

The following is a statement by Kansas Attorney General Phill Kline released at 10:00 PM on Friday, December 22, 2007

Statement

Yesterday, December 21, 2006, at 4:37 pm, the Office of Attorney General filed criminal charges against Dr. George Tiller of Wichita, Kansas. Mr. Tiller's attorneys first made the charges public when they held a news conference in Wichita at 11:15 am today, Friday, December 22, 2006.

At 1:00 pm I was notified by the District Attorney of the 18th Judicial District that she had filed a motion and sought and obtained a hearing without notification of this office to dismiss the charges. That motion was granted. To my knowledge there was not any attempt to notify myself or this office of this motion nor its consideration by the District Attorney or the Court.

Immediately, this Office initiated efforts to contact the judge to move for reconsideration. I responded to the District Attorney within 15 minutes asking for copies of her filings. They were forwarded to me within the next hour. Our efforts to contact judges to file our motion for reconsideration were unsuccessful and we were unable to file the motion in person on Friday afternoon due to the inability to locate a judge.

As a basis for her motion the District Attorney cited Kansas statutes that require the Attorney General to file certain actions when directed to do so by the Governor or either branch of the Kansas legislature. KSA 75-702 and 704. The District Attorney then argues that the Attorney General does not have inherent power to file charges other than those articulated in those statutes. This argument is flawed. As Attorney General I have initiated hundreds of filings without the permission of the legislature or the Governor and consistent with my common law and statutory authority of the office. The statutes provided by the District Attorney are simply requirements to file in certain instances; not prohibitions.

Based on her flawed legal reasoning the District Attorney argued, without our participation, that this Office could not file charges without her consent.

KSA 22-3103 provides that if inquisition evidence and testimony "discloses probable cause to believe that a crime has been committed.the attorney general.may file such testimony, together with his complaint or information.against the person or persons . and a warrant shall there upon be issued for the arrest of such person . as in other criminal cases."

This authority is consistent with the broad constitutional, statutory and common law authority of the Office of Attorney General.

Similarly, K.S.A. 22-3201, a statute of basic criminal procedure, provides that "prosecutions in the district court shall be upon complaint, indictment or information" (K.S.A. 22-3201(a)) and that such information may "be signed by the county attorney,

the attorney general or any legally appointed assistant or deputy of either." K.S.A. 22-3201(b).

K.S.A. 22-2202(17) defines "Prosecuting attorney" to mean "any attorney who is authorized by law to appear for and on behalf of the state of Kansas in a criminal case, and **includes the attorney general**, an assistant attorney general, the county or district attorney, an assistant county or district attorney and any special prosecutor whose appearance is approved by the court."

"The attorney general is the chief law enforcement officer of the state. *State ex rel. v. Rohleder*, 208 Kan. 193, 194, 490 P.2d 374 (1971).

As a courtesy to the District Attorney I initiated efforts yesterday early afternoon to meet with her to consult regarding this filing and prior to filing this case. I, Mr. Eric Rucker, my Chief Deputy and Mr. Steve Maxwell, Assistant Attorney General, signed into Ms. Foulston's office yesterday afternoon at approximately 3:30 pm. I met with the District Attorney for approximately 1 hour and she acknowledged the jurisdiction of this office and indicated that she would not object to the filing. The case was filed at 4:37 pm.

The charges brought are the result of a multi-year investigation involving the review of thousands of pages of documents, numerous sworn statements and testimony by witnesses and expert review of records and documents. The investigation was delayed for a little over two years by the Kansas Supreme Court and this office only received the relevant medical records from Mr. Tiller's clinic on October 24, 2006.

The District Attorney, without notification to this office nor the opportunity to be heard has approached a judge not familiar with the evidence and obtained a dismissal. We will seek an emergency reconsideration of this decision.

The District Court judge overseeing this investigation has found probable cause to believe that crimes have been committed and that evidence of the crimes is found in the medical records. Now, a Sedgwick County District Court Judge found probable cause to believe that Dr. Tiller committed those crimes listed in the complaint. The District Attorney has sought to dismiss a case in which two courts have found probable cause to believe that crimes have been committed.

This office, as long as I am Attorney General, will endeavor to abide by its oath to enforce the laws of the State of Kansas. When evidence of crimes is presented, we shall investigate and when such evidence rises to the legal standard to support criminal charges, we will prosecute.

Dr. Tiller is presumed innocent by law and the allegations within the complaint are mere allegations. The complaint is now public due the news conference of Mr. Tiller's attorneys and the following provides a summary of Kansas law and the complaint.

Summary of Complaint/Information

A. The Law Protects Patients from Legal Jeopardy

Kansas law does not place the women or children who seek abortion under any criminal or legal jeopardy. Kansas law specifically states that the patient cannot be guilty of any crime and that the law's prohibitions only apply to the doctor who performs the abortion or who causes the abortion to be performed.

B. The Identity of the Patients is Protected

Attorney General Phill Kline does not desire the identity of the women who have had abortions and will file motions as this case proceeds to protect the identity of all patients requesting that their identity not be revealed in any fashion in any public documents or open court.

C. Statement by the Attorney General

Statement by Attorney General Kline: "The complaint speaks for itself, the identity of the patients will not be sought or revealed by my Office. These are accusations and Mr. Tiller is presumed innocent unless proven guilty in a court of law. The investigation is ongoing."¶

D. The Law

Kansas law restricts post viability abortion unless two doctors find either: a) the mother's life is in jeopardy if the abortion is not performed; or b) "a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman."¶ KSA 65-6703(a)(2).

The law requires this finding to be made by the physician performing the abortion and that the physician performing the abortion also have "a documented referral from another physician not legally affiliated with the physician performing or inducing the abortion"¶ that also finds that "a continuation of the pregnancy will cause a substantial or irreversible impairment of a major bodily function."¶ KSA 65-6703(a).

Kansas law requires that the medical facility in which the abortion is performed and the physician performing or inducing the abortion to report the reasons and basis for the determination that "a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the women"¶ to the Kansas Department of Health and Environment.

Violating any of the provisions of this act is a Class A misdemeanor, punishable by up to one year in jail, a \$2,500 fine or both. Although the late-term abortion statute states that "upon a second or subsequent offense"¶ for violation of this statute that the person is guilty of a severity level 10, non-person felony;"¶ Kansas Supreme Court case law has

interpreted such provisions to require a previous conviction before a person can be charged with a felony. (KSA 65-6703(g); State v. Bandy, 25 Kan. App. 2nd 1096 (1998) rev. denied (1999)). The penalty for a Class 10 non-person felony is presumptive probation.

Kansas law also provides that performing a criminal late-term abortion may be a basis to revoke a person's license to practice medicine. KSA 65-2836. Furthermore, KSA 65-2837(b)(5) defines unprofessional conduct for a medical professional as including assisting, performing or inducing a criminal abortion.

E. The Complaint

The complaint is comprised of 30 counts of alleged violations of Kansas abortion laws, KSA 65-6703.

F. Summary of Allegations in the Public Records Found in the Complaint/Information

The patients range in age from 10-22 years of age. The gestational ages of the fetuses range from 25 weeks to 31 weeks.

In every instance the life of the mother was not in jeopardy.

In every instance a mental health diagnosis was provided by the referring physician and the defendant as the justification for the late term abortion except in one case where no diagnosis was provided.

In nine cases the pregnant woman or child was diagnosed as having "Major Depressive Disorder, Single Episode."

In four cases the pregnant woman or child was diagnosed as having "Acute Stress Disorder."

In two cases, two different diagnoses were reached. In one of these cases one diagnosis was "Acute Stress Disorder" and the other was "Anxiety Disorder." In the other case the two differing diagnoses were "Anxiety Disorder" and "Adjustment Disorder."

In three cases, it is alleged that the clinic reported to KDHE that the fetus was not viable when the defendant's medical records indicate that the fetus was viable.

In all cases, it is alleged that the defendant failed to report the basis or reasons for the late term abortion pursuant to Kansas law.

G. Statute of Limitations

The subpoenas for the records were originally issued in September 2004. The Kansas Supreme Court first accepted jurisdiction in this case on October of 2004. At the time the Court accepted jurisdiction it effectively stayed this investigation pending its decision. The Court did not render a decision until February of 2006. The documents were

provided to investigators in the Office of Attorney General on October 24, 2006, effectively providing a two year delay in the investigation.

Kansas law originally provided a two-year statute of limitations for prosecuting criminal late-term abortions. This means that a criminal complaint charging such a crime would have to be filed within two years of the act or the state would be prohibited from prosecuting the crime.

The Kansas legislature and Governor, however, extended the statute of limitations for such crimes to 5 years effective on July 1, 2005. This means that the new five year statute of limitations applies to all alleged criminal activity where the previous two-year time limit had not run at the time the new law became effective. In other words, the statute had already expired for all activity on or prior to June 30, 2003 prior to the effective date of the new law and, therefore, the previous two year statute of limitations applied and those actions are now barred. For any activity, however, where the old statute of limitations had not run (activity on or after July 1, 2003) the new five-year statute of limitations applies and those actions can be initiated anytime prior to July 1, 2008.

By the time the investigators for the Attorney General's office obtained the files on October 24, 2006, twenty-eight of the files subpoenaed by the Court in September 2004 relating to this defendant had expired under the statute of limitations on any alleged criminal activity.

The Complaint contains allegations and Dr. Tiller is presumed innocent by law.