

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY
STATEMENT OF

GERALD APPELEGATE, M.D.

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

This matter came before the Board of Medicine (hereinafter the Board) on April 4, 2025, in Kissimmee, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Petitioner was not present and was represented by Jamila Johnson, Paige Suelzle, and Erica Mallon. The Notice of Petition for Declaratory Statement was published on March 20, 2025, in Vol. 51, No. 55, in the Florida Administrative Register. No comments by interested persons or requests for intervention were received. The Board was represented by Allison M. Dudley, Senior Assistant Attorney General.

FINDINGS OF FACT

1. The Petitioner is a licensed medical doctor in the State of Florida seeking guidance as to the applicability of sections 458.331(1)(z) and 390.0111, Florida Statutes.

2. The facts set forth in Paragraphs 1-4, 6, 8, and 9 of the Petition (attached hereto as "Exhibit A") are hereby adopted

and incorporated herein by reference as the findings of fact of the Board.

CONCLUSIONS OF LAW

1. The Board of Medicine has authority to issue Final Orders pursuant to Section 120.565, F.S., and Rule 28-105, Florida Administrative Code.

2. Section 120.565, F.S., reads as follows:

120.565. Declaratory statement by agencies

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

3. However, an agency's authority to issue declaratory statements is limited as follows:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or

orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.001, Florida Administrative Code.

4. As set forth above, the Respondent seeks a declaratory statement from the Board regarding the application of sections 458.331(1)(z) and 390.0111, F.S.

5. Section 390.0111(1), F.S. provides in pertinent part, that a physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than 6 weeks, unless one of the specifically enumerated conditions exists.

6. Section 458.331(1)(z) provides grounds for disciplinary action for "procuring, or aiding or abetting in the procuring of, an unlawful termination of pregnancy."

7. Petitioner asks the Board whether the restriction on performing a termination of a pregnancy on fetuses with a gestational age more than 6 weeks would allow Dr. Applegate to perform a termination of pregnancy through the gestational age of 6 weeks and 6 days of pregnancy.

8. When analyzing the meaning of a statute, "the words of

a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Page v. Deutsche Bank Trust Co. Americas*, 308 So. 3d 953, 958 (Fla. 2020) The plain language found in section 390.0111, F.S. clearly and unambiguously states that a termination of pregnancy may not be performed "if the physician determines the gestational age of the fetus is more than 6 weeks." There is no basis to support an interpretation that would allow a termination of a pregnancy when the gestational age of the fetus is more than 6 weeks. Further, there is no basis to interpret the language to allow for the termination of pregnancies through a gestational age of six weeks and six days, as suggested by Petitioner.

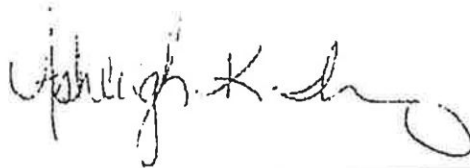
9. To the contrary, the Florida Supreme Court recognized more than 100 years ago that "[t]he term 'week' is as certain, clear, and definite a designation of time according to our division of it as it is possible to make." *Myakka Co. v. Edwards*, 67 So. 217, 222 (Fla. 1914) (on rehearing). More recently, the Fourth District Court of Appeal considered a prior version of section 390.0111, Florida Statutes, which generally prohibited abortions during the third trimester and defined the third trimester as "the weeks of pregnancy after the 24th week of pregnancy." *OB/GYN Specialists of Palm Beaches, P.A. v. Mejia*,

134 So. 3d 1084, 1088 (Fla. 4th DCA 2014). There, "the gestational age of the mother's fetus . . . was twenty-four weeks and one day" -- and the court had no trouble concluding that this was "just past the statutory deadline" of 24 weeks. *Id.* at 1090. The same reasoning applies here and leads the Board to conclude that six weeks and six days (or even six weeks and one day) is past the six-week statutory deadline for terminating a pregnancy.

WHEREFORE, based on the foregoing, the Board hereby answers the Petition for Declaratory Statement filed by Gerald Applegate, M.D., in the negative for the reasons set forth herein.

DONE AND ORDERED this 3rd day of June, 2025.

BOARD OF MEDICINE

A handwritten signature in dark ink, appearing to read "Ashleigh K. Irving", written over a horizontal line.

Ashleigh K. Irving, Interim Executive Director
For Amy Derick, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

PURSUANT TO SECTION 120.68, *FLORIDA STATUTES*, A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW UNLESS WAIVED. PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF THE NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEALS, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Gerald Applegate, M.D., c/o Jamila Johnson, Esq.; Paige Suelzle, Esq., at 3157 Gentilly Blvd., #2231, New Orleans, LA 70122 and Erica Mallon, Esq., at 1000 Maxwell Ln, Hoboken, NY 07030; by email to: Allison M. Dudley, Senior Assistant Attorney General, at Allison.Dudley@myfloridalegal.com; and Alysson Bradley, Interim General Counsel, Department of Health, at Alysson.Bradley@flhealth.gov this 3rd day of June, 2025.

Amy L. Canaway

Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

RECEIVED

DEC 12 2024

IN RE: Petition for Declaratory Statement of
Dr. Gerald Applegate, M.D.

by MQA/Board of Medicine

PETITION FOR DECLARATORY STATEMENT
BEFORE THE BOARD OF MEDICINE

Pursuant to Section 120.565, Florida Statutes, and Rule Chapter 28-105, Florida Administrative Code, Petitioner Gerald Applegate, M.D., in his individual capacity, petitions the Florida Board of Medicine for a Final Order setting forth a declaratory statement on the facts and law presented herein.

Background

1. Petitioner Gerald Applegate, M.D., is a physician licensed pursuant to Chapter 458, Florida Statutes.
2. Dr. Applegate has been licensed to practice medicine since 1983 and has been board-certified continuously in obstetrics and gynecology since 1988.
3. He is the medical director at Eve Medical of Miami, an abortion clinic, where he has been practicing for over twenty years and is an independent contractor. He is the only licensed physician practicing there.
4. Dr. Applegate's medical license number in Florida is ME 82602 and he maintains his license in good standing. He also currently holds medical licenses in New York, Pennsylvania, and Ohio.

5. For the purposes of this Petition, Dr. Applegate's authorized representatives are his undersigned counsel and qualified representatives, and Petitioner's contact information is that of his undersigned counsel and qualified representatives.¹

6. The agency affected by this Petition is the Board of Medicine of the State of Florida ("the Board").

7. The Board was established to "ensure that every physician practicing in this state meets minimum requirements for safe practice." Fla. Stat. § 458.301. The Board has authority over physician licensing and discipline. *See id.* §§ 458.311, 458.313, 458.331.

8. Dr. Applegate is licensed and regulated by the Board.

9. In his role as Medical Director of Eve Medical, Dr. Applegate primarily provides abortion care. He also occasionally provides well-women exams, pap smears, and contraception.

Statutory Basis

10. This Petition is based on Section 458.331, Florida Statutes, which provides the grounds for disciplinary action against physicians who are licensed to practice medicine in the state. The Board has the authority to interpret this statute and its related regulations because the Board is responsible for disciplining, licensing, and regulating physicians.

11. Specifically, Petitioner seeks clarification of Fla. Stat. § 458.331(z), which states that "[p]rocur[ing], or aiding or abetting in the procur[ing] of, an unlawful termination of pregnancy" constitutes grounds for the Board to take disciplinary action against a physician.

¹ Pursuant to Fla. Admin. Code r. 28-106.106(2), Petitioner's written request to be represented by qualified representatives is pending.

12. The Board has promulgated disciplinary guidelines that shall be imposed upon licensees. *See* Fla. Admin. Code r. 64B8-8.001. The recommended penalty for a first offense under Fla. Stat. § 458.331(z) ranges from a one-year suspension to be followed by a period of probation to license revocation or denial and an administrative fine from \$5,000 to \$10,000. The penalties increase after additional offenses. Fla. Admin. Code r. 64B8-8.001.

13. This Petition is further based on Section 390.0111, Florida Statutes, entitled “Termination of pregnancies.” Defining the meaning of an “unlawful termination of pregnancy” pursuant to Fla. Stat. § 458.331(z) would require the Board to consult Florida’s laws on abortion, including Fla. Stat. § 390.0111. Given that the Board may discipline a provider for an “unlawful termination of pregnancy,” Fla. Stat. § 458.331(z), it follows that the Board may interpret Fla. Stat. § 390.0111 to determine what constitutes an “unlawful termination of pregnancy.”

14. Under Fla. Stat. § 390.0111, Florida law states: “A physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than 6 weeks” unless certain limited exceptions are met. Fla. Stat. § 390.0111(1) (“Six-Week Ban”). The Six-Week Ban went into effect on May 1, 2024.

15. The Six-Week Ban imposes criminal penalties on physicians who violate the ban. A physician need not first be criminally investigated or convicted under the Six-Week Ban before the Board can bring disciplinary action for an unlawful termination of pregnancy pursuant to Fla. Stat. § 458.331(z). *See Pendergraft v. Dep’t of Health, Bd. of Med.*, 19 So. 3d 392, 394 (Fla. Dist. Ct. App. 2009) (“[T]here is no explicit statutory requirement that a licensee be adjudicated guilty of the acts specified in the penal statutes before disciplinary action may be instituted.”). Thus, the Board may independently interpret what constitutes an

"unlawful termination of pregnancy," without an investigation, prosecution, or conviction under the criminal penalties in the Six-Week Ban.

16. As an abortion provider in Florida, Dr. Applegate is substantially affected by the statutes at issue in this Petition and their related administrative regulations and could be subject to professional discipline by the Board. *See* Fla. Stat. § 120.565.

Requested Declaration

17. Dr. Applegate petitions the Board for a declaratory statement that states that he may provide abortion care through and including six weeks and six days of pregnancy.

Discussion

18. As stated, Florida law bans abortion when "the gestational age of the fetus is more than 6 weeks." Fla. Stat. § 390.011(1). "Gestational age" is not defined in the Six-Week Ban or elsewhere in Florida statutes. *See* Fla. Stat. § 390.011. To Petitioner's knowledge, the term "gestational age" has not been defined by a Florida court or by the Board.

19. Florida law separately defines "gestation" as "the development of a human embryo or fetus as calculated from the first day of the pregnant woman's last menstrual period." Fla. Stat. § 390.011(7).

20. Out of an abundance of caution, Dr. Applegate currently provides abortion care only through six weeks and zero days of pregnancy.

21. But the most reasonable interpretation of the Six-Week Ban is that it allows him to provide abortion care through six weeks and six days of pregnancy. Dr. Applegate contends that providing care through six week and six days weeks does not constitute an "unlawful termination of pregnancy" under Fla. Stat. § 458.331(z). He petitions the Board for a final order to this effect.

22. The Six-Week Ban uses "weeks" as the unit of time, and not "days." Because the statute uses weeks as the unit of time, what counts as "more" than six weeks should also be measured in weeks, not days. Therefore, he submits that "more than six weeks" allows lawful care up until, but not including, seven weeks, zero days (or said another way: through and including six weeks and six days).

23. Dr. Applegate has encountered a contrary view that the Six-Week Ban prohibits care after six weeks and zero days. Given this difference in interpretation, he has cautiously restricted his own practice to the most conservative approach—six weeks and zero days—even though he believes the law allows for care through and including six weeks and six days and asks the Board to clarify.

24. In support of his interpretation, Dr. Applegate submits that a given length of time may be described using "ordinal" or "cardinal" numbers. For example, "six" weeks is a cardinal number. The "sixth" week or the "seventh" week are ordinal numbers. If the Six-Week Ban stated that abortion is prohibited through "the end of the sixth week," it would be clear that providing abortion care at the start of the seventh week, or beginning at six weeks and one day, would be unlawful. This is how Florida previously calculated trimesters when abortion was banned only in the third trimester. *See Fla. Stat. §390.011(14)*. If the statute stated that abortion was prohibited at "more than six weeks and zero days," then six weeks and one day would be unlawful. However, because the Six-Week Ban provides that abortions are unlawful if performed when "the gestational age of the fetus is more than 6 weeks," it is logical to conclude that "weeks" are the relevant unit of measurement and therefore, it is not until a full seven weeks of pregnancy that an abortion is unlawful.

25. A review of other state statutes further illustrates the lack of clarity in Florida's Six-Week Ban. Some other state statutes that regulate abortion based on a certain number of weeks are more precise than Florida's Six-Week Ban about when abortion becomes unlawful.

26. For example, North Carolina allows abortion "[d]uring the first 12 weeks of a woman's pregnancy." N.C. Gen. Stat. § 90-21.81B(2). It is also legal "after the twelfth week and through the twentieth week . . . when the woman's pregnancy is a result of rape or incest." N.C. Gen. Stat. § 90-21.81B(3). This language is clear that abortion is legal through twelve weeks and zero days and becomes illegal at twelve weeks and one day, except for in cases of rape or incest.

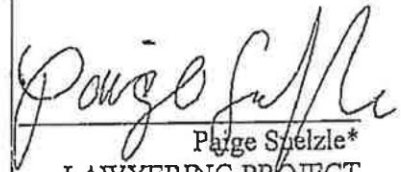
27. Another example is Pennsylvania. Pennsylvania prohibits abortion "when the gestational age of the unborn child is 24 or more weeks." 18 Pa. Cons. Stat. § 3211(a). This language is clear that abortion is legal in Pennsylvania through 23 weeks and six days and is banned at 24 weeks and zero days and beyond. In other words, Florida's Six-Week Ban does *not* say abortion is banned at "6 or more weeks."

28. The differences in how these statutes are worded as compared to Florida's Six-Week Ban help demonstrate that "more than 6 weeks" in Florida law means abortion care can be provided through six weeks and six days.

29. In sum, Dr. Applegate seeks clarification of Fla. Stat. § 458.331(z).

WHEREFORE, Petitioner respectfully requests that the Board issue a Final Order declaring that Dr. Applegate may provide abortion care through and including six weeks and six days of pregnancy.

Respectfully submitted this 6th day of December, 2024.



Paige Spelzie*
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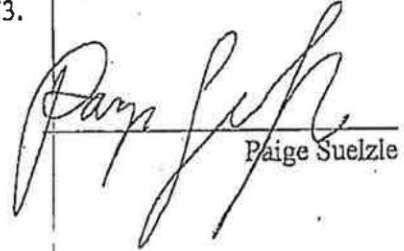
Jamila Johnson*
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Erica Mallon
Fla. Bar No. 106315
Phone: (412) 496-0474
erica.c.mallon@gmail.com

**Request to serve as a qualified representative pending*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 6, 2024, a true and correct copy of the foregoing Petition for Declaratory Statement was mailed to the Department of Health, Board of Medicine, 4052 Bald Cypress Way, Bin C-03, Tallahassee, FL 32399-3253.


Paige Suelzle

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: Petition for Declaratory Statement of
Dr. Gerald Applegate, M.D.

REQUEST TO BE REPRESENTED BY QUALIFIED REPRESENTATIVES

Pursuant to Fla. Admin. Code r. 28-106.106, Petitioner Gerald Applegate, M.D., seeks to be represented in the above-referenced matter by two qualified representatives, Jamila Johnson and Paige Suelzle, and in support thereof states the following:

1. Jamila Johnson's contact information is as follows:

Jamila Johnson
LAWYERING PROJECT
3157 Gentilly Blvd. #2231
New Orleans, LA 70122
Phone: (347) 706-4981
Fax: (646) 480-8622
jjohnson@lawyeringproject.org

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by MQA/Board of Medicine

2. Paige Suelzle's contact information is as follows:

Paige Suelzle
LAWYERING PROJECT
158 SW 148th Street #1198
Burien, WA 98166
Phone: (347) 515-6073
Fax: (646) 480-8622
psuelzle@lawyeringproject.org

3. Petitioner is aware of the services that the representatives can provide.
4. Petitioner is also aware that he can be represented by counsel. He seeks to be represented by qualified representatives in addition to counsel, Erica Mallon, who is a member of the Florida Bar.
5. Petitioner requests that Ms. Johnson and Ms. Suelzle be accepted as Petitioner's qualified representatives for all purposes connected with this matter.
6. Ms. Johnson's and Ms. Suelzle's qualifications are set forth in their affidavits attached hereto.

WHEREFORE, Petitioner respectfully requests that Ms. Johnson and Ms. Suelzle be permitted to represent Petitioner as qualified representatives.



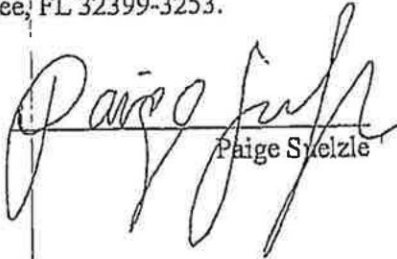
Paige Suelzle
LAWYERING PROJECT
Proposed Qualified Representative
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Erica Mallon
Fla. Bar No. 106315
Phone: (412) 496-0474
erica.c.mallon@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 6, 2024, a true and correct copy of the foregoing Request to be Represented by Qualified Representatives was mailed to the Department of Health, Board of Medicine, 4052 Bald Cypress Way, Bin C-03, Tallahassee, FL 32399-3253.


Paige Snelzle

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: Petition for Declaratory Statement of
 Dr. Gerald Applegate, M.D.

AFFIDAVIT OF PAIGE SUELZLE

BEFORE ME, the undersigned authority, personally appeared PAIGE SUELZLE, who states that the following information is true and correct to the best of her knowledge and belief:

1. I am seeking to be designated as a qualified representative in the above-referenced matter pursuant to Rule 28-106.106, Florida Administrative Code.
2. I am a resident of the State of Washington.
3. I am a member of good standing with the State Bar of Washington (Wash. Bar No. 60410).
4. I am employed as Litigation Counsel the Lawyering Project.
5. Counsel in this matter is Erica Mallon of Tampa, Florida (Fla. Bar No. 106315). I seek to represent the petitioner alongside counsel for all purposes connected with this matter.
6. I have knowledge of jurisdiction.
7. I have reviewed and have knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding.
8. I have reviewed and have knowledge of the rules of evidence, including the concept of hearsay in an administrative proceeding.
9. I have knowledge regarding the factual and legal issues involved in this matter.
10. I have reviewed and will comply with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, Florida Administrative Code.

Dated this 6th day of December, 2024.

Paige Butler Suelzle

Paige Suelzle

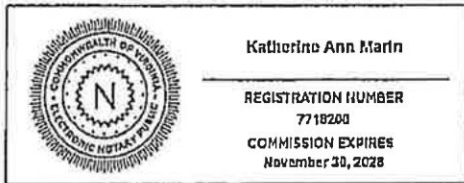
STATE OF Virginia

COUNTY OF Roanoke City

Sworn to and subscribed before me by means of online notarization, this 6th day of
December, 2024.

Katherine Ann Marlin

Signature of Notary Public



Notarized remotely online using communication technology via Proof.

**STATE OF FLORIDA
BOARD OF MEDICINE**

IN RE: Petition for Declaratory Statement of
 Dr. Gerald Applegate, M.D.

AFFIDAVIT OF JAMILA JOHNSON

BEFORE ME, the undersigned authority, personally appeared JAMILA JOHNSON, who states that the following information is true and correct to the best of her knowledge and belief:

1. I am seeking to be designated as a qualified representative in the above-referenced matter pursuant to Rule 28-106.106, Florida Administrative Code.
2. I am a resident of the State of Louisiana.
3. I am a member of good standing with the State Bar of Louisiana (La. Bar No. 37953), the State Bar of Oregon (Ore. Bar No. 162526), and the State Bar of Washington (Wash. Bar No. 39349) and I obtained my first bar admission (Washington) in 2007.
4. I am employed as Senior Counsel with the Lawyering Project.
5. Counsel in this matter is Erica Mallon of Tampa, Florida (Fla. Bar No. 106315). I seek to represent the petitioner alongside counsel for all purposes connected with this matter.
6. I have knowledge of jurisdiction.
7. I have reviewed and have knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding.
8. I have reviewed and have knowledge of the rules of evidence, including the concept of hearsay in an administrative proceeding.
9. I have knowledge regarding the factual and legal issues involved in this matter.
10. I have reviewed and will comply with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, Florida Administrative Code.

Dated this 6th day of December, 2024.

Jamila Johnson

Jamila Johnson

STATE OF Virginia

COUNTY OF Prince William

Sworn to and subscribed before me by means of online notarization, this 6th day of
December, 2024, by Jamila Johnson

Atm Nurul Alam

Atm Nurul Alam

Signature of Notary Public
Electronic Notary Public

Notarized remotely online using communication technology via Proof.



Atm Nurul Alam

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