

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
DIVISION FIVE

STATE OF KANSAS,)
)
 Plaintiff,)
)
 vs.)
)
 COMPREHENSIVE HEALTH OF)
 PLANNED PARENTHOOD OF KANSAS)
 AND MID-MISSOURI, INC.,)
)
 Defendant.)

Case No. 07 CR 2701

DEFENDANT'S FIRST MOTION FOR PROTECTIVE ORDER

Comes now defendant, Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., and moves the Court to enter a protective order in this case. As the Court is aware, the recent decision by the Kansas Supreme Court in the interlocutory appeal declared that medical records and the termination of pregnancy report which the Johnson County District Attorney attempted to subpoena from the Kansas Department of Health and Environment can only be obtained by the Kansas Attorney General. Through discussion with the District Attorney and the Attorney General, defendant understands that in all likelihood, either an Assistant Attorney General will be assigned to assist in the prosecution of this case, or one of the Assistant District Attorneys involved in the prosecution will be appointed Special Assistant Attorney General. Either way, it is anticipated that the authority of the Kansas Attorney General will be exercised to obtain medical records and termination of pregnancy reports from the KDHE for use in the prosecution of this case. Defendant submits that it is therefore mandatory that the proper handling of those documents be considered and ordered by this Court. In support of this

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proposition, defendant relies on the decision of the Kansas Supreme Court in Alpha Medical Clinic v. Anderson, 280 Kan. 903, 128 P.3d 364 (2006). There at Syl. 10, the Court noted that:

...three federal constitutional rights to privacy are potentially implicated by the attorney general's inquisition and subpoenas duces tecum seeking records of abortions performed in Kansas: the right to maintain the privacy of certain information; the right to obtain confidential health care; and the fundamental right of a pregnant woman to obtain a lawful abortion without the government's imposition of an undue burden on that right.

Id., 128 P.3d at 368. At Syl. 11 the Court stated that "abortion providers can assert their patients' constitutional rights to privacy." Id. Syl. 12 the court went on to hold that the district court,

...must balance the State's compelling interest in pursuing criminal investigations and the privacy rights of patients who have received abortions, considering the type of information requested, the potential harm in disclosure, the adequacy of safeguards to prevent unauthorized disclosure, the need for access, and statutory mandate or public policy considerations.

Id., at 368-9.

Defendant hereby asserts the privacy rights of any of its patients whose records will be sought under the auspices of the Kansas Attorney General for use in this case, and further asserts that those privacy rights must be of the highest concern for the Court and counsel. In furtherance of those privacy rights defendant proposes that the following be ordered by the Court:

1. That if the Johnson County District Attorney's office should join forces with the Office of the Kansas Attorney General in an effort to subpoena medical records and termination of pregnancy reports from the Kansas Department of Health and Environment, defense counsel be immediately notified in order to provide defendant with an opportunity to raise appropriate objections;
2. That if the Office of the Kansas Attorney General becomes involved in this matter and medical records and termination of pregnancy reports are subpoenaed, that an appropriate

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procedure be initially established to insure that the subpoenaed records are appropriately redacted in an effort to protect the patients' privacy rights, so that the records, as redacted, contain no information from which the identity of individual patients can be discerned;

3. That all medical records, including termination of pregnancy involved in this case be maintained under seal;

4. That no copy of any subpoenaed termination of pregnancy records or portions thereof be made or distributed without prior approval from the Court, except as required in any redaction process directed or authorized by the Court, and further except for a copy of the subpoenaed records to be furnished to defendant immediately upon receipt;

5. That the records be maintained under lock and key at the Johnson County District Attorney's office, and that anyone provided access to the records sign a ledger prior to examining the records, stating the purpose of their access to the records and providing a date and time when the records are examined;

6. That no copy of medical records or any portion thereof, or copies of the Kansas State Department of Health and Environment termination of pregnancy reports or any portion thereof, shall be made available to any expert, outside counsel, investigator, or staff, except by Court order after such person or persons have executed a confidentiality agreement by which they agree (1) to not share any of the information received with anyone else without first obtaining Court approval; (2) that no copy can be made of the provided documents or any portion thereof without first obtaining prior Court approval; (3) that any notes taken from or regarding the provided records not be distributed to a third party without a Court order; and (4) that at the conclusion of the case all provided records, any notes regarding the provided records and any video/audio recordings of or regarding the provided records must be returned to the Court.

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Defendant seeks the order described above as necessary to protect the privacy of the patients involved and submits that the requested orders are reasonable in light of the decision of the Kansas Supreme Court in Alpha Medical Clinic v. Anderson, supra.

Respectfully submitted,

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ATTORNEYS FOR COMPREHENSIVE
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OF KANSAS AND MID-MISSOURI, INC.

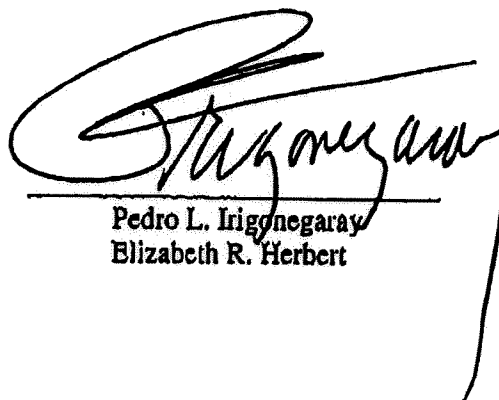
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CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was served on counsel of record by () placing the same in the United States mail, postage prepaid; by () courier service; by () facsimile, to telephone number _____, and that the transmission was reported as complete and without error, and that the facsimile machine complies with the Supreme Court Rule 119 (b) (3); or by () hand delivery, on April 5, 2011, to:

Stephen M. Howe
JOHNSON COUNTY DISTRICT ATTORNEY
100 N. Kansas
Olathe, KS 66061

Chamber copy to:
Hon. Stephen R. Tatum
Johnson County District Court
100 N. Kansas Avenue
Olathe, Kansas 66061



Pedro L. Irigonegaray
Elizabeth R. Herbert

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Defendant.)
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DEFENDANT'S SECOND MOTION FOR PROTECTIVE ORDER

Comes now defendant, Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., and moves the Court to enter the following protective order:

1. Defendant anticipates that at the Preliminary Hearing the State will attempt to introduce documents entitled DEPARTMENT OF HEALTH AND ENVIRONMENT REPORT OF INDUCED TERMINATION OF PREGNANCY, hereinafter referred to as a "TOP." A TOP is a one-page, two-sided form. The form contains questions on both the front and back. The questions are numbered 1 through 18(b) inclusive.
2. In accordance with defendant's previous Motion for Protective Order, defendant anticipates that TOPs presented in evidence will be redacted in a manner consistent with previous redactions performed in related litigation involving defendant.
3. Notwithstanding reasonable and necessary redactions to the TOPs, the possibility still remains that with enough time and effort one could ascertain a patient's identity based on the remaining information on the form.

CLERK OF DISTRICT COURT 1
JOHNSON COUNTY, KS

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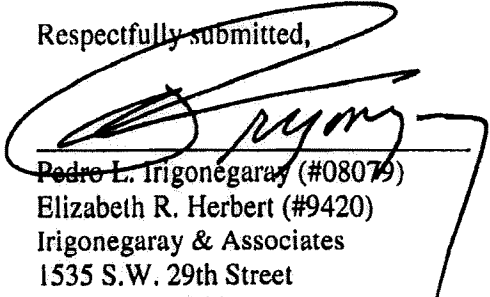
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4. In an effort to decrease the risk of a patient being identified, defendant suggests the following process be employed during the presentation of the evidence at preliminary hearing, and later at trial, should a trial occur:

- a. A computer system employing monitors for the Court and counsel should be installed. (At trial, provision would have to be made for the jury to see the exhibits also.)
- b. Exhibits should not be visible in the court room to anyone other than the court and counsel.
- c. TPPs should only be referred to by their exhibit number; no other number or identification code should be used.
- d. Testimony regarding TOPs should be limited to the specific numbered question which is alleged to be in issue on that exhibit; no general discussion of the content of each TOP should be permitted, since it could potentially lead to the discovery of the patient's identity, and is also irrelevant to the alleged criminal violation.

WHEREFORE, counsel prays the Court for an order mandating that the process and procedures outlined herein be employed in the presentation of evidence in this matter.

Respectfully submitted,



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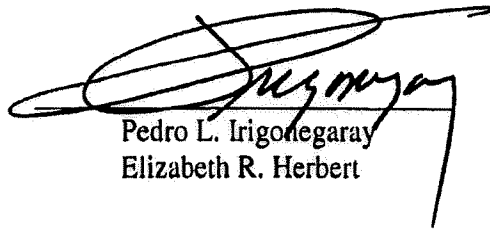
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