

Issues Statements Regarding Attorney General Kline's Subpoena of Medical Records

Issue: Intrusion on Physician-Patient Privilege

Enforcement of subpoenas that seek the entire medical records of nearly 90 women violates Kansas' statutory physician-patient privilege.

Kansans expect that information shared in a medical setting is communicated in confidence and will not be disclosed to third parties.

Kline is demanding that full medical records be provided to the court – records including patients' names and other identifying information, intimate details about their sexual histories, birth control practices, prior medical and personal histories, and notes of physical examinations. Whoever is selected to review the records would have full access to this information.

Without redactions of identifying information or a protective order safeguarding information, the inquisition subpoenas violate physician-patient privilege.

Issue: Violation of Patient Privacy

Enforcement of subpoenas that seek these full, unredacted medical records violates patients' privacy.

Kline's demands for patient records that include personal and identifying information infringes upon constitutional privacy protections and disregards the statutory rights of women who sought abortions expecting that their (medical records and) identities would not be disclosed to any third party not involved in their treatment.

Concerned for the privacy of their patients, the clinics requested a court order allowing the submission of the requested records without irrelevant personal information that would individually identify each patient. The Attorney General's investigation focuses on the clinics, not their patients. As a result, the Attorney General should not need access to identifying information at this time.

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Issue: Deficient Compelling State Interest and Intrusion Tests

No compelling state interest obliges/authorizes the release of entire, unredacted medical records.

The Attorney General has failed to demonstrate a compelling need for the medical records. Furthermore, the Attorney General has denied the clinics an opportunity to learn the basis for the inquisition and be given an opportunity to challenge his claims of compelling need.

However, even if this interest exists, there are less intrusive ways to meet the needs of the investigation. Given that the Attorney General is investigating the clinics, not individual patients, how can the identities of nearly 90 women be needed at this stage of the inquisition? How can a woman's method of birth control or use of medications be relevant?

Issue: Need for Protective Order

Before any records are produced, there must be a protective order in place that safeguards patients' privileges and privacy.

The records the Attorney General is demanding contain personal information wholly irrelevant to any possible inquisition – information such as women's marital status, race, employment information, and emergency contacts.

Given the sensitivity of this information and the rights at stake, a protective order that allows for the redaction of non-relevant, identifying privileged information must be entered prior to enforcement of the subpoena.