



## AlaFile E-Notice

03-CV-2023-901109.00

Judge: GREG GRIFFIN

To: MOLLMAN ALISON NICOLE  
amollman@aclualabama.org

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# NOTICE OF ELECTRONIC FILING

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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 2/25/2025 3:22:44 PM

**D001 ALABAMA DEPARTMENT OF PUBLIC HEALTH**

**D002 IN HIS OFFICIAL CAPACITY AS STATE HEALTH OFFICER S**

DEFENDANTS' REPLY AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Filer: ALBRITTON BENJAMIN HOWARD]

Notice Date: 2/25/2025 3:22:44 PM

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

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03-CV-2023-901109.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

**STATE OF ALABAMA**

Revised 3/5/08

**Cas**

Unified Judicial System

03-MONTGOMERY

☐ District Court☒ Circuit Court

CV20

OASIS FAMILY BIRTHING CENTER,LLC, ON  
BEHALF OF ITSELF AND ITS PATIENTS**CIVIL MOTION COVER SHEET**

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 Defendants' Reply and Opposition to  
Plaintiff's Motion for Summary Judgment  
pursuant to Rule 7b (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:  
2/25/2025 3:21:34 PM

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

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*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' REPLY AND OPPOSITION TO PLAINTIFFS' 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, offer the following reply in support of their Motion for Summary Judgment as to Claim One (doc. 242), as well as opposition to Plaintiffs' Motion for Summary Judgment on Claim One (doc. 246).

**Introduction**

On January 15, 2025, Defendants filed a Motion for Summary Judgment as to Claim One, based upon the Joint Stipulations of Fact. *See* docs. 242 & 243. Defendants argued that a freestanding birth center (FSBC) is a hospital, as defined in Ala. Code § 22-21-20(1), and is due regulation as an "institution . . . primarily engaged in offering to the public generally . . . obstetrical care." Plaintiffs countered Defendants' motion with a motion of their own, arguing that they are entitled to summary judgment as to Claim One because FSBCs are not hospitals. *See* docs. 246 & 247. To make this argument, Plaintiffs relied on roughly 450 pages of filings, which included multiple affidavits and exhibits for the Court to consider. Defendants decline to address the affidavits and exhibits as they are unnecessary to the question at hand—are FSBCs hospitals, as

defined in Ala. Code § 22-21-20(1)? This Court need not look beyond the Stipulated Facts to answer that question in the affirmative. Defendants' Motion for Summary Judgment as to Claim One is due to be granted.

### **Argument**

#### **I. FSBCs are hospitals subject to ADPH regulation because they are “engaged in obstetrical care.”**

In their Motion for Summary Judgment, Plaintiffs cling to the proposition that FSBCs do not provide obstetrical care because the midwifery model is not a branch of medicine. Doc. 247 at 29. In doing so, Plaintiffs sweep past the overwhelming facts demonstrating that FSBCs are engaged in the “management of women during pregnancy, childbirth, and the puerperium.” Doc. 239 ¶ 12. Defendants refer this Court to the facts cited in their Motion for Summary Judgment, which showcase that both the practice of midwifery, as well as the nurses that practice midwifery, are undeniably linked with the provision of obstetrical care because of the services they provide. *See* doc. 243 at 11, 12.

The Supreme Court of Alabama agrees with Defendants' understanding of obstetrical care. The Court has quoted with approval a definition of “the practice of obstetrics” from an obstetrician's testimony in trial court that “the practice of obstetrics ‘primarily . . . involves taking care of a mom . . . up to the time of her delivery, taking care of her through the delivery, and then after the delivery process.’” *Hegarty v. Hudson*, 123 So. 3d 945, 947 (Ala. 2013). Thus, the key inquiry for whether certain care falls under the practice of obstetrics is the nature of the care provided, not arbitrary labels such as whether the care falls under the branch of medicine. FSBCs and their employees are engaged in obstetrical care to the extent they are providing care for women during pregnancy, childbirth, and following delivery. The stipulated facts demonstrate

overwhelmingly that Plaintiff FSBCs provide obstetrical care. Accordingly, Defendants are entitled to summary judgment as to Claim One.

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

Plaintiffs’ second argument is that FSBCs are not hospitals because they are not offering care to the “public generally.” Doc. 247 at 36. They argue that because FSBCs limit which patients they accept, they are not open to the public at-large. *Id.* at 36-37. Plaintiffs, however, read this phrase too narrowly, and they cannot escape the hospital definition merely by arguing that they refuse to accept certain patients. Plaintiffs readily admit in their Motion for Summary Judgment that any patient who meets certain criteria and that agrees to specific policies and procedures can and will be served by FSBCs. *See* doc. 247 at 37. Thus, Plaintiffs stand ready to serve any member of the public that meets these requirements.

To accept Plaintiffs’ understanding of the phrase “public generally” would contradict the definition of “hospitals” found in Ala. Code § 22-21-20(1). The definition includes facilities such as rehabilitation centers, abortion or reproductive health centers, and transplant centers. These facilities serve only a subset of the population but are still open to the public generally. Rehabilitation centers only serve patients in need of rehabilitation, while abortion centers only serve patients seeking an abortion. Likewise, only individuals needing an organ transplant seek care at a transplant center. Beyond these facilities, the definition of a “hospital” also includes institutions “primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury, deformity, disease, [and] surgical [care].” Ala. Code § 22-21-20(1). This definition, the same provision at issue in the present case, anticipates that facilities will not serve the entire population. Instead, the facilities will serve only those patients who require treatment for injury, surgery, obstetrics, etc.

In addition to the support found within the statutory definition of a “hospital,” this Court should also find that Plaintiffs are open to the public generally in keeping with ADPH’s purpose to protect the public health. Ala. Code § 22-21-21 states that the purpose of the regulation of hospitals is to “promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards for the treatment and care of individuals.” To allow Plaintiffs to escape regulation because they only serve a subset of the population would run counter to efforts to protect the public generally. *See Parker Bldg. Services Co., Inc. v. Lightsey ex rel. Lightsey*, 925 So. 2d 927, 931 (Ala. 2005) (holding that the Court should interpret words in keeping with the Building Code’s purpose “to protect the public generally”).

Plaintiffs, in view of the hospital definition as well as ADPH’s broad purpose to protect the public, are offering care to the public generally. Accordingly, Defendants are entitled to summary judgment as to Claim One.

**III. Even if ADPH’s determination that FSBCs are hospitals is not entitled to deference, this Court should give effect to the legislative intent behind the hospital-licensing statute.**

Defendants, in their Motion for Summary Judgment, argued that ADPH’s determination that FSBCs are hospitals is entitled to deference because it is a reasonable interpretation of the “hospital” definition. Doc. 243 at 13. Plaintiffs replied by arguing that this Court should not defer to the agency’s interpretation when the question concerns an agency’s jurisdiction to regulate. Doc. 247 at 39. But even assuming Plaintiffs are correct, this Court should still interpret the statute broadly in accord with the wide-sweeping purpose of the hospital-licensing statute and find that FSBCs are hospitals subject to ADPH regulation.

Plaintiffs rely on *Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson County* to argue that ADPH is not entitled to administrative deference. But this case offers support to Defendants’ interpretation of the “hospital” definition. Even if an agency is not entitled to

administrative deference, this Court must still “ascertain and give effect to the Legislature’s intent in enacting the statute.” *Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson County*, 103 So. 3d 17, 28 (Ala. 2012) (citation omitted). “Instead of taking one isolated and narrowly construed sentence of [a section in the statute], we should look to the entire framework of the act, the intents and purposes of the act and the means by which it has been given construction, effect and operation during its years of existence.” *Id.* (citation omitted).

As mentioned above, the purpose of the hospital-licensing statute is broad. The purpose of the statute is to promote public health, safety, and welfare by enacting and enforcing regulations for hospitals. *See* Ala. Code § 22-21-21. This Court must give effect to this purpose and interpret the remaining provisions of ADPH’s jurisdiction and authority with this intent in mind. *See Fraternal Order of Police*, 103 So. 3d at 29. Applying this principle, it is certainly no stretch to find that FSBCs are properly included in the definition of a “hospital.” It is a reasonable and correct interpretation of the statute that FSBCs are engaged in obstetrical care. Accordingly, Defendants are entitled to summary judgment as to Claim One.

#### **IV. Plaintiffs are not entitled to a permanent injunction.**

To be entitled to a permanent injunction, Plaintiffs must demonstrate: 1) success on the merits, 2) a substantial threat of irreparable injury if the injunction is not granted, 3) that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and 4) that granting the injunction will not disserve the public interest. *City of Gadsden v. Boman*, 143 So. 3d 695, 703 (Ala. 2013). For the reasons stated above and the reasons stated in the Brief in Support of Defendants’ Motion for Summary Judgment as to Claim One, Defendants are entitled to summary judgment as to Claim One. Thus, Plaintiffs cannot demonstrate success on the merits, and this Court should deny their request for a permanent injunction.



## Conclusion

For the reasons stated above and the reasons stated in the Brief in Support of Defendants' Motion for Summary Judgment as to Claim One, 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 deny Plaintiffs' motion for summary judgment and grant summary judgment as to Claim One in Defendants' favor.

Respectfully submitted,

Steve Marshall  
*Attorney General*

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

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

OFFICE OF ATTORNEY GENERAL  
501 Washington Avenue  
Montgomery, Alabama 36130-0152  
Telephone: (334) 242-7300  
Fax: (334) 353-8400  
Ben.Albritton@AlabamaAG.gov  
Hunter.Sims@AlabamaAG.gov

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have on February 25, 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*