

*This transcript is a version of the episode.*

**Imani:** Hello fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast. I'm Rewire News Group's Editor-at-Large Imani Gandy.

**Jess:** I'm Jess Pieklo, Rewire News Group's Executive Editor.

Rewire News Group is the one and only home for expert repro journalism that inspires, and the Boom! Lawyered podcast is part of that mission. A big thanks to our subscribers and welcome to our new listeners!

Our first episode of this year was all about EMTALA. That's the federal law that requires Medicare funded hospitals to screen and provide stabilizing treatments to patients that show up in their emergency rooms. Well we're going to be talking about EMTALA a lot. Maybe too much. But you're going to love it, so strap in.

Weeks after the Supreme Court overturned Roe, the Biden administration issued guidance about EMTALA, which clarified that stabilizing treatment may include abortion care.

**Imani:** And that was fantastic. That was a step in the right direction when it comes to the Biden administration demonstrating it understands how important abortion rights are even if he won't say the goddamn word.

**Jess:** I agree. It was a nice change. But I have a question for you?

Why—after issuing such a clear guidance—when faced with a clear cut violation of EMTALA did the Biden administration side with hospital administrators over a patient in clear medical distress and in need of an abortion? Talk about an unforced error.

**Imani:** Are you talking about Jaci Statton?

**Jess:** Yep.

**Imani:** What in the world was the Biden administration thinking?

**Jess:** Who knows. Let's get into it. Who is Jaci Statton and how is her case a perfect example of everything that's wrong with relying on EMTALA to enforce abortion rights.

Statton is an Oklahoma woman who found herself sitting in a hospital parking lot waiting to get close enough to death for the hospital to perform the abortion she needed to save her life.

Jaci Statton was diagnosed with a partial molar pregnancy, a potentially fatal condition that can cause hemorrhaging, high blood pressure, and cancer in some cases.

Here's what she said about her condition: "It was the closest I've ever felt to death." But rather than provide the abortion, the hospital told her to go sit in the parking lot until she was on death's door.

Imani, they made her go sit in her car. They wanted her to be close enough to the hospital so that when her health deteriorated she would be right near the emergency room, but she wasn't deteriorating enough for them to actually take care of her when she showed up at the ER. It's bananas.

They said, "The best we can tell you to do is sit in the parking lot, and if anything else happens, we will be ready to help you. But we cannot touch you unless you are crashing in front of us or your blood pressure goes so high that you are fixing to have a heart attack."

**Imani:** Statton filed a complaint alleging a violation of EMTALA. And according to abortion rights advocates, it seemed like it should have been a clear cut case.

- One reason it may not be such a clear cut case is that after she was initially treated in the emergency room, she was moved to another part of the hospital not governed by EMTALA, according to reporting from the Washington Post.

So it was a big slap in the face when the Biden administration this week denied that Oklahoma University Medical Center had violated EMTALA when it told Statton to go out and sit in the hospital parking lot until her condition was serious enough to warrant abortion care.

Biden's decision to deny that this was a violation throws doctors under the bus.

- Lends credence to the idea that doctors are willfully refusing to perform life saving care to send a message to politicians.
- We can see that politicians are more than willing to throw doctors under the bus. They are even encouraging patients to throw their doctors under the bus even though patients and doctors are suing together demanding that Texas, for example, clarify its medical exception.

- The hospital acknowledged the severity of her condition, but doctors claimed they couldn't legally treat her due to the state's abortion restrictions.

Oklahoma

- The Biden administration essentially threw the hospital under the bus and said there was no violation thereby implying that the doctor should have performed the abortion. This plays right into anti choice messaging.

**Jess:** It's safe to ask whether or not the Biden administration is taking this seriously. The administration seemed like it would be embracing EMTALA as a response to Dobbs. They certainly made a big stink about it in Idaho. The DOJ filed a lawsuit to block Idaho from enforcing its total abortion ban in a manner that conflicted with EMTALA's requirement for stabilizing treatment including abortion.

But the administration has only publicly announced one EMTALA violation case involving a patient in Missouri and Kansas. This is the case even though there are numerous cases of denied medical care due to abortion bans.

**Imani:** The Biden administration's interpretation of EMTALA faces challenges from the right, with arguments that it does not cover abortion and that state abortion bans already have sufficient exceptions for life-threatening cases. But that doesn't mean he needs to roll over for them. He needs to step up and back doctors. He needs to call out this insidious scheme among anti choicers to drive a wedge between a patient and their doctor in order to make it seem as if abortion providers are somehow different and don't have their patients best interest at heart when that's obviously false.

**Jess:** It's easy to blame doctors in situations like this, but part of the problem in this post-*Dobbs* landscape is that states have not been clear about when it is a life saving abortion is permissible. Blame the states that pass mad lib bills drafted by lobbying groups like Americans United for Life. These legislators don't know what they're enacting. They're cosplaying as doctors and actual doctors don't understand what the fuck they're talking about.

**Imani:** In Texas, especially, two dozen women and their doctors are suing asking for a clarification of the medical exception in that state. Jaci Statton is actually named in the Zurwaski allegations alongside probably 40 other women. She's not a Texas resident, but the Center for Reproductive Rights used her case as evidence that the problems regarding understanding the medical exceptions aren't exclusive to Texas.

**Jess:** Doctors are terrified. Doctors, hospital administrators and their lawyers are forced to parse through statutes written using medical jargon that has no real-life connection to the way doctors practice medicine so that they can make decisions about individual patient's need for an abortion. It's a time-consuming clusterfuck because while people are clucking about a pregnant person's health care, that pregnant person may be getting sicker and sicker.

**Imani:** They're right to be terrified. The wrong decision, no matter how carefully made, can land a doctor in prison. Or if they're lucky, they'll just be stripped of their license, forcing their existing patients to seek care elsewhere. It's a lose-lose situation for many of these doctors.

- A study of OB-GYNS [conducted by KFF](#) demonstrated that in states with abortion bans, not only are OB-GYNs not performing abortions themselves, but 30 percent aren't even offering their patients referrals to other clinics or any information about abortion out of fear of being labeled an aider or abettor.

It's that wrong decision that doctors live in fear of. Because depending on where the abortion is performed, their judgment could be called into question by doctors who believe there is never a need for an abortion. Moreover, the anti-choice movement has spent more than a decade building up its network of junk scientists and expert witnesses willing to testify that abortion is immoral and never necessary.

**Jess:** And we have Anthony Kennedy to thank for the courts' willingness to accept rather than interrogate junk science first from the states and now maybe this term, from the courts themselves.

- *Gonzales v. Carhart* legacy and the both-sides-ing of science lays the groundwork for undermining/conspiracizing government experts because it empowers local electeds to just pick a side – incentivizes flooding the zone with nonsense—and that's how we get to the FDA mifepristone case for example.

**Jess:** We're seeing in these EMTALA fights the coming together of decades of attacks on science and government agencies—they're hand in hand—and a campaign by the anti-choice movement to carve abortion out of health care generally right?