



STATE OF TENNESSEE
 DEPARTMENT OF HEALTH
 HEALTH RELATED BOARDS
 227 FRENCH LANDING, SUITE 300
 HERITAGE PLACE METRO CENTER
 NASHVILLE, TN 37243

TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION
 (800) 778-4123, ext. 24384 or (615) 532-3202, ext. 24384
 www.tennessee.gov

APPLICATION INSTRUCTIONS FOR LICENSURE AS AN OSTEOPATHIC PHYSICIAN

Provided below is a checklist for your personal use and convenience containing all the things you must do to receive consideration for issuance of a Tennessee license to practice osteopathic medicine. Do not leave any blanks. If not applicable, type N/A.

- | | <u>Done</u> |
|---|-------------|
| 1. Complete, have notarized, and mail the application pages 1 through 6. | _____ |
| 2. Complete and mail Attachment 1 to the National Board of Osteopathic Medical Examiners, Inc. If you took a state board medical licensure examination prior to December 1972, complete and mail Attachment 5 to the appropriate state board. All scores must be submitted directly to the Board administrative office from the appropriate entity. | _____ |
| 3. Complete and mail Attachment 2 to each institution at which you received postgraduate medical training. | _____ |
| 4. Complete and mail Attachment 3 to each state, country, or province in which you hold or have ever held a license to practice any profession. | _____ |
| 5. Complete and mail Attachment 4 to your medical school for transcript request. | _____ |
| 6. Submit a clear and recognizable current passport type photograph of yourself that shows the full head, face forward from at least the shoulders up. The photograph must be legibly signed. | _____ |
| 7. Submit proof of citizenship in the United States or Canada or evidence of being legally entitled to live and work in the United States. (Notarized copies of birth certificates, naturalization papers, H-1 visas, or voter registration are acceptable). | _____ |
| 8. Submit two (2) original letters of recommendation from licensed physicians on the signatory's letterhead attesting to your good moral character. The letters must contain original signatures. | _____ |
| 9. Complete and mail the Profile Questionnaire pages 1 through 6. | _____ |

10. Attach to the application a check or money order in the amount of Four Hundred Ten Dollars (\$410), payable to the Tennessee Board of Osteopathic Examination.
11. On October 1, 2008, Public Chapter 927 will become effective requiring physicians who perform Level II office based surgery must so report at the time of initial application, reinstatement or renewal of a medical license. Level II office based surgery means "level II surgery, as defined by the board of medical examiners in its rules and regulations, that is performed outside of a hospital, an ambulatory surgical treatment center, or other medical facility licensed by the Department of health." The board of osteopathic examinations' rules regarding office based surgery can be found at: <http://www.state.tn.us/sos/rules/1050/1050-02.pdf>. Please review these rules carefully if you perform level II procedures in your office. Under Public Chapter 927 you are further required to report certain "unanticipated events" to the board of osteopathic examinations within mandated time frames of the occurrence. To review Public Chapter 927 please go to <http://state.tn.us/sos/acts/105/pub/pc0927.pdf>. It is imperative that you review this new law and adhere to it strictly.
12. Criminal Background Check. Click here for instructions.
13. Complete Attachment 6 – Declaration of Citizenship

UNDERSTANDING THE APPLICATION PROCESS

1. All application fees are non-refundable.
2. All correspondence must be mailed directly to:

**Tennessee Board of Osteopathic Examination
227 French Landing, Suite 300
Heritage Place Metro Center
Nashville, TN 37243**
3. The application process will take six (6) to eight (8) weeks.
4. An initial deficiency letter will be sent to you by certified mail. The supporting documentation requested in the letter must be received in the board office ninety (90) days from the date of the initial deficiency letter. Files not completed within ninety (90) days will be closed.
5. If an address change occurs at any time during the application process, you must notify the board office in writing immediately.
6. **DO NOT MAKE ARRANGEMENTS TO ACCEPT EMPLOYMENT AS A PHYSICIAN IN TENNESSEE UNTIL YOU ARE GRANTED A LICENSE NUMBER BY THE BOARD OF OSTEOPATHIC EXAMINATION.**

TAPE
SIGNED
PICTURE
HERE



For Office Use Only
1907-001 \$400
1907-006 10

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APPLICATION FOR LICENSURE AS AN OSTEOPATHIC PHYSICIAN

READ INSTRUCTIONS PRIOR TO COMPLETING APPLICATION. APPLICANTS MUST COMPLY WITH ALL INSTRUCTIONS.

Attach to this application a check or money order in the amount of \$410, payable to the Tennessee Board of Osteopathic Examination.

PERSONAL INFORMATION

Name in full: _____
(First) (Middle/Maiden) (Last)

Have you been known by any other name? Yes ___ No ___ If yes, list names: _____

Date of Birth: Mo. ___ Day ___ Year ___ Social Security Number: _____ - -

Place of Birth: _____
(City) (State)

Present Mailing Address: _____

_____ Home Phone: () _____
_____ Work Phone: () _____

U.S. Citizen: Yes ___ No ___ Sex: Male ___ Female ___

E-mail address: _____

Do you wish to receive notification, including renewal notification, from the Department of Health via email? Y N

Are you presently in postgraduate training: Yes ___ No ___

I intend to perform Level II Office Based Surgery which is integral to a planned treatment regimen and not performed on an urgent or emergent basis. Yes ___ No ___

EDUCATIONAL AND EXAMINATION INFORMATION

MEDICAL EDUCATION

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

POST-GRADUATE TRAINING

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

From: _____
Mo/Yr *Mo/Yr* *Educational Institute* *Location*

I have taken the following medical licensure examinations: (Check all that is applicable)

1. _____ National Boards (NBOME) Certificate Number _____
2. _____ FLEX examination administered by the State of _____ on _____
Date(s)
3. _____ COMLEX - Certificate Number _____
4. _____ USMLE
5. _____ State Board administered by _____ prior to December 1972.
(State)

Are you board-certified by AOA or ABMS? _____ Certificate #: _____

If so, complete name of board: _____
 (Attach notarized copy of original.) _____

Type of intended primary specialty practice in Tennessee _____

PRACTICE AND LICENSURE INFORMATION

Describe in chronological order your professional practice experience and medical activities since graduating from medical school. Include dates and locations. Additional pages may be attached to this form if necessary.

<u>DATE</u>	<u>LOCATION</u>	<u>ACTIVITY</u>
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____
_____ <i>Mo/Yr</i>	_____ <i>(City)</i> _____ <i>(State)</i>	_____ _____ _____

List below **ALL STATES, COUNTRIES, OR PROVINCES IN WHICH YOU HAVE EVER BEEN OR ARE CURRENTLY LICENSED** as an osteopathic physician. Submit a copy of Attachment 3 to all such states, countries, or province regarding such licensure. Additional pages may be added if necessary.

STATE	LICENSE NUMBER	DATE ISSUED	CURRENT STATUS
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

List below **ALL** states, countries, or provinces in which you hold or have ever held a license as a health professional other than an osteopathic physician. Submit a copy of Attachment 3 to all such states, countries, or province regarding such licensure. Additional pages may be added if necessary.

STATE	PROFESSION	LICENSE NUMBER	DATE ISSUED	CURRENT STATUS
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Intended practice location in Tennessee:

Name: _____

Address: _____

COMPETENCY INFORMATION

PLEASE ANSWER THE FOLLOWING QUESTIONS. If any answers to the questions in this part are in the affirmative, attach an explanation on a separate sheet. ***In support of your explanation, the final documents or orders from the issuing states, courts, and/or agencies must be submitted along with this application.***

For the purposes of these questions, the following phrases or words have the following meanings:

1. **"Ability to practice Osteopathic Medicine"** is to be construed to include all of the following:
 - a. The cognitive capacity to make appropriate clinical diagnoses, exercise reasoned medical judgments, to learn, and keep abreast of medical developments;
 - b. The ability to communicate those judgments and medical information to patients and other health care providers, with or without the use of aids or devices, such as voice amplifiers; and
 - c. The physical capability to perform medical tasks such as physical examination and surgical procedures, with or without the use of aids or devices, such as corrective lenses or hearing aids.
2. **"Medical condition"** includes physiological, mental or psychological conditions or disorders, such as, but not limited to; orthopedic, visual, speech and/or hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disability, HIV, tuberculosis, drug addiction, and alcoholism.
3. **"Chemical substances"** is to be construed to include alcohol, drugs, or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.
4. **"Currently"** does not mean on the day of or even in the weeks or months preceding the completion of this application. Rather, it means recently enough so that the use of drugs or alcohol may have an ongoing impact on one's functioning as a licensee or within the past two (2) years.
5. **"Illegal use of controlled substances"** means the use of controlled substances obtained illegally (e.g. heroin, or cocaine) as well as the use of controlled substances which are not obtained pursuant to a valid prescription or not taken in accordance with the directions of a licensed health care practitioner.

QUESTIONS:

YES NO

- | | | | |
|----|--|-------|-------|
| 1. | Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety? | _____ | _____ |
| a. | If yes, are they reduced or ameliorated because you receive ongoing treatment (with or without medications) or participate in a monitoring program? | _____ | _____ |
| b. | If you have any limitations or impairments caused by an existing medical condition, are they reduced or ameliorated because of the field of practice, the setting, or the manner in which you have chosen to practice? | _____ | _____ |

[If you receive such ongoing treatment or participate in such a monitoring program, the Board will make an individual assessment of the nature, the severity, and the duration of the risks associated with an ongoing medical condition so as to determine whether an unrestricted license should be issued, whether conditions should be imposed, or whether you are not eligible for licensure.]

COMPETENCY INFORMATION CONTINUED

QUESTIONS	YES	NO
2. Do you currently use chemical substances? If yes, do they in any way impair or limit your ability to practice medicine with reasonable skill and safety? Please list: _____	_____	_____
3. Are you currently engaged in the illegal use of controlled substances? If yes, are you currently participating in a supervised rehabilitation program or professional assistance program that monitors you in order to assure that you are not engaged in the illegal use of controlled substances?	_____	_____
4. Have you ever been diagnosed as having or have you ever been treated for pedophilia, exhibitionism, or voyeurism?	_____	_____
5. If you have held or applied for a license or certificate to practice medicine in any state, country, or province, has or was it ever been denied, reprimanded, suspended, restricted, revoked, otherwise disciplined, curtailed, or voluntarily surrendered under threat of investigation or disciplinary action?	_____	_____
6. If you have ever had staff privileges at any hospital or health care facility have they ever been revoked, suspended, curtailed, restricted, limited, otherwise disciplined, or voluntarily surrendered under threat of restriction or disciplinary action?	_____	_____
7. Have you ever applied for and been denied a state or federal controlled substance certificate? If you have possessed such a certificate has it ever been revoked, suspended, restricted, otherwise disciplined, or voluntarily surrendered under threat of investigation or disciplinary action?	_____	_____
8. Have you ever been convicted of a felony or a misdemeanor other than a minor traffic offense?	_____	_____
9. Have you ever been rejected or censured by a medical society?	_____	_____
10. In relation to the performance of your professional services in any profession:		
a. Have you ever had final judgment rendered against you;	_____	_____
b. Have you ever had settlement of any legal action rendered against you; or	_____	_____
c. Are there any legal actions pending against you or to which you are a party?	_____	_____
11. If you have ever held a license or certificate in any health care profession, has it ever been reprimanded, suspended, restricted, revoked, otherwise disciplined, curtailed, or voluntarily surrendered under threat of investigation or disciplinary action?	_____	_____

Affirmative response requires final documents or orders from the issuing states, courts, and/or agencies.

APPLICANT: FILL OUT THE FOLLOWING AFFIDAVIT IN THE PRESENCE OF A NOTARY PUBLIC

AFFIDAVIT AND RELEASE

I, _____, D.O., of _____
(Applicant's Name) (City) (State)

being duly sworn and identified as the person referred to in this application and signed photo, attest to the truth of each statement made in said application. I further swear that I have read and understand the law and the rules and regulations, which were enclosed in the application packet, and agree to abide by them in the practice of medicine in the State of Tennessee.

I HEREBY:

SIGNIFY my willingness to appear to answer such questions as the Board may find necessary, which may include a full Board interview.

RELEASE to the Board, its staff, and their representatives, any and all documentation necessary now and in the future to establish my physical and mental capabilities to safely practice medicine.

AUTHORIZE the Board, its staff, and their representatives to consult with my prior and current associates and others who may have information bearing on my professional competence, character, health status, ethical qualifications, ability to work cooperatively with others and other qualifications.

RELEASE from liability the Board, its staff, and all their representatives and any and all organizations which provide information for their acts performed and statements made in good faith and without malice concerning my competence, ethics, character, and other qualifications for licensure.

ACKNOWLEDGE that I, as an applicant for licensure, have the burden of producing adequate information for a proper evaluation of my professional, ethical, other qualifications, and for resolving any doubts about such qualifications.

AUTHORIZE release, use and disclosure of otherwise HIPAA protected health information to the limited extent necessary for my application to receive full consideration up to and including discussion in a public forum should that become necessary.

THIS CERTIFIES THAT THE INFORMATION SUBMITTED BY ME IN THIS APPLICATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE

DATE

Sworn to before me this _____ day of _____, _____.

NOTARY PUBLIC

Affix Seal Here

My Commission Expires _____



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DEPARTMENT OF HEALTH
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227 FRENCH LANDING, SUITE 300
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NASHVILLE, TN 37243

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(800) 778-4123, ext. 24384 or (615) 532-3202, ext. 24384
www.tennessee.gov

This is a release form for your National Board of Osteopathic Medical Examiners test scores.

APPLICANT: PROVIDE THE INFORMATION REQUESTED IN THE BOX AND THEN MAIL THIS FORM ALONG WITH A FEE OF \$50 MADE PAYABLE TO THE NBOME TO THE FOLLOWING ADDRESS:

National Board of Osteopathic Medical Examiners, Inc.
8765 W. Higgins Road, Suite 200
Chicago, Illinois 60631-4101
773-714-0622

NBOME Registration Number: _____		
Name: _____		
Last	First	Middle or Maiden
Date of Birth: _____	Social Security Number: _____ - _____ - _____	
Medical School: Name: _____		
Location: _____		
Year of Graduation: _____		
_____	_____	_____
Date	Applicant's Signature	

<p>FOR NBOME USE ONLY</p> <p>Please mail the response to the following address:</p> <p>Tennessee Board of Osteopathic Examination 227 French Landing, Suite 300 Heritage Place Metro Center Nashville, TN 37243</p>
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TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION
(800) 778-4123, ext. 24384 or (615) 532-3202, ext. 24384
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VERIFICATION OF POST GRADUATE MEDICAL TRAINING

APPLICANT: Provide the information requested in the top box and then mail this form to each institution in which you received any postgraduate medical training. If additional forms are required copy this one.

Institution Administration: I am applying for a Tennessee osteopathic license and hereby authorize you to release any and all information in your files concerning my medical training. I was in training at your institution as follows:

Applicant's name: _____
(Last) (First) (Middle/Maiden)

Name of Institution: _____ **Program Title:** _____

Applicant's Signature **Date**

ADMINISTRATIVE OFFICE OF TRAINING INSTITUTION.

NOTE: THIS FORM MUST BE NOTARIZED.

Please complete and return to: **Tennessee Board of Osteopathic Examination**
227 French Landing, Suite 300
Heritage Place Metro Center
Nashville, TN 37243

YES NO

- Is your training program AOA or AGCME approved?
- Was the above program AOA or AGCME approved at the time the applicant completed training?
- Were there any adverse charges or actions taken during the residency?
If yes, please attach supporting information and/or documentation.
- Would you recommend the applicant for license?
- Did the applicant successfully complete the program?

The Applicant attended the program from _____ to _____. I certify that the information on this form is true and correct.
(Mo/Yr) (Mo/Yr)

Director/Dean's Signature **Date**

Subscribed and sworn before me this the _____ day of _____, _____.

Notary Public **(Affix Seal Here)**

My commission expires: _____



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CLEARANCE FROM OTHER STATE LICENSURE BOARDS

APPLICANT: Please provide the information requested in the top box and then mail one (1) form to the licensure board in EACH state where you hold **OR HAVE EVER HELD** a license to practice any profession. (Copies of this form can be used.) **NOTE: Some states require a fee for providing clearance information.** To expedite your application, you may wish to contact the applicable state(s).

_____ was granted a license to practice _____
(Name of Applicant) (Profession)
 with license number _____ on _____ by your State. The Board of
(Date)
 Osteopathic Examination of Tennessee requests that I submit evidence of the current status of that license in your state. You are hereby authorized to release any information in your files, favorable or otherwise, directly to:

Tennessee Board of Osteopathic Examination
 227 French Landing, Suite 300
 Heritage Place Metro Center
 Nashville, TN 37243

_____ Applicant's Signature
 _____ Applicant's typed or printed name
 _____ Date

ADMINISTRATIVE OFFICE OF STATE LICENSURE BOARD, PLEASE COMPLETE:

Name in full as it appears on license: _____ State: _____
 License Number: _____ Profession: _____ Date issued: _____
 Basis of issuance: _____ Endorsement/Reciprocity with _____
(State)
 Written Examination: _____
(Name of Exam)

The license is currently active and registered? Yes ___ No ___
 Is there any derogatory information on file? Yes ___ No ___ If yes, an explanation must be attached.

_____ Authorized Signature _____ Title _____ Date

ATTACHMENT 4



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
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TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION
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www.tennessee.gov

TRANSCRIPT REQUEST

APPLICANT: Supply the information requested in this box and then mail this entire form to your medical school.

Full Name:	_____	_____	_____
	(Last)	(First)	(Middle/Maiden)
Address:	_____	Social Security Number:	____ - ____ - ____

Student Identification Number:	_____		
Year of Graduation:	_____		
Degree Obtained:	_____		

TO WHOM IT MAY CONCERN:

I am applying for a license to practice osteopathic medicine in the State of Tennessee. Please forward an original graduate transcript bearing the institution's official seal to:

Tennessee Board of Osteopathic Examination
227 French Landing, Suite 300
Heritage Place Metro Center
Nashville, TN 37243

Thank you for your cooperation and prompt response.

Applicant's Signature

Date



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www.tennessee.gov

APPLICANT: USE THE FORM ONLY IF YOU HAVE TAKEN A STATE EXAM PRIOR TO DECEMBER 1972. IF YOU HAVE, COMPLETE THE INFORMATION IN THE BOX AND THEN SEND IT TO THE STATE BOARD FOR WHICH YOU TOOK THE EXAMINATION.

Full Name: _____
(Last) (First) (Middle/Maiden)
Social Security Number: _____ - _____ - _____ State License Number: _____

CERTIFICATE OF SECRETARY OF STATE BOARD ISSUING ORIGINAL LICENSE

I, _____, Secretary of the _____
(Name) (State)
Board of Medical Examiners/Osteopathic certify that _____
(Applicant's Name)
of _____, was granted License/Certificate number _____
(City/State)
to practice Osteopathic Medicine in this State on the _____ day of _____, _____. I further certify that the aforesaid
in the written examination before this Board, which was administered on _____, obtained a general
(Date)
average of _____ percent and the following percentages on each subject.

Subject	Percent	Subject	Percent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Acting on behalf of the _____ Board of Osteopathic Examination, I certify that the applicant
(State)
successfully completed the state licensure examination.

Seal of the Board
Date _____ Board Secretary's Signature _____

Please return to: Tennessee Board of Osteopathic Examination
227 French Landing, Suite 300
Heritage Place Metro Center
Nashville, TN 37243



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
HEALTH RELATED BOARDS
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DECLARATION OF CITIZENSHIP
MUST ACCOMPANY ALL APPLICATIONS FOR INITIAL LICENSURE OR REINSTATEMENT OF LICENSURE

The "SAVE Act" requires Tennessee Department of Health (including all Boards, Commissions, and contractors), along with every local health department in the State, to verify that *every adult* applicant for a professional license is either a U.S. citizen, a "qualified alien," or a nonimmigrant who meets the requirements set out at 8 U.S.C. 1621.

I am a(n) _____ <div style="text-align: center; font-size: small;">Healthcare Profession (Please Print)</div>	_____ <div style="text-align: center; font-size: small;">License number if applicable</div>
--	--

Please Print Legibly

1. Name: _____

Last
First
Middle
Maiden_
2. Mailing Address: _____
3. Phone Number: Home: (____)____-____ Office: (____)____-____ Fax: (____)____-____
4. I am a United States Citizen: ___Yes ___No
5. I am a foreign national not physically present in the United States ___Yes ___No. If you answered yes, to this question please sign this form in the presence of a notary and return it with your application. No further documentation is required.
6. Applicants Claiming United States Citizenship **MUST** provide one of the following:
 - a) Tennessee Driver's License, or photo ID issued by Department of Safety.
 - b) A valid driver license or ID issued by another state, provided its issuance requirements meet Department of Safety criteria.
 - c) An official birth certificate issued by a U.S. state, territory, or other jurisdiction. Puerto Rican birth certificates issued before July 1, 2010 do not count.
 - d) A federally issued birth certificate.
 - e) A valid, unexpired U.S. passport.
 - f) A report of birth abroad of a U.S. citizen.
 - g) A certificate of citizenship.
 - h) A certificate of naturalization.
 - i) A U.S. citizen ID card.
 - j) Any successor document to #'s a-i above.
 - k) SSN that the entity or local health department may verify with the Social Security Administration in accordance with federal law.
7. If you checked "No" in question 4 please indicate from the list below which category applies to you: (circle one)

- a) Permanent Residents
- b) A nonimmigrant applicant for a professional or commercial license whose visa for entry into the United States is related to such employment, or a nonimmigrant under the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*).
- c) Asylees who meet the qualifications set out in 8 U.S.C. 1158
- d) Refugees who meet the qualifications set out in 8 U.S.C. 1157
- e) Persons who have been "paroled into the United States," under 8 U.S.C. 1182(d)(5) or whose deportation has been withheld under 8 U.S.C. 1253.
- f) Cuban or Haitian entrants as defined by section 501(e) of the Refugee Education Assistance Act of 1980
- g) Persons granted conditional entry into the U.S. under 8 U.S.C. 1153(a)(7) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity.
- h) An alien who has been "battered" or subjected to "extreme cruelty" by a parent or spouse as defined by 8 U.S.C. 1641(c), and also meets the qualifications set out 8 U.S.C. 1641(c)(1)(B). Under the circumstances set out in 8 U.S.C. 1641(c)(2) and (3), victims' children, or the parents of children who are victims, may also apply for benefits as qualified aliens.

Applicants claiming **qualified alien status** (question 7 above), please submit two of the following forms of "documentation of identity and immigration status" as determined by U.S. Homeland Security to be acceptable for verification through the SAVE program. Common types of documents used to verify immigration status are listed below. (Note: If you can provide only one document, your status will be verified through the U.S. Department of Homeland Security's SAVE program):

- I-327 (Reentry Permit)
- I-551 (Permanent Resident Card or "Green Card")
- I-571 (Refugee Travel Document)
- I-766 (Employment Authorization Card)
- Machine Readable Immigrant Visa (with Temporary I-551 language)
- Temporary I-551 stamp (on passport or I-94)
- I-94 (Arrival/Departure record)
- Unexpired foreign passport
- WT/WB Admission Stamp in unexpired foreign passport
- I-20 (Certificate of Eligibility for Nonimmigrant F(1) student status-- "student visa")
- DS2019 (Certificate of Eligibility for Exchange Visitor (J-1) Status)

I affirm under the penalty of perjury that the above is true and correct.

Signed this _____ day of _____, 20__.

Signature

Sworn to before me this _____ day of _____, 20__.

NOTARY PUBLIC

AFFIX SEAL HERE

My Commission Expires: _____

If an applicant is discovered to be an unqualified alien, or otherwise ineligible for benefits under the Act, all recurring benefits provided to that applicant must be immediately terminated. Anyone who purposefully makes a false, fictitious, or fraudulent claim of U.S. citizenship or qualified alien status will be liable under the Tennessee Medicaid False Claims Act, or Tennessee's False Claims Act. Any person who conspires to defraud the state or any local health department by securing a false claim allowed or paid to another person in violation of the Act may be liable under Tennessee's False Claims Act. Upon discovery of an applicant's false, fictitious, or fraudulent claim of U.S. citizenship, state governmental entities and local health departments must also file a criminal complaint with the United States Attorney.

2002 WL 31840685

Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

The TENNESSEE DEPARTMENT
OF HEALTH, et al.,

v.

Gary C. BOYLE, M.D., et al.

No. M2001-01738-COA-R3-CV. | Dec. 19, 2002.

Appeal from the Chancery Court for Davidson County, No. 99-1343-J; Irvin H. Kilcrease, Jr., Chancellor.

Attorneys and Law Firms

Thomas C. Jessee, Johnson City, Tennessee, for the appellants, Gary C. Boyle, M.D., Wesley A. Adams, Jr., M.D., Adams & Boyle, P.C., d/b/a The Women's Center; Angus McDonald Green Crook, M.D., Debra Jo Adams, Leisa Boyle, Welshwood Partnership, Adams & Boyle Partnership, and Regina Taylor Hensley.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Michael W. Catalano, Associate Solicitor General; and E. Blaine Sprouse, Assistant Attorney General, for the appellee, State of Tennessee.

BEN H. CANTRELL, P.J., M.S., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J. and ROBERT E. CORLEW, III, Sp. J., joined.

Opinion

OPINION

BEN H. CANTRELL, P.J.

*1 The issue in this case is the constitutionality of a Tennessee statute requiring a private clinic that performs a "substantial number" of abortions to acquire a certificate of need from the Health Facilities Commission and a license from the Department of Health. The Chancery Court of Davidson County upheld the statute, enjoined the defendants from operating without a certificate and a license, and imposed substantial monetary sanctions for civil contempt. We hold that the statute violates relevant provisions of the

United States and Tennessee Constitutions. We therefore reverse the judgment below and dismiss the contempt charge.

I.

Dr. Wesley Adams and Dr. Gary Boyle are residents of Bristol, Tennessee. They are both licensed to practice medicine in Tennessee, and prior to 1989, they practiced obstetrics and gynecology in Bristol. In 1990 they opened an office in Nashville as partners. In 1992 they incorporated their Nashville practice under the name of Adams & Boyle, P.C., and their clinic was known as The Women's Center.

The Women's Center offered full gynecological services to women, including first trimester abortions. The Tennessee legislature has defined any place or building that provides medical or surgical services to terminate pregnancies as an "ambulatory surgical treatment center" (ASTC). But exempted from the definition are "private physicians' and dentists' office practices, except those private physicians' and dentists' offices in which a substantial number of medical or surgical pregnancy terminations are performed." Tenn.Code Ann. § 68-11-201(3). Thus, any facility that is not a private physician's or dentist's office where even one abortion is performed is an ASTC. On the other hand, a private physician or dentist may perform any number of surgical procedures, of varying degrees of severity and risk, without being classified as an ASTC, so long as the surgical procedures do not include a "substantial number" of abortions.

In terms of state regulation the consequences of being an ASTC are enormous. An ASTC is also defined as a Health Care Institution. Tenn.Code Ann. § 68-11-102(4) (A) and Tenn.Code Ann. § 68-11-106(a)(1) prevents the "construction, development, or other establishment of any type of health care institution" without receiving a certificate of need (CON) from the Health Facilities Commission (HFC). An ASTC also must be licensed by the Department of Health (the Department). Tenn.Code Ann. § 68-11-204(a) (1). The Department performs its licensing functions through the Board for Licensing Health Care Facilities. Tenn.Code Ann. § 68-11-202(a)(2). As this trip to and fro in the Code indicates, even first trimester abortions have gotten a great deal of attention from the legislature.

In the early 1990's the Department of Health suggested to Drs. Adams and Boyle that they should acquire a CON. They did so in June of 1994, and applied for an ASTC license.

The Department inspectors, however, insisted that they install certain equipment in the Women's Center that Drs. Adams and Boyle did not think was required. The dispute dragged on and the CON lapsed in August of 1996. Drs. Adams and Boyle continued to operate their offices in Bristol and Nashville.

*2 Drs. Adams and Boyle filed a new application for a CON for both facilities in September of 1998. In December of 1998 the HFC deferred action on the Bristol office and denied the application for the Nashville office, allegedly to punish Drs. Adams and Boyle for operating without a CON for an extended period of time. When operations at both facilities continued, the Department filed this action on May 13, 1999 seeking an injunction to prevent the Women's Center from operating an ASTC without a CON and a proper license.

The defendants alleged in their answer that the statute and the actions taken by the Department violated the Tennessee and United States Constitutions relating to the right of privacy of women and the rights of the defendants to due process and equal protection. On July 1, 1999, the court overruled the defenses and enjoined the defendants and anyone associated with them from operating an ASTC without a CON and a license as required by law.

In the meantime, Drs. Adams and Boyle took two actions. On May 28, 1999, they filed an action in the United States District Court in Nashville seeking an adjudication that the statutes on which the State relied were unconstitutional; and on June 25, 1999, after the chancellor had issued a temporary restraining order against operating without a CON and a license, they leased the Women's Center to Dr. James Oliver. The federal court chose not to hear any issues relating to Drs. Adams and Boyle since those issues were pending in the state court. The plaintiffs amended the federal action to make Dr. Oliver and the Bristol Women's Center the plaintiffs and to dismiss Drs. Adams and Boyle as party plaintiffs.

On March 6, 2000, the Department and HFC amended their complaint in this action to include Dr. Oliver, the employees/manager of the Women's Center, Dr. Angus Crook who performed abortions at the Women's Center on a contract basis, and the owners of the property on which the Women's Center sits. Again, the complaint sought an injunction against operating a ASTC without a CON or a proper license. The same defenses were raised by the new defendants.

On April 17, 2000, the federal court issued a temporary injunction enjoining the Department/HFC from enforcing the

statutes as to Dr. Oliver and the Bristol Women's Center. The next day the chancery court enjoined all the defendants except Dr. Oliver from operating, owning, managing, or maintaining an ASTC without a CON and a license.

On September 26, 2000, the Department/HFC filed a petition to hold certain defendants in civil contempt for violating the courts' injunctions. The court found the defendants in contempt and imposed a fine of \$10,000 each on Dr. Adams and Dr. Boyle; \$7,500 on Dr. Crook, \$5,000 each on the executive director of Adams & Boyle, P.C. and Welshwood Partnership, the business entity that owned the property; and \$2,500 each on the office manager at the Welshwood facility and one of the partners in the Welshwood partnership. The court allowed the defendants to purge themselves of contempt by withdrawing their relationship to the Welshwood facility, including employment and any other interest they might have therein. The court also ordered the defendants to pay the plaintiff's attorneys' fees in the amount of \$17,484.00.

*3 On May 18, 2001, the court entered a final judgment permanently enjoining the defendants from operating an ASTC without a CON and a valid license.

II.

CONSTITUTIONALITY OF THE STATUTE

As we have found, a doctor may perform abortions in his/her own private office without a CON or a license to operate the facility, unless he/she performs a "substantial number" of abortions. In that case the facility becomes an ASTC subject to stricter regulation by the Department. Accepting patients in an unlicensed facility is also a class B misdemeanor, Tenn.Code Ann. § 68-11-213(b)(2). For a number of reasons, the defendants say that the statute violates the Tennessee and the United States Constitution.

There are certain principles the courts use when litigants mount an attack on the constitutionality of a statute. First, the courts presume that the Acts of the General Assembly are constitutional, *In Re Petition of Burson*, 909 S.W.2d 768 (Tenn.1995). Consequently, the courts indulge every presumption and resolve every doubt in favor of constitutionality, *State v. Lyons*, 802 S.W.2d 590 (Tenn.1990). When the courts find that a statute may be construed in different ways, they are required to adopt a construction that will sustain the statute and avoid a conflict

with the constitution. *Marion County Bd. v. Marion Co. Election Comm'n*, 594 S.W.2d 681 (Tenn.1980). The courts also have a duty to ascertain and carry out the legislature's intent without unduly restricting or expanding the statute's coverage. *Lavin v. Jordan*, 16 S.W.3d 362 (Tenn.2000).

As these rudimentary principles show, the persons challenging a statute have the burden of showing its unconstitutionality, *Fritts v. Wallace*, 723 S.W.2d 948 (Tenn.1987); and unless the statute restricts a fundamental right, the courts will uphold it if the courts are able to conceive of a rational basis for the measure that is reasonably related to a legitimate governmental interest. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn.1997). Conversely, "where certain fundamental rights are involved ... regulation limiting these rights may be justified only by a 'compelling state interest' ... and ... legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." *Roe v. Wade*, 410 U.S. 113, 155 (1973); *Planned Parenthood v. Sundquist*, 38 S.W.3d 1 (Tenn.2000).

A person challenging a statute on constitutional grounds must also have standing to do so. *National Gas Distributors v. Sevier County Utility District*, 7 S.W.3d 41 (Tenn.Ct.App.1999). Under state law the standing requirement demands a showing that the statute infringes the rights of the person attacking it. *Id.* "A person has no standing to contest the constitutionality of a statutory provision he claims to be deficient unless the provision ... has been used to deprive him of his rights." *State v. Johnson*, 762 S.W.2d 110, 118 (Tenn.1988). Under federal law, Article III of the United States Constitution restricts the jurisdiction of federal courts to actual "cases or controversies." *Younger v. Harris*, 401 U.S. 37 (1971). To have standing to challenge a statute on constitutional grounds a plaintiff must allege that he has "sustained or is immediately in danger of sustaining some direct injury as a result of the challenged statute.... The injury or threat of injury must be both 'real and immediate' not 'conjectural or hypothetical.'" *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). With respect to abortion rights, both the United States Supreme Court and the Tennessee Supreme Court have accorded physicians standing to challenge the constitutionality of abortion statutes on behalf of their patients. "[A] physician is uniquely qualified to litigate the constitutionality of the State's interference with, or discrimination against, [a woman's decision to terminate her pregnancy]." *Singleton v. Wolff*, 428 U.S. 106, 117 (1976). See also *Planned Parenthood v. Sundquist*, 38 S.W.3d 1 (Tenn.2000).

*4 The courts have also applied the standing requirement to the special circumstance where a defendant claims that a statute is too vague to satisfy due process. In *Parker v. Levy*, 417 U.S. 733 (1974), the U.S. Supreme Court held that a person who clearly understands that his own conduct comes within the statute's prohibitions cannot challenge the statute because it might be vague as to some other conduct. Following this line of thought, our Supreme Court said, "a party who engages in conduct that is clearly proscribed by the state cannot complain of the vagueness of the law as applied to others." *State v. Burkhardt*, 58 S.W.3d 694 at 699 (Tenn.2001).

III.

DUE PROCESSX

The defendants assert that the statute requiring a doctor's office to obtain a CON and a license to operate if a "substantial number" of abortions are performed in the office does not satisfy the constitutional requirement of due process. See U.S. Const., amend. XIV; Tenn. Const., art. I, § 8. Since Tenn.Code Ann. § 68-11-213(b)(2) makes the operation of an ASTC without a license a crime, due process requires that such statutes be drawn with a certain clarity. *City of Chicago v. Morales*, 527 U.S. 41 (1999). The reasons are two-fold. The first is one of fundamental fairness. If the government thinks it is necessary to punish one of its citizens for violating the government's laws, fairness dictates that the person affected be able to understand what is expected or prohibited. *Leech v. American Booksellers Ass'n, Inc.*, 582 S.W.2d 738 (Tenn.1979). The second reason is based on our concept of equality before the law. An imprecise law encourages arbitrary and discriminatory enforcement. See *Crites v. Smith*, 826 S.W.2d 459 at 473 (Tenn.Ct.App.1991)(Judge Koch concurring and dissenting.) As the United States Supreme Court said in *Grayned v. City of Rockford*, 408 U.S. 104 (1972),

a vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant danger of arbitrary and discriminatory application.

408 U.S. at 108-9.

This invalidating principle has been called “void for vagueness.” *Underwood v. State*, 529 S.W.2d 45 (Tenn.1975). But the term “void” may be misleading. No one is required to obey a void law. *Cumberland Capital Corp. v. Paty*, 556 S.W.2d 516 (Tenn.1977). Yet there are some laws that are invalid as to some defendants and not invalid as to others. The courts have called laws that are invalid only in certain circumstances “invalid as applied,” while laws that are invalid in every conceivable circumstance are “facially invalid.” *Bowen v. Kendrick*, 487 U.S. 589 (1988). The distinction has been described in this way: “If a statute is unconstitutional as applied, the state may continue to enforce the statute in different circumstances where it is not unconstitutional, but if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances.” *Women’s Medical Professional Corp v. Conovich*, 130 F.3d 187, 193 (6th Cir.1997). Therefore, it seems to us that only those laws that are facially invalid are truly void.

*5 Arguing that the law under consideration is not facially invalid, the State argues that the *Parker v. Levy*/*State v. Burkhardt* principle prevents the defendants from attacking the statute on vagueness grounds since they knew that they were performing a large number of abortions and might come within the statutes’ application. Using the language of the United States Supreme Court, the State says:

None of them [past cases] suggests that one who has received fair warning of the criminality of his own conduct from the statute in question is nonetheless entitled to attack it because the language would not give similar fair warning with respect to other conduct which might be within its broad and literal ambit.

Parker v. Levy, 417 U.S. 733 at 756.

But the *Parker v. Levy* prohibition also has its exceptions. By the time the court decided *Parker v. Levy* it had already decided that an unaffected plaintiff could assert a vagueness defense “where individuals not parties to a particular suit stand to lose by its outcome and yet have no effective avenue of preserving their rights themselves.” *Lisenstadt v. Baird*, 405 U.S. 438 (1972). Another exception allows

Litigants ... to challenge a statute not because their own rights of free

expression are violated, but because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression ...

Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973). Such statutes are invalidated because they are “overbroad,” according to the U.S. Supreme Court. *Id.* Although this doctrine is applied most often to laws that impact First Amendment rights, our Supreme Court has recognized that it applies also to other constitutionally protected conduct. See *State v. Burkhardt*, 58 S.W.3d at 701 (Tenn.2001). The United States Supreme Court has now held that the standing requirements should be relaxed when the challenged statute affects a substantial amount of constitutionally protected conduct. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Ltd.*, 445 U.S. 489, 494-95 (1982). Thus, even a person whose conduct is at the core of the activities clearly covered by a statute’s terms may raise a vagueness defense if the state is one that is likely to chill the exercise of constitutionally protected conduct. *United States v. Loy*, 237 F.3d 251, 259 (3rd Cir.2001). Obtaining a first trimester abortion is undisputedly constitutionally protected conduct. *Planned Parenthood of Middle Tennessee v. Stuckquist*, 38 S.W.3d 1 (Tenn.2000).

It also seems to us that the *Parker v. Levy* principle does not apply to the second prong of the due process argument—that a law encourages arbitrary enforcement. If a defendant has notice that his conduct is unlawful, it makes sense to say to him “you cannot complain that the law may not give adequate notice to someone else.” But the same logic does not apply to a claim that a law commits law enforcement to the personal whims of officers, prosecutors, judges, and juries. *State v. Lyons*, 802 S.W.2d 590 (Tenn.1990).

*6 The U.S. Supreme Court seems to be moving in that direction. In two recent cases the Court stated that “the more important aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983); *City of Chicago v. Morales*, 527 U.S. 41 (1999). While both cases involved loitering statutes that substantially impacted First Amendment rights, the Court’s majority in *Kolender* and a plurality in *City of Chicago* relied more heavily on the fact that the statutes allowed the law to be

arbitrarily enforced and in that way distinguished *Parker v. Levy*. See 461 U.S. at 358 fn. 8; 527 U.S. at 52, 56.

Finally, *Parker v. Levy* applies in circumstances where the challenged statute, as authoritatively construed, contains some standards that can be used to determine whether conduct is proscribed or not. It does not apply when the challenged statute contains no standards at all. The “substantial number” provision in Tenn.Code Ann. § 68-11-201(3) is so nebulous and ill-defined that it provides no notice at all as a practical matter.

The State argues that in an appearance before the Health Facilities Commission the lawyer representing Drs. Adams and Boyle conceded that they knew a substantial number of abortions were being performed at the Welshwood facility. But this statement does not amount to an admission that they knew their activities were in violation of the statute. The physicians were seeking a CON, not because they understood that the statute required them to, but because the state officials told them they needed to. Dr. Boyle continued to insist that he did not have to have an ASTC license to perform gynecology services including first trimester abortions in his office.

Even if the statements of the lawyer before the Health Facilities Commission could be construed as concessions that Drs. Adams and Boyle understood that the statute applied to their activities, those statements can be attributed only to Drs. Adams and Boyle. The lawyer was not speaking for the other defendants, and so the concession cannot reasonably be attributed to them.

We believe that these defendants have standing to challenge the statute on the vagueness ground. We also believe the statute is unconstitutional because it fails to give fair notice of what it requires and because it encourages arbitrary and discriminatory enforcement.

IV.

THE STATUTE'S EFFECT ON FUNDAMENTAL RIGHTS

In *Planned Parenthood of Middle Tennessee v. Sunkvist*, 38 S.W.3d 1 (Tenn.2000), the court held that a woman's right to terminate her pregnancy is a vital part of the right of privacy guaranteed in the Tennessee Constitution. Accordingly, the statutes regulating this right must be subjected to a strict

scrutiny analysis, and must be narrowly tailored to achieve a compelling state interest. *Id.* The State argues, however, that this statute does not purport to regulate abortions; it attempts to regulate the facilities where abortions are performed; and, in any event, the Welshwood facility is a place devoted primarily to the performance of surgical procedures. Therefore, it fits the ASTC definition under the first part of the subsection. See *Marcowitz v. Department of Public Health*, 435 N.E.2d 1291 (Ill.App.1982).

*7 In focusing on the doctors and the facilities in which they work, the State argues for the more deferential rational basis test rather than the strict scrutiny the statute must undergo when considered as a regulation on a woman's right to an abortion. We think, however, that the State's argument would require us to read out of the statute the references to abortions and to ignore the fact that the statute seems to be aimed primarily at facilities where abortions are performed. As we have pointed out, the performance of even one abortion makes a facility an ASTC, unless the facility is a private doctor or dentists' office. In that case, any number of surgical procedures may be performed there so long as the procedures do not include a substantial number of abortions. When that invisible threshold is crossed, the State insists on deciding if the facility is needed and on what terms it should be allowed to operate.

Our Supreme Court applied the strict scrutiny test to a statute that required all second trimester abortions to be performed in a hospital. Although the court recognized that the State has a compelling interest in maternal health from the beginning of pregnancy, the second trimester hospitalization requirement was not narrowly tailored to further that interest. *Planned Parenthood of Middle Tennessee v. Sunkvist*, 38 S.W.3d 1, 18 (Tenn.2000). Other courts have considered statutes similar to this one, and have found that they impose burdens on exercising the right to an abortion that the State has to justify by important state health objectives. In *Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir.1988), the court noted how the statute seemed to run counter to the State's interest in preserving a woman's health:

To the extent that there is any basis for distinguishing between a doctor who occasionally performs an abortion in his office and one whose practice is primarily devoted to such procedures, the regulations appear to run contrary to sound health policy.

841 F.2d at 1371.

In *Planned Parenthood of Greater Iowa v. Atchison*, 126 F.3d 1042 (8th Cir.1997), the court said, "where a requirement serves no purpose other than to make abortions more difficult, it strikes at the heart of a protected right, and is an unconstitutional burden on that right." *Id.* At 1049.

There is evidence in the record showing that first trimester abortions are less likely to result in complications than many other surgical procedures that are routinely performed in doctor's offices. Loop electrical excision procedures, regular diagnostic D & C's, hysteroscopy, diagnostic laparoscopy, genetic amniocentesis and laser procedures all pose risks to women equal to or greater than first trimester abortions. A tonsillectomy carries a risk of death twice as high as that of a legal abortion. The proof would justify a conclusion that there is no medical justification for treating abortions differently from other medical procedures of similar complexity and risk.

*8 The proof with respect to the actual burden on a woman's right to an abortion is sketchy. But the facts of this case demonstrate how the statute impacts the availability of abortions. The attempts to comply with the statute have already cost the defendants in excess of \$15,000 and that does not include the improvements to the physical facilities that the State insists on as a condition to issuing the license. These costs will undoubtedly be passed on to the patients of the Women's Center. The deterrent effect of the statute on the availability of abortions cannot be said to be *de minimus*. See *Ragsdale v. Turnock*, 841 F.2d 1358, 1371 (7th Cir.1988). Therefore, we conclude that the statute adversely impacts a constitutionally protected right without a compelling state reason to justify it. See *Planned Parenthood of Middle Tennessee v. Sandquist*, 38 S.W.3d 1 (Tenn.2000). Consequently, it cannot be enforced.

V.

CONTEMPT

Ordinarily if a court issues an injunction, the parties enjoined must obey it, even if they believe the statute on which the injunction was based is unconstitutional. This is called the Collateral Bar Rule. See *Howat v. Kansas*, 258 U.S. 181 (1922). Thus, even if the injunction was improvidently granted, the order must be obeyed, and disobedience of the injunction may be punished. *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

This rule, however, does not apply to civil contempt. In *United States v. United Mine Workers of America*, 330 U.S. 258 (1947), the Court said "the right to remedial relief falls with an injunction which events prove was erroneously issued." The Court reasoned that since the civil contempt sanction is for the benefit of the other party, a plaintiff was not entitled to profit from an order that is subsequently reversed. Apparently this question has not been decided before in Tennessee, but other courts have followed the rule laid down in *Mine Workers*. In *Ulica v. Hammonds*, 305 F.2d 565, 570 (C.A. 5th Cir.1962), the Court said, "In contrast, civil contempt falls with the order if it turns out to have been erroneously or wrongfully issued." Therefore, the civil fines imposed along with the attorneys' fees awarded for violating the injunction in this case are reversed.

VI.

We declare the statute unconstitutional on the ground that it is an undue burden on a woman's right to privacy. We therefore reverse the judgment of the court below and remand the case to the trial court for any further proceedings that may become necessary. Tax the costs on appeal to the State.

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

1. Log No: ACYF-CB-PI-05-01

2. Issuance Date: April 22, 2005

3. Originating Office: Children's Bureau

4. Key Words: CAPTA and the Born-Alive Infants Protection Act of 2002

PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of the Child Abuse Prevention and Treatment Act (CAPTA) Program.

SUBJECT: Child Abuse Prevention and Treatment Act requirements and the Born Alive Infants Protection Act of 2002.

LEGAL AND RELATED REFERENCES: The Born-Alive Infants Protection Act of 2002, Public Law 107-207; and the Child Abuse Prevention and Treatment Act.

PURPOSE: The purpose of this Program Instruction (PI) is to provide instruction to States about the requirements of the Born-Alive Infants Protection Act that are applicable to the CAPTA State grant program.

BACKGROUND: The Born-Alive Infants Protection Act, Public Law 107-207, was enacted on August 5, 2002, and amends the United States Code to provide that, in determining the meaning of any Act of Congress, or of any ruling, regulation or interpretation of a federal administrative bureau or agency, the words "person," "human being," "child," and "individual" "shall include every infant member of the species homo sapiens who is born alive at any stage of development." (1 U.S.C. 8(a)). The Act also defines the term "born alive" to mean the complete expulsion or extraction, at any stage of development, of a member of the homo sapiens species from his or her mother who—regardless of whether the umbilical cord has been cut, or whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion—after such expulsion or extraction, possesses certain indicia of life (1 U.S.C. 8 (b)). The text of the Act is attached.

The purpose of the Act was to reaffirm the legal principle that infants who are born alive, at any stage of development—including those born alive after failed abortions—are persons entitled to the protections of the law. See H.R. Rep. 107-186 at 3 and throughout (2001).

INSTRUCTION:

All references to a "child" or "children" in the definitions, provisions and assurances of the Child Abuse Prevention and Treatment Act, as amended, are to be read to include infants who are "born-alive" as that term is defined at 1 U.S.C. 8. States also must ensure that their State laws, procedures and practices with respect to child abuse and neglect conform to the requirements of CAPTA as its terms are interpreted in accordance with Public Law 107-207.

In particular, States must ensure that implementation of section 106(b)(2)(B) of CAPTA, which requires States to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), applies to born-alive infants. This means that the State must provide the following with regard to born-alive infants:

- X Coordination and consultation with individuals designated by and within health-care facilities with regard to responding to medical neglect (section 106(b)(2)(B)(i) of CAPTA);
- X Prompt notification by the individuals designated within health-care facilities of cases of suspected medical neglect (including withholding of medically indicated treatment from disabled infants with life-threatening conditions) to child protective services (section 106(b)(2)(B)(ii) of CAPTA);
- X At a minimum, *the authority* for State child protective services to pursue any legal remedies as may be necessary to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child (sections 106(b)(2)(A)(vi), 106(b)(2)(B), and 113(b) of CAPTA); and,
- X The authority for State Child Protective Services to pursue, and the *actual pursuit* of, any legal remedies that may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106(b)(2)(B) and section 113(b) of CAPTA).

INQUIRIES TO: ACF Regional Offices.

Wade F. Horn, Ph.D.
Assistant Secretary for Children and Families

Attachment