



# Aid for Women v. Foulston, 441 F.3d 1101 (10<sup>th</sup> Cir. 2006)

Topics Covered: Abortions, Patient Privacy

## **Outcome: Unfavorable**

### **Issue**

The issue in this case was whether health care professionals in Kansas must report abortions on girls under 16 years of age, without exception, to the Department of Social and Rehabilitation Services.

### **AMA Interest**

The AMA believes that the reporting of possible child abuse should fall within a physician's professional judgment.

### **Case Summary**

The Kansas child abuse reporting statutes require health care professionals to report suspected injury from sexual abuse to the Kansas Department of Social and Rehabilitation Services. Also, Kansas law considers sex with a child less than 16 years of age to be statutory rape. In response to a question from a member of the state legislature, the Kansas Attorney General stated that, under these laws, health care professionals must report any girls under the age of 16 who had an abortion to the Department of Social and Rehabilitation Services. The Attorney General opinion further opined that any sexual activity by an unmarried person under the age of 16 must be reported.

A coalition of health care professionals sued in federal court to have the Attorney General's opinion deemed a violation of the children's right of privacy under the federal constitution. The judge found that the opinion was such a violation, and he entered a preliminary injunction against prosecution of health care professionals for failing to report "sexual activity between adolescents under the age of sixteen and persons of similar age in which injury is not reasonably suspected." The defendants, the county and district attorneys in Kansas appealed. The Tenth Circuit vacated the preliminary injunction and remanded to the trial court, finding an abuse of discretion by the trial court in failing to adequately analyze the several factors required for a preliminary injunction.

### **AMA Involvement**

The AMA, the Kansas Medical Society, several specialty medical societies, and numerous other public health organizations filed an amicus curiae brief on January 6, 2005, to advise the court of the importance of maintaining confidentiality in the relationship between physicians and their minor patients. The brief argued that adolescent sexual activity, even for children under the age

of sixteen, is not necessarily injurious, so long as it is consensual and between children of similar ages. Reporting of such activity, therefore, should be within the discretion of the health care professional and not mandatory.

United States Court of Appeals for the Tenth Circuit brief