



Office of the District Attorney  
Nola Tedesco Foulston

July 2, 2008

District Attorney Nola Tedesco Foulston announces that the grand jury convened on January 8, 2008, in response to a petition drive has been discharged after completing its investigation into allegations of violations of the laws pertaining to abortion by physicians and others at Women's Health Care Services. The grand jury issued the following statement:

"We the Grand Jury were charged with investigating alleged violations of the laws related to abortion at the Women's Health Care Services, Wichita, KS. After six months of conducting an investigation that included hearing extensive witness testimony, reviewing volumes of documents and medical records of patients of Women's Health Care Services, this Grand Jury has not found sufficient evidence to bring an indictment on any crime related to the abortion laws.

We believe that the Kansas State Legislature has made an earnest attempt to limit viable late-term abortions by including the words 'substantial and irreversible impairment of a major bodily function...' in the statutory language of K.S.A. 65-6703. This statute prohibits the abortion of a viable fetus unless there is a finding by two legally and financially unaffiliated physicians that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function. Our perception is that these words were used to insure that only the gravest of circumstances would allow the abortion of a viable fetus. However, the medical records reviewed by this Jury revealed a number of questionable late-term abortions with regard to the diagnosis of 'substantial and irreversible impairment.' As the current law is written and interpreted by the Kansas Supreme Court, late-term abortions will continue for many circumstances that would seem, as a matter of common interpretation, not to meet the definition of 'substantial and irreversible impairment of a major bodily function.'

The Kansas Supreme Court has stated that in order for our abortion statute to be constitutional, it must be construed to contain an exception to preserve the mental health of the woman – her mental health being part of a major bodily

function. The Court has further indicated that if a review of the relevant circumstances surrounding a woman's pregnancy and subsequent abortion revealed no more than a reasonable medical debate over the condition of the patient and the threats posed to her by continuing her pregnancy to term, no crime has been committed by the performance of the abortion. The woman's condition is the subject for a medical judgment, not a legal one. If two legally and financially unaffiliated physicians, properly exercising their professional judgment, determine that the continuation of a pregnancy will cause a substantial and irreversible impairment of a major bodily function (including a mental condition), a late-term abortion may lawfully be performed. The fact that another physician may differ with the conclusions of the other two doctors regarding the existence of a 'substantial and irreversible impairment' does not convert an otherwise lawful act into an unlawful one.

Unless, and until the State Legislature is willing to amend the present statutes and provide clearer and more definitive guidelines regarding 'substantial and irreversible impairment,' or impose new or additional statutory limitations on the ability of a woman to obtain an abortion of a viable fetus, we doubt that any investigation into the practices and procedures of Dr. Tiller and the Women's Health Care Services will yield an outcome that will provide any basis for indictment."

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Eighteenth Judicial District of Kansas