

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — CHANCERY DIVISION

#46279

THE HOPE CLINIC FOR WOMEN LTD.;)
ALLISON COWETT, M.D., M.P.H.,)
)
Plaintiffs,)
)
v.)
)
BRENT ADAMS, Acting Secretary of the Illinois)
Department of Financial and Professional)
Regulation, in his official capacity; DANIEL)
BLUTHARDT, Director of the Division of)
Professional Regulation of the Illinois Department of)
Financial and Professional Regulation, in his official)
capacity; THE ILLINOIS STATE MEDICAL)
DISCIPLINARY BOARD,)
)
Defendants.)

Case No. 09C438661

In Chancery
Preliminary Injunction/Temporary
Restraining Order

CLERK OF THE CIRCUIT COURT
OF COOK COUNTY
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CHANCERY DIVISION

VERIFIED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action brought pursuant to the Illinois Constitution, seeking a declaratory judgment, temporary restraining order, and preliminary and permanent injunction against enforcement of the Illinois Parental Notice of Abortion Act of 1995, 750 ILCS 70/1 et seq. (“Act” or “Parental Notice Act”). The Act severely restricts minors’ access to abortion by requiring a physician to notify a parent, grandparent, step-parent living in the household, or legal guardian of a minor’s intention to terminate her pregnancy and wait at least 48 hours before performing the abortion. (For convenience, Plaintiffs will refer to these adult family members as “parents,” except where necessary to differentiate among them.) Notification is not required if a minor goes to court and obtains a judicial waiver of the notification requirement or certifies in writing that she is a victim of physical abuse, neglect or sexual abuse. (A copy of the Act is attached to the Complaint as Exhibit A. A copy of Illinois Supreme Court Rule 303A, entitled

“Expedited and Confidential Proceedings Under the Parental Notice of Abortion Act,” is attached as Exhibit B.) On information and belief, unless it is enjoined, the Act will be enforced starting on November 3, 2009.

2. If permitted to be enforced, the Act will work a significant change in the way safe and appropriate medical care is provided in this state. Currently, as it has for over three decades, Illinois law permits a pregnant minor to obtain any hospital, medical or surgical care without notifying a parent. She can decide to carry her pregnancy to term and parent her child, to bear her child and place it for adoption, or to terminate her pregnancy, all without involving a parent. Enforcement of the Act will fundamentally alter this scheme by requiring those minors who choose to terminate their pregnancies, but not those who choose to carry to term, to either notify a parent or obtain a judicial waiver of the notification requirement.

3. In contrast, a minor who chooses to carry her pregnancy to term may continue to consent to any hospital, medical, and surgical care, including major surgery such as a cesarean section, without involving her parent or a court. Minors who are parents are similarly entitled to make all medical decisions – including life and death decisions – for their children without notifying a parent or going to court. In addition, minors who choose to carry to term may place their children for adoption without parental or court involvement.

4. By forcing minors seeking abortions to involve a parent or obtain a court order, enforcement of the Act will immediately and irreparably harm minors in this state. The Act will prevent some young women from obtaining safe abortions and force them to carry their pregnancies to term against their will. Others will be beaten or thrown out of their homes when their parents learn of their pregnancy and planned abortion. Moreover, whether a young woman chooses to notify a parent or go to court, her abortion will be delayed, which will increase the

cost and health risks associated with the procedure and decrease its availability. Finally, the Act will lead some desperate minors in this state to resort to drastic measures such as self-induced and illegal abortions because they fear parental reaction or are overwhelmed and terrified by the prospect of going to court.

5. In placing these restrictions on minors who choose abortion, the Act violates minors' fundamental rights to privacy, substantive due process, equal protection, and gender equality under the law as guaranteed by the Illinois Constitution.

II. JURISDICTION AND VENUE

6. Jurisdiction is appropriate and venue is proper in this court pursuant to 735 ILCS 5/2-101 because Defendants have offices in Cook County, and Plaintiff Dr. Allison Cowett, conducts her medical practice in Cook County.

III. THE PARTIES

7. Plaintiff Hope Clinic for Women Ltd. ("Hope Clinic"), located in Granite City, Illinois, is a licensed private medical clinic that provides reproductive health services to patients from Illinois and elsewhere. Hope Clinic provides patients with pregnancy testing, birth control, pregnancy options counseling, and abortions up to twenty-four weeks from the date of a woman's last menstrual period or "Imp." Hope Clinic is the only clinic that provides abortion services in southern Illinois. Among Hope Clinic's patients are unemancipated women under the age of 18 who need abortions and who, for a host of reasons, cannot involve their parents. These patients include young women who are mature enough to make an informed decision about abortion. Hope Clinic sues on its own behalf and on behalf of its minor patients.

8. Plaintiff Allison Cowett, M.D., M.P.H., ("Dr. Cowett") is a physician board certified in the practice of obstetrics and gynecology and licensed to practice in Illinois. Dr.

Cowett is the Director of the University of Illinois at Chicago (“UIC”) Center for Reproductive Health (“CRH”) and an attending physician at UIC Hospital, as well as an Assistant Professor of Clinical Obstetrics and Gynecology and Assistant Director of the Family Planning Fellowship at the UIC School of Medicine. For more than ten years, Dr. Cowett has provided her patients – thousands of women – with a broad range of gynecologic and obstetric care, including prenatal care, labor and delivery, and induced abortions. Dr. Cowett provides abortions up to 24 weeks Imp. Among Dr. Cowett’s patients are unemancipated women under the age of 18 who need abortions and who, for a host of reasons, cannot involve their parents. Dr. Cowett sues on her own behalf and on behalf of her minor patients.

9. On information and belief, defendant Brent Adams is the Acting Secretary of the Illinois Department of Financial and Professional Regulation (“IDFPR”). IDFPR is an entity of the State of Illinois with offices located at 320 West Washington St., Springfield, Illinois, 62706, and at 100 West Randolph Street, Chicago, Illinois, 60601. IDFPR oversees the licensing of regulated professions in Illinois, including physicians. Defendant Daniel Bluthardt is the Director of the Division of Professional Regulation of IDFPR. Defendants Adams and Bluthardt are sued in their official capacity.

10. On information and belief, defendant, the Illinois State Medical Disciplinary Board (“Disciplinary Board”), established by the Medical Practice Act of 1987, 225 ILCS 60/1 *et seq.*, is an entity of the State of Illinois responsible for investigating conduct allegedly in violation of the Parental Notice Act and recommending disciplinary action – including “civil penalties and any other appropriate discipline” – against physicians found to violate the Act. 750 ILCS 70/40, 225 ILCS 60/22(C). Defendants Adams, Bluthardt and the Disciplinary Board are referred to jointly as “Defendants” or “the State.”

IV. FACTS

A. Statutory Framework and Litigation History

11. On information and belief, absent relief from this Court, the Act will be enforced beginning November 3, 2009.

12. Prior to adoption of the Act, Illinois law permitted an unmarried pregnant minor to consent to any hospital, medical or surgical care for herself or, if she is a parent, her child, without involving her parents. *See* 410 ILCS 210/1. The Act creates a single exception to this longstanding statutory framework by requiring only those pregnant minors who choose to terminate their pregnancies to notify a parent or obtain a court order. Minors who choose to carry a pregnancy to term may continue to provide consent for all their own medical care and to make all medical decisions for their children without notifying a parent. They can make such decision even when the decision may put the fetus at risk. Illinois law further provides that a minor may decide to place her child for adoption without notifying a parent. *See* 750 ILCS 50/11(a). Thus, the Act singles out pregnant minors who choose abortion and imposes on them alone a requirement of parental notification as a condition of receiving medical care.

13. Specifically, the Act prohibits the performance of an abortion on a minor until at least 48 hours after notice of the procedure has been provided to an adult family member, *id.* § 15, defined by the Act as the minor's parent, grandparent, step-parent living in the household, or legal guardian, *id.* § 10. Where actual notice is not possible after a reasonable effort, "the physician or his or her agent must give 48 hours constructive notice." *Id.* § 15. Constructive notice is defined as "notice by certified mail to the last known address of the person entitled to notice with delivery deemed to have occurred 48 hours after the certified notice is mailed." *Id.* § 10.

14. A physician who fails to provide notice as required by the Act is subject to professional discipline and civil penalties under the Medical Practice Act of 1987. *See id.* § 40(a); 225 ILCS 60/22(A)(40), 22(C).

15. The Act does not require notification if: (1) the minor is “accompanied by a person entitled to notice;” (2) notice is waived in writing by such person; or (3) “the attending physician certifies in the patient’s medical record that a medical emergency exists and there is insufficient time to provide the required notice.” 750 ILCS 70/20.

16. In addition, notification is not required if the minor “declares in writing that she is a victim of sexual abuse, neglect, or physical abuse by an adult family member as defined in [the] Act.” *Id.* § 20. The attending physician must certify in the minor’s medical record that he or she has received this declaration. *Id.* Any legally required report of the abuse need not be made until after the minor's abortion. *Id.*

17. Finally, notice is not required if it is “waived under [the procedures for judicial waiver of notice outlined in] Section 25” of the Act. *Id.* § 20(5). In order to obtain a judicial waiver of notice, the minor bears the burden of proving by a preponderance of evidence either: “(1) that the minor . . . is sufficiently mature and well enough informed to decide intelligently whether to have an abortion; or (2) that notification under Section 15 of this Act would not be in the best interests of the minor” *Id.* § 25(d). Under the Act, unless the minor asks for an extension, the circuit court must rule on the minor’s petition and “issue written findings of fact and conclusions of law within 48 hours of the time that the petition is filed,” excluding weekends and holidays. *Id.* § 25(c); Ill. Sup. Ct. R. 303A(a). If a decision is not rendered immediately following a hearing, it is the minor’s responsibility to contact the clerk of court for notification of the decision. Ill. Sup. Ct. R. 303A(a). The petition is deemed granted if no ruling issues within

48 hours. 750 ILCS 70/25(c); Ill. Sup. Ct. R. 303A(a). If an extension is requested, however, the Act fails to provide any deadline by which the court must rule. The Act furthermore fails to provide any mechanism by which a minor may establish to a physician that her court petition has been deemed granted.

18. The Act provides for appeal to the Court of Appeals as a matter of right where the petition is denied in the trial court. 750 ILCS 70/25(f); Ill. Sup. Ct. R. 303A(b). The Court of Appeals must issue a written ruling within three days. Ill. Sup. Ct. R. 303A(g). Should the appellate court affirm the denial of the petition, the minor may petition the Illinois Supreme Court for leave to appeal. Ill. Sup. Ct. R. 303A(h).

19. Although the Act was enacted in 1995, enforcement was enjoined because the Illinois Supreme Court had not issued rules necessary to comply with federal constitutional requirements. *Zbaraz v. Ryan*, No. 84-CV-00771, 1996 WL 33293423 (N.D. Ill. Feb. 8, 1996). On September 20, 2006, the Illinois Supreme Court adopted Illinois Supreme Court Rule 303A, entitled “Expedited and Confidential Proceeding Under the Parental Notification of Abortion Act.” The United States District Court for the Northern District of Illinois declined to dissolve the permanent injunction, first because the Attorney General admitted that the Illinois courts were not prepared to apply the new procedures, and later, because the court concluded that a facial defect rendered the Act unconstitutional as written under federal law. *Zbaraz v. Madigan*, No. 84-CV-00771, 2008 WL 589028, at * 3 (N.D. Ill. Feb. 28, 2008).

20. The United States Court of Appeals for the Seventh Circuit subsequently reversed the District Court and dissolved the permanent injunction. *Zbaraz v. Madigan*, 572 F.3d 370 (7th Cir. 2009).

21. Although the Seventh Circuit's mandate issued shortly thereafter, the Illinois Department of Financial and Professional Regulation granted physicians a ninety day period to develop policies and procedures to ensure compliance with the Act and protection of the rights of patients. Ill. Dept. of Fin. & Prof'l Reg., *Medical Professionals Offered More Time for Compliance with Parental Notification Laws*, available at <http://www.idfpr.com/newsrsls/08052009MedProfOfferedMoreTimeComplianceParentalNotificationLaw.asp> (last visited Oct. 12, 2009).

B. The Provision of Abortions in Illinois

22. Based on available data, approximately 15,000 Illinois teens – out of a population of more than 250,000 – under the age of 18 became pregnant in 2000. Approximately one-third of those teens, or 5,000, terminated their pregnancies.

23. Legal induced abortion is one of the most frequently performed surgical procedures in the United States, and is one of the safest procedures in contemporary medicine. Indeed, today the risk of death from legal induced abortion is less than that from an injection of penicillin. Both in terms of mortality (death) and morbidity (serious medical complications short of death), abortion is many times safer than continuing a pregnancy to term.

24. Pregnancy and childbirth pose serious risks for all women, even those who are generally healthy. It effects changes in every major bodily organ. It can exacerbate a preexisting medical condition. And, even the healthiest pregnancy can quickly become life threatening.

25. Although pregnancy presents significant potential health risks for any woman, it presents enhanced risks for teens. Maternal health risks are significantly higher for pregnant adolescents than for adult women. An adolescent carrying a pregnancy to term faces a mortality

rate of more than twice that of an adult woman, and teens younger than 17 years have a higher incidence of morbidity than do adult women, with risks being greatest for the youngest teens.

26. Although abortion is far safer than carrying a pregnancy to term, delay in the performance of an abortion significantly increases the health risks that women face in connection with the procedure.

27. Abortions also become more expensive the later in pregnancy they are performed, and there are fewer providers who offer abortion services later in pregnancy. This is so particularly outside the Chicago area. Because of increased cost and decreased availability, the more delay a woman faces in getting an abortion, the less likely she is to be able to obtain one.

28. The increased health risks and limited accessibility of abortion at later gestational ages is particularly significant for minors because they are more likely than older women to delay having an abortion until after the first trimester. Teens seek later abortions for a variety of reasons, including that they frequently have irregular menstrual cycles and thus take longer to recognize the signs of pregnancy, and that once they do begin to suspect pregnancy, they take a longer amount of time to overcome the logistical and financial hurdles to obtaining an abortion.

29. Women in Illinois, including minors, decide to terminate their pregnancies for a variety of maternal and fetal health, familial, economic and personal reasons. Young women in particular often feel that they are not yet ready to be parents, that they do not feel they can be the kind of parent their child would deserve, or that having a child in their teens would completely change their plan for their lives, and would thwart education and career plans.

30. Most minors involve one or both parents in the decision to obtain an abortion. The younger the minor, the more likely it is that a parent is involved. Many of those minors who do not involve a parent consult with and have the support of another adult.

31. When minors do not involve a parent in deciding whether to have an abortion, they generally have compelling reasons for not doing so. Some minors fear physical or emotional abuse by their parents if they learn of the minor's pregnancy. Other minors fear that their parents will force them out of the house. Still others fear that their parents will force them to carry their pregnancies to term against their will.

32. Some minors choose not to tell a parent because of other crises in the family, such as the death or serious illness of a family member or a parent's loss of a job and impending economic problems. These minors choose to obtain an abortion independently because they fear that news of their pregnancy will be too much for a parent already dealing with such significant problems, and the family will be unable to cope with one more crisis.

33. Other minors come from families in which they have no real parent/child relationship at all because, for example, their parents are in jail, are addicted to drugs, or have abandoned them. Minors from these families sometimes find that there are significant emotional reasons not to attempt to engage their parents and no advantage to doing so as they know that the parent will not offer help or support.

C. The Harms of the Act

34. For those minors who cannot involve a parent in their decision to terminate a pregnancy, the Act's notification requirement will result in significant and irreversible harm.

a. The Act will leave some minors little choice other than to tell a parent, contrary to their best judgment. Some of these minors will suffer: some will be beaten; some will be thrown out of their homes; and some will be forced to continue their pregnancies against their will.

b. The Act will subject some minors to other harms as well. Some minors who determine that they cannot notify a parent or go to court will take extreme action to avoid

parental involvement, including obtaining an illegal abortion or attempting to self-induce an abortion. Others will continue to carry their unwanted pregnancy to term, suffering the attendant medical risks and severe adverse education, economic, and social consequences.

c. Regardless of the route the minor chooses, telling a parent or going to court to seek a bypass, the Act will delay minors' abortions. Delay in obtaining an abortion increases the medical risks, costs and lack of availability associated with the procedure.

35. The Act's abuse and neglect exception provides little, if any, aid to minors who are endangered. Because of the psychology of abuse, many abused and neglected minors will be unwilling to reveal the abuse. In addition, the exception provides no remedy for minors who have not previously been subject to physical or sexual abuse, but who know with certainty (often because they have seen it happen to an older sister) that revealing their pregnancy will subject them to physical harm or ejection from the home.

36. In addition, for those minors who cannot involve a parent in their decision to terminate a pregnancy, the Act's provision for obtaining judicial waiver of notice (hereinafter "judicial bypass") does not provide an adequate substitute.

a. For many minors who cannot notify, the judicial bypass is not a realistic alternative. For some, the prospect of going to court and revealing to a judge the intimate details of their home, personal life, and circumstances of their pregnancies is simply too daunting. For others, the logistical hurdles, including phone calls, arranging transportation, and finding a time to be away from school and home without arousing suspicion, are too difficult to overcome.

b. Minors who do pursue a judicial bypass will be delayed in obtaining medical care as they overcome their fears and apprehensions about explaining their very private predicament to a stranger and authority figure; struggle to determine how to pursue a bypass; arrange

transportation to court; await a time when they can travel to court undetected by parents or school officials; and then actually progress through a bypass procedure. The delay will increase the risk of the abortion procedure. In addition, it will increase the cost and decrease the availability of the abortion procedure, if abortion is even still an option at her advanced stage of pregnancy.

c. Minors who do pursue a judicial bypass are at risk for their parents discovering their pregnancy and planned abortion. All of the actions required to pursue a bypass, such as arranging transportation to and from the courthouse, explaining absences from home or school, and spending time at the courthouse awaiting the hearing and decision, put minors' confidentiality at risk. Thus, the very act of pursuing a waiver of the parental notification requirement will result, in some cases, in a minor's parent learning of her pregnancy and planned abortion.

d. The delays, risks of disclosure, and humiliation suffered by being forced to reveal the intimate details of their lives to a judge that are inherent in the judicial bypass process will take a tremendous emotional toll on minors who pursue judicial bypass.

D. Lack of Justification for the Act

37. There is no justification for the Act.

38. By requiring minors to notify a parent or go to court before having an abortion, the Act will harm, not protect, minors' health and well-being, as discussed above in paragraphs 34-36.

39. The Illinois General Assembly asserted only limited justifications for the Act:

The General Assembly finds that notification of a family member as defined in this Act is in the best interest of an unemancipated minor, and the General Assembly's purpose in enacting this

parental notice law is to further and protect the best interests of an unemancipated minor.

The medical, emotional, and psychological consequences of abortion are sometimes serious and long-lasting and immature minors often lack the ability to make fully informed choices that consider both the immediate and long-range consequences.

Parental consultation is usually in the best interest of the minor and is desirable since the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.

750 ILCS 70/5.

40. Contrary to the Act's asserted findings and purpose, the Act is not necessary to prevent "serious and long-lasting" medical, emotional and psychological consequences.

41. As already noted, abortion is one of the safest surgical procedures available, and is many times safer than continuing a pregnancy through to childbirth.

42. In addition, more than two decades of scientific research has consistently shown that for the vast majority of women, including adolescents, abortion poses no psychological hazard. Indeed, the best scientific evidence available demonstrates that adolescents who terminated their pregnancies were just as healthy – if not healthier psychologically – than those who gave birth, and there is no reliable evidence that abortion leads to long-term mental health problems.

43. Moreover, contrary to the Act's assumptions, the Act is not necessary to ensure that minors make an informed decision regarding abortion. Minors seeking abortion services independently of their parents are sufficiently mature to provide informed consent and the essential medical information to health professionals prior to obtaining treatment. They are capable of understanding their options for dealing with an unintended pregnancy, the risks and benefits of each option, and the immediate and long-range consequences of their decision.

44. The majority of minors already involve a parent in their decision to have an abortion. However, for minors who have good reasons not to involve their parents in their decision to have an abortion, the Act will not create a positive family relationship and open lines of communication where none existed previously. For these and other reasons, leading professional medical organizations, including the American Medical Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the Society for Adolescent Medicine, and the American Public Health Association, oppose laws mandating parental notification of a minor's abortion, such as the Act.

CLAIMS FOR RELIEF

COUNT I: RIGHT TO PRIVACY

45. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–44 above as if set forth fully herein.

46. The Act violates the Illinois Constitution's express privacy clause, Article I, Section 6, by impairing a minor woman's fundamental right to obtain an abortion. The Act does so by unlawfully intruding upon a minor woman's rights to bodily autonomy, to make medical decisions about her reproductive healthcare, and to keep medical information confidential, all without justification.

COUNT II: SUBSTANTIVE DUE PROCESS

47. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–44 above as if set forth fully herein.

48. The Act violates the substantive components of the Illinois Constitution's Due Process Clause, Article I, Section 2, by impairing a minor woman's fundamental right to obtain

an abortion. The Act does so by unlawfully intruding upon a young woman's rights to bodily autonomy, to make medical decisions about her reproductive healthcare, and to keep medical information confidential, all without justification.

COUNT III: RIGHT TO EQUAL PROTECTION

49. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–44 above as if set forth fully herein.

50. The Act violates the Illinois Constitution's guarantee of equal protection, Article I, Section 2, by discriminating against minors on the basis of their decision to exercise their fundamental right to abortion. The Act does so by subjecting minors who choose to terminate their pregnancies to a requirement of parental notification while minors who choose to carry their pregnancies to term are subject to no such restraint. The state's discriminatory scheme is without justification.

COUNT IV: GENDER EQUALITY

51. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–44 above as if set forth fully herein.

52. The Act violates the Illinois Constitution's guarantee of gender equality, Article 1, Section 18, by preferencing childbirth over abortion, thus improperly advancing gender based stereotypes about the role of women as mothers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

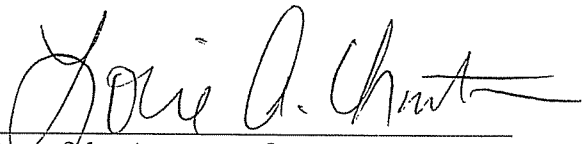
53. Declare the Act to be unconstitutional and that, as a consequence, the Act is void and of no effect.

54. Enter a temporary restraining order and a preliminary and permanent injunction prohibiting Defendants from enforcing the Act.

55. Award Plaintiffs attorneys' fees, costs and expenses pursuant to 740 ILCS 23/5(c)(2).

56. Enter such relief as the Court deems just and proper.

Respectfully submitted,

By: 
One of the Attorneys for
Plaintiffs

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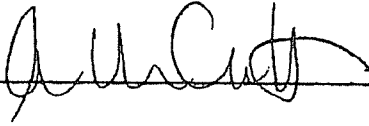
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Dated: October 13, 2009

VERIFICATION

I, Allison Cowett, M.D., M.P.H., under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, hereby certify that I have read the foregoing Verified Complaint; that the factual statements set forth in paragraphs 1-4, 6, 8-18, 22-31, 34, 37-41, and 43-44 are true, except for those alleged on information and belief; and that I am informed and I believe that the facts alleged on information and belief are also true.



Allison Cowett, M.D., M.P.H.

VERIFICATION

I, Anne Baker, M.A., under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, hereby certify that I have read the foregoing Verified Complaint; that the factual statements set forth in paragraphs 1-2, 7, 11, 13-18, 26-27, and 29-40 are true, except for those alleged on information and belief; and that I am informed and I believe that the facts alleged on information and belief are also true.

A handwritten signature in cursive script that reads "Anne Baker M.A." is written over a horizontal line.

Anne Baker, M.A.