

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, on behalf of itself,
its physicians and staff, and its patients;
MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and
staff, and its patients; KNOXVILLE CENTER
FOR REPRODUCTIVE HEALTH, on behalf of
itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
patients; and AUDREY LANCE, M.D., M.S., on
behalf of herself and her patients,

CIVIL ACTION
CASE NO. 3:20-cv-00740
JUDGE CAMPBELL

Plaintiffs,

v.

HERBERT H. SLATERY III, Attorney General
of Tennessee, in his official capacity; LISA
PIERCEY, M.D., Commissioner of the
Tennessee Department of Health, in her official
capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON,
JR., M.D., President of the Tennessee Board of
Medical Examiners, in his official capacity;
AMY P. WEIRICH, District Attorney General of
Shelby County, Tennessee, in her official
capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

DEFENDANTS' NOTICE OF FILING DECLARATIONS

Defendants Herbert H. Slatery III, Lisa Piercey, Rene Saunders, W. Reeves Johnson, Jr., Amy P. Weirich, Glenn Funk, Charme P. Allen, and Tom P. Thompson, Jr., in their official capacities only, hereby give notice to the Court of the filing of the following declarations of:

1. Lisa Piercey, M.D., Commissioner of the Tennessee Department of Health.
2. W. Reeves Johnson, Jr., M.D., President of the Tennessee Board of Medical Examiners.
3. Rene Saunders, M.D., Chair of the Board for Licensing Health Care Facilities.
4. Amy P. Weirich, District Attorney General for the 30th Judicial District.
5. Charme P. Allen, District Attorney General for the 6th Judicial District.
6. Tom P. Thompson, Jr., District Attorney General for the 15th Judicial District.

These declarations make clear that the plain language of the challenged informed consent provision, Tenn. Code Ann. § 39-15-218, only criminalizes performing or inducing an abortion without making the required disclosures and does not penalize, civilly or criminally, disagreement or disassociation with the information communicated by the disclosure requirements. Defendants submit that these declarations—and, as a threshold matter, Plaintiffs’ failure to identify a reasonable basis for concern that they might be prosecuted for their disagreement or dissociation—establish that Plaintiffs cannot demonstrate irreparable harm or a likelihood of success on the merits. *See Lawson v. Hill*, 368 F.3d 955, 959 (7th Cir. 2004) (Posner, J.) (holding that “such disavowals are important only in cases in which, without a disavowal, the plaintiff seeking to enjoin enforcement would have a reasonable basis for concern that he might be prosecuted” and “there is no federal right to obtain advisory opinions from local prosecutors.”) (internal citations removed). In any event, the burden remains upon Plaintiffs to demonstrate entitlement to extraordinary injunctive relief.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

/s/Alexander S. Rieger
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/s/Charlotte Davis
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/s/ Edwin Alan Groves, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice has been served on the following counsel of record through the Electronic Filing System on this 22nd day of September, 2020:

Thomas H. Castelli
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/s/Alexander S. Rieger
ALEXANDER S. RIEGER

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, on behalf of itself,
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MEMPHIS CENTER FOR REPRODUCTIVE
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itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
patients; and AUDREY LANCE, M.D., M.S., on
behalf of herself and her patients,

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Plaintiffs,

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HERBERT H. SLATTERY III, Attorney General
of Tennessee, in his official capacity; LISA
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Tennessee Department of Health, in her official
capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON, JR.,
M.D., President of the Tennessee Board of
Medical Examiners, in his official capacity;
AMY P. WEIRICH, District Attorney General of
Shelby County, Tennessee, in her official
capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF LISA PIERCEY, M.D., COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF HEALTH**

I, Lisa Piercey, M.D., pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I, Lisa Piercey, M.D., am the Commissioner of the Tennessee Department of Health (“the Department”). Under my direction and supervision, the Department has the power, among other things, to “[h]ave general supervision of the interest relating to the health and lives of the people of the state” and to “[p]romote the information of the general public in all matters pertaining to public health.” *See* Tenn. Code Ann. §§ 4-3-1802, -1803(1), (6); 68-1-104.

2. This declaration addresses whether the Department may impose civil penalties on an abortion provider who expresses disagreement with or disassociates him or herself from the disclosures required by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The informed-consent provision directs the Department to “develop and maintain a stable internet website” that will provide materials “designed to inform the woman of the possibility of reversing the effects of a chemical abortion utilizing mifepristone if the woman changes her mind and information on and assistance with the resources that may be available to help reverse the effects of a chemical abortion.” *Id.* § 39-15-218(h)–(i).

4. The informed consent provision also requires “a private office, ambulatory surgical treatment center, facility, or clinic” that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage disclosure requirement). The Department “shall assess [an abortion provider] that negligently fails to post a sign required by subsection (b) a civil penalty of

ten thousand dollars (\$10,000).” *Id.* § 39-15-218(k). Except in cases of a medical emergency, “[e]ach day on which an abortion . . . is performed [in a facility that fails to comply with the signage disclosure requirement] is a separate violation.” *Id.*

5. Additionally, the informed consent provision requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.* “No penalty or civil liability may be assessed for failure to comply with subdivision (e)(2) unless the department of health has made the information available on the website at the time the physician is required to inform the woman.” *Id.* § 39-15-218(j).

6. Once a physician has initiated a medication abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge instructions” that include the following statement:

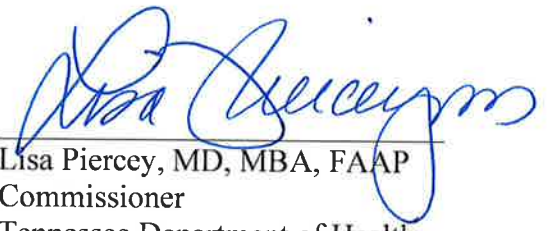
Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(f) (the written disclosure requirement).

7. It is my understanding that the informed consent provision does not give the department authority to impose civil penalties on an abortion provider who provides the required disclosures but who expresses disagreement, orally and/or in writing, with the information communicated by the signage disclosure requirement, the oral disclosure requirement, or the written disclosure requirement. It is also my understanding that the informed consent provision

does not give the department additional authority to impose civil penalties on an abortion provider who provides the required disclosures but disassociates him or herself from the required disclosures by informing a patient that the State has required the applicable disclosure so long as the dissociation or disagreement comply with all other ethical and professional standards and does not violate any other applicable laws or regulations.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 21 day of September, 2020, at Nashville, TN.



Lisa Piercey, MD, MBA, FAAP
Commissioner
Tennessee Department of Health

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, on behalf of itself,
its physicians and staff, and its patients;
MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and
staff, and its patients; KNOXVILLE CENTER
FOR REPRODUCTIVE HEALTH, on behalf of
itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
patients; and AUDREY LANCE, M.D., M.S., on
behalf of herself and her patients,

CIVIL ACTION
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JUDGE CAMPBELL

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of Tennessee, in his official capacity; LISA
PIERCEY, M.D., Commissioner of the
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capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON, JR.,
M.D., President of the Tennessee Board of
Medical Examiners, in his official capacity;
AMY P. WEIRICH, District Attorney General of
Shelby County, Tennessee, in her official
capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF W. REEVES JOHNSON, JR., M.D., PRESIDENT OF THE
TENNESSEE BOARD OF MEDICAL EXAMINERS**

I, W. Reeves Johnson, Jr., M.D., pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I, W. Reeves Johnson Jr., M.D., am the President of the Tennessee Board of Medical Examiners (“the Board”). It is the Board’s duty “to examine the qualifications of all applicants for certification of fitness to practice medicine or surgery in this state, to conduct disciplinary hearings, and to make such rules and regulations as are necessary to carry out and make effective [the Board’s statutory duties].” Tenn. Code Ann. § 63-6-101(a)(3).

2. This declaration addresses whether the Board may take disciplinary action against a physician who expresses disagreement with or disassociates him or herself from the disclosures required by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The Board has the authority to

- (1) Deny an application for a license to any applicant who applies for the same through reciprocity or otherwise;
- (2) Permanently or temporarily withhold issuance of a license;
- (3) Suspend, or limit or restrict a previously issued license for such time and in such manner as the board may determine;
- (4) Reprimand or take such action in relation to disciplining an applicant or licensee, including, but not limited to, informal settlements, private censures and warnings, as the board in its discretion may deem proper; or
- (5) Permanently revoke a license.

Id. § 63-6-214(a).

4. The Board “shall exercise such power” when there has been a “[v]iolation of the laws governing abortion.” *Id.* § 63-6-214(b)(6).

5. The informed consent provision requires “a private office, ambulatory surgical treatment center, facility, or clinic” that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage requirement).

6. The informed consent provision also requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.*

7. Once a physician has initiated a medication abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge instructions” that include the following statement:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

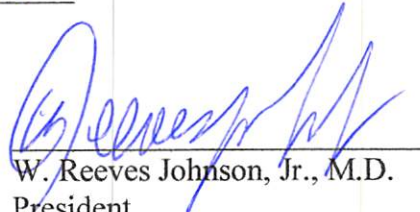
Id. § 39-15-218(f) (the written disclosure requirement).

8. The Board can discipline a physician when there has been a violation of the laws governing abortion; therefore, not providing the disclosure in Tenn. Code Ann. § 39-15-218 could prompt discipline. However, I do not interpret a physician who provides the required disclosures

but also expresses disagreement with them or disassociates him or herself from them as violating Tenn. Code Ann. § 39-15-218. *See* Tenn. Code Ann. § 63-6-214(b)(6).

9. The Board can also take disciplinary action against a physician for: “[u]nprofessional, dishonorable or unethical conduct,” “[m]aking false statements or representations,” and “being guilty of fraud or deceit in the practice of medicine.” Tenn. Code Ann. § 63-6-214(b)(1), (3). Therefore, a physician who expresses disagreement with the required disclosures must do so in a manner that does not violate any other legal and ethical obligations.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 21st day of September, 2020, at Knoxville, TN.


W. Reeves Johnson, Jr., M.D.
President
Tennessee Board of Medical Examiners

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, on behalf of itself,
its physicians and staff, and its patients;
MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and
staff, and its patients; KNOXVILLE CENTER
FOR REPRODUCTIVE HEALTH, on behalf of
itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
patients; and AUDREY LANCE, M.D., M.S., on
behalf of herself and her patients,

CIVIL ACTION
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JUDGE CAMPBELL

Plaintiffs,

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HERBERT H. SLATERY III, Attorney General
of Tennessee, in his official capacity; LISA
PIERCEY, M.D., Commissioner of the
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capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON,
JR., M.D., President of the Tennessee Board of
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AMY P. WEIRICH, District Attorney General of
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capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF RENE SAUNDERS, M.D., CHAIR OF THE BOARD FOR
LICENSING HEALTH CARE FACILITIES**

I, Rene Saunders, M.D., pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I, Rene Saunders, am the Chair of the Board for Licensing Health Care Facilities (“the Board”). The Board is responsible for the licensing and regulation of healthcare facilities, including ambulatory surgical treatment centers (ASTCs). *See* Tenn. Code Ann. § 68-11-202(a)(1)-(2).

2. This declaration addresses whether the Board may take disciplinary action against an ASTC that expresses disagreement with or disassociates itself from the disclosures required by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The Board has the authority to “suspend or revoke” an ASTC’s license for:

(1) A violation of [Tenn. Code Ann. § 68-11-201 et seq.] or of the rules and regulations or minimum standards issued pursuant to [Tenn. Code Ann. § 68-11-201 et seq.]

(2) Permitting, aiding or abetting the commission of any illegal act in such institutions; or

(3) Conduct or practice found by the board to be detrimental to the welfare of the patients in such institutions.

Id. § 68-11-207(a); *see also* Tenn. Comp. R. & Regs. 1200-08-01-.03.

4. The Board also has the authority to place an ASTC on probation. Tenn. Code Ann. § 68-11-207(f)(1).

5. The informed consent provision requires an ASTC that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse

the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage requirement).

6. The informed consent provision also requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication assisted abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.*

7. Once a physician has initiated a medication assisted abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge instructions” that include the following statement:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(f) (the written disclosure requirement).

8. “Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of this section commits a Class E felony.” *Id.* § 39-15-218(j).

9. It is my understanding that the informed consent provision does not impose criminal liability on an abortion provider who provides the required disclosures but expresses disagreement, orally and/or in writing, with the information communicated by the signage disclosure requirement, the oral disclosure requirement, or the written disclosure requirement. Nor

does the informed consent provision, by its plain language, impose criminal liability if an abortion provider provides the required disclosures but disassociates him or herself from the disclosure requirements by informing a patient that the State has required the applicable disclosure.

10. Consequently, an ASTC that provides the required disclosures but expresses disagreement with or disassociates itself from them, or allows others to do the same, is not “[p]ermitting, aiding or abetting the commission of any illegal act in [the ASTC].” *See* Tenn. Code Ann. § 68-11-207(a)(2); *see also* Tenn. Comp. R. & Regs. 1200-08-01-.03(1)(a), (c).

11. Additionally, an ASTC that provides the required disclosures but expresses disagreement with or disassociates itself from them, or allows others to do the same, is not engaging in “[c]onduct or practice found by the board to be detrimental to the welfare of the patients in such institutions,” provided that any disagreement or disassociation expressed by the ASTC or one of its medical practitioners does not violate any other applicable laws or regulations. *See* Tenn. Code Ann. § 68-11-207(a)(3); *see also* Tenn. Comp. R. & Regs. 1200-08-01-.03(1)(d).

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 21st day of September, 2020, at Nashville, TN.



Rene Saunders, M.D.

Chair

Board for Licensing Health Care Facilities

**IN THE UNITED STATES DISTRICT COURT
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General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF AMY P. WEIRICH, DISTRICT ATTORNEY GENERAL FOR THE
30th JUDICIAL DISTRICT**

I, Amy Weirich, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I, Amy Weirich, am the District Attorney General for the 30th Judicial District, consisting of Shelby County. I am responsible for prosecuting all violations of state criminal statutes occurring in this judicial district. *See* Tenn. Code Ann. § 8-7-103.

2. This declaration addresses the scope of criminal liability imposed by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The informed consent provision requires “a private office, ambulatory surgical treatment center, facility, or clinic” that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage requirement).

4. The informed consent provision also requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.*

5. Once a physician has initiated a medication abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge instructions” that include the following statement:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(f) (the written disclosure requirement).

6. “Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of this section commits a Class E felony.” *Id.* § 39-15-218(j).

7. The informed consent provision is silent regarding criminal liability for an abortion provider who provides the required disclosures but expresses disagreement, orally and/or in writing, with the information communicated by the signage disclosure requirement, the oral disclosure requirement, or the written disclosure requirement. The informed consent provision is also silent regarding criminal liability for an abortion provider who provides the required disclosures but disassociates him or herself from the disclosure requirements by informing a patient that the State has required the applicable disclosure.

8. Tenn. Code Ann. § 39-15-218 only criminalizes performing or inducing an abortion without making the required disclosures.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 22nd day of September, 2020, at 2:20 p.



Amy P. Weirich
District Attorney General
30th Judicial District

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FOR REPRODUCTIVE HEALTH, on behalf of
itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
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capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON,
JR., M.D., President of the Tennessee Board of
Medical Examiners, in his official capacity;
AMY P. WEIRICH, District Attorney General of
Shelby County, Tennessee, in her official
capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF CHARME P. ALLEN, DISTRICT ATTORNEY GENERAL FOR
THE 6th JUDICIAL DISTRICT**

I, Charme P. Allen, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as

follows:

1. I, Charme P. Allen, am the District Attorney General for the 6th Judicial District, consisting of Knox County. I am responsible for prosecuting all violations of state criminal statutes occurring in this judicial district. *See* Tenn. Code Ann. § 8-7-103.

2. This declaration addresses the scope of criminal liability imposed by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The informed consent provision requires “a private office, ambulatory surgical treatment center, facility, or clinic” that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage requirement).

4. The informed consent provision also requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.*

5. Once a physician has initiated a medication abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge instructions” that include the following statement:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill

has not been taken. Please consult with a healthcare professional immediately.

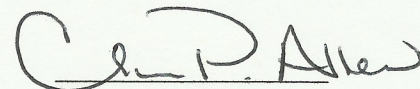
Id. § 39-15-218(f) (the written disclosure requirement).

6. “Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of this section commits a Class E felony.” *Id.* § 39-15-218(j).

7. The informed consent provision is silent regarding criminal liability for an abortion provider who provides the required disclosures but expresses disagreement, orally and/or in writing, with the information communicated by the signage disclosure requirement, the oral disclosure requirement, or the written disclosure requirement. The informed consent provision is also silent regarding criminal liability for an abortion provider who provides the required disclosures but disassociates him or herself from the disclosure requirements by informing a patient that the State has required the applicable disclosure.

8. Tenn. Code Ann. § 39-15-218 only criminalizes performing or inducing an abortion without making the required disclosures.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 22 day of September, 2020, at 1:57 pm.



Charne P. Allen
District Attorney General
6th Judicial District

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

PLANNED PARENTHOOD OF TENNESSEE
AND NORTH MISSISSIPPI, on behalf of itself,
its physicians and staff, and its patients;
MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and
staff, and its patients; KNOXVILLE CENTER
FOR REPRODUCTIVE HEALTH, on behalf of
itself, its physicians and staff, and its patients;
FEMHEALTH USA, INC., d/b/a CARAFEM, on
behalf of itself, its physicians and staff, and its
patients; and AUDREY LANCE, M.D., M.S., on
behalf of herself and her patients,

CIVIL ACTION
CASE NO. 3:20-cv-00740
JUDGE CAMPBELL

Plaintiffs,

v.

HERBERT H. SLATERY III, Attorney General
of Tennessee, in his official capacity; LISA
PIERCEY, M.D., Commissioner of the
Tennessee Department of Health, in her official
capacity; RENE SAUNDERS, M.D., Chair of the
Board for Licensing Health Care Facilities, in her
official capacity; W. REEVES JOHNSON,
JR., M.D., President of the Tennessee Board of
Medical Examiners, in his official capacity;
AMY P. WEIRICH, District Attorney General of
Shelby County, Tennessee, in her official
capacity; GLENN FUNK, District Attorney
General of Davidson County, Tennessee, in his
official capacity; CHARME P. ALLEN, District
Attorney General of Knox County, Tennessee, in
her official capacity; and TOM P. THOMPSON,
JR., District Attorney General for Wilson
County, Tennessee, in his official capacity,

Defendants.

**DECLARATION OF TOM P. THOMPSON, JR., DISTRICT ATTORNEY GENERAL
FOR THE 15th JUDICIAL DISTRICT**

I, Tom P. Thompson, Jr., pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I am the District Attorney General for the 15th Judicial District, consisting of Jackson, Macon, Smith, Trousdale, and Wilson Counties. I am responsible for prosecuting all violations of state criminal statutes occurring in this judicial district. *See* Tenn. Code Ann. § 8-7-103.

2. This declaration addresses the scope of criminal liability imposed by Tenn. Code Ann. § 39-15-218 (the informed consent provision).

3. The informed consent provision requires “a private office, ambulatory surgical treatment center, facility, or clinic” that has performed more than 50 elective abortions during the previous calendar year to “conspicuously post a sign” that contains the following message:

Recent developing research has indicated that mifepristone alone is not always effective in ending a pregnancy. It may be possible to avoid, cease, or even reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not been taken. Please consult with a healthcare professional immediately.

Id. § 39-15-218(b) (the signage requirement).

4. The informed consent provision also requires a physician to make the following oral disclosure at least 48 hours in advance of initiating a medication abortion:

(1) It may be possible to reverse the intended effects of a chemical abortion utilizing mifepristone if the woman changes her mind, but that time is of the essence; and

(2) Information on and assistance with reversing the effects of a chemical abortion utilizing mifepristone is available on the department of health website.

Id. § 39-15-218(e) (the oral disclosure requirement). This requirement is subject to a medical emergency exception. *Id.*

5. Once a physician has initiated a medication abortion by administering mifepristone, the physician or an agent of the physician must provide the patient with “written medical discharge

instructions” that include the following statement:

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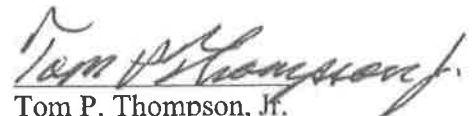
Id. § 39-15-218(f) (the written disclosure requirement).

6. “Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of this section commits a Class E felony.” *Id.* § 39-15-218(j).

7. The informed consent provision is silent regarding criminal liability for an abortion provider who provides the required disclosures but expresses disagreement, orally and/or in writing, with the information communicated by the signage disclosure requirement, the oral disclosure requirement, or the written disclosure requirement. The informed consent provision is also silent regarding criminal liability for an abortion provider who provides the required disclosures but disassociates him or herself from the disclosure requirements by informing a patient that the State has required the applicable disclosure.

8. Tenn. Code Ann. § 39-15-218 only criminalizes performing or inducing an abortion without making the required disclosures.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 22nd day of September, 2020, at _____, TN.


Tom P. Thompson, Jr.
District Attorney General
15th Judicial District