

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

(1) LARRY A. BURNS, D.O., on behalf of )  
himself and his patients, )

Plaintiff, )

v. )

(2) TERRY L. CLINE, in his official )  
capacity as Oklahoma Commissioner of )  
Health; )

(3) CARL B. PETTIGREW, D.O., in his )  
official capacity as President of the )  
Oklahoma State Board of Osteopathic )  
Examiners; and )

(4) GREG MASHBURN, in his official )  
capacity as District Attorney for Cleveland, )  
Garvin, and McClain Counties, )

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Defendants.

**VERIFIED PETITION**

1. Plaintiff Larry A. Burns, D.O., by and through his undersigned attorneys, brings this Petition against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following:

**I. PRELIMINARY STATEMENT**

2. Dr. Burns, on behalf of himself and his patients, brings this action to challenge the validity of Senate Bill 1848 (“S.B. 1848,” the “statute” or the “Act”) under the Oklahoma Constitution. Enrolled Senate Bill No. 1848, (2014 Okla. Sess. Law Serv. Ch. 370 (West)) (Attached hereto as Exhibit A.). S.B. 1848 was signed into law by Governor Mary Fallin on

May 28, 2014 and goes into effect on November 1, 2014.

3. S.B. 1848 requires physicians performing abortions in Oklahoma to have admitting privileges at a general hospital within thirty miles of the facility at which the abortion is performed. Violation of the admitting privileges requirement exposes abortion providers to an array of intimidating criminal, civil, and administrative penalties.

4. S.B. 1848 imposes unique burdens on physicians who provide abortions that are not imposed on any other health care providers in Oklahoma. These burdens are inconsistent with accepted medical standards, serve no legitimate state interests, and will force Dr. Burns to close his medical practice. The consequence will be a significant reduction in the number and geographic distribution of medical facilities in the State where women can access abortion care.

5. The statute violates the Oklahoma Constitution in numerous ways. Specifically, it violates (a) the single-subject rule, (b) the special law prohibition, (c) the non-delegation clause, (d) the guarantee of equal protection, and (e) the guarantee of procedural due process. In addition, the statute impermissibly burdens the fundamental substantive due process rights of Dr. Burns's patients to terminate a pregnancy.

6. Plaintiff seeks declaratory and injunctive relief from these constitutional violations.

## **II. JURISDICTION AND VENUE**

7. Jurisdiction is conferred on this Court by OKLA. CONST. art. VII, § 7(a).

8. Dr. Burns's claims for declaratory and injunctive relief are authorized by OKLA. STAT. tit. 12, §§ 1651 and 1381 and by the general equitable powers of this Court.

9. Venue is appropriate under OKLA. STAT. tit. 12, § 133 because the official residence of two of the three Defendants is in Oklahoma County.

### III. THE CHALLENGED STATUTE

10. S.B. 1848 requires that “on any day when any abortion is performed in a facility providing abortions, a physician with admitting privileges at a general medical surgical hospital which offers obstetrical or gynecological care in this state within thirty (30) miles of where the abortion is being performed must remain on the premises of the facility to facilitate the transfer of emergency cases if hospitalization of an abortion patient or a child born alive is necessary and until all abortion patients are stable and ready to leave the recovery room” Enrolled Senate Bill No. 1848, § 1(B), 2014 Okla. Sess. Law Serv. Ch. 370 (West). S.B. 1848 was enacted on May 28, 2014.

11. S.B. 1848 also directs the State Board of Health to (a) establish abortion facility supplies and equipment standards; (b) adopt standards relating to the training of physicians assistants and volunteers at facilities providing abortions; (c) adopt standards related to the medical screening and evaluation of each abortion patient; (d) adopt standards related to the performance of the abortion procedure and post-procedure follow-up care; and (e) requires facilities performing abortions to record in writing, within ten days, each incident resulting in a patient’s or a “born-alive child’s injury” occurring at the facility with the State Board of Health and all appropriate professional licensing and regulatory boards.

12. Violation of S.B. 1848 carries criminal penalties: “Any person who intentionally, knowingly or recklessly, violates the provisions of [S.B. 1848] or any standards adopted by the State Board of Health in accordance with [S.B. 1848] shall be guilty of a felony.” *Id.* § 1(J).

13. The statute further provides for substantial civil penalties: “Any violation of this act or any standards adopted under this act may be subject to a civil penalty or fine up to Twenty-five Thousand Dollars (\$25,000.00) imposed by the State Board of Health. Each day

of violation constitutes a separate violation for purposes of assessing civil penalties or fines.”  
*Id.* § 1(K).

#### IV. PARTIES

14. Plaintiff Larry A. Burns, D.O., is a physician who has been licensed to practice medicine in the State of Oklahoma since 1973. As part of his medical practice in Norman, Oklahoma, Dr. Burns provides first-trimester surgical and medication abortions. Dr. Burns’s practice is licensed as an abortion facility by the Oklahoma State Department of Health. Although Dr. Burns has applied for admitting privileges at a number of hospitals within 30 miles of his clinic, no hospital to date has granted him admitting privileges. Dr. Burns brings claims on behalf of himself and his patients.

15. Defendant Terry L. Cline is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Board of Health, which issues licenses to facilities at which abortions are performed and oversees compliance with the regulation of such facilities. OKLA. STAT. ANN. tit. 63, § 1-706(A), (B)(1); OKLA. ADMIN. CODE § 310:600-7-3. The Oklahoma State Board of Health is also empowered to impose a civil penalty of \$25,000 per day for violations of the admitting privileges requirement. S.B. 1848 § 1(K). He is sued in his official capacity.

16. Defendant Carl B. Pettigrew, D.O., is the President of the Oklahoma State Board of Osteopathic Examiners (“Osteopathic Board”). The Osteopathic Board, among other things, issues medical licenses to physicians trained in schools of osteopathic medicine and has the authority to take disciplinary action against licensees. OKLA. STAT. ANN. tit. 59, § 637; *id.* § 637.1. He is sued in his official capacity.

17. Defendant Greg Mashburn is the District Attorney for District 21, which includes Cleveland County where Norman is located. The district attorney has the power to prosecute

violations of the admitting privileges requirement as a felony. S.B. 1848 § 1(J); OKLA. STAT. ANN. tit. 19, § 215.4.

## **V. EXISTING REGULATORY FRAMEWORK**

18. Prior to the enactment of S.B. 1848, Oklahoma already had in place an extensive set of laws and regulations concerning the performance of abortions, including laws intended to ensure that emergency procedures are in place should a woman suffer from complications during or following an abortion procedure. *See* OKLA. ADMIN. CODE § 310:600-9-6 (2014). For example, abortion facilities are required to establish a protocol for the transfer of patients requiring emergency treatment that cannot be provided on-site. *Id.* § 600-9-6(9). The protocol must include procedures to contact the local ambulance service and expedite the transfer to the receiving hospital. Appropriate clinical patient information must be provided to the receiving facility. *Id.* If the attending physician does not have admitting privileges at a local general hospital, the physician must attest that arrangements have been made with a physician having hospital privileges to receive emergency cases. *Id.*

19. Physicians who perform procedures in ambulatory surgical centers (“ASCs”) that are comparable to, and more complicated than, abortion are similarly required to have a written protocol for the transfer of patients requiring emergency treatment that cannot be provided on-site. No physician at an ASC is required to have admitting privileges in order to perform outpatient procedures. *See* OKLA. ADMIN. CODE § 310:615-5-1(h), 27 OK Reg. 2536 (2014).

## **VI. FACTUAL ALLEGATIONS**

20. In the entire State of Oklahoma, there are currently only three health care providers that are licensed to operate facilities where abortions are performed: Reproductive Services of Tulsa, Outpatient Services for Women in Oklahoma City, and Plaintiff Dr. Burns in Norman,

approximately 17 miles from Oklahoma City.

### **Abortion is Safe**

21. Abortion is a very safe procedure. The prevalence of any complication following a first trimester surgical abortion – including minor complications – is approximately 1.3%. The prevalence of major complications requiring treatment at a hospital is approximately 0.05%. Medication abortion is also very safe and has the same symptoms as miscarriage. Because the medication takes hours or days to take effect, a patient will not be in the doctor's office when the abortion occurs.

22. In his 41 years of providing abortions to women in Oklahoma, Dr. Burns has sent only one patient to the emergency room due to complications at the clinic; that patient was suffering from prolonged anesthetic effect. This patient awoke by the time the ambulance arrived and was taken to the hospital for observation. She was released from the hospital and sent home within three hours of her arrival.

### *Procedural Due Process*

23. S.B. 1848 deprives Dr. Burns of procedural due process by failing to afford him adequate time to obtain admitting privileges prior to the statute's effective date.

24. The admitting privileges law was signed by the governor on May 28, 2014, and becomes effective on November 1, 2014. Oklahoma law imposes no time limits on how long a hospital may consider an application for admitting privileges and it is clear, based on Dr. Burns's good faith efforts to comply, that 157 days is not enough time. Not only can it take weeks to file an application -- identifying appropriate hospitals, obtaining applications, gathering supporting documents, and scheduling interviews -- but, once an application is filed, the hospital has no prescribed time limit within which to respond. Although Dr. Burns is

applying for privileges and has applications pending, he does not expect to receive notification regarding several of those applications prior to November 1.

25. Absent a temporary injunction or a temporary restraining order, Dr. Burns will be forced either to stop practicing or face criminal sanctions. Such a denial of his right to practice his profession, when for reasons beyond his control he is unable to come into compliance, amounts to unreasonable governmental interference, in violation of his procedural due process rights under the Oklahoma constitution.

*Multiple Subjects Addressed in S.B. 1848*

26. As noted above, S.B. 1848 is composed of six distinct provisions that have no common theme or purpose. Legislators voting for the bill could reasonably have favored one of its provisions while opposing another.

*S.B. 1848 is an Unconstitutional Special Law That Singles Out*

*Dr. Burns and His Patients*

27. S.B. 1848 arbitrarily singles out less than an entire class of similarly affected persons – physicians who perform outpatient procedures in an office setting – for different and more burdensome regulations than all other health care providers in the state. The admitting privileges mandate is reasonably susceptible of general treatment, yet only physicians who perform abortions are subject to this special law.

28. S.B. 1848 arbitrarily singles out another group that is less than entire class of similarly affected persons – patients seeking outpatient procedures in an office setting. The law imposes this onerous regulation on patients seeking abortions, not on all patients seeking outpatient surgical procedures.

29. Physicians who perform various kinds of surgical procedures outside a hospital

setting are not required to have admitting privileges at the hospitals to which they refer patients for further treatment. Requiring hospital admitting privileges for abortion providers departs from accepted medical practice. Nor is there any valid legislative objective for singling out abortion patients from all other patients. Such differential treatment is not related to the promotion of women's health or any other governmental interest.

30. Because the Act treats similarly situated physicians and patients differently by singling out abortion physicians for regulation, and the admitting privileges requirement is not reasonably and substantially related to a valid legislative objective, it is an unconstitutional special law.

#### *Equal Protection*

31. As described above, S.B. 1848 creates an arbitrary classification by singling out physicians who provide abortion services from physicians who provide outpatient surgical procedures and by singling out abortion patients from patients undergoing outpatient surgical procedures.

32. Because the Act creates an arbitrary classification by singling out abortion providers and their patients and is not adequately related to a legitimate government purpose, it violates the equal protection clause.

#### *Unconstitutional Delegation*

33. S.B. 1848 delegates to hospital boards the power to decide which doctors may provide essential women's health care but it fails to give specific instructions about the factors a hospital must consider in making that determination. It therefore leaves an important determination to the unrestricted and standardless discretion of unelected bureaucrats.

34. Hospitals, rather than being tasked with making rules of a subordinate character to



carry out the legislature's policy with respect to abortion providers, instead make their admitting privileges decisions in accordance with their own bylaws and interests. Accordingly, hospitals can and do deny physicians admitting privileges for reasons wholly unrelated to clinical expertise. It is a clear violation of the non-delegation doctrine for the legislature to grant to hospital boards the role of gatekeeper for abortion providers, which serves as a de facto determinant of abortion access in the state.

*Constitutionally Protected Right to Abortion Compromised*

35. Women in Oklahoma face many challenges in accessing abortion. These challenges include poverty, lack of service providers, lack of access to transportation, need for child care, and inability to take time off from work. Requiring Dr. Burns to obtain hospital admitting privileges would force him to close his medical practice, leaving no more than two remaining abortion providers. Without additional capacity at these clinics, it will be significantly more difficult, if not impossible, for many Oklahoma women to exercise their constitutional right to abortion.

**VII. CLAIMS FOR RELIEF**

**First Claim for Relief**  
**(Due Process)**

36. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

37. S.B. 1848 violates the principle of due process of the law, in violation of OKLA. CONST. art. II, § 7, by failing to afford Dr. Burns adequate time to comply prior to the statute's effective date.

**Second Claim for Relief**  
**(Single-Subject Rule)**

38. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

39. S.B. 1848 violates OKLA. CONST. art. 5, § 57 because it addresses more than one subject.

**Third Claim for Relief**  
**(Special Law)**

40. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

41. S.B. 1848 constitutes an impermissible special law in violation of OKLA. CONST. art. V, § 59 because it singles out less than an entire class of similarly situated persons for different treatment.

**Fourth Claim for Relief**  
**(Improper Delegation)**

42. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

43. S.B. 1848 violates the principles of separation of powers and the role of the state legislature, in violation of OKLA. CONST. articles IV and V, respectively, by impermissibly delegating fundamental policy-making authority to hospitals and without adequate directions for the implementation of any declared policy.

**Fifth Claim for Relief**  
**(Equal Protection)**

44. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

45. S.B. 1848 violates the principle of equal protection of the laws, in violation of OKLA. CONST. art. II, § 7, by subjecting the Plaintiff and his patients to an unreasonable classification.

**Sixth Claim for Relief**  
**(Right to Terminate a Pregnancy)**

46. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

47. S.B. 1848 violates the right of Plaintiff's patients to terminate a pregnancy, which is protected as an inherent right by OKLA. CONST. art. II, § 2 and as a fundamental right by OKLA. CONST. art. II, § 7.

**Seventh Claim for Relief**  
**(Declaratory Judgment – Unconstitutional and Void)**

48. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

49. Because the Act violates the Oklahoma Constitution, declaratory judgment is warranted stating that the Act is unconstitutional and void. The judgment would terminate the controversy giving rise to this proceeding. *See id.*

50. Declaratory judgment is warranted because S.B. 1848 violates Plaintiff's constitutional rights and the constitutional rights of Plaintiff's patients.

**Eighth Claim for Relief**  
**(Temporary Injunction and Temporary Restraining Order)**

51. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

52. If S.B. 1848 goes into effect, it will irreparably harm Plaintiff and his patients.

53. Immediate relief is required to prevent and enjoin this harm. Defendants should be temporarily enjoined from enforcing the act.

**Ninth Claim for Relief**  
**(Permanent Injunction)**

54. The allegations of paragraphs 1 through 35 and 51–53 are incorporated as though fully set forth herein.

55. Because the Act violates the Oklahoma Constitution, warranting declaratory judgment stating that S.B. 1848 is unconstitutional and void, Defendants should be permanently enjoined from enforcing the Act.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully request that this Court:

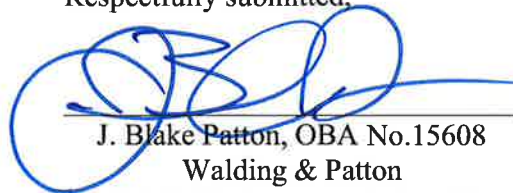
56. Issue a declaratory judgment that S.B. 1848 violates the Oklahoma Constitution and is void and of no effect; and

57. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 1848; and

58. Grant such other and further relief as the Court may deem just and proper, including reasonable attorney's fees and costs.

Dated: October 2, 2014

Respectfully submitted,



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CENTER FOR REPRODUCTIVE RIGHTS  
120 Wall Street, 14<sup>th</sup> Floor  
New York, NY 10005  
Telephone: (917) 637-3697  
Fax: (917) 637-3666

*\*Out-of-State Attorney Application and Motion to  
Associate Forthcoming*

*\*\*Out-of-State Attorney Applications Filed*

ATTORNEYS FOR PLAINTIFF

VERIFICATION

The undersigned Plaintiff has read the contents of the Verified Petition. The undersigned hereby verifies, under penalty of perjury, that the contents of the Verified Petition are true and correct to the best of his present knowledge.

Larry A. Burns, D.O.  
Larry A. Burns, D.O.



Subscribed and sworn to before me,  
a Notary Public, in and for the State  
of Oklahoma, Cleveland County, this  
1 day of Oct, 2014.

Sworn to before me this 1<sup>st</sup> day  
of October 2014

Brenda Hanna  
NOTARY PUBLIC

Brenda Hanna  
Notary Public

My Commission expires Aug 20, 2018

**IN THE DISTRICT COURT FOR OKLAHOMA COUNTY  
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Oklahoma Commissioner of Health )  
(3) CARL B. PETTIGREW, D.O., in his official )  
capacity as President of the Oklahoma State )  
Board of Osteopathic Examiners, and )  
(4) GREG MASHBURN, in his official capacity )  
as District Attorney for Cleveland, Garvin, and )  
McClain Counties; )  
 )  
Defendants. )

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

**CERTIFICATE OF SERVICE ON OKLAHOMA ATTORNEY GENERAL**

Pursuant to Local Rule 37 (D), the undersigned hereby certifies that true and correct copies of the petition, motion, and brief challenging Enrolled Senate Bill No. 1848 were served on the Office of the Oklahoma Attorney General.

Respectfully submitted,



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# EXHIBIT A



# An Act

ENROLLED SENATE  
BILL NO. 1848

By: Treat, Newberry, Allen,  
Griffin and Echols of the  
Senate

and

Grau, Christian, Ritze,  
Kern, Reynolds, Turner,  
Roberts (Sean), Fisher,  
Derby, Johnson, Cockroft,  
Biggs and Walker of the  
House

An Act relating to public health; directing State Board of Health to establish certain standards; requiring physicians with certain privileges to remain at certain facilities for certain time period; requiring certain training for physicians, physician assistants, and volunteers; requiring medical screenings prior to performance of abortion; providing standards for screenings; requiring offer of examination after abortion; requiring certain facilities to keep certain records; requiring reporting of injuries and death to State Department of Health; requiring filing of incident reports to appropriate boards; providing penalties for performance of abortions without licensure; authorizing certain legal action against certain persons; providing for codification; and providing an effective date.

SUBJECT: Establishment of certain medical procedure standards

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-748 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall establish abortion facility supplies and equipment standards, including equipment required to be immediately available for use in an emergency. Such standards shall, at a minimum:

1. Specify required equipment and supplies, including medications, required for the performance of abortion procedures and for monitoring the progress of each patient throughout the abortion procedure and post-procedure recovery period;

2. Require that the number or amount of equipment and supplies at the facility is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient;

3. Specify the mandated equipment and supplies for required laboratory tests and the requirements for protocols to calibrate and maintain laboratory equipment at the abortion facility or operated by facility staff;

4. Require ultrasound equipment in all abortion facilities; and

5. Require that all equipment is safe for the patient and facility staff, meets applicable federal standards, and is checked annually to ensure safety and appropriate calibration.

B. On any day when any abortion is performed in a facility providing abortions, a physician with admitting privileges at a general medical surgical hospital which offers obstetrical or gynecological care in this state within thirty (30) miles of where the abortion is being performed must remain on the premises of the facility to facilitate the transfer of emergency cases if hospitalization of an abortion patient or a child born alive is necessary and until all abortion patients are stable and ready to leave the recovery room.

C. The State Board of Health shall adopt standards relating to the training physician assistants licensed pursuant to the provisions of Section 519.1 of Title 59 of the Oklahoma Statutes and employed by or providing services in a facility providing abortions shall receive in counseling, patient advocacy, and the specific medical and other services.

D. The State Board of Health shall adopt standards related to the training that volunteers at facilities providing abortions shall receive in the specific services that the volunteers provide, including counseling and patient advocacy.

E. The State Board of Health shall adopt standards related to the medical screening and evaluation of each abortion patient. At minimum these standards shall require:

1. A medical history, including the following:
  - a. reported allergies to medications, antiseptic solutions, and latex,
  - b. obstetric and gynecological history,
  - c. past surgeries, and
  - d. medication the patient is currently taking;
2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa; and
3. The appropriate preprocedure testing, including:
  - a. urine or blood tests for pregnancy, if ordered by a physician,
  - b. a test for anemia,
  - c. Rh typing, unless reliable written documentation of blood type is available, and
  - d. an ultrasound evaluation for all patients who elect to have an abortion. The physician performing the

abortion is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and established standards of obstetrical care and shall write the estimate in the patient's medical record. An original print of each ultrasound examination of the patient shall be kept in the patient's medical record.

F. The State Board of Health shall adopt standards related to the performance of the abortion procedure and post-procedure follow-up care. At minimum these standards shall require:

1. That medical personnel are available to all abortion patients throughout the procedure;

2. The appropriate use of local anesthesia, analgesia, and sedation if ordered by the physician performing the procedure;

3. The use of appropriate precautions, such as the establishment of intravenous access;

4. That the physician performing the abortion procedure monitors the patient's vital signs and other defined signs and markers of the patient's status throughout the procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room;

5. Immediate post-procedure care and observation in a supervised recovery room for as long as the patient's condition warrants;

6. That the facility in which the abortion procedure is performed arranges for a patient's hospitalization if any complication beyond the management capability of the abortion facility's medical staff occurs or is suspected;

7. That a licensed health-care professional trained in the management of the recovery room and capable of providing cardiopulmonary resuscitation actively monitors patients in the recovery room;

8. That there is a specified minimum time that a patient remains in the recovery room by type of abortion procedure and duration of gestation;

9. That a physician discusses RhO(D) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate post-operative period or that it will be available to her within seventy-two (72) hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the State Board of Health shall be signed by the patient and a witness and included in the medical record;

10. Written instructions with regard to post-abortion coitus, signs of possible complications, and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies;

11. That the physician ensures that a licensed health-care professional from the abortion facility makes a good faith effort to contact the patient by phone, with the patient's consent, within twenty-four (24) hours after procedure to assess the patient's recovery;

12. Equipment and services are located in the recovery room to provide appropriate emergency and resuscitative life-support procedures pending the transfer of the patient or a child born alive in the facility;

13. That a post-abortion medical visit shall be offered to each abortion patient and, if requested, scheduled for two (2) to three (3) weeks after the abortion procedure and shall include a medical examination and a review of the results of all laboratory tests; and

14. That a urine or blood test shall be obtained at the time of the follow-up visit to rule out continued pregnancy. If a continuing pregnancy is suspected, the patient shall be appropriately evaluated; and a physician who performs abortions shall be consulted.

G. Facilities performing abortions shall record each incident resulting in a patient's or a born-alive child's injury occurring at

the facility and shall report incidents in writing to the State Board of Health within ten (10) days of the incident. For the purposes of this subsection, "injury" shall mean an injury that occurs at the facility and creates a serious risk of substantial impairment of a major body organ or function.

H. If a patient's death occurs, other than the death of an unborn child properly reported pursuant to law, the facility performing abortions shall report the death to the State Board of Health no later than the next business day.

I. Incident reports shall be filed with the State Board of Health and all appropriate professional licensing and regulatory boards, including, but not limited to, the State Board of Medical Licensure and Supervision and the Oklahoma Board of Nursing.

J. Whoever operates a facility performing abortions without a valid license shall be guilty of a felony. Any person who intentionally, knowingly, or recklessly violates the provisions of this act or any standards adopted by the State Board of Health in accordance with this act shall be guilty of a felony.

K. Any violation of this act or any standards adopted under this act may be subject to a civil penalty or fine up to Twenty-five Thousand Dollars (\$25,000.00) imposed by the State Board of Health. Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines. In deciding whether and to what extent to impose civil penalties or fines, the State Board of Health shall consider the following factors:

1. Gravity of the violation, including the probability that death or serious physical harm to a patient or individual will result or has resulted;

2. Size of the population at risk as a consequence of the violation;

3. Severity and scope of the actual or potential harm;

4. Extent to which the provisions of the applicable statutes or regulations were violated;

5. Any indications of good faith exercised by facility;

6. The duration, frequency, and relevance of any previous violations committed by the facility; and

7. Financial benefit to the facility of committing or continuing the violation.

L. In addition to any other penalty provided by law, whenever in the judgment of the State Commissioner of Health any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this act, or any standard adopted in accordance with this act, the Commissioner shall make application to any court of competent jurisdiction for an order enjoining such acts and practices. Upon a showing by the Commissioner that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

SECTION 2. This act shall become effective November 1, 2014.

Passed the Senate the 22nd day of May, 2014.

*Anthony E. Jones*

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2014.

*Jeffrey W. Nielsen*

Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 23<sup>rd</sup>  
day of May, 20 14, at 9:08 o'clock P M.

By: Audrey Koedwell

Approved by the Governor of the State of Oklahoma this 28<sup>th</sup>  
day of May, 20 14, at 1:42 o'clock P M.

*Mary Fallin*  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 28<sup>th</sup>  
day of May, 20 14, at 2:54 o'clock P M.

By: Ch. Benge