

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

MMB PROPERTIES, a Florida general
partnership,

CASE NO.: 2014-CA1636 OC

Plaintiff,

vs.

PLANNED PARENTHOOD OF GREATER
ORLANDO, INC., a Florida non-profit
corporation,

Defendant.

AFFIDAVIT OF JENNA TOSH

STATE OF FLORIDA
COUNTY OF OSCEOLA

BEFORE ME, the undersigned authority, personally appeared Jenna Tosh, who after first being duly sworn on oath, deposes and says as follows:

1. My name is Jenna Tosh. I am over the age of 18 and otherwise fully competent to testify in these proceedings. Unless indicated to the contrary, all statements made in this Affidavit are true and correct based on my own personal knowledge.

2. I am the President and CEO of Planned Parenthood of Greater Orlando, Inc. ("PLANNED PARENTHOOD"), which is a Florida non-profit corporation that was founded in 1994 and which is an affiliate of Planned Parenthood Federation of America.

3. PLANNED PARENTHOOD currently operates two health centers in Orlando, Florida. According to PLANNED PARENTHOOD's records, the centers saw patients approximately 21,000 times during the past year in connection with family planning and women's primary and preventative care services.

4. PLANNED PARENTHOOD currently is in the process of opening a third health center, which is the subject of this lawsuit. It is located at 610 Oak Commons Boulevard in Kissimmee, Florida (“the Kissimmee Health Center”) and is one of several stand-alone medical buildings in the Oak Commons Medical Park (“Oak Commons”).

5. Like PLANNED PARENTHOOD’s other health facilities, the Kissimmee Health Center will provide family planning and women’s primary and preventative care services. Specifically, under the direction of PLANNED PARENTHOOD’s physicians, the Kissimmee Health Center will provide patients with all FDA-approved forms of contraception, breast and cervical cancer screening, HPV screening, HIV testing and counseling, screening and treatment for other STDs, blood pressure screening, as well as medication and surgical abortions.

6. All of the services that Plaintiff complains about in this lawsuit will be provided to PLANNED PARENTHOOD’s patients at the Kissimmee Health Center only when ancillary and incidental to its physicians’ medical practice.

7. Medication abortions involve no surgery at all. In a medication abortion, a woman takes two prescription medications, one at the health center and one later at home. These medications cause an early pregnancy to be expelled similar to a natural miscarriage. Despite widespread use of the label “surgical,” surgical abortion does not also involve what is typically thought of as surgery. Instead, surgical abortion uses instruments to evacuate the contents of the uterus. No incision is made into the woman’s skin or other bodily membrane. Surgical abortions are almost always performed in an outpatient setting, most often at a clinic.

8. Abortions have constituted less than 1% of the total number of services provided at the two existing Orlando PLANNED PARENTHOOD health centers during the past year.

PLANNED PARENTHOOD anticipates that abortions will constitute about the same very low percentage of the total services to be provided at the Kissimmee Health Center.

9. Besides abortion, PLANNED PARENTHOOD does plan to offer other services at the Kissimmee Health Center which some might argue to be “outpatient surgical procedures.” Those other services include Essure tubal sterilizations and colposcopies, but we estimate all combined will constitute less than one-tenth of a percent of the services PLANNED PARENTHOOD will be providing at that location. As earlier noted, none of these services will be performed except when ancillary to the practice of PLANNED PARENTHOOD’s physicians.

10. The Florida legislative has defined for licensing purposes out-patient surgery centers. None of the services to be provided or activities engaged in at PLANNED PARENTHOOD’s Kissimmee Health Center bring it within the definition of an ambulatory (outpatient) surgical center, as that term is specifically defined in Section 395.002(3) of the Florida Statutes.

11. In like fashion, the terms “emergency services and care,” and “emergency medical condition(s)” are defined in Section 395.002(8)-(9), Fla. Stat. (2013). PLANNED PARENTHOOD will not be offering care to any of its patients at the Kissimmee Health Center that might fall within these statutory definitions. The Kissimmee Heath Center is not an emergency medical center. In fact, it will only be open during normal business hours, similar to a private physician’s office.

12. I understand that the Plaintiff MMB Properties in this lawsuit may also be contending that the Kissimmee Health Center will be an emergency medical center because it will provide “emergency” contraception. Emergency contraception is however just that – contraception. It has only been called “emergency” because, in order for the medication to

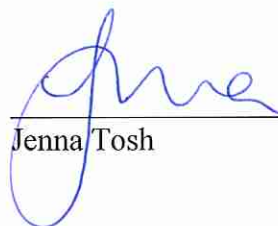
prevent pregnancy, the medication must be taken within a narrow window of time after a woman has had unprotected sex.

13. The emergency contraception to be offered at the Kissimmee Health Center will consist either of intrauterine devices (“IUDs”) that can be inserted by a clinician or of pills, which are either prescribed or available for purchase over the counter at drugstores and other locations. My understanding is that emergency contraceptive pills are hormonally no different than birth control pills. They are not the same as the abortion pill, or RU-486, and they cannot be used to end a pregnancy. IUDs can be used for either emergency contraceptive purposes or as an effective and safe birth control method. The insertion of an IUD does not involve a surgical procedure and will not end a pregnancy. Combined, all these “emergency” contraceptive services are anticipated to constitute but approximately six tenths of one percent of the total services to be provided at the Kissimmee Health Center.

14. The zoning verification letter application which Plaintiff has attached to their Complaint was written by PLANNED PARENTHOOD to the City of Kissimmee to determine whether the Kissimmee Health Center could be zoned as a medical office as well as an outpatient surgical center. PLANNED PARENTHOOD inquired about both types of uses because while PLANNED PARENTHOOD only intends to operate as a medical office now, PLANNED PARENTHOOD wanted to determine beforehand whether the zoning for the Kissimmee Health Center would allow it to later expand and include an outpatient surgical suite. If PLANNED PARENTHOOD were to build an outpatient surgical suite, that would potentially make it possible for PLANNED PARENTHOOD to provide additional types of services, such as laparoscopic tubal sterilization, in the future at the Kissimmee Health Center.

15. Of course, even if PLANNED PARENTHOOD did expand to include those additional services, all would be provided ancillary and incidental to PLANNED PARENTHOOD's physicians' practice of medicine at the Kissimmee Health Center. The number of those procedures performed would also likely constitute a very small percentage of the total services provided at the Kissimmee Health Center.

FURTHER AFFIANT SAITH NAUGHT.


Jenna Tosh

SWORN TO AND SUBSCRIBED before me this ____ day of July, 2014, by Jenna Tosh who is ☒ personally known to me, or ☐ who produced _____ as identification.



Notary Public

Nicole R. Virtue

Printed Name

My commission expires: 7/15/17

[SEAL]



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2014, I electronically filed the foregoing with the Clerk of the Court by using the E-Portal system which will serve a copy via email on:

Dennis R. O'Connor, Esq.
O'Connor & O'Connor, LLC
840 S. Denning Drive, Suite 200
Winter Park, FL 32789
doconnor@oconlaw.com

Maureen A. Arago, Esq.
The Arago Law Office
P.O. Box 452275
Kissimmee, FL 34745-2275
maureenarago@aragolaw.com

/s/ Donald E. Christopher
Donald E. Christopher