



AlaFile E-Notice

03-CV-2023-901109.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

OASIS FAMILY BIRTHING CENTER, LLC, ON BEHALF OF ITSELF AND ITS PATIENTS
03-CV-2023-901109.00

The following answer was FILED on 2/29/2024 10:28:06 AM

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GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
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MONTGOMERY, AL, 36104

334-832-1260

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**OASIS FAMILY BIRTHING
 CENTER, LLC, *et al.*,**)
)
)
Plaintiffs,)
)
v.)
)
**ALABAMA DEPARTMENT OF
 PUBLIC HEALTH, *et al.*,**)
)
Defendants.)

Case No. 03-CV-2023-901109.00

**PARTIAL ANSWER TO FIRST AMENDED COMPLAINT OF DEFENDANTS
ALABAMA DEPARTMENT OF PUBLIC HEALTH AND SCOTT HARRIS**

INTRODUCTION

1. Denied.
2. First sentence admitted. Otherwise, Defendants lack sufficient information to admit or deny the allegations of this paragraph, and so deny the same.
3. Denied.
4. Defendants admit that the final regulations took effect on October 15, 2023. Otherwise denied.
5. Denied.

JURISDICTION AND VENUE

6. Admitted.
7. Admitted.

PARTIES

A. Plaintiffs

8. Admitted that Oasis Family Birthing Center, LLC (“OFBC”) is a freestanding birthing center in Birmingham, Alabama, founded in June 2022; Defendants lack sufficient

information to admit or deny the remaining allegations in this sentence, and so deny the same. Second sentence admitted, upon information and belief. Defendants further admit that OFBC began seeing patients in September 2022, upon information and belief, and that it purports to sue on behalf of itself and its patients. The remaining allegations in this paragraph are denied.

9. First, second, and third sentences admitted, upon information and belief. Defendants admit that Dr. Skanes purports to sue on behalf of herself and her patients but deny that she has standing to sue on her patients' behalf.

10. Admitted that ABC is a freestanding birthing center in development and under construction in Huntsville, Alabama. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

11. First, second, and third sentences admitted, upon information and belief. Defendants admit that Dr. Robinson purports to sue on behalf of herself and her patients but deny that she has standing to sue on her patients' behalf.

12. First and second sentences admitted, upon information and belief. Defendants aver that they lack sufficient information to admit or deny the remaining allegations of this paragraph, and so deny the same. With regard to fn. 5, the statutory and regulatory provisions concerning certified professional midwives and certified nurse midwives speak for themselves.

13. Defendants admit, upon information and belief, that Jo Crawford is an Alabama licensed CPM. Defendants admit that Jo Crawford purports to sue on behalf of herself and her patients but deny that she has standing to sue on her patients' behalf. Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and so deny the same.

14. Defendants admit, upon information and belief, that Tracie Stone is not licensed as a CPM in Alabama. Defendants admit that Tracie Stone purports to sue on behalf of herself and

her patients but deny that she has standing to sue on her patients' behalf. Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and so deny the same.

B. Defendants

15. The texts of Ala. Code § 22-1-1, Ala. Code § 22-2-2, Ala. Code § 22-21-28(a), and the cited case law speak for themselves. Otherwise, admitted.

16. The texts of Ala. Code § 22-21-22, Ala. Code § 22-21-20(1), and Ala. Admin. Code r. 420-5-7-.02(3)(a) speak for themselves.

17. The texts of Ala. Code § 22-21-23, Ala. Code § 22-21-25(a), and Ala. Code § 22-21-21 speak for themselves. Defendants deny the remaining allegations in this paragraph.

18. Admitted that Scott Harris is the State Health Officer for the Alabama Department of Public Health (“ADPH”), and that he is sued in his official capacity only. The texts of Ala. Code § 22-2-8, Ala. Code § 22-2-2 *et seq.*, and Ala. Admin. Code r. 420-5-7-.01 speak for themselves. Defendants deny the remaining allegations in this paragraph.

FACTUAL STATEMENT

A. Establishment of Plaintiffs' Birth Centers

19. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

20. First sentence denied. Second sentence admitted. Third sentence denied. Defendants further admit, upon information and belief, that available options for birthing care in Alabama include giving birth in a hospital and home births. Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and so deny the same.

Oasis Family Birthing Center

21. Admitted, upon information and belief.

22. Admitted, upon information and belief.

23. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

24. First sentence admitted, upon information and belief. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

25. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

26. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

27. Defendants deny that ADPH “forced OFBC to stop offering care to patients at the birth center.” Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

28. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

29. First sentence and fourth sentence denied. Defendants aver that at no point has ADPH required OFBC to cease or discontinue care of patients, only to cease performing births at OFBC until such time as the facility became licensed. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

30. Denied.

Alabama Birth Center

31. Admitted, upon information and belief.

32. First, second, and fourth sentences admitted, upon information and belief. Defendants lack sufficient information to admit or deny the allegations in the third sentence of this

paragraph, and so deny the same.

33. First sentence and fourth sentence denied. Defendants deny that Dr. Robinson was forced to halt construction of her birth center because of ADPH's actions. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

34. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

35. Denied.

B. Maternal and Infant Health in Alabama

36. The cited document, Maternal Mortality Rates in the United States, 2020, speaks for itself.

37. The cited document, 2020 Maternal Mortality Review, speaks for itself.

38. The cited document, Maternal Mortality Among Vulnerable US Communities, speaks for itself.

39. The cited document, 2020 Maternal Mortality Review, speaks for itself.

40. The cited documents, Infant Mortality Rates by State and Infant Mortality: Alabama 2021, speak for themselves.

41. The cited documents, U.S. Maternal Mortality Rates 2020 and Severe Maternal Morbidity in the United States: A Primer, speak for themselves.

42. First sentence denied. With respect to the second sentence, the cited documents, 2020 Maternal Mortality Review, Underlying Cause of Death 2018-2021, Natality, and Infant Mortality: Alabama 2021, speak for themselves.

43. Defendants lack sufficient information to admit or deny the allegations in this

paragraph, and so deny the same.

44. Admitted, upon information and belief. Averred that the cited document, *Maternity Care Desert: Alabama*, speaks for itself.

45. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

46. Admitted, upon information and belief. Averred that the cited documents, *Rural Health: At A Glance* and *A Picture of the Loss of Rural Obstetrical Service in Alabama 1980 to 2019*, speak for themselves.

47. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

48. Admitted, upon information and belief.

49. First and second sentences admitted. The cited documents in sentences two and three, *2020 Maternal Mortality Review*, *Radical Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, *Prenatal Care: Why Do I Need Prenatal Care?*, and *Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies for Prevention, 13 States, 2013-17*, speak for themselves. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

50. The cited document, *Infant Mortality: Alabama 2021*, speaks for itself.

51. The cited document, *Member Spotlight: Scott Harris*, speaks for itself. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

C. Birth Centers and the Midwifery Model of Care

52. The cited document, *What is a Birth Center?*, speaks for itself. Otherwise, denied.

Defendants expressly deny the allegations of this paragraph to the extent that the terms “hospital” and “acute care facility” are intended to carry any legal meaning with respect to the applicability of Ala. Code § 22-21-20(1).

53. Fourth sentence admitted, upon information and belief. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

54. The Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same. Additionally, the cited document, *What is a Birth Center?*, speaks for itself.

55. Averred that the definition of midwifery for purposes of Alabama law is set out in Ala. Code § 34-19-11(3), which speaks for itself. The remaining allegations in this paragraph are denied.

56. First sentence admitted, upon information and belief. Defendants lack sufficient information to admit or deny the allegations in the second sentence of this paragraph, and so deny the same.

57. The text of Ala. Code §§ 34-21-81(1) and 34-21-81(2)(b) speak for themselves. Otherwise, admitted, upon information and belief.

58. The cited document, *Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives*, speaks for itself. Averred that the practice of a certified nurse midwife (CNM) under Alabama law is set out in Ala. Code § 34-21-81(2)(b), which speaks for itself. Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and so deny the same.

59. Defendants lack sufficient information to admit or deny the allegations of this paragraph, and so deny the same.

60. The texts of Ala. Code §§ 34-21-81(1) and § 34-21-81(5) speak for themselves. Otherwise, denied.

61. Denied.

62. The texts of Ala. Code § 34-19-11 and the cited document, *Who Are CPMs?*, speak for themselves. Otherwise, admitted, upon information and belief.

63. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

64. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

65. The text of Ala. Code § 34-19-16(a) speaks for itself. Admitted that CPMs providing home-birth services in Alabama are not subject to a collaborative practice agreement (CPA) requirement. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

66. Second sentence is denied. The texts of Ala. Code §§ 34-19-12, -14 speak for themselves.

67. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

68. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

69. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

70. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

71. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

72. The cited documents, *Alabama Vital Statistics* and *WHO Statement on Caesarean Section Rates*, speak for themselves. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

73. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

74. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

75. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

76. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

77. The cited document, *Mapping Integration of Midwives Across the United States: Impact on Access, Equity, and Outcomes*, speaks for itself. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

78. The cited document, *Mapping Integration of Midwives Across the United States: Impact on Access, Equity, and Outcomes*, speaks for itself. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

D. History of Midwifery in Alabama

79. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

80. Defendants lack sufficient information to admit or deny the allegations in this

paragraph, and so deny the same.

81. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

82. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

83. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

84. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

85. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

86. The text of the cited document, Ala. Act No. 1976-499 (codified at Ala. Code §§ 34-19-3(a)-(b)), speaks for itself. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

87. The text of the cited case, *State v. Kimpel*, 665 So. 2d 990 (Ala. Crim. App. 1995), speaks for itself. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

88. The texts of Ala. Act No. 2017-383 (codified at Ala. Code § 34-19-11 *et seq.*), Ala. Code § 34-19-16(a), Ala. Code §§ 34-19-12(a), -14, and Ala. Att’y Gen. Op. No. 2023-012, speak for themselves. Defendants admit that CPMs may provide care in out-of-hospital settings. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

89. Admitted, upon information and belief.

E. Access to Midwifery Care and Birth Centers in Alabama Today

90. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

91. Admitted that under Alabama law, CNMs are restricted from practicing independently. Otherwise, denied.

92. Denied.

93. The rosters of licensees for the Alabama Board of Nursing and Alabama State Board of Midwifery speak for themselves. Otherwise, admitted, on information and belief.

94. Admitted that access to midwifery care in Alabama is limited by the small number of practicing midwives in the state. Otherwise, denied.

95. Second sentence admitted. Otherwise, denied.

96. Admitted, upon information and belief.

97. Denied that the only means to obtain temporary licensure for a freestanding birthing center is pursuant to this Court's preliminary injunction. Otherwise, admitted upon information and belief.

98. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

F. ADPH's Policies Restricting Birth Centers

ADPH's Attempts to Regulate Freestanding Birth Centers in Alabama between 1987 and 2022.

99. Admitted.

100. Admitted, upon information and belief.

101. Admitted.

102. The texts of Ala. Act No. 2017-383 and Ala. Code §§ 34-19-11 to -20 speak for

themselves. Otherwise, denied.

103. Averred that in 2020, ADPH did not have regulations governing licensure of birthing centers. Otherwise, denied.

104. Defendants deny the allegation that ADPH “reversed course” in proposing regulations for licensing birthing centers. Averred that after learning in December 2021 of Plaintiff Robinson’s plans to open the first birthing center in Alabama following the repeal of the regulations in 2010, ADPH proposed regulations for licensing birthing centers in July 2022. Otherwise, denied.

105. Averred that certain individuals and groups indicated their disagreement with the terms of ADPH’s 2022 proposed regulations for birthing centers. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

106. Admitted that certain groups and individuals, including Plaintiffs, made public comments concerning the proposed regulations including these statements. Denied as to the truth of the statements themselves.

107. Averred that ADPH consulted with the Alabama Board of Nursing prior to promulgating the 2022 proposed regulations. Otherwise, admitted.

108. Admitted that some of the requirements set out in the 2022 regulations were carried over from the 1987 regulations. Otherwise, denied.

109. Denied.

110. Denied that the proposed regulations diverged from modern standards of care. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

111. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

112. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

113. The text of Ala. Code § 41-22-6(b) speaks for itself. Otherwise, the Defendants admit that the proposed 2022 regulations were never finalized, and therefore lapsed, and deny the remaining allegations in this paragraph.

114. Averred that the withdrawal of the 2022 proposed regulations addressed the concerns raised during the public comment period in 2022. Otherwise, denied.

OFBC Operations After Opening in September 2022

115. First and second sentences admitted, upon information and belief. Averred that no regulations had been implemented for licensing birthing centers at the time OFBC opened and began seeing patients in September 2022.

116. Admitted, upon information and belief.

117. Admitted, upon information and belief, that OFBC staff reached out to one arm of ADPH, Health Statistics, to inquire about the status of an account. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

118. Admitted that OFBC's *facility* access to the state's birth registry system was never established. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

Attorney General's 2022 Opinion and ADPH Actions Against OFBC

119. The text of Ala. Code § 36-15-1(a) speaks for itself. Otherwise, admitted.

120. The text of the cited document, Ala. Att’y Gen. Op. No. 2023-12, speaks for itself. Otherwise, admitted.

121. The text of the cited document, Ala. Att’y Gen. Op. No. 2023-12, speaks for itself. Admitted that the Attorney General’s Opinion stated that “[w]hether a freestanding birth center is primarily engaged in offering obstetrical care requires a factual determination that must be made by the Board [of Public Health].” Otherwise, denied.

122. The texts of Ala. Code §§ 22-21-22 and 22-21-20(1) speak for themselves. Otherwise, admitted.

123. To the extent the allegations in this paragraph state a legal conclusion, no response is required. Defendants aver that the text of the cited document, Ala. Att’y Gen. Op. No. 2023-12, speaks for itself. Otherwise, admitted.

124. To the extent the allegations in this paragraph state a legal conclusion, no response is required. Defendants aver that the texts of the cited documents, Ala. Att’y Gen. Op. No. 2023-12 and Ala. Code § 34-19-16, speak for themselves. Otherwise, admitted.

125. The texts of Ala. Code §§ 22-21-33(a)(1)-(3) speak for itself. Otherwise, admitted.

126. Averred that at the time Dr. Skanes requested a license for OFBC, ADPH indicated that no application for licensure was yet available. The remaining allegations in the first sentence are denied. Second sentence denied. Averred that Dr. Skanes and ADPH worked together to determine whether existing OFBC patients would be permitted to deliver there or should make arrangements for delivery elsewhere, and that Dr. Skanes was informed that no new patients would be permitted to *deliver* at OFBC until it was licensed.

127. First and second sentences admitted. Admitted that Ms. Billingsley confirmed ADPH would not permit OFBC to operate without a license, that regulations concerning licensing

for birthing centers were in the process of being drafted and finalized, and that ADPH could not guarantee a particular timeline for finalization of those regulations. Otherwise, denied.

128. Averred that the April 5, 2023 letter from Dr. Skanes' counsel indicated that OFBC would not provide birthing services to any new patients until (1) it was licensed by ADPH, or (2) it was accredited by the Commission for the Accreditation of Birth Centers (CABC). Otherwise, denied.

129. Averred that the April 7, 2023 letter from Ms. Billingsley on behalf of ADPH was responsive to the plans articulated in the April 5, 2023 letter concerning Dr. Skanes' plans to handle care for her existing patients at OFBC, and did not affirmatively state that OFBC could not operate without a license, only that it could not "sanction the continued operation of an unlicensed facility that has been notified of its requirement to cease deliveries in the interest of public health and safety." Otherwise, denied.

130. Admitted, upon information and belief.

131. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

132. The text of Ala. Att'y Gen. Op. 2023-012 speaks for itself. Otherwise, first sentence denied. Second sentence admitted, upon information and belief.

133. Denied. Averred that as of the date of filing of the First Amended Complaint, ADPH's regulations for birthing centers providing a pathway to licensure have become final.

134. First sentence denied. Second sentence admitted. Denied that the only means to obtain temporary licensure for a freestanding birthing center is pursuant to this Court's preliminary injunction.

ADPH's Proposed 2023 Regulations

135. The text of the 2023 proposed regulations (Ala. Admin. Code ch. 420-5-13) speaks for itself. Otherwise, first sentence admitted. Second sentence denied.

136. The text of the 2023 proposed regulations (Ala. Admin. Code ch. 420-5-13) speaks for itself. Otherwise, denied.

137. The text of the 2023 proposed regulations (Ala. Admin. Code ch. 420-5-13) speaks for itself. Denied that the requirements of the regulations are unduly burdensome or irrational. Otherwise, denied.

138. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

139. Admitted that speakers at the public hearing held on July 13, 2023, including Plaintiffs, opposed the 2023 proposed regulations. Denied as to the veracity of their complaints about the proposed regulations.

140. Admitted that all speakers at the public hearing were opposed to the proposed regulations but denied as to any implication that this signaled uniform opposition to the terms of proposed regulations. Averred that ADPH received letters in support of the proposed regulations, and that it is unusual for supporters of proposed regulations to speak during such public hearings.

Initiation of the Litigation

141. The texts of the Alabama Administrative Procedure Act and the Alabama and federal Constitutions speak for themselves. Otherwise, admitted as to the date of initiation of the present litigation and the claims therein. Denied as to the veracity of those claims.

142. The Plaintiffs' Motion for Preliminary Injunction speaks for itself. Otherwise, admitted.

143. This Court's Order of September 29, 2023, speaks for itself. Otherwise, admitted.

144. This Court's Scheduling Order of August 10, 2023, speaks for itself. Otherwise, admitted.

145. This Court's Orders of September 30, 2023 and October 3, 2023, speak for themselves. Otherwise, admitted.

146. Admitted, upon information and belief.

147. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

Adoption of the 2023 Final Regulations

148. The Alabama Administrative Monthly of August 31, 2023, speaks for itself. Otherwise, admitted.

149. Denied. Averred that ADPH consulted with the Alabama State Board of Midwifery, the Alabama Board of Nursing, the Alabama State Board of Medical Examiners, and the Alabama Hospital Association prior to promulgating the 2023 proposed regulations and consulted with the Alabama State Board of Medical Examiners and the Alabama Board of Nursing after receiving public comments regarding the proposed regulations.

150. The texts of Ala. Code § 41-22-6(c) and Ala. Admin. Code r. 420-5-13-.01 to -.19 speak for themselves. Otherwise, admitted.

151. The text of the Memorandum from Denise Milledge to the State Committee of Public Health speaks for itself. Otherwise, denied.

152. The text of the 2023 final regulations speaks for itself. Otherwise, denied.

153. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. The texts of the 2023 final regulations, Ala. Code §§ 34-19-14(b)(1), -16(a) and the Milledge Memo speak for themselves. First sentence admitted. Otherwise,

Defendants lack sufficient information to admit or deny the allegations in the second sentence, and so deny the same.

154. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

155. The texts of the 2023 final regulations, Ala. Code §§ 34-19-14(b)(1), -16(a), Ala. Code §§ 34-21-83, -84, -85, -90, and the Milledge Memo speak for themselves. Second sentence admitted. Otherwise, denied.

156. The texts of the 2023 final regulations and the Milledge Memo speak for themselves. Defendants deny that the 2023 final regulations impose requirements that are not required for other licensed health care facilities in Alabama. Otherwise, denied.

157. Defendants admit that the final regulations require transfer agreements and admitting privileges. Defendants lack sufficient to admit or deny the allegations in the last sentence, and so deny the same. Otherwise, denied.

158. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. The texts of the 2023 final regulations and the Milledge Memo speak for themselves. Otherwise, denied.

159. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. The texts of the 2023 final regulations and the Milledge Memo speak for themselves. Otherwise, denied.

160. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. The texts of the 2023 final regulations, Ala. Code § 34-19-16(a), and the Milledge Memo speak for themselves. Defendants admit that certain persons are excluded from

eligibility to receive services in a birthing center. Otherwise, denied.

161. The texts of the 2023 final regulations and the Milledge Memo speak for themselves. First sentence denied. Defendants admit that the final regulations require accreditation. Fourth sentence denied. Otherwise, Defendants lack sufficient information to admit or deny the allegations in the remainder of the paragraph, and so deny the same.

162. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Otherwise, denied.

G. Harmful Impact of ADPH's Actions on Birth Centers, on Plaintiffs, and their Patients

163. The text of Ala. Code § 22-21-23 speaks for itself. Otherwise, denied.

164. Denied.

165. First sentence denied. Defendants lack sufficient information to admit or deny the allegations in the second sentence of this paragraph, and so deny the same.

166. Denied that ADPH's actions have forced OFBC to turn away or refuse to provide care to new or existing patients. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

167. Denied.

168. Denied that ADPH's actions caused any alleged harms to Dr. Skanes' work. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

169. Admitted that patients were unable to give birth in a freestanding birth center in Alabama. Otherwise, denied.

170. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

171. Denied.

172. Denied that ADPH's actions caused any alleged harms to Dr. Robinson's work. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

173. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

174. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

175. First sentence denied. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

176. Denied.

177. Denied that ADPH's actions caused any alleged harms to Jo Crawford's work. Admitted that patients were unable to give birth in a freestanding birth center in Alabama. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

178. Denied.

179. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

180. Denied that ADPH's actions have caused any harm to Plaintiffs, Plaintiff's members, or their patients. Otherwise, denied.

181. The text of the 2023 final regulations speaks for itself. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Otherwise, denied.

182. The text of the 2023 final regulations speaks for itself. To the extent this paragraph

states a legal conclusion rather than factual allegations, no response is required. Otherwise, denied.

183. Denied that ADPH's actions have caused any harm to Dr. Skanes, Dr. Robinson, and their birth centers. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

184. Denied that ADPH's actions have caused any harm to Plaintiffs, their staff, and their members. Otherwise, denied.

185. Denied that the 2023 final regulations violate Ala. Code §§ 34-19-16(a) and 34-19-14(b)(2), which speak for themselves. Otherwise, denied.

186. First sentence denied. Otherwise, Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph, and so deny the same.

187. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

188. Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

189. The text of the 2023 final regulations speaks for itself. Denied that the 2023 final regulations are harmful to patients. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

190. The text of the 2023 final regulations speaks for itself. Denied that the 2023 final regulations are harmful to patients. Otherwise, Defendants lack sufficient information to admit or deny the allegations in this paragraph, and so deny the same.

191. Denied.

192. Denied.

CLAIMS

Primary Claim

**Claim One: Alabama Administrative Procedure Act (AAPA)—
Exceeds Statutory Authority**

193-197 – Claim One is subject to the Motion to Dismiss filed contemporaneously with this Partial Answer.

Alternative Claims

**Claim Two: AAPA—Exceeds Statutory Authority
(De Facto Ban)**

198-205 – Claim Two is subject to the Motion to Dismiss filed contemporaneously with this Partial Answer.

**Claim Three: AAPA—Exceeds Statutory Authority
(Unreasonable Regulatory Scheme)**

206-211 – Claim Three is subject to the Motion to Dismiss filed contemporaneously with this Partial Answer.

**Claim Four: AAPA—Exceeds Statutory Authority
(Conflict with Childbirth Freedom Act, Act 2017-383)**

212-219 – Claim Four is subject to the Motion to Dismiss filed contemporaneously with this Partial Answer.

**Claim Five: AAPA—Exceeds Statutory Authority
(Conflict with Certified Nurse Midwife Statutes)**

220-226 – Claim Five is subject to the Motion to Dismiss filed contemporaneously with this Partial Answer.

**Claim Six: Due Process Right to Pursue Useful Activities
under Alabama Constitution**

227. Defendants re-allege and incorporate by reference their responses to the allegations

contained in paragraphs 1 through 192.

228. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

229. The texts of Ala. Const. art. I, § 13 and *Friday v. Ethanol Corp.*, 539 So. 2d 208 (Ala. 1988), speak for themselves.

230. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Otherwise, denied.

**Claim Seven: AAPA—Violates Constitutional Provisions
(Due Process Right to Pursue Useful Activities under Alabama Constitution)**

231. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

232. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

233. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the text of Ala. Code § 41-22-10 speaks for itself. Otherwise, denied.

Claim Eight: Right to Procreate under Alabama and U.S. Constitutions

234. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

235. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

236. The texts of *Skinner v. State of Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) and *Gilbreath v. Wallace*, 292 So. 3d 651 (Ala. 1974), speak for themselves.

237. To the extent this paragraph states a legal conclusion rather than factual allegations,

no response is required. Otherwise, denied.

**Claim Nine: AAPA—Violates Constitutional Provisions
(Right to Procreate under Alabama and U.S. Constitution)**

238. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

239. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

240. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the text of Ala. Code § 41-22-10 speaks for itself. Otherwise, denied.

**Claim Ten: Due Process—Unlawful Private Delegation
under Alabama and U.S. Constitutions**

241. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

242. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

243. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the texts of *Washington ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116 (1928) and *Gilbreath v. Wallace*, 292 So. 2d 651 (Ala. 1974) speak for themselves.

244. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the texts of *Friday v. Ethanol Corp.*, 539 So. 2d 208 (Ala. 1988) and *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577–78 (1972) speak for themselves. Otherwise, denied.

245. To the extent this paragraph states a legal conclusion rather than factual allegations,

no response is required. Otherwise, denied.

246. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the texts of *Washington ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116 (1928) and *Eubank v. City of Richmond*, 226 U.S. 137 (1912) speak for themselves. Otherwise, denied.

**Claim Eleven: AAPA—Violates Constitutional Provisions
(Unlawful Private Delegation under Alabama and U.S. Constitutions)**

247. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

248. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

249. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the text of Ala. Code § 41-22-10 speaks for itself. Otherwise, denied.

Claim Twelve: Due Process and Equal Protection under Alabama and U.S. Constitutions

250. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

251. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

252. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the texts of Ala. Const. art. 1, § 13, U.S. Const. amend. XIV, and *Barnes v. State ex rel. Ferguson*, 151 So. 2d 619, 623 (Ala. 1963) speak for themselves.

253. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the texts of Ala. Const. art. 1, § 13 and U.S. Const. amend.

XIV speak for themselves.

254. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the text of the 2023 final regulations speaks for itself. Otherwise, denied.

255. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Denied that the 2023 final regulations impose requirements that are not required for other licensed health care facilities in Alabama. Otherwise, denied.

256. Denied. Averred that the texts of Ala. Const. art. 1, § 13, U.S. Const. amend. XIV, and *Wallace v. Jones*, No. 2:20-CV-361-MEF, 2013 WL 5406799 (M.D. Ala. Sept. 25, 2013) speak for themselves.

**Claim Thirteen: AAPA—Violates Constitutional Provisions
(Due Process and Equal Protection under Alabama and U.S. Constitutions)**

257. Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 through 192.

258. Admitted that Plaintiffs bring this claim in the alternative to Claim One; denied as to its merits.

259. To the extent this paragraph states a legal conclusion rather than factual allegations, no response is required. Averred that the text of Ala. Code § 41-22-10 speaks for itself. Otherwise, denied.

PRAYER FOR RELIEF

Defendants admit that Plaintiffs seek the relief set out in Paragraphs 1, 2, and 3 (and their accompanying subparts) of this section but deny that they are entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

1. Defendants deny any and all allegations not specifically admitted above.

2. Defendants are not liable for the matters and allegations contained in the First Amended Complaint.

3. Defendants deny any illegal, unlawful, or improper conduct.

4. Defendants deny that Plaintiffs have suffered any legally cognizable injury or damages at their hands.

5. Defendants aver that Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, lack of standing, and/or any applicable statute of limitations.

6. Plaintiffs' First Amended Complaint fails to state a claim upon which relief may be granted as to any of their thirteen claims against Defendants.

7. Sovereign immunity pursuant to Section 14 of the Alabama Constitution bars or otherwise limits Plaintiffs' requests for relief, including their requests that state agencies and/or officials be compelled to exercise their discretionary authority in the way that Plaintiffs specify.

8. Defendants acted at all times within the scope of their statutory and regulatory authority.

9. There is no causal relationship between any alleged action or other alleged wrongdoing by Defendants and any alleged injuries suffered by Plaintiffs.

10. Defendants did not proximately cause any injury to Plaintiffs.

11. Even if Plaintiffs were to prevail, they cannot recover an award of attorney's fees in this action. *See Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1211-1212 (Ala. 2006).

12. Plaintiffs lack standing to bring the claims asserted in this action on behalf of their patients and/or potential patients.

13. Plaintiffs have failed to exhaust administrative remedies available to them.

14. Plaintiffs have failed to petition for a declaratory ruling from ADPH concerning the

validity or applicability of the final regulations, pursuant to Ala. Code § 41-22-11.

15. Defendants rely on *Tucker v. State Department of Public Health*, 650 So. 2d 910, for its authority to regulate freestanding birth centers.

16. Some or all of Plaintiffs' claims are moot.

17. Plaintiffs have failed to mitigate their damages, and so are not entitled to relief.

18. Defendants reserve the right to assert additional affirmative defenses as they become known.

Respectfully submitted,

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Attorney General

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***Counsel for Defendants Alabama Department of
Public Health and Scott Harris***

CERTIFICATE OF SERVICE

I hereby certify that I have on February 29, 2024, electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of the same to all counsel of record.

/s/ Benjamin H. Albritton
Benjamin H. Albritton
Assistant Attorney General

/s/ Hunter L. Sims
Hunter L. Sims
Assistant Attorney General