

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

October 20, 2015

Ms. Judy Waxman  
Attorney at Law  
2913 Cathedral Avenue, N.W.  
Washington, DC 20008

Dear Ms. Waxman:

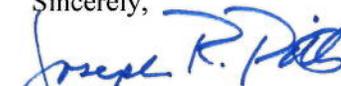
Thank you for appearing before the Subcommittee on Health on September 17, 2015, to testify at the hearing entitled "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on November 3, 2015. Your responses should be mailed to Graham Pittman, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [graham.pittman@mail.house.gov](mailto:graham.pittman@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

  
Joseph R. Pitts  
Chairman  
Subcommittee on Health

cc: The Honorable Gene Green, Ranking Member, Subcommittee on Health

Attachment

## Attachment — Additional Questions for the Record

### The Honorable Joseph R. Pitts

In the majority opinion upholding the Partial-Birth Abortion Ban Act in 2007 Justice Kennedy quoted from the testimony of a nurse who witnessed this partial-birth method of abortion for killing a 26 week old unborn child.

“ ‘Dr. Haskell went in with forceps and grabbed the baby’s legs and pulled them down into the birth canal. Then he delivered the baby’s body and the arms—everything but the head. The doctor kept the head right inside the uterus... ”

“ ‘The baby’s little fingers were clasping and unclasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby’s arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall.

“ ‘The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby’s brains out. Now the baby went completely limp... ”

“ ‘He cut the umbilical cord and delivered the placenta. He threw the baby in a pan, along with the placenta and the instruments he had just used.’ ”

1. Do you believe that the procedure described here, partial-birth abortion, should be legal? If yes, do you believe this procedure is humane?

In the decision upholding the partial-birth abortion ban act Justice Kennedy noted,

“The evidence also supports a legislative determination that an intact delivery is almost always a conscious choice rather than a happenstance. Doctors, for example, may remove the fetus in a manner that will increase the chances of an intact delivery... Many doctors who testified on behalf of respondents, and who objected to the Act, do not perform an intact D&E by accident. On the contrary, they begin every D&E abortion with the objective of removing the fetus as intact as possible.”

In the first video released by CMP Dr. Nucatola described the factor of intent as playing an important role in an abortionists’ use of abortion method. She said “...the Federal Abortion Ban is a law and laws are up to interpretation. So there are some people who interpret it as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn’t matter. Because I didn’t intend to do this on Day 1 so I’m complying with the law.”

2. As an attorney, do you believe Dr. Nucatola’s reliance on ‘intent’ represents a valid legal approach?

3. More than 9,000 Medicaid providers have been terminated by federal and state authorities in the past two decades for ethical, professional and competency reasons.<sup>1</sup> Many have been terminated for failing to pay their school loans.<sup>2</sup> Do you agree that the laws requiring health care professionals and other vocations to report child sexual abuse are good public policy and help prevent abuse? Additionally, do you agree that a health care professional failing to report sexual abuse of a minor is a serious issue? Do you agree that Planned Parenthood provider or any provider caught failing to report child sexual abuse should be terminated as a Medicaid provider?
4. Do you agree with the law that a Medicaid provider who has willfully overbilled the government for services or medications may be disqualified as provider? There are 44 state and federal Government audits of Planned Parenthood Medicaid billing practices that indicate overpayments to Planned Parenthood of at least \$8 million.<sup>3</sup> Given that hundreds of other Medicaid providers have been terminated for fraudulent and abusive billing practices, would you agree with me that if Planned Parenthood was shown to have overbilled taxpayer millions of dollars, then that should be grounds for terminating PP as a Medicaid provider?
5. You are aware that in a letter to Congress dated August 27, 2015 Cecile Richards acknowledged that PP clinics were receiving \$60 per specimen for baby body parts, correct? Are you aware of any attempt by Planned Parenthood or an affiliate to explain how it determined this amount reflects its actual costs for “transportation, packaging, storage or any other expenses associated with the procurement of these organs?”
6. In your testimony, a central assumption you seem to make is that current Medicaid law only permits suspension or termination following a felony conviction of a Medicaid provider. Do you disagree that federal circuit court decisions construing Medicaid law, together with statutes and regulations, form the body of law states and federal governments should follow when determining the rights of Medicaid providers?

The Ninth Circuit in a 2009 decision, *Guzman v. Shewry*,<sup>4</sup> held, “The Medicaid statutes contain no explicit preemption language limiting the grounds upon which a state may suspend a provider from a state health care program” and that “nothing in the federal Medicaid statutes or regulations prevents a state from suspending a provider temporarily from a state health care program on the basis of an ongoing investigation for fraud or abuse.”

7. So isn't it a fact that, under current law, states have the power to suspend a provider, pending an investigation, without a felony conviction? After all, isn't the point of an investigation is that the investigator may have a suspicion of wrongdoing and wants to investigate the subject to gather more facts and either confirm its initial suspicion of wrongdoing, or conclude there is insufficient evidence of wrongdoing?

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<sup>1</sup> [//oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp)  
(Last accessed 08/19/2015)

<sup>2</sup> <http://oig.hhs.gov/exclusions/authorities.asp>,

<sup>3</sup> <http://www.adfmedia.org/News/PRDetail/9216>

<sup>4</sup> 552 F.3d 941, 949(2009).

8. If contraception is so inexpensive and widespread as you claim in your writing, why do you oppose religious liberty protections for employers regarding contraception choices?