

Proponent, HB 2319 - DISCLOSE ACT

House Federal & State Affairs Committee

March 14, 2017

Good morning, Chairman Barker and committee members.

I am Kathy Ostrowski, and have been Kansans for Life's state legislative director for 15 years. Today I am here to urge this committee to support a very narrowly tailored bill that updates the 1997 Woman's Right to Know (WRTK) law and ensures the intent of that law is followed in 2017.

The DISCLOSE ACT, HB 2319, will remedy a deficit in the way women considering abortion are treated by abortion clinics. It only requires some **simple data entry and poses no undue burden**.

First, the background. KDHE data issued April 2016 shows 6,941 total abortions were obtained in Kansas in 2015, with 43 Kansas women obtaining abortions in other states that year. Of the total:

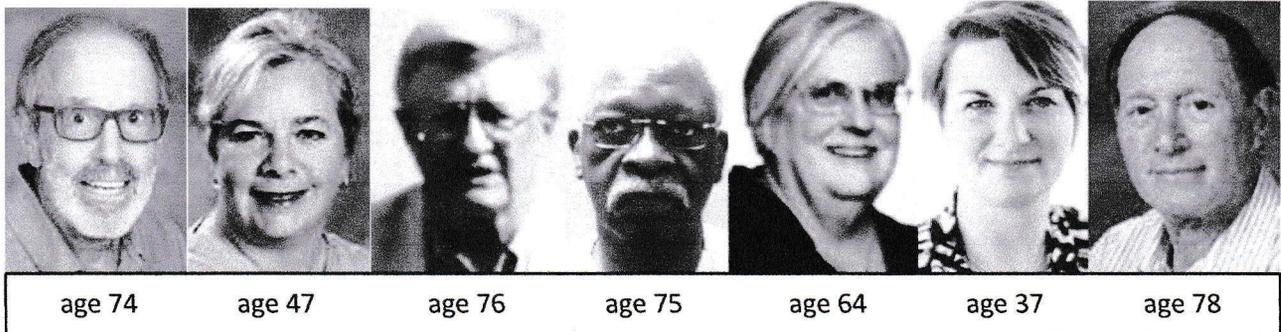
- 51% (3,579) were Kansans, 49% (3,395) non-residents, mostly Missourians (3,060);
- 65% of these were "first" abortions;
- 58% of these were obtained by young women in their 20's.

None of these women knew which individual would perform their abortion before signing the "consent" for it. That is not what WRTK intended.

Today, the abortion transaction is largely contracted online. KDHE no longer prints or distributes handbooks, as they did back in 1997, and KDHE expanded the WRTK website in 2011.

A phone call or email arranges the Kansas abortion appointment and the woman (or teen) must download a consent form, time-stamped at a minimum 24 hours prior to the abortion.

There are **four Kansas abortion destinations** (two in Wichita, and two in Overland Park) staffed by **seven abortionists**; four are ages 74-78 and four live long distances from the clinics they work at.



The abortion clinic is required to inform the pregnant woman planning an abortion, in writing, about the **state WRTK website** – and (more recently) that the link to that site also appears on its homepage. The clinics have resisted fulfilling this mandate, and have downplayed its inclusion by using reduced type size, non-black ink and adding negative statements. Under “informed consent” in the abortion context (*see attachment*), the woman evaluates relevant information and can consult pregnancy assistance organizations--all within no less than 24 hours prior to the abortion.

WRTK law requires the pregnant woman be told **who her particular abortion provider is** and meet with her/him at least 30 minutes prior to the abortion taking place. However, the online consent forms used in Kansas betray that mandate by listing the names of ALL their staff abortionists.

The Kansas State Board of Healing Arts offers minimum data on all licensed physicians (*see chart*) but most people don't know that, nor that the public can access it. Even knowing about KSBHA and its online data, it would take six “steps” online to get that information for just one practitioner.

Women considering an abortion deserve readily accessible, relevant, written info in order to achieve a truly informed decision. Dr. Colbern, with extensive experience in this area, submitted testimony asserting that,

“when counseling patients in such stressful situations, there needs to be a lot of information written down so the patients can process ...and re-read the information.”

Yet attorney Whitehead's testimony points out that (1) KSBHA does not make publicly available as much information as the Federation of State Medical Boards recommends, and (2) that Kansas abortion businesses not only do not provide what modern consumers expect, but

“disclosures provided to women in Kansas have moved from leading edge to obsolete.”

Under the DISCLOSE ACT, the online informed consent statute is updated so that relevant data for each practitioner is listed at the top of the consent form, (*see highlighted sample attached*) in 12 pt. black type where it is easily visible for a woman examining the consent provisions.

With HB 2319, the clinics simply make a one-time data entry, and only have to infrequently update it. None of this is unreasonable, and women deserve to know these facts:

- **The year medical degree attained** (by which women can extrapolate age)
- **Date employment began** (one Wichita clinic has had 100% turnover in under 4 years)
- **That he/she carries malpractice insurance**
- **Whether he/she has been disciplined by KSBHA** (KSBHA told one licensee to stop practicing Ob/Gyn but she is recently listed as an abortionist!)
- **Whether he/she has local hospital privileges** (where /since when)
- **Whether he/she has lost hospital privileges**
- **Whether he/she is a Kansas resident**

KFL asks this committee to add the minor amendment accepted for the SB 98-DISCLOSE ACT (that the new info be printed on a white background) and to pass HB 2319 out favorably. Thank you.

Informed consent is the right to accept or refuse a medical procedure based on reasonable, medically-accurate and non-misleading facts. Informed consent serves two main objectives: to acquire a patient’s consent, and for doctors to disclose such information to patients as will enable them to participate knowledgably in making decisions about treatment.

In *Planned Parenthood v. Casey* (1992), the U.S. Supreme Court affirmed three principles central to the constitutionality of informed consent laws, such that:

- the state has an interest in fetal life from the moment of conception;
- the state could prefer childbirth over abortion; and
- the **state could enact regulations to ensure that a woman’s choice was “thoughtful and informed”**. (*Casey* at 916)

These principles, the court argued, were consistent both with doctor-patient medical privacy and a woman’s “reproductive” rights. Furthermore, the Court argued that **neither the state’s attempts to dissuade a woman from abortion, nor the state’s mandate that a specific body of information be given** to a woman, invalidated a state’s informed consent law.

“In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” (*Casey* at 882)

Over the past 30 to 40 years, courts have established that patients have the right to **full** information. The standard of disclosure has shifted from what a “reasonable” doctor might disclose to what a “reasonable or prudent” patient or person deserves to know about a procedure. Elective procedures (for example induced abortion) require a greater degree of disclosure than emergency procedures.

The fully informed consent depends on three aspects of medical consent:

1. How well informed is the patient?
2. Is the patient fully competent, at that moment, to make such a major decision?
3. To what extent is consent given voluntarily?

In the abortion context, none of these can be taken for granted.

ConsumerReports Medical Board Website Ratings

● Excellent ● Very Good ○ Good ● Fair ● Poor

Site	Overall Score	Search Capabilities	Complaint and Board Information	Identifying Doctor Information	Board Disciplinary Actions	Hospital Disciplinary Actions	Federal Disciplinary Actions	Malpractice Payouts	Convictions
California	84	●	●	●	●	●	●	●	●
New York	79	●	○	●	●	●	●	○	●
Massachusetts	78	●	○	●	○	●	●	●	●
Illinois	76	●	●	●	●	●	●	●	●
North Carolina	76	●	●	●	●	●	●	○	●
Virginia	72	●	●	●	○	●	○	○	●
New Jersey	70	●	●	●	●	●	●	○	●
Florida	70	○	●	●	●	●	●	○	●
Texas	68	●	●	●	●	●	○	○	●
Florida Osteopathic	67	○	●	●	●	●	●	○	●
Oregon	66	●	●	●	●	●	●	●	●
Nevada Osteopathic	61	●	●	●	●	●	●	●	●
Colorado	61	○	●	●	●	●	●	○	○
Arizona	60	●	●	●	●	●	●	●	●
Connecticut	68	○	○	●	●	●	●	○	○
Tennessee Osteopathic	68	●	○	●	●	○	●	○	○
Maryland	67	●	○	●	●	●	●	○	●
Kansas	66	●	○	●	●	●	●	●	●

KANSAS: ranked below 14 states and 3 Osteopathic groups in disclosing info

Search capabilities=very good,
Complaint & Board info=good,
 Identifying doctor info=excellent,
 Board disciplinary actions=very good,
 Hospital disciplinary actions=very good,
 Federal disciplinary actions=very good,
Malpractice payments=poor,
Convictions=poor

<http://consumersunion.org/wp-content/uploads/2016/03/Chart-website-review-CR-blobs-all-states-FINAL-4.pdf>

KANSAS 24-HOUR INFORMED CONSENT

- Bring this document with you to your appointment.
- Please read and initial each section and sign your FULL LEGAL name at the bottom.
- Please mail, fax, or hand deliver to South Wind Women's Center, LLC.
- **THIS MUST BE SIGNED WITH THE DATE AND TIME AT LEAST 24 HOURS BEFORE YOUR APPOINTMENT!**

To comply with Kansas Law effective July 1, 1998 (amended July 1, 2009; July 1, 2011; July 1, 2013), you must receive this Informed Consent at least 24 hours prior to your procedure.

_____ 1. Your abortion procedure will be performed by Colleen McNicholas, D.O., Leslie Page, D.O., or Allen Palmer, D.O. You will have the opportunity to meet with the doctor before your procedure.

_____ 2. Estimated Gestation of Pregnancy: Until you have a sonogram to determine how far along the pregnancy is, the best way to estimate the gestation is by the date of your last normal menstrual period.

If you believe your last normal menstrual period started: Then you are probably about:

4 weeks ago	4 weeks pregnant
5 weeks ago	5 weeks pregnant
6 weeks ago	6 weeks pregnant
7 weeks ago	7 weeks pregnant
8 weeks ago	8 weeks pregnant
9 weeks ago	9 weeks pregnant
10 weeks ago	10 weeks pregnant
11 weeks ago	11 weeks pregnant
12 weeks ago	12 weeks pregnant
13 weeks ago	13 weeks pregnant
14 weeks ago	14 weeks pregnant
15 weeks ago	15 weeks pregnant
16 weeks ago	16 weeks pregnant

The final determination will be made by the doctor upon ultrasound examination. If you are between 4 - 14 weeks, the common procedure is Vacuum Aspiration. Medication Abortion is available for pregnancy termination between 4 - 9 weeks. If you are between 15 - 22 weeks the most common procedure is Dilation and Evacuation.