

# UNM, clinic settle for \$1.26M in abortion death

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Southwestern Women's Options clinic on Lomas Blvd. (Roberto E. Rosales/Albuquerque Journal)

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Six months pregnant at the age of 23, Keisha Atkins spent the final week of her life trying to get an elective legal abortion in 2017 in Albuquerque.

She died midway through the dayslong outpatient process.

For that, the University of New Mexico Health Sciences Center and a private late-term abortion clinic in Albuquerque agreed to pay her estate a total of \$1.26 million in exchange for the dismissal of a politically charged wrongful death/medical

malpractice lawsuit, according to state and court records obtained by the Journal.

UNM, which state records show paid \$365,000 of the total, was accused of negligently referring Atkins to the private Southwestern Women's Options clinic near downtown Albuquerque after she was deemed ineligible for an elective abortion at UNM's Center for Reproductive Health.

Southwestern Women's Options, founded by Dr. Curtis Boyd, agreed via a court mediation to settle for \$900,000 the claims that its subsequent treatment of Atkins fell below the standard of care and was negligent, court records show.

The lawsuit filed by Atkins' mother and sister alleged clinic providers failed to identify, diagnose and provide care for the young woman after she showed signs of sepsis two days into a medical induction abortion procedure. Such procedures require a woman to be administered medication to stop the fetal heartbeat, go home, and then return to a medical provider to undergo labor and delivery of the fetus.

The clinic and its doctors denied any wrongdoing in response to the claims.

Lawyers representing UNMH and the private abortion clinic didn't return Journal phone calls seeking comment.

Southwestern Women's Option clinic, in settling its part of the lawsuit, sought a confidentiality provision to bar the parties from discussing the settlement. They are specifically not permitted to disparage the clinic or its doctors, according to the settlement agreement, which was filed as an exhibit in the lawsuit.

The settlements were reached last fall; the case was formally dismissed in April.

### **Safety concerns**

The Albuquerque attorney who brought the case on behalf of the

estate of Keisha Atkins, her mother Tina Atkins and her sister Nicole Atkins had little to say about the case when contacted by the Journal.

“I can only say that it’s settled,” said attorney Michael Seibel of Albuquerque, who was described as an “active pro life advocate” in court records. “I’m not going to disparage them over this case.”

But Jamie Jeffries, of the advocacy group “Abortion on Trial,” told the Journal she believes Atkins’ death and settlement underscores the need for providing safe procedures and counseling to women seeking abortions.

“What we’re trying to say and do, especially for the women of New Mexico, is just finding that common ground, regardless of who’s for or against abortion rights, we all want women to be safe, we want women to live and referring women out for outpatient induction abortion is not a good way to protect women.”

Jeffries’s organization recently publicized the settlement with UNM on its website, including providing excerpts of videotape depositions in the case.

Beyond the politically charged abortion rights issue, she said national experts who perform abortions who believe late-term induction abortions, such as occurred in Atkins’s case, should be done “in a hospital where they are constantly monitoring.”

New Mexico permits elective abortions at any phase of a pregnancy, and Boyd’s clinic has been one of the few providers nationwide to offer late-term abortions. The clinic website states abortions are performed up to 32 weeks, and on a case-by-case basis after that time.

Asked about UNMH’s current policy on performing elective abortions, UNMH spokesman Mark Rudi responded by email, “UNM Health prioritizes patient care and puts patients first. We cannot discuss specific cases or patients.”

However, a woman who answered the phone at the UNM Center for Reproductive Health said last week that elective abortions are performed at up to 22 weeks.

Asked whether UNMH still refers patients to Southwestern Women's Options, Rudi responded in an email, "UNM Health provides a wide range of options and support networks for patients based on that patient's needs."

### **Desperate situation**

Legal abortion is considered a fairly safe medical procedure, according to experts. The risk of maternal death among pregnant women is estimated to be 8.8 per 100,000 live births, compared to less than one death for every 100,000 abortion procedures, according to court filings from experts in the case.

In 2017, the year Atkins died, two women died in the U.S. as a result of complications from legal induced abortion, according to data reported to the Centers for Disease Control and Prevention. Because not all states report to the CDC, it wasn't clear whether Atkins' death was counted in the national report. A spokeswoman told the Journal last week that CDC disclosure of state-level information on such deaths isn't permitted.

In the U.S., abortions occurring at or after 21 weeks gestation are rare. According to the CDC's Abortion Surveillance Data, the vast majority of abortions (91%) occur at or before 13 weeks gestation and just 1.2% of abortions are performed at or after 21 weeks.

Why Atkins, who worked at a local restaurant, waited so long into her pregnancy to seek an abortion wasn't addressed in court filings in the case.

Records in the case show she went to UNM Center for Reproductive Health to seek an elective abortion on or about Jan. 23, 2017, and returned for an exam a week later. At that point she was 24 weeks into her pregnancy, and was referred to Southwestern Women's Options.

UNM Medical Group staff contacted the private clinic, confirmed the availability of an appointment time and scheduled the appointment for her, hand delivering their ultrasound results to the clinic on Jan. 31, 2017, the lawsuit alleged.

The next day, Atkins began the three- to four-day abortion process at the clinic. Two days later she returned to the clinic, and was administered fluids. Nine hours later, her vital signs “and her troubled breathing had not improved since her arrival,” the lawsuit stated.

An ambulance was summoned and she arrived at the emergency department of UNM Hospital with a fever, respiratory distress and a fast heart rate. She deteriorated further over the next five hours, and late that night was transferred to the operating room to finish the abortion process.

“During the procedure she suffered cardiac arrest and became pulseless,” the lawsuit stated.

The lawsuit initially sued the Office of Medical Investigator for ruling the cause of death as “natural” due to pregnancy, claiming the real cause of death was septic abortion. The OMI autopsy determined her cause of death was a pulmonary thromboembolism due to pregnancy. Legal claims against the OMI and the physicians named in the case were later dropped.

Her mother, Tina Atkins, couldn't be reached for comment. But a portion of her 2019 videotaped deposition in the case appears on Abortion on Trial's social media pages.

Asked to describe her relationship with her daughter, Atkins testified, “She was one good kid, man.”

She recalled seeing her daughter in the emergency room fighting for her life.

Keisha was combative, and “a little bit delirious,” Atkins said.

But she could still talk.

“The first thing that came out of her mouth was, ‘Mom, I’m going to die.’”

Boyd couldn’t be reached for comment for this story. In an excerpt of his Oct. 24, 2019, deposition, Boyd said his clinic offered a full range of second- and third-trimester abortions.

Boyd began performing late-term abortions in New Mexico in 2010 after the fatal shooting of his friend, Dr. George Tiller, in Wichita, Kansas, a year earlier by an anti-abortion activist. Tiller had been medical director of one of only three abortion clinics nationwide that offered late-term abortions.

“I don’t want to say ‘no’ to someone who’s in a desperate situation,” Boyd testified. “I come from a religious background. I’m an ordained minister and I believe in compassion and service – service above self. That’s my calling.”

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