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Attorney for Pro-Life Group Challenges Prosecutor's Dismissal of Charges Against Abortionist

(South Bend – December 2, 2015) - “The Prosecutor’s Office is ignoring the law and the evidence, and has fabricated its own legal rule in order to dismiss a pending criminal charge against Dr. Klopfer,” claimed Shawn Sullivan, attorney for The Life Center that is located in St. Joseph County, next to Dr. Klopfer’s abortion clinic. After learning of the Prosecutor’s decision and reasoning, Sullivan sent a letter and legal memorandum to the Prosecutor and the presiding judge alerting them to several problems with the prosecutor’s legal analysis, calling the prosecutor’s reasoning for dismissal as novel and adverse to the express provisions of Indiana Code. Sullivan and his clients urged the Prosecutor’s Office to acknowledge that Dr. Klopfer had admitted to violations of the informed consent law, which, according to Sullivan, are criminal offenses. If the violations of the informed consent law are in fact criminal offenses, this would be a violation of the pretrial diversion agreement, and the Prosecutor would not be in position to dismiss the pending criminal charge against Dr. Klopfer.

At the hearing on December 1, 2015, the Prosecutor moved to dismiss the charge brought against Dr. Klopfer in 2014, the failure to timely report an abortion he performed on a 13 year old, on the basis that Dr. Klopfer fulfilled the terms of his pretrial diversion agreement. But that agreement, according to the Prosecutor’s own press release, required that Dr. Klopfer “not commit any criminal offense” for one year. The Life Center’s attorney pointed to an Indiana State Department of Health inspection report that showed 10 violations of the informed consent law that were admitted by Dr. Klopfer, but the Prosecutor’s Office claimed that these were “civil” infractions and did not constitute “criminal acts.”

“Not only is there no legal support for the Prosecutor’s position, but it is contrary to the express language of the abortion statute, statutory language obligating the prosecutor to bring cases involving infractions, and the Prosecutor’s own practices,” as set forth by The Life Center’s attorneys. “The Prosecutor’s Office knows that abortion statute, I.C. §16-34-2-1 (a) provides that ‘[a]bortion shall in all instances be a criminal act’ except when performed by a physician with the pregnant woman’s informed consent. Accordingly, an abortion without a woman’s informed consent would be a criminal act.” That is why, then, argues attorney Sullivan, that the informed consent penalty falls under “CHAPTER 2: REQUIREMENTS FOR PERFORMANCE OF ABORTION; **CRIMINAL PENALTIES.**” Pointing

to the title which governs the section at issue, Sullivan maintains, as his firm did in its memo to the court and the Prosecutor's Office, "every penalty under Chapter 2 of the abortion laws is a criminal penalty, that is why it is under the heading "Criminal Penalties."

Moreover, according to Sullivan, the Indiana Code requires the prosecutor to bring these type of criminal cases for "infractions." Quoting from § 34-28-5-1(b): "An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place." Accordingly, Sullivan argued that section 34-28-5-1(b) puts to rest the notion that the infractions are not criminal violations. Prosecutors prosecute crimes so if they are supposed to prosecute infractions, infractions are crimes." Sullivan went on to say that "the fact that a violation of the informed consent law allows for a penalty of up to \$10,000 does not make it non-criminal, as argued by the Prosecutor. The Prosecutor pursues infractions all the time, and, obviously, if the Prosecutor is pursuing them, they are criminal acts."