

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

COMPREHENSIVE HEALTH OF PLANNED)	
PARENTHOOD GREAT PLAINS, et al.)	
)	
Plaintiffs,)	
)	Case No. 2:16-cv-04313-HFS
v.)	
)	
PETER LYSKOWSKI, et al.,)	
)	
Defendants.)	

**THE STATE DEFENDANTS' SUPPLEMENTAL BRIEF IN OPPOSITION
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs' reports of abortion-related complications at the St. Louis and Columbia facilities over the last five years (2012-2016) illustrate both the significant health risks associated with abortion procedures performed in Missouri, and the serious concerns about underreporting of abortion complications attested by the State Defendants' experts.

I. The Reports of Complications at the RHS Facility in St. Louis Illustrate the Risks to Women's Health and Safety Arising From Abortion Procedures in Missouri.

Based on Plaintiffs' own reports, the number and nature of post-abortion complications at the RHS facility in St. Louis from 2012-2016 illustrate the health risks from abortion procedures that the regulations challenged in this case are designed to address.

Plaintiffs' fact witnesses assert that the provision of abortion at their facilities has been very safe. *See, e.g.*, McQuade Decl., ¶¶ 6-7; Kogut Decl., ¶ 5. Likewise, Plaintiffs' expert, Dr. Eisenberg (who is the medical director of RHS's St. Louis facility), claims that hospital treatment after abortion is vanishingly rare. *See* Corrected Eisenberg Decl., Doc. 63-1 ¶¶ 6, 39. Yet Plaintiff RHS reports that 84 patients have required hospital treatment after abortion

procedures at its St. Louis facility during the last five years, including at least 21 emergency transfers to the hospital. *See* RHS Complication Report, at 1-5 (to be filed under seal as Exhibit 1).¹ These 21 emergency transfers include very serious complications, such as a perforated uterus after surgical abortion that resulted in hysterectomy, *id.* at 5; an infection following medication abortion that resulted in hysterectomy, *id.* at 4; several hemorrhage incidents that required emergency medical treatment, *id.* at 4; and additional uterine perforations requiring emergency medical treatment, *id.* at 5.

The complication rate after surgical abortion reported by the St. Louis facility raises serious health and safety concerns. RHS reports an overall complication rate of 106 complications following 18,566 surgical abortions from 2012-2016, for an overall rate of 0.57 percent. This is below the rate projected by Dr. Eisenberg based on national data. But the rate of serious complications—those requiring hospital treatment—at the St. Louis facility appears to be substantially higher than predicted by Dr. Eisenberg. Citing the Weitz study, Dr. Eisenberg reports that the rate of hospital treatment after first-trimester surgical abortion is 0.05 percent. *See* Doc. 63-1, ¶ 6. But the St. Louis facility reports that 59 patients sought hospital treatment after surgical abortions during the same period, including 39 who had “hospital contact” and 20 emergency transfers. This is a hospital-treatment rate of 0.32 percent—over six times the rate predicted by Dr. Eisenberg for first-trimester surgical abortions. *See* Doc. 63-1, ¶ 6. Moreover, of those 59 patients, 45 sought hospital treatment after first-trimester surgical abortions, resulting

¹ Plaintiffs’ reports divide the cases of hospital treatment into cases involving “Hospital Contact (Excluding Transfers),” and “Transfer to Hospital.” *See* Ex. 1. The latter category comprises all cases in which the patient was “transferred to ED,” *i.e.* to the Emergency Department—in other words, cases in which the patient was sent directly to the hospital, presumably by ambulance, in a medical emergency. *See id.* The former category evidently includes all other cases of hospital treatment of the patient for post-abortion complications. *Id.*

in a hospital-treatment rate of 0.28 percent. *See* Ex. 1, at 6 (15,729 first-trimester surgical abortions).

The reports for the St. Louis facility also reflect significant complications from medication abortion. RHS reports a complication rate following medication abortion at the St. Louis facility of 1.9 percent (119 complications out of 6,270 total procedures). Similarly, Comprehensive Health reports a complication rate following medication abortion at the Columbia facility of 2.7 percent, though admittedly based on a much smaller data set (6 complications out of 219 procedures). *See* Comprehensive Health Complication Report (to be filed under seal as Exhibit 2). Dr. Eisenberg attests that the rate of “ongoing pregnancy” following medication abortion is only 0.5 percent, or 1 in 200, and that only some of those ongoing pregnancies result in surgical abortion to correct the failure. Doc. 63-1, ¶ 32. But his St. Louis facility reports 81 cases of “ongoing pregnancy” in 6,270 medication abortions, or 1.3 percent (about 1 in 77) – all of which resulted in an unplanned surgical procedure to correct the failure of the medication abortion. *See* Ex. 1, at 1-2.

Plaintiffs classify most of these post-medication-abortion complications—those that involve “ongoing pregnancy” or “retained POC,” requiring a second surgical procedure to correct—as “anticipated adverse events” rather than “complications.” Ex. 1, at 1-5; *see also* Doc. 42-1, ¶ 7 (Dr. Eisenberg arguing that requiring a second surgical abortion to evacuate retained fetal tissue is not a true “complication”). But medical journal articles discussing post-abortion complications routinely classify ongoing pregnancy and “retained products of conception” as “complications.” *See, e.g.,* Lauren Lederle, et al., *Obesity as a Risk Factor for Complication After Second-Trimester Abortion by Dilation and Evacuation*, OBSTET. GYNECOL. 126(3):585-592 (Sept. 2015) (defining “complication” to include “retained products of

conception,” and defining “major complications” to include “additional surgery”); Katrina Mark et al., *Medical Abortion in Women with Large Uterine Fibroids: A Case Series*, *CONTRACEPTION* 94(5):572-574 (Nov. 2016) (distinguishing “patients [who] required evacuation for retained products” after medical abortion from those who “had successful medical abortions without complications”). In ordinary parlance, undergoing an unplanned surgical procedure to remove fetal parts and prevent dangerous infection constitutes a “complication.” Moreover, in ordinary parlance, “[t]he term ‘adverse event’ describes harm to a patient as a result of medical care.” Dep’t of Health and Human Servs., Office of Inspector General, *Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries*, at 2 (Nov. 2010), at <https://oig.hhs.gov/oei/reports/oei-06-09-00090.pdf>. Thus, an “adverse event” is a “complication,” as Dr. Eisenberg concedes elsewhere. *See* Doc. 63-1, ¶ 13.

Furthermore, the rate of hospital treatment following medication abortion at the St. Louis facility is substantially higher than predicted by Dr. Eisenberg. RHS reports 24 instances of hospital treatment after 6,270 medication abortions, for a rate of hospital treatment of 0.38 percent. *See* Ex. 1. Comprehensive Health reports three instances of hospital treatment in 219 medication abortions, for a rate of 1.4 percent. Ex. 2. But Dr. Eisenberg reports that, based on the Cleland study, “0.1% of patients were treated in an emergency room for complications following a medication abortion, and even fewer—0.06%—had to be admitted to the hospital.” Doc. 63-1, ¶ 6. It thus appears that the hospital-treatment rate following medication abortion is substantially higher at Plaintiffs’ facilities than the rate Dr. Eisenberg reports based on national data.

II. Plaintiffs’ Post-Abortion Complication Reports Raise Concerns About Underreporting and the Completeness of Their Data.

Plaintiffs' complication reports raise serious concerns about potential incompleteness and underreporting of data. For example, as noted above, RHS reports 21 emergency hospital transfers from the St. Louis facility during the five-year period from 2012-2016—20 following surgical abortions, and one following medication abortion. *See* Ex. 1, at 2-5. By comparison, the City of St. Louis Fire Department has reported in response to open-records litigation that it responded to calls for emergency medical services at the St. Louis facility 58 times during the seven-year period from January 1, 2009 to April 6, 2016. *See* St. Louis Fire Department Records, at 3-4 (attached as Exhibit 3). In other words, RHS reports about four emergency transfers per year, while Fire Department records reflect almost eight emergency calls per year from the St. Louis facility. Similarly, RHS reports eight emergency transfers due to post-abortion hemorrhage during the five-year period. *See* Ex. 1, at 5. But St. Louis Fire Department records report that RHS's St. Louis facility called for an ambulance due to reported incidents of "hemorrhage" 23 times during the 7-year recorded period—more than twice the rate reported by RHS during a substantially overlapping time period. *See* Ex. 3, at 3.

To be sure, the time period of the Fire Department records does not overlap completely with the time period of complications reported by Plaintiffs, and the records contain limited information about the nature of the St. Louis facility's emergency calls. It is surely possible that some calls arose from health issues unrelated to abortion, or that post-abortion hospital transfers were much more frequent in the non-overlapping period—though this would be extremely troubling for independent reasons. But at least, the two sets of records contain discrepancies that raise serious concerns about the completeness of Plaintiffs' data on post-abortion complications.

CONCLUSION

This Court should deny the Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2017, I electronically filed the foregoing
with the Clerk of the Court using the CM/ECF system, which sent notification to the following:

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/s/ *Emily A. Dodge*
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State of Missouri)
) SS
City of Saint Louis)

Affidavit of Carolyn Moore

Before me, the undersigned authority, personally appeared Captain Carolyn Moore, who being by me duly sworn, deposed as follows:

- 1 My name is Carolyn Moore. I am of sound mind, over the age of eighteen, capable of making this affidavit, and personally acquainted with the facts herein stated.
- 2 I am employed with the Saint Louis Fire Department as a Captain.
- 3 I am a custodian of the records of the City of Saint Louis Fire Department.
- 4 In settlement of the case *Myers v. Saint Louis Fire Department*, case number 1422-cc01250, I have compiled a spreadsheet consisting of the "Problem" and "Priority" fields from each of the Medical Dispatch Agency Incident Reports for every 911 call for ambulance service to the Planned Parenthood located at 4251 Forest Park Avenue, Saint Louis, Missouri 63108, from January 1, 2009, through April 6, 2016.
- 5 The spreadsheet provided to Deborah Myers consists of 2 pages and provides information from the Medical Dispatch Agency Incident Reports resulting from 58 separate calls for service from January 1, 2009, through April 6, 2016.
- 6 The entries contained in the spreadsheet I compiled are the verbatim entries contained in the "Problem" and "Priority" fields of the Medical Dispatch Agency Incident Reports.
- 7 The column labeled "problem" is organized in alphabetical order and these entries bear no association to any date or time or any particular record. However, the "Problem" and "Priority" entries are related to each other such that each row in the spreadsheet comes from the same report.

8 I am executing this affidavit on May 3, 2016.

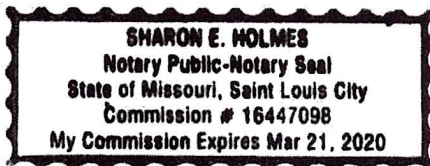
9 I certify under the penalty of perjury that the statements above are complete, true and accurate to the best of my knowledge and belief.

Carolyn Moore
Affiant

Subscribed and sworn to before me this 3rd day of May, 2016.

My Commission Expires:

Sharon E. Holmes
Notary Public



Problem

Priority

Abdominal Pain On the Quiet	P3 On the Quiet Response
Adominal Pain on the Quiet	P1 Urgent Response
Allergic Reaction Unknown	P1 Urgent Response
Fainting Alert <35 No Cardc Hx	P1 Urgent Response
Fainting Alert <35 No Cardc Hx	P1 Urgent Response
Fainting Alert <35 No Cardc Hx	P1 Urgent Response
Fainting Not Alert	P1 Urgent Response
Fainting Not Alert	P1 Urgent Response
Fainting Single and Alert < 35	P3 On the Quiet Response
Fall Poss Dangerous Body Area	P1 Urgent Response
Fall Poss. Dangerous Injury	P1 Urgent Response
Fall Poss. Dangerous Injury	P1 Urgent Response
Fall On the Quiet	P3 On the Quiet Response
Hemorrhage Dangerous	P1 Urgent Response
Hemorrhage Dangerous	P1 Urgent Response
Hemorrhage Dangerous	P1 Urgent Response
Hemorrhage On the Quiet	P3 On the Quiet Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Hemorrhage Possibly Dangerous	P1 Urgent Response
Interfacility Emerg Resp Rqstd	P1 Urgent Response
Interfacility Emerg Resp Rqstd	P1 Urgent Response
Interfacility Emerg Resp Rqstd	P1 Urgent Response
Interfacility Emerg Resp Rqstd	P1 Urgent Response
Pregnancy 1st Tri Serous Bleed	P1 Urgent Response
Pregnancy 2nd Tri Bleed/Miscar	P1 Urgent Response
Pregnancy 3rd Tri Bleed	P1 Urgent Response
Pregnancy Unknown Status	P1 Urgent Response

Problem

Pregnancy Unknown Status
Psych Not Alert
Psych Suicidal Non-Threat Alrt
Psychiatric Suicidal
Seizure Continuous/Multiple
Seizure Continuous/Multiple
Seizure Irregular Breathing
Sick Case Not Alert
Sick No Priority Symptoms
Sick Unknown Status
Sick Unknown Status
Sick Unknown Status
Stroke Not Alert
Unconscious Person

Priority

P1 Urgent Response
P2 Urgent On the Quiet Resp
P3 On the Quiet Response
P2 Urgent On the Quiet Resp
P1 Urgent Response
P1 Urgent Response
P1 Urgent Response
P1 Urgent Response
P3 On the Quiet Response
P1 Urgent Response
P1 Urgent Response
P1 Urgent Response
P1 Urgent Response
P1 Urgent Response