No. 01-25-00268-CV

In the Court of Appeals for the First Judicial District, Houston, Texas*

Maria Margarita Rojas; Maternal and Child Healthcare and Research Center LLC d/b/a Clinica Latinoamericana; Clinicas Latinoamericanas; Clinica-Waller Latinoamericana; Clinica-Telge Latinoamericana a/k/a Clinica de la Mujer a/k/a Houston Birth House,

Defendants-Appellants,

v.

State of Texas,

Plaintiff-Appellee

BRIEF FOR APPELLANTS MARIA ROJAS, ET AL.

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*Motion to transfer to the Fifteenth Court of Appeals pending

Oral argument requested

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STATEMENT OF THE CASE

The Texas Attorney General filed this civil suit in the name of the State of Texas on March 17, 2025, accusing Defendants of providing or attempting unlawful abortions and practicing medicine without a license. CR.39. On March 27, the district court held an evidentiary hearing and entered a temporary injunction enjoining Defendants "from practicing medicine or performing abortions in violation of State law." CR.13. This appeal is from the temporary injunction. CR.9.

The State filed an unopposed motion to transfer this appeal to the Fifteenth Court of Appeals. On May 12, 2025, the Chief Justice of the First Court notified the clerk of the Fifteenth Court that the First Court has decided to grant the motion and is requesting the Fifteenth Court to file a letter explaining whether it agrees with that decision.

ISSUES PRESENTED

1. Whether the order granting the temporary injunction should be reversed because it does not comply with Rule 683's mandatory requirements, for *any* of three independent bases: (a) the order set forth its reasons for issuance in conclusory fashion and did not find that irreparable harm was probable and imminent; (b) the order was not specific and did not describe in reasonable detail the restrained acts, because it prohibited Defendants from "practicing medicine or performing abortions in violation of State law," requiring restrained parties to examine all of Texas law to decipher what is prohibited; and (c) the order did not set a trial date.

2. Whether the order should be reversed for *either* of two additional independent reasons: (a) the Attorney General lacks standing to bring a claim for injunctive relief because his authority under the abortion ban and the Medical Practice Act is limited to seeking a civil penalty, not an injunction, and (b) his authority is limited to filing a civil suit in his own name, not in the name of the State.

3. Whether the order should be reversed for *any* of three more independent reasons: (a) the Attorney General (whether in his own name or in the State's name) has no cause of action for injunctive relief for violations of the abortion ban and Medical Practice Act; (b) the State did not prove a probable right to relief on its claims because it introduced no competent evidence of abortions or practicing medicine without a license; and (c) the State failed to show that any irreparable injury was probable and imminent.

INTRODUCTION

The Attorney General boasts that he has caught a "Houston-Area Abortionist" and has shut down "Clinics Providing Illegal Abortions."[1] But there's a snag: it isn't true.

In the Attorney General Office's rush to find and prosecute *someone* for violating the State's total abortion ban, it conducted a shoddy investigation and leapt to wild conclusions. It ensnared Defendant Maria Rojas, a dedicated, licensed midwife who ran a lawful birthing center and delivered babies. And it shut down the Defendant Clinics, where uninsured, primarily Spanish-speaking Texans could receive lawful, affordable care via telemedicine from licensed healthcare professionals, including advance-practice nurse practitioners.

In parallel criminal proceedings, the State accuses Mrs. Rojas of a felony offense of practicing medicine in violation of the Medical Practice Act—an offense that the Court of Criminal Appeals has held applies only to licensed physicians, not midwives. Despite that, Mrs. Rojas was arrested twice; her phone and money were seized; and she was stripped of her livelihood. She was held in jail for ten days until she could post an exorbitant $1.4 million bond. She must wear a GPS monitor with restrictions on her liberty. More than two months after her initial arrest, Mrs. Rojas still has not

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[1] Ken Paxton, Tex. Att'y Gen., *Press Release: Attorney General Ken Paxton Announces Arrest of Houston-Area Abortionist and Crackdown on Clinics Providing Illegal Abortions* (Mar. 17, 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-announces-arrest-houston-area-abortionist-and-crackdown-clinics.

been indicted for any crime. The State has failed to provide *any* criminal discovery as required.

This appeal is from a temporary injunction granted in the civil case that the Attorney General filed in the name of the State against Mrs. Rojas and the Defendant Clinics. In this case, the Attorney General seeks civil penalties and an injunction for purported violations of the State's abortion ban and for practicing medicine without a license. At the temporary-injunction hearing, the State failed to offer testimony from its lead investigator or any other witness of its own. Instead, the State relied on hearsay and unauthenticated documents that, even if admissible, came nowhere close to meeting the State's burden. As its only witness, the State called Mrs. Rojas, who understandably invoked her Fifth Amendment rights when she had to take the stand after the court forced her to be present at the hearing, despite the State's failure to subpoena her.

At the hearing's conclusion, the court entered a temporary injunction fraught with errors. The injunction doesn't meet *any* of the mandatory requirements of Rule 683: it doesn't explain the reasons for its issuance; it is completely vague about what it prohibits; and it fails to set a trial date. The Attorney General has no standing to seek an injunction for the claims he asserts, nor does he have the authority to sue in the name of the State. And even assuming he does, the State failed to show its entitlement to a temporary injunction: it has no cause of action for injunctive relief; it did not show that any laws were violated; and it did not present evidence showing

any probable, imminent, irreparable harm. The order granting the injunction should be reversed.

STATEMENT OF FACTS AND LEGAL BACKGROUND

A. Maria Rojas was a licensed midwife who cared for pregnant patients and conducted deliveries of babies.

Until criminal proceedings began, Maria Rojas was an experienced midwife duly licensed by the State of Texas. 2.RR.52. A native of Peru, Mrs. Rojas has attended over 700 births in community-based and hospital settings. 2.RR.48-50. Mrs. Rojas has spent her entire career assisting women with pre-and post-partum care. *Id.*

The State introduced records showing that Mrs. Rojas was the manager of Defendant Maternal and Child Healthcare and Research Center LLC, which operated the three Defendant Clinics. 2.RR.16-36. Those clinics are referred to herein as the Waller Clinic, the Telge Clinic, and the Spring Clinic. The Telge Clinic also had a birthing center called the Houston Birth House. 2.RR.37-45.

B. HHSC received an anonymous email complaint.

On January 17, 2025, an anonymous complaint was emailed to the Texas Health and Human Services Commission about two abortions alleged to have been provided at one of the Defendant Clinics. 2.RR.5-13. The State offered this anonymous email exchange as evidence at the temporary-injunction hearing, but the court excluded it. 1.RR.18-24; 2.RR.5; *see also* 1.RR.114-17, 134, 138-41 (ruling that statements made to the investigators is inadmissible hearsay).

C. The Medicaid Fraud Control Unit conducted an investigation culminating in unsupported conclusions without investigating alternative, lawful explanations.

On January 31, 2025, the Medicaid Fraud Control Unit within the Attorney General's Office launched an investigation into "allegations of fraud and abortion." 2.RR.71. This account of the investigation is derived from two nearly identical documents that the State offered at the temporary-injunction hearing, asserting that they were redacted copies of the arrest warrants and affidavits of the lead investigator, Lt. Edward Wilkerson. 1.RR.36; 2.RR.65-125. Over Defendants' authentication and hearsay objections, 1.RR.36-37, the court admitted the documents under the public-records exception to the hearsay rule, but the court excluded hearsay contained within the documents unless it also came within a hearsay exception, 1.RR.114-17.

1. The investigators lacked any apparent training or experience in investigating abortion or practicing medicine without a license.

Lt. Wilkerson's training and experience is in investigating offenses including theft, provider healthcare fraud, engaging in organized criminal activity, and identity theft. 2.RR.70. His affidavits list thirteen other employees of the Medicaid Fraud Control Unit or Criminal Investigations Division who were involved in the investigation. 2.RR.70-71. None of these individuals has any apparent training or experience in investigating abortion or practicing medicine without a license. They also have no apparent medical

training or expertise, nor do they appear to have consulted a medical expert during the investigation. 2.RR.70-71.

As discussed in more detail below, the investigators' lack of training and experience and their lack of reproductive-healthcare knowledge led to their making invalid assumptions and failing to investigate alternatives to those assumptions.

2. Investigators confirmed that Maria Rojas had a licensed midwifery practice at a birthing center.

Investigators confirmed that Maria Rojas was a licensed midwife. 2.RR.52, 75, 88. The website for Mrs. Rojas's birthing center, Houston Birth House, stated that midwifery services were provided and did not suggest there was a physician on site. 2.RR.37-50. The website included a profile for Mrs. Rojas, identifying her as "a health care professional"—specifically, a "Midwife." 2.RR.49.

As a licensed midwife in Texas, Rojas could (1) provide the necessary supervision, care, and advice to a woman during normal pregnancy, labor, and the postpartum period; (2) conduct a normal delivery of a child; and (3) provide normal newborn care. Tex. Occ. Code § 203.002(7). Licensed midwives are trained to identify when a patient needs additional medical care, such as if they determine that the pregnancy, labor, post-partum period, or newborn period of a woman or newborn falls outside normal parameters. *See id.* § 203.352.

Investigators also learned that Mrs. Rojas was associated with a physician and had standing orders from the physician. 2.RR.76. Under Texas

law, midwives can administer or provide prescription drugs under the supervision and delegation of a licensed physician. Tex. Occ. Code §§ 157.001, 157.002, 203.401. In that case, the "delegating physician remains responsible for the medical acts of the person performing the delegated medical acts." *Id.* § 157.001(b). The administration or provision of drugs may be delegated in multiple ways, including through "a standing medical order" or "a standing delegation order." *Id.* § 157.002(e). "Standing delegation orders" are "[w]ritten instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted." 16 Tex. Adm. Code § 115.1(26). They provide lawful authority and a plan in advance for treating patients who may present in a certain way—as opposed to orders directing the care of particular patients after their examination. Operating in this manner is not practicing medicine without a license. Tex. Occ. Code § 157.005 ("A person to whom a physician delegates the performance of a medical act is not considered to be practicing medicine without a license by performing the medical act unless the person acts with knowledge that the delegation and the action taken under the delegation is a violation of this subtitle.").

3. Investigators collected, but disregarded, extensive evidence that other, non-midwifery patient care was provided by licensed healthcare professionals lawfully, through telemedicine.

The investigators collected extensive evidence that patient care outside Mrs. Rojas's midwifery practice was provided at the direction of and under the supervision of licensed healthcare professionals.

a) Investigators learned that APRNs were associated with the Defendant Clinics.

Investigators learned that Rubildo Labanino Matos, a licensed advanced practice nurse practitioner (APRN), provided care at the clinics via telemedicine. 2.RR.84. Investigators confirmed that Labanino was a licensed APRN. 2.RR.74, 77. Labanino's license was displayed at the clinics. 2.RR.74, 83.

Investigators obtained bank records of Mrs. Rojas and at least one clinic, which confirmed that APRN Labanino and other nurses were associated with the clinics via telemedicine. The records showed payments through the Zelle app to various individuals. There were multiple Zelle payments to APRN Labanino, and each payment had the description: "Zelle Payment To Rubildo Labanino *Telemedicine*." 2.RR.76 (emphasis added). The bank records also showed Zelle payments to "Kirenia Doctor Cypress," "Nurse Practiotener [sic] Lizandrs," "Gerardo Medico Clinicas," and "Danna Enfermera" (enfermera is Spanish for nurse). 2.RR.76.

APRNs can "practice in a variety of settings and provide a broad range of health care services to a variety of patient populations within their Board

authorized role and population focus area." 22 Tex. Adm. Code § 221.12. Investigators learned that Labanino was licensed as a "family" nurse practitioner (FNP), 2.RR.74, meaning that his authorized population focus area was "Family/individual across the lifespan," 22 Tex. Admin Code § 221.2(a)(2)(B).

As a registered nurse, Labanino could "engage in independent nursing practice without supervision by another health care provider," provided that he functioned within his legal scope of practice. Tex. Bd. of Nursing, *Practice – Texas Board of Nursing Position Statements: 15.28 The Registered Nurse Scope of Practice* (Jan. 2025).[2] Lt. Wilkerson learned from the Board of Nursing that as an APRN, Labanino could perform additional aspects of care through "a collaborative relationship and practice agreement with a Texas licensed physician," and that Labanino would not have been required to notify the Board of Nursing of the specifics of such an arrangement. 2.RR.77.

APRNs with prescriptive authority can prescribe medications. *See generally* 22 Tex. Admin Code ch. 222. APRNs can provide telemedicine services and issue prescriptions for patient care via telemedicine, and the standard of care when doing so is the same standard that would apply in an in-person setting. Tex. Bd. of Nursing, *Frequently Asked Questions* –

[2] https://www.bon.texas.gov/practice_bon_position_statements_content.asp.html#15.28.

Advanced Practice Registered Nurse, Questions related to Telemedicine Prescriptions.[3]

b) <u>Investigators learned that medical assistants worked at the clinics at the direction and under the supervision of APRNs.</u>

Nurses, including APRNs, may "delegat[e] nursing tasks to unlicensed personnel across a variety of settings." 22 Tex. Admin. Code § 224.3(b). These unlicensed personnel include "assistants" who are "not licensed as a health care provider." *Id.* § 224.4(4).

Investigators learned that medical assistants were physically present at the clinics. 2.RR.84. Two different medical assistants separately explained to investigators that APRN Labanino provided care at the clinics via telemedicine. Jose Manuel Cendan Ley told two investigators that he is a medical assistant at the clinics and was previously a licensed physician in Cuba. 2.RR.84. Ley explained to the investigators that his duties include triaging patients, and then APRN Labanino directs the patients' treatment using telemedicine. 2.RR.84. Ley explained "that every patient signs a telemedicine agreement before receiving treatment." 2.RR.84. Sabiel Gongora also explained to one of the investigators that APRN Labanino provided care to patients via telemedicine. 2.RR.84.

When nurses delegate tasks to medical assistants or others, the nurse "retain[s] accountability for how the unlicensed person performs the task."

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[3] https://www.bon.texas.gov/faq_practice_aprn.asp.html#t21 (last visited May 9, 2025).

Id. § 224.4(3). The nurse "shall be available in person or by telecommunications." *Id.* § 224.7(2). The nurse "provide[s] supervision" and is responsible for determining the "degree of supervision required." *Id.* § 224.7(1). "The scope of delegation and the level of supervision by the RN may vary depending on" factors including "the skills and experience of the unlicensed person." *Id.* § 224.3(b). Here, investigators learned that the medical assistants' skills and experience were high, as at least some of the medical assistants were physicians in their home countries before they came to the United States. 2.RR.84.

Texas law defines "[p]racticing medicine" as "the diagnosis, treatment, or offer to treat" a condition or "the attempt to effect cures of those conditions," by a person who "publicly professes to be a physician or surgeon" or "directly or indirectly charges money or other compensation for those services." Tex. Occ. Code § 151.002(a)(13). Investigators obtained no evidence that any medical assistant at any of the Defendant Clinics diagnosed any individual patient or provided any care to any patient outside the supervision of a licensed APRN or physician, whether in person or via telemedicine.

c) <u>Investigators summarily disregarded this evidence.</u>

The lead investigator, Lt. Wilkerson, disregarded this evidence. Without explanation, Wilkerson brushed aside what Gongora told him and "believe[d] this to be a pretext intended to obscure the fact that Gongora is similarly engaging in the unlicensed practice of medicine." 2.RR.84. To

Defendants' knowledge, the State has not, however, accused Gongoro of practicing medicine without a license.

Wilkerson similarly disregarded what Ley told him without investigating its veracity. Although investigators seized patient records from the clinics, 2.RR.83-84, they apparently never investigated whether those records include the telemedicine agreements that Ley told them patients signed. Wilkerson just jumped to the conclusion that "this is an attempt to create a false appearance of legitimacy for an illegal operation wherein unlicensed individuals provide medical treatment under the guise of telemedicine, in effort to obscure the unlawful nature of their conduct and provide a legal defense if questioned." 2.RR.84-85.

Without basis, Wilkerson also assumed the worst about the clinic's acceptance of payments in cash, credit card, and through Zelle—claiming it to be evidence of "unlicensed medical operations to avoid financial scrutiny and regulatory oversight." 2.RR.85. Wilkerson did not appear to consider whether it was commonplace for uninsured, low-income populations to pay for medical services with cash, credit card, and Zelle.

Investigators determined that APRN Labanino was not an employee of the Defendant Clinics, in part because they did not find records indicating his employment there. 2.RR.74, 78. From this, Wilkerson assumed that "Labanino is being compensated for the use of his medical credentials rather than actively working at the clinic." 2.RR.78. But investigators also had evidence that APRN Labanino has his own business (Ruby Two), 2.RR.77,

meaning that the services he provides at the Defendant Clinics are on a contract basis, not as an employee.

4. Investigators surveilled the outside of the clinics but did not investigate the care being provided.

A significant part of the investigation consisted of investigators surveilling the outside of the clinics. Investigators conducted outside-only surveillance on multiple days between January 31 and March 5, 2025. 2.RR72-75, 77-80, 82. On most of these days, they reported observing only a medical assistant—Ley or Gongoro—physically present at the clinic while individuals they believed to be patients entered and/or left the clinic. On February 27, an investigator also observed APRN Labanino enter the Telge Clinic and stay approximately ten minutes. 2.RR.78.

During this surveillance, investigators never entered the clinics or observed any part of the clinics' operations. They did not determine whether any particular visitor received any medical treatment—much less who provided it, whether it was within the scope of delegated authority, or whether telemedicine was involved. They did not seriously investigate whether patients were receiving care from licensed healthcare professionals via telemedicine.

Instead, because investigators saw only medical assistants physically present at the clinics during most of their surveillance, Wilkerson presumed that medical assistants had been "observed practicing medicine." 2.RR.79. In truth, investigators never observed any medical practice by anyone inside the clinics.

On March 2, while Wilkerson believed Gongora to be the only employee present at a clinic, Wilkerson saw "a young female patient holding her stomach after leaving the clinic." 2.RR.80. Despite myriad reasons someone might be holding their stomach, Wilkerson just assumed that this meant that the woman "had received medical treatment inside." 2.RR.80. Wilkerson never spoke with the woman to interrogate his suspicion, but that didn't stop him from reporting his unconfirmed suspicion in his affidavit.

Wilkerson also reported that on multiple dates between January 31 and March 1, 2025, investigators observed Rojas at various times at each of the clinics. 2.RR.77-79. There is no report that any of these investigators spoke with any patient or obtained evidence of abortion or unlicensed practice of medicine during this surveillance. On March 3, an investigator saw Rojas enter and leave one of the Defendant Clinics while carrying a hard case that the investigator determined was used for medical devices and products. 2.RR.80. Wilkerson found Rojas's carrying of this case to be so notable that he included an image of it in his affidavits. 2.RR.80, 111. But no investigator examined the contents of the case, and, regardless, Wilkerson failed to explain how a licensed midwife's carrying of a medical case was purportedly evidence of a crime.

5. An investigator entered a clinic once but did not observe any alleged medical practice.

On February 6, 2025, an investigator entered the Spring Clinic. 2.RR.74. The investigator noticed signs indicating the clinic provides MRI services and medical "screenings." 2.RR.74. The investigator asked two

Hispanic women if there was a physician "on scene" and was told there was not. 2.RR.74. The investigator was directed to APRN Labanino's license on the wall. 2.RR.74.

Although the investigator did not observe any physicians or nurse practitioners "on scene," 2.RR.74, he did not appear to investigate whether any physician or nurse practitioner was providing medical services using telemedicine. Nor did he appear to observe any medical services being provided at the clinic, much less the manner in which they were provided. The investigator did not report observing abortions being offered at the clinic or finding any evidence about alleged abortions.

6. Wilkerson searched through the Waller Clinic's trash and found evidence consistent with lawful medical care.

On February 3, Wilkerson "retrieved a small trash bag from the city-issued garbage can" behind the Waller Clinic and found it "to contain medical-type remnants, such as used sodium IV drip bags, an empty multivitamin injection bottle, and bandage wrappers." 2.RR.73-74.

On February 8, Wilkerson reported observing a woman place trash in bins outside the clinic. Wilkerson didn't investigate further. 2.RR.75.

On February 13, Wilkerson "conducted another trash pull" from the Waller Clinic's outdoor trash bin. 2.RR.76. He found a laboratory label with APRN Labanino's name written into the space for "Physician Signature," and a medical excuse note with Labanino's name and pre-printed signature, as well as a bill for a patient. 2.RR.76-77. The documents were dated on days when Wilkerson had conducted outside-only surveillance and concluded

that Ley was the only employee physically present. 2.RR.76-77. Wilkerson did not appear to consider whether this was consistent with APRN Labanino's scope of practice or permissible treatment of the patient via telemedicine.

Wilkerson did not report finding any evidence of abortions in any of the times he searched through the trash.

7. Rojas was initially arrested on March 6, 2025, and police seized misoprostol, which has many uses, including for childbirth.

On March 5, 2025, Lt. Wilkerson presented an arrest-warrant application for Mrs. Rojas to the Hon. Gary W. Chaney—the same judge presiding in this civil case—who approved it. 2.RR.82. The affidavit supporting that warrant is not part of the record in this case.

Wilkerson also presented, and Judge Chaney approved, arrest-warrant applications for Labanino and Ley. 2.RR.82. The affidavits supporting those warrants are not part of the record in this case. Ley was arrested on March 6. 2.RR.82. The press has also reported that Labanino has been arrested, but that is not in the record in this case.

Mrs. Rojas was arrested on March 6. 2.RR.82. She was released shortly thereafter. The reason for her release is not in this record.

Incident to Rojas's March 6 arrest, police seized her mobile phone and iPad. 2.RR.82. Police also seized "a pill bottle containing 29 pills of

misoprostol 200mg [sic[4]], a pre-loaded syringe containing an unknown substance, and $2,900 in cash." 2.RR.82-83.

Wilkerson stated that he knew, "based on training and experience, that misoprostol is an abortifacient commonly used to induce medical abortions, either alone or in combination with mifepristone." 2.RR.83. Wilkerson, however, did not know—or if he did know, he did not mention—misoprostol's common uses for other purposes.

These non-abortion uses of misoprostol include its uses before labor and after delivery of a baby. The U.S. Food and Drug Administration approved misoprostol for reducing the risk of NSAID-induced gastric ulcers. FDA, *Cytotec® (misoprostol) Label*, at 3.[5] FDA also recognizes that misoprostol is often used off label to soften the cervix or induce contractions to begin labor, as well as to decrease blood loss after delivery of a baby. FDA, *Misoprostol (marked as Cytotec) Information*.[6] The World Health Organization recommends the use of misoprostol to resolve an incomplete abortion—i.e., when an abortion occurred either spontaneously

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[4] A misoprostol tablet contains 100 or 200 micrograms, not milligrams. FDA, *Cytotec® (misoprostol) Label*, at 1, available at https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/misoprostol-marketed-cytotec-information (last visited May 9, 2025).

[5] Available at https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/misoprostol-marketed-cytotec-information (last visited May 9, 2025).

[6] https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/misoprostol-marketed-cytotec-information (last visited May 9, 2025).

(miscarriage) or was induced, but not all the products of conception (usually the placenta) have been expelled from the uterus. WHO, *Medical Management of Abortion* at 16-19 (2018).[7] WHO also recommends the use of misoprostol in treating intrauterine fetal demise—i.e., when the fetus is not living but the uterus has not yet started to expel its contents. *Id.* at 20-23.

This Court can and should take judicial notice that FDA and WHO recognize these uses of misoprostol. That FDA and WHO have made these statements and recommendations is not subject to reasonable dispute because they can be accurately and readily determined from the cited sources on the FDA and WHO's websites, and the accuracy of those sources cannot readily be questioned. *See* Tex. R. Evid. 201(b).

8. The Defendant Clinics were searched pursuant to a warrant, and the evidence seized was consistent with lawful medical care.

The district court also approved warrants submitted by Lt. Wilkerson to search the Defendant Clinics. 2.RR.82-83. The search warrants were executed on March 6, 2025. 2.RR.83.

Police seized Labanino's nursing license from the wall, an empty bottle of misoprostol that they later determined had an incorrect patient name on it, other pharmaceuticals, billing records, patient files, and other items. 2.RR.83-84, 87. They also seized a "patient logbook containing sign-in

[7] Available at https://www.who.int/publications/i/item/9789240039483.

records and payment entries for a significant number of young Hispanic female patients." 2.RR.83.[8] At the Waller Clinic, police seized an ultrasound machine. 2.RR.83.

Wilkerson stated that these seized items were evidence of "practicing medicine in violation of subtitle" and/or "performance of abortion." 2.RR.83. He apparently did not consider whether the items were consistent with a licensed midwifery practice and/or a practice in which licensed healthcare professionals serve patients via telemedicine with the aid of medical assistants.

At least as significant as what investigators found is what they did not find. They did not report finding mifepristone, the tools that would be used in a surgical abortion, or patient records indicating that any patient had received an abortion. They did not find any documents anywhere indicating that abortions were being offered at the clinics.

[8] The logbook included an entry for Witness 1, one of the two individuals mentioned in the anonymous email to HHSC. 2.RR.71, 83. The entry showed only that Witness 1 signed in at the Telge Clinic and paid for something unspecified. 2.RR.83. According to Wilkerson, this entry "corroborates" her statement to investigators that she purportedly received an abortion. 2.RR.83. But the court excluded that statement as inadmissible hearsay, 1.RR.114-17, 134, 138-41, and the State introduced no competent evidence that Witness 1 had an abortion.

9. After Rojas's March 6, 2025, arrest, Wilkerson came to believe an abortion "may" have been provided on March 3, 2025.

Later in the day of Mrs. Rojas's initial arrest, investigators interviewed an individual identified as Witness 3, who Wilkerson believed "may have had an abortion on March 3, 2025," at the Waller clinic. 2.RR.85.

At the temporary-injunction hearing, the court excluded Witness 3's statements to investigators as inadmissible hearsay. 1.RR.114-17, 134, 138-41.

Even assuming those statements had been admissible, however, they would not have shown that an abortion was attempted or had occurred. According to Witness 3's excluded hearsay statements, she had just recently given birth to twins, was pregnant again, and was told her pregnancy was high risk. 2.RR.85. She said she went to the Waller Clinic on March 1 where tests were run and an ultrasound was performed. 2.RR.85. She said she returned on March 3 and that Rojas explained to her that her pregnancy would not be successful. 2.RR.86. Witness 3 said that Rojas "gave her a pill orally and told her it was a low dosage." 2.RR.86. Witness 3 said she returned to the clinic on March 4 and was told "she had been given a low dosage" of "Misoprostol" the previous day. 2.RR.86.

As discussed above, misoprostol has many uses. But taking a single tablet or a low dose of misoprostol is inconsistent with its use for a medication abortion. Indeed, investigators did not report finding—or looking for—evidence that taking a single tablet or a low dose of misoprostol could induce an abortion. According to FDA, a single tablet of misoprostol contains

100 or 200 micrograms. *Cytotec® (misoprostol) Label* at 1. FDA says that misoprostol can be taken in combination with mifepristone to induce a medication abortion, but the appropriate dose of misoprostol is 800 micrograms taken 24 to 48 hours after taking mifepristone. FDA, *Questions & Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation* (Feb. 2025).[9] The WHO recognizes a misoprostol-only regimen to induce an abortion (as an alternative to the recommended mifepristone-misoprostol combination), but the misoprostol dose is 800 micrograms. WHO, *supra*, at 24. This Court can and should take judicial notice of these statements by FDA and WHO. *See* Tex. R. Evid. 201(b); *supra*, at 19.

Witness 3 also said she had been given an injection of iron "due to the amount of the blood she would be losing." 2.RR.86. Wilkerson apparently did not consider whether such blood loss could be due to a miscarriage rather than a supposed medication abortion.

On March 12, Witness 3 told an investigator that she had tested positive on a pregnancy kit sometime after March 5. 2.RR.90. This is consistent with Witness 3 having *not* been given a medication abortion.

Also on March 12, Wilkerson reviewed records that had been collected from the clinic during the search warrant execution. He found a March 1 lab order for a blood draw for Witness 3 and a March 4 lab report with the blood-

[9] https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation.

test results. 2.RR.89-90. Wilkerson stated that the "progesterone level shows to be 9.51 NG/ML." 2.RR.89. But he apparently failed to investigate whether this progesterone level is consistent with a developing pregnancy or with miscarriage.

Wilkerson also failed to look for Witness 3's ultrasound imaging. Wilkerson had reported (1) that the ultrasound machine from the Waller Clinic had been seized during the search warrant's execution, 2.RR.83, (2) that the machine appeared capable of storing patient information and/or imaging records, 2.RR.83, and (3) Witness 3 received an ultrasound at the Waller Clinic, 2.RR.86. But Wilkerson did not report having anyone review the ultrasound machine to look for Witness 3's imaging records to determine whether she had a developing pregnancy or was undergoing a miscarriage.

Investigators searched Ley's mobile phone and saw there were WhatsApp messages exchanged between Ley and Rojas on March 3. In the messages, Ley and Rojas appeared to discuss Witness 3. 2.RR.90-94. Rojas asked about the test results, and Ley told her that some test results were still pending but that the progesterone level was 9.51. 2.RR.92-93. Rojas instructed Ley to confirm Witness 3's March 3 appointment and to "[t]ell her it is important for her to be there because now we have something concrete to tell her." 2.RR.93. At no point during the WhatsApp messages did Rojas and Ley discuss an abortion. Lt. Wilkerson apparently did not consider whether the exchange between Rojas and Ley was consistent with Witness 3 undergoing a miscarriage.

D. The court issued new arrest warrants based on Wilkerson's March 14 affidavits, and Rojas was arrested a second time.

On March 14, 2025, Wilkerson presented to Judge Chaney two complaints and affidavits for arrest warrants for Maria Rojas. 2.RR.70-95, 101-25. The affidavits appear to be identical except for the alleged offenses.

The first affidavit alleged that Rojas committed "the offense of PERFORMANCE OF ABORTION, a Second Degree Felony offense, as described in Section 170A.004(b) of the Texas Health & Safety Code." 2.RR.70, 94. Section 170A.004 makes it a crime to knowingly perform, induce, or attempt a prohibited abortion. Tex. Health & Safety Code §§ 170A.002(a), 170A.004(a). This offense "is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense." *Id.* § 170A.004(b). Wilkerson alleged a single act that purportedly constituted this offense: Rojas's alleged attempted provision of an abortion to Witness 3. 2.RR.70, 94. Wilkerson did not allege that an unborn child had died.

The second affidavit alleged that Rojas committed "the offense of PRACTICING MEDICINE IN VIOLATION OF SUBTITLE, a Third Degree Felony offense, as described in Section 165.152 of the Texas Occupations Code." 2.RR.101, 125. Wilkerson alleged a single act that purportedly constituted this offense—when Rojas purportedly "practice[d] medicine, to wit: by attempting an abortion on [Witness 3]" without "having a license to practice medicine in the State of Texas." 2.RR.101, 125. The Court of Criminal Appeals has held that the offense in Section 165.152 of the

Occupations Code, "proscribes only the conduct of licensed physicians who violate the subtitle" and does not apply to "practicing medicine without a license." *Diruzzo v. State*, 581 S.W.3d 788, 804 (Ct. Crim. App. 2019).

The district court issued the requested arrest warrants on March 14. 2.RR.66, 97.

Mrs. Rojas was arrested on March 17 and held in the Waller County Jail. She posted a $1.4 million bond on March 26, but she remained in custody another night while waiting for a GPS monitor to be attached. *See* 1.RR.52. Mrs. Rojas remains subject to the bond limitations, including that she wear a GPS monitor, *see* 1.RR.52, even though she has not been indicted.

E. The Attorney General, in the name of the State of Texas, filed a civil petition and application for TRO and temporary injunction.

On March 17, 2025, the Attorney General, in the name of the State of Texas, filed this civil action against Mrs. Rojas and the Defendant Clinics. CR.33-44. This civil case was also assigned to Judge Chaney, the only district judge in Waller County, who also signed the arrest warrants.

The State asserts two claims in the petition. First, it asserts that Defendants "knowingly performed, induced, or attempted abortions in violation of the Human Life Protection Act," which is Texas's total abortion ban. CR.39 (citing Tex. Health & Safety Code § 170A.002). A person who violates the abortion ban "is subject to a civil penalty of not less than $100,000 for each violation," and "[t]he attorney general shall file an action to recover a civil penalty assessed under this section." Tex. Health & Safety Code § 170A.005.

The only abortions alleged in the petition were the two purported abortions mentioned in the anonymous email to HHSC, which was attached to the petition. CR.38-39, 67-75. Neither the petition nor the application for TRO and temporary injunction pleaded that an abortion was provided to Witness 3.

Second, the State asserts that "Defendants performed abortions without a physician's license in violation of the Texas Occupations Code and Texas Health and Safety Code." CR.39 (citing Tex. Occ. Code §§ 155.001, 165.159; Tex. Health & Safety Code §§ 170A.002(b)(1), 171.003). "If it appears that a person is in violation of or is threatening to violate" the Occupancy Code subtitle regulating physicians, "the attorney general may institute an action for a civil penalty of $1,000 for each violation." Tex. Occ. Code § 165.101(a). The statute authorizes the Texas Medical Board—not the Attorney General—to "institute an action in its own name to enjoin a violation of this subtitle." *Id.* § 165.051.

The *only* conduct alleged in Claim 2 to have constituted practicing medicine without a license is when Defendants purportedly "performed abortions without a physician's license." CR.39. Although at other points the petition alleges that the Defendant Clinics "provide illegal services, including abortions," CR.34, the petition never alleges that this unspecified, non-abortion "illegal services" included the practice of medicine without a license.

F. The district court granted a TRO and temporary injunction.

On March 18, 2025, the district court granted a TRO ex parte, signing the State's proposed order. CR.31-32. The TRO's terms went beyond the allegations in the claims of the petition by prohibiting Defendants "from providing *any* medical services, including abortions." CR.32 (emphasis added).

On March 27, the day of the temporary-injunction hearing, although Mrs. Rojas had already posted bond, she was still in custody at the Waller County Jail, awaiting a GPS monitor. 1.RR.52. Although the State had not subpoenaed Rojas's testimony, the court sua sponte ordered Rojas to be transferred to the court for the hearing. 1.RR.56. During the hearing, the GPS monitor arrived and was placed on Rojas, thus fulfilling all the bond conditions. 1.RR.52. Although the court allowed Mrs. Rojas to return to the jail to begin processing out, the court ordered her to return to the courtroom when she was released. 1.RR.52-60. Because the court required her to be present in the courtroom, the State was able to call Mrs. Rojas to testify.

Mrs. Rojas was the State's sole witness at the hearing. The State asked Mrs. Rojas 235 questions, and she invoked her Fifth Amendment rights not to testify in response to each question. 1.RR.60-94, 146-60.

The State failed to call Lt. Wilkerson or any other investigator to testify and be subjected to cross-examination to test the thoroughness of the investigation. Instead, the State relied on the two above-summarized documents that it asserted contained redacted copies of the arrest-warrant

affidavits prepared by Wilkerson. Although the State suggested it had multiple witnesses it could call to authenticate the documents, 1.RR.46, 102-03, it never called any of those witnesses. As noted, the court admitted the documents but excluded hearsay contained within the affidavits unless it came within a hearsay exception. 1.RR.114-17.

At the close of the hearing, the court did not make any finding that an abortion had occurred. Nor did the court make any finding that any particular acts constituted the unlicensed practice of medicine. Instead, the court stated: "So y'all are really worried about the abortion issue, and I get it. That's -- I'm more worried about if someone's out there being a doctor and they shouldn't be a doctor." 1.RR.199. "And so based upon the evidence that I've seen, I think the burden's been met by the State. Therefore, I am going to grant their injunctive relief." 1.RR.199.

The court entered the temporary injunction proposed by the State. CR.12-14. The entirety of the findings and reasoning in the order is as follows:

> Having considered the application, the evidence, and argument of counsel, the Court FINDS that the State of Texas is entitled to the temporary injunction.
>
> The Court FINDS that the State of Texas is likely to succeed in this action and that a Temporary Injunction is in the public interest and should be issued to restrain and prevent violations of the Texas Health and Safety Code §§ 170A.002 and 171.003 and the Texas Occupations Code §§ 155.001 and 165.159. The State of Texas has a sovereign interest in the enforcement of its own laws, any injury to

> which is irreparable, and the termination of unborn life is also necessarily irreparable.

CR.12-13.

The injunction enjoins Defendants and their agents and employees "from practicing medicine or performing abortions in violation of State law." CR.13.

G. Related proceedings are pending before the Texas Medical Board.

On March 31, the Texas Medical Board notified Mrs. Rojas that it had initiated an investigation into alleged unlicensed practice of medicine, stemming from her March 6 arrest. The TMB file number is 25-5509.

SUMMARY OF THE ARGUMENT

I. The order granting a temporary injunction should be reversed because it fails to comply with any of the three mandatory requirements of Rule 683.

First, it does not explain the reasons for its issuance in non-conclusory terms. Although the order states that the State is likely to succeed, it fails to set forth any reasons for that conclusion. Nor does it find that any irreparable injury is probable and imminent.

Second, the order is not specific and does not describe in any detail the act or acts sought to be restrained. It prohibits Defendants and their agents and employees from "practicing medicine or performing abortions in violation of State law." CR.13. Restrained parties must therefore examine all of Texas law to determine what is prohibited. The order also fails to specify what conduct constitutes the practice of medicine and is therefore barred.

Third, the order fails to set a trial date. Although Defendants' counsel agreed to not include a trial date in the order, this requirement is mandatory and not waivable.

II. The Attorney General lacks standing to sue for an injunction for the asserted claims. When the Legislature grants the Attorney General statutory authority to seek an injunction, it does so explicitly. In the abortion ban and the Medical Practice Act, the Legislature authorized the Attorney General to seek civil penalties, but it did not authorize him to seek an injunction. Indeed, the Medical Practice Act expressly authorizes the Texas Medical Board to file a lawsuit in its own name for an injunction but withholds such authority from the Attorney General.

The Attorney General also lacks authority to bring these claims in the name of the State. The Attorney General's authority to represent the State in civil litigation does not authorize him to institute an action in the name of the State; such authority must come from the Legislature. Here, he has no such power.

III. Finally, the State failed to plead and prove its entitlement to a temporary injunction. First, the Attorney General has no cause of action for an injunction for these claims, whether filed in his own name or in the name of the State.

Second, the State failed to prove a probable right to relief. The State offered no competent evidence of abortions. The court correctly excluded as hearsay the allegations of abortions in the anonymous email to HHSC. The only evidence concerning Witness 3's alleged abortion was in two documents

that the State asserted were redacted copies of Lt. Wilkerson's arrest-warrant affidavits. But a party moving for a temporary injunction cannot meet its burden by relying on affidavits. And the district court's admission of those exhibits was an abuse of discretion because the State never authenticated them. Regardless, the court correctly excluded Witness 3's statements to investigators, without which there was no evidence that anyone attempted to provide an abortion to Witness 3. Even if Witness 3's statements could be considered, Mrs. Rojas's alleged provision of a single tablet of misoprostol is inconsistent with knowingly providing an abortion. Nor do Witness 3's statements prove that she was pregnant or that Mrs. Rojas knew she was pregnant, as opposed to undergoing an early miscarriage. Finally, Mrs. Rojas's invocation of her Fifth Amendment right not to testify at the hearing is not evidence that abortions occurred.

The State also failed to show that anyone practiced medicine without a license. The State was required to both plead and prove its entitlement to a temporary injunction. The State pleaded only one way in which Defendants purportedly practiced medicine without a license: by allegedly providing abortions. As discussed, the State failed to show that Defendants provided abortions; it thus failed to show a probable right to relief on its claim for practicing medicine without a license, as pleaded.

Even if other acts had been pleaded, the State failed to show that Defendants practiced medicine without a license in another way. The only evidence was the two unauthenticated affidavits by Wilkerson. But affidavits cannot prove entitlement to a temporary injunction, and regardless, they

were inadmissible. Additionally, the State failed to show that Mrs. Rojas or any of the medical assistants diagnosed, treated, or offered to treat a condition or attempted to effect cures of a condition. The State failed to show that Mrs. Rojas acted outside the scope of her midwifery license or her physician-delegated authority. Nor did the State show that any non-midwifery visitor to the clinic was diagnosed or treated by anyone other than a licensed physician or APRN through telemedicine.

Finally, in addition to failing to show that Defendants violated the abortion ban or Medical Practice Act in the past, the State failed to show that an injunction was necessary to prevent a probable, imminent, and irreparable future injury.

ARGUMENT

I. The Temporary Injunction Failed to Comply with Any of the Mandatory Requirements of Rule 683.

The temporary injunction failed to comply with *any* of the requirements of Rule 683 of the Texas Rules of Civil Procedure. Those requirements "'are mandatory and must be strictly followed.'" *In re Luther*, 620 S.W.3d 715, 722 (Tex. 2021) (quoting *InterFirst Bank San Felipe, N.A. v. Paz Const. Co.*, 715 S.W.2d 640, 641 (Tex. 1986) (per curiam)). Rule 683 mandates that "[e]very order granting an injunction" must (1) "set forth the reasons for its issuance," (2) "be specific in terms," (3) "describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained," and (4) "include an order setting the cause for trial on the merits with respect to the ultimate relief sought." Tex.

R. Civ. P. 683. "A temporary restraining order that does not strictly comply with the mandates of Rule 683 is subject to being declared void and dissolved." *Luther*, 620 S.W.3d at 722.

A. The order does not set forth the reasons for its issuance.

The order fails to explain the reasons for its issuance. "Every injunction or restraining order must inform the violator of the reasons why he is enjoined." *Breithaupt v. Navarro Cnty.*, 675 S.W.2d 335, 339 (Tex. App.—Waco 1984, writ ref'd n.r.e.). "The reasons must be specific and legally sufficient, and not mere conclusory statements." *Indep. Capital Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792, 795 (Tex. App.—Dallas 2008, no pet.). Where the order does not include "any underlying facts to support its finding," that "mak[es] the court's finding conclusory" and the injunction invalid. *Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 56 (Tex. App.—San Antonio 2010, no pet.); *see also Good Shepherd Hosp., Inc. v. Select Specialty Hosp. - Longview, Inc.*, 563 S.W.3d 923, 929 (Tex. App.—Texarkana 2018, no pet.) ("The temporary injunction fails to recite facts supporting the determination that Select established a probable right to relief at trial based on breach or anticipatory breach of the contracts, if any.").

Here, the order includes nothing more than conclusory statements. To obtain a temporary injunction, the State was required to "plead and prove . . . (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2004). The

temporary-injunction order states that the State "is likely to succeed in this action," CR.13, but it fails to "set forth the reasons" for that conclusion, Tex. R. Civ. P. 683. As for irreparable injury, the order states only that the State "has a sovereign interest in the enforcement of its own laws, any injury to which is irreparable," and that "termination of unborn life is also necessarily irreparable." CR.13. But the order does not find—much less support the finding with any reasons—that it is probable and imminent that state law will be violated or unborn life will be terminated without an injunction. The order's lack of reasons for its issuance renders the injunction void.

B. The order is not specific in terms, nor does it describe in reasonable detail the acts restrained.

Additionally, the order is not specific and does not describe in any detail the act or acts sought to be restrained.

A temporary injunction must inform parties, "unambiguously and with a reasonable degree of specificity, of the conduct to be restrained." *Luther*, 620 S.W.3d at 723. "A temporary injunction should inform a party of the acts he is restrained from doing without requiring inferences or conclusions about which persons might disagree and which might require additional court hearings." *Cooper Valves, LLC v. ValvTechnologies, Inc.*, 531 S.W.3d 254, 266 (Tex. App.—Houston [14th Dist.] 2017, no pet.). "These requirements ensure that an enjoined party is given adequate notice of the acts it is enjoined from doing." *Id.*

Restrained parties must not be "left to conjecture as to whether certain acts will violate the terms of the decree." *Rubin v. Gilmore*, 561 S.W.2d 231,

236 (Tex. App.—Houston [1st Dist.] 1977, no writ). "Restrained parties should be able to pick up a temporary injunction order, read it, understand it, and not have to guess about what they are prohibited from doing upon threat of contempt." *Clark v. Hastings Equity Partners, LLC*, 651 S.W.3d 359, 372 (Tex. App.—Houston [1st Dist.] 2022, no pet.). Even if the parties to the case may be able to decipher what is prohibited by referring to other documents, that does not make an ambiguous injunction valid; injunctions "frequently restrain the conduct of more than just the named parties to the suit," such as employees, and those restrained parties must be able to know what is prohibited based on the face of the order. *Id.*

In *Luther*, the temporary injunction "require[d] Defendants to cease and desist from conducting in-person services at the salon 'in violation of State of Texas, Dallas County, and City of Dallas emergency regulations related to the COVID-19 pandemic.'" 620 S.W.3d at 722. That injunction failed to "describe with specificity which 'in-person services' were restrained." *Id.* at 723. A person "could not know without analyzing a multitude of regulations—state, county, and city emergency orders referenced in the temporary restraining order, plus the federal guidelines they referenced—what conduct was prohibited at any given time." *Id.* The Texas Supreme Court held that the "order's lack of specificity regarding the conduct to be restrained renders it . . . void." *Id.* at 724.

In *Cooper Valves*, the injunction prohibited "'possessing, selling, disclosing, or using' VTI's 'Confidential and Trade Secret Information,' which according to the injunction 'includes, but is not limited to,' a two-page list of

items." 531 S.W.3d at 266. The court concluded that "this open-ended definition of 'Confidential and Trade Secret Information' is impermissibly vague, fails to provide adequate notice to appellants of the acts they are restrained from doing in terms not subject to reasonable disagreement, and therefore violates Rule 683's specificity requirement." *Id.*

The injunction here is even less specific than in *Luther* and *Cooper Valves*. It prohibits Defendants and their agents and employees from "practicing medicine or performing abortions in violation of State law." CR.13. This runs afoul of the specificity requirement in at least two ways. First, because the order refers to "State law," restrained parties must examine Texas's abortion laws, laws governing the practice of medicine, and presumably *all* of Texas law to determine what violates state law and is therefore enjoined. The injunction is no more specific than an order that says: "Don't violate state law." Second, the order requires restrained parties to make inferences and conclusions about what it means to "practice medicine." The order is silent about what specific conduct constitutes the practice of medicine and therefore is prohibited; restrained parties are left to guess, on pain of contempt. And not only must Defendants decipher these complex questions, so must each of their employees and agents. CR.13.

The temporary injunction's "failure to specify—with reasonable detail and clarity and without reference to other documents—the precise conduct prohibited makes the order too uncertain when measured against Rule 683." *Luther*, 620 S.W.3d at 723.

C. The order does not set the cause for trial on the merits.

Finally, the order is invalid because it fails to set the cause for trial on the merits. At the conclusion of the temporary-injunction hearing, the court examined the State's proposed order and said, "I'm going to scratch out the part about the trial on the merits." 1.RR.200. Counsel for the State responded that this was a requirement of Rule 683. 1.RR.201. To be sure, counsel for Defendants mistakenly stated that the trial date need not be included in the injunction, and the parties then agreed not to include it and to confer on a trial date after the hearing. 1.RR.201-02.

But "even when parties agree to the language and entry of an injunction order, the order's failure to comply with Rule 683 will render the order void." *Clark*, 651 S.W.3d at 373. Because the injunction binds individuals who are not parties, such as employees of the Defendant Clinics, all restrained persons must be able to tell from the order what conduct is prohibited and how long the prohibition lasts—i.e., through the trial date. *See id.* at 372-73. Thus, "parties cannot waive the mandatory requirements of Rule 683 by consent." *Id.*; *see also In re Garza*, 126 S.W.3d 268, 271, 273 (Tex. App.—San Antonio 2003, no pet.) (Agreed temporary injunction that fails to set a trial date is void, and a "void order has no force or effect and confers no rights; it is a mere nullity. Thus, a party who agrees to a void order has agreed to nothing." (citation omitted)); *Int'l Broth. of Elec. Workers Local Union 479 v. Becon Const. Co., Inc.*, 104 S.W.3d 239, 243 (Tex. App.—Beaumont 2003, no pet.) (parties cannot waive failure to comply with Rule 683); *Big D*

Properties, Inc. v. Foster, 2 S.W.3d 21, 23 (Tex. App.—Fort Worth 1999, no pet.) (holding that "rule 683's requirements may not be waived").

II. The Attorney General Lacks Standing to Sue for an Injunction or to Sue in the Name of the State for Violations of the Abortion Ban or Medical Practice Act.

The Attorney General has no standing to sue for an injunction for a violation or threatened violation of the abortion ban or the Medical Practice Act, nor does he have standing to sue in the name of the State.

A. The Attorney General lacks authority to sue to enjoin violations of the abortion ban or the Medical Practice Act.

"Texas courts have consistently held that the Texas AG is powerless to act in the absence of explicit statutory or constitutional authorization." *Tex. v. Ysleta del Sur Pueblo*, 79 F. Supp. 2d 708, 712 (W.D. Tex. 1999), *aff'd*, 237 F.3d 631 (5th Cir. 2000); *see also Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 494 (Tex. 2024) (Attorney General's "authority comes from the Constitution and from statutes."); *see Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001) ("[T]he Attorney General can only act within the limits of the Texas Constitution and statutes, and courts cannot enlarge the Attorney General's powers.").

The Attorney General's constitutionally derived authority is limited. *See* Tex. Const. art. IV, § 22. Although his authority has been expanded by statute, he has no general authority to file suits in district courts seeking to enjoin violations of state law. *See El Paso Elec. Co. v. Texas Dep't of Ins.*, 937

S.W.2d 432, 438 (Tex. 1996) ("[T]here is no general statute authorizing the Attorney General to represent the State and its agencies in district court.").

While Texas "courts have repeatedly permitted the AG to sue provided that specific authorization could be found in a relevant act," they have also "dismissed actions in which the AG attempted to rely upon implied powers without express authority from the legislature." *Ysleta*, 79 F. Supp. 2d at 713; *see also State ex rel. Downs v. Harney*, 164 S.W.2d 55, 58 (Tex. Civ. App. 1942) ("[S]ince there is no constitutional or statutory provision which vests in the Attorney General the power, or makes it his duty, to institute actions for the removal of county officers . . . the Attorney General cannot assert or exercise such power and duty in this action."), *writ refused W.O.M.* (Oct. 14, 1942).

Whenever the Legislature authorizes the Attorney General to file civil actions in district courts to enforce violations of statutory schemes, the authorizing statute is specific about the enforcement mechanism that the Attorney General is empowered to seek: a civil penalty, an injunction, or both.

When the Legislature authorizes the Attorney General to sue for an injunction, the Legislature says so explicitly. It has done so dozens, perhaps hundreds, of times. *See, e.g.*, Tex. Bus. & Com. Code § 328.003 (b) (online sale of goods) ("If the attorney general believes that a person is violating this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter."); Tex. Health & Safety Code § 365.015(a) ("[T]he attorney general may bring a civil suit for

an injunction to prevent or restrain a violation of this subchapter."); Tex. Nat. Res. Code § 191.172 ("[T]he attorney general may bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter."); *see also, e.g.*, Tex. Alco. Bev. Code § 101.01(a); Tex. Bus. & Com. Code §§ 17.47(a), 17.903(a), 17.953(a), 324.102(b), 501.002(c), 501.102(b), 502.002(e), 521.151(b), 601.205; Tex. Bus. Orgs. Code § 21.802(c); Tex. Educ. Code Ann. § 44.152; Tex. Fin. Code § 392.403(d); Tex. Gov't Code §§ 403.620(c); 411.510(a); Tex. Health & Safety Code § 161.706(a); Tex. Ins. Code §§ 101.105(b), 601.102(a); Tex. Labor Code § 419.006(a); Tex. Nat. Res. Code § 91.456; Tex. Occ. Code §§ 453.451, 1101.752(a), 2001.558(a); Tex. Property Code § 5.207(a); Tex. Transp. Code §§ 728.004(a)-(b); Tex. Utilities Code § 121.203.

Likewise, when the Legislature authorizes the Attorney General to seek both a civil penalty and injunctive relief, it says so expressly. *See, e.g.*, Tex. Bus. & Com. Code § 109.006(b), (d) (The "attorney general . . . may sue to collect a civil penalty under this section" and "may bring an action in the name of the state to restrain or enjoin a violation or threatened violation of this chapter."); *id.* § 328.003(b)-(c) (online sale of event tickets) ("If the attorney general concludes that a person is violating this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter. . . . In addition to bringing an action for injunctive relief under this chapter, the attorney general may seek restitution and petition a district court for the assessment of a civil penalty

as provided by this section."); Tex. Gov't Code § 442.012(a) ("The attorney general . . . may file suit in district court to restrain and enjoin a violation or threatened violation of this chapter . . . , to recover on behalf of the state a civil penalty provided by this chapter, . . . or for both injunctive relief and a civil penalty."); *see also, e.g.*, Tex. Bus. & Com. Code §§ 17.953(b)(1), 324.102(a)-(b), 501.053(a)-(b), 501.102(a)-(b), 503A.008(b), 521.151(a)-(b); Tex. Fin. Code § 397.009(a), (c); Tex. Health & Safety Code § 164.011(a); Tex. Ins. Code §§ 101.105(c), 601.102(a)-(b); Tex. Occ. Code § 2001.558(a), (d); Tex. Property Code § 5.207(b).

In contrast with the above-cited statutes, the abortion ban does not give the Attorney General the authority to seek injunctive relief. The abortion ban specifies that a person who violates it "is subject to a civil penalty of not less than $100,000 for each violation" and that "[t]he attorney general shall file an action to recover a civil penalty assessed under this section." Tex. Health & Safety Code § 170A.005; *see State v. Zurawski*, 690 S.W.3d 644, 659 (Tex. 2024) ("[T]he Attorney General may recover civil penalties for violations of the Human Life Protection Act."). The Legislature's omission of an injunction in the remedies available to the Attorney General means he lacks power to seek one. *See Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex. 1998) ("We presume that this omission has a purpose."); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) ("It is a rule of statutory construction that every word of a statute must be presumed to have been

used for a purpose," and "every word excluded from a statute must also be presumed to have been excluded for a purpose.").[10]

In the Medical Practice Act, the Legislature vested the authority to sue for an injunction in the Texas Medical Board, not the Attorney General. The Medical Practice Act has a chapter entitled "Penalties," with four subchapters: Administrative Penalties, Injunctive Relief and Other Enforcement Provisions, Civil Penalties, and Criminal Penalties. Tex. Occ. Code ch. 165. The Attorney General is named only in the Civil Penalties subchapter: "If it appears that a person is in violation of or is threatening to violate this subtitle or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of $1,000 for each violation." *Id.* § 165.101. The Injunctive Relief and Other Enforcement Provisions subchapter names only the Medical Board, and it vests the power to seek injunctive relief solely in the Board: "In addition to any other action authorized by law, the board may institute an action in its own name to enjoin a violation of this subtitle." *Id.* § 165.051. Where the Legislature explicitly gave the authority to seek an injunction to the Medical Board but, just two

[10] Section 170A.006 of the Texas Health and Safety Code does not give the Attorney General the authority to seek an injunction for a violation of the abortion ban. Section 170A.006, titled "Civil Remedies Unaffected," states: "The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit." Tex. Health & Safety Code § 170A.006. This provision preserves any remedies that may already exist if there is another civil cause of action available for the same conduct—e.g., damages in a tort lawsuit. It does not create any new remedies, much less add to the civil penalty that the Attorney General may seek.

sections later, omitted it from the Attorney General's authority, that means the Attorney General lacks the authority. *See PPG Indus., Inc. v. JMB/Houston Centers Partners Ltd. P'ship*, 146 S.W.3d 79, 84 (Tex. 2004) ("When the Legislature includes a right or remedy in one part of a code and omits it in another, that may be precisely what the Legislature intended."); *see also Touche Ross & Co. v. Redington,* 442 U.S. 560, 572 (1979) (rejecting implied private right of action when statutory provision is silent but flanked by provisions that explicitly grant private causes of action).

Lacking any statutory authority to seek to enjoin violations of the abortion ban and Medical Practice Act, "the Attorney General is without standing to file and prosecute this cause" for an injunction. *Hill v. Lower Colorado River Auth.*, 568 S.W.2d 473, 480 (Tex. App.—Austin 1978, writ ref'd n.r.e.); *see also Lukasik v. San Antonio Blue Haven Pools, Inc.*, 21 S.W.3d 394, 400-03 (Tex. App.—San Antonio 2000, no pet.) (holding that plaintiffs were not consumers within the Deceptive Trade Practices Act and thus lacked standing to pursue a DTPA cause of action). The order granting the injunction should therefore be reversed. *See State ex rel. Downs*, 164 S.W.2d at 58 (dismissing where Attorney General lacked authority to bring suit).

B. The Attorney General lacks authority under the Medical Practice Act and the abortion ban to sue in the name of the State.

This lawsuit exceeds the Attorney General's authority in a second way: he improperly sued in the name of the State of Texas. Although the Attorney General has authority to represent the State, this "authority to *represent* the

state, however, does not necessarily include the authority to independently decide whether to *institute* a suit on the state's behalf." *State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 303 (Tex. 2022). "The Legislature must provide that authority by statute." *Id.*

When the Legislature gives the Attorney General the authority to sue "in the name of the State," it is explicit. *See, e.g.*, Tex. Bus. & Com. Code §§ 17.903(a), 17.953(a), 21A.003(a), 324.102(b), 501.002(c), 501.053(b), 501.102(b), 502.002(e), 521.151(b), 601.205; Tex. Bus. Orgs. Code § 21.802(c); Tex. Fin. Code §§ 392.403(d), 397.009(a); Tex. Health & Safety Code §§ 464.015(a), (e), (f), 571.022 (a)-(b), 571.023(b)-(d), 591.023(d); Tex. Ins. Code §§ 101.105(c), 562.206(a)-(b), 752.0002(a), 861.703(a), 1811.203(c); Tex. Nat. Res. Code § 191.172(a); Tex. Property Code § 74.709(a); Tex. Transp. Code §§ 111.058(a), 548.6015(a)-(b).

At other times, the Legislature gives the Attorney General the authority to sue in his own name and does not authorize him to sue on behalf of the State. Any civil penalties he collects in such suits are paid into the state treasury. Tex. Gov't Code § 402.007(a).

Here, the Legislature gave the Attorney General the power to sue for a civil penalty, but not in the name of the State. *See* Tex. Occ. Code § 165.101 ("the attorney general may institute an action for a civil penalty"); Tex. Health & Safety Code § 170A.005 ("The attorney general shall file an action to recover a civil penalty assessed under this section."). Because the temporary injunction granted relief that the Attorney General lacked

standing to seek, in a case he lacked the authorization to file on behalf of the State, the order granting the injunction should be reversed.

III. The State Failed to Plead and Prove Its Entitlement to a Temporary Injunction.

A preliminary injunction is an extraordinary remedy and cannot be granted as a matter of right. *See Butnaru*, 84 S.W.3d at 204. "To obtain a temporary injunction, the applicant must plead and prove . . . (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Id.* "A trial court abuses its discretion if it enters a temporary injunction unsupported by the evidence." *Zurawski*, 690 S.W.3d at 654 n.3. Here, the district court's grant of a temporary injunction was an abuse of discretion because the State failed to meet its burden on any of the three requirements.

A. The Attorney General has no cause of action for an injunction.

As discussed above, the Attorney General lacks authority, whether in his own name or in the State's name, to sue for an injunction here. For the same reasons, he also lacks a cause of action for an injunction under the abortion ban or the Medical Practice Act.

B. The State failed to prove that it has a probable right to relief on its claims.

Even assuming that there is a cause of action, the State failed to prove that it has a probable right to relief on either of the two claims it pleaded.

1. The State failed to show that it is likely to succeed on its claim for violations of the abortion ban.

The State's first claim for relief is that "Defendants knowingly performed, induced, or attempted abortions in violation of the Human Life Protection Act." CR.39 (citing Tex. Health & Safety Code § 170A.002). At the temporary-injunction hearing, the State failed to show that these abortions were performed.

There were two alleged abortions reported in the anonymous email complaint to HHSC, 2.RR.5-13, but the State produced no competent evidence that those abortions occurred. The court correctly excluded the anonymous email to HHSC as inadmissible hearsay. 1.RR.18-24. The court also excluded as hearsay anything these two individuals may have told Lt. Wilkerson. 1.RR.114-17, 134, 138-41. There was no other evidence concerning these alleged abortions.

The only evidence concerning an abortion alleged to have been attempted for Witness 3 was the two documents that the State claimed to be Wilkerson's arrest-warrant affidavits. 1.RR.36; 2.RR.65-125. Those documents fail to show that an abortion was attempted, for at least five reasons.

First, a party moving for a temporary injunction cannot meet its burden by relying on affidavits. *See Zurawski*, 690 S.W.3d at 654 n.3 ("The trial court properly excluded affidavit evidence" in temporary-injunction hearing.); *Millwrights Loc. Union No. 2484 v. Rust Eng'g Co.*, 433 S.W.2d 683, 686 (Tex. 1968) (Absent agreement, "the proof required to support a

judgment issuing a writ of temporary injunction may not be made by affidavit.").

Second, the admission of those exhibits was an abuse of discretion because the State never authenticated them. The exhibits were not self-authenticating because they were neither sealed and signed, *see* Tex. R. Evid. 902(1), nor signed and certified, see Tex. R. Evid. 902(2). The State repeatedly acknowledged it could call witnesses to authenticate these documents, 1.RR.46, 102-03, but it never did. Because these documents were not authenticated, there was no competent evidence of an attempted abortion with respect to Witness 3.

Third, even if the affidavits were properly admitted, the district court correctly excluded Witness 3's statements to investigators as inadmissible hearsay. 1.RR.114-17, 134, 138-41. Without those statements, there was no evidence that anyone attempted to provide an abortion to Witness 3.

Fourth, even if Witness 3's statements to investigators could be considered for the truth of the matters asserted, they do not show that an abortion was knowingly provided or attempted. The abortion ban prohibits knowingly performing, inducing, or attempting an abortion. Tex. Health & Safety Code § 170A.002. "'Abortion' means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant," and it does not include an act "done with the intent to . . . remove a dead, unborn child whose death was caused by spontaneous abortion." *Id.* § 245.002(1); *see id.* § 170A.001(1) ("'Abortion' has the

meaning assigned by Section 245.002."). At most, Witness 3's statements could show that Mrs. Rojas provided her a single 200-microgram tablet of misoprostol—one-fourth of the dose for a medication abortion. *See supra*, at 21-22. If misoprostol was provided to Witness 3, it was likely for a different use. This certainly does not show that Mrs. Rojas knowingly provided Witness 3 misoprostol with the intent to cause the death of her fetus or embryo.

Fifth, Witness 3's statements do not prove that she was pregnant or that Mrs. Rojas knew she was pregnant. According to Witness 3, Mrs. Rojas told her that her pregnancy would not be successful, 2.RR.86; that suggests that Mrs. Rojas believed Witness 3 was undergoing a spontaneous abortion, i.e., a miscarriage. There is evidence that Witness 3's progesterone level was 9.51, 2.RR.89, 92-93, but the State failed to introduce any testimony about whether that is consistent with a developing pregnancy or with an early miscarriage. And although the State seized an ultrasound machine that was capable of storing patient information and images, 2.RR.83, and Witness 3 said she received an ultrasound, 2.RR.86, the State failed to introduce Witness 3's ultrasound results that could have confirmed her pregnancy status.

Indeed, none of this evidence was convincing to Lt. Wilkerson or to the court. Wilkerson concluded only that Witness 3 "may" have had an abortion. 2.RR.85. And the court made no finding that Ms. Rojas or the clinics had provided abortions. 1.RR.199; CR.12-14.

Finally, Mrs. Rojas's invocation of her Fifth Amendment rights in response to the State's questions is not evidence that any abortions were performed. "[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to *probative evidence offered against them*." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (emphasis added). But "the claim of privilege is not a substitute for relevant evidence." *United States v. Rylander*, 460 U.S. 752, 761 (1983). "Without some other probative evidence, any negative inference drawn from a party's invocation of the Fifth Amendment cannot rise beyond 'mere suspicion,' and the inference 'could not be considered as evidence at all.'" *In re Commitment of Gipson*, 580 S.W.3d 476, 487 (Tex. App.—Austin 2019, no pet.) (quoting *Matbon, Inc. v. Gries*, 288 S.W.3d 471, 489-90 (Tex. App.—Eastland 2009, no pet.)). Here, where the State offered no competent evidence of abortions, Mrs. Rojas's refusal to testify is not evidence that abortions occurred. *See id.*; *see also Webb v. Maldonado*, 331 S.W.3d 879, 883 (Tex. App.—Dallas 2011, pet. denied); *Matbon*, 288 S.W.3d at 489-90; *Blake v. Dorado*, 211 S.W.3d 429, 433-34 (Tex. App.—El Paso 2006, no pet.).

2. The State failed to show that it is likely to succeed on its claim for practicing medicine without a license.

The State also failed to show that it is likely to succeed on its claim for practicing medicine without a license.

In its pleadings, the State's claim of practicing medicine without a license was premised on the alleged provision of abortions. The State was required to both "plead and prove" its entitlement to a temporary injunction.

Butnaru, 84 S.W.3d at 204. In its petition and application for a temporary injunction, the State pleaded only one way in which Defendants purportedly practiced medicine without a license: by allegedly providing abortions. Claim 2, titled "Practicing Medicine Without a License," recites: "Defendants performed abortions without a physician's license in violation of the Texas Occupations Code and Texas Health and Safety Code." CR.39. In its application for a temporary injunction, the State stated only: "By performing abortions without a physician's license, Defendants have violated the Texas Health & Safety Code and Texas Occupations Code." CR.40. Although the petition alleges that the Defendant Clinics provided "illegal services," CR.34, the only acts of illegality that the State pleaded are "illegal abortions," CR.39. As to Mrs. Rojas, nothing in the petition suggests she practiced medicine in any way other than by purportedly providing abortions.

Because the State failed to show that the Defendants provided abortions, *see supra*, at 46-49, it also failed to show a probable right to relief on its claim for practicing medicine without a license as pleaded in the petition and application.

Even if acts besides the alleged abortions had been pleaded, the State failed to show that Defendants practiced medicine without a license in any other way.

First, the only evidence to support this claim were the two inadmissible documents that the State asserted were Lt. Wilkerson's affidavits. But a party moving for a temporary injunction cannot meet its burden by relying on affidavits. *See Zurawski*, 690 S.W.3d at 654 n.3; *Millwrights*, 433 S.W.2d

683, 686. Regardless, those documents were never authenticated and should have been excluded. *See supra*, at 47.

Second, the State failed to show that Mrs. Rojas practiced medicine without a license. "Practicing medicine" is defined as "the diagnosis, treatment, or offer to treat" a condition or "the attempt to effect cures of those conditions," by a person who "publicly professes to be a physician or surgeon" or "directly or indirectly charges money or other compensation for those services." Tex. Occ. Code § 151.002(a)(13). Although there was some evidence that unspecified people referred to Rojas as a doctor, 2.RR.85, there was no evidence that she publicly professed to be a physician or surgeon, *see* 2.RR.47-50. Regardless, there was no evidence that Mrs. Rojas diagnosed, treated, offered to treat, or attempted to effect a cure for any patient outside the scope of what her midwifery license permitted her to do. Moreover, because Mrs. Rojas was associated with a physician and had standing orders from the physician, 2.RR.76, she could perform the acts delegated to her by the physician, including the administration or provision of drugs. *See* Tex. Occ. Code §§ 157.001, 157.002, 203.401; 16 Tex. Admin. Code § 115.1(26). The "delegating physician remains responsible for the medical acts" of the midwife. Tex. Occ. Code § 157.001(b). A midwife "to whom a physician delegates the performance of a medical act is not considered to be practicing medicine without a license by performing the medical act unless the [midwife] acts with knowledge that the delegation and the action taken under the delegation is a violation." Tex. Occ. Code. § 157.005.

Third, the State failed to show that any of the medical assistants at the clinics practiced medicine without a license. Lt. Wilkerson's alleged affidavits contained little to no evidence about what happened *inside* the Defendant Clinics. The State did not show that any particular visitor to the Clinics was diagnosed or treated at the Clinics, much less that it was done or supervised by anyone other than a licensed physician or APRN through telemedicine. Investigators just ignored—or summarily disregarded, without investigating—the evidence that care was provided and directed by licensed healthcare professionals using telemedicine. *Supra*, at 9-14.

Investigators' assumptions that medical assistants must have been practicing medicine were unfounded. In addition to administrative functions and interacting with patients, medical assistants commonly perform a wide range of clinical tasks. These clinical tasks may include taking vital signs, drawing blood, processing labs, preparing patients for examination, and collecting specimens. The Texas Board of Nursing recognizes that APRNs and other nurses may delegate such tasks to "unlicensed personnel," such as medical assistants. 22 Tex. Admin. Code § 224.3(b). The delegation of these types of clinical functions to unlicensed personnel is permitted by law; it is not the unlicensed practice of medicine.

Even assuming that there were specific acts being provided at the Defendant Clinics that constituted practicing medicine without a license, the Texas Medical Board—but not the Attorney General—can file a lawsuit seeking to enjoin those acts. Tex. Occ. Code § 165.051; *see supra*, at 42-43. Were the Board to file such a lawsuit and show a violation, any injunction

issued would have to describe with specificity the acts that the restrained parties are prohibited from performing. *See supra*, at 34-36. The remedy cannot be an injunction in a lawsuit by the Attorney General that summarily prohibits Defendants and their employees from "practicing medicine . . . in violation of State law." CR.13.

C. The State failed to prove a probable, imminent, and irreparable injury.

The State also failed to show that it would suffer a probable, imminent, and irreparable injury without a temporary injunction. "Establishing probable, imminent, and irreparable injury requires proof of an actual threatened injury, as opposed to a speculative or purely conjectural one." *Tex. Dep't. of Pub. Safety v. Salazar*, 304 S.W.3d 896, 908 (Tex. App.—Austin 2009, no pet.). In addition to failing to show that Defendants violated the abortion ban or Medical Practice Act in the past, the State failed to show an actual threatened future injury. There simply was no evidence that an injunction was necessary to prevent a probable, imminent, and irreparable injury. Indeed, the order contained no finding that an irreparable injury was probable or imminent. CR.13. That is another independent basis for reversal.

PRAYER

For the foregoing reasons, Appellants respectfully request that the Court reverse and vacate the district court's order granting the application for a temporary injunction and such other and further relief to which they should be justly entitled.

May 12, 2025

/s/ Marc Hearron

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*pro hac vice application forthcoming

No. 01-25-00268-CV

In the Court of Appeals for the First Judicial District, Houston, Texas*

Maria Margarita Rojas; Maternal and Child Healthcare and Research Center LLC d/b/a Clinica Latinoamericana; Clinicas Latinoamericanas; Clinica-Waller Latinoamericana; Clinica-Telge Latinoamericana a/k/a Clinica de la Mujer a/k/a Houston Birth House,

Defendants-Appellants,

v.

State of Texas,

Plaintiff-Appellee

APPENDIX

Tab A

Temporary Injunction Order,
***State v. Rojas, et al.*, Cause No. CV25-03-0062 (Waller Cnty. Dist. Ct. Mar. 27, 2025)**

STATE OF TEXAS
COUNTY OF WALLER
I do hereby certify that the foregoing is true and correct copy as the same appears on FILE AND RECORDED IN THE Official Public Records of Waller County, Texas on the date and time stamped hereon
Date 3/27/25 4:50pm
Liz Pirkle
Waller County District Clerk
by _____ Deputy

CAUSE NO. CV25-03-0062

STATE OF TEXAS,
Plaintiff,

v.

MARIA MARGARITA ROJAS;
MATERNAL AND CHILD HEALTHCARE AND RESEARCH CENTER LLC d/b/a CLINICA LATINOAMERICANA;
CLINICAS LATINOAMERICANAS;
CLINICA-WALLER LATINOAMERICANA;
CLINICA-TELGE LATINOAMERICANA a/k/a CLINICA DE LA MUJER a/k/a HOUSTON BIRTH HOUSE;
MEDICAL LATINOAMERICANA SPRING,

Defendants.

IN THE DISTRICT COURT OF

WALLER COUNTY, TEXAS

506TH JUDICIAL DISTRICT

ORDER GRANTING APPLICATION FOR TEMPORARY INJUNCTION

On the __ day of _____ 2025, the Court considered the State of Texas's Application for Temporary and Permanent Injunctive Relief. Plaintiff, the State of Texas, asks for a temporary injunction enjoining Defendants, Maria Rojas and the clinics she owns or operates, and any of their officers, agents, servants, employees, attorneys, representatives, and all persons acting in concert or participation with, on behalf of, or under the direct or indirect control of Defendants from performing elective abortions or providing medical services while this litigation proceeds.

Having considered the application, the evidence, and argument of counsel, the Court **FINDS** that the State of Texas is entitled to the temporary injunction.

The Court **FINDS** that the State of Texas is likely to succeed in this action and that a Temporary Injunction is in the public interest and should be issued to restrain and prevent violations of the Texas Health and Safety Code §§ 170A.002 and 171.003 and the Texas Occupations Code §§ 155.001 and 165.159. The State of Texas has a sovereign interest in the enforcement of its own laws, any injury to which is irreparable, and the termination of unborn life is also necessarily irreparable.

The Court **FINDS** that Texas's Application for Temporary Injunctive Relief should be, and is hereby, **GRANTED**.

It is therefore **ORDERED**, **ADJUDGED**, and **DECREED** that a temporary injunction is entered immediately and continuously thereafter enjoining Maria Margarita Rojas, Maternal and Child Healthcare and Research Center LLC d/b/a Clinica Latinoamericana, Clinicas Latinoamericanas, Clinica-Waller Latinoamericana, Clinica-Telge Latinoamericana also known as Clinica de la Mujer also known as Houston Birth House, Medical Latinoamericana Spring (altogether Defendants), and all officers, agents, servants, employees, attorneys, representatives, and all persons acting in concert with, on behalf of, or under the direct or indirect control of Defendants, from practicing medicine or performing abortions in violation of State law.

This Temporary Injunction shall not expire until judgment in this case is entered or this case is otherwise dismissed by this Court.

All parties may be served with notice of this Temporary Injunction in any manner provided under Rule 21a of the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED that this case be set for trial on the merits with respect to the ultimate relief sought on the ___ day of _____, at _____.

Parties will get with Court Coordinator Regarding Trials Setting.

IT IS FURTHER ORDERED that pursuant to Tex. Civ. Prac. & Rem. Code § 6.001, *et seq.*, the State of Texas is not required to pay a filing fee or other security for costs and is not required to pay a bond prior to the Court granting a temporary injunction.

SIGNED this 27th day of March, 2025.

THE HONORABLE GARY W. CHANEY

Tab B

Tex. Health & Safety Code ch. 170A

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the

best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and

costs incurred in bringing the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Tab C

Tex. Occ. Code ch. 165

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE B. PHYSICIANS

CHAPTER 165. PENALTIES

SUBCHAPTER A. ADMINISTRATIVE PENALTIES

Sec. 165.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The board by order may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.002. PROCEDURE. (a) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.035, eff. Sept. 1, 2001.

Sec. 165.003. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.004. NOTICE OF VIOLATION AND PENALTY. (a) If the board by order determines that a violation has occurred and imposes an administrative penalty, the board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.005. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the

copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.006. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.007. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.008. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

Sec. 165.051. INJUNCTION AUTHORITY. In addition to any other action authorized by law, the board may institute an action in its own name to enjoin a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.48, eff. September 1, 2005.

SUBCHAPTER C. CIVIL PENALTIES

Sec. 165.101. CIVIL PENALTY. (a) If it appears that a person is in violation of or is threatening to violate this subtitle or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of $1,000 for each violation.

(b) Each day a violation continues constitutes a separate violation.

(c) An action filed under this section must be filed in a district court in Travis County or the county in which the violation occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.102. LIMITATION ON CIVIL PENALTY. The attorney general may not institute an action for a civil penalty against a person described by Section 151.053 or 151.054 if the person is not in violation of or threatening to violate this subtitle or a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.103. RECOVERY OF EXPENSES BY ATTORNEY GENERAL; DEPOSIT. (a) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subchapter, including:

(1) court costs;

(2) reasonable attorney's fees;

(3) investigative costs;

(4) witness fees; and

(5) deposition expenses.

(b) A civil penalty recovered by the attorney general under this subchapter shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 165.151. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or a rule of the board.

(b) If another penalty is not specified for the offense, an offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.152. PRACTICING MEDICINE IN VIOLATION OF SUBTITLE. (a) A person commits an offense if the person practices medicine in this state in violation of this subtitle.

(b) Each day a violation continues constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

(d) On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 37, eff. June 10, 2003.

Sec. 165.153. CRIMINAL PENALTIES FOR ADDITIONAL HARM. (a) A person commits an offense if the person practices medicine without a license or permit and causes another person:

(1) physical or psychological harm; or

(2) financial harm.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.1535. PERFORMING SURGERY WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this subtitle, performs surgery on a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

(d) It is an affirmative defense to prosecution under this section that the actor performed the surgery in an emergency. In this subsection, "emergency" means a condition or circumstance in which a reasonable person with education and training similar to that of the actor would assume that the person on whom the surgery was performed was in imminent danger of serious bodily injury or death.

Added by Acts 2003, 78th Leg., ch. 565, Sec. 1, eff. Sept. 1, 2003.

Sec. 165.154. FALSE STATEMENT; OFFENSE. (a) A person commits an offense if the person knowingly makes a false statement:

(1) in the person's application for a license; or

(2) under oath to obtain a license or to secure the registration of a license to practice medicine.

(b) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 12, eff. September 1, 2023.

Sec. 165.155. SOLICITATION OF PATIENTS; PENALTY. (a) A physician commits an offense if the physician employs or agrees to employ, pays or promises to pay, or rewards or promises to reward any person, firm,

association, partnership, or corporation for securing or soliciting a patient or patronage.

(b) Each payment, reward, or fee or agreement to pay or accept a reward or fee constitutes a separate offense.

(c) A physician commits an offense if the physician accepts or agrees to accept a payment or other thing of value for securing or soliciting patronage for another physician.

(d) This section does not prohibit advertising except that which:

(1) is false, misleading, or deceptive; or

(2) advertises professional superiority or the performance of professional service in a superior manner and which is not readily subject to verification.

(e) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.156. MISREPRESENTATION REGARDING ENTITLEMENT TO PRACTICE MEDICINE. A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner, indicates that the person, partnership, trust, association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.157. DUTY TO ASSIST IN CERTAIN PROSECUTIONS. (a) The board and the board's employees shall assist the local prosecuting officers of each county in the enforcement of:

(1) state laws prohibiting the unlawful practice of medicine;

(2) this subtitle; and

(3) other matters.

(b) Except as otherwise provided by law, a prosecution is subject to the direction and control of the prosecuting officers. This subtitle does not deprive those officers of any authority vested by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.158. UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION.

(a) A person commits an offense if the person unlawfully discloses confidential information described by Section 160.006 that is possessed by the board.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.159. PRACTICING MEDICINE WITHOUT REGISTRATION. (a) A person commits an offense if the person practices medicine without complying with the registration requirements imposed by this subtitle.

(b) An offense under Subsection (a) constitutes the offense of practicing medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.160. EFFECT ON CRIMINAL PROSECUTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle or a rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 11,716 words, excluding the sections that can be excluded under Rule 9.4(i)(1), according to Microsoft Word's word count.

/s/ Marc Hearron

CERTIFICATE OF SERVICE

I certify that the foregoing brief was served on the following through electronic filing on May 12, 2025:

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