of the State of North Dakota, yes.
Q. Other than what's in that informed consent statement, what other risks that you are aware of that are associated with abortion?
A. What risks am I aware of?
Q. Well, because you say, "while the patients are informed of the risks associated

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with abortion," is that the only thing that you talk to them about is what the State of North Dakota requires you to --
A. We read the required statements to the patients and a patient -- patients will often ask questions and we answer those questions.
Q. Concerning the risks associated with abortion?
A. Correct.
Q. And those risks associated with abortion, as I understand, those are the things that are within that informed consent from the State of North Dakota?
A. Yes.
Q. Do you know do you talk to the patients about any other risks that may not be listed in that informed consent that are associated with abortion?
A. Yes. Patients ask many questions about the risks of abortion.
Q. Give me an example of --
A. Am I going to die.
Q. Any other --
A. Will my uterus fall out.
Q. And that's all listed from that

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informed consent or is that --
A. No. We do not tell them that their uterus will not fall out.
Q. I understand.
A. That's not part of the informed consent.
Q. I understand that it's a question that they're posing after they've read that informed consent statement, correct?
A. Sometimes before.
Q. What are the risks of -- associated with childbirth that you are referencing in paragraph 5?
A. That's also required as part of the informed consent.
Q. So it's -- whatever's in that informed consent, that's what you were referencing in these risks associated with abortion or childbirth?
A. Yes.
Q. And then you've got that inform consent and you go on to say, that is not the only thing that women consider in deciding whether or not to have an abortion," and I've got some here listed in paragraph 5. Is there

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anything else that you know of as to what women consider in whether or not to have an abortion? Other than what's enumerated in paragraph 5.
A. I think it's alluded to in some younger patients but, you know, the ability to provide that's not only younger patients, so financial reasons. I believe -- I don't know that I could give you a complete list of every reason that every patient has ever, you know, told us. These are the general, sort of, most typical reasons that we hear but many -- you know, every women is unique, every women has a unique situation and will have her own reasons.
Q. And in paragraph 5, are these reasons why women would seek an abortion or actually have an abortion?
A. I believe women seek an abortion because they don't want to be pregnant for some reason.
Q. And tell me what reasons they consider not having an abortion. Do you know? If a patient comes and decides not to have an abortion, do you know what factors that --
A. Many of the same exact reasons.
Q. That are listed paragraph 5?

A. Yes.
Q. Do you need a break?
A. No, I do not. Thank you.
Q. You're statement in the last sentence of paragraph 5, you say, "women take several days or weeks to decide whether to continue the pregnancy or have an abortion." Do you see that?
A. Yes, I do.
Q. Tell me the -- when a woman first calls to schedule an appointment, what's the length of time before they're actually brought into the clinic?
A. At least 24 hours, and it can vary depending on the woman's financial situation, ability to get time off from work, provide child care if she has children she needs to, make the trip to Fargo, and our availability.
Q. And at that point when they call, have they made the decision, at least initially, that they want to seek an abortion? That's why they're trying at get an appointment at your clinic?
A. I would assume that somebody calling and saying I would like to make an appointment for an abortion has made that decision that that

is her intention.
Q. Okay. And so once that initial phone call is made, the decision has been made that she's going to seek and abortion, it's just trying to schedule things out is the problem? It could be -- it has to be at least 24 hours but if there's a longer period of time, it's just a scheduling problem then, correct?
A. Well, she, you know, has to wait at least the 24 hours required by law and then there's a variety of factors that may play into how soon she can get in. This sentence is referencing what I believe happens before she even makes the call to us.
Q. Okay. So when they make the call to you, they've already gone through this several days or weeks of deciding whether they want to continue the pregnancy or have an abortion?
A. That's my experience, yes.
Q. Have they ever told you when they call for the appointment, geez, this has taken me forever to decide?
A. Yes.
Q. And is that something that would get noted in the records somehow?

A. No.
Q. And tell me what information do you get from a woman when they call in for the appointment.
A. A lot.
Q. Tell me what's the protocol as to what the clinic requires to -- the information you're required to get.
A. We first ask her if she's confirmed the pregnancy with a pregnancy test, her name, age, date of birth, where she lives, her last period, whether or not she's been a patient at our clinic before, we ask her if she's had an ultrasound with this pregnancy, then we ask her a series of medical history questions. Would you like me to list those?
Q. Just -- go ahead. Yes.
A. We ask her what medications she's taking, we ask her if she has a history of asthma, diabetes, seizures, high blood pressure, we ask her if she has a history of heart surgery, or heart condition, we ask her if she has a -- if she's taking blood thinners or has a bleeding disorder, and we ask her if she has any other medical problems that she knows of and we also

ask her if she's been hospitalized for any reason other than childbirth.
Q. Okay. Those are things that are required by the clinic protocol, correct?
A. Dr. Eggleston has directed us to ask those questions to screen for medical situations that might require more information before the patient comes and sees us.
Q. Okay. And that would then be within their medical records? You retain that information?
A. That appointment sheet, it is part of her medical record.
Q. And to the extent that you -- is there space in that appointment sheet to add additional comments the patient may provide to you do during this communication?
A. Yes. There's spots where somebody -- if a patient tells me she's been raped, I will write rape on there because we also waive her fee at that time, so it's an indicator that this person is not going to be paying the fee.
Q. Okay. And to the extent that you might write down things like rape or domestic violence or the reasons why they're seeking an

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abortion, it would be within that type of initial appointment?
A. I generally don't make those kinds of notes on the appointment sheet. I would put rape. The only other note I would put is if the patient says she has, you know, an IUD.
Q. And these -- the items in paragraph 5, as I understand it, you're trying to explain what the impact of this Heartbeat Detection Bill has on women, correct? Your patients.
A. I think paragraph 5 is just explaining why women seek abortion services.
Q. Okay. Paragraph 7 of Exhibit Number 8. You say, "it would be difficult for most patients to schedule their abortion prior to the cutoff of approximately six weeks imposed by H.B. 1456."
A. Yes, I see that.
Q. And that's the Heartbeat Detection Statute, right?
A. Yes.
Q. Does that statute actually make reference to a time period? Do you know?
A. My understanding of H.B. 1456 is that it says no abortion can be performed once a

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detectable heartbeat is found.
Q. Okay. And you're assuming that that occurs at around six weeks?
A. Yes.
Q. Okay. So tell me what the purpose of paragraph 7 is. Is that then to demonstrate the impact or the harm of the women as a result of this Heartbeat Detection Statute?
A. Can you repeat the question?
Q. Yeah. You said paragraph 5 is -- your purpose was to explain why women seek abortions.
A. Yes.
Q. I'm trying to figure out what your purpose was in drafting paragraph 7. Was that to describe what the impact of the Heartbeat Detection Statute would have on your patients?
A. Yes.
Q. And I don't see anything in here about the impact, in your affidavit as part of summary judgment, the impact that 1456 would have on the clinic. Is there anything in your affidavit that makes reference to any harm or impact of 1456 has on your clinic?
A. I don't believe there's any

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paragraphs that talk about the harm to Red River Women's Clinic in my affidavit.
Q. The affidavit that's marked as Exhibit Number 8?
A. Yes.
Q. Do you know what the harm to the clinic would be from 1456 that's not in your affidavit?
A. I believe the harm would be we would no longer be able to stay open.
Q. Why?
A. 'Cause the vast majority of our patients would not be able to comply with H.B. 1456.
Q. And why wouldn't they be able to comply with H.B. 1456?
A. For all the reasons I listed in paragraph 7.
Q. Okay. Any other reason?
A. No.
Q. If you're open more then one day a week providing services though, would that still be the same scenario?
A. The patient population wouldn't be any different if we were op- -- there's -- by

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being open more days a week, we're not creating more women in North Dakota and the surrounding areas that we serve.
Q. Okay. But that wasn't my question. I understand that you believe that there's a limited number of customers that you've got or patients, potential patients that come in for abortion services. The question is: If you're open more days a week providing abortion services, would that still be the same? The vast majority of your patients would not be able to comply with 1456?
A. I think that's still correct, yes.
Q. Why?
A. Again, for all the reasons that are listed in 7 that it takes a woman time to find out she's pregnant, decide if she wants an abortion or not, discuss it with family members and friends, take a day off of work, provide childcare, travel to Fargo, that all takes time.
Q. Any other reason that you believe other than what you've just described there as to why they wouldn't be able -- even if you're open more then one day a week, you still believe that 1456 -- the vast majority of women would not be

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able to comply with 1456?
A. I believe that is correct.
Q. As far as viability is concerned, whether an unborn child is viable, do you have any qualifications to make that judgment as to when an unborn child is viable?
A. No. I'm not a physician.
Q. It takes medical judgement to -- I trust, as to whether an unborn child is viable?
A. Viable -- a physician has to answer that question.
Q. You're not qualified to make that determination?
A. I am not a physician, no.
Q. So the answer is you're not qualified to make that determination?
A. To make what determination?
Q. As to whether an unborn child is viable or not?
A. No. I am not qualified to make that determination.
Q. Do you know who Stacey Burns is?
A. Yes, I do.
Q. Who is she?
A. Stacey Burns, I don't know her

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official title, but she works for the National Network of Abortion Funds as their social media person.
Q. Is that one of the organizations you're involved in?
A. No. The National Network of Abortion Funds is -- no, I am not involved with The National Network of Abortion Funds other than the North Dakota WIN Abortion Access Fund is one of a member fund of the National Network of Abortion Funds.
Q. Is she on the board for the North Dakota Network of Abortion Funds?
A. Stacey Burns is not on the board of the North Dakota Women In Need Abortion Access Fund, no.
Q. Does she attend your meetings?
A. No, she does not.
Q. Do you know why she sent out this Twitter?
A. Stacey Burns is a very active reproductive justice tweeter. I cannot tell you why she sends out tweets she sends out.
Q. And then went through and -- with Dr. Eggleston, these forms that are, I think it

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starts at PL 624, if my memory serves me it goes to PL 675 as part of the discovery the plaintiffs provided in this case. Do you know how those are created?
A. Yes. We ask patients to fill those -- the first forms out and the later ones are from patient journals at our clinic.
Q. So these are -- these PL 627 to 694 are patients that have already had an abortion?
A. Yes.
Q. So they're sitting in the recovery room filling this out?
A. We have patient journals throughout the clinic and patients or their support person who comes with will often be seen writing in them. The recovery room is where most of that writing occurs 'cause it's a more private space.
Q. Do you then retain these? I mean, how do you retain these journals?
A. Every patient journal that's ever been written in is within Red River Women's Clinic. They never leave the building.
Q. Do they ever go -- do you identify which patient they're from?
A. No. Unless the patient writes her

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name in there, no. There's no way to know the identity of a specific patient who wrote those.
Q. MKB is a North Dakota corporation, correct?
A. That is correct.
Q. Do you know who the officers are?
A. Yes, I do.
Q. Who are they?
A. Jane Bovard, George Miks, and George Klopfer.
Q. And who are the directors?
A. Those same people.
Q. Same people serve as officers and directors?
A. They are the owners and officers of the corporation.
Q. Okay. Which one is the president?
A. Jane Bovard.
Q. And the other -- the other two people, what are their positions?
A. I don't know.
Q. Don't know. Was she affiliated with The Fargo Women's Health Organization?
A. Yes.
Q. Have they always been officers and

directors as far as you've been there?
A. Yes.
Q. Other than your attorneys, have you spoken to anybody about this case?
A. No.
MR. GAUSTAD: We will keep this deposition open as well for the same reasons that's cited in Dr. Eggleston's deposition.
THE WITNESS: Okay.
MS. CREPPS: Anything else?
MR. GAUSTAD: That's it for now.
(This deposition was concluded at 1:36 p.m.)

NOTARY REPORTER'S CERTIFICATE
STATE OF NORTH DAKOTA
COUNTY OF CASS

I, Kristen M. Keegan, a Notary Public within and for the County of Cass and State of North Dakota do hereby certify: That the afore-named witness was by me sworn to testify the truth, the whole truth, and nothing but the truth.

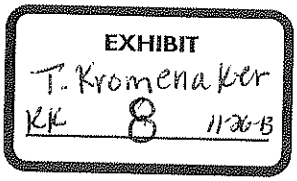
That the foregoing fifty-nine (59) pages contain an accurate transcription of my shorthand notes then and there taken.

I further certify that I am neither related to any of the parties or counsel, nor interested in this matter directly or indirectly.

WITNESS my hand and seal this 4th day of December, 2013.

Kristen M. Keegan
Notary Public
Fargo, North Dakota

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO THE REPRODUCTION OF THE SAME BY ANY MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

MKB MANAGEMENT CORP, et al.,

Plaintiffs,

vs.

BIRCH BURDICK, et al.,

Defendants.

Case No. 1:13-CV-071

DECLARATION OF TAMMI KROMENAKER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Tammi Kromenaker declares and states the following:

1. I am the Director of MKB Management Corporation, doing business as Red River Women's Clinic ("the Clinic"), a North Dakota corporation and one of the Plaintiffs in this lawsuit. I submit this declaration in support of Plaintiffs' Motion for Summary judgment.

2. Red River Women's Clinic is a reproductive health care facility located in Fargo, North Dakota. It provides a range of services, including abortions, contraception, gynecological examinations, cancer screening, and pregnancy testing.

3. I have been the Clinic's Director since it opened in 1998. As Director, I am responsible for overseeing the Clinic's day-to-day operations. This includes handling personnel matters and the Clinic's business affairs, and serving patients in virtually all non-medical capacities, including education, counseling, and billing.

4. Red River Women's Clinic is the only clinic providing abortions in North Dakota. The Clinic's patients travel from throughout the state, and from neighboring states. Due to the small population of North Dakota and surrounding areas, the Clinic typically performs abortions only one day per week.

5. As Director of the Clinic, I am familiar with the reasons why women seek our abortion services. Fifty-eight percent of the Clinic's patients already have children and many do not feel they can adequately parent and support additional children. Some younger patients believe that parenthood will prevent completion of their education, which would hinder both their own education and development and their ability to provide for children in the future. Some patients seek abortions because they are pregnant as a result of rape, are victims of domestic violence, or because the pregnancy threatens their health. While patients are informed of the risks associated with abortion and childbirth, that is not the only thing that women consider in deciding whether or not to have an abortion. Women often take several days or weeks to decide whether to continue the pregnancy or have an abortion.

6. According to the three most recent years of Induced Termination of Pregnancy Reports made available by the North Dakota Department of Health, *available at http://ndhealth.gov/vital/pubs.htm*, ninety-one percent of abortions performed in the state occurred at and after 6 weeks since the patients' last menstrual period ("lmp"). Comparing the number of abortions reported by the State with the number of abortions performed at the Clinic, it appears that Red River accounts for all of the abortions reported to the State.

7. It would be difficult for most patients to schedule their abortions prior to the cutoff of approximately six weeks imposed by H. B. 1456. Women come to the Clinic only once they have realized they are pregnant, carefully thought through the decision of whether to seek

an abortion and discussed it with family members or others, obtained the financial and other resources that they need to come to Fargo and receive an abortion, and waited through various delays imposed by North Dakota law. Only a small minority of women can accomplish all of these steps within the few days that HB 1456 permits them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 15th, 2013

Tammi Kromenaker

Tammi Kromenaker

Exhibit 3