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BEFORE THE BOARD OF HEALING ARTS

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STATE OF KANSAS

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6 IN THE MATTER OF

Docket No. 17-HA00060

7 ALLEN S. PALMER, D.O.

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TRANSCRIPT

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OF

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PROCEEDINGS

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CONFERENCE HEARING ON PETITION FOR DISCIPLINE,

15

beginning at 3:25 p.m., on the 10th day of August,

16

2017, at the Kansas Board of Healing Arts, 800 SW

17

Jackson Street, Lower Level, in the City of

18

Topeka, County of Shawnee, and State of Kansas,

19

before Garold O. Minns, M.D., President; Joel R.

20

Hutchins, M.D., Richard A. Macias, J.D., Robin D.

21

Durrett, D.O., Kimberly J. Templeton, M.D., Steven

22

J. Gould, D.C., Ronald M. Varner, D.O., Douglas J.

23

Milfeld, M.D., and Terry L. Webb, D.C.

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1 APPEARANCES

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4 ON BEHALF OF THE PETITIONER:

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16 ON BEHALF OF THE RESPONDENT:

17 .

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1 PRESIDENT MINNS: The next case is that
2 of Allen S. Palmer, D.O., Docket No. 17-HA00060,
3 conference hearing on petition for discipline.
4 The DP is 32, Beezley, DeGrado, Leinwetter and
5 Settich should be recused. This is in open
6 session. So would the parties make their
7 appearances.

8 MS. GERING: May it please the Board,
9 Susan Gering, Deputy Litigation Counsel, appears
10 on behalf of the Board.

11 MR. THEIS: Tom Theis appears on behalf
12 of Doctor Allen Palmer, and he appears in person.

13 PRESIDENT MINNS: So as I understand this
14 case, there is no disputed facts. You each may
15 make your case, and no more than seven and a half
16 minutes apiece, please.

17 MS. GERING: I do have -- Mr. Theis just
18 handed me an additional exhibit. It is Doctor
19 Palmer's curriculum vitae. I have no objection to
20 this, but he would like it to be part of the
21 record.

22 MR. THEIS: Just so you know who he is.

23 PRESIDENT MINNS: It's just the CV, there
24 is no new evidence or anything like that?

25 MS. GERING: It's just the CV, from my



1 looking at it, yeah.

2 PRESIDENT MINNS: Does the Board have any
3 objection to that? We'll go ahead and let that be
4 submitted. Go ahead.

5 MS. GERING: Materials related to this
6 case begin on E-book page 61. We are here today
7 because on December 22nd, 2014, Doctor Palmer
8 performed a surgical abortion on a patient that
9 was 13 years old. After performing the abortion,
10 Doctor Palmer failed to preserve fetal tissue as
11 required by statutory and regulations developed by
12 the Kansas legislature.

13 This 13-year-old girl's pregnancy was the
14 result of a sexual relationship with a 19-year-old
15 man. Under the law, since Patient 1 was a minor,
16 Doctor Palmer had the duty to preserve the fetal
17 tissue.

18 Now, you do have a response that was
19 submitted by Mr. Theis on behalf of his client
20 that indicates the reasons that there was a
21 failure for that fetal tissue to be preserved.
22 However, those responses and those reasons are not
23 sufficient. Ignorance of the law is not an
24 excuse.

25 Also, there is no delegation of the providing



1 physician's duty. He ultimately was responsible
2 to ensure that fetal tissue was preserved and
3 provided to the Kansas Bureau of Investigation.
4 Such failure is the result of a violation of the
5 statutes and regulations that were created.

6 Now, the Petition was authorized for filing
7 by Disciplinary Panel 32. And in coming to this
8 Board today with a Petition, Disciplinary Panel 32
9 has recommended that the guidelines should apply.
10 And in looking at the guidelines, Disciplinary
11 Panel 32 has recommended that this is a category
12 offense either 2A or 2B, and, therefore, it is
13 requested by the Disciplinary Panel 32 that this
14 Board make findings of fact and conclusions of law
15 that are in congruence with the Disciplinary Panel
16 -- or disciplinary sanction guidelines, excuse me.
17 Thank you.

18 PRESIDENT MINNS: Mr. Theis.

19 MR. THEIS: May it please the Board,
20 Doctor Palmer has a statement he'd like to read,
21 and then after he does that I'll give a brief
22 summary of our position, if that's acceptable.

23 PRESIDENT MINNS: We'll have the court
24 reporter swear you in in just a moment.

25 (THEREUPON, Doctor Palmer was



1 administered the oath.)

2 DOCTOR PALMER: I appreciate the
3 opportunity to meet with you face to face today.
4 I've devoted 45 years of my life, mostly to
5 obstetrics and gynecology and to helping women.
6 It has always been my passion. I deeply regret
7 what happened to Patient 1 at that time.

8 MS. GERING: I'm going to interrupt that
9 we make sure that any mention of a patient name be
10 referred to as Patient 1 and that the patient's
11 name be protected and redacted from any mention
12 throughout this hearing.

13 DOCTOR PALMER: Okay, thank you. I
14 didn't know that.

15 I was not informed that she was a minor under
16 age 14. As a result, there was no need to retain
17 tissue. When I first started at Planned
18 Parenthood in Kansas City five years before this
19 incident, I was informed by Doctor Moore, the
20 clinical -- the clinical medical director, that
21 terminations of pregnancy performed on minors were
22 done only by him. Therefore, I never received
23 training or information regarding Planned
24 Parenthood's policies and procedures to ensure
25 compliance with the law when terminating pregnancy



1 in minors and preservation of tissue. I was never
2 shown or trained on a KBI kit and its
3 requirements.

4 I was hired by Planned Parenthood as a
5 part-time independent contractor to cover when
6 Doctor Moore had time off. This is usually one
7 weekend a month. I only -- was only going to do
8 first trimester abortions.

9 Patients presenting at Planned Parenthood
10 clinic follow a process. I may not exactly have
11 got it in order, but this is generally what
12 happens. They get a blood test with a lab tech.
13 The ultrasound is performed by a clinical staff
14 member, and then receive counseling from the
15 clinic counselor before seeing me.

16 When I see the patient, I'm assuming that
17 they've been screened and counseled by Planned
18 Parenthood staff according to their policies and
19 procedures and according to the state law and have
20 been determined to be candidates for an abortion.

21 After screening and counseling has been
22 completed, I see the patient. At that time I ask
23 if she has any questions about the procedure. The
24 patient and I sign the consent. After we both
25 sign the consent, the patient waits 30 minutes



1 before the procedure can begin. In reviewing the
2 patient's records, I cannot find a consent form
3 that she and I signed.

4 Termination of pregnancy occurs in a surgical
5 room. Once a patient enters the room, I first
6 check the computer to make sure I have the correct
7 patient by asking her name. I review the
8 ultrasound and verify the gestational age. Once
9 again, confirming that the patient understands the
10 procedure and I ask her if there is any questions.
11 Then I proceed with the termination.

12 Once the procedure is completed and tissue
13 removed and taken to another area of the clinic,
14 evaluated, the patient is taken to a post-op area.
15 I examine the tissue with the surgical tech.
16 After I examine the tissue, I leave it to the
17 surgical tech to handle it from there.

18 In the room -- in the room the tissue was
19 taken, there was no KBI evidence kit or anything
20 to establish chain of custody for evidence or to
21 instruct any preservation of tissue.

22 When I worked in Illinois, there was only a
23 special container -- there was not only a special
24 container for evidence, but also a police officer
25 standing outside ready to collect the tissue from



1 the procedure, and the form for me to sign and
2 verify my knowledge that she was a minor, and the
3 police officer was there to take the tissue.
4 There was no police officer standing outside the
5 room, no special form for me to acknowledge my
6 understanding the patient was a minor.

7 After the procedure is completed and the
8 tissue is evaluated, I would turn to the medical
9 record and document the procedure in the patient's
10 electronic medical record.

11 Yes, I failed to preserve the tissue, but
12 only because I was not informed the patient was
13 less than 14 years old. I was never educated on
14 Planned Parenthood policies and procedures on
15 termination of pregnancy on a patient less than 14
16 years old, including I was never shown a KBI kit
17 or received any information about its
18 requirements. This is because only Doctor Moore
19 performed these procedures according to the
20 information provided to me by him.

21 The events of that day did not ensure the
22 tissue was collected according to Planned
23 Parenthood policies and procedures. There was no
24 KBI kit tissue in the room or even -- or even
25 alert me or the staff that the preservation was



1 necessary. No police officer was standing outside
2 the room waiting.

3 I was a part-time contractor. I depended on
4 the staff of Planned Parenthood to receive the
5 proper training and knowledge of their own
6 policies and procedures in termination of
7 pregnancies in minors and alert me to the fact
8 that there was a minor left alone -- let alone a
9 minor under 14.

10 After the procedures were over and closer to
11 the end of the day, Aaron -- can I say his name --
12 Samulcek, I think I said it right, chief operating
13 officer of Planned Parenthood came to me and
14 informed me that the clinic had a system failure.
15 That is how he put it. This is how I found out
16 about the patient. She was a minor under the age
17 of 14. I had just performed my first termination
18 of a pregnancy on a minor in five years at that
19 clinic and I was shocked.

20 Right after Samulcek informed me, Christi
21 Campbell, the Planned Parenthood nurse manager,
22 came up to me crying and hugging and apologized
23 for not telling me the patient was less than 14
24 years old. Christi performed the ultrasound prior
25 to the termination. The ultrasound image I



1 reviewed contained the name of the patient but not
2 the patient's age.

3 Afterwards, I was informed that Stephanie
4 Williams, the health center manager of the clinic
5 was fired, as well as Evelyn, the surgical tech.
6 I've had several texts and phone calls and an
7 in-person -- and a personal conversation with the
8 staff member named Marlo Lubron. Marlo was very
9 sad and apologetic that this incident occurred.
10 She told me that the entire nursing staff were
11 unaware the patient was 14 -- or less than 14
12 years old.

13 I am no longer performing abortions in any
14 state. I closed my office eight years ago. I
15 recently gave up my Illinois license. My Kansas
16 license is due to expire in October. I do not
17 plan on renewing it. Thank you for giving me the
18 opportunity to tell you my story. I have been
19 saddened by this entire incident. It's been
20 hanging over my head for three-plus years. I'm a
21 caring and -- caring physician with a passion to
22 take care of people.

23 After closing my office, I became certified
24 as a wound specialist and work in a wound center
25 part-time in Missouri. I would like to continue



1 to do that. I hope that as the Board will decide
2 not to do anything to impact my Missouri license
3 so I can continue this practice in its limited
4 role.

5 PRESIDENT MINNS: Mr. Theis.

6 MR. THEIS: If the Board would have
7 questions, I would entertain that, or I can make a
8 brief statement.

9 PRESIDENT MINNS: Why don't you go ahead
10 and make your statement and then we'll open it up
11 for questions.

12 MR. THEIS: As you can see, first of all,
13 we have no dispute with the fact that the statute
14 places the obligation upon the physician to retain
15 the tissues. I do suggest that the statement that
16 it cannot be delegated is incorrect in part, and
17 that is because the regulations that the Attorney
18 General was required by statute to promulgate
19 specifically provide that the surgeon or the
20 physician or his designee can perform these
21 functions, but the reality is this: Planned
22 Parenthood is in the business of performing
23 abortions on all ages. It is not unreasonable for
24 a part-time physician who comes in and covers once
25 a month and some holidays to expect that they are



1 going to have in place procedures that are,
2 frankly, fail-safe for the purpose of preserving
3 tissue, and they simply did not in this case.

4 The -- the -- I think it's a very telling --
5 one of the telling facts, when I went through the
6 records in this case, is that on the very first
7 page of the record there is a consent form that's
8 signed by the patient that authorizes Planned
9 Parenthood to share her tissue and medical records
10 with law enforcement. This procedure occurred on
11 December 22nd. That form was signed on January
12 8th. Surely, in the process of preparing a minor
13 for an abortion where their tissue is going to be
14 sent to law enforcement, that whole informed
15 consent discussion is going to occur with respect
16 to the staff determining that -- in getting her
17 consent to the procedure.

18 As you well know, the physician is not part
19 of those initial discussions. He's actually by
20 law can't be a part of them so he doesn't
21 influence them. It's the social worker's thing.
22 But the burden -- again, the statute, you know,
23 captain of the ship, you know, the buck stops here
24 from the standpoint of it's the physician's
25 ultimate responsibility to retain tissue, but so



1 does the Kansas Administrative Regulations with
2 respect to ultrasound records. They require that
3 the radiologist preserve the ultrasound records.
4 Well, who preserves it? The facility preserves
5 it. And I suggest to you that it is reasonable
6 for a physician to expect that.

7 I think that the fact that Doctor Moore was
8 the one, as Doctor Allen -- Doctor Palmer was --
9 would normally perform these procedures, is -- is
10 supported by the fact, and I think in Mr.
11 Simulcek's letter he identified certain failures,
12 although I have not seen their procedures in the
13 past, but certain failures in the procedures such
14 as they had. One of -- two of them really had to
15 do with prior notification that the -- to their
16 scheduling staff and to the nursing staff that
17 this was indeed going to be a minor less than 14.
18 That did not happen. If it had happened, it
19 wouldn't have been scheduled that day. It would
20 have been scheduled on -- I suggest to you
21 scheduled on a day when Doctor Moore was there.

22 PRESIDENT MINNS: Mr. Theis, we are
23 running short on time.

24 MR. THEIS: I will just get to -- I don't
25 think it's unreasonable -- it wasn't unreasonable



1 for Doctor Palmer to expect that he would at least
2 be notified that a -- the fact that he didn't
3 receive any training at all on the KBI kit, and if
4 you look at the Attorney General regulations that
5 kit has very specific procedures with respect to
6 the collection and the preservation, the type of
7 tissue, and the reason he didn't was because he
8 wasn't ever intended to.

9 So what Doctor Palmer -- essentially the,
10 bottom line is this: He really does not intend to
11 renew his license in Kansas after October. He's
12 78 years old. He wants to continue to practice
13 part-time in Missouri in his wound care clinic.
14 His concern is he doesn't want something to happen
15 here that will impact upon his license in Missouri
16 and take away from him what -- his limited
17 opportunity to practice medicine. And I suggest
18 to you that the Board is well within their power
19 to find that there was a reasonable justification
20 in this circumstance for the tissue not to be
21 preserved.

22 PRESIDENT MINNS: Thank you. Miss
23 Gering, do you have any statements before I let
24 the Board ask questions?

25 MS. GERING: Yes, I do have a couple



1 things in response to the statements that were
2 just made.

3 First off, Doctor Palmer admitted that he has
4 practiced for 29 years. 29 years he's practiced
5 in an area that he's devoted to obstetrics. He
6 also practiced in an area that specifically
7 entailed abortions, and with that came very
8 specific rules and laws that are to be followed.

9 He also mentioned that he saw a patient, or
10 it is normally his habit, which is also in his
11 response, to see the patient. He sat in a room
12 with the patient, who also had the mother there
13 because she was a 13-year-old girl. He saw a
14 record, whether electronic or printout, it doesn't
15 matter, date of birth can be ascertained in a
16 record. And the Exhibit No. 5 provides additional
17 information on where the date of birth could be
18 located.

19 In regards to these allegations, it is still
20 on the performing provider, and specifically shall
21 perform or shall ensure. It's not on Planned
22 Parenthood and is not on Planned Parenthood's
23 staff to ensure that the fetal tissue is collected
24 and preserved. And so from the statute point of
25 view, from the regulation point of view, it is



1 very clear there was a violation and the Board
2 should not consider collateral effects of what
3 happened in determining what the proper
4 disciplinary action in a case where statutes and
5 regulations are not followed.

6 And, again, I would just state that ignorance
7 of the law, after practicing for 29 years, is not
8 a defense. Thank you.

9 PRESIDENT MINNS: Okay, thank you.
10 Anybody on the Board have any questions? Yes,
11 Doctor Gould.

12 DOCTOR GOULD: Yes. On our E-book page
13 166, they submitted a copy of the screen print of
14 the computer monitor. If you looked on the
15 computer monitor and saw the patient's name, just
16 to the right of that is the date of birth and in
17 parentheses the age. Did you see that prior to
18 the procedure or anything?

19 DOCTOR PALMER: No.

20 DOCTOR GOULD: Did you see the computer
21 afterwards?

22 DOCTOR PALMER: How do I explain this?
23 It is very difficult. Unless you've worked on a
24 multi-faceted computer, it shows procedures, it
25 shows this, it shows that. All those things that



1 they send you is things I usually don't even have
2 to look at because they have been taken care of by
3 the staff. My job was to check the ultrasound,
4 check how I did it, exactly -- tell them exactly
5 what I did. I never go through the different
6 sessions that are on that computer. I know they
7 like to think that that's the way it does, it
8 happens, but I work in a wound care center, it's
9 basically the same thing. I don't check the
10 nurse's notes. I do what I -- I document what I
11 do. The nurses are responsibility for what they
12 do.

13 DOCTOR GOULD: You are not a technician,
14 you are the physician.

15 DOCTOR PALMER: A technician, what's that
16 mean?

17 DOCTOR GOULD: You're just not an
18 abortion technician, you're the physician that
19 performed that procedure. You are supposed to
20 know the global picture there. The patient's age
21 has to be a part of that, doesn't it?

22 DOCTOR PALMER: Can I say something? The
23 young --

24 MR. THEIS: No, no, no, just respond to
25 his question.



1 DOCTOR PALMER: I don't know how to
2 answer that because I've never done that in any
3 session that I've ever done in any place I've ever
4 worked. That may be something that needs to be
5 explained, but I certainly was not told to do
6 that, I was never shown to do that. I was shown
7 to do exactly what I did.

8 PRESIDENT MINNS: Doctor Durrett.

9 DOCTOR DURRETT: Doctor Palmer, I'm
10 Doctor Durrett, just a couple of questions. So,
11 you said, when you gave your statement, you did
12 not see a signed operative consent when you
13 reviewed the chart?

14 DOCTOR PALMER: Correct.

15 MR. THEIS: That was signed by him. Just
16 for clarification, there are consents in that
17 record. Amazingly, the consent that he signed
18 with the patient, they did not produce.

19 DOCTOR DURRETT: Okay. Was there a
20 signed consent on the procedure for the operation?

21 DOCTOR PALMER: Yes.

22 DOCTOR DURRETT: And is it in the medical
23 records somewhere?

24 DOCTOR PALMER: No.

25 DOCTOR DURRETT: So, you never saw the



1 operative consent that explains -- any patient
2 that we operate on, you sign a consent and you
3 look at that before you take a patient back to the
4 OR, you see the patient before they go back to the
5 OR and you review, per the American College of
6 Surgeons, the risks and complications, and that is
7 on that operative consent. You never saw that
8 form that was -- that was signed by you and the
9 patient?

10 DOCTOR PALMER: I'll explain to you how
11 it proceeds.

12 DOCTOR DURRETT: First, can you answer
13 my --

14 DOCTOR PALMER: No, I did not see it.

15 DOCTOR DURRETT: So you never saw an
16 operative consent before you took the patient
17 back? And, yes, explain that to me in just a
18 second.

19 And then the second question, do you review
20 the medical records, the history and physical,
21 before you take the patient back?

22 DOCTOR PALMER: No, I don't have access
23 to that.

24 DOCTOR DURRETT: How can you operate on
25 somebody without looking at a history and physical



1 exam? I mean, I understand what you're saying,
2 you are not a technician, you are a doctor, we
3 take care of the whole patient.

4 DOCTOR PALMER: I understand that.

5 DOCTOR DURRETT: So is this your common
6 practice or was that a practice on that one
7 patient?

8 DOCTOR PALMER: It is a common practice
9 at Planned Parenthood.

10 DOCTOR DURRETT: Okay.

11 DOCTOR PALMER: It is not -- I did lots
12 of surgeries. I know what you're saying, okay?
13 We are not arguing, okay? That is not how it
14 works at Planned Parenthood.

15 DOCTOR DURRETT: Is it your
16 responsibility to review the patient records
17 before you do a procedure?

18 DOCTOR PALMER: On a normal abdominal
19 surgery, yes.

20 DOCTOR DURRETT: On any surgery.

21 DOCTOR PALMER: Not on an abortion.

22 DOCTOR DURRETT: I'm a surgeon.

23 DOCTOR PALMER: So am I.

24 DOCTOR DURRETT: Yes, you are. I'm
25 telling you what the American College of Surgeons



1 said. We are held to those standards.

2 DOCTOR PALMER: I understand that.

3 DOCTOR DURRETT: And you did not do that.

4 That was my point.

5 Now your explanation as to why there was no
6 signed operative consent before you did an
7 operative procedure.

8 DOCTOR PALMER: Well, first of all, I met
9 with the young woman by herself and I talked to
10 her.

11 DOCTOR DURRETT: Okay, I thought the
12 mother was present, Miss Gering. Sorry.

13 DOCTOR PALMER: I'm telling you my side.

14 DOCTOR DURRETT: Okay, that's fine.

15 DOCTOR PALMER: There was no one else
16 there.

17 DOCTOR DURRETT: Okay.

18 DOCTOR PALMER: I remember this
19 distinctly. I could not even guess her age. I'm
20 sorry, you can't do that with women any more. I
21 explained to her the procedure. We both signed
22 it. I signed -- it's two or three pages of
23 information, I guess. I signed my -- I flip it
24 over, we sign it, she signs it. It goes back to
25 the counselor. That's the last time I see it.



1 MR. THEIS: That's not -- his signed
2 consent he signed is not in the record.

3 DOCTOR DURRETT: Okay. And you say that
4 you signed it and the 13-year-old patient signed
5 it?

6 DOCTOR PALMER: Correct.

7 DOCTOR DURRETT: Okay. I gotcha.

8 PRESIDENT MINNS: Doctor Templeton.

9 DOCTOR TEMPLETON: I just have two
10 questions. One, what would you have done if you
11 did know that she was under 14 years of age prior
12 to the procedure?

13 DOCTOR PALMER: Same thing I do in
14 Illinois, I mean, I know what to do. I knew the
15 law. Okay? That wasn't the issue. I would have
16 done something -- asked somebody, where -- how do
17 we preserve this tissue because that's the law.
18 It's in Illinois, it's in Kansas. I have known it
19 for years. No one, no one, from my information
20 that I was given by an employee there, knew that
21 this woman was under 14 years of age, and I can't
22 explain it to you. I'm as shocked and awed by
23 this failure as anybody here, but they want to
24 hang it on me, and maybe that's the way it is, I
25 don't know, but I did everything I could with what



1 I had, even though I didn't -- I've never gone
2 back in the different histories and things because
3 if someone has a problem, the counselor or the
4 nurse would come to me and say, oh, this woman's
5 got diabetes, this woman's got this, she's got
6 hypertension, something. These are normal,
7 healthy women. You don't go back and look at -- I
8 don't do breast exams on young women any more. I
9 used to years ago, but we don't do that any more.
10 I'm telling you that I did not know, and I would
11 not have proceeded if I had known, because Doctor
12 Moore said he was the only one that they allowed
13 to do people under 14, or 14 or under, I'm not
14 sure how it reads. But in five years I've -- I
15 never did one. I have never performed an abortion
16 on a woman that young.

17 DOCTOR TEMPLETON: My second question is
18 did you ever let anyone know in Planned Parenthood
19 or anyone with whom you worked that you were
20 uncomfortable as a physician going in and doing a
21 procedure when you really didn't know anything
22 about the patient other than that she was pregnant
23 and the gestational age, that you didn't know
24 anything else about the history, since you
25 presumably didn't see that in the rest of --



1 DOCTOR PALMER: Only if they brought it
2 to my attention.

3 DOCTOR TEMPLETON: But you never -- did
4 you ever tell them you were uncomfortable
5 operating on somebody when you really didn't know
6 very much about them?

7 DOCTOR PALMER: Well, all I needed to
8 know was they were a young woman --

9 MR. THEIS: Did you ever tell them?

10 DOCTOR PALMER: No. No. It never --
11 first of all, it never -- in five years it never
12 came up.

13 PRESIDENT MINNS: Any other questions?

14 MS. GERING: Doctor Minns, I do have a
15 response to Doctor Durrett's question earlier from
16 where I mentioned the mother being in the room. I
17 was referring to page 2 of Exhibit 4, specifically
18 E-book 132, where it was not clear in the second
19 paragraph when he -- or the third paragraph,
20 excuse me. Let me find it specifically. "The
21 patient was confident and clear about her decision
22 to have an abortion and her mother supported her
23 decision." So, it was unclear from that statement
24 that there were two separate conversations that
25 went on.



1 Also, I would just say that in that second
2 paragraph above on that same page, it's stated
3 that Doctor Palmer made it his practice never to
4 perform abortions on minors less than 14, and,
5 thus, found it unnecessary to familiarize himself
6 in the details of the laws of the state of Kansas
7 requiring the preservation of fetal tissue
8 extracted during an abortion procedure on a minor
9 who was less than 14 years of age.

10 PRESIDENT MINNS: Doctor Macias, do you
11 have a question?

12 MR. MACIAS: Just a couple. I think you
13 cleared it up. At one time I believe in your
14 testimony or your statement you indicated that it
15 was the first procedure that you performed in five
16 years.

17 DOCTOR PALMER: No, the first --

18 MR. MACIAS: Of a minor under 14. I
19 think I --

20 DOCTOR PALMER: In Kansas.

21 MR. MACIAS: Oh, in Kansas. You done so
22 before --

23 DOCTOR PALMER: In Illinois.

24 MR. MACIAS: Of younger than 14?

25 DOCTOR PALMER: I don't think so. I



1 really don't remember. I mean, it's been a long
2 time. There weren't that many. I mean, you're
3 talking maybe a dozen in 20 years.

4 MR. MACIAS: A dozen?

5 DOCTOR PALMER: Patients that were
6 reported to the police in Illinois that the
7 detective or the policeman was standing outside
8 the door. We put the tissue in saline, we had a
9 special bag and a container. We gave it to the
10 doctor -- doctor, the policeman so that he could
11 transport it and analyze and see who had sex with
12 this woman.

13 MR. MACIAS: And then just to clarify, in
14 five years you were there every -- was it every
15 week -- one weekend a month?

16 DOCTOR PALMER: One weekend a month and
17 sometimes on Christmases more than that, but it
18 was like only on holidays.

19 MR. MACIAS: But you performed more
20 abortions than one during that five-year period or
21 was that the only one?

22 MR. THEIS: You performed more abortions
23 than just the one?

24 DOCTOR PALMER: Yes, of course. I'm
25 sorry, I didn't get that.



1 MR. MACIAS: And, then, the last one, and
2 this is for the counselor. As I got it, there was
3 no answer that was filed. So, in essence, you are
4 admitting a violation took place, you just -- your
5 letter was more of a mitigating circumstance?

6 MR. THEIS: There was no doubt, you can't
7 refute the facts that the statute requires -- puts
8 the ultimate responsibility on the physician, that
9 is true. The question is are there mitigating
10 circumstances.

11 MR. MACIAS: That's all.

12 PRESIDENT MINNS: Doctor Milfeld.

13 DOCTOR MILFELD: Doctor Palmer, the
14 question I have is you've heard of captain of the
15 ship doctrine --

16 DOCTOR PALMER: Yes.

17 DOCTOR MILFELD: -- that surgeons have in
18 the OR?

19 DOCTOR PALMER: Correct.

20 DOCTOR MILFELD: What's your
21 understanding of that and how far does it extend
22 or not extend as far as being captain of the ship
23 in the OR on whatever surgical procedure you
24 perform?

25 DOCTOR PALMER: Well, I'll just give you



1 one little instance, experience. I handed a
2 surgical specimen off to the nurse to send to
3 pathology. Guess what, it never showed up. Who's
4 responsible?

5 DOCTOR MILFELD: How far does it extend?

6 DOCTOR PALMER: That's my point, I don't
7 know, because that was her responsibility. Okay?
8 It was biopsy of the cervix. It was carcinoma in
9 situ. But nevertheless, the tissue disappeared on
10 the way to the pathology. I don't know what -- I
11 have no idea. It does happen. I'm sorry it
12 happens, but it does happen. I have heard it from
13 other surgeons myself.

14 DOCTOR MILFELD: Prior to this case and
15 any abortion cases you have been involved in, did
16 you ever ask a young-looking patient their age
17 before and then turn them down because they were
18 14 or 13 and you felt uncomfortable with that?

19 DOCTOR PALMER: I never had to.

20 DOCTOR MILFELD: So I'm looking at this
21 -- for instance, you go into a liquor store and
22 somebody -- you have to be 21 and they question
23 you. You may be 25, but they are still going to
24 ask you and you have to prove it. During your
25 conversation with her being uncomfortable with



1 doing a 13 or 14, it never entered your mind just
2 to say -- ask them how old you are?

3 DOCTOR PALMER: I used to ask women how
4 old they were and some took offense to that. I've
5 been doing this a long time as far as taking care
6 of women, so I really don't ask them because the
7 teenagers today, the way they dress, I can't tell
8 how old anybody is any more. I thought somebody
9 was 19 and she was 25. I've seen people 18 and
10 they look 14. I don't know what to say to you.
11 I mean --

12 DOCTOR MILFELD: That would have made a
13 difference, though, if you just asked that simple
14 question, right?

15 DOCTOR PALMER: But I don't ask that
16 question any more. See, they go through
17 counseling, they go through screening. I'm the
18 last person in line for that. They -- if there is
19 a problem, the staff brings it to me or they
20 notify me somehow.

21 MR. THEIS: Just as a supplement to that,
22 Kansas statutes are somewhat unique in the sense
23 of the physician really can't be involved in the
24 initial counseling process to determine their
25 eligibility, whether or not they indeed are a



1 candidate for abortion.

2 Now, obviously, the physician ultimately has
3 the right to say from a physical standpoint they
4 don't -- you know, I can't perform it, but those
5 kinds of questions, I think it's reasonable to
6 assume, especially in Kansas, that that's all been
7 done by qualified counselors who do this on a day
8 in, day out 365-day-a-year basis.

9 With respect to the captain of the ship, just
10 a brief response. You may or may not know, about
11 all I do any more is med mal, represent physicians
12 and health care providers. The captain of the
13 ship doctrine is a nice concept. If a surgeon is
14 performing a surgery and the nurse tells him,
15 doctor, the sponge count is correct, and it turns
16 out the sponge count is not correct, is the
17 physician responsible for that? And the answer in
18 the law in Kansas is no, he is not. Is it
19 reasonable to -- as long as it's reasonable for a
20 physician to rely upon that representation. Now,
21 and some lay people would argue in some cases,
22 well, Doctor, whether or not you get -- the nurse
23 tells you the sponge count is correct, you have an
24 obligation to go ahead and look for that lab tape,
25 you know, you're the surgeon in that abdominal



1 cavity. Well, most surgeons don't because of the
2 risks associated for the patient.

3 So, it is reasonable for a physician to, yes,
4 captain of the ship in the sense that he has
5 overall supervisory responsibility, but you have
6 to rely upon people to do their job. And that's
7 all he's -- we are suggesting here is it was not
8 unreasonable for him to rely upon the fact that a
9 business in the -- an organization in the business
10 of performing these kinds of procedures wouldn't
11 inform the surgeon, who doesn't normally, and they
12 should know, doesn't normally perform these types
13 of procedures on this age of a person, female,
14 that they at least inform him. So, they would at
15 least have in the room the KBI collection kit.

16 If you look at that -- if you look at the
17 regs with respect to this, this is not a simple
18 process with respect to what you need to do.

19 PRESIDENT MINNS: Mr. Theis, I think we
20 heard that before.

21 MR. THEIS: I understand.

22 PRESIDENT MINNS: Doctor Durrett, do you
23 have a question?

24 DOCTOR DURRETT: Can I make a motion we
25 go into recess for attorney/client consultation?



1 PRESIDENT MINNS: Frankly, you don't have
2 to make a motion. I am going into recess at this
3 point for attorney/client consultation,
4 confidential.

5 (THEREUPON, a recess was taken.)

6 PRESIDENT MINNS: The Board is going to
7 take these matters under advisement and we will
8 deliver a written statement.

9 MR. THEIS: Thank you for your
10 consideration.

11 DOCTOR PALMER: Thank you very much for
12 hearing me.

13 (THEREUPON, the hearing concluded at 4:10
14 p.m.)

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C E R T I F I C A T E

STATE OF KANSAS

SS :

COUNTY OF SHAWNEE

I, Lora J. Appino, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 30th day of August, 2017.

Lora J. Appino

Lora J. Appino, C.C.R. No. 0602

