



Pillsbury Winthrop Shaw Pittman LLP

Deborah B. Baum

May 23, 2016

Confidential
Via Email

The Honorable Marsha Blackburn, Chair
c/o Rachel Collins, Investigative Counsel and Clerk, Majority Staff
Select Investigative Panel on Infant Lives
H2-316 Ford House Office Building
Washington, D.C. 20515

Re: **May 5, 2016 Subpoena to** [REDACTED]

Dear Representative Blackburn:

As counsel for [Abortion Doctor #1], I write regarding the document requests set forth in the schedule (“document requests”) attached to your May 5, 2016 Subpoena (“Subpoena”). In accordance with the agreement between myself and Rachel Collins reached on Friday, May 20, 2016, [Abortion Doctor #1] provides his written responses to the Subpoena today, Monday, May 23, 2016, and will produce responsive documents on a rolling basis through Friday, May 27, 2016. We expect the first tranche of documents to be provided tomorrow. Additionally, while [Abortion Doctor #1] intends to comply with the Subpoena and assist the Select Investigative Panel on Infant Lives (“Panel”) with its investigation, he asserts the following general and specific objections to the document requests.

As a threshold matter, [Abortion Doctor #1] requests that the information contained in the documents and other materials produced in response to these requests be treated as strictly confidential. I would appreciate written assurances from the Panel as to its commitment to adhere to the requirement that such confidentiality be maintained. Dr. [Abortion Doctor #1] makes this request to protect confidential business, proprietary, and personally identifiable information, the disclosure of which could pose a significant threat to [Abortion Doctor #1] and impede the care and safety of his patients. *See, e.g., Watkins v. United States*, 354 U.S. 178, 200 (1957) (“[T]here is no congressional power to expose for the sake of exposure.”); *Exxon Corp. v. F.T.C.*, 589 F.2d 582, 590-91 (D.C. Cir. 1978) (relying on the presumption that “Congressional committees will act responsibly with confidential data revealed to them”); *United States v. Poindexter*,

698 F. Supp. 300, 304 n.5 (D.D.C. 1988) (“Congress may not, of course, use its investigating power merely to call conduct it does not like to the attention of the public . . .”). Additionally, we request a further discussion regarding the date and location of the deposition, given the very real threats to [Abortion Doctor #1] personal safety and security that are regrettably an ongoing part of his life, and given that the Subpoena identifying the date, time and location of [Abortion Doctor #1] deposition was unfortunately made public in a press release.

[Abortion Doctor #1] does not intend to withhold any pertinent documents solely on the grounds of confidentiality or privilege. However, in addition to the redaction of information protected by the American Health Portability and Accountability Act of 1998 (“HIPAA”), [Abortion Doctor #1] seeks to redact personally identifiable information including names, home addresses, phone numbers, and email addresses, to the extent necessary to protect the privacy, safety, and security of the individuals identified in these documents. This precaution is especially necessary given the heightened risk harassment, violence, intimidation, and harm associated with disclosure of information related to this politically sensitive topic. *See, e.g., Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 153 (D.C. Cir. 2006) (finding that privacy rights of individuals involved in the approval process for a drug used to terminate pregnancy warranted the redaction of identifying information.); *Glenn v. Md. Dep’t of Health & Mental Hygiene*, No. 48, Sept. Term 2015, 2016 WL 690513, at *4 (Md. Feb. 22, 2016) (affirming the state agency’s redaction of identifying information in light of the “history of violence” against providers of abortion services); *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No. 15 Civ. 3522, 2016 WL 454082, at *1-2 (N.D. Cal. Feb. 5, 2016) (recognizing the legitimate privacy interests of individuals involved in reproductive health services as well the heightened risk of threats and harm associated with disclosure of identifying information); *Planned Parenthood Gold Gate v. Superior Court*, 83 Cal. App. 4th 347, 358-59 (2000) (holding that the association and privacy rights of Planned Parenthood staff and volunteers outweighed the asserted public interest in disclosure of their identifying information to facilitate civil discovery).

We do not raise these safety concerns lightly. In addition to the murder of Dr. George Tiller in his church in Kansas, there is a well-documented and ongoing threat to individuals involved in or associated with the provision of reproductive health services across the country. *See, e.g., Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No. 15 Civ. 3522, 2016 WL 454082, at *1-2 (N.D. Cal. Feb. 5, 2016) (acknowledging a “documented” and “dramatic” increase in the threatened and actual injuries inflicted on individuals and entities involved in providing reproductive health services following disclosure). We are particularly concerned insofar as we believe that

organizations linked to Scott Roeder, the convicted murderer of Dr. Tiller¹, have also directly initiated complaints against [Abortion Doctor #1] with the Maryland Board of Physicians. Those complaints reference incidents involving the very same providers of emergency services that the Panel has now also subpoenaed, suggesting strongly that those same individuals may be connected in some way with the Panel's investigation.

As stated in more detail in response to the specific requests below, [Abortion Doctor #1] has never engaged in the donation or sale of fetal tissue, nor has any infant (or fetus of greater than 17 weeks gestation) ever been born alive during any procedure performed by [Abortion Doctor #1]. In light of this information, which we realize was not previously available to the Panel, we fail to see the pertinence of any financial information—personal or otherwise related to the clinics at which [Abortion Doctor #1] works—to the stated purpose of this Panel's investigation.

As a general matter, therefore, [Abortion Doctor #1] objects to the production of any financial information at this time, and respectfully requests that the Panel explain the pertinence of this information to the investigation in light of the information above. *See Watkins v. United States*, 354 U.S. at 214-15 (“Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto.”); *United States v. McSurely*, 473 F.2d 1178, 1203-04 (D.C. Cir. 1972) (requiring subpoenas to seek information “pertinent” to the investigation, and holding subpoena power to have been exceeded where inquiry “diverted” into a personal investigation of subpoenaed individual); *Tobin v. United States*, 306 F.2d 270, 275-76 (D.C. Cir. 1962) (holding invalid a congressional subpoena where the “general terms” authorizing the committee's investigation failed to justify the subpoena's request for detailed information such as internal agency communications). Moreover, [Abortion Doctor #1] objects to the document requests to the extent they seek personal tax information. We do not believe that the Panel has authorization to obtain tax information. *Cf.*, 28 U.S.C. Section 6103(f)(3).

Subject to these objections, [Abortion Doctor #1] is attempting to comply fully with the Subpoena and has made his best effort to collect and produce all responsive documents in his possession custody or control. [Abortion Doctor #1] responds to these requests on behalf of himself and the entities in which he has an ownership interest, **NE Clinic** and **website**

¹ “Not a Lone Wolf,” Ms. Magazine, Spring 2010.
<http://www.msmagazine.com/spring2010/lonewolf.asp>

(“ACO”). To the extent the document requests seek information regarding or relating to MD Clinic [Abortion Doctor #1] refers the Panel directly to MD Clinic as the information sought is not in [Abortion Doctor #1] possession, custody, or control. Further, [Abortion Doctor #1] does not act as an agent of MD Clinic [Abortion Doctor #1] reserves the right to amend, supplement, or withdraw these responses as necessary.

Subject to the foregoing general objections, [Abortion Doctor #1] provides the following responses and objections to the specific document requests.

Request 1: A copy of any chart of accounts for [Abortion] or for any entity that provides abortion services and is owned by [Abortion] employs or contracts with [Abortion] accepts volunteer services from [Abortion] or employs any member of [Abortion] family (collectively, [Abortion] entities”), including but not limited to account descriptions from any financial recording system relating to [Abortion] or [Abortion] entities.

[Abortion Doctor #1] objects to this request to the extent it seeks financial information. Financial information is outside the scope of the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15.

Request 2: All accounting documents reflecting for [Abortion] and all [Abortion] entities the trial balance report and trial balance details for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

To the best of [Abortion Doctor #1] knowledge, there are no documents responsive to this request.

Request 3: All documents reflecting [Abortion] and all [Abortion] entities’ statement of revenues (i.e., a breakdown by product or service categories) for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

[Abortion Doctor #1] objects to this request to the extent it seeks financial information. Financial information is outside the scope of the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15.

Request 4: [Abortion] and all [Abortion] entities’ balance sheets for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.

To the best of [Abortion Doctor #1] knowledge, there are no documents responsive to this request as [Abortion Doctor #1] has not historically created balance sheets.

Request 5: [Abortion Doctor] and all [Abortion D] entities' income statements, including but not limited to any profit and loss statements, statements of operations and statements of activities for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.

[Abortion Doctor #1] objects to this request to the extent it seeks financial information. Financial information is outside the scope of the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15.

Request 6: Copies of [Abortion Doctor] and all [Abortion D] entities' filed tax returns for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

[Abortion Doctor #1] objects to the production of tax returns. [Abortion Doctor #1] financial information and that of entities he owns is outside the scope the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15.

Request 7: All of [Abortion Doctor] [Abortion Doctor] family members (only if involved in the delivery of abortion services), and all [Abortion D] entities' bank statements from any financial institution where they have maintained an account for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

[Abortion Doctor #1] objects to this request to the extent it seeks financial information. [Abortion Doctor #1] personal financial information and that of his family members and entities is outside the scope of the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how personal financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15. Even if it were pertinent, [Abortion Doctor #1] does not have possession, custody, or control of his family members' financial information (other than that of his wife).

Request 8: Documents Related to Fetal Tissue

Applicable to all subparts: [Abortion Doctor #1] never took part in the donation or sale of fetal tissue. For the sake of transparency and completeness, [Abortion Doctor #1] will provide information related to one genetic counseling research study,

conducted by Natera, Inc., in connection with an IRB, in which blood samples were taken from select mothers and fetuses with swab samples collected from the fathers. NE Clinic was paid the standard stipend paid to other hospitals and medical providers for its time and effort spent collecting the blood and swab samples. Documents related to that study—which did not involve “fetal tissue”—are included in response to the requests below.

- a. All communications and documents [Abortion D.] and [Abortion D.] entities utilized or currently utilize to obtain patient consent for abortion procedures and/or donation of fetal tissue. (See Instruction ¶3 below regarding HIPAA.)

An example of the standard patient consent form currently being utilized will be produced. Copies of consent forms provided in connection with the Natera, Inc. genetic counseling study will be also produced as available.

- b. All communications and documents sufficient to show the Institutional Review Board (IRB) (as defined by Title 45 of the Code of Federal Regulations, Part 46) approval assurances and compliance for any fetal tissue transferred from [Abortion D.] or [Abortion D.] entities.

A copy of the IRB approval in connection with the Natera, Inc. genetic counseling study involving donation of blood—not tissue—samples will be produced.

- c. All communications and documents sufficient to show the gestation of the fetal tissue transferred to, from, or by [Abortion D.] or any [Abortion D.] entities.

No documents responsive to this request exist as no donations or sales of fetal tissue have been made.

- d. All communications and documents, including contracts or written agreements to which [Abortion D.] is a party, referring or relating to the procurement of fetal tissue from any [Abortion D.] entity.

No documents responsive to this request exist. [Abortion Doctor #1] will produce documents related to the one Natera, Inc. genetic counseling study, which involved the donation of blood—not tissue—samples.

- e. All communications and documents sufficient to show all entities and/or persons to which [Abortion D.] or [Abortion D.] entities transferred fetal tissue and records of these transfers.

To the best of [Abortion Doctor #1] knowledge, the only instances in which fetal tissue is transported include:

- a. Transfer at the request of law enforcement in connection with an investigation (usually cases of rape and/or incest);
 - b. Transfer to funeral homes at the patient's request for cremation and/or burial purposes; and
 - c. In cases of termination in connection with severe genetic abnormalities, transfer to a medical facility at the request of the patient's physician/genetic counselor for purposes of analyzing potential genetic issues relevant to future pregnancies.
- f. All communications and documents sufficient to show anything of value, including but not limited to money or honorarium, offered to or received by [Abortion D] or [Abortion D] entities from any entity to which fetal tissue was transferred.

No documents or communications exist relative to the donation or sale of fetal tissue. Documents related to the payment of the standard stipend in connection with the participation in the Natera, Inc. study involving blood samples will be produced.

- g. All communications and documents sufficient to show all invoices sent from [Abortion Doc] to any entity, and any payments received by [Abortion Doc] from any entity referring or relating to fetal tissue for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

See response to subparagraph f, above.

- h. All documents reflecting [Abortion Doctor] and [Abortion D] entities' record of costs and expenses associated with fetal tissue acquisition for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Such records should include a full description of expenses.

No documents responsive to this request exist.

- i. All communications and documents sufficient to show whether any current and former personnel of [Abortion D] entities had responsibilities which include(d) procuring, researching, storing, or packaging for donation, sale, or transport of any fetal tissue.

Any documents responsive to this request will be produced.

- j. All communications and documents sufficient to show the identity of persons or entities that made requests for fetal tissue and the means by which these requests are made.

Any documents responsive to this request will be produced.

Request 9: Documents Related to [Abortion Doctor] Work Schedule

- a. Documents sufficient to show the position and description of job responsibilities for each employee of the [Abortion Doctor] entities.

[Abortion Doctor #1] assumes that this request does not seek the identities of specific individuals. To the extent it does seek the identities of specific individuals, [Abortion Doctor #1] objects to this request. The disclosure of identifying information is not pertinent to this investigation. In addition, the disclosure of such information would infringe on the privacy rights of the individuals identified and likely subject them to harassment, violence, intimidation, or harm. *See, e.g., Judicial Watch, Inc. v. FDA*, 449 F. 3rd 141, 153 (finding privacy interests warranted withholding personal identifying information in the context of a government approval for a drug used to terminate pregnancy because disclosure risked exposing individuals to “abortion related violence”). For these reasons, the names and other personal identifying information of specific employees will be redacted from any documents responsive to this request that are produced.

- b. All communications and documents sufficient to show [Abortion Doctor] schedule, days and hours present, at each [Abortion Doctor] entity for May 1, 2015, through May 1, 2016.

Responsive documents will be produced. [Abortion Doctor #1] does not keep time sheets. [Abortion Doctor #1] will provide schedule sheets for both clinics at which he works, which show days on which procedures were performed, which in turn indicate days on which he was present.

- c. List the number of and type of abortions performed each day by [Abortion Doctor] for May 1, 2015 through May 1, 2016.

A chart detailing information responsive to this request for **NE Clinic** will be produced. To the extent **[Abortion Doctor #1]** provides services at **MD Clinic** as an independent contractor, **MD Clinic** will respond to this request.

- d. All communications and documents sufficient to show any other licensed physicians who were present at **[REDACTED]** **MD Clinic** while **[Abortion D]** performed abortions in 2015 and 2016.

To the best of **[Abortion Doctor #1]** knowledge, there are no documents responsive to this request except to the extent that residents and occasionally another physician may come to the **MD Clinic** for purposes of observation or training.

- e. Medical records of all patients who received services from **MD Clinic** and were subsequently transferred to any hospital. Include all communications and documents sufficient to show the reason for the transfer and the method of transportation used to transport the patient. (See Instruction ¶3 below regarding HIPAA.)

Any documents responsive to this request will be produced.

- f. All communications and documents sufficient to show all emergency numbers given to patients of **MD Clinic**

Any documents responsive to this request will be produced.

Request 10: Licensing and Discipline

- a. Documents sufficient to show all states where **[Abortion DC]** has an active, inactive, or expired medical license.

Any documents responsive to this request will be produced.

- b. All communications and documents sufficient to show all disciplinary actions taken, or threatened, against **[Abortion DC]**

To the best of **[Abortion Doctor #1]** knowledge, no such communications or documents exist as regards disciplinary actions. There have been complaints made, many by employees of Operation Rescue, but none of these complaints has ever resulted in any disciplinary action being taken or threatened to the best of **[Abortion Doctor #1]** knowledge.

- c. All communications and documents sufficient to show medical practice litigation or settlement of any threatened or actual litigation in which [Abortion Doctor #1] or [Abortion Doctor #2] entities are or have been involved.

To the best of [Abortion Doctor #1] knowledge, no such communications or documents exist. [Abortion Doctor #1] has not been involved in any medical practice litigation, threatened or actual.

Request 11: Payment for Abortions

- a. All communications and documents sufficient to show the initial communication made to patients regarding the pricing and method of payment for abortions; all intake forms used for patients to apply for government or private sector financial assistance related to payment for abortions; and all other documents and forms given to patients by [Abortion Doctor #1] or [Abortion Doctor #2] entities related to abortion services or the payment thereof.

Any documents responsive to this request will be produced.

- b. Documents stating, for each abortion performed at MD Clinic any reimbursements from the government or private sector for abortions and related expenses. (See Instruction ¶3 below regarding HIPAA.)

Responsive documents showing limited insurance reimbursements submitted by [Abortion Doctor #1] will be produced. No public funding was received by NE Clinic during the relevant time period.

- c. Documents sufficient to show all information for any account held at a financial institution on behalf of [Abortion Doctor #1] including deposit slips for any cash deposits related to abortions performed at MD Clinic

[Abortion Doctor #1] objects to this request to the extent it seeks [Abortion Doctor #1] personal financial information. [Abortion Doctor #1] personal financial information is outside the scope of the stated purpose of this investigation. [Abortion Doctor #1] respectfully requests that the Panel explain how personal financial information is pertinent to this investigation. *See Watkins v. United States*, 354 U.S. at 214-15. Subject to and without waiving the forgoing objections, [Abortion Doctor #1] states the only compensation he receives for his services performed at MD Clinic is in the form of weekly checks, and such compensation is reflected on 1099 forms each year. [Abortion Doctor #1] does not receive or deposit cash related to any services performed at MD Clinic

Request 12: Born-Alive Investigation and Disposition of Fetal Tissue

- a. All communications and documents stating the MD Clinic policy and procedures for infants born alive during an abortion, including any training provided to staff on how to care for an infant born alive.

Any documents responsive to this request will be produced.

- b. All communications and documents sufficient to show the presence of any equipment that serves infants born alive or persons trained to provide neonatal care for an infant born alive at [Abortion D] entities.

No infant (or fetus of gestation greater than 17 weeks) has ever been born alive in any of [Abortion Doctor #1] procedures. [Abortion Doctor #1] requires an ultrasound establishing lack of a fetal heartbeat before beginning any induction or D&E procedure. All staff members at NE Clinic and MD Clinic have been trained in infant CPR.

- c. All communications and documents sufficient to show the dates on which any child was born alive at [Abortion D] entities, the person(s) who assisted with the care of that child, and the disposition of the child, including any death certificates prepared for that child and any related referrals to a funeral home.

To the best of [Abortion Doctor #1] knowledge, no such communications or documents exist.

- d. All communications and documents about medical disposal, including the name of all companies [Abortion D] and [Abortion D] entities have used and the scheduled pickups of medical waste at [Abortion D] entities.

Any documents responsive to this request will be produced with the name and license number of the entity identified redacted. To the extent the Panel requires the names of the entities identified, [Abortion Doctor #1] respectfully requests that the Panel explain the pertinence of this information. *See Watkins v. United States*, 354 U.S. at 214-15.

Request 13: Staff Training

- a. All communications and documents, whether internal or external, directing the conduct of [Abortion Doctor] staff and the staff at [Abortion D] entities.

Any documents responsive to this request will be produced.
Responsive documents containing personally identifiable information
will have such information redacted.

- b. All communications and documents sufficient to show unlicensed persons who assist with abortions or who perform medical tasks at [redacted] entities, including any rotating personnel schedule information.

Responsive documents will be produced with respect to medical assistants who (consistent with state law) assist with various tasks not performed by [redacted] or licensed nurses who work at [redacted] or MD Clinic [redacted] does not, respectfully, see the pertinence of the names of these individuals to the Panel's investigation and therefore has redacted them. If the Panel wishes to pursue this issue, we respectfully request that the pertinence of the names of those individuals be provided in light of the safety and security concerns surrounding their disclosure.

Please feel free to contact me, Deborah Baum, or Thomas Hill if you have further questions.

Sincerely,



Deborah B. Baum

CC: Thomas Hill

Rachael Collins, Investigative Counsel and Clerk, Majority Staff
Heather Sawyer, Staff Director and General Counsel, Democratic Staff