

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

No.: D-202-CV-2016-07498

JESSICA DURAN,

Plaintiff,

vs.

CURTIS BOYD, M.D. P.C. D/B/A SOUTHWESTERN
WOMEN'S OPTIONS, CURTIS W. BOYD, INDIVIDUALLY, SHELLEY SELLA,
INDIVIDUALLY AND CARMEN LANDAU, INDIVIDUALLY,

Defendants.

**COMPLAINT FOR UNFAIR TRADE PRACTICES, UNCONSCIONABLE TRADE
PRACTICES, INFORMED CONSENT, NEGLIGENCE PER SE, NEGLIGENT
SUPERVISION, INJUNCTIVE RELIEF, BREACH OF CONTRACT AND
EMOTIONAL DISTRESS**

COMES NOW the Plaintiff JESSICA DURAN, by and through her attorney of record,
Michael J. Seibel, and for her complaint states as follows:

1. Plaintiff, Jessica Duran is a resident of Bernalillo County, New Mexico.
2. Defendant, Curtis Boyd, M.D. P.C is a New Mexico Corporation doing business in Bernalillo County, Albuquerque, New Mexico as Southwestern Women's Options.
3. Defendant, Curtis W. Boyd, is a licenced physician doing business in Albuquerque, New Mexico. Upon information and belief, Curtis Boyd supervises all employees of Southwestern Women's Options.
4. Defendant, Shelley Sella, is a licenced physician doing business in Albuquerque, New Mexico. Upon information and belief, Shelley Sella is employed by Southwestern Women's Options
5. Defendant, Carmen Landau, is a licenced physician residing and doing business in Albuquerque New Mexico. Upon information and belief, Carmen Landau is an employee of

Southwestern Women's Options.

6. The events are the subject of this complaint occurred in Bernalillo County, New Mexico.

7 Curtis Boyd M.D. P.C. is a New Mexico Corporation and provides abortion services under the name Southwestern Women's Options, Curtis Boyd, M.D P.C. herein this complaint it will be referred to as "Southwestern Women's Options" within the body of this complaint.

STATEMENT OF FACTS

8. On or about October 5, 2010, Plaintiff, Jessica Duran, went to the Curtis W. Boyd, M.D., d/b/a/ Southwestern Women's Options to obtain a consultation and counseling for an abortion.

9. The Plaintiff was examined by the doctors and staff, in preparation for the possible abortion of her pregnancy.

10. Plaintiff told the doctor's and staff at Southwestern Women's Options of her history of depression and anxiety.

11. Jessica Duran was given a form for the consent for treatment and an alleged consent to donate body parts to the Curtis Boyd Clinic MD. P.C. A true and accurate copy of the consent is attached hereto as Exhibit "A".

12. The Consent for treatment and the consent to allegedly donate unborn infant baby body parts were contained within the same document.

13. The consent for treatment did not inform Plaintiff Jessica Duran that Dr. Curtis W. Boyd was a volunteer faculty member at the University of New Mexico.

14. At all times relevant, Dr. Curtis W. Boyd was a volunteer faculty member at the University of New Mexico.

15 At all times relevant, Dr. Carmen Landau was a volunteer faculty member at the University of New Mexico.

16. The consent did not contain any disclosure that Dr. Curtis Boyd and Dr. Carmen Landau were faculty members at the University of New Mexico.

17. The Congressional Select Panel on Infant Lives has been investigating Southwestern Women's Options and its relationship with the University of New Mexico.

18. On June 23, 2016, the Congressional Select Panel on Infant Lives issued a Criminal Referral to the Attorney General of the State of New Mexico for prosecution of various acts.

19. The Congressional Select panel Published the Criminal Referral of June 23, 2016 on its website.

20. The Law Firm of Jenner and Block LLP was hired by the doctors and staff at Southwestern Women's Options to defend them with regard to the Criminal Referral.

21. At all times relevant, Jessica Hertz and her law firm, Jenner and Block, LLP, were agents of Southwestern Women's Options and the Defendants.

22. According to the Congressional Select Panel on Infant Lives, the law firm of Jenner and Block issued a letter dated February 12, 2016, in Appendix "B" to her letter, Ms. Hertz stated that the University of New Mexico is the only entity to which Southwestern Women's Options donates unborn infant baby body parts (See Appendix "B" of the letter to Marsha Blackburn of February 12, 2016 attached as Attachment 26 Select Panel on Infant Lives criminal referral issued on June 23, 2016).

23. Additionally, the University of New Mexico responded to a Subpoena from the Select Panel on Infant Lives on January 29, 2016 . In its response, The University of New Mexico stated

that Southwestern Women's Options was the sole supplier of infant baby body parts to the University of New Mexico (See Response to the Select Panel on Infant lives Criminal Referral to the Attorney General attachment Number 24).

24. Plaintiff, Jessica Duran, was not informed that Southwestern Women's Options was the sole supplier of unborn infant baby body parts to the University of New Mexico.

25. The fact that Southwestern Women's Options was the sole supplier of unborn infant baby body parts was not disclosed to Jessica Duran in any written document.

26. Additionally, numerous documents in the Select Panel on Infant Lives Criminal Referral of June 23, 2015 display that Southwestern Women's Options and its doctors collaborated with the University of New Mexico regarding Fetal Tissue research since 1995.

27. On November 18, 2005, Curtis W. Boyd, on behalf of Southwestern Women's Options, issued a letter stating that he had reviewed the research protocols for the University of New Mexico and felt that the use of fetal tissue was appropriate.

28. Upon Information and belief, Curtis Boyd has issued several letters to the University of New Mexico for their fetal tissue research regarding his collaboration with the University of New Mexico.

29. Southwestern Women's Options and Curtis W. Boyd have been acknowledged in studies and thanked for their technical assistance in their published studies.

30. According to the letter of Jessica Hertz of February 12, 2016, Southwestern Women's Options purchased a freezer to store the unborn baby body parts at its facilities.

31. Southwestern Women's Options, its doctors, employees and staff were active participants in the studies with the University of New Mexico.

32. Southwestern Women's Options, its employees, doctors and staff did not inform Plaintiff,

Jessica Duran, that Southwestern Women's Options was collaborating with University of New Mexico on its fetal tissue research.

33. At all times relevant, Dr. Carmen Landau was the treating Physician of Jessica Duran at Southwestern Women's Options.

34. Upon information and belief Dr. Carmen Landau, the agents and employees of Southwestern Women's Options knew or should have known of the collaboration between the University of New Mexico and Southwestern Women's Options regarding the fetal tissue research.

35. Dr. Carmen Landau, the agents and employees of Southwestern Women's Options failed to disclose to Jessica Duran the nature and extent of how her unborn infant baby's body parts were to be used in fetal tissue research.

36. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options give Plaintiff, Jessica Duran, a fair explanation of the procedures to be followed and their purposes, including identification of any procedures which are experimental with regard to the donation of her baby's body parts to fetal tissue research as a result of the termination of the pregnancy.

37. At no time did Carmen Landau, the agents and employees of Southwestern Women's Options provide the Plaintiff, Jessica Duran, a statement that she was a participant of a research study, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

38. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide the Plaintiff, Jessica Duran, a description of any benefits to herself or to others which may reasonably be expected from the donation of her baby's body parts for fetal tissue

research.

39. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide the Plaintiff, Jessica Duran, a statement describing the extent, if any, to which confidentiality of records identifying Jessica Duran will be maintained with regards to the donation of her baby's body parts.

40. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide a statement to Jessica Duran with an explanation of whom to contact for answers to pertinent questions about the donation of her baby's body parts and whom to contact in the event of an injury to herself in relation to the donation of her baby's body parts.

41. At no time did Carmen Landau, the agents and employees of Southwestern Women's Options provide a statement that the donation of fetal tissue was voluntary and Jessica Duran's refusal to participate will involve no penalty or loss of benefits to which Jessica Duran was otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits.

42. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide Jessica Duran a description of any attendant discomforts and risks reasonably to be expected as a result of the donation of fetal tissue.

43. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide Jessica Duran a description of any attendant discomforts and risks reasonably to be expected as a result of the donation of her baby's body parts.

44. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options disclose any appropriate alternative procedures that might be advantageous for the Plaintiff, Jessica Duran, when she was donating her baby's body parts for fetal tissue research.

45. At no time did Carmen Landau, the agents and employees of Southwestern Women's

Options provide an instruction that Plaintiff, Jessica Duran, that she was free to withdraw her consent and to discontinue the donation of body parts.

46. At no time did Carmen Landau, the Agents or employees of Southwestern Women's Options inform Jessica Duran she was free to withdraw her consent to donate infant baby body parts.

47. At no time did Dr. Carmen Landau, the agents and employees of Southwestern Women's Options provide a consent to donate her baby's body parts that was separate and distinct from the consent for the termination of the pregnancy.

48. The custom and practice in the medical community is to provide a separate consent form for the donation of body parts.

49. On October 5, 2012, Carmen Landau did gestational dating and performed an ultrasound on Jessica Duran.

50. As of October 5, 2012 Dr. Carmen Landau and the staff estimated the approximate gestational age of Jessica Duran's baby at 12 weeks 2 days.

51. On October 10, 2012, Dr. Carmen Landau estimated the age of Jessica's baby at 13 weeks 3 days.

52. According to the procurement notes, attached as exhibit 28 to the Congressional Select Panel on Infant Lives Criminal Referral, The University of New Mexico picked up two specimens on October 17, 2012. Specifically two samples were picked up, a 11.5 week old baby and a 12.7 week old unborn baby were provided to the University of New Mexico.

53. Both unborn babies were in the approximate gestational age range of Jessica's baby.

54. Plaintiff, Jessica Duran, has requested her medical records from the Defendants.

55. The medical records delivered to Plaintiff, Jessica Duran, were different than the medical records provided by Defendants to her attorney.

56. On December 2, 2015, Plaintiff's attorney included a letter from the Plaintiff specifically requesting the disposition of her baby's body parts.

57. Plaintiff received a portion of the medical records but did not receive records regarding the disposition of her baby's body parts.

58. Defendants should have copies of all the medical records of the Plaintiff, Jessica Duran, including the disposition of her baby's body parts.

59. Without any documentation as to the disposition of the babies body parts, and the correlation between the University of New Mexico's pickup of babies of the same approximate gestational age. Jessica Duran reasonably believes her baby's body parts were donated to the University of New Mexico for fetal tissue research.

60. As a result of the actions of the Defendants, Jessica Duran has sustained a loss of money and property and sustained extreme mental anguish and emotional distress which she should be compensated for at trial.

61. Included within the medical records was a signed statement by Dr. Shelley Sella regarding the medicaid eligibility of Jessica Duran for the abortion.

62. Upon information and belief the Plaintiff was not medically treated by Shelley Sella.

63. Upon information and belief Dr. Shelley Sella was supervising Dr. Carmen Landau.

64. Despite not having personal first hand knowledge of the treatment of Jessica Duran, Shelley Sella made affirmative statements regarding the medical condition of Jessica Duran.

COUNT I. UNFAIR TRADE PRACTICES

65. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 64 as if set fourth fully again herein.

66. New Mexico has a Statute which defines unfair trade practices, in part, as follows:.

D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Practices Act [57-12-1 NMSA 1978], a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes:

- (1) representing goods or services as those of another when the goods or services are not the goods or services of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;
-
- (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

67. Defendant, Curtis Boyd M.D. Clinic, its agents and employees have engaged in unfair trade practices by:

(A) Failing to inform the Plaintiff that Curtis W. Boyd M.D. P.C. is in active collaboration with the University of New Mexico and that its staff members are voluntary professors at the University of New Mexico.

(B) Failing to inform the Plaintiff that Dr. Curtis Boyd is the provider of infant unborn body parts to the University of New Mexico.

(C) Failing to Inform the Plaintiff of a fair explanation of the procedures to be followed and their purposes, including identification of any procedures which are experimental with regard to the parts donated for fetal tissue research

(D) Failing to inform the Plaintiff of a description of any attendant discomforts and risks reasonably to be expected as a result of the donation of unborn infant body parts.

(E) Failure to inform the Plaintiff of a description of any benefits reasonably to be expected of the donation of the unborn infant body parts.

(F) Failure to inform the Plaintiff of a disclosure of any appropriate alternative procedures that might be advantageous for the subject in donating the unborn infant body parts.

(G) Failing to offer to answer any inquiries concerning the procedure associated with regard to the unborn infant baby parts donated by Jessica Duran

(H) Failing to inform the Plaintiff of an instruction that she was free to withdraw her consent and to discontinue participation in the project or activity at any time without prejudice.

(I) Failing to inform the Plaintiff of how the unborn infant body parts were going to be used.

(J) Failing to give the Plaintiff informed consent Under 45 C.F.R 46.

(K) Failing to give the Plaintiff informed consent under New Mexico Law

(L) Failing to provide a clear conspicuous informed consent to donate unborn infant body parts separate from the consent to receive treatment as required by the Federal Regulations and industry standards.

68. As a result of the acts of Defendant, Curtis W. Boyd Clinic MD PC, Jessica Duran has sustained damages in loss of property, emotional distress, mental anguish, consequential damages and other damages to be proven at trial.

69. Pursuant to 57-12-1 *et seq.* Jessica Duran is entitled to attorneys fees.

70. Pursuant to 57-12-1 *et seq.* Jessica Duran is entitled to treble damages.

COUNT II. UNCONSCIONABLE TRADE PRACTICES

71. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 70 as if set forth again herein.

72. "Unconscionable Trade Practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or

services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid.

73. Jessica Duran, at the time of the abortion, did not have the financial means to pay for the abortion.

74. Jessica Duran, at the time of the abortion, had limited experience and didn't know she was donating her unborn infant babies parts for medical research.

75. Jessica Duran did not have the capacity to fully understand the consent agreement.

76. The Defendants failed to give her proper informed consent to donate unborn infant baby body parts when they asked for informed consent to donate her baby's body parts.

77. The actions of the Defendants took advantage of the lack of knowledge, ability and capacity of Jessica Duran to an unfair degree.

78. Jessica Duran has sustained damages.

79. Jessica Duran is entitled to attorney's fees pursuant to The Unfair Trade Practices Act.

80. Jessica Duran is entitled to treble damages pursuant to the Unfair Trade Practices Act.

COUNT III. INFORMED CONSENT

81. The Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 80 of the complaint as if set forth again fully herein.

82. The decision to undergo an abortion is a decision that is subject to a variety of material, emotional, spiritual, relational, financial and physical factors.

83. In order to have the freedom to make the best possible decision, a woman contemplating

the decisions about her pregnancy should be able to consider all material facts that may affect her decision.

84. Defendants, Southwestern Women's Options, Dr. Curtis W. Boyd, Dr. Carmen Landau, and Dr. Shelley Sella have a duty to inform the patient of all material facts that may affect the person's decision to engage their services, including the disposition of tissue and parts..

85. Defendants, Southwestern Women's Options, Dr. Curtis W. Boyd, Dr. Carmen Landau, and Dr. Shelley Sella when seeking a patient's consent for a medical procedure, in order to satisfy his fiduciary duty and to obtain the patient's informed consent, they must disclose personal interests unrelated to the patient's health, whether research, financial, economic or personal interest, that may effect her medical judgment.

86. Defendants have been actively engaged in corroborating with the University of New Mexico on research using unborn baby body parts.

87. Defendants knew that they were the sole baby body part providers for the medical research conducted at the University of New Mexico

88. In numerous letters, Dr. Curtis W. Boyd acknowledged that he had reviewed the protocols for the researchers at the University of New Mexico.

89. Defendants, Southwestern Women's Options and Dr. Curtis W. Boyd, participated in giving technical assistance for research studies.

90. At all times relevant, Defendants knew that the unborn infant body parts were being used for medical research.

91. Defendants, Southwestern Women's Options, Curtis W. Boyd, Shelley Sella and Carmen Landau breached their duty of providing informed consent by failing to disclose the following information to Jessica Duran and others who engaged their services

(A). Failing to disclose their collaboration with the University of New Mexico in research projects for the last 20 years.

(B). Failing to disclose the faculty status of Dr. Curtis W. Boyd and Dr Carmen Landau.

(C). Failing to inform Jessica Duran that Defendants were providing unborn infant body parts to the University of New Mexico and participating in the University of New Mexico's research study by providing technical assistance.

(D). Failing to Inform the Plaintiff of a fair explanation of the procedures to be followed and their purposes, including identification of any procedures which are experimental with regard to the unborn infant body parts donated for fetal tissue research

(E) failing to inform the Plaintiff of a description of any attendant discomforts and risks reasonably to be expected as a result of the donation of unborn infant body parts.

(F) failure to inform the Plaintiff of a description of any benefits reasonably to be expected of the donation of the unborn infant body parts.

(G) Failure to inform the plaintiff of a disclosure of any appropriate alternative procedures that might be advantageous for the subject in donating the unborn infant body parts .

(H) Failing to an offer to answer any inquiries concerning the procedure associated with regard to the unborn infant body parts donated by Jessica Duran

(I) Failing to inform the plaintiff of an instruction she was free to withdraw her consent and to discontinue participation in the project or activity at any time without prejudice.

(J) Failing to inform the Plaintiff of how the unborn infant body parts were going to be used.

(K) Failing to give the plaintiff informed consent Under 45 C.F.R 46.

(L) Failing to comply with the provisions of the Maternal, Fetal and Infant Experimentation Act Section 24-9A-1 et seq.NMSA (1978).

(M) Failing to provide a clear conspicuous informed consent to donate unborn infant body parts separate from the consent to receive treatment as required by the Federal Regulations and industry standards.

92. As a direct and proximate cause of the failure Defendants to provide proper informed Consent the Plaintiff, Jessica Duran, has incurred damages, emotional distress and mental anguish to be proven at the time of trial.

93. Upon information and belief the Defendants have failed to provide the proper informed consent for hundreds of women dating back to 1995 when they first started corroborating with the University of New Mexico. The Defendants blatant violation of State Statutes, Federal laws, and the rights of the Plaintiff, Jessica Duran, is wilful, wanton, and reckless. Such conduct requires the imposition of punitive damages.

**COUNT IV. NEGLIGENCE PER SE MATERNAL FETAL AND INFANT
EXPERIMENTATION ACT**

94. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 93 as if set forth again fully herein.

95. The New Mexico Statute enacted a Maternal, Fetal and Infant Experimentation Act 24-9A-1 to 24-9A-7 (NMSA 1978) for the protection of pregnant women, fetus and live born infants.

96. The Statute provides a standard of conduct for which all people partitipating in clinical research must follow.

97. The statute is to be construed liberally.

98. The Defendants, Southwestern Women's Options, Carmen Landua, Shelley Sella and Curtis Boyd have been corroborating, providing technical assistance for research and assisting in the clinical research with the University of New Mexico since 1995.

99. Defendants violated the above mentioned Statute by participating in the research also having full participation of Jessica Duran's timing method and procedures used to determine the pregnancy.

100. Defendants violated 24-9A-5(C) by failing to give the proper informed consent to Jessica Duran when she allegedly donated the baby for medical research.

101. The informed consent provided to Jessica Duran to allegedly donate tissue was invalid as she was not provided the proper disclosures under 24-9A-5 (C) (1 through 6) (NMSA 1978).

102. Plaintiff, Jessica Duran, is in the class of persons sought to be protected by the statute.

103. The act was intended to prevent severe physical and psychological harm to persons such as Plaintiff, Jessica Duran.

104. As a direct and proximate cause of Defendants violations of the Maternal, Fetal and Infant Experimentation Act, Plaintiff, Jessica Duran, has suffered emotional distress and mental anguish and other damages to be proven at trial.

105. The Defendants, Southwestern Women's Options, Curtis W. Boyd, Shelley Sella and Carmen Landau are liable under a theory of negligence per se as a matter of law.

106. Plaintiff, Jessica Duran, is entitled to equitable tolling of the Statute of Limitations as it was previously not public knowledge that Defendants were the supplier of unborn infant baby body parts to the University of New Mexico.

107. The acts of Southwestern Women's Options, Curtis Boyd, Shelley Sella and Carmen Landau were so wilful, wanton and reckless and done without any concern for the rights of the Plaintiff or any other woman allegedly donating body parts that the imposition of punitive damages is required.

V. NEGLIGENT SUPERVISION

108. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through

107 as if fully set forth again herein.

109. According to the letter from Jessica Hertz to the Select Panel on Infant Lives, Curtis W. Boyd trains all physicians regarding the laws, develops medical protocol and supervises all physicians at Southwestern Women's Options.

110. Shelley Sella signed Jessica Duran's medicaid eligibility form and upon information and belief, Shelley Sella was the physician in charge of Jessica Duran's treatment.

111. Upon information and belief, Shelley Sella had a duty to supervise Carmen Landau when she performed services for Jessica Duran.

112. Both Curtis Boyd and Shelley Sella had a duty to ensure that Carmen Landau and the employees of Southwestern Women's Options complied with the New Mexico Maternal, Fetal and Infant Experimentation Act, complied with the standards in the industry, complied with 45 CFR 46 and gave the proper informed consent to Plaintiff Jessica Duran.

113. Curtis Boyd and Shelley Sella were negligent in their supervision of Dr. Carmen Landau as she violated the Maternal, Fetal and Infant Experimentation Act, failed to comply with Federal laws, and failed to give the proper informed consent to the Plaintiff, Jessica Duran.

114. Curtis Boyd and Shelley Sella breached the duty of care they had to Jessica Duran.

115. As a direct and proximate cause of Curtis W. Boyd and Shelley Sella's failure to adequately train and supervise Dr. Carmen Landau, Jessica Duran has sustained damages, emotional distress and mental anguish.

116. The acts of Curtis Boyd and Shelley Sella were so wilful, wanton and reckless that they require the imposition of punitive damages

VI. INJUNCTIVE RELIEF

117. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through

116 as if set forth again fully herein.

118. Pursuant to 57-12-10 (N.M.S.A. 1978) a person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable.

119. Southwestern Women's Options has engaged in a pattern and practice of withholding material facts and proper informed consent to women since 1995.

120. Defendants have engaged in unconscionable trade practices as stated above.

121. If Defendants are allowed to continue these practices severe physical and psychological harm could come to women seeking care from the Defendants.

122. Jessica Duran is entitled to an injunction restraining Curtis W. Boyd, Shelley Sella, Carmen Landau and Southwestern Women's Options for seeking the donation of unborn baby infant body parts until the Defendants can comply with 45 CFR 46.117, complying with all provisions of the Maternal, Fetal and Infant Experimentation Act, disclosing to women who wish to donate how the unborn infant baby body parts will be used and for what purpose, and providing a complete disclosure of all personal and financial interests that Defendants may have with the University of New Mexico and other institutions that seek to procure the body parts from the clinic.

123. Jessica Duran is entitled to her attorney's fees in bringing this action pursuant to the New Mexico Unfair Trade Practices Act.

COUNT VII. BREACH OF CONTRACT

124. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 123 as if set forth again fully herein.

125. The contract between Curtis Boyd and Jessica Duran specifically stated that "I UNDERSTAND THAT WHEN POSSIBLE I MAY BE TREATED FOR ANY RESULTING

COMPLICATIONS WHEN POSSIBLE AT DR. CURTIS BOYD'S OFFICE AT NO CHARGE TO ME.

126. Emotional distress was listed as a complication of the termination of the pregnancy in the contract.

127. Jessica Duran has sustained emotional distress as a result of the termination of pregnancy procedure performed by the Curtis Boyd MD P.C. d/b/a Southwestern Women's Options.

128. Jessica Duran has reported the complication to the Curtis Boyd MD P.C. d/b/a Southwestern Women's Options.

129. The Defendants did not offer to treat this complication as they agreed to in the contract.

130. The contract is ambiguous and all inferences must be construed against the drafter of the contract.

131. The drafter of the contract was Southwestern Women's Options.

132. The Defendant has breached the terms of its contract.

133. As a result of the breach of the contract, Jessica Duran has sustained damages.

134. The conduct of the Defendants that it requires the imposition of punitive damages.

COUNT VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

135. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 134 of the complaint as if set forth again full herein.

136. Plaintiff, Jessica Duran, has a right to freedom from severe emotional distress.

137. The failure of the Defendant to follow Federal, State and local laws regarding informed consent was extreme and outrageous.

138. The failure to adequately inform Jessica Duran of the donation of the unborn infant body parts to the University of New Mexico was extreme and outrageous.

139. The failure to secure the consent to donate unborn infant baby body parts from Jessica Duran in a separate consent from the consent to treat, was extreme and outrageous in light of industry standards.

140. The Defendants failure to follow the New Mexico Maternal, Infant and Fetal Experimentation Act was extreme and outrageous.

141. The Defendants have acted wilfully and recklessly in failing to follow State laws, Federal laws and industry standards in giving Jessica Duran proper informed consent is so willful, wanton, and reckless.

142. As a result of the conduct of the Defendants, Jessica Duran has suffered and continues to suffer severe emotional distress and mental anguish.

143. The acts of the Defendants are so willful, wanton, and reckless they require the imposition of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants for the following amounts:

- A. For damages to be proven at trial;
- B. For damages for emotional distress and mental anguish;
- C. For treble damages under the New Mexico Unfair Trade Practices Act;
- D. For reasonable costs and attorneys fees;
- E. For an injunction against Southwest Women's Options to prevent them for seeking the donation of Fetal Tissue until they comply with the Maternal, Fetal and Infant Experimentation Act, provide proper informed consent, and comply with all State and Federal Laws regarding fetal tissue research, and to disclose their personal and financial interests to all potential patients..

F. For Punitive damages against all Defendants.

G. For such other and further relief is as deemed just and proper.

H. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

MICHAEL J. SEIBEL & ASSOCIATES

By: /s/Michael J. Seibel
Michael J. Seibel
Attorney for Plaintiff
P.O. Box 14066
Albuquerque, NM 87191-4066
(505) 275-1700

NM ALLIANCE FOR LIFE

**INFORMED CONSENT FOR
PREGNANCY TERMINATION TREATMENT, ANESTHETIC, AND
OTHER MEDICAL SERVICES**

Name of client Jessica Duran

Address 10400 UNIVERGE Blvd. NW #1413 Albuquerque, NM 87114

Birth Date 12/7/90

Date ~~10/5/12~~ 10/10/12 AD

I, Jessica Duran request and consent to the performance upon me of a pregnancy termination procedure by vacuum aspiration or standard dilation and evacuation at Dr. Curtis Boyd's office by any of the physicians employed by Curtis Boyd, M.D., P.C.

I further consent to the taking of cultures and performance of reasonably indicated tests and procedures, whether or not relating to presently known conditions, if my medical provider finds these necessary or advisable in the course of evaluation or treatment for pregnancy termination or management of complications.

I have fully and completely disclosed my medical history, including allergies, medical conditions, prior medications, over the counter or other drugs taken, and reactions I have had to anesthetics, medicines, or drugs. I consent to my physicians relying on this disclosure as complete.

I consent that the physician or medical staff may administer such anesthesia and medications as deemed necessary or advisable (including a medication called misoprostol given to prevent bleeding and enhance safety, which has been associated with birth defects), with the exception of *(list any medications which you do not want or are allergic to):*

NRDA

I understand that local and IV anesthetics do not always eliminate all pain, that in a small number of cases, those anesthetics cause severe reactions or even shock or death, and that no guarantee to the contrary has been made to me. I further understand that any anesthetic will affect my level of consciousness and may, in a small number of cases, cause bodily reactions or complications requiring additional measures and treatment. I understand that the affect on my level of consciousness will impair my ability to make important decisions or operate machinery; I agree to not drive for a period of 30 minutes - 24 hours postoperatively depending on medications given to me. I request and consent to local and/or IV anesthetics.

I understand that the gestation of my pregnancy is determined through multiple methods that may include a urine test, the first date of my last normal menstrual period, and ultrasound measurements taken here in the clinic. Based on these findings, I consent to treatment deemed appropriate by the physician(s) of the Curtis Boyd Clinic, M.D., P.C.

I fully understand that the purpose is to terminate this pregnancy, and I affirm this to be my personal choice in light of the alternative of continuing the pregnancy to term. No one has coerced or compelled me to make this decision.

I understand that tissue and parts will be removed during the procedure, and I consent to their examination and their use in medical research and their disposal by the clinic and/or physician in the manner they deem appropriate.

I understand that the complications associated with early pregnancy termination are generally much less severe and less frequent than with childbirth. Nonetheless, I realize, as is true of childbirth and any kind of surgery, that there are inherent risks of minor and major complications and death which may occur without the fault of the physician.

No guarantee or assurance has been made to me as to the results that may be obtained. The risk of terminating a pregnancy gradually increases throughout the course of the pregnancy. These comparative risks become approximately equal at 16 - 18 weeks of pregnancy and increase so that pregnancy termination at 18 weeks and above involves a greater risk than carrying the pregnancy to term.

Southwestern Women's Options Clinic 000003

Exhibit A

The risks and possible complications of pregnancy termination procedures most likely to occur, though only in a small number of cases, include the following:

Perforation: An instrument used in the procedure may go through the wall of the uterus. If this happens, hospitalization may be necessary for repair and/or observation of the perforation and any internal injuries and/or completion of the abortion.

Laceration: In rare cases, the cervical opening and/or cervical canal may be torn. A few stitches to repair the tear are usually all that is necessary. However, this complication can cause severe bleeding and require hospitalization.

Bleeding: This may require an immediate repeat of the abortion procedure, or hospitalization for observation and treatment. If the excessive bleeding occurs some hours or days after the abortion, hospitalization may be necessary, and dilation and curettage may need to be done to remove material retained in the uterus.

Infections: Infections usually respond to antibiotics, but in a few cases, hospitalization is necessary.

Failure to Terminate Pregnancy: (i.e. The procedure fails to end the pregnancy): It is this possibility, among others, that makes a post-operative examination essential. In such a case, another procedure must be performed, since the first one may have affected normal development of the pregnancy.

Tubal Pregnancy: A tubal pregnancy occurs when the fertilized egg implants in the fallopian tube instead of in the uterus. If this condition is unchecked, the fetus develops in the tube until it is large enough to burst the tube. Although the chances of a tubal pregnancy are small, the risk of death from a ruptured tubal pregnancy is very great. This procedure cannot terminate a tubal pregnancy. I understand that this is a preexisting medical condition for which Curtis Boyd's office assumes no medical or financial responsibility.

Hysterectomy (i.e. removal of the uterus): I understand that as a result of certain conditions or some complications (such as perforating, bleeding, or severe infection) a hysterectomy may be necessary.

Pulmonary (Lung) Embolism: (i.e. Blood clot or amniotic fluid clot that may go to the lungs and cause difficulty breathing;) It may require transport to a hospital for evaluation and treatment.

Infertility Although rare, infertility may result from certain complications (such as infection) that remain untreated.

Unintended expulsion: When dilators are inserted and/or Misoprostol is used, the intent is to perform a D&C (suction curettage) or a standard D&E procedure. On rare occasions, unintended expulsion of products of conception may occur.

Emotional Distress: Individual women cope differently with pregnancy termination; most patients go through the process with minimal emotional effects, but in some cases professional help is required. I release the attending physicians and staff from any liability or responsibility for any condition that may result from this procedure, including but not limited to short range or long term psychological effects resulting from my decision to have this procedure.

I understand that my physician and/or counselor will answer any questions or concerns I have, and I will ask such questions before leaving the clinic. If I have concerns or complications after leaving, I agree to call the office of Curtis Boyd, M.D., P.C. immediately. I also agree to have an examination and pregnancy test in two (2) weeks after the abortion, in order to rule out a continued pregnancy or the existence of other problems.

I UNDERSTAND THAT, WHEN POSSIBLE, I MAY BE TREATED FOR ANY RESULTING COMPLICATIONS AT DR. CURTIS BOYD'S OFFICE, AT NO CHARGE TO ME; HOWEVER, SHOULD HOSPITALIZATION BE NECESSARY, I UNDERSTAND THAT I WILL BE RESPONSIBLE FOR ANY CHARGES.

I further understand that the medical practice of my physician(s) at Curtis Boyd, M.D., P.C. is to be judged according to those standards reasonably acceptable to other physicians practicing in similar facilities in the United States.

I certify that I have read, had explained to me, and fully understand the above informed consent, and that I agree, in light of the consent, to the pregnancy termination procedure I have requested.

Date 10/10/12 Signature of Client [Signature]
Provider [Signature] Witness - Staff Person [Signature]
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