

Court file shows confusion over Wisconsin abortion regulation law

By [Akbar Ahmed](#) of the Journal Sentinel
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A doctor who filed an affidavit in support of Wisconsin's new abortion regulations provided a federal court with inaccurate information on how difficult it would be for doctors who perform abortions to obtain the hospital admitting privileges required by the law.

The situation highlights the confusion about whether these doctors will be able to gain the privileges they will need if the suspended law is upheld in court.

Matthew Lee, a member of the credentials committee at Wheaton Franciscan St. Joseph Campus in Milwaukee, said in the court declaration he filed last week that many religiously affiliated hospitals across the state could be open to granting such doctors admitting privileges.

But the hospital he works at is not. The chief medical officer for Wheaton Franciscan Healthcare said this week that as a Catholic institution, it would not grant privileges to doctors who perform abortions.

And a spokeswoman for the Columbia St. Mary's Health System said that organization also would deny privileges to physicians who perform abortions "as a matter of our Catholic identity."

The new law, known as Act 37, requires doctors who perform abortions to have admitting privileges at a hospital within a 30-mile radius of their clinics. The law [passed the Wisconsin Legislature](#) on June 14 and was signed into law by Gov. Scott Walker on July 5. [Abortion clinics promptly sued](#) Attorney General J.B. Van Hollen and a slew of other officials with the authority to enforce the legislation.

U.S. District Judge William Conley has blocked the law from going into effect twice, [most recently about a week ago](#). Conley said July 18 that the state must prove it has a legitimate interest in requiring doctors who provide abortions to have admitting privileges. He will decide by next week whether to issue a preliminary injunction blocking the law for months and has scheduled a trial for Nov. 25 on the act's constitutionality.

In the meantime, the doctors at abortion clinics who lack admitting privileges are in the process of applying for them, their attorneys said, though they believe the privileges will be almost impossible to obtain.

The law's opponents say the doctors are likely to be denied privileges because of the religious affiliations of many Wisconsin hospitals and because some institutions require doctors with privileges to bring in a certain number of patients per year or live nearby. They argue that the privileges requirement amounts to unfair discrimination, as doctors performing other outpatient services with higher hospitalization rates are not being required to have such privileges.

In his declaration, one of more than a dozen filed in the case, Lee pushed back on the statements of the plaintiffs, Planned Parenthood of Wisconsin, Affiliated Medical Services and two doctors working for

Planned Parenthood.

"I am unaware of any absolute bar at religiously affiliated Wisconsin hospitals against competent abortion providers seeking or receiving admitting privileges," Lee's declaration said.

He called one plaintiff's statement that more than half of the hospitals in the state do not permit their physicians to provide abortions due to their religious affiliations "a gross overstatement." He also cited laws prohibiting credentialing committees from discriminating against doctors who provide abortions.

But Rita Hanson, the chief medical officer at Wheaton Franciscan, said the decision to grant admitting privileges at Lee's organization is made by the hospital board, which takes recommendations from the credentialing committee but then makes the final call.

"Wheaton Franciscan Healthcare is a ministry of the Catholic church," Hanson wrote in an email. "For that reason, if it's known to us that a doctor performs abortions and that doctor applies for privileges at one of our hospitals, our hospital board would not grant privileges."

Asked about the inconsistency in Lee's portrayal of whether privileges would be available to such doctors at religiously affiliated hospitals, Hanson said he might not have fully understood the hospital's privilege-granting process.

"This is an issue that has not arisen in many years and it would appear that Dr. Lee may not have been aware of what the stance of the hospital board would be," Hanson said.

Matt Moran, assistant general counsel for Wheaton Franciscan, said in an email that the hospital board is permitted by court precedent to take its Catholic mission and values into account when making decisions on granting privileges.

Lee described himself in his sworn statement to the court as an "active" member of the credentials committee "thoroughly familiar with the hospital process of granting admitting privileges for physicians."

Lee declined to comment through a Wheaton Franciscan spokeswoman. A spokeswoman for the Wisconsin Department of Justice said the attorneys for the state stand by Lee's declaration and cannot comment further with the matter still pending.

If the plaintiffs prove that doctors performing abortions cannot successfully obtain admitting privileges, they can further argue that the privileges requirement would force two of the state's five abortion clinics, a Planned Parenthood facility in Appleton and Affiliated in Milwaukee, to close. That would strengthen their claim that the requirement unconstitutionally hinders women's access to abortions.

Court documents show that a clinic in Green Bay was already scheduled to stop providing abortions on Aug. 1 [after being sold to a new owner](#), which means the law could leave Wisconsin with only two clinics offering the procedure.

Commenting on Lee's declaration on Wednesday, Planned Parenthood attorney Lester Pines said, "I'm not going to accuse him of being deliberately misleading.... Apparently, he didn't know what he was talking about."

Pines added that Lee's personal stance on abortion might have affected his declaration.

Lee is one of 26 Wisconsin physicians who are members of the American Association of Pro-life Obstetricians and Gynecologists. So are James Linn and David Merrill, two other Wisconsin physicians who filed declarations supporting the privileges requirement.

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None of the doctors mentioned that affiliation in the declarations.

"When people provide declarations, sometimes they make mistakes," Pines said. "When people make declarations which presume to be objective declarations made by experts but when they are really advocates, then the danger of overstatement or error is greater."

Douglas Laube, a former chairman of the department of obstetrics and gynecology at the University of Wisconsin Medical School who supports abortion access and gave the court a declaration opposing the legislation, said he would presume that members of a credentialing committee would be fully aware of the committee's role in granting admitting privileges.

"Each of us has an ideology regarding many different things and it's sometimes hard to separate ideology from the facts," Laube said.

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