



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

May 30, 2013

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**VIA ELECTRONIC TRANSMISSION
AND U.S. MAIL:**

Hon. Bob Goodlatte
Hon. Trent Franks
U.S. House of Representatives
Committee on the Judiciary
c/o John Coleman
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Representatives Goodlatte and Franks,

I am in receipt of your letter of May 7, 2013, in which you requested that my Office provide you certain information about homicide prosecutions and related issues under Alabama law.

Like you, I was horrified to learn of the heinous and disgusting crimes of Kermit Gosnell. The regulatory failures that apparently allowed Gosnell to commit these crimes for so long are completely unacceptable. This case is a stark reminder that "the only thing necessary for the triumph of evil is for good men to do nothing." I firmly believe that, if Gosnell's murder mill had been in Alabama, it would have been shut down long ago and Gosnell would be on death row where he belongs.

Before addressing your specific questions, I need to explain how I prepared this response. Most criminal prosecutions in Alabama are initiated and conducted at the trial level by district attorneys, not the Attorney General, and there is no comprehensive database in Alabama that tracks the age of crime victims or the circumstances of murders. Accordingly, I have forwarded your specific inquiries to the Alabama District Attorneys Association, and the Association has responded with anecdotal information about prosecutions. In my responses below, I have combined this anecdotal information with similar anecdotal information gathered from the attorneys in my Office.

The following are my responses to your specific questions, as rephrased:

- 1. Do prosecutors in Alabama treat the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortions, as a criminal offense?**

Yes. Alabama law treats the deliberate killing of any infant as a serious criminal offense. The Alabama homicide statute expressly applies to the killing of any person including an “unborn child *in utero* at any stage of development, regardless of viability.” Ala. Code § 13A-6-1(a)(3). Under Alabama law, a murderer who intentionally kills a child under the age of fourteen is eligible for the death penalty based on the youthful status of the child alone. *See* Ala. Code § 13A-5-40(a)(15). The State’s civil wrongful death statute, which allows for the imposition of punitive damages, also applies to unborn and newborn children. *See Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011); *Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012).

- 2. Has the Alabama Legislature enacted laws, in addition to general laws against homicide, specifically to protect newborns delivered alive in the process of abortions?**

I would call your attention to the following Alabama statutes that prohibit late-term and partial-birth abortions and otherwise protect unborn and newborn children: The “Brody Act” of 2006, Ala. Code § 13A-6-1(a)(3); Abortion of Viable Unborn Child Act, Ala. Code § 26-22-1, *et seq.*; Alabama Partial-Birth Abortion Ban Act of 1997, Ala. Code § 26-23-1, *et seq.*; Alabama Pain-Capable Unborn Child Protection Act, Ala. Code § 26-23B-1, *et seq.*; Fetal Death Reporting Act, Ala. Code § 22-9A-13, *et seq.* These statutes impose varying degrees of criminal and civil penalties.

- 3. Does Alabama have a different statute of limitations for the death of infants than for the death of older persons?**

No.

- 4. Has the Office of Alabama Attorney General prosecuted criminal cases in which a woman has died or suffered serious complications as a result of an abortion?**

The Alabama Legislature has enacted numerous laws and safety codes to protect the health of women who seek to have abortions. *See, e.g.*, The Women’s Health and Safety Act, Act 2013-79, effective July 1, 2013; Parental Consent to Performing Abortion Upon Minor, Ala. Code § 26-21-1, *et seq.*; Licensing of Hospitals, Nursing Homes and Other Health Care Facilities, Ala. Code § 22-21-20, *et seq.* These laws are strictly enforced in Alabama. The

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Attorney General's Office recently prosecuted a nurse, Janet King, for performing unlicensed abortions, and the Department of Public Health has recently closed (and filed an action to re-close) an abortion clinic in Birmingham because of safety-code violations. *See State of Alabama v. Janet O. King*, CC-2006-4787, CC-2006-4788, CC-2006-4789 (Jefferson County Circuit Court, sentenced by Judge Gloria Bahakel in 2009) (indictments attached as Exhibit A); *Ex parte King*, 23 So. 3d 77 (Ala. 2009); *State Board of Health v. All Women's Inc.*, CV-2013-901119 (Jefferson County Circuit Court, pending) (complaint attached as Exhibit B).

The prosecution of Janet King for performing unlicensed abortions involved the administration of an abortion-inducing drug that resulted in complications for the patient. To my knowledge, this Office has not prosecuted another person for injuring or killing a woman in relation to an abortion procedure. The Alabama District Attorneys Association is also not aware of any abortion-related murder or injury prosecutions in Alabama. We stand ready to prosecute those crimes, however, if they were to occur in Alabama.

5. Has the Office of Alabama Attorney General prosecuted persons for performing abortions after the statutory limit imposed by Alabama law?

To my knowledge, this Office has never prosecuted a person for performing an abortion after the statutory limit imposed by Alabama law. The Alabama District Attorneys Association is also not aware of any similar prosecutions in Alabama. We stand ready to prosecute those crimes, however, if they were to occur in Alabama.

I hope this letter answers your questions. Please contact Andrew Brasher of my staff at 334-353-2609 if you need any additional assistance.

Sincerely,



Luther Strange
Attorney General

LS:AB:smm

Exhibit A

INDICTMENT

CIRCUIT COURT OF TENTH
JUDICIAL CIRCUIT

The State of Alabama,
JEFFERSON COUNTY

The grand jury of said county charge that, before the finding of this indictment,

JANET ONTHANK KING whose name is to the grand jury otherwise unknown, not being a
physician as defined in Section 26-23A-3(7) of the Code of Alabama, did
intentionally, knowingly or recklessly perform an abortion on a woman, to-wit: L. J.,
in violation of Section 26-23A-7 of the Code of Alabama, against the peace and
dignity of the State of Alabama.

David Barber
DISTRICT ATTORNEY, TENTH JUDICIAL
CIRCUIT OF ALABAMA

RAIL FIXED AT ONE THOUSAND DOLLARS
Laura Petro
JUDGE

=====

GJ NO: 83297	CHARGE: ABORT NON PHYS	JCID: A0000628	INTAKE: AG000136
WARR NO:	OFFENSE CODE: 14990200	NCIC:	

NOVEMBER 2006 SESSION

A TRUE BILL

[Handwritten Signature]
Foreman of the Grand Jury

Presented to the presiding Judge in open court
by the foreman of the Grand Jury, in the presence
of 17 Grand Jurors and filed in
open court by order of the Court on this the
17th day of November

20 06 *[Handwritten Signature]*
Clerk.

INDICTMENT

No Prosecutor

I hereby certify that a true copy of this indictment
has been served on the defendant this the
_____ day of _____
20 _____

MIKE HALE, Sheriff

By _____
Deputy Sheriff

CAPIAS
ISSUED
12-7-06

INDICTMENT

The State of Alabama,
JEFFERSON COUNTY

CIRCUIT COURT OF TENTH
JUDICIAL CIRCUIT

The grand jury of said county charge that, before the finding of this indictment,

JANET ONTHANK KING whose name is to the grand jury otherwise unknown, not being a
physician as defined in Section 26-23A-3(7) of the Code of Alabama, did
intentionally, knowingly or recklessly perform an abortion on a woman, to-wit: R. J.,
in violation of Section 26-23A-7 of the Code of Alabama, against the peace and
dignity of the State of Alabama.

David Barker
DISTRICT ATTORNEY, TENTH JUDICIAL
CIRCUIT OF ALABAMA

BAIL FIXED AT ONE THOUSAND DOLLARS

Laura Petro
JUDGE

=====

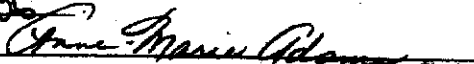
GJ NO: 83296 CHARGE: ABORT NON PHYS JCID: A0000628 INTAKE: AG000135
WARR NO: OFFENSE CODE: 14990200 NCIC:

NOVEMBER 2006 SESSION

A TRUE BILL


Foreman of the Grand Jury

Presented to the presiding Judge in open court
by the foreman of the Grand Jury, in the presence
of 17 Grand Jurors and filed in
open court by order of the Court on this the
17th day of November,
20 06


Clerk.

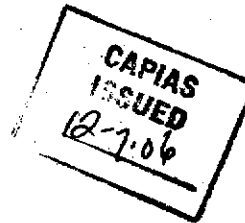
INDICTMENT

No Prosecutor

I hereby certify that a true copy of this indictment
has been served on the defendant this the
_____ day of _____,
20 _____.

MIKE HALE, Sheriff

By _____
Deputy Sheriff



INDICTMENT

The State of Alabama,
JEFFERSON COUNTY

CIRCUIT COURT OF TENTH
JUDICIAL CIRCUIT

The grand jury of said county charge that, before the finding of this indictment,

JANET ONTEANK KING whose name is to the grand jury otherwise unknown, did, with intent to defraud, make or cause a false entry, to-wit: false entries into Bacteriological Sterilization Reports required to be kept under Alabama Administrative Code Chapter 420-5-1-03(7), in the business records of an enterprise, to-wit: SUMMIT MEDICAL CENTER OF ALABAMA, INC., in violation of Section 13A-9-45 of the Code of Alabama, against the peace and dignity of the State of Alabama.

David Barber
DISTRICT ATTORNEY, TENTH JUDICIAL
CIRCUIT OF ALABAMA

BAIL FIXED AT ONE THOUSAND DOLLARS

Laura Petro
JUDGE

=====
GJ NO: 83300 CHARGE: FALS BUS REC JCID: A0000628 INTAKE: AG000139
WARR NO: OFFENSE CODE: 26070001 NCIC:

NOVEMBER 2006 SESSION

A TRUE BILL

[Handwritten Signature]
Foreman of the Grand Jury

Presented to the presiding Judge in open court
by the foreman of the Grand Jury, in the presence
of 17 Grand Jurors and filed in
open court by order of the Court on this the

17th day of November,
20 06

[Handwritten Signature] Clerk.

INDICTMENT

No Prosecutor

I hereby certify that a true copy of this indictment
has been served on the defendant this the
_____ day of _____,

20 _____

MIKE HALE, Sheriff

By _____
Deputy Sheriff

CAPIAS
ISSUED
12-5-06

Exhibit B

**IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA**

STATE BOARD OF HEALTH,)
)
Plaintiff,)
)
v.)
)
ALL WOMEN’S, INC., d/b/a NEW)
WOMAN ALL WOMEN HEALTH)
CARE, DIPAT, L.L.C., DIANE W.)
DERZIS, PATRICK H. SMITH, and)
BRUCE E. NORMAN, M.D.)
)
Defendants.)

CIVIL ACTION NO.

COMPLAINT

1. This is an action seeking declaratory and injunctive relief to enjoin the further operation of an illegally operated abortion or reproductive health center in Jefferson County, Alabama. This action is brought pursuant to §§ 6-6-503 and 22-21-33, Ala. Code 1975.

PARTIES

2. The State Board of Health (hereinafter “the Board”) has been granted authority and jurisdiction by the Alabama Legislature to exercise general control over the enforcement of laws relating to public health in Alabama. See § 22-2-2, Ala. Code 1975. The Medical Association of the State of Alabama constitutes the Board, and designates full authority to a State Committee of Public Health to exercise the powers of the Board whenever the Board is not in session. See §§ 22-2-1 and 22-2-4, Ala. Code 1975. The Alabama Department of Public Health or State Health Department (hereinafter “the Department”) is a state agency and is the administrative arm of the State Committee of Public Health and the Board. See § 22-1-1, Ala. Code 1975. The State Health Officer, a physician, serves as the executive officer of the State Committee of Public Health and the Department. See § 22-2-8, Ala. Code 1975.

3. The Board is explicitly authorized and required to license and regulate all hospitals within the state of Alabama. The term “hospital” is broadly defined to include most health care institutions or facilities within the state, including “abortion or reproductive health centers.” See §§ 22-21-20 through -34, Ala. Code 1975. The Board, as statutorily charged by § 22-21-28, Ala. Code 1975, has promulgated rules establishing licensure requirements and minimum standards for the safe and adequate treatment of patients in abortion or reproductive health centers. Such rules are to have the force and effect of law and are to be enforced by the courts as in the case of other health laws. See § 22-2-2(6), Ala. Code 1975. The Board also, as statutorily charged by §§ 22-21-29 and -33, Ala. Code 1975, conducts inspections of both licensed and unlicensed facilities, and takes appropriate action to enforce the requirements of the State’s health care facility licensure laws and its administrative rules.

4. An “abortion or reproductive health center” is defined by the Board’s Rules for Abortion or Reproductive Health Centers as follows:

“[A]ny health care facility operated substantially for the purpose of performing abortions. Such a facility must be a free-standing unit and not part of a hospital or other facility licensed for other purposes by the State Board of Health. A health care facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

“1. The health care facility performs thirty or more abortion procedures per month during any two months of a calendar year;

“2. The health care facility holds itself out to the public as an abortion provider by advertising by some public means, such as a newspaper, telephone directory, magazine, or electronic media, that it performs abortions; or

“3. The health care facility applies to the State Board of Health for licensure as an abortion or reproductive health center.”

Rule 420-5-1-.01(2)(b), Ala. Admin. Code.

5. All Women's, Inc., d/b/a New Woman All Women Health Care, is an Alabama domestic corporation according to records maintained by the Alabama Secretary of State.

6. Diane W. Derzis and Patrick H. Smith are listed as officers - President and Secretary, respectively - of All Women's, Inc., in records maintained by the Alabama Secretary of State.

7. Dipat, L.L.C., is an Alabama domestic limited liability company according to records maintained by the Alabama Secretary of State.

8. Diane W. Derzis and Patrick H. Smith are listed as members of Dipat, L.L.C., in records maintained by the Alabama Secretary of State.

9. Bruce E. Norman, M.D., is a physician who practices medicine in Alabama.

FACTS

10. On March 16, 2012, the Department initiated license revocation proceedings against a license to operate an abortion or reproductive health center issued to All Women's, Inc., doing business as New Woman All Women Health Care, at 1001 17th Street South, in Birmingham, Alabama. The matter was set for a contested case hearing pursuant to the Board's Rules for Hearing of Contested Cases, Chapter 420-1-3, Ala. Admin. Code, which have been adopted pursuant to the Alabama Administrative Procedure Act, § 41-22-1, et seq., Ala. Code 1975. Notice of hearing and the factual bases supporting license revocation proceedings were delivered to Diane W. Derzis. (See Exhibit 1). The license revocation proceedings were based upon findings by the Department that constituted serious violations of the Board's Rules for Abortion or Reproductive Health Centers, Chapter 420-5-1, Ala. Admin. Code, including, but not limited to, a failure to ensure clinic staff was properly trained to provide safe quality patient care, a failure to ensure the clinic had policies and procedures related to medication errors and

the administration of medications, and a failure to ensure a registered nurse administered and prepared medications accurately per a signed physician's order.

11. The license revocation proceedings were ultimately settled by Diane W. Derzis, as President of All Women's, Inc., entering into a Consent Agreement with the Department on April 2, 2012. (See Exhibit 2). Derzis agreed to close the abortion or reproductive health center by May 18, 2012, and thereafter return the license certificate to the Department. The agreement further provided that another person or entity could submit application for license to operate an abortion or reproductive health center at the 1001 17th Street South location so long as: (1) the Department was satisfied, in its sole discretion, that the applicant was both willing and able to comply with the Board's Rules for Abortion or Reproductive Health Centers; (2) the applicant was independent from and not affiliated with All Women's, Inc., and its officers and directors; and (3) the applicant agreed to not employ Diane W. Derzis, Bruce E. Norman, M.D., who had performed abortion procedures at the abortion or reproductive health center, and the abortion or reproductive health center's medical director. The Consent Agreement was incorporated into a final Consent Order of the State Health Officer entered on April 3, 2012. (See Exhibit 3).

12. Since the May 18, 2012, closure, the Department has denied two applications for license to operate an abortion or reproductive health center at the 1001 17th Street South location filed with the Department by the same applicant. Pursuant to the documentation provided as part of those applications, the explicit or implicit agreement by All Women's, Inc., Dipat, L.L.C., Diane W. Derzis and Patrick H. Smith is required for any use of the 1001 17th Street South facility, particularly the provision of abortion services. The first application for license included a real estate lease agreement between the license applicant and Dipat, L.L.C., and a proposed business lease agreement between the license applicant and All Women's, Inc. (See Exhibits 4

and 5). The second application for license included the same proposed real estate lease agreement and an asset purchase agreement between the applicant and “New Woman Health Care, Inc.”¹ (See Exhibits 4 and 6). Per these agreements, Dipat, L.L.C., owns the 1001 17th Street South real estate and All Women’s, Inc., owns New Woman All Women Health Care’s tangible and intangible business assets. The submitted agreements described tangible business assets to include machinery, furniture, fixtures and equipment and described intangible business assets to include business and trade names, business plans, trade secrets, proprietary information, intellectual property, trademarks, email addresses, internet domain names and web sites.

13. There currently is no person or entity licensed by the Department to operate an abortion or reproductive health center at 1001 17th Street South, in Birmingham, Alabama.

14. All Women’s, Inc., doing business as New Woman All Women Health Care, is holding itself out as an abortion provider through an operable web site – <http://www.newwomanallwomen.com> . (See Exhibit 7). Said website, in pertinent part, provides: (1) 1001 17th Street South, Birmingham, Alabama, as an address of operation; (2) operable phone numbers answered by persons scheduling appointments for services; (3) abortion services are offered at this facility; (4) fees charged for abortions and other services; and (5) abortion aftercare directions. Further, no trespassing and other signage at the 1001 17th Street South facility provides it to be property of New Woman All Women Health Care.

15. Abortion procedures are being performed at the 1001 17th Street South facility by Bruce E. Norman, M.D., doing business as the “Women’s Center.”

¹ There is no such corporation listed in the records of the Alabama Secretary of State. The proper entity to have been provided in the asset purchase agreement is likely All Women’s, Inc.

VIOLATIONS OF LAW

16. All Women’s, Inc., doing business as New Woman All Women Health Care, is holding itself as an abortion provider through advertising and offering abortion services to the public without a license as required by Board Rule 420-5-1-.01(2)(b)2., Ala. Admin. Code.

17. To the extent that Bruce E. Norman, M.D. - or any other physician - perform abortions and be permitted to perform abortions through explicit or implicit agreement with All Women’s, Inc., Dipat, L.L.C., Diane W. Derzis or Patrick H. Smith, so that Bruce E Norman, M.D. – or any other physician - is performing thirty or more abortion procedures per month during any two months of a calendar year at the 1001 17th Street South facility, said facility must be licensed as an abortion or reproductive health center pursuant to Board Rule 420-5-1-.01(2)(b)1., Ala. Admin. Code. This rule provision withstood legal challenge concerning its applicability to a private physician office setting in Tucker v. State Department of Public Health, 650 So. 2d 910 (Ala. Civ. App. 1994).

18. None of the Defendants possess a license authorizing them to operate an abortion or reproductive health center as required by §§ 22-21-23 through -25, Ala. Code 1975. Pursuant to § 22-21-33, Ala. Code 1975, the operation of a health care facility without the required license is subject to civil injunctive relief.

19. Pursuant to § 22-21-33, Ala. Code 1975, when the Board determines that a facility is operating as an unlicensed health care facility, the Board may seek declaratory and injunctive relief in the circuit court of the county in which the unlicensed facility is located. This statute explicitly provides that “[t]he proceedings shall be expedited” by the circuit court, and that the sole evidentiary questions before the court shall be whether the facility meets the definition of a health care facility within the meaning of the statute and the rules promulgated by

the Board, and whether the facility has been granted a valid and current license. This statute further explicitly directs the circuit court that, “[i]f the State Board of Health prevails on these questions, then the court shall, upon the request of the [Board], forthwith grant declaratory and injunctive relief requiring the operator to close the facility and requiring the operator or operators to move all residents or patients to appropriate placements.”

RELIEF REQUESTED

WHEREFORE, these premises considered, the Board respectfully requests that the following relief be granted:

1. That this Court enter an Order declaring that All Women’s, Inc., doing business as New Woman All Women Health Care, and its officers Diane W. Derzis and Patrick H. Smith, are operating an abortion or reproductive health center without a valid or current license issued by the Board, and that the Defendants are therefore in violation of the State’s health care facility licensure law, §§ 22-21-20 through -34, Ala. Code 1975;

2. That this Court enters an Order providing the following permanent injunctive relief:

A. That All Women’s, Inc., doing business as New Woman All Women Health Care, Dipat, L.L.C., Diane W. Derzis, and Patrick H. Smith be permanently enjoined from operating, or allowing, by explicit or implicit agreement, for the operation of an unlicensed abortion or reproductive health center, or holding themselves out to the public as an abortion provider without the required license, at 1001 17th Street South, in Birmingham, Alabama, or at any other location within the State of Alabama, and directing that its web site, phone

numbers, and all other advertising as an abortion provider by public means be immediately disabled; and

B. That Bruce E. Norman, M.D., and any business entity through which he conducts business as a provider of abortions, be permanently enjoined from holding himself or any associated business entity out to the public as an abortion provider without the required license, and be permanently enjoined from performing thirty or more abortion procedures per month during any two months of a calendar year without the required license at the 1001 17th Street South facility, or at any other location within the State of Alabama.

3. That this Court tax costs against the Defendants; and
4. That this Court grant such other relief to the Board as may be appropriate.

Respectfully submitted,

s/ P. Brian Hale

P. Brian Hale (HAL072)
Deputy General Counsel

s/Patricia E. Ivie

Patricia E. Ivie (IVI001)
General Counsel

AS COUNSEL FOR THE STATE BOARD OF HEALTH

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