

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_  
CIVIL ACTION NO. \_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY  
SERVICES

PLAINTIFF

v.

PLANNED PARENTHOOD OF INDIANA  
AND KENTUCKY, INC.,

DEFENDANT

Serve:

Taylor Ewing, Registered Agent, or  
Managing Agent or other authorized  
agent for service of process  
1025 South Second Street  
Louisville, KY 40203

or

842 South 7<sup>th</sup> Street  
Louisville, KY 40203

\* \* \* \* \*

**COMPLAINT**

Plaintiff Commonwealth of Kentucky, Cabinet for Health and Family Services, hereby comes, by and through counsel, for its Complaint against the Defendant, Planned Parenthood of Indiana and Kentucky, Inc., and states as follows:

**Introduction**

Kentucky's laws regarding the operation of abortion facilities are clear: such facilities must first obtain a license before performing abortions, and there is a significant fine for any abortion performed without a license. Furthermore, in order to protect the health and safety of women, Kentucky law prescribes strict requirements for licensure.

On November 19, 2015, in the waning days of the administration of former Governor Steven L. Beshear, Planned Parenthood of Indiana and Kentucky, Inc., filed an application with the Kentucky Cabinet for Health and Family Services for a license to operate an abortion facility in Louisville, Kentucky.

Attached to Planned Parenthood's license application were purported "transfer agreements," which are essential prerequisites for a license. Transfer agreements are not only essential for obtaining a license, but they are also essential for ensuring the safety of patients. Despite the importance of these agreements, the documents submitted by Planned Parenthood were a complete sham.

Despite the fact that Planned Parenthood did not have an abortion facility license, and the glaringly obvious fact that it did not have transfer agreements in place, Planned Parenthood knowingly and callously endangered the lives of its patients and began performing abortions at its facility on December 3, 2015.

On December 7, 2015, one day before the Beshear Administration left office, the then head of the Cabinet's Office of Inspector General, Maryellen Mynear, ignored or overlooked these facts and retroactively confirmed to Planned Parenthood that it was a "long standing OIG policy" that abortion clinics could begin operations without a license. The reality, however, is that the Cabinet had never had such a policy relating to abortion facilities. Mynear's actions ignored clear statutory law and were without authority.

In addition, Planned Parenthood was seeking to accelerate the licensure process to be completed before its sympathetic advocate willing to ignore the law, Mynear, left the Cabinet for a new job in early January, 2016.

Between December 3, 2015, and January 28, 2016, when the Cabinet learned Planned Parenthood had been operating an unlicensed abortion facility without hospital and ambulance transfer agreements, Planned Parenthood performed twenty-three (23) abortions, placing its patients at extreme risk to their health, safety, and lives had an emergency occurred. Because of its blatant violations of law, Planned Parenthood should be required to pay fines in the maximum amount allowed by law in order to punish it for its callous and knowing violations of law and to deter it and others from such violations in the future.

### **Parties**

1. Plaintiff Commonwealth of Kentucky, Cabinet for Health and Family Services (“Cabinet”) has authority to enforce through legal actions the provisions of KRS Chapter 216B, including the laws of the Commonwealth relative to abortion facilities.

2. Defendant Planned Parenthood of Indiana and Kentucky, Inc. (“Planned Parenthood”) is a corporation existing under the laws of the State of Indiana and having its principal place of business at 200 South Meridian Street, Suite 400, Indianapolis, Indiana. Planned Parenthood currently operates a facility at 842 South 7<sup>th</sup> Street, Louisville, Kentucky, at which abortions were performed unlawfully from December 3, 2015, through January 28, 2016, and for which location it is seeking to be licensed by the Cabinet as an abortion facility.

### **Jurisdiction and Venue**

3. Jurisdiction is proper in this Court because Plaintiff seeks fines exceeding the jurisdictional minimum for this Court.

4. Venue is proper in this Court pursuant to KRS 452.405 and KRS 216B.990(6) because the violations that form the basis for this action seeking the imposition of a fine occurred in Jefferson County, Kentucky.

## Facts

5. According to KRS 216B.010, the policy of Kentucky regarding health facilities is as follows: “[Kentucky] General Assembly finds that the licensure of health facilities and health services is a means to insure that the citizens of this Commonwealth will have safe, adequate, and efficient medical care;...”

6. Abortion facilities are health facilities for which a license is required. KRS 216B.0431. Pursuant to KRS 216B.105:

Unless otherwise provided in this chapter [KRS Chapter 216B] no person shall operate any health facility in this Commonwealth without first obtaining a license issued by the Cabinet.

7. As defined in KRS 216B.015, an “abortion facility” means “any place in which an abortion is performed.”

8. According to Merriam-Webster Medical Dictionary, “abortion” is defined as:

The termination of pregnancy, accompanied by, resulting in, or closely followed by the death of the embryo or fetus.

9. Planned Parenthood submitted to the Cabinet an application (“Application”) for a license to operate an abortion facility at 842 South 7<sup>th</sup> Street, Louisville, on November 19, 2015. A copy of the Application is attached hereto as Exhibit A.

10. “Transfer Agreements” are contractual agreements between health facilities, such as abortion facilities, and licensed hospitals and ambulance services that contractually bind the transferee hospital and ambulance service to accept patients of the transferor abortion facility in the event of complications and emergencies that occur as part of an abortion procedure. Such transfer agreements are required by law in order to safeguard and protect the health, safety, and lives of women upon whom abortions are performed.

11. Pursuant to KRS 216B.0435 and 902 KAR 20:360, and as a legal prerequisite to receiving a license, abortion facilities must file with the Cabinet transfer agreements with a licensed acute-care hospital and a licensed ambulance service. In that regard, KRS 216B.0435 requires that:

- (1) Each abortion facility shall enter into a written agreement with a licensed acute-care hospital capable of treating patients with unforeseen complications related to an abortion facility procedure by which agreement the hospital agrees to accept and treat these patients.
- (2) If unforeseen complications arise prior to or during an abortion facility procedure, the patient shall be transferred to the licensed acute-care hospital with which the abortion facility has a written agreement as provided under subsection (1) of this section or to the hospital selected by the patient, if the patient so chooses.
- (3) Each abortion facility shall enter into a written agreement with a licensed local ambulance service for the transport of any emergency patient within the scope of subsection (1) of this section to the licensed acute-care hospital.
- (4) The written agreements of an abortion facility with an acute-care hospital and with a local ambulance service shall be filed by the abortion facility with the cabinet.

12. The risk of complications resulting in the need for hospital emergency care for women on whom abortions are performed is not insubstantial. Having legally binding transfer agreements in place is an absolute condition precedent to, and requirement for, being able to legally perform abortions in Kentucky. Failure to have those agreements in place puts the women on whom abortions are performed at extreme risk in the event of complications and emergencies during the abortion operations.

13. Any woman on whom surgery is performed at an abortion clinic that does not have valid and enforceable transfer agreements in place is subject to life-threatening health and safety risks.

14. Planned Parenthood knowingly, intentionally, fraudulently, deceitfully, with unlawful design, willfully, and with deliberate misrepresentation, or by careless, negligent, or

incautious disregard for Kentucky law, submitted facially and patently deficient transfer agreements with its Application in wanton callous disregard for the health, safety, and lives of its prospective patients, the women on whom it would, and did, conduct abortion operations.

15. The “transfer agreement” attached to Planned Parenthood’s Application that purported to be with a hospital was not with a licensed hospital and was not legally binding on any hospital. It did not even identify the hospital that was supposedly entering into the agreement. Thus, it facially failed to comply with KRS 216B.0435(1).

16. The purported ambulance service transfer agreement attached to the Application was simply a letter from Louisville Metro EMS instructing Planned Parenthood to call “911” in the event of an emergency. As such, it was not a contractual agreement and also facially failed to meet the requirements of KRS 216B.0435(3).

17. No reasonable applicant or other person could have believed in good faith that the purported “transfer agreements” attached to the Application were sufficient under Kentucky law, and therefore neither Planned Parenthood nor the Cabinet could have justifiably relied upon such deficient transfer agreements. In fact, they appear to have been supplied intentionally in order to mislead the Cabinet into granting a license or to persuade the Cabinet to permit Planned Parenthood to begin performing abortions even before a license was granted.

18. As of the date of filing of this Complaint, Planned Parenthood’s Application remains pending with the Cabinet. Thus, Planned Parenthood has not had a license to operate an abortion facility at any point since it filed its Application on November 19, 2015.

19. Nevertheless, with full knowledge that it did not have a license to operate an abortion facility, and that it did not have valid and enforceable transfer agreements in place, Planned Parenthood unlawfully began performing abortions at its Louisville facility on

December 3, 2015. Those unlawful abortions continued at Planned Parenthood's Louisville location until the Cabinet discovered unlawful abortions were taking place and ordered Planned Parenthood on January 28, 2016, to cease and desist in performing abortions.

20. Since the change in gubernatorial administrations on December 8, 2016, it has come to light that Planned Parenthood was attempting to accelerate the process during the last days of former Governor Steven L. Beshear's administration and to begin performing abortions in Louisville.

21. On or about November 19, 2015, the date the Planned Parenthood Application was filed, then-Cabinet Inspector General Maryellen Mynear ("Mynear") hand-delivered the Application to Cabinet employees involved in the Cabinet's licensing group. Such action on the part of Mynear was considered unusual by those employees.

22. On December 1, 2015, at 3:03 p.m., an attorney for Planned Parenthood emailed Mynear, stating it was the Planned Parenthood attorney's "understanding" that "it is not only permissible but required for a health facility applicant to conduct operations, at least at some minimal level, after filing a licensure application although a survey has not yet been conducted and a license not yet issued." A "survey" is, generally speaking, similar to an inspection. The Planned Parenthood attorney further stated in that email "that this has been my experience with the OIG [Office of Inspector General] as a longstanding policy for many years in connection with applications to license any type of health facility." The Planned Parenthood attorney asked Mynear to "please confirm our understanding of this process as set forth above." A copy of this email is attached as Exhibit B.

23. About half-an-hour later, by email of 3:40 p.m. on December 1, 2015 [Exhibit C], Mynear responded to the Planned Parenthood attorney: "I have verified with OIG staff that your

summary is correct – a facility must be performing services for which it seeks licensure so that the survey (i.e., inspection) process may fully evaluate compliance with applicable regulations. I have also verified that OIG has *received the necessary documentation* and fees from your client so that the survey can (and will) be scheduled. I recognize the inherent conflict in this approval but it is, indeed the process by which OIG has historically issued licenses and is a reasonable application of all statutes and regulations read in conjunction with one another.” (Emphasis added.) There was no indication, however, that Mynear had actually reviewed the Application and made herself aware of the gross deficiencies in the Application caused by the lack of the required transfer agreements.

24. Mynear was wrong in her email response. Abortion facilities are not allowed to commence performing abortions in Kentucky without a license. Even if non-abortion health facilities have ever been permitted to engage in some activities prior to formal licensure at the “minimal level” referred to by Planned Parenthood’s attorney, those facilities would have already undergone the stringent Certificate of Need (“CON”) process. Under Kentucky law, abortion facilities are exempt from the CON process and do not go through that screening process.

25. Predictably, the Planned Parenthood attorney was unsatisfied with Mynear’s December 1 response. By an email at 4:04 p.m., Friday, December 4, 2015 [Exhibit D], the attorney thanked Mynear for her December 1 explanation but pushed her further for after-the-fact “confirmation” and “reassurance”: “The facility began operations yesterday [Dec. 3] so I am just asking for confirmation (reassurance) again that, *because all the materials needed for issuance have been filed*, they may continue to be operational until a survey can be arranged, without fear of such services being deemed unlicensed.” (Emphasis added.)



26. By quick email to another Cabinet employee [Exhibit E], Mynear told that employee: *“I believe this [the Planned Parenthood attorney’s statement] is a correct statement but want to double check with you before I respond. I’ll respond on Monday [Dec. 7].”* (Emphasis added.) “Monday” was the day before the administrations were to change in Frankfort. Had there truly been a “long-standing” Cabinet policy in effect to allow abortion facilities to begin performing abortions without a license and without valid and enforceable transfer agreements in place, Mynear, the Cabinet’s then-Inspector General, would have known it and would not have needed to “double check.”

27. The employee to whom Mynear directed her December 7, 2015, email had never had occasion to review the Application and was unaware at the time of the serious deficiencies in the purported transfer agreements.

28. Nevertheless, by email of 3:15 p.m., Monday, December 7, 2015 [Exhibit F], Mynear told the Planned Parenthood attorney: “Yes, this is a correct statement of long standing OIG policy.” It is unknown whether Mynear herself had by then reviewed the Application and become aware of the two deficient purported “transfer agreements.”

29. By the time Mynear’s December 7 email statement was made to the Planned Parenthood attorney, Planned Parenthood had already performed six (6) abortions at its Louisville facility – all without a license, and without the statutorily required enforceable transfer agreements in place.

30. Furthermore, Mynear and Planned Parenthood knew, or should have known, that Mynear was without legal authority to waive or alter clear and unambiguous Kentucky law that requires a license to be obtained before an abortion facility may lawfully perform abortions.

31. In addition, although the Planned Parenthood attorney had said in her 4:03 p.m., December 4, 2015, email that “all materials needed for issuance [of a license] have been filed,” Planned Parenthood either knew, or should have known, that the purported “transfer agreements” attached to the Planned Parenthood Application were grossly insufficient and non-compliant in that neither was a binding contractual agreement with a licensed acute-care hospital or a licensed ambulance service, as required by law.

32. Planned Parenthood’s scheme to accelerate the licensure process, as set forth in Paragraph 20, above, is evidenced by an email from its attorney to Mynear on December 29, 2015 [Exhibit F]. In that 4:49 p.m. email, sent less than a week before Mynear was scheduled to cease her employment in the Cabinet’s Office of Inspector General and assume a new job, the Planned Parenthood attorney stated to Mynear:

I assume you are aware that Planned Parenthood is still awaiting its licensure survey. While respecting the policy that the survey must be unannounced, given your familiarity with the application and *my client’s general concern (based on experience in other states) that external forces may attempt to disrupt the licensure process, we are obviously hoping that the survey will take place before you leave the OIG.* We would appreciate any reassurance you can provide that will allay their concerns about timing, without disclosing an actual survey date. (Emphasis added).

33. Those “external forces” obviously meant the new administration in the Governor’s Office in Frankfort. Moreover, Planned Parenthood was clearly attempting to push through its license Application (based on patently false and insufficient information) before Mynear ceased being Cabinet Inspector General. The only reasonable conclusion for this rush was to obtain an abortion facility license from the Cabinet while Planned Parenthood still had someone in the Cabinet who was willing to ignore or overlook the law.

34. On January 28, 2016, media outlets reported, and Planned Parenthood confirmed, that it had begun performing abortions in its Louisville facility on January 21 even though it had

neither a license to do so nor the statutorily required and crucial transfer agreements, which are fundamental prerequisites to a license and to lawfully performing abortions in Kentucky.

35. Furthermore, Planned Parenthood's public confirmation was false and misleading. Documents later obtained by the Cabinet reveal that Planned Parenthood actually commenced performing abortions on December 3, 2015, almost two months earlier.

36. During the application review process, in mid-January, 2016, the Cabinet immediately recognized that Planned Parenthood's Application was deficient in that the two attached "transfer agreements" did not comply with Kentucky law. At that time, the Cabinet did not know that Planned Parenthood had already begun performing abortions at its Louisville facility. The Cabinet was in the process of drafting a letter to Planned Parenthood about the deficiencies in the Application when, on January 28, 2016, the Cabinet learned the startling news that Planned Parenthood had already performed numerous abortions at its Louisville South 7<sup>th</sup> Street location.

37. Upon discovering on January 28, 2016, that Planned Parenthood was performing abortions without a license and without the required transfer agreements, the Cabinet issued a cease and desist letter [Exhibit G] demanding that Planned Parenthood stop performing abortions without a license and pointing out the foregoing deficiencies in the Application.

38. In response, Planned Parenthood did not deny that it was acting without the appropriate license and transfer agreements. In fact, by letter dated January 29, 2016 [Exhibit H], Planned Parenthood stated, *inter alia*, "We...appreciate your review of the agreements submitted with the application. We are working on getting those agreements revised, with the intention of re-submitting them to your office as soon as possible." Planned Parenthood also

agreed that it would stop providing abortions until such time as it received a license to operate an abortion facility.

39. KRS 216B.990(1) provides:

- (1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.

40. KRS 216B.990(6) provides:

- (6) Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.

41. Planned Parenthood violated KRS 216B.990(1) by operating, and conducting the business of, an abortion facility in Jefferson County, Kentucky, from December 3, 2015, through January 28, 2016, without first obtaining a license.

42. Planned Parenthood violated KRS 216B.990(6) by operating an abortion facility and conducting the business of an abortion facility in Jefferson County, Kentucky, without a license and without the required transfer agreements, and it did so by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious

disregard for statutes or administrative regulations, including but not limited to, KRS 216B.0435(1), (3), and (4), relating to transfer agreements.

43. Because of Planned Parenthood's violations, as set forth herein, it should be fined not less than \$500 nor more than \$10,000 for each time it operated an abortion facility without a license, *i.e.*, (1) for each of the fifty-seven (57) days beginning December 3, 2015, and ending January 28, 2016, or, alternatively, (2) for each of the twenty-three (23) abortions it performed from December 3, 2015 through January 28, 2016. Accordingly, Planned Parenthood should be fined either \$10,000 for each day it operated without a license, *i.e.*, \$570,000 or, in the alternative, \$10,000 for each abortion it performed without a license, *i.e.*, \$230,000.

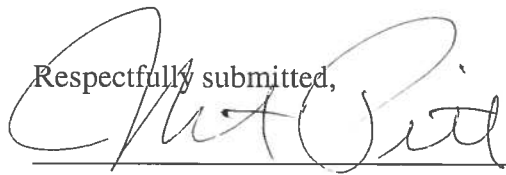
44. In addition to the foregoing fines, Planned Parenthood should be fined in amounts not to exceed \$1,000 for each day it operated and conducted the business of an abortion facility without having in place the statutorily required contractual transfer agreements with (1) a licensed hospital and (2) a licensed ambulance service.

45. Because Planned Parenthood operated and conducted the business of an abortion facility for fifty-seven (57) days, from December 3, 2015, through January 28, 2016, without a transfer agreement with (1) a licensed hospital and (2) a licensed ambulance service, it also should be fined a total of \$114,000, amounting to \$1,000 for each of the fifty-seven (57) days of operation without each of the two required transfer agreements being in place, to-wit: a total of \$57,000 for all of the days of operation without a hospital transfer agreement and a total of \$57,000 for all of the days of operation without an ambulance transfer agreement.

**WHEREFORE**, Plaintiff Commonwealth of Kentucky Cabinet for Health and Family Services respectfully requests the following relief:

- (1) For its violations of KRS 216B.105(1), that Planned Parenthood be fined a total of \$570,000;
- (2) In the alternative, for its violations of KRS 216B.105(1), that Planned Parenthood be fined a total of \$230,000;
- (3) For its violations of KRS 216B.0435(1), that Planned Parenthood be fined \$57,000;
- (4) For its violations of KRS 216B.0435(3), that Planned Parenthood be fined \$57,000;
- (5) That Plaintiff recover its costs herein expended; and
- (6) That Plaintiff have all other and further relief to which it may be entitled.

Respectfully submitted,



M. Stephen Pitt  
S. Chad Meredith  
Office of the Governor  
700 Capital Avenue, Suite 101  
Frankfort KY 40601  
(502) 564-2611 (phone)  
(502) 564-1275 (fax)  
[Steve.Pitt@ky.gov](mailto:Steve.Pitt@ky.gov)  
[Chad.Meredith@ky.gov](mailto:Chad.Meredith@ky.gov)

*Attorneys for Plaintiff*  
Cabinet for Health and Family Services,  
Commonwealth of Kentucky

3DD 260

RECEIVED

NOV 19 2015

OFFICE OF INSPECTOR GENERAL

59040

Application for License to Operate  
an Abortion Facility

For Administrative Use Only:

Date Received 11-19-15  
Amount Received \$155.00

I. IDENTIFICATION

Facility Name Planned Parenthood of Indiana and Kentucky

Address 842 South 7th Street

City/County/Zip Louisville, KY 40203

Telephone Number 502-584-2473

Director LaToya Rose

Date operation began at current address 12-3-2015

Date operation began under current owner 12-3-2015

II. CONTROL (Check one in each column)

Name and address of individual owner, partnership or corporation

Planned Parenthood of Indiana and Kentucky, Inc.

200 South Meridian Street, Suite 400

Indianapolis, Indiana 46225

If owned by a corporation, attach separate sheet listing names and titles of the governing body of the corporation.

Parent Corporation  
(If Applicable)

Management Company  
(If Applicable)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT

A

I understand that any change in the application that affects my licensure status will be reported to the Division of Licensing and Regulation and a new application will be completed at the time.

I agree that this service and all aspects of its operation shall be open at all times to inspection and surveillance by all state agency licensure personnel.

I agree to provide written agreements with an acute care hospital and a local ambulance service with this application as required by Senate Bill 217 of the 1998 Regular Session of the General Assembly.

I certify that the information given in completing this application is accurate to the best of my knowledge and recognize that falsification of this application can result in denial or revocation of licensure.

  
Signature of Authorized Representative

COO

Title

11/18/15  
Date

The annual licensure fee for an abortion facility is \$155.00.

Make check payable to Kentucky State Treasurer. **DO NOT SEND CASH.**

Return application, agreements, and fee to:

Division of Licensing and Regulation  
275 East Main Street, 4E-A  
Frankfort, Kentucky 40621

L&R 240 (7/98)



**TRANSFER AGREEMENT  
BETWEEN  
DEPARTMENT OF OBSTETRICS, GYNECOLOGY AND WOMEN'S HEALTH AND  
PLANNED PARENTHOOD OF INDIANA AND KENTUCKY, INC**

**THIS TRANSFER AGREEMENT** (this "Agreement") is entered into as of the 2/1/14 (the "Effective Date"), by and between Department of Obstetrics, Gynecology and Women's Health ("Receiving Entity") and Planned Parenthood of Indiana and Kentucky, Inc, an Indiana not-for-profit corporation ("Transferring Facility") (each a "Party" and collectively "Parties").

**WHEREAS**, Receiving Entity is an academic department of OB/GYN Physicians operating with an academic medical center that operates in conjunction with a teaching hospital;

**WHEREAS**, Transferring Facility is licensed under Kentucky law to provide health care services to patients;

**WHEREAS**, Receiving Entity and Transferring Facility desire, by means of this Agreement, to assist physicians in the appropriate transfer and treatment of patients to facilitate appropriate patient care;

**WHEREAS**, the Parties mutually desire to enter into this Agreement to provide for the medically appropriate transfer of patients of Transferring Facility who have experienced complications and are in need of inpatient admission ("Patients") to the teaching hospital where the Receiving Entity cares for their patients;

**NOW, THEREFORE**, for and in consideration of the terms, conditions, covenants, agreements and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby mutually agreed by the Parties as follows:

**I. DUTIES AND RESPONSIBILITIES.**

- 1.1 Joint Responsibilities.** In accordance with the policies and procedures of both the Transferring Facility and Receiving Entity and upon confirmation of the recommendation of the Patient's attending physician that such a transfer is medically appropriate, such Patient shall be transferred from the Transferring Facility to the Receiving Entity as long as the Receiving Entity determines the teaching hospital has bed availability, staff availability, is able to provide the services requested by the Transferring Facility, including on-call specialty physician availability, and pursuant to any other necessary criteria established by the Receiving Entity. In such cases, the Receiving Entity and the Transferring Facility agree to exercise best efforts to provide for prompt admission of the Patient. If applicable, the Parties shall comply with all EMTALA requirements with respect to such transfers. Receiving Entity and Transferring Facility shall meet periodically to review the transfer process, of policies and procedures in order to improve the process, including efficiency, clinical care and Patient safety.
- 1.2 Receiving Entity.** The Receiving Entity shall accept Patients in need of transfer from the Transferring Facility pursuant to the criteria set forth in Section 1.1. Receiving Entity

shall also designate an individual or individuals to coordinate with Transferring Facility in order to establish acceptable and efficient transfer guidelines.

1.3 Transferring Facility. Transferring Facility shall request transfers of Patients to Receiving Entity pursuant to the criteria set forth in Section 1.1. Further, Transferring Facility shall:

- a. Transfer Patients to Receiving Entity for medical treatment only where such transfer and referral has been determined to be medically appropriate.
- b. Have responsibility for obtaining the informed consent for the potential transfer to Receiving Entity and the teaching hospital from the Patient, or from the legal guardian, legal representative or other surrogate decision maker of a Patient who is determined to be unable to give informed consent to transfer.
- c. Notify Receiving Entity and the teaching hospital as far in advance as possible of the impending transfer.
- d. Transfer to the teaching hospital the personal effects, including money and valuables, and information related thereto. A standard form shall be adopted and used by both Parties listing such personal effects and appropriate documentation and transfer procedure.
- e. Affect the transfer to Receiving Entity and the teaching hospital through qualified personnel and appropriate transfer equipment and transportation, including the use of necessary and medically appropriate life support measures. Receiving Entity's responsibility for the Patient's care shall begin when the Patient is formally admitted to the teaching hospital.
- f. Transfer, and supplement promptly and as necessary, all relevant medical records, or in the case of an emergency, transfer an abstract of the pertinent medical and other records necessary in order to continue the Patient's treatment without interruption and provide identifying and other information, including contact information for referring physician, name of physician(s) at Receiving Entity contacted with regard to the Patient (and to whom the Patient is to be transferred), medical, social, nursing and other care plans. Such information shall also include, without limitation, current medical and lab findings, history of the illness or injury, diagnoses, advanced medical directives, rehabilitation potential, brief summary of the course of treatment at the Transferring Facility, medications administered, known allergies, nursing, dietary information, ambulation status and pertinent administrative, third Party billing and social information.

1.4 Non Discrimination. The Parties hereto affirm that neither shall permit any form of discrimination in the transfer process set forth herein based on race, color, national origin, handicap, religion, age, sex or any other characteristic protected by State or Federal law and that no otherwise qualified individual with a disability shall, solely by reason of the disability, be excluded from participation in, or denied the benefits of, or be subjected to discrimination in a facility certified under the Medicare or Medicaid programs.

- 1.5 Name Use. Neither Party shall use the names, trademarks, logos or symbols of the other Party for any reason including but not limited to any promotional, informational, marketing or advertising activities or materials without in each instance obtaining the prior written consent of the Party owning the rights thereto.
- 1.6 Standards. Receiving Entity shall make every reasonable effort to ensure that its staff and those of the teaching hospital provide care to Patients in a manner that will ensure that all duties are performed and services provided in accordance with any standard, ruling or regulation of The Joint Commission, the Department of Health and Human Services or any other federal, state or local government agency, corporate entity or individual exercising authority with respect to or affecting Receiving Entity. Receiving Entity shall ensure that its professionals shall perform their duties hereunder in conformance with all applicable federal, state and local laws, regulations and rules.
- 1.7 Exclusion/Debarment. Each Party hereby represents and warrants that it has not been debarred, suspended, or excluded from participation in any state or federal healthcare program, including, but not limited to, Medicaid and Medicare. In addition, each Party agrees that it will notify the other Party immediately if it subsequently becomes debarred, suspended or excluded or proposed for debarment, suspension or exclusion from participation in any state or federal healthcare program.
- 1.8 Confidentiality.
- a. The Parties agree to maintain the confidentiality of each other's confidential information. Each Party acknowledges that certain material, which will come into its possession or knowledge in connection with this Agreement, may include confidential information, disclosure of which to third Parties may be damaging to the other Party to this Agreement. The Parties agree to hold all such material in confidence, to use it only in connection with performance under this Agreement and to release it only to those persons requiring access thereto for such performance or as may otherwise be required by law.
  - b. Neither Party shall disclose to any third Party, except where permitted or required by law or where such disclosure is expressly approved in writing by both Parties or the Patient in writing, any Patient or medical record information regarding either Party's Patients, and both Parties shall comply with all federal and state laws and regulations regarding the confidentiality of such information, including but not limited to, the Health Insurance Portability and Accountability Act.
- 1.9 Access to Books and Records. Both Parties will maintain records relating to their responsibilities under this Agreement for a period of five (5) years from the date of services. Said records may be maintained in an electronic format. During normal working hours and upon prior written and reasonable notice, each Party will allow the other Party reasonable access to such records and also the right to make photocopies or obtain electronic copies of such records subject to all applicable state and federal laws and regulations governing the confidentiality of such records. Requesting Party agrees to pay a reasonable expense for any such copies.

## II. FINANCIAL ARRANGEMENTS.

- 2.1 Billing and Collection. Unless otherwise agreed to in a writing signed by both Parties and Patient, the Patient is solely responsible for payment for care provided by Transferring Facility or Receiving Entity or the teaching hospital. Each Party shall bill and collect for services rendered by each Party pursuant to all state and federal guidelines and those set by third Party payors. Neither the Transferring Facility nor the Receiving Entity shall have any liability to the other for billing, collection or other financial matters relating to the transfer or the transferred Patient.
- 2.2 Insurance. Each Party shall, at its expense, maintain through insurance policies, self-insurance or any combination thereof, policies of comprehensive general liability and professional liability insurance with coverage limits of at least One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate to insure such Party and its Board, officers, employees and agents against any claim for damages arising by reason of injuries to property or personal injuries or death occasioned directly or indirectly in connection with services provided by such Party and activities performed by such Party in connection with this Agreement. Either Party shall notify the other Party thirty (30) days prior to the termination or modification of such policies. Prior to execution of this Agreement, the Parties shall provide each other evidence of such insurance.

## III. TERM AND TERMINATION.

Term. The promises and obligations contained herein shall commence as of the Effective Date hereof and shall continue for a term of one (1) year, and shall automatically renew for additional one-year terms, unless sooner terminated pursuant to Section 3.1.

### 3.1 Termination.

- a. Either Party shall have the right to terminate this Agreement immediately upon notice to the other Party in the event the other Party fails to maintain the licensure, certification or insurance necessary to carry out the provisions of this Agreement or if the other Party is sanctioned by, excluded, suspended or otherwise declared ineligible to participate in, or is proposed for exclusion or suspension from, participation in Medicare, Medicaid or any other federal health care program, or is charged with or convicted of an offense related to health care (each Party shall have an independent obligation to notify the other Party immediately in the event it becomes aware of any of the above listed actions).
- b. In the event of breach of any of the terms or conditions of this Agreement by either Party and the failure of the breaching Party to correct such breach within thirty (30) business days after written notice of such breach by either Party, such other Party may terminate this Agreement upon written notice of such termination to the breaching Party.
- c. This Agreement may terminate at any time and upon any terms mutually agreed to by the Parties.

- d. Either Party may terminate this Agreement without cause at any time by giving thirty (30) days prior written notice of termination to the other Party.
- 3.2 Effects of Termination. Upon termination of this Agreement, as hereinabove provided, no Party shall have any further obligations hereunder, except for obligations accruing prior to the date of termination.

#### IV. MISCELLANEOUS.

- 4.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and contains all of the terms and conditions between the Parties with respect to the subject matter hereunder. Receiving Entity and Transferring Facility shall be entitled to no benefits or services other than those specified herein. This Agreement supersedes any and all other agreements, either written or oral, between the Parties with respect to the subject matter hereof.
- 4.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 4.3 Execution and Amendments. Several copies of this Agreement shall be signed on behalf of each Party hereto. Each signed copy shall be deemed an original, but all signed copies together shall be deemed one and the same instrument. In order to be effective, any amendments to this Agreement must be in writing and signed by both Parties.
- 4.4 Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, legal representatives and assigns, provided, however that neither this Agreement nor any right or interest of Receiving Entity or Transferring Facility arising herein shall be voluntarily or involuntarily sold, transferred or assigned without the prior written consent of the other Party which consent shall not unreasonably be withheld. Unless otherwise agreed to in writing and signed by both Parties, any attempted assignment or assignment by one of the Parties to this Agreement shall not release the assigning Party from any liability to the other Party or a third Party that arises from the assignee's performance hereunder.
- 4.5 Independent Relationship. The Parties are independent contractors under this Agreement. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship or a joint venture relationship between the Parties, or to allow any Party to exercise control or direction over the manner or method by which any of the Parties perform services herein. It is understood and agreed that neither Party to this Agreement shall be legally liable for any negligent nor wrongful act, either by commission or omission, chargeable to the other, unless such liability is imposed by law and that this Agreement shall not be construed as seeking to either enlarge or diminish any obligations or duty owed by one Party against the other or against a third Party.
- 4.6 Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

- 4.7 Notice. Notices required herein shall be considered effective when delivered in person, or when sent by United States certified mail, postage prepaid, return receipt requested and addressed to:

Receiving Entity

Ruby D. Fenton  
Tilford Dobbins Alexander, PLLC  
401 West Main Street, Suite 1400  
Louisville, KY 40202  
Phone: (502) 584-1000  
Fax: (502) 584-2318

Transferring Facility:

Planned Parenthood of Indiana and  
Kentucky, Inc.  
Administrative Offices  
200 South Meridian Street  
P.O. Box 397  
Indianapolis, IN 64206  
Phone: 317-637-4343  
Fax: 317-637-4344


or to other such address, and to the attention of such other person(s) or officer(s) as a Party may designate by written notice.

- 4.8 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- 4.9 Section Headings. The section titles and other headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have hereto executed this Agreement in multiple originals as of the last date written below.

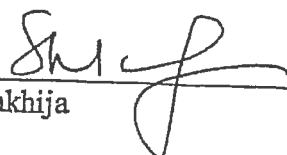
TRANSFERRING FACILITY

Planned Parenthood of Indiana

  
Suzannah Wilson Overholt  
Vice President of Finance and Administration

Dated: 2/13/14

RECEIVING ENTITY:

  
Sharmila Makhija

Dated: 1/16/14



LOUISVILLE METRO EMERGENCY MEDICAL SERVICES  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

NEAL J. RICHMOND, M.D.  
CHIEF EXECUTIVE OFFICER

October 7, 2013

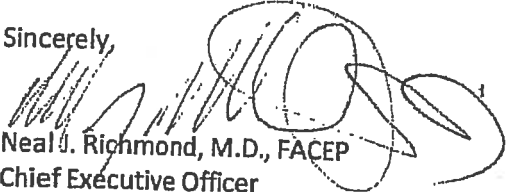
Suzannah Overholt  
VP Finance & Administration  
Planned Parenthood of Indiana and Kentucky  
200 S. Meridian Street, Suite 400  
Indianapolis, IN 46225

Ms. Overholt,

"Louisville Metro Emergency Medical Services (LMEMS) provides advanced life support care to citizens of and visitors to the city of Louisville on a twenty-four hours-a-day basis. We will respond, on an emergency non-scheduled basis, to any request for assistance. The method for accessing LMEMS services is the 911 emergency communications system.

LMEMS ensures response, on an emergency basis, to requests for service from Planned Parenthood of Indiana and Kentucky's Louisville Health Center facility at 1025 S. Second Street (Louisville, KY) in the same manner we would respond to requests for service from other similar facilities located in Louisville Metro."

Sincerely,

  
Neal J. Richmond, M.D., FACEP  
Chief Executive Officer  
Louisville Metro EMS

**Planned Parenthood of Indiana and Kentucky Board of Director Officers - 2015**

Marya M Rose JD  
Chair

Kim Greene, JD  
Chair Elect

Alan Albright, JD CPA  
Treasurer

Katherine McConahay Willing  
Secretary

11/18/2015





502 655 0592  
cell

Planned Parenthood of Indiana and Kentucky

**Patti A. Stauffer**  
*Vice President for Public Policy*

p: 317.637.4348  
f: 317.637.4349  
patti.stauffer@ppink.org

200 South Meridian Street, Suite 400, Indianapolis, IN 46225



---

Planned Parenthood Advocates of Indiana and Kentucky

**Patti A. Stauffer**  
*Vice President for Public Policy*

p: 317.637.4348  
f: 317.637.4349  
patti.stauffer@ppink.org

---

200 South Meridian Street, Suite 400, Indianapolis, IN 46225

**NOTICE OF CONFIDENTIALITY:** This e-mail, including any attachments, is intended only for the use of the individual or entity to which it is addressed and may contain confidential information exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e mail and destroy all copies of the original message.

**From:** Christian, Carole [<mailto:cchristian@wyattfirm.com>]  
**Sent:** Tuesday, December 01, 2015 3:03 PM  
**To:** Mynear, Maryellen (CHFS OIG)  
**Subject:** Health Facility Licensure Proceedings

Ms. Mynear,

As you are aware, Planned Parenthood of Kentucky and Indiana has recently filed a licensure application pursuant to 902 KAR 20:008 and 902 KAR 20: 360 for a new facility. In planning for a licensure survey, the applicant is concerned about a chicken-or-egg kind of question. It is a matter of particular concern because of the provisions of KRS chapter 311 and KRS chapter 216B that specifically address performance of an abortion in an unlicensed facility.

Pursuant to our conversations with your office, it is our understanding that, in order to determine compliance with licensure criteria, it is the policy of the Office of Inspector General that a facility must be operational when the licensure survey is conducted. It is further our understanding that since licensure surveys are not announced in advance, preparation for a survey requires the applicant to initiate business operations after filing an application so that your office will have an operational facility to review when the unannounced licensure survey is conducted. For this reason, it is our understanding that it is not only permissible but required for a health facility applicant to conduct operations, at least at some minimal level, after filing a licensure application although a survey has not yet been conducted and a license not yet issued. The only alternative would be to have pre-arranged licensure surveys, which is contrary to the longstanding policy of the OIG.

I would add that this has been my experience with the OIG as its longstanding policy for many years in connection with applications to license any type of health facility. Although the license is effective as of the date of the survey, because of the timing conundrum there is effectively a grace period or other form of licensure blessing that begins after the good-faith filing of an application until the survey is conducted.

Please confirm our understanding of this process as set forth above. It is the policy of Planned Parenthood of Kentucky and Indiana to comply fully with all laws and we would appreciate your assurance that it is indeed expected to conduct operations while waiting for your office to act on its licensure application.

Thank you,

**Carole D. Christian**

Wyatt Tarrant & Combs, LLP  
500 West Jefferson Street  
Suite 2800  
Louisville KY 40202-2898  
Direct (502) 562-7588  
Mobile (502) 541-0105  
Fax (502) 589-0309  
Email [cchristian@wyattfirm.com](mailto:cchristian@wyattfirm.com)



intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** Christian, Carole [<mailto:cchristian@wyattfirm.com>]  
**Sent:** Friday, December 04, 2015 4:04 PM  
**To:** Mynear, Maryellen (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Maryellen,

Thank you for your explanation below. The facility began operations yesterday so I am just asking for confirmation (reassurance) again that, because all the materials needed for licensure have been filed, they may continue to be operational until a survey can be arranged, without fear of such services being deemed unlicensed.

Also, it is my understanding that as long as operations have begun and there are patient records for surveyors to review, it is not necessary to worry about whether there will be patients in the facility at the time the surveyor arrives.

Thanks again,  
Carole

**From:** Mynear, Maryellen (CHFS OIG) [<mailto:maryellen.mynear@ky.gov>]  
**Sent:** Tuesday, December 01, 2015 3:40 PM  
**To:** Christian, Carole  
**Cc:** Poynter, Melanie (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Ms. Christian – I have verified with OIG staff that your summary is correct – a facility must be performing services for which it seeks licensure so that the survey (i.e., inspection) process may fully evaluate compliance with the applicable regulations. Once OIG has received a license application, State Fire Marshal documentation and appropriate fee, the survey is scheduled but not to be announced. In fact, state law mandates that surveys of long term care facilities be unannounced (KRS 216.530), while 902 KAR 20:008 provides that inspections of health care facilities may be unannounced. I have also verified that OIG has received the necessary documentation and fees from your client so that the survey can (and will) be scheduled.

I recognize the inherent conflict in this approach but it is, indeed, the process by which OIG has historically issued licenses and is a reasonable application of all statutes and regulations read in conjunction with one another.

Please let me know if you have any questions or concerns.

*Maryellen B. Mynear*  
Inspector General  
Office of Inspector General  
Cabinet for Health and Family Services  
275 E. Main Street, 5 E-A  
Frankfort, Kentucky 40621-0001  
Phone: (502) 564-2888  
Fax: (502) 564-6546  
<http://chfs.ky.gov/os/oig>



intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** Christian, Carole [<mailto:cchristian@wyattfirm.com>]  
**Sent:** Friday, December 04, 2015 4:04 PM  
**To:** Mynear, Maryellen (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Maryellen,

Thank you for your explanation below. The facility began operations yesterday so I am just asking for confirmation (reassurance) again that, because all the materials needed for licensure have been filed, they may continue to be operational until a survey can be arranged, without fear of such services being deemed unlicensed.

Also, it is my understanding that as long as operations have begun and there are patient records for surveyors to review, it is not necessary to worry about whether there will be patients in the facility at the time the surveyor arrives.

Thanks again,  
Carole

**From:** Mynear, Maryellen (CHFS OIG) [<mailto:maryellen.mynear@ky.gov>]  
**Sent:** Tuesday, December 01, 2015 3:40 PM  
**To:** Christian, Carole  
**Cc:** Poynter, Melanie (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Ms. Christian – I have verified with OIG staff that your summary is correct – a facility must be performing services for which it seeks licensure so that the survey (i.e., inspection) process may fully evaluate compliance with the applicable regulations. Once OIG has received a license application, State Fire Marshal documentation and appropriate fee, the survey is scheduled but not to be announced. In fact, state law mandates that surveys of long term care facilities be unannounced (KRS 216.530), while 902 KAR 20:008 provides that inspections of health care facilities may be unannounced. I have also verified that OIG has received the necessary documentation and fees from your client so that the survey can (and will) be scheduled.

I recognize the inherent conflict in this approach but it is, indeed, the process by which OIG has historically issued licenses and is a reasonable application of all statutes and regulations read in conjunction with one another.

Please let me know if you have any questions or concerns.

*Maryellen B. Mynear*  
Inspector General  
Office of Inspector General  
Cabinet for Health and Family Services  
275 E. Main Street, 5 E-A  
Frankfort, Kentucky 40621-0001  
Phone: (502) 564-2888  
Fax: (502) 564-6546  
<http://chfs.ky.gov/os/oig>



---

**From:** Mynear, Maryellen (CHFS OIG)  
**Sent:** Friday, December 04, 2015 4:16 PM  
**To:** Poynter, Melanie (CHFS OIG)  
**Subject:** Fwd: Health Facility Licensure Proceedings  
**Attachments:** image001.jpg

I believe this is a correct statement but want to double check with you before I respond. I'll respond on Monday. Thanks.

Maryellen Mynear  
CHFS OIG  
Sent from my iPad

Begin forwarded message:

**From:** "Christian, Carole" <cchristian@wyattfirm.com>  
**Date:** December 4, 2015 at 4:03:53 PM EST  
**To:** "Mynear, Maryellen (CHFS OIG)" <maryellen.mynear@ky.gov>  
**Subject:** RE: Health Facility Licensure Proceedings

Maryellen,

Thank you for your explanation below. The facility began operations yesterday so I am just asking for confirmation (reassurance) again that, because all the materials needed for licensure have been filed, they may continue to be operational until a survey can be arranged, without fear of such services being deemed unlicensed.

Also, it is my understanding that as long as operations have begun and there are patient records for surveyors to review, it is not necessary to worry about whether there will be patients in the facility at the time the surveyor arrives.

Thanks again,  
Carole

**From:** Mynear, Maryellen (CHFS OIG) [mailto:maryellen.mynear@ky.gov]  
**Sent:** Tuesday, December 01, 2015 3:40 PM  
**To:** Christian, Carole  
**Cc:** Poynter, Melanie (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Ms. Christian – I have verified with OIG staff that your summary is correct – a facility must be performing services for which it seeks licensure so that the survey (i.e., inspection) process may fully evaluate compliance with the applicable regulations. Once OIG has received a license application, State Fire Marshal documentation and appropriate fee, the survey is scheduled but not to be announced. In fact, state law mandates that surveys of long term care facilities be unannounced (KRS 216.530), while 902 KAR 20:008 provides that inspections of health care facilities may be unannounced. I have also verified that OIG has received the necessary documentation and fees from your client so that the survey can (and will) be scheduled.



**From:** Christian, Carole <cchristian@wyattfirm.com>  
**Sent:** Tuesday, December 29, 2015 4:49 PM  
**To:** Myneer, Maryellen (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Maryellen,

Congratulations on your new position at the AG's Office. I know you will be an asset to that office.

I assume you are aware that Planned Parenthood is still awaiting its licensure survey. While respecting the policy that the survey must be unannounced, given your familiarity with the application and my client's general concern (based on experience in other states) that external forces may attempt to disrupt the licensure process, we are obviously hoping that the survey will take place before you leave the OIG. We would appreciate any reassurance you can provide that will allay their concerns about timing, without disclosing an actual survey date.

They have held off providing procedures since the initial opening day or two in order to avoid giving rise to any questions from the public while they are awaiting licensure, but believe there is a community need to commence full-time operations as soon as possible. (Again, we also understand that this is the applicant's option whether to conduct business or not while awaiting survey, but I am sure you can understand why they have opted for the more cautious approach to this point. )

As always, we appreciate your attention to our inquiries,

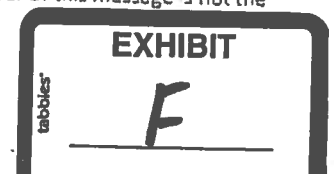
Carole

**From:** Myneer, Maryellen (CHFS OIG) [mailto:maryellen.myneer@ky.gov]  
**Sent:** Monday, December 07, 2015 3:15 PM  
**To:** Christian, Carole  
**Subject:** RE: Health Facility Licensure Proceedings

Yes, this is a correct statement of long standing OIG policy. As we have discussed, the survey will be unannounced but I can confirm that this provider is on the schedule in our normal course of business. Thank you.

*Maryellen B. Myneer*  
Inspector General  
Office of Inspector General  
Cabinet for Health and Family Services  
275 E. Main Street, 5 E-A  
Frankfort, Kentucky 40621 0001  
Phone: (502) 564-2888  
Fax: (502) 564-6546  
<http://chfs.ky.gov/os/oig>

**NOTICE OF CONFIDENTIALITY:** This e mail, including any attachments, is intended only for the use of the individual or entity to which it is addressed and may contain confidential information exempt from disclosure under applicable law. If the reader of this message is not the



intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** Christian, Carole [<mailto:cchristian@wyattfirm.com>]  
**Sent:** Friday, December 04, 2015 4:04 PM  
**To:** Mynear, Maryellen (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Maryellen,

Thank you for your explanation below. The facility began operations yesterday so I am just asking for confirmation (reassurance) again that, because all the materials needed for licensure have been filed, they may continue to be operational until a survey can be arranged, without fear of such services being deemed unlicensed.

Also, it is my understanding that as long as operations have begun and there are patient records for surveyors to review, it is not necessary to worry about whether there will be patients in the facility at the time the surveyor arrives.

Thanks again,  
Carole

**From:** Mynear, Maryellen (CHFS OIG) [<mailto:maryellen.mynear@ky.gov>]  
**Sent:** Tuesday, December 01, 2015 3:40 PM  
**To:** Christian, Carole  
**Cc:** Poynter, Melanie (CHFS OIG)  
**Subject:** RE: Health Facility Licensure Proceedings

Ms. Christian – I have verified with OIG staff that your summary is correct – a facility must be performing services for which it seeks licensure so that the survey (i.e., inspection) process may fully evaluate compliance with the applicable regulations. Once OIG has received a license application, State Fire Marshal documentation and appropriate fee, the survey is scheduled but not to be announced. In fact, state law mandates that surveys of long term care facilities be unannounced (KRS 216.530), while 902 KAR 20:008 provides that inspections of health care facilities may be unannounced. I have also verified that OIG has received the necessary documentation and fees from your client so that the survey can (and will) be scheduled.

I recognize the inherent conflict in this approach but it is, indeed, the process by which OIG has historically issued licenses and is a reasonable application of all statutes and regulations read in conjunction with one another.

Please let me know if you have any questions or concerns.

*Maryellen B. Mynear*  
Inspector General  
Office of Inspector General  
Cabinet for Health and Family Services  
275 E. Main Street, 5 E-A  
Frankfort, Kentucky 40621-0001  
Phone: (502) 564-2888  
Fax: (502) 564-6546  
<http://chfs.ky.gov/os/oig>





**CABINET FOR HEALTH AND FAMILY SERVICES  
OFFICE OF INSPECTOR GENERAL**

**Matthew G. Bevin**  
Governor

275 E. Main Street, 5 E-A  
Frankfort, Kentucky 40621-0001  
(502) 564-2888  
Fax: (502) 564-6546  
<http://chfs.ky.gov/os/oig>

**Vickie Yates Brown Glisson**  
Secretary

**Stephanie Hold**  
Acting Inspector General

January 28, 2016

LaToya Rose, Director  
Planned Parenthood of Indiana and Kentucky  
842 South 7<sup>th</sup> Street  
Louisville, Kentucky 40203

Re: License application number 59040  
Via Facsimile (502) 657-0228 and Certified Mail

The Office of Inspector General is in receipt of the application of Planned Parenthood of Indiana and Kentucky (Planned Parenthood) for an abortion facility license at 842 South 7<sup>th</sup> Street, Louisville, Kentucky. This Office received the application on November 19, 2015 and has examined it for compliance with 902 KAR 20:360, KRS 216B and KRS Chapter 311. By this letter we are informing you that our initial review of the application indicates that it is deficient for multiple reasons.

In accordance with KRS 216B.0435 and 902 KAR 20:360, the abortion facility is required to enter into written agreements with an acute care hospital and a local ambulance service, and shall file the agreements with the Cabinet for Health and Family Services (Cabinet). The agreements filed with the application are deficient.

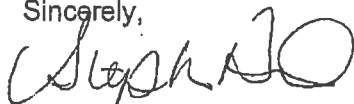
The agreement with the acute care hospital must be with a hospital capable of treating a patient with unforeseen complications relating to the abortion procedure and the hospital must agree to accept and treat the patient. Planned Parenthood included a document titled "Transfer Agreement between Department of Obstetrics, Gynecology and Women's Health and Planned Parenthood of Indiana and Kentucky, Inc." The agreement does not identify the acute care hospital, does not reference the Planned Parenthood location at 842 South 7<sup>th</sup> Street, and does not obligate the hospital to treat the patient as contemplated under KRS 216B.0435. Sharmila Makhija signed the agreement on January 16, 2014, nearly two years before the November 18, 2015 license application. The agreement does not include Ms. Makhija's title, authority, or hospital affiliation, and incorrectly notes the "Receiving Entity" is Ruby D. Fenton, who apparently is a lawyer with the law firm Tilford Dobbins Alexander, PLLC. The agreement is also deficient because the purported hospital has not agreed to unconditional acceptance of patients with unforeseen complications from the abortion procedure. Rather, acceptance of transfer is expressly conditioned on bed availability, staff

availability, and service availability. The conditional terms nullify the purpose of the agreement in contravention of KRS 216B.0435.

In a similar manner, the agreement with a local ambulance service (service) must obligate the service to accept a patient with unforeseen complications related to the abortion procedure and to transport the patient to the acute care hospital identified in the transfer agreement referenced above. The application includes a letter dated October 7, 2013 from Neal J. Richmond, M.D., FACEP, Chief Executive Officer of Louisville Metro EMS (LMEMS). The letter recites basic emergency run protocol and states, "LMEMS ensures response, on an emergency basis, to requests for service from Planned Parenthood of Indiana and Kentucky's Louisville Health Center facility at 1025 S. Second Street (Louisville, KY) in the same manner we would respond to requests for service from other similar facilities located in Louisville Metro." This document is not an agreement contemplated under KRS 216B.0435 and is not in reference to the location at 842 South 7<sup>th</sup> Street. Similarly, the letter does not obligate the ambulance provider to respond to a request to transport a patient with "unforeseen complications related to an abortion facility procedure" to the acute care hospital identified on the transfer agreement. Consequently, this document is deficient and is not in compliance with KRS 216B.0435

The absence of adequate written agreements with an acute care hospital and a local ambulance service prevent us from continuing our review of your application at this time. Therefore, this Office has determined that Planned Parenthood is not in compliance with standards for an abortion facility and is not authorized to provide abortion services. In accordance with KRS 216B.105(5), no person shall operate any health facility in the Commonwealth of Kentucky without first obtaining a license specifying the kind or kinds of health services the facility is authorized to provide. Following your submission of written agreements in compliance with KRS 216B.0435, we will continue our review of your application. The facility at 842 South 7<sup>th</sup> Street is not permitted to perform the abortion procedure until a license is issued following an inspection of your facility and shall cease and desist any such activity. Please note that any violation of KRS Chapter 216B regarding the abortion facility, by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. See, KRS 216B.990(6).

Sincerely,



Stephanie Hold  
Acting Inspector General

cc: Carole Christian, Esq.  
cchristian@wyattfirm.com



200 South Meridian Street, Suite 400, Indianapolis, IN 46225  
Mailing Address: P.O. Box 397 Indianapolis, IN 46206-0397  
p: 317.637.4343 · f: 317.637.4344  
www.ppink.org

Planned Parenthood of Indiana and Kentucky

January 29, 2016

Stephanie Hold  
Acting Inspector General  
Cabinet for Health and Family Services  
Office of Inspector General  
275 E. Main St.  
Frankfort, KY 40621

Re: License application number 59040

Dear Ms. Hold:

We have received your correspondence dated January 28, 2016 concerning our November 19 application for an abortion facility license at 842 South 7<sup>th</sup> Street, Louisville, and appreciate your review of the agreements submitted with the application. We are working on getting these agreements revised, with the intention of re-submitting them to your office as soon as possible. As I hope our communications with your office reflect, we are committed to full compliance with all applicable licensing regulations, and began providing services only after receiving assurance from your office, in emails dated Dec. 1 and Dec. 7, that it would be appropriate while we awaited a survey.

In light of the matters outlined in your letter, please be assured that we will refrain from performing any abortion procedures until your office has conducted a survey of the facility in which we demonstrate appropriate compliance with KRS 216B.0435 and 902 KAR 20:360 and issued a license pursuant to your usual procedures. We assume that the survey process will be conducted in the normal course of operations of your office. However, we do request that this matter not delay your process of arranging for the survey.

Thank you for your attention to this matter, and please do not hesitate to contact me directly about any issues that may arise in the future.

Sincerely,

Suzannah Wilson Overholt  
Chief Operating Officer

Cc: Steven D. Davis  
M. Stephen Pitt  
Carole Christian

