UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

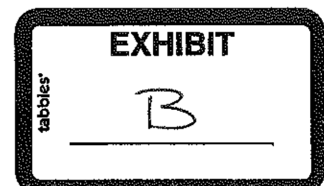
JACKSON WOMEN'S HEALTH ORGANIZATION, on behalf of itself and its patients, and WILLIE PARKER, M.D., M.P.H., M.Sc., on behalf of himself and his patients, Plaintiffs, v. DR. MARY CURRIER, in her official capacity as State Health Officer of the Mississippi Department of Health, and ROBERT SHULER SMITH, in his official capacity as District Attorney for Hinds County, Mississippi, Defendants.	)	CASE No. 3:12-CV-00436-DPJ-FKB

Jackson Women's Health Organization et al v. Currier et al

DECLARATION OF JAMES C. ANDERSON, M.D., IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

James C. Anderson, M.D., declares and states the following:

1. I received my M.D. from the University of Virginia, School of Medicine in 1978. I have been an Emergency Room Physician in the Commonwealth of Virginia for 22 years. I have been board certified in Family Practice since 1981 and board certified in Emergency Medicine since 1996 by the American Association of Physician Specialists. I have



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been certified in Advanced Trauma Life Support since 1992 and in Advanced Cardiac Life Support since 1984.

2. I am a clinical professor in the Department of Family Practice at the Medical College of Virginia and have held this position since 1995. In 2002, I joined the U.S. Army Reserves. In 2005, I resigned from U.S. emergency rooms due to the time demands of my military responsibilities and have served in the emergency departments of the U.S. Army's Combat Support Hospitals (CSH) while deployed to Iraq in 2007 and 2009. In 2011, I served in the out-patient department at Craig Hospital at Bagram Airfield, Afghanistan. I hold the rank of Colonel, USAR.

3. Over the last thirty-four years, I have treated many patients who arrived at U.S. emergency rooms and U.S. military hospitals extremely sick including critical situations of hemorrhage and infection. For a complete listing of my professional activities, please see my attached Curriculum Vitae. (Exhibit A)

4. I have reviewed H.B. 1390, the Plaintiffs' Complaint, and the Declarations of Brewer-Anderson, Thompson and Parker. The opinions I express here are based on my education, training and experience, in addition to my ongoing review and familiarity with the medical literature.

5. I understand that Plaintiffs object to two provisions of H.B. 1390 which require that all physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology and that they must have admitting and staff privileges at a local hospital. In my expert opinion, these two provisions are reasonable and beneficial requirements to protect women's health in Mississippi; these two regulations will most likely

improve the quality of abortion care offered in ambulatory surgical facilities there and enhance patient follow-up care after abortion.

6. There are two main reasons this regulatory change is beneficial. First, the training and subsequent credentialing of doctors has been a time-proven method to ensure that those doing life-impacting surgical procedures were qualified to do so. Secondly, continuity of care and inter-physician communication have long been recognized as important components of good health care delivery. To remove or undermine these basic tenets would be to undermine sound medical practice and the care patients might reasonably expect to receive by a competent physician.

7. Hospital credentialing protects patients. Requiring physicians associated with Mississippi's abortion clinics to have hospital privileges is consistent with the time-honored practice of requiring training and credentialing of physicians who are making decisions and doing procedures that have life-impacting consequences. If a physician cannot obtain privileges for the specific requested procedures at his or her local hospital, then in my expert opinion, the physician is not qualified to do the surgical procedures that have life-changing or life-threatening impact.

8. Hospital credentialing, in my experience, is generally a more rigorous screening and evaluation of a physician than obtaining a state's medical license. Both State licensure and hospital credentialing require proof of education, letters of recommendation, records of continuing medical education and questions about prior malpractice or disciplinary action from prior regulating agencies. Generally, only hospital credentialing requires reporting the numbers of past procedures performed to verify the experience and training necessary for these specific procedures. Only by reviewing and evaluating this information, is

the hospital able to verify that the physician has sufficient training and experience to perform the requested procedures. Hospital admitting privileges are dependent on this review; so is quality patient care.

9. The credentialing process is in constant flux as both state governments and local hospitals try to ensure that only capable and well-trained physicians are performing life-impacting surgical procedures. Personally, when I have applied to hospitals for Emergency Room or admitting privileges, it has taken 2-3 months of information gathering and review before I was granted these privileges. It is a very rigorous process.

10. Another major benefit of requiring abortion clinic doctors to have local hospital staff privileges is this maintains continuity of care that ensures better care and minimizes time delays for treatment of critical conditions. If a physician is performing surgical procedures is providing care and is subsequently paid for it, it also makes sense that he or she should assume responsibility for the management of any complications. To allow the physician to do a procedure and then not to expect the physician to manage complications encourages patient abandonment. This is not the standard of care nor does it conform to patient expectations or desires.

11. As stated earlier, I have worked in local Emergency Rooms across Virginia for over thirty years. When women have come to the Emergency Room with complications related to an abortion, never once have I received a phone call initiated by the provider conveying information about the abortion, the young woman's condition or potential complications. I have always had to evaluate the situation, come to my own conclusions and initiate what I thought was appropriate treatment. This definitely created some time delays that were not in the patient's best interest. I have called many abortion clinic physicians but

never once has the provider come to the Emergency Room to assume care. I have always had to call a staff physician. This then creates another delay since the staff physician is taking care of his/her own patients but now must change his/her schedule to assume the care of someone else's patient. These delays can have life-threatening implications when dealing with hemorrhage or infection.

12. Post-abortion complications are serious and can be life-threatening. The two most common of the serious and life threatening complications of an abortion are infection and profuse post-abortion bleeding.

13. Infection can be the result of bacterial spread from retained fetal parts, uterine perforation, colon perforation or poor uterine contraction and persistent bleeding post-abortion. As in many areas of emergency care, time has been proven to be of critical importance. The amounts of bacteria that invade the blood stream or contaminate normally sterile compartments make the time until initiation of antibiotic treatment the top priority. Uterine perforation or colon perforation can cause an infection which grows and spreads very quickly because so many bacteria are introduced into the abdominal cavity and blood stream. Sepsis is a clinical syndrome that complicates severe infection. It is theorized that the infection sets in motion a massive inflammatory response, "an uncontrolled release of pro-inflammatory mediators that initiate a chain of events that lead to widespread tissue injury. This response can lead to multiple organ dysfunction syndrome (MODS) which is the cause of the high mortality associated with sepsis."[1] The mortality rate associated with sepsis ranges

[1] Neviere, R. "Sepsis and the systemic inflammatory response syndrome: Definitions, epidemiology, and prognosis" *UpToDate*, 2012, p. 1.

from 20-50%.[2] The medical literature affirms the importance of early treatment: "early institution of adequate antibiotic therapy was associated with a 50% reduction in the mortality rate."[3] The medical literature emphasizes the necessity of early intervention in sepsis: "poor outcomes are associated with delays in initiating antimicrobial therapy, even short delays (e.g., one hour)."[4] A retrospective analysis of 2,731 patients with septic shock demonstrates that the time to initiation of appropriate antimicrobial therapy was the strongest predictor of mortality.[5] With this clear emphasis on early treatment to reduce the morbidity and mortality associated with sepsis and severe infection, it is in the woman's best interest to reduce delays in treatment so that medical intervention is not postponed. If the abortion clinic's physician has local hospital privileges, this will reduce potential delays in initiation of treatment for infection or hemorrhage. As affirmed by the medical literature as well as my own clinical experience, even short time delays can have life-threatening implications.

14. Post-abortion bleeding, another complication of abortion, can be life-threatening and is hard to recognize in its early stage. Prolonged bleeding can result in the under-perfusion of vital organs, including brain, heart and kidneys, which can have implications up to, and including death. It is very difficult for a woman to be able to distinguish between "normal and acceptable" post-abortion bleeding and dangerous bleeding. Symptoms of early volume loss are minimal because people have such good compensatory circulatory mechanisms to shunt blood from non-essential organs to essential core organs. If bleeding is heavy, a patient can deteriorate in over one hour's time from a fragile but

[2] Neviere, R. ibid, p. 4.
[3] Neviere, R., ibid. p. 5.
[4] Schmidt, G. "Management of Severe Sepsis and Septic Shock in Adults." *UptoDate*, 2012, p. 7.
[5] Schmidt, G., ibid, p. 8.

recoverable situation to one of grave or irreversible prognosis. Not all post-abortion bleeding is visible (intra-abdominal bleeding from a uterine vein tear or a colon puncture involving an artery or vein), but even in the cases in which it is visible (vaginal bleeding from poor uterine contractions, retained fetal parts or infection), a woman cannot accurately recognize what a dangerous amount of bleeding is in order to respond appropriately. Even experienced emergency medical technicians and surgeons often have difficulty accurately predicting the amount of blood loss when viewing the scene or situation. The availability of her physician is of utmost importance in the management of her complication(s). The actual degree of blood loss can only be determined by the patient's symptoms, vital signs, organ function and lab values. If a woman knows her physician does not practice at a local hospital, then she is faced at that moment with having to change physicians and possibly have to wait in a crowded Emergency Room to see a doctor she has never met. Both are a hurdle that most patients try to avoid. If the abortion clinic's physician met her at the ER, then a quicker evaluation and lab monitoring is possible and therefore an earlier intervention takes place. If she knows her physician does not practice at the hospital, she will likely put off going to the hospital as long as possible.

15. From both my medical experience and my continuing review of the medical literature, early intervention is paramount in order to reduce morbidity and mortality from massive blood loss.[6] Initiating treatment as fast as possible is of top priority. A drop in blood pressure and increased heart rate are the most common signs of hypo-perfusion but critical hypo-perfusion can also occur in the absence of hypotension as the compensatory circulatory mechanisms try to prevent collapse. The medical literature strongly emphasizes the need for

[6] Schmidt, G., ibid, p. 10.

early intervention: "Initial management of the patient with hemorrhagic shock is focused on restoring intravascular volume, maintaining adequate oxygen delivery, and limiting ongoing blood loss."[7] Additionally, rapid volume repletion is indicated in patients with severe hypovolemia or hypovolemic shock. "Delayed therapy can lead to ischemic injury and eventually to irreversible shock and multi-organ system failure."[8] Early correction of this volume deficit is essential in hypovolemic shock to prevent the decline in tissue perfusion from becoming irreversible.[9]

16. Recent media attention has focused on examples of egregious and substandard abortion care by both abortion providers and clinics. Expanding on a compendium of abortion clinic violations and license revocation of abortion providers,[10] the following examples are illustrative of the need for state regulation of abortion practice and conformity to standards of care in medicine:

- Kermit Gosnell in Pennsylvania[11]
- Soleiman Soli in Pennsylvania.[12]
- The Beacon Women's Center in Alabama[13]
- Feliciano Rios[14] and Andrew Rutland in California[15]
- Albert Dworkin in Delaware[16]

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[7] Colwell, C. "Initial Evaluation and Management of Shock in Adult Trauma." *UptoDate*, 2012, pp. 1-2.
[8] Rose, B. "Treatment of Severe Hypovolemia or Hypovolemic Shock in Adults." *UptoDate*, 2012, p. 1.
[9] Rose, B., ibid, p. 1.
[10] Burke, D. "Exposing Substandard Abortion Facilities: The Pervasiveness of True "Back-Alley" Practices, *Defending Life*, 2012, 50.
[11] *See* Loviglio J., *Abortion Doctor Suspended After Philadelphia Raid: 'Deplorable' Conditions Reported At Kermit Gosnell's Office* (Feb. 23, 2010) available at http://www.huffingtonpost.com/2010/02/23/abortion-doctor-suspended_n_473963.html
[12] *See*, e.g., M. Scolforo, *2 abortion clinics closed after reports* (Mar. 10, 2011), available at http://www.washingtontimes.com/news/2011/mar/10/2-abortion-clinics-closed-after-reports/.
[13] For a copy of the Alabama Department of Health's February 2010 report on the clinic's "numerous and serious violations," see Alabama Department of Health, *Statement of Deficiencies and Plan of Correction* (Feb. 1, 2010), available at http://wsfa.images.worldnow.com/images/incoming/linkedwebdocs/13113.pdf.
[14] *See* S. Ertelt, *Abortion Practitioner in California Operates Despite Repeated Legal Troubles* (Jan. 1, 2009), available at http://www.lifenews.com/2009/01/01/state-5544/.
[15] *See* C. Perkes, *Abortion Doctor Gives Up License Over Death* (Jan. 25, 2011), available at http://www.ocregister.com/articles/ rutland-285561-death-license.html.

- Randall Whitney[17] and James Pendergraft[18] in Florida
- Ann Kristin Neuhaus in Kansas[19]
- The Gentilly Medical Clinic for Women[20] and the Hope Medical Group for Women[21] in Louisiana
- Romeo Ferrer[22], George Sheppard[23], and Nicola Riley[24] in Maryland
- Steven Brigham[25] in Maryland, New Jersey, and Pennsylvania
- Rapin Osathanondh[26] in Massachusetts
- Alberto Hodari[27] in Michigan
- Salomon Epstein[28] and Robert Hosty[29] in New York
- Southwestern Women's Options[30] in New Mexico
- Tami Lynn Holst Thorndike[31] in North Dakota
- Robert E. Hanson Jr., Margaret Kini, Douglas Karpen, Pedro J. Kowalyszyn, Sherwood C. Lynn Jr., Alan Molson, Robert L. Prince, H. Brook Randal, Franz Theard, and William W. West Jr.[32] in Texas

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[16] *See* S. Ertelt, *Hearing: Delaware Abortionist Helped Kermit Gosnell Avoid Law* (Mar. 16, 2011), available at http://www.lifenews.com/2011/03/16/hearing-delaware-abortionist-helped-kermit-gosnell-avoid-law/.

[17] *See* J. Stanek, *Late-Term Abortionist Randall Whitney Arrested for Slapping Patient* (Jun 7, 2010), available at http://www.opposingviews.com/i/late-term-abortionist-randall-whitney-arrested-for-slapping-patient.

[18] *See* S. Ertelt, *Abortion Practitioner James Pendergraft Loses Florida License a Fourth Time* (Jan. 1, 2009), available at http:// www.lifenews.com/2009/01/01/state-5339/.

[19] *See, e.g.*, J. Hanna, *Doctor Defends Abortion Referrals* (Sept. 17, 2011), available at http://www.kansas.com/2011/09/17/2020433/doctor-defends-abortion-referrals.html.

[20] *See* S. Ertelt, *Abortion Business in Louisiana Loses License for Poor Health, Safety Standards* (Jan. 20, 2010), available at http://www.lifenews.com/2010/01/20/state-4743/.

[21] *See* P. J. Smith, *Louisiana Abortion Clinic Shut Down for Ignoring "Most Basic" Medical Practices* (Sept. 7, 2011), available at http://www.lifesitenews.com/news/archive/ldn/2010/sep/10090707.

[22] *See* S. Ertelt, *Pro-Lifers Want Maryland Practitioner Disciplined, Killed Woman in Botched Abortion* (June 1, 2010), available at http://www.lifenews.com/2010/06/01/state-5145/.

[23] *See* S. Ertelt, *Troubled Abortion Biz Sees Two Practitioners Lose Medical Licenses* (Sept. 3, 2010), available at http://www.lifenews.com/2010/09/03/state-5416/.

[24] *Id.*

[25] *See, e.g., N.J. targets abortion doctor Steven Brigham's license* (Sept. 9, 2010), available at http://www.lehighvalleylive.com/phillipsburg/index.ssf/2010/09/nj_targets_abortion_doctor_ste.html.

[26] *See Doctor gets 6 months in abortion patient death* (Sept. 14, 2010), available at http://www.msnbc.msn.com/id/39177186/ ns/us_news-crime_and_courts/t/doctor-gets-months-abortion-patient-death/.

[27] *See, e.g.*, Office of the Attorney General, *Schuette Files Suit to Close Unlicensed Abortion Clinic* (Mar. 29, 2011), available at http://www.michigan.gov/ag/0,1607,7-164--253426--,00.html.

[28] *See* S. Ertelt, *Practitioner Denies He Botched Legal Abortion That Killed Hispanic Woman* (Mar. 1, 2010), available at http://www.lifenews.com/2010/03/01/state-4858/.

[29] Hosty, who ran the A-1 Women's Center abortion clinic in Queens, New York, had his license revoked after causing the death of Alexandra Nunez, a 37-year old single mother of four. Revocation Order can be found at http://operationrescue.org/pdfs/Hosty%20revocation.pdf.

[30] See J. Kryn, *New 911 Call from New Mexico Abortion Clinic Exposes Pattern of Emergencies* (Oct. 20, 2011), available at http://www.lifesitenews.com/news/new-911-call-from-new-mexico-abortion-clinic-exposes-pattern-of-emergencies.

[31] *See* D. Burke, *North Dakota Abortionist Practices With Expired License* (Nov. 8, 2010), available at http://www.aul.org/2010/11/north-dakota-abortionist-practices-with-expired-license/.

- Whole Women's Health[33] in Texas
- New Woman All Women[34] in Alabama
- Mi Yong Kim[35] in New York and Virginia

17. In 2000, the Institute of Medicine released "To Err Is Human." The premise of this report is that "the problem in medical errors is not bad people in health care—it is that good people are working in bad systems that need to be made safer. Poor communication, unclear lines of authority of physicians, nurses, and other care providers all contribute to medical errors." With the adoption of H.B. 1390, Mississippi is improving an inadequate system which allows physicians to abandon their patients when critically ill after a procedure they performed, as well as continue a system that accepts poor communication as the norm. By not requiring hospital privileges for an abortion clinic's physician, the state would in effect be saying the physician has no responsibility for his patient's care when there are critical complications. This essentially is abandonment and constitutes very poor, fragmented care. Abandonment in any other circumstance is considered negligent and cause for malpractice. Transfer of care is fragmented care. This is not quality care as it violates "continuity of care" which is the highest standard. Under this lower standard, the abortion clinic's physician does

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[32] *See* S. Ertelt, *Tenth Texas Abortion Practitioner Under State Investigation* (Aug. 24, 2011), available at http://www.lifenews.com/2011/08/24/tenth-texas-abortion-practitioner-under-state-investigation/.

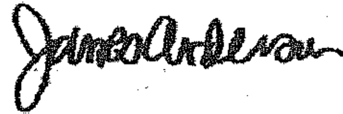
[33] *Id.*

[34] New Woman All Women (NWAW) abortion clinic has had numerous health and safety deficiencies identified by the Alabama Department of Public Health. See Alabama Department of Public Health, Statement of Deficiencies and Plan of Correction available at http://abortiondocs.org/wp-content/uploads/2012/04/NEW-WOMAN-ALL-WOMEN-20120301l.pdf. Diane Derzis, clinic owner of NWAW and Jackson Women's Health Organization and who is also a Plaintiff in this action, was ordered to not have any further affiliation with NWAW by the Alabama Department of Public Health. Consent Order available at http://abortiondocs.org/wp-content/uploads/2012/04/New-Woman-Consent-Order.pdf

[35] *See Troubled Virginia abortion clinic puts bleeding botched abortion patient in hospital* available at http://www.lifesitenews.com/news/troubled-virginia-abortion-clinic-puts-bleeding-botched-abortion-patient-in/. Kim, who continues to own/operate Nova Women's Healthcare in Virginia, voluntarily surrendered her New York medical license in 2000 and by consent order, and permanently surrendered her Virginia medical license in 2007 after repeated serious violations. Consent Order can be seen at http://abortiondocs.org/wp-content/uploads/2012/04/Kim-VA-License-Surrender05182007.pdf

not go to the hospital nor is there a mechanism for communication with other doctors that is needed for a good transfer of care. Inter-physician communication is critical to good care so relieving the abortion doctor from this responsibility is inconsistent with the state's responsibility to protect its citizens from harmful or substandard medical care. The transfer of the care of a patient increases the chance of time delays and miscommunication, both of which are detrimental for the patient's health and well-being. Contemporary medical practice can and should do better given these improved regulations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Dated: July 5, 2012

James C. Anderson, M.D.

APPENDIX A:

Curriculum Vitae of

James C. Anderson, M.D.

Curriculum Vitae

July 4, 2012

1. Personal Information:

1.1	JAMES CORR ANDERSON, M.D.			
1.2	Birthdate:	9/23/52	Newport News, Virginia	
1.3	Citizenship:	United States		
1.4	Married:	37 years to Doris K. Anderson		
		4 Children:	Elizabeth Anderson Smith	age 35
			James Luke Anderson	age 33
			Emily Ruth Anderson	age 27
			Mary Katherine Anderson	age 25

1.5 Home: 2911 Fincastle Court
Midlothian, Virginia 23113
(804) 320-3527

Office: 2500 Pocoshock Place
Richmond, Virginia 23235
(804) 276-9305

2. Licensure:

2.1 0101 030737 Virginia
2.2 Board Certification in Family Practice: 1981
Re-certified 1987, 1993, 1999, 2006
2.3 Board Certification in Emergency Medicine: 1996, 2008 (by American Association of Physician Specialists)

3. Education:

Chesterfield Family Practice Residency Program
Richmond, Virginia (1978-1981)
Residency Training in Family Practice

University of Virginia
Charlottesville, Virginia (1974-1978)
M. D. 1978

University of Virginia
Charlottesville, Virginia (1970-1974)
B. S. 1974

4. **Military Service Record:**

US Army Reserves: Rank of Colonel
Status: February 2002 – Present

Medical Director of Emergency Medical Training of U.S. Army Reserves in Pennsylvania, West Virginia, New Jersey, Maryland and Virginia. Surgeon's Office, 9th Battalion, 80th Division.
(Five Active Duty deployments for 3 months each in Texas during 2003, Germany in 2005, Iraq in 2007, Iraq 2008, Afghanistan 2011)

5. **Postdoctoral Training or Special Work Experiences:**

Associate Director
Chesterfield Family Practice Center, P.C.
Richmond, Virginia
October 1995 to present

Southeastern Emergency Physicians P.A.
Emergency Medicine Johnston-Willis Hospital and Chippenham Medical Center
Richmond, Virginia
Full time: 1985 to 1995, part-time 1995-2005 (resigned from ER after 3 years in with US Army Reserves)

House Physician-Emergencies within Hospital
Johnston-Willis Hospital
Richmond, Virginia
1981 to 1985

6. **Academic Appointments:**

Associate Clinical Professor
Department of Family Practice
Virginia Commonwealth University's Medical College of Virginia
1996 - Present

7. **Membership in Professional Societies:**

Richmond Academy of Medicine, 1995 - present
Medical Society of Virginia, 1995 - present
American Medical Association, 1995 to present
Christian Medical and Dental Society, 1991 - present

American Academy of Family Physicians, 1998-present
Virginia Academy of Family Physicians, 1998-present

8. Membership in Community Organizations:

Elder, Grace Covenant Church, 1984 to 1996
Chairman and School Board Member of Dove Christian School, Inc. 1981-1989
Chairman, Virginia Physicians for the Unborn Child, Inc. 1983-1988
Chairman, Family Policy Council, Inc. 1988 to present
Executive Board, Richmond Christian Medical & Dental Society, 1991 to present
Chairman of Greater Richmond Roever Crusade, 1993-1995, 2003
Co-Chairman of Abstinence Promotion, 1995-1996, 1999-2000
Appointed by Governor Allen to "Virginia Neurologic Birth Defect Fund" Board 1995 to 1999
Chairman of "One Way to Play - Drug-Free" Promotion, 1997-1998
Executive Board, March for Jesus, 1996-2000
Missions Service: 4 short term Mission trips to:
Philippines in 1981
Mexico in 1984
Mexico in 1986
Hungary in 1987
Nicaragua in 2010
Thailand in 2011

Chairman of U-Turn, Peak Performance Academy, 1998-2000
Executive Board of U-Turn, Peak Performance Academy, 1998-present
Chairman, 'Jesus Day' Board, 2000-2005
Chairman, Abstinence – Now Until Marriage, 2000 Campaign

9. Awards:

Outstanding Educator Award in Emergency Medicine by Family Practice Interns 1992, 1993, 1994, 1995, 1996, 1998 (In 1998, as a full time staff member at Chesterfield Family Practice, I withdrew from consideration for this award)

Alpha Omega Alpha Clinical Volunteer Faculty Award in 2008 by VCU-MCV graduating medical students in the AOA Society

Outstanding Teacher Award for Best Teacher in the M3 Family Medicine Clerkship 2008-2009 by VCU Medical Center, VCU School of Medicine.

High Evaluation Award for the 2009-2010 academic year in M3 Family Medicine Clerkship

10. **Publications and Lectures:**

In the process of writing '*How Family Dysfunction has Impacted Adolescent Emergency Room Medical Care*'

Osler Institute, Lectures to Family Practice Physicians preparing for Family Practice Board Review Exam
May 1998