ENROLLED HOUSE
BILL NO. 1970

By: Grau, Trebilcock, Cockroft, Reynolds, Faught, Ownbey, Kern, Ritze, Cooksey, Roberts (Dustin) and Peterson of the House

and

Treat, Brecheen and Allen of the Senate

An Act relating to public health and safety; amending Section 1, Chapter 48, O.S.L. 2010 (63 O.S. Supp. 2010, Section 1-729a), which relates to RU-486 for the purpose of inducing abortions; adding definitions; requiring that physicians prescribe certain drugs according to certain protocol; modifying duties of certain physicians; requiring physician to examine woman and document gestational age prior to administering certain drugs; requiring follow-up appointment to be scheduled for certain patient; providing for severability; and providing an effective date.

SUBJECT: Abortion (Gov. signed May 5, 2011)(effec. Nov. 1, 2011) (temporary injunction enjoined enforcement Dec. 2, 2011)

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

SECTION 1. AMENDATORY Section 1, Chapter 48, O.S.L. 2010 (63 O.S. Supp. 2010, Section 1-729a), is amended to read as follows:

Section 1-729a. A. As used in this section:

1. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination shall with reasonable likelihood cause the death of the unborn child. This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents or diagnostic drugs;

2. “Drug label” or “drug’s label” means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the U.S. Food and Drug Administration (FDA) and agreed upon by the drug company applying for FDA authorization of that drug. Also known as “final printing labeling instructions”, it is the FDA document which delineates how a drug is to be used according to the FDA approval;

3. “Federal law” means any law, rule, or regulation of the United States or any drug approval letter of the U.S. Food and Drug Administration that governs or regulates the use of RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing abortions;

~~2.~~ 4. “Personal identifying information” means any information designed to identify a person and any information commonly used or capable of being used alone or in conjunction with any other information to identify a person; and

~~3.~~ 5. “Physician” means a doctor of medicine or osteopathy legally authorized to practice medicine in the state.

B. No person shall knowingly or recklessly give, sell, dispense, administer, prescribe, or otherwise provide RU-486, also known as mifepristone, or any abortion-inducing drug for the purpose of inducing an abortion in a pregnant female, unless the person who gives, sells, dispenses, administers, prescribes, or otherwise provides the RU-486 (mifepristone) or any abortion-inducing drug is a physician who:

1. Has the ability to assess the duration of the pregnancy accurately;

2. Has the ability to diagnose ectopic pregnancies;

3. Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or has made and documented in the patient’s medical record plans to provide such care through other qualified physicians;

4. Is able to assure patient access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary; and

5. Has read and understood the prescribing information for the use of RU-486 (mifepristone) or any abortion-inducing drug as provided by the drug manufacturer in accordance with the requirements of the U.S. Food and Drug Administration.

C. No physician who provides RU-486 (mifepristone) or any abortion-inducing drug shall knowingly or recklessly fail to provide or prescribe the RU-486 (mifepristone) or any abortion-inducing drug according to the protocol tested and authorized by the U.S. Food and Drug Administration and as authorized in the drug label for the RU-486 (mifepristone) or any abortion-inducing drug.

D. No physician who provides RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing an abortion shall knowingly or recklessly fail to:

1. Provide each patient with a copy of the drug manufacturer's medication guide and drug label for RU-486 (mifepristone) or any abortion-inducing drug being used;

2. Fully explain the procedure to the patient, including, but not limited to, explaining ~~whether the physician is using~~ that the drug is being used in accordance with the protocol tested and authorized by the U.S. Food and Drug Administration ~~regimen or an evidence-based regimen, and, if using an evidence-based regimen, specifying that the regimen differs from the U.S. Food and Drug Administration regimen and providing detailed information on the evidence-based regimen being used~~ and as outlined in the drug label for RU-486 (mifepristone) or any abortion-inducing drug;

3. Provide the female with a copy of the drug manufacturer's patient agreement and obtain the patient's signature on the patient agreement;

4. Sign the patient agreement; and

5. Record the drug manufacturer's package serial number in the patient's medical record.

~~D.~~ E. Because the failure and complications from medical abortion increase with increasing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because RU-486 (mifepristone) or any abortion-inducing drug does not treat ectopic pregnancies but rather is contraindicated in ectopic pregnancies, the physician

giving, selling, dispensing, administering, or otherwise providing or prescribing RU-486 (mifepristone) or any abortion-inducing drug shall first examine the woman and document, in the woman's medical chart, gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing RU-486 (mifepristone) or any abortion-inducing drug.

F. When RU-486 (mifepristone) or any abortion-inducing drug is used for the purpose of inducing an abortion, the drug must be administered ~~by or~~ in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug to the patient. The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall schedule the patient for a follow-up appointment and make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of RU-486 (mifepristone) or any abortion-inducing drug for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and assess the patient's medical condition. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making such efforts, shall be included in the patient's medical record.

~~E.~~ G. 1. If a physician provides RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing an abortion and if the physician knows that the female who uses the RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing an abortion experiences within one (1) year after the use of RU-486 (mifepristone) or any abortion-inducing drug an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or any abortion-inducing drug or is hospitalized, receives a transfusion, or experiences any other serious event, the physician shall, as soon as is practicable, but in no case more than sixty (60) days after the physician learns of the adverse reaction or serious event, provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the drug manufacturer. If the physician is a doctor of medicine, the physician shall simultaneously provide a copy of the report to the State Board of Medical Licensure and Supervision. If the physician is a doctor of osteopathy, the physician shall simultaneously provide a copy of the report to the State Board of Osteopathic Examiners. The relevant Board shall compile and retain all reports it receives pursuant to

this subsection. All reports the relevant Board receives under this subsection are public records open to inspection pursuant to the Oklahoma Open Records Act; however, absent an order by a court of competent jurisdiction, neither the drug manufacturer nor the relevant Board shall release the name or any other personal identifying information regarding a person who uses or provides RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing an abortion and who is the subject of a report the drug manufacturer or the relevant Board receives under this subsection.

2. No physician who provides RU-486 (mifepristone) or any abortion-inducing drug to a pregnant female for the purpose of inducing an abortion shall knowingly or recklessly fail to file a report required under paragraph 1 of this subsection. Knowing or reckless failure to comply with this subsection shall subject the physician to sanctioning by the licensing board having administrative authority over such physician.

~~F.~~ H. Any female upon whom an abortion has been performed, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child~~,~~ may maintain an action against the person who performed the abortion in knowing or reckless violation of this section for actual and punitive damages. Any female upon whom an abortion has been attempted in knowing or reckless violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

~~G.~~ I. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

~~H.~~ J. No pregnant female who obtains or possesses RU-486 (mifepristone) or any abortion-inducing drug for the purpose of inducing an abortion to terminate her own pregnancy shall be subject to any action brought under subsection ~~F~~ H of this section.

K. If some or all of the language in this section is ever temporarily or permanently restrained or enjoined by judicial order,

then this section shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 2. This act shall become effective November 1, 2011.

OKLAHOMA COALITION FOR REPRODUCTIVE JUSTICE v.
Terry CLINE, in his official capacity as Oklahoma Commissioners of Health; Lyle Kelsey, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; and Catherine V. Taylor, in her official capacity as the President of the Oklahoma State Board of Osteopathic Examiners, Defendants.
No. CV-2011-1722.
December 2, 2011.

Order Granting Temporary Injunction

Honorable Daniel L. Owens, Judge of the District Court.
Plaintiffs' Motion for Temporary Injunction is now before the Court for consideration. After reviewing the motion and all supporting evidentiary materials, and having given the parties the opportunity to be heard on October 18, 2011, the Court finds that the Motion should be granted in part, and denied in part.

IT IS THEREFORE ORDERED THAT: Defendants, Terry L. Cline, in his official capacity as Oklahoma Commissioner of Health; Lyle Kelsey, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; and Catherine C. Taylor, in her official capacity as the President of the Oklahoma State Board of Osteopathic Examiners, and Defendants' agents, employees, attorneys are temporarily enjoined from:
I. Enforcing each of Oklahoma House Bill 1970's amendments to 63 O.S. §1-729a, except subsection (K).

Passed the House of Representatives the 4th day of May, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the 26th day of April, 2011.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this_____

day of _____, 20____,

at_____ o'clock _____M.

_____

By: _____

Approved by the Governor of the State of Oklahoma the_____day of

_____, 20____, at_____ o'clock _____M.

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Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this_____

_____day of_____, 20____,

at_____ o'clock _____M.

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By: _____