



AlaFile E-Notice

03-CV-2023-901109.00

Judge: GREG GRIFFIN

To: MOLLMAN ALISON NICOLE
amollman@aclualabama.org

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 matter was FILED on 1/15/2025 11:28:37 AM

D001 ALABAMA DEPARTMENT OF PUBLIC HEALTH
D002 IN HIS OFFICIAL CAPACITY AS STATE HEALTH OFFICER S
MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56
[Filer: ALBRITTON BENJAMIN HOWARD]

Notice Date: 1/15/2025 11:28:37 AM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



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1/15/2025 11:28 AM

03-CV-2023-901109.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

STATE OF ALABAMA

Revised 3/5/08

Unified Judicial System

03-MONTGOMERY

☐ District Court
 ☒ Circuit Court

Case

CV20

CIVIL MOTION COVER SHEETOASIS FAMILY BIRTHING CENTER,LLC, ON
BEHALF OF ITSELF AND ITS PATIENTS
 Name of Filing Party: D001 - ALABAMA DEPARTMENT OF PUBLIC
HEALTH
D002 - IN HIS OFFICIAL CAPACITY AS STATE
HEALTH OFFICER S

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

 Benjamin H. Albritton
501 Washington Avenue
Montgomery, AL 36130
Attorney Bar No.: ALB008

☐ Oral Arguments Requested
TYPE OF MOTION**Motions Requiring Fee**

- ☐ Default Judgment (\$50.00)
 Joinder in Other Party's Dispositive Motion
☐ (i.e. Summary Judgment, Judgment on the Pleadings,
 or other Dispositive Motion not pursuant to Rule 12(b))
 (\$50.00)
☐ Judgment on the Pleadings (\$50.00)
☐ Motion to Dismiss, or in the Alternative
 Summary Judgment (\$50.00)
 Renewed Dispositive Motion (Summary
☐ Judgment, Judgment on the Pleadings, or other
 Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
☒ Summary Judgment pursuant to Rule 56 (\$50.00)
☐ Motion to Intervene (\$297.00)
☐ Other _____
 pursuant to Rule _____ (\$50.00)

 *Motion fees are enumerated in §12-19-71(a). Fees
 pursuant to Local Act are not included. Please contact the
 Clerk of the Court regarding applicable local fees.

☐ Local Court Costs \$ 0 _____
Motions Not Requiring Fee

- ☐ Add Party
☐ Amend
☐ Change of Venue/Transfer
☐ Compel
☐ Consolidation
☐ Continue
☐ Deposition
☐ Designate a Mediator
☐ Judgment as a Matter of Law (during Trial)
☐ Disburse Funds
☐ Extension of Time
☐ In Limine
☐ Joinder
☐ More Definite Statement
☐ Motion to Dismiss pursuant to Rule 12(b)
☐ New Trial
☐ Objection of Exemptions Claimed
☐ Pendente Lite
☐ Plaintiff's Motion to Dismiss
☐ Preliminary Injunction
☐ Protective Order
☐ Quash
☐ Release from Stay of Execution
☐ Sanctions
☐ Sever
☐ Special Practice in Alabama
☐ Stay
☐ Strike
☐ Supplement to Pending Motion
☐ Vacate or Modify
☐ Withdraw
☐ Other _____
 pursuant to Rule _____ (Subject to Filing Fee)

 Check here if you have filed or are filing contemporaneously
 with this motion an Affidavit of Substantial Hardship or if you
 are filing on behalf of an agency or department of the State,
 county, or municipal government. (Pursuant to §6-5-1 Code
 of Alabama (1975), governmental entities are exempt from
 prepayment of filing fees) ☒

 Date:
1/15/2025 11:26:24 AM

 Signature of Attorney or Party
/s/ Benjamin H. Albritton

****Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.**



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

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Case No. 03-CV-2023-901109.00

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON CLAIM ONE

Defendants Alabama Department of Public Health ("ADPH") and Scott Harris, sued in his official capacity as State Health Officer, move this Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in their favor as to Claim One of Plaintiffs' First Amended Complaint. For grounds of their motion, Defendants state that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law as to Claim One. Ala. R. Civ. P. 56(c)(3).

This motion is based upon the parties' Joint Stipulations of Fact filed on January 14, 2025 (Doc. 239) and Defendants' brief in support of their motion for summary judgment, which is filed contemporaneously with this motion.

Respectfully submitted,

Steve Marshall
Attorney General

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

/s/ Hunter L. Sims
Hunter L. Sims
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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 January 15, 2025, electronically filed the foregoing with the Clerk of Court using the Alafire 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

Case No. 03-CV-2023-901109.00

Legal Standard

Summary judgment is proper where a party's motion "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ala. R. Civ. P. 56(c)(3). The parties have agreed to joint stipulations of fact for the purposes of resolving all claims and defenses in this lawsuit. *See* Doc. 239. "A stipulation is a judicial admission, dispensing with proof, recognized and enforced by the courts as a substitute for legal proof." *Travelers Indem. Co. of Conn. v. Worthington*, 252 So. 3d 645, 663 (Ala. 2017) (quoting *Stericycle, Inc. v. Patterson*, 161 So. 3d 1170, 1175-76 (Ala. Civ. App. 2013)). Since the parties have agreed to resolve their case on cross-motions for summary judgment on joint stipulations of fact, there are no genuine issues as to any material fact. *See id.* ("Parties may agree to try their case upon a theory of their choosing and their agreements will be binding."). Since the facts are undisputed, the Court must "appl[y] . . . the law to those facts to determine whether the [movant] [is] entitled to judgment as a matter of law." *Carpenter v. Davis*, 688 So. 2d 256, 258 (Ala. 1997).

Facts

All parties to this suit hereby jointly stipulate to the following facts for the purposes of deciding Claim One of Plaintiffs' First Amended Complaint without conceding the materiality or relevance thereof. In jointly stipulating to the following, the parties do not waive their rights to rely on supporting affidavits or any other materials permitted under Alabama Rule of Civil Procedure 56, or to further supplement the record in the event summary judgment is denied:

The Plaintiffs

1. Oasis Family Birthing Center, LLC (hereinafter "OFBC") is a freestanding birth center ("FSBC") in Birmingham, Alabama, founded in June 2022 and currently operating under a temporary license issued by Defendant ADPH on January 1, 2024, pursuant to the temporary

injunction issued in this case.¹

2. Alabama Birth Center (hereinafter “ABC”) is a FSBC in Huntsville, Alabama, which began development in 2020, and is currently operating under a temporary license issued by Defendant ADPH on July 17, 2024, pursuant to the temporary injunction issued in this case.²

3. Heather Skanes, M.D., is a duly licensed board-certified obstetrician and gynecologist. Dr. Skanes is OFBC’s founder and Executive Director.

4. Yashica Robinson, M.D., is a duly licensed board-certified obstetrician and gynecologist. Dr. Robinson is ABC’s founder and Executive Director.

5. Jo Crawford is a nationally-certified Certified Professional Midwife (“CPM”) and holds licenses in Virginia and Alabama. She currently provides midwifery services in Alabama at OFBC and through her home birth practice, Home Sweet Birth, LLC.

6. Tracie Stone is a nationally-certified CPM and holds licenses in Utah and Alabama. She currently provides midwifery services in Alabama at ABC, where she is the Clinical Director, and through her home birth practice, Grace and Glory Maternity Care Services.

7. The American College of Nurse Midwives (hereinafter “ACNM”) is a nationwide professional association of Certified Nurse Midwives (“CNMs”). ACNM sets the national standards for nurse-midwifery education and practice in the United States. ACNM’s Alabama affiliate, ACNM-AL, is the primary organization representing CNMs in Alabama. ACNM-AL provides professional support and liaises with ACNM on behalf of its members with respect to questions about national standards, state laws, and regulations. ACNM-AL also engages in advocacy on its members’ behalf and provides a forum for CNMs practicing in Alabama. Its

¹ See Order Granting Pls.’ Mot. Prelim. Inj., Doc. 110 (Sept. 30, 2023) [hereinafter “Prelim. Inj. Order”], *supplemented by* Suppl. Prelim. Inj. Order, Doc. 119 (Oct. 3, 2023) [hereinafter “Suppl. Prelim. Inj. Order”], *reconsideration denied*, Order Defs.’ Mot. Recons., Doc. 131 (Oct. 16, 2023).

² See Prelim. Inj. Order; Suppl. Prelim. Inj. Order.

membership includes all Alabama-based members of the national ACNM, including members who are dually certified as CNMs and CPMs.

The Defendants

8. The State Committee of Public Health has authority to create and enforce public health regulations in Alabama. Ala. Code §§ 22-2-1 and -2.³ The Alabama Department of Public Health is synonymous with the State Committee of Public Health when ADPH acts on behalf of the State Committee of Public Health. Ala. Code § 22-1-1.⁴

9. Scott Harris, M.D., MPH, is the State Health Officer for ADPH. As State Health Officer, Dr. Harris is the executive officer of ADPH, and is responsible, *inter alia*, for supervising the licensing of hospitals in Alabama. *See* Ala. Code § 22-2-8.

ADPH Regulatory Authority

10. Pursuant to Ala. Code § 22-21-22, ADPH has authority to regulate hospitals.

11. The term “hospitals” is statutorily defined in Ala. Code § 22-21-20(1), as follows:

General and specialized hospitals, including ancillary services; independent clinical laboratories; rehabilitation centers; ambulatory surgical treatment facilities for patients not requiring hospitalization; end stage renal disease treatment and transplant centers, including free-standing hemodialysis units; abortion or reproductive health centers; hospices; health maintenance organizations; and other related health care institutions when such institution is primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury,

³ Effective October 1, 2024, Ala. Code § 22-2-1 has been revised, as follows:

The State Board of Health is abolished. All powers and duties of the State Board of Health, as those powers and duties exist on September 30, 2024, are conferred upon the State Committee of Public Health created under Section 22-2-4, and the State Committee of Public Health shall act as the State Board of Health for purposes of this code.

⁴ Effective October 1, 2024, Ala. Code § 22-1-1 has been revised, as follows: “For the purposes of this code, the Alabama Department of Public Health shall mean the State Committee of Public Health.”

deformity, disease, surgical or obstetrical care. Also included within the term are long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, assisted living facilities, and specialty care assisted living facilities rising to the level of intermediate care. The term “hospitals” relates to health care institutions and shall not include the private offices of physicians or dentists, whether in individual, group, professional corporation or professional association practice. This section shall not apply to county or district health departments.

12. The term “obstetrical care,” as cited in Ala. Code § 22-21-20(1), is not statutorily defined. The Alabama Attorney General, in opining on whether an FSBC is a hospital pursuant to Ala. Code § 22-21-20(1), cited the medical dictionary definition of obstetrics as “the branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.” *Obstetrics*, TABER’S CYCLOPEDIA MEDICAL DICTIONARY (18th ed. 1997); *see* Ala. Op. Atty. Gen. No. 2023-012. Throughout the litigation, the parties have agreed that this is the appropriate definition of obstetrics.

13. An FSBC provides pregnancy, birthing, postpartum, and limited newborn care in a home-like environment to low-risk patients who have been clinically screened and receive continuous risk assessment to proactively identify risk factors or complications that could arise during pregnancy or birth and affect the patients’ ability to be safely cared for in an FSBC.

14. FSBCs are independent, autonomous health care centers and are not attached to or organized as part of a general or specialized hospital or other acute care facility.

15. Effective October 15, 2023, ADPH adopted final regulations for the licensure and regulation of FSBCs. Ala. Admin. Code r. 420-5-13-.01 to -.19 (hereinafter “Final Regulations”). The Final Regulations cite Ala. Code § 22-21-20 as their “Legal Authority.” Ala. Admin. Code r. 420-5-13-.01(1).

16. In pertinent part, the Final Regulations would require all FSBCs either to have a physician on staff or to have an agreement with a consulting physician and would require such

physicians to meet certain physical presence and supervision requirements. *See id.* r. 420-5-13-.01(2)(b), (f), (w).

17. The Final Regulations restrict CPMs' scope of practice in FSBCs to providing care only as "assistive" personnel to a physician or CNM and prohibit them from providing independent patient care at FSBCs throughout pregnancy, birth, and the postpartum period, including attending deliveries. *See id.* r. 420-5-13-.01(2)(b), (e).

18. The Final Regulations prevent CNMs from working in FSBCs absent a valid Collaborative Practice Agreement ("CPA") with the FSBC's staff or consulting physician, and meeting other experience and training requirements. *See id.* r. 420-5-13-.01(2)(b), (d), (f), (w).

Operation of Freestanding Birth Centers

19. Plaintiffs OFBC and ABC operate as FSBCs through CNMs and CPMs, utilizing a midwifery model of care.

20. Midwifery care is a patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor.

21. Midwifery is practiced by trained midwives with a different skill set, education, and training background than obstetricians, who are licensed and regulated by the Alabama State Board of Medical Examiners. Ala. Code § 34-24-330, et seq.

22. Two kinds of midwives are licensed to practice in Alabama: CNMs and CPMs. Both kinds of midwives provide care in the midwifery model but fulfill different educational and training requirements.

23. CNMs are advanced practice registered nurses licensed and regulated by the Alabama Board of Nursing to engage in practice as a nurse midwife. CNMs must complete a nursing program qualifying them as a registered nurse, in addition to specialized training and

certification in nurse midwifery. Ala. Code §§ 34-21-81(1), 2(b).

24. In Alabama, CNMs are required to maintain CPAs with licensed physicians as a condition of their advanced practice. Ala. Code §§ 34-21-81(1), (5), 34-21-83, -84, -85, -90.

25. A CNM's scope of practice includes care during pregnancy, childbirth, and the postpartum period, and care for the healthy newborn during the first weeks of life. CNMs may conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing.

26. CPMs are licensed and regulated by the Alabama State Board of Midwifery. Ala. Code §§ 34-19-12(a), -14, -15. CPMs must be credentialed through an education program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education. Ala. Code § 34-19-15(a)(3).

27. A CPM's scope of practice encompasses the provision of care, counseling, and education throughout pregnancy, birth, and the postpartum period; making diagnoses; recognizing conditions requiring consultation or referral to other healthcare providers; administering medications; ordering and interpreting lab and diagnostic tests; providing continuous, hands-on care during labor and delivery; and providing maternal and well-baby care through 6-8 weeks postpartum.

28. Surgical and vaginal operative deliveries are not available in Plaintiffs OFBC and ABC, and these procedures are outside the scope of practice of the licensed midwives who work at Plaintiffs OFBC and ABC.

29. Plaintiffs OFBC and ABC pre-screen patients who might otherwise be eligible to deliver in an FSBC to ensure that they agree to forgo medicated pain management during labor and agree to complete education components to ensure that they are prepared for unmedicated labor and early home discharge, among other conditions.

Operation of Plaintiff Birth Centers

30. As of this filing, the only FSBCs that are operating in Alabama are those that have received a temporary license pursuant to the Circuit Court's preliminary injunction orders.

31. ADPH granted OFBC a temporary license effective January 1, 2024, pursuant to the Circuit Court's injunction.

32. OFBC provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. OFBC also provides patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

33. At OFBC, CPMs or a dually licensed CNM/CPM conduct all prenatal and postpartum visits and attend births in the birthing center, with assistance from registered nurses (RNs), birth assistants, and/or student midwives, some of whom are also trained as doulas and lactation consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation.

34. All patients at OFBC are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Skanes through her private practice and, where appropriate, transferred to an OB/GYN for births at a general or specialized hospital.

35. ADPH granted ABC a temporary license in July 2024, pursuant to the Circuit Court's injunction.

36. ABC provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. ABC also provides extensive patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

37. At ABC, CPMs or CNMs conduct all prenatal and postpartum visits and will attend births in the birthing center, with assistance from RNs and/or student midwives, who also serve as birth assistants. ABC also employs doulas and lactation consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation.

38. All patients at ABC are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Robinson through her private practice and, where appropriate, transferred to her care for births at a general or specialized hospital.

ADPH Authority over Birth Centers

39. If FSBCs operating under the midwifery model of care are “hospitals” within the definition of Ala. Code § 22-21-20(1), the Plaintiff FSBCs are subject to ADPH’s regulatory authority.

40. If FSBCs operating under the midwifery model of care are not “hospitals” within the definition of Ala. Code § 22-21-20(1), ADPH lacks statutory authority to regulate the Plaintiff FSBCs.

Argument

Plaintiffs’ Claim One alleges that “ADPH’s adoption of the rule that any and all freestanding birth centers operating under the midwifery model of care are ‘hospitals’ . . . exceeds ADPH’s statutory authority in violation of [Ala.] Code § 41-22-10.” Doc. 144 ¶ 197. Ala. Code § 41-22-10 provides that a court may declare an agency’s rule invalid “only if it finds that it violates constitutional provisions or exceeds that statutory authority of the agency or was adopted without substantial compliance with rulemaking procedures provided for [under the AAPA].” Ala. Code § 41-22-10. Here, Plaintiffs assert that “[b]ecause a freestanding birth center operating under the

midwifery model of care is not engaged in offering obstetrical care to the public generally, it does not fall within ADPH's hospital regulatory and licensing authority." Doc. 144 ¶ 196.

Alabama law unambiguously grants ADPH the authority to regulate the operation and conduct of hospitals. Ala. Code § 22-21-28(a). In relevant part, hospitals are defined to include "institution[s] . . . primarily engaged in offering to the public generally . . . obstetrical care." Ala. Code § 22-21-20(1). Plaintiffs are likely to rely on affidavits, reports, and studies to show that they are not a hospital. But these documents are irrelevant. This Court need not look beyond the stipulated facts to find that FSBCs are hospitals subject to ADPH regulation. FSBCs are both "engaged in obstetrical care" and open to the "public generally." Any woman meeting the eligibility criteria for a low-risk pregnancy and seeking delivery in an FSBC's home-like environment may avail herself of that facility's services. *See* Doc. 239 ¶ 13. In addition, ADPH's determination that FSBCs are hospitals is a reasonable interpretation of Ala. Code § 22-21-20(1), so this Court must defer to ADPH's interpretation. *Ex parte State Dept. of Revenue*, 683 So. 2d 980, 983 (Ala. 1996). Accordingly, this Court should grant summary judgment as to Claim One in Defendants' favor.

A. FSBCs are hospitals subject to ADPH regulation because they are "engaged in obstetrical care."

Whether FSBCs are hospitals under the statute is determined solely by whether they are "primarily engaged in offering to the public generally . . . obstetrical care," not on whether they are commonly accepted in public opinion as being a hospital. Plaintiffs allege that FSBCs operate under the midwifery model of care, which is distinguishable from obstetrics, so that they are not hospitals within the statutory definition in Ala. Code § 22-21-20(1). Doc. 144 ¶¶ 52 & 196. But the definition of obstetrics, as stipulated to, includes precisely the care that Plaintiffs offer their patients. *See* Doc. 239 ¶ 12. Plaintiffs' claim that they are not a hospital because they do not provide obstetrical care thus fails.

The parties have stipulated to the definition of obstetrics found in Attorney General Opinion 2023-012, as the “branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.”⁵ Doc. 239 ¶ 12. Thus, the question for this Court is whether Plaintiff FSBCs offer care that encompasses the “management of women during pregnancy, childbirth, and the puerperium.”

The stipulated facts demonstrate overwhelmingly that the Plaintiff FSBCs are involved in the management of women during all stages of their pregnancies and the birthing process, providing “pregnancy, birthing, postpartum, and limited newborn care in a home-like environment,” consistent with the obstetrical definition. Doc. 239 ¶¶ 13, 19. They are unquestionably engaged in the provision of obstetrical care, using the midwifery model, which is a “patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor.” *Id.* at ¶¶ 19, 20. Plaintiffs OFBC and ABC admittedly “provide[] midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth.” *Id.* at ¶¶ 32, 36.

In the operation of the FSBCs, Plaintiffs OFBC and ABC utilize two types of nurses: CNMs and CPMs. *Id.* at ¶ 19. “A CNM’s scope of practice includes care during pregnancy, childbirth, and the postpartum period, and care for the healthy newborn during the first weeks of life.” *Id.* at ¶ 25. CNMs also “conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing.” *Id.* at ¶ 25. CPMs, while they have a different scope of practice than CNMs, are involved in the “provision of care, counseling, and education throughout pregnancy, birth, and the postpartum period.” *Id.* at ¶ 27.

⁵ The puerperium is the period of forty-two days following childbirth.

The stipulated facts are clear that Plaintiff FSBCs are engaged in a healthcare model that manages and offers care to women throughout pregnancy and childbirth; as such, Plaintiff FSBCs are engaged in the provision of obstetrical care. Because the stipulated facts all point to FSBCs being primarily engaged in obstetrical care, they come within the definition of a “hospital” set out in Ala. Code § 22-21-20(1) and are subject to regulation by ADPH. Therefore, as to Claim One, contending that ADPH has exceeded its statutory authority by adopting rules for the regulation of FSBCs, Defendants are entitled to judgment as a matter of law because ADPH’s statutory authority to regulate “hospitals” was validly exercised in regulating FSBCs.

B. FSBCs are hospitals subject to ADPH regulation because they are open to the “public generally.”

Plaintiffs are likely to argue that they are not open to the “public generally” because they serve only pre-screened patients, not the public at large. *See* Doc. 169 at 12; *see also* Doc. 239 ¶ 13 (“An FSBC provides . . . care . . . to low-risk patients who have been clinically screened and receive continuous risk assessment to proactively identify risk factors or complications that could arise during pregnancy or birth and affect the patients’ ability to be safely cared for in an FSBC.”). But Plaintiffs read the phrase open to the “public generally” too narrowly.

Even though FSBCs screen out certain patients, they are willing to provide care to *any* person that meets the criteria to receive “pregnancy-related care, including births, and neonatal care through six weeks after birth.” Doc. 239 at ¶¶ 32, 36. Just like a restaurant is open to the public, though it serves only paying customers, an FSBC is open to the public generally, despite the fact that it only accepts patients who meet certain criteria. Accordingly, Plaintiff FSBCs are facilities “offering to the public generally obstetrical care,” and ADPH may rightfully regulate their facilities as hospitals. For these reasons, Defendants are entitled to judgment as a matter of law as to Claim One.

C. ADPH’s determination that FSBCs are hospitals is a reasonable interpretation of Ala. Code § 22-21-20(1), so this Court must defer to ADPH’s interpretation.

Alabama courts have long held that “in interpreting a statute, a court accepts an administrative interpretation of the statute by the agency charged with its administration, if the interpretation is reasonable.” *Ex parte State Dept. of Revenue*, 683 So. 2d at 983 (citation omitted). “Absent a compelling reason not to do so, a court will give great weight to an agency’s interpretations of a statute and will consider them persuasive.” *Id.* By enacting final rules on October 15, 2023, ADPH has interpreted the definition of a “hospital” in Ala. Code § 22-21-20(1) to include FSBCs. This is certainly a reasonable interpretation of the statute.

As stipulated, FSBCs utilize a midwifery model of care, which is a “patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor.” Doc. 239 at ¶¶ 19, 20. Thus, it is reasonable for ADPH to find that FSBCs are “institution[s] . . . primarily engaged in offering to the public generally . . . obstetrical care.” *See* Ala. Code § 22-21-20(1). Because Defendants were reasonable in interpreting the definition of a hospital to include FSBCs, this Court must accept ADPH’s interpretation of the statute. Defendants are therefore entitled to judgment as a matter of law as to Claim One.

Conclusion

For the reasons stated above, Defendants are entitled to judgment as a matter of law in their favor on the grounds that Plaintiff FSBCs are hospitals subject to ADPH regulation. This Court should grant summary judgment as to Claim One in Defendants’ favor.

Respectfully submitted,

Steve Marshall
Attorney General

/s/ Benjamin H. Albritton
Benjamin H. Albritton
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/s/ Hunter L. Sims
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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 January 15, 2025, electronically filed the foregoing with the Clerk of Court using the Alafile 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