



Texas Medical Board
P.O. Box 2018, MC-263, Austin, Texas 78768-2018
Phone: (512) 305-7100 FAX: (512) 305-7123

COMPLAINT FORM

COMPLAINT REGISTERED AGAINST:

Name of Practitioner: Dr. Paul Fine, Medical Director, Supervising Physician
Address: 4600 Gulf Freeway / 4112 East 29th Street
City, State: Houston, TX 77023 / Bryan, TX 77802
Business phone number: (713) 522-3976 / (979) 846-1744

Dr. Paul Fine is the Medical Director of the Planned Parenthood Gulf Coast (formerly Planned Parenthood of Houston and Southeast Texas and Planned Parenthood of Southeast Texas Surgical and Comprehensive Health Services). As the Medical Director, Dr. Fine served as the medical consultant, who under state law is "responsible for implementing and enforcing the clinical policies of the facility; and supervising all medical services provided at the facility, such as medical, nursing, clinical, laboratory, and information/education services." 25 TAC § 139.42. The facility in Bryan closed on August 1, 2013. The facility in Houston remains open.

PERSON REGISTERING COMPLAINT:

Name: Abby Johnson
Address: P.O. Box 2571
City, State, Zip code: Round Rock, TX 78680
Home Phone: (979) 219-8777
Business Phone: (512) 520-9382
E-mail: abbkp@hotmail.com

I was affiliated with the Planned Parenthood facility in Bryan, TX, which was under the supervision of Dr. Paul Fine, for eight years beginning in 2001 and ending in October 2009. I served as a volunteer for two years, until I became a campus intern. A couple years later, I began working at the facility, counseling patients, and giving talks on safe sex at high schools. In 2006, I became the community services director, and on September 1, 2007, I was hired as the facility's health center director. As the health center director, my duties included running the family planning and abortion programs. In that capacity, I became very familiar with the inner-workings, security procedures, business plans, and protocol of Planned Parenthood. I am thoroughly knowledgeable of the inner-workings of the Bryan/College Station facility, but I also had personal interactions with the larger Houston office, including my boss, the regional director, Dyann Santos. During my time with Planned Parenthood, I interacted with thousands of Planned Parenthood patients and many employees. While not a part of my typical job duties, in September 2009, I even had the opportunity to assist as a surgical abortion procedure was performed.



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I was awarded my facility's "Employee of the Year" title in 2008. I left my position at Planned Parenthood in October of 2009 on good terms and without any pressure from my employer to do so. While Planned Parenthood alleged I had taken confidential records from the facility, their request for a restraining order was dismissed because there was no evidence I had taken any confidential information. The lawsuit, styled *Planned Parenthood of Houston and Southeast Texas v. Johnson*, was dismissed by the Brazos County District Court, 85th Judicial District on November 17, 2009.

PATIENT/PERSON HARMED BY THE PRACTITIONER:

Name: Multiple Patients
Date of Birth (mm/dd/yyyy): N/A

DETAILS OF COMPLAINT:

- 1. Describe your complaint in detail and the events that led to your complaint. Include dates and location of treatment, medications prescribed. You may use additional paper and/or provide other documents to clarify the information given.**

Dr. Fine pre-signed prescription forms for controlled substances.

Between 2005 and 2009, Dr. Fine pre-signed hundreds of prescription forms for controlled substances used at our office, which either the Nurse Practitioner (Stephanie Shetler) or the RN (Adele Vorse) would finish filling out for Tylenol 3 and other controlled substances. Dr. Fine had not given either of these employees prescriptive authority; nor had he examined the patients being given these controlled substance prescriptions. Every medication abortion patient received a controlled substance prescription for pain medication. The prescription forms did not contain the patient name or any other information when he signed them. During my time at Planned Parenthood, there were always two signed prescription pads available for use.

Dr. Fine prescribed drugs for clients no employee had ever examined.

On multiple occasions, a patient who came in for STD treatment would describe multiple partners who may also be infected. Employees would give these patients multiple doses of the STD treatment for the patient to take home and give to their partners, without those partners ever having been seen or examined by a physician or other Planned Parenthood employee. Several times, we received calls from people we had never had in our facility who were having an allergic reaction to a drug we had sent home with a partner.



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Dr. Fine did not properly supervise his employees.

During my time as the health center director, Dr. Fine never came into our facility. Dr. Fine supervised 10 facilities, which were located in Bryan, Houston, Lufkin, Stafford, Rosenberg, Dickinson, and Huntsville. His residence and primary practice were in Dickinson, which is 130 miles from Bryan. Often times, he was out of the country, either in Mexico or Europe. All interactions I or my staff had with Dr. Fine were through electronic means or by traveling to Houston. No physician regularly supervised the nurse practitioners or other staff at Planned Parenthood-Bryan. Dr. Fine did not have an advanced practice nurse delegation agreement with any employees at Planned Parenthood-Bryan.

We would often go several weeks without having any physician present in our office. The physicians who would perform abortions were scheduled to come in once every two weeks, but often times, these contracted doctors would have to miss several weeks. While I was the health center director, there was at least one three-month span of time during which my facility did not have a doctor to come in at all, and during which time none of our contracted doctors were paid.

Between 2007 and 2009, I was the person at the facility responsible for reviewing files. I have no medical or nursing training.

Dr. Fine falsely documented forms.

At Planned Parenthood-Bryan, Dr. Fine would falsely authenticate Mifeprex Patient Agreement forms, claiming "[t]he patient signed the PATIENT AGREEMENT in my presence after I counseled her and answered all her questions. I have given her the Medication Guide for mifepristone." But Dr. Fine was never actually present; nor did he obtain informed consent, counsel the patient, or answer any patient questions. Untrained, non-medical personnel discussed the form with the patient. The Patient Agreement can be found here:

<http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM111332.pdf>.

For medication abortion on minors, Dr. Fine would sign the TMB promulgated consent form well after the abortion had taken place. That consent form can be found here: <http://info.sos.state.tx.us/fids/200605029-1.pdf>.

Every couple of weeks, either I or another employee would gather the files that needed to be signed and deliver them to Dr. Fine in Houston. After Dr. Fine back-dated and signed the records, we would bring them back to the facility in Bryan.



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Dr. Fine provided anesthesia services at a substandard level.

At Planned Parenthood-Bryan, every woman who undergoes a surgical abortion received anesthesia/sedation. Patients were given a combination of Fentanyl and Versed administered through an IV. Dr. Fine failed to ensure that the standard of care was met for these patients. First, Dr. Fine did not employ a “qualified anesthesia provider.” There was no anesthesiologist, CRNA, or anyone trained in anesthesiology to perform a pre-anesthesia exam at either the Bryan or Houston Planned Parenthood centers. An LVN (Sherry Smith) who did not meet the criteria of 25 TAC 139.59 would administer the conscious sedation medications.

Neither the physician performing the surgical abortion nor the person administering the anesthesia examined the patient immediately prior to surgery. Following the surgical abortion, the operating physician routinely left as soon as the abortions for the day were performed, without examining patients prior to their discharge, and without remaining within 30 minutes of the facility in order to deal with any complications that could arise from the procedure and anesthesia.

The requirement that the anesthesiologist or operating physician be available until his or her patients have been discharged was never followed as required by 25 TAC 139.59(f). There was never a physician on call and available to respond within 30 minutes until all of the facility’s patients had been discharged as required by 25 TAC 139.59(i).

Dr. Fine misused government funding.

Under Dr. Fine’s supervision, the Planned Parenthood of Bryan fraudulently billed the Medicaid Women’s Health Program (WHP) thousands of times for procedures the funding was not allocated.

Both Planned Parenthood of Houston and Southeast Texas and Planned Parenthood-Bryan received federal and state funds for women’s health services under several programs: Title X, XX, XIX, and the Breast Cancer and Cervical Cancer screening program (BCCS).

While Title V, X, and XX funds are block grants, Title XIX and WHP reimbursement are unlimited sources of Medicaid entitlement. Any eligible individual visiting a Medicaid provider must be given services. Federal and Texas state law required that WHP reimbursement only be used for office visits which include contraceptive management. Once Planned Parenthood had used up their allotted grants, they would begin to fraudulently bill the government to WHP. In order to circumvent the restrictions placed on these unlimited funding sources, Planned Parenthood trained unlicensed employees, including myself, to



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diagnose/treat women for eligible services, but also bootstrap additional services and treatments that were not performed or medically necessary under the Medicaid programs and have it paid for through the unlimited WHP funding.

For example, a woman would come in for STD testing, but we would note in the patient's file that we "discussed birth control," and then charge the WHP. Planned Parenthood could only be reimbursed for one family planning visit per fiscal year per patient. To get around this, we would bill for second visits as "patient follow-up." Between January 1, 2007 and October 6, 2009, Planned Parenthood-Bryan fraudulently billed for at least 650 clients and 3,900 procedures.

I believe this was also in violation of Texas Penal Code § 35A.02 Medicaid Fraud (a)(1). The law states it is an offense for any person who "knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized." Please see attached document detailing Medicaid fraud. This document is a complaint I filed in federal district court in Houston. The complaint details the false claims Planned Parenthood Gulf Coast (formerly known as Planned Parenthood of Houston and Southeast Texas) presented under the WHP, and their wrongful retention of such improperly granted funds.

Dr. Fine performed medication abortions below the standard of care and likely violated HIPAA.

Dr. Fine always delegated the performance of medication abortions to non-physicians. Medication abortions are done with a two-pill regimen that causes an abortion. The first pill, mifepristone ("Mifeprex") causes the woman to have a miscarriage. The second pill, misoprostol, causes the uterus to contract, expelling the pregnancy. Together, these pills are called the RU-486 regimen. Facility staff would administer the RU-486 regimen. Dr. Fine was never on site when RU-486 was administered. In fact, Dr. Fine was frequently out of the country.

In order to obtain permission for a medication abortion, a nurse would perform a pelvic exam on the woman and take an ultrasound. This ultrasound would be emailed to Dr. Fine's mobile phone. Dr. Fine would email back from his phone that the patient was "okay" for a medication abortion. I am not aware that these emails containing protected health information were sent in encrypted form. Dr. Fine likely violated state and federal patient privacy laws by this practice (Texas Medical Records Privacy Act, Chapter 181, Health and Safety Code and HIPAA).

Dr. Fine was never on site to be able to sign the required paperwork. His signature was obtained after the medication abortion and fraudulently backdated by him.



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Dr. Fine or any other physician was generally not on site to be able “to provide surgical intervention or provide for the patient to receive surgical abortion if necessary,” as required by 25 TAC 139.53(b)(3)(3).

The FDA-approved protocol for RU-486 abortions was never followed. The FDA has only approved RU-486 for abortions up to 49 days of pregnancy, but Dr. Fine would prescribe RU-486 (remotely) for women up to 63 days of gestation. Women would still have to sign the FDA’s Patient Agreement stating they were “no more than 49 days (7 weeks) pregnant.” The Patient Agreement can be found here: <http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM111332.pdf>.

Further, the FDA requires that women return to the physician’s office to receive the second medication in the RU-486 regimen. Dr. Fine would have staff give patients the second dose to take home with them to ingest on their own, without medical supervision. Dr. Fine would not even have his staff provide the patient with a medication guide. The medication guide can be found here: <http://www.fda.gov/downloads/Drugs/DrugSafety/UCM088643.pdf>.

Taken together, Planned Parenthood’s standard practices for the prescription and administration of RU-486 constituted a breach of medical ethics and the standard of care. They ignored the suggested course of treatment set forth by the FDA, violated the Prescriber’s Agreement with the drug’s manufacturer, and left women alone to face the stages in a medication abortion that should be supervised by a physician.

FDA regulations require Medication Guides to be distributed with certain prescription drugs that require labeling in order to prevent “serious adverse effects,” or where sufficient risk exists, relative to benefits, that the required information may affect a person’s decision to use the drug, or where a person’s adherence to directions for use is crucial for the drug’s effectiveness. 28 C.F.R. § 208.1(c).

The prescriber’s agreement with Danco, the Mifeprex manufacturer, states that the physician must provide the Medication Guide and give the woman the chance to read it, that he must explain it, and get her approval and signature. Danco also requires a follow-up visit, to take place 14 days after the first appointment. The prescriber’s agreement can be found here: <http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm111364.pdf>.

Dr. Fine did not ensure adherence to basic patient safety standards.

After performing surgical abortions, the physician who performed the surgical abortion would leave the facility and would routinely be more than 30 minutes away before all his patients had been discharged.



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The physicians who practiced at the facility did not have admitting privileges or a working arrangement with a physician who did have admitting privileges at a local hospital in order to ensure the necessary backup for medical complications, as required by 25 TAC 139.56. For medical abortions, the discharge instructions the staff gave to patients only had the number to the Planned Parenthood facility where the abortion was performed. This phone number was not a number the patient could call to contact someone on a 24-hour basis. There was no on-call physician listed. This is because these Planned Parenthood centers did not have a contractual relationship with any outside physicians. I saw this at both the Bryan and Houston Planned Parenthood centers. The physicians' conduct fell far below the standard of care for post-surgery care.

Dr. Fine did not ensure informed consent for surgical or medical abortions.

Dr. Fine and physicians under his supervision performed abortions without ensuring the informed consent of their patients.

The Texas Woman's Right to Know Act (Sec. 171.012, Health and Safety Code) requires that the performing or referring physician give women certain information 24 hours prior to obtaining their consent to an abortion. Planned Parenthood failed to meet this requirement by having the staff forward women to a pre-recorded message by a physician, one who was often not the performing or actual referring physician. The missing information included the physician's name (Sec. 171.012(a)(1)(A), Health and Safety Code), the particular risks associated with the particular abortion procedure (Sec. 171.012(a)(1)(B), Health and Safety Code), and the probable gestational age of the unborn child at the time the abortion was to be performed (Sec. 171.012(a)(1)(C), Health and Safety Code). Dr. Fine and the other physicians who performed abortions did not give their patients any information regarding their particular pregnancy, abortion procedure, medical risks, or unborn child.

In addition to the missing required information, Dr. Fine never ensured women had the opportunity to ask questions and therefore be fully informed. The expert consensus in the area (American Medical Association, American Congress of Obstetricians and Gynecologists, National Abortion Federation) describes informed consent as a process in which it is the physician's duty to ensure the woman understands the abortion procedure and the alternatives. The pre-recorded message does not give the woman an opportunity to ask questions and therefore be fully informed 24 hours prior to the abortion. Because Dr. Fine did not ensure women understood the procedure, he did not obtain their informed consent.



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2. Have you received a second opinion from another physician? ___yes Xno
If yes, please give full name and address.

I have read the preceding, and it is true to the best of my information and belief.
If my complaint would be more appropriately addressed by a different agency or society, I authorize TMB to forward my complaint to that agency or society.

/s/ Abby Johnson
Signature

10/17/14
Date

To use this version please print, complete and mail to:

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