

House Committee on Federal and State
Affairs February 7th, 2017

Testimony of Robert Eye Opposing SB 98 in behalf of Trust Women
Foundation, Inc., and South Wind Women's Center L.L.C.

Mr. Chairman and the Members of the Committee:

My name is Robert Eye and I am counsel for Trust Women Foundation, Inc. and South Wind Women's Center, L.L.C.. On behalf of both entities I am here to express opposition to SB 98.

Since the legislative session of 2016 the Supreme Court of the United States decided an important case related to the extent of legislative authority to restrict access to abortion. In *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) the court overturned Texas legislation that had the effect of unduly restricting access to abortion care. The Texas legislation was advanced by abortion opponents on the basis that its restrictions would protect women's health. The statutory restrictions were determined by the Supreme Court to lack a medical basis that could be said to protect the health of women. In rendering this opinion the Court provided guidance for legislation related to abortion care. The court made clear that restrictions that cause substantial obstacles to abortion without a corresponding health benefit for women are unconstitutional. It is in this light that Trust Women Foundation, Inc. and South Wind Women's Center, L.L.C. register their opposition to S.B. 98.

Additionally, S.B. 98's various disclosure requirements are redundant because most of the specified information is already available from the Kansas State Board of Healing Arts (BOHA) website. For example, Sections 1(a)(1)(B)(D)(G)(H) relate to information collected and maintained by BOHA. Patients already can verify physician license status from BOHA.

<http://www.ksbha.org/requests/licenseverification.shtml>

Requiring this information to be provided again to the patient by the physician/clinic assumes the information access through BOHA is inadequate or that women are incapable of accessing the website (something a brief visit to the BOHA website would readily dispel). Moreover, the redundancy could be argued as an undue burden on access because it is an additional requirement for providers to meet that does not have an evident health benefit for women.

Sec. 1(a)(1)(C) requires a clinic to provide the date a physician employment commenced at the clinic. BOHA's application process already requires disclosure of the physician's intended practice location but BOHA does not inquire about the commencement date of employment.

http://www.ksbha.org/forms/md_do_app_nonfill.pdf

However, in light of BOHA's issuance of a practice license does employment commencement date matter? To the extent SB 98 purports to be about women's health it's unlikely that such would be any better protected by disclosure of employment start date. The real issue is whether the physician is qualified and BOHA's license issuance conclusively answers that question. Hence, from a health protection perspective Sec.1(a)(1)(C) is indefensible.

Sec. 1(a)(1)(D) relates to information about BOHA disciplinary actions. Addendum 2 of the BOHA application covers disciplinary actions in greater detail than what would be required for disclosure under Sec. 1(a)(1)(D).

http://www.ksbha.org/forms/md_do_app_nonfill.pdf

Hence, this is a redundant requirement. Further, BOHA, not patients, is in the best position to determine qualifications and fitness to practice. Requiring duplication of these disclosures is an undue burden with no discernible health benefit. Similarly, requiring providers to disclose whether they have “lost” clinical privileges is a transparent attempt at stigmatizing abortion providers and causing fear and insecurity about a safe medical procedure. An abortion provider could “lose” clinical privileges at a hospital because they moved, did not meet the minimum patient admissions due to the safety of the abortion procedure, or for any number of other reasons unrelated to the quality and safety of the care they provide.

Sec. 1(a)(1)(E) concerns disclosures related to physician has medical malpractice coverage. Of course, in Kansas malpractice coverage is mandatory. KSA 40-3402 requires professional liability coverage as a condition for active licensure.

Hence, requiring disclosure of this information is a duplication of the BOHA licensing function and may be argued as an undue burden because it has no discernible health benefit.

Sec. 1(a)(1)(F) requires disclosure of whether the physician has privileges at a hospital within thirty miles of the location of where an abortion is performed. This requirement is an undue burden in direct conflict with the Whole Woman's Health decision. 136 S.Ct. 2292, 2310.

This bill is clearly nothing more than an attempt to single out abortion providers for differential treatment without any evidence that such yields even a minimal health benefit for women.

If the Kansas legislature believes patients should know this information in order to achieve informed consent, they should mandate these disclosures for all medical procedures. Anything short of that is a bald-faced attempt at stigmatizing and singling out abortion providers and causing fear and insecurity about a safe medical procedure.

I will attempt to answer questions you may have.

Thank you.