

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
10/19/2018 12:15 PM
James A. Noel
CLERK OF THE COURT
Patsy Baca

TINA ATKINS, individually and as personal
representative of the ESTATE of KEISHA
MARIE ATKINS, and NICOLE ATKINS

Plaintiffs,

vs.

No. D-202-CV-2018-05696

CURTIS BOYD, M.D. P.C. d/b/a
SOUTHWESTERN WOMEN'S OPTIONS,
CURTIS W. BOYD, Individually, CARMEN
LANDAU, Individually, SHANNON CARR,
Individually, THE UNIVERSITY OF NEW
MEXICO d/b/a UNM HEALTH SYSTEM, THE
UNIVERSITY OF NEW MEXICO BOARD OF
REGENTS, THE UNIVERSITY OF NEW
MEXICO HEALTH SCIENCES CENTER, LISA
HOFER, M.D., Individually, UNM MEDICAL
GROUP, INC., LILY BAYAT, M.D., Individually,
and BRENDA PEREDA, M.D., Individually,
LAUREN DVORSCAK, M.D., Individually.

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS CURTIS BOYD, M.D. P.C. d/b/a
SOUTHWESTERN WOMEN'S OPTIONS, CURTIS W. BOYD, SHANNON CARR and
CARMEN LANDAU'S MOTION FOR PROTECTIVE ORDER**

COME NOW Plaintiffs herein and file this Response to Defendants Curtis Boyd M.D. P.C.
d/b/a Southwestern Women's Options, Curtis W. Boyd, Shannon Carr and Carmen Landau's
Motion for Protective Order, and, in support thereof, would respectfully show unto the Court as
follows:

BACKGROUND

Plaintiffs have filed a medical malpractice lawsuit against Defendants as a result of injuries
that Keisha Atkins received while a patient of Defendants' abortion clinic located at 522 Lomas
Boulevard NE, in the City of Albuquerque, New Mexico, which ultimately lead to her death from a

septic abortion on February 04, 2017.

In their complaint for Medical Malpractice, Wrongful Death, Unfair Trade Practices and Civil Conspiracy, Plaintiffs, among other allegations, have alleged that Defendants Landau, Carr, Boyd and Curtis Boyd d/b/a Southwest Women's Options were negligent in the following ways:

1. Failing to abide by the standard of care to perform abortion procedures in a hospital and/or in a similarly equipped overnight facility capable of providing constant medical monitoring;
2. Failing to abide by the standard of care to identify and diagnose infection and sepsis;
3. Failing to abide by the standard of care to provide adequate medical treatment for infection and sepsis;
4. Failing to inform Keisha Atkins of the inadequacy of SWO's medical facility and equipment used in performing late term elective abortions and addressing medical complications; and
5. Failing to inform Keisha Atkins of the risks and potential complications associated with SWO instructing its patients not to contact or consult any medical facility, hospital, doctor, emergency room or nurse outside of the employees, agents and/or staff of the SWO clinic.

Each of these claims of negligence specifically refer to the inadequacy of Defendants' abortion clinic facility, located at 522 Lomas Boulevard NE, in the City of Albuquerque, New Mexico, where Keisha Marie Atkins received medical treatment that resulted in her death from a septic abortion.

**THE SCOPE OF DISCOVERY PLAINTIFFS' ARE
REQUESTING VIA THE NEW MEXICO RULES OF CIVIL PROCEDURE**

Rule 1-034 NMRA of the New Mexico Rules of Civil Procedure, is a discovery rule permitting parties to enter upon land or other property in the possession or control of the party upon whom the request is served for inspection, photographing, etc. any designated object or operation thereon and within the scope of Rule 1-026 NMRA. Rule 1-034 specifically states the following:

Rule 1-026 NMRA of the New Mexico Rules of Civil Procedure, is a general discovery rule permitting liberal discovery of information relevant to the subject matter involved in the pending action. The information sought in discovery does not even need to be admissible at trial. The scope of discovery permitted by Rule 26 is that the information sought must be non-privileged and reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) allows a very loose nexus. To be discoverable, information need not be admissible at trial so long as it "appears reasonably calculated to lead to the discovery of admissible evidence." *Pina v. Espinosa* 130 N.M. 661, 29 P.3d 662 (NM App 2001). Rule 1-026 specifically states the following:

1-026. General provisions governing discovery.

A. **Discovery methods.** Parties may obtain discovery by any of the following methods: depositions; interrogatories; requests for production or to enter land; physical and mental examinations and requests for admission.

B. **Scope of discovery.** Unless otherwise limited by the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party responding to discovery requests shall provide all non-privileged responsive information then known to the party, subject to the limitations in these rules or as ordered by the court.

1-034. Production of documents and things and entry upon land for inspection and other purposes.

A. **Scope.** Any party may serve on any other party a request:

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(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test or sample any designated documents, electronically stored information any tangible things which constitute or contain matters within the scope of Rule 1-026 NMRA and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of Rule 1-026 NMRA.

request for inspection is well within the scope of both Rule 1-034 and Rule 1-026. The information

Plaintiffs seek via their Rule 1-034 request for inspection of Defendants' abortion clinic is both relevant to their claims and does not seek privileged information.

Specifically, Plaintiffs seek to inspect the clinic to determine what, if any, medical equipment was available at 522 Lomas Boulevard NE, in the City of Albuquerque, New Mexico, for the purpose of Defendants performing the elective late term abortion procedure which resulted in Keisha Atkins' death from a septic abortion. Plaintiffs further seek to determine what, if any, equipment was available for Defendants' ability to abide by the standard of care to perform abortion procedures in a hospital and/or in a similarly equipped overnight facility capable of providing constant medical monitoring. Plaintiffs further seek to determine what, if any, equipment was available for identifying, diagnosing and treating infection and sepsis.

Furthermore, Plaintiffs are not requesting to perform their inspection of Defendants' clinic while Defendants' patients are being treated at the clinic. Consequently, there should be no concern for Plaintiffs' request disrupting or infringing patient privacy or protection.

Furthermore, Plaintiffs' Rule 1-034 Inspection Request is for the purpose of promoting efficiency and economy during the discovery process of Plaintiffs' lawsuit against Defendants. Plaintiffs will use the information from their inspection to streamline their discovery requests, deposition questions and expert witness evaluation and articulation of Plaintiffs' negligence theories.

Finally, as stated in Plaintiffs' Rule 1-034 request, Plaintiffs are willing to enter any reasonable stipulation agreement as to the specifics of the proposed inspection. Because Defendants have not offered a reasonable stipulation agreement, Defendants request for a blanket protective order with no reasonable stipulation or limiting conditions seems unreasonably prohibitive and counter-productive to the promotion of efficiency ensured by the liberal scope of New Mexico's

discovery rules.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Court deny Defendants' Motion for Protective Order, and for such other and further relief, both at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 19, 2018, a true and correct copy of Plaintiffs' Response to Defendants' Motion for Protective Order was served by electronic mail or mailed by USPS on the following:

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