

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

COMPREHENSIVE HEALTH OF PLANNED))	
PARENTHOOD GREAT PLAINS, et al.))	
)	
Plaintiffs,))	
)	
v.))	Case No. 2:16-cv-04313-HFS
)	
PETER LYSKOWSKI, in his official capacity))	
as Director of the Missouri Department of))	
Health and Senior Services, et al.))	
)	
Defendants.))	

**DECLARATION OF LAURA MCQUADE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Laura McQuade, declare and state the following:

1. I am the President and Chief Executive Officer of Comprehensive Health of Planned Parenthood Great Plains ("Comprehensive Health"). I am responsible for the management of this organization, and, therefore, am familiar with our operations and finances, including the services we provide and the communities we serve. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.

2. I understand that the Missouri's Ambulatory Surgical Center Licensing Law ("ASCLL"), Mo. Ann. Stat. § 197.200, and its implementing regulations require any health center providing five or more first trimester abortions, or any second trimester abortions, to be licensed as an ambulatory surgical center ("ASC"), and impose certain requirements for such licensure, Mo. Code. Regs. Ann. tit. 19 § 30-30.010, 050-070 ("ASC Restriction"). I also understand that the ASCLL requires that either physicians who provide abortions must have hospital admitting privileges within 15 minutes from the health center, or the health center must

have a written transfer agreement with such a hospital, Mo. Code Regs. Ann. Tit. 19, § 30-30.060(1)(C)4; *see also* Mo. Ann. Stat. § 197.215(2);, and also that a separate Missouri statute makes it a crime for a physician to provide an abortion without hospital privileges, Mo. Ann. Stat. § 188.080; *see also* Mo. Ann. Stat. § 188.027(1)(1)(e) (collectively, the “Hospital Relationship Restriction”).

3. As is discussed in detail below, Comprehensive Health and its physicians are unable to comply with the ASC and Hospital Relationship Restrictions as to two health centers in Missouri, one in Columbia and the other in Kansas City, and are therefore unable to provide abortion services at those locations.

4. As a result, the availability of abortion services in Missouri is severely restricted, threatening the health of Missouri women and depriving them of their right to obtain a pre-viability abortion.

Comprehensive Health and Abortion Services

5. Comprehensive Health is a not-for-profit corporation organized under the laws of Kansas and qualified to do business in Missouri. Comprehensive Health currently provides abortion services at two health centers in Kansas and one health center in Oklahoma, and wishes to provide abortion services at health centers in Columbia and Kansas City, Missouri. These health centers currently provide general reproductive health care, including family planning services, testing and treatment for sexually transmitted infections, cervical and breast cancer screening services, pregnancy testing, and all-options counseling.

6. Both surgical and medication abortion services have previously been available at the Columbia health center, and were safely provided there for many years. Comprehensive

Health wishes to resume providing both surgical abortions and medication abortions at the Columbia health center.

7. Medication abortion only (and no surgical abortion or surgery of any kind) was available previously at the Kansas City health center, and was safely provided there for years. Comprehensive Health wishes to resume providing medication abortions only at the Kansas City health center.

8. Even though abortion is extremely safe, Comprehensive Health and its physicians and staff are prepared to provide high quality care in the event of complications. Most complications related to abortion are safely and appropriately managed in the clinic setting, but in the exceedingly rare case that a patient requires hospital-based care, Comprehensive Health's protocols and practices ensure that the patient receives the necessary, quality care.

9. In the event that a patient needs to be transferred from a Comprehensive Health health center to a hospital, Comprehensive Health policy requires that staff call and notify the receiving emergency department to which a patient is being transferred. Comprehensive Health staff also prints out the patient's visit summary document and completes a transfer form containing information on the patient's vital signs, and other relevant information, and those documents are sent with the patient to the hospital. Comprehensive Health physicians and staff are available should emergency department or other on-call hospital physicians need to speak with them further regarding the patient. Comprehensive Health policy further requires that Comprehensive Health staff call the patient within 72 hours of the transfer to follow up. The Comprehensive Health physician who transferred the patient also follows up with the emergency department physician who took control of the patient following the transfer to ensure Comprehensive Health has full information regarding the treatment the patient received.

10. When patients leave the health center following a surgical abortion or after taking the first pill of the medication abortion regimen, they are given detailed instructions on what to expect in terms of potential symptoms. All patients are also given the telephone number for a 24-hour after-hours line that they can call with any questions or concerns. A registered nurse is available at all times at this number, and the nurse has contact information for an on-call Comprehensive Health physician who can be reached at any time. While our nurses are more than qualified to respond to most patient questions and concerns, they are also able to contact our physicians for consultation should the need arise. In almost all cases, patients' questions and concerns can be addressed over the phone. Many patients simply need reassurance that their symptoms (like bleeding and cramping) are normal and will subside. Patients are always encouraged to call the after-hours number or the health center again if they continue having concerns. If the nurse determines that a patient does not need immediate care but should return to the health center to be evaluated, the patient is given the next available appointment at a health center.

11. In the exceedingly rare case that the nurse or consulting physician determines that a patient should be treated or evaluated immediately, she or he will refer the patient to the nearest emergency department. Following such a referral, Comprehensive Health staff follows up with the patient to determine if she in fact went to the emergency department and, if so, what treatment she received and whether any additional follow-up is required.

ASC Restriction

12. As explained above, neither the Columbia nor the Kansas City health center is able to meet the requirements for licensure as an ASC, including the Hospital Relationship Restriction, as required in order to provide abortion services in Missouri.

13. In addition, neither health center complies with the physical facility requirements contained in the ASCLL's implementing regulations. For example, neither facility meets the minimum hallway width, doorway width, ceiling height, or dimensions for procedure rooms outlined in the regulations.

14. As a result, when the ASCLL was amended in 2007 to apply to facilities that provide five or more first trimester abortions or any second trimester abortions, the Columbia and Kansas City health centers were the subject of a lawsuit challenging the ASCLL as it was being applied to those health centers. That litigation resulted in a 2010 settlement ("2010 Settlement") pursuant to which the health centers were permitted to be licensed by complying with a lesser (though still onerous) set of requirements than those required by the regulations.

15. In particular, because only medication abortion, and no surgical abortion or surgery of any kind, was offered at the Kansas City health center, the settlement agreement entirely exempts it from complying with the physical facility requirements contained in the ASCLL implementing regulations, as well as from certain administrative, laboratory and pathology requirements that are inappropriate for medication abortion.

16. For the Columbia health center, which offered both surgical and medication abortion, the settlement agreement permits narrower hallway widths, smaller procedure and counseling rooms, and lower procedure room ceilings than those required in the regulations, as well as a unisex personnel change room instead of the separate sex rooms required by the regulations, among other items.

17. However, the Missouri Department of Health and Senior Services ("DHSS") has repeatedly changed its position on what it will require under the settlement agreement, and these shifting interpretations make it extremely difficult for Comprehensive Health to anticipate what

will be required and to comply. For example, as is explained in detail below, during Comprehensive Health's most recent attempt to obtain licenses for the Columbia and Kansas City health centers, DHSS stated that several of our policies that had previously been approved were no longer sufficient, the number of recliners in the Columbia facility's recovery area was no longer sufficient, and the exhaust system in one of the patient restrooms was no longer sufficient, even though DHSS approved all of these items as recently as 2015. In addition, DHSS recently attempted to immediately terminate the most recent abortion facility ASC license that had been issued for the Columbia health center, as a result of political pressure, without going through the statutorily required plan of correction process that DHSS normally provides to other ASCs. *See Planned Parenthood of Kan. v. Lyskowski*, No. 2:15-CV-04273-NKL, 2016 WL 2745873, at *1 (W.D. Mo. May 11, 2016). Therefore, even with the settlement agreement in place, the Columbia health center's ASC license has been a political target and the health center has been at risk of having to suspend services.

Hospital Relationship Restriction

A. Columbia Health Center

18. As explained above, Missouri law imposes several overlapping requirements for admitting privileges and/or a transfer agreement at a nearby hospital, both as part of the requirements for ASC licensure and as a separate criminal statute requiring all physicians providing abortions to have admitting privileges; these requirements are discussed here together as the Hospital Relationship Restriction.

19. The Hospital Relationship Restriction has been an ongoing impediment to the provision of abortion services at the Columbia health center for the past decade, as it has been extremely difficult to recruit and retain physicians from the community who have privileges at a

hospital within the required geographic region, and it has been extremely difficult for out-of-town physicians who wish to provide abortions in Columbia to obtain local privileges. Currently, two out-of-town physicians desire to provide abortions at the Columbia health center, but neither has privileges at either of the two hospitals within the required geographic area, Missouri University Health Care (“MU Health Care”) and Boone Hospital Center (“Boone”), nor are they able to obtain such privileges, as is explained in detail below.

20. Historically, the Columbia health center has been served by several local physicians with qualifying privileges at different points in time since approximately 2007, but we have been unable to retain these physicians because of the hostility to abortion within the local community. For example, one physician resigned after only a few months because protestors began appearing at her home, and another resigned because of harassing phone calls by anti-abortion protestors to the private ob/gyn practice she maintained separate from her work with Planned Parenthood. In addition, we have had protestors follow physicians when they were arriving at and leaving the health center, and we had to develop a drop-off point for security personnel to pick up the physicians and bring them to the health center and then take them back to their cars at the end of the day. Despite ongoing efforts to identify a local physician with qualifying privileges we have been unable to find such a person who is willing to provide abortions in Columbia for the past several years. Most recently, toward the end of 2015, there were two local physicians who came close to agreeing to provide services in Columbia, but both ultimately concluded that they were not willing to subject themselves and their families to the potential harassment that comes with working for Planned Parenthood.

21. Similarly, we have historically had difficulty locating out-of-town providers who are able to get qualifying hospital privileges in the Columbia area. For example, one of the

hospitals in the area, Boone Hospital Center, requires that out-of-town physicians name a local backup provider who already has privileges at the hospital. At one point in the past several years we had an out of town physician who had identified a local doctor who had agreed to serve as a backup and had submitted an application for privileges to the hospital. However, the backup was forced to withdraw because of pressure from her private group practice not to associate with Planned Parenthood, even in the capacity of a backup physician. For that reason, the out-of town-physician was unable to get privileges and therefore unable to provide abortions at the Columbia health center.

22. Dr. Colleen McNicholas was our most recent out-of town provider at the Columbia health center and would provide abortions there but for the ASCLL and Hospital Relationship Requirements. She holds privileges at Washington University Medical Center in St. Louis, Missouri, which is a highly-respected teaching hospital but is too far from the Columbia health center to meet the geographic requirements of Missouri's privileges requirements. Dr. McNicholas previously held refer and follow privileges at MU Health Care, and, because of those privileges, was able to provide abortions at the Columbia health center from July 2015 through November 2015. However, during the summer of 2015 the Missouri Senate formed a special committee named The Interim Committee on the Sanctity of Life ("Committee") chaired by Senator Kurt Schaefer, a Republican from Columbia. The Committee put pressure on MU Health Care regarding its grant of privileges to Dr. McNicholas, including sending a letter to the University's chancellor requesting information about those privileges and warning that whether the Columbia facility's license was dependent upon privileges from MU Health Care, "a publicly funded entity. . . is a matter of substantial public interest and concern." Rose Schmidt & Emma Nicolas, *Target 8: Planned Parenthood Emails Uncover Lack of Transparency*, KOMU 8 (Nov.

12, 2015), <http://www.komu.com/news/target-8-planned-parenthood-emails-uncover-lack-of-transparency/page/2>. Following this, MU Health Care eliminated the “refer and follow” category of privileges as of December 1, 2015, and therefore revoked Dr. McNicholas’s privileges.

23. Dr. McNicholas applied for a different category of privileges at MU Health Care in November 2015, but that application was denied in February 2016 with a statement that she would not contribute to the University's mission, despite acknowledging that this decision did not relate to her professional competence or conduct. Dr. McNicholas appealed that denial through MU's Fair Hearing process, and her appeal was denied.

24. Dr. McNicholas is also unable to obtain privileges at Boone because she does not meet the requirement that she identify a backup provider. Since Dr. McNicholas lost her privileges with MU Health Care, our staff has exhausted our contacts with area physicians who have privileges at Boone, including speaking with several ob-gyns and a physician in the Boone emergency department, but none were willing to serve as a backup given the hostility to abortion in the local community. For example, one ob-gyn indicated that she could not serve as a backup because her group practice was not supportive of her being associated with Planned Parenthood, even in this limited capacity.

25. Plaintiff Dr. Yeomans, who holds privileges at Overland Park Regional Medical Center in Overland Park, Kansas (“Overland Park Regional”) (another highly regarded teaching hospital that does not meet the geographic restrictions of Missouri’s privileges requirements), also desires to provide abortion services at the Columbia health center, but he is similarly unable to obtain privileges at either MU Health Care or Boone. Given the history with MU Health Care, and its denial of Dr. McNicholas’s application for privileges based on its determination that she could not contribute to the hospital’s mission, it is not realistic that Dr. Yeomans could obtain

privileges at MU Health Care. And Dr. Yeomans would fare no better at Boone, as Comprehensive Health has been unable to identify a current Boone physician who would be willing to be named as a backup on the Boone application.

26. Comprehensive Health has been able to obtain a working agreement for the transfer of patients with a hospital within 15 minutes' travel time of the Columbia facility. However, this agreement does not enable us to resume abortion services because Comprehensive Health's physicians are still prevented by the criminal privileges law from providing abortions. Furthermore, this agreement can be cancelled by the hospital at any time without cause and, as we have recently experienced, hospitals are subject to anti-abortion political pressure. Therefore, there is a risk that we could lose this agreement at any time. If we did lose the agreement, we would be out of options, as the only other hospital within the required geographic area has refused to enter into a transfer agreement with Comprehensive Health despite multiple attempts by our staff to request an agreement.

B. Kansas City Health Center

27. Comprehensive Health is unable to comply with the Hospital Relationship Restriction as to the Kansas City health center, at which we intend to provide only the non-surgical service of medication abortion.

28. Two local, Kansas City Comprehensive Health physicians desire to provide abortions at the Kansas City health center, Dr. Orrin Moore and Plaintiff Dr. Yeomans. Both physicians have privileges at nearby hospitals, but they are unable to obtain privileges at any of the four hospitals that are located within 15 minutes' travel time from the Kansas City health center, as required to meet the Hospital Relationship Restriction. I personally reached out to each of these hospitals (Research Medical Center, Truman Medical Center, St. Luke's Hospital, and

the University of Kansas Hospital (“KU Med”)) to find out the requirements for privileges at each location. In addition, I reached out to St. Joseph Medical Center which is approximately 16–20 minutes from the Kansas City health center, so it is not clear that DHSS would consider privileges at this hospital to meet the ASCLL requirement. As is explained more fully below, none of the hospitals is an option, as the physicians do not meet their requirements, the hospital refused to provide us with the necessary privileging documents or refused to respond at all, or the hospital stated that it would not work with us because of its religious affiliation or opposition to abortion.

29. At one of the hospitals within the required geographic area, Research Medical Center, Dr. Yeomans has unsuccessfully applied for privileges in the past. After submitting his application, Dr. Yeomans did not hear back from the hospital for an unusually long time, so he called the Chairman of the department of Obstetrics and Gynecology to inquire about his application. The Chairman indicated that the hospital was not going to move forward with Dr. Yeomans’ application since he provides abortions, and so Dr. Yeomans withdrew his application. Given that this occurred several years ago, I emailed the Director of Physician Recruitment for Research Medical Center on September 28, 2016 to request the hospital’s current staff bylaws in case the situation at the hospital had changed such that it might be open to working with Dr. Yeomans or our other physicians. A representative from Research then called and left me a voicemail and said that they could not send the staff bylaws because it was too complicated to do so. I called back to attempt to get more information or clarification, but my call has still not been returned to date.

30. One of my staff members reached out to a contact at a second eligible hospital, Truman Medical Center, in late September to request the staff bylaws, and the hospital’s General

Counsel replied that they could not share the bylaws outside of the facility. I sent a follow up email on October 11, 2016 to the General Counsel clarifying that our physicians were interested in seeking privileges and again requesting the bylaws so that we could review the requirements. I have not received a response.

31. I emailed the Director of Physician Recruitment and Retention at a third eligible hospital, St. Luke's, on September 28, 2016. A hospital representative responded the following day and stated that a physician would have to request an application before the hospital could provide its staff bylaws. Dr. Yeomans requested an application on October 5, 2016, in order to be able to view the full requirements contained in the hospital's staff bylaws, but did not receive the application or bylaws. I followed up with an email to the hospital representative I had been in communication with to let her know the application had been requested and asking again for the bylaws, but we have not heard anything further from the hospital.

32. I also emailed the Director of Physician Recruitment at a fourth eligible hospital, KU Med, on September 28, 2016 to request the hospital's staff bylaws. On September 30, 2016 the KU Med Director of Medical Staff Affairs sent me the bylaws. The document contained only limited information, so I followed up on October 4, 2016 to request additional information about the hospital's requirements for privileges, but I received no response. However, even the limited information contained in the bylaws indicates that our physicians are unable to meet the hospital's requirements. First, the bylaws state that only physicians who are on the KU Med faculty may obtain privileges at the hospital, and neither of our physicians is on the faculty. In addition, the bylaws indicate that physicians are required to undergo a Focused Professional Practice Evaluation upon initial appointment to the medical staff to confirm competence in the hospital setting, and may be required to undergo Ongoing Professional Practice Evaluations to

maintain their privileges on an ongoing basis. I understand that these evaluations involve hospital representatives observing and/or reviewing some minimum number of cases that involve the physician treating patients in the hospital. However, given that abortion is extremely safe, it is exceedingly rare that any of Dr. Yeomans' or Moore's patients need hospitalization and they, therefore, would not have sufficient hospital admissions to undergo this required evaluation.

33. Finally, I emailed St. Joseph Medical Center's Director of the Physician Network on September 28, 2016 to request privileging information. St. Joseph is approximately 16–20 minutes from the Kansas City health center, so it is not clear that DHSS would consider privileges at this hospital to meet the ASCLL requirement, but I nonetheless reached out to the hospital in order to be sure we exhausted every possibility. When I did not hear back, I sent a follow up email on October 11, 2016. That day, the Director responded to my email and stated that he would be unable to provide the staff bylaws because St. Joseph is a Catholic organization and, therefore, will not work with Planned Parenthood.

34. Dr. Moore does have privileges within the community, but outside the 15 minute travel time requirement, and DHSS has indicated that it does not consider these privileges to be sufficient. Specifically, Dr. Moore has surgical privileges at Overland Park Regional, which (as noted above) is a highly-regarded teaching hospital and which is located 20–25 minutes' travel time from the Kansas City health center. DHSS has previously recognized that privileges at a hospital this distance from the health center fulfills any supposed medical justification for the Hospital Relationship Restriction, permitting the Kansas City health center to be licensed as an ASC based on a physician's privileges to perform surgery at Menorah Medical Center ("Menorah"), which is located 20–25 minutes from the health center. However, they have now

taken the position that privileges at Overland Park Regional –the same distance away –is inadequate to fulfill the same requirements. *See* Ex. D, *infra*.

35. Dr. Moore currently has ambulatory privileges at Menorah, but those privileges do not permit him to perform surgery, and so DHSS has indicated that these privileges are also insufficient to meet the Hospital Relationship Restriction. Dr. Moore has sought, as part of his biannual reappointment process with the hospital, Affiliate privileges, which would allow him to perform surgery, but the reappointment process is not complete.

36. Dr. Yeomans also holds staff privileges at Overland Park Regional that do not permit him to perform surgery, and DHSS has similarly indicated that these privileges are insufficient, both because of the hospital's location and because the privileges are not surgical. Dr. Yeomans has also applied for Affiliate privileges at Menorah, but has not yet heard back regarding his application.

37. Comprehensive Health has also been unable to obtain a transfer agreement with any of the hospitals near the Kansas City health center, despite diligent efforts.

38. I reached out to each of the four hospitals discussed above that are within 15 minutes' travel time from the Kansas City health center, as well as three additional hospitals in the Kansas City area that are slightly further away, to request transfer agreements. This amounted to a total of seven hospitals. Of those seven, six refused entirely to respond to my communications, and one responded that it would not enter into a transfer agreement with Comprehensive Health.

39. On August 23, 2016, I emailed representatives of KU Med, Truman Medical Center, St. Luke's Hospital, St. Joseph Medical Center, and Research Medical Center explaining Comprehensive Health's need for a transfer agreement and providing a sample form agreement.

When I did not hear back from any of the five hospitals, I followed up again via email on September 28, 2016. I still have not received responses from any of these five hospitals.

40. I also emailed representatives of Overland Park Regional and Menorah on September 12, 2016 to request transfer agreements, even though they are slightly further than 15 minutes' travel time from the Kansas City health center, in order to ensure that we had covered all possible options. A representative of Menorah called me in response to my email and informed me that they were not willing to enter into a written agreement with us, and that such an agreement is not necessary, as the hospital will treat any patient who presents at their emergency department. I never heard back from Overland Park Regional.

Comprehensive Health's Recent Attempts to Seek Licensure from DHSS

41. Before the Columbia health center's most recent license expired in June 2016, Comprehensive Health submitted a renewal application. DHSS responded with a letter stating that they would not move forward with the licensing process, including an inspection of the facility, until we had a physician with local hospital privileges. Because our physicians cannot obtain local privileges, that application process did not move forward at the time.

42. However, in August 2016, following the United States Supreme Court decision declaring Texas's ASC and physician privilege requirements unconstitutional, *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292 (2016), *as revised* (June 27, 2016), Comprehensive Health's attorneys sent a letter to DHSS asking whether it would continue to enforce Missouri's ASC and Hospital Relationship Restrictions in light of the decision. *See* Letter from Arthur Benson & Melissa Cohen, Atty's for Comprehensive Health, to Nikki Loethen, Gen. Couns. For DHSS, (Aug. 24, 2016), attached as Ex. A. At the same time, Comprehensive Health submitted a license application for the Kansas City health center.

43. In early October 2016, DHSS notified us that they would be conducting licensing inspections of both the Columbia and Kansas City facilities. Those inspections took place on October 11 and October 19, respectively. Following the inspections, Comprehensive Health staff had additional discussions with DHSS representatives regarding the scope and application of the 2010 Settlement and regarding the details of our physicians' current hospital privileges.

44. On November 2, 2016, DHSS sent us letters regarding each facility and listing items that they found to be out of compliance with licensing requirements. *See* Letters from John Langston, Admin., Bureau of Ambulatory Care, Mo. DHSS, to Vicki Casey, Comprehensive Health, (Nov. 2, 2016), attached as Ex. B. The deficiencies listed in those letters indicated that DHSS would be enforcing the ASC and Hospital Relationship Restrictions despite the Supreme Court's decision in *Whole Woman's Health*. In addition, these letters indicated that DHSS was changing its position as to whether certain items that it had approved in the past were in compliance with the settlement agreement. For example, DHSS stated in its letter regarding the Columbia health center that our policies regarding our medical staff membership and quality assurance program were not sufficient, even though DHSS had approved the language of those policies repeatedly in the past, most recently in 2015. The letter regarding the Columbia health center also states that the exhaust system in the patient lavatory near the recovery room is insufficient, even though this very system has been approved repeatedly in the past, most recently in 2015.

45. In addition, the letter regarding the Columbia health center states that we need to apply for a waiver for permission to have three recliners in the recovery area instead of the four recliner required in the regulations, even though DHSS has licensed the Columbia facility since the entry of the 2010 settlement agreement with only 3 recliners. This requirement, in particular,

has been subject to ongoing shifting interpretations by DHSS that make it difficult for us to predict what will be required and to comply. From 2010 to 2015, when the facility offered both medication and surgical abortion, DHSS did not require a waiver application and simply licensed the facility with the three recliners. Then, in 2015, DHSS for the first time required us to apply for a waiver in order to have three recliners instead of four. DHSS granted that waiver application and licensed the facility to provide medication abortion only. Now DHSS says that we must apply for a new waiver, since we seek to resume both medication and surgical abortion services.

46. Comprehensive Health's attorneys responded to DHSS by letter on November 11, Letter from Arthur Benson & Melissa Cohen, Atty's for Comprehensive Health, to John Langston, Admin., Bureau of Ambulatory Care, Mo. DHSS, (Nov. 11, 2016), attached as Ex. C, providing additional information regarding our physicians' privileges and the Columbia facility's transfer agreement and asking if this information affected DHSS's decision regarding licensure of our facilities. Our attorneys also noted that it seemed futile for us to attempt to correct the other deficiencies noted in DHSS's letter, since DHSS's continued enforcement of Missouri's physician privileges requirements would prevent our facilities from being licensed regardless.

47. DHSS responded by letter on November 18, Letter from John Langston, Admin., Bureau of Ambulatory Care, Mo. DHSS, to Arthur Benson, Att'y for Comprehensive Health, (Nov. 18, 2016) attached as Ex. D, and confirmed that it did not consider Comprehensive Health to be in compliance with physician privileges requirements for either health center and that it would not license either facility until those privileges requirements are met.

Impact of the Restrictions on Comprehensive Health, its Physicians, and its Patients

48. The ASC and Hospital Relationship Restrictions severely restrict the availability of abortion services in Missouri. Because we cannot comply with these requirements, there are no abortion providers in the northern half of the state of Missouri. I understand that Reproductive Health Services of Planned Parenthood of the St. Louis Region (“RHS”) is similarly unable to provide abortion services at health centers in Joplin and Springfield Missouri, leaving only one abortion facility in the state, RHS’s facility in St. Louis. As a result, Missouri women must travel from all corners of the state to St. Louis to obtain an abortion at this facility, a 245-mile round trip from Columbia and a nearly 490-mile round trip from Kansas City. For women living in the far northwest corner of Missouri, the round trip to St. Louis can be up to 740 miles.

49. This additional travel increases patients’ costs and creates logistical complications for patients that delay the procedure. During the periods of time when we have been unable to provide abortion services in Columbia, for example, we regularly hear from patients about the burdens they face in traveling to reach another health center. For example, our patients often do not have reliable access to transportation and may be unable to travel because of issues such as their car breaking down or a family member needing the only car to get to work. Other women are unable to get time off from work or have difficulties arranging child care for their children. Sometimes these delays push our patients past the gestational age at which they may obtain a medication abortion or push them into the second trimester of pregnancy. Any delay in obtaining an abortion increases the risk of the procedure.

50. The ASC and Hospital Relationship Requirements also injure Comprehensive health and our physicians because we are unable to fulfill our mission of providing

comprehensive reproductive health care to Missouri women and pursue our business and professions.

51. As can be seen from this declaration, Comprehensive Health has devoted an enormous amount of staff time to attempting to comply with these Restrictions—time that could be otherwise spent focusing on patient care. I am aware that other abortion providers and their patients throughout the country are not subject to these sorts of medically unnecessary restrictions and safely provide abortions outside of ASCs and without arrangements with hospitals. I believe that our patients too should not be hampered by these sorts of restrictions, which do nothing to help them and, instead, only impede their ability to exercise their right to choose abortion.

Dated: December 12, 2016

/s/ Laura McQuade

Laura McQuade

EXHIBIT A

LAW OFFICES
ARTHUR BENSON & ASSOCIATES

ARTHUR BENSON
JAMIE KATHRYN LANSFORD

4006 CENTRAL STREET
KANSAS CITY, MISSOURI 64111-2236
816-531-6565 • 816-531-6688 FAX

EMAIL: abenson@bensonlaw.com
jlansford@bensonlaw.com
WEBSITE: www.bensonlaw.com

August 24, 2016

Nikki Loethen
General Counsel
Missouri Department of Health and Senior Services
912 Wildwood
PO Box 570
Jefferson City, MO 65102-0570
nikki.loethen@health.mo.gov

VIA EMAIL AND U.S. MAIL

Dear Ms. Loethen:

The United States Supreme Court has made clear in its recent decision in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *as revised* (June 27, 2016), that state requirements, like those in Missouri, requiring physicians who provide abortions to have local hospital admitting privileges and provide abortions at ambulatory surgical centers ("ASC") are unconstitutional and unenforceable.

Planned Parenthood Great Plains ("PPGP") (formerly known as Planned Parenthood of Kansas and Mid-Missouri) operates health centers in Columbia and Kansas City that do not currently hold Abortion Facility Licenses, but would provide abortions if not for these restrictions. Therefore, given the Supreme Court's decision, we write on behalf of PPGP to request that the Department of Health and Senior Services ("DHSS") acknowledge that Missouri's admitting privileges and ASC requirements are unenforceable and grant these two health centers Abortion Facility Licenses without delay.

Supreme Court Decision and Its Impact on Similar State Laws

In *Whole Woman's Health*, the Supreme Court reviewed Texas's admitting privileges and ASC requirements. As in Missouri, abortion providers in Texas were unable to comply with the admitting privileges and ASC laws and were therefore unable to provide abortions. In assessing the constitutionality of these laws, the Supreme Court held that "neither of these provisions confers medical benefits sufficient to justify the burdens upon access that each imposes . . . and each violates the Federal Constitution." *Whole Woman's Health*, 136 S. Ct. at 2299.

The Court found that abortion is “extremely safe with particularly low rates of serious complications and virtually no deaths.” *Id.* at 2311 (quotations omitted). Further, it found that there was a “virtual absence of any health benefit” from Texas’s admitting privileges requirement, *id.* at 2313 (quotations omitted), and that the ASC requirement “does not benefit patients and is not necessary,” *id.* at 2315. Moreover, both of these requirements hindered access to abortion because they caused or would cause abortion providers to close. *Id.* at 2313, 2316. Given that these laws failed to provide a benefit to patients and hindered access to abortion, the Court found that both the admitting privileges requirement and the ASC requirement posed an undue burden on women’s right to access abortion and were therefore unconstitutional and unenforceable state-wide. *Id.* at 2313, 2318.

The impact of this ruling on similar laws in other states was immediately clear. The day after it decided *Whole Woman’s Health*, the Supreme Court denied petitions for writs of certiorari that had been filed by Mississippi and Wisconsin seeking review of appeals court decisions that had declared unconstitutional or likely unconstitutional those states’ admitting privileges laws. *Currier v. Jackson Women’s Health Org.*, 136 S. Ct. 2536 (2016); *Schimel v. Planned Parenthood of Wis., Inc.*, 136 S. Ct. 2545 (2016). Similarly, the state of Alabama quickly filed a motion to dismiss its appeal of a district court decision striking down its admitting privileges law, stating that “because Alabama’s law is identical in all relevant respects to the law at issue in *Whole Woman’s Health*, there is now no good faith argument that the law is constitutional under controlling precedent.” Mot. to Dismiss Appeal, *Planned Parenthood Southeast v. Strange*, No. 16-11867 (11th Cir. July 15, 2016). Indeed, Missouri Attorney General Koster’s office has recognized the import of the Supreme Court’s ruling, stating that it “calls into serious question the constitutionality of certain Missouri laws.” Blythe Bernard, *Clinic Vows to Resume Abortions in Columbia After Supreme Court Ruling*, St. Louis Post-Dispatch (June 29, 2016) http://www.stltoday.com/lifestyles/health-med-fit/health/clinic-vows-to-resume-abortions-in-columbia-after-supreme-court/article_09414645-e606-5888-b9a3-a329ed7d07e0.html (quotations omitted).

As with the Mississippi, Wisconsin, and Alabama requirements, Missouri’s admitting privileges requirement and its ASC law, at the very least as to the physical plant restrictions, are squarely impacted by the Supreme Court ruling. The Department should, therefore, acknowledge that the following statutes and regulations, and any other admitting privileges and ASC restrictions, are invalid and unenforceable: Mo. Ann. Stat. § 197.200; Mo. Ann. Stat. § 197.215(2); Mo. Ann. Stat. § 188.080; 19 CSR 30-30.020(1)(B)(4); 19 CSR 30-30.050; 19 CSR 30-30.060; 19 CSR 30-30.070.

PPGP's Columbia and Kansas City Health Centers

On June 14, 2016, PPGP submitted to DHSS an application for an Abortion Facility License for its Columbia Health Center prior to the expiration of its prior license on June 30, 2016. In its June 23, 2016 response, DHSS indicated that it would not grant the license until the Columbia health center had "a physician with the required privileges" and indicated that once it received proof of such privileges it would proceed with the licensing process. Letter from John Langston, Administrator, Bureau of Ambulatory Services, Mo. DHSS, to Laura McQuade, President and Chief Executive Officer, PPGP, (June 23, 2016). As the Supreme Court has now made clear that such a privileges requirement is unconstitutional and unenforceable, there is no remaining barrier to DHSS granting the Columbia Health Center an Abortion Facility License, and DHSS should do so without delay.

Similarly, given the Supreme Court's decision, DHSS should also grant an abortion facility license without delay to PPGP's Midtown Health Center (formerly known as the Patty Brous Health Center) located in Kansas City, Missouri. Accordingly, we will be promptly submitting an application for such a license to the DHSS Bureau of Ambulatory Care.

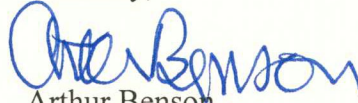
Should Missouri continue to enforce its ASC and admitting privileges laws as to PPGP's Columbia and Kansas City health centers, in clear contravention of the Supreme Court's ruling, we will have no choice but to bring litigation, the defense of which will be costly for Missouri's taxpayers. *See Order, Planned Parenthood Southeast v. Strange*, No. 2:13-cv-405, at 2 (M.D. Ala. Aug. 5, 2016) (ordering the state of Alabama to pay \$1.7 million in attorney fees and expenses following litigation regarding its admitting privileges requirement); *Planned Parenthood of Kan. & Mid-Mo., Inc. v. Lyskowski*, No. 2:15-CV-04273-NKL, 2016 WL 4083484, at *5 (W.D. Mo. Aug. 1, 2016) (ordering Missouri to pay \$156,630.68 in attorney fees and expenses to Planned Parenthood following litigation related to DHSS's revocation of the Columbia health center's license); *Pls.' Mot. for an Award of Att'y's Fees, Costs, and Expenses, Planned Parenthood of Wis. v. Schimel*, No. 13-CV-465, at 2 (W.D. Wis. July 28, 2016) (seeking nearly \$1.8 million in attorney fees and expenses following litigation regarding Wisconsin's admitting privileges requirement).

For these reasons, PPGP hopes that DHSS complies with the Supreme Court's ruling and grants the licenses that we have requested. In addition, please let us know your position as to the

Nikki Loethen
August 24, 2016
Page 4

enforceability of Missouri's admitting privileges and ASC requirements as to any other health centers state-wide. We kindly request that you respond within 30 days of receipt of this letter.

Sincerely,



Arthur Benson

Arthur Benson & Associates
4006 Central Avenue
Kansas City, Missouri 64111
(816) 531-6565

Melissa Cohen
Planned Parenthood Federation of America
123 William Street
New York, NY 10038
(212) 261-4649

cc: (by U.S. Mail)

Chris Koster
Missouri Attorney General
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102

Daniel Knight
Boone County Prosecuting Attorney
705 E. Walnut St
Columbia, MO 65201-4485

Jean Peters Baker
Jackson County Prosecutor
Jackson County Courthouse
415 E 12th Street
Kansas City, MO 64106

EXHIBIT B



Missouri Department of Health and Senior Services

P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466

Peter Lyskowski
Director



Jeremiah W. (Jay) Nixon
Governor

November 2, 2016

Vicki Casey (vicki.casey@ppgreatplains.org)
Comprehensive Health of Planned Parenthood Great Plains
1001 Emanuel Cleaver II
Kansas City, MO 64110

Re: Comprehensive Health of Planned Parenthood Great Plains – Kansas City survey

Dear Ms. Casey:

The Department received the application for licensure of the Kansas City Planned Parenthood location (Brous Center) as an abortion facility. Department staff conducted an onsite survey of the facility on October 19, 2016 to determine compliance with the terms of the 2010 settlement agreement and applicable statutes and regulations, including the Ambulatory Surgical Center Licensing Law (Section 197.200, RSMo, et seq.) and Chapter 188, RSMo (Regulation of Abortions).

Listed below are items the survey indicated were not in compliance. Until a written response is provided describing how all items below have been addressed, including acceptable evidence of compliance, an abortion facility license cannot be issued.

19 CSR 30-30.060(1)(B)12. The administrator shall be responsible for ensuring that the provisions of Chapter 188, RSMo, Regulation of Abortions, are adhered to.

- Sections 188.027 and 188.080, RSMo, require that all physicians performing or inducing abortions have clinical privileges at a hospital which offers obstetrical or gynecological care located within thirty miles of the location at which the abortion is performed or induced. The credentialing file documents provided by your staff show that one of the physicians who would be performing abortions had clinical privileges at a hospital within 30 miles of the Brous Center. Regarding the other physician who would be performing abortions, the credentialing file documents indicated the physician has privileges at a hospital within thirty miles but do not specify whether the privileges are clinical in nature.

Regarding physician privileges at the Brous Center, the 2010 settlement agreement (page 19) states, "PPKM represents that medication abortion at the Brous Center is provided by a physician licensed to practice in Missouri who has privileges to perform surgery either at Menorah Medical Center or Research Medical Center. This will fulfill the physical presence requirements of 19 CSR 30-30.060(3) and (3)(A) and (3)(D) and the staff privileges requirement of 19 CSR 30-30.060(1)(C)4."

The facility failed to document that it meets the above requirement of the settlement agreement:

- The facility had two physicians on staff who would perform abortions. One physician did not have privileges at either Menorah or Research Medical Centers. The other physician apparently has some type of privileges at Menorah, but the documents provided do not specify the type of privileges, (e.g., staff, surgical).

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19 CSR 30-30.0601(B)8. The facility shall establish a program for identifying and preventing infections and for maintaining a safe environment.

The facility failed to demonstrate compliance with facility's established Infection Prevention Program, based on Association for the Advancement of Medical Instrumentation standards.

- The facility failed to establish a traffic pattern in the decontamination/sterilization room that prevented cross contamination between contaminated and clean instrument processing.
- The facility failed to establish a policy for the process of high level disinfection of semi-critical instruments and equipment using OPA (ortho-phthalaldehyde) solution that included cleaning, disinfecting, rinsing, drying and storage.
- The facility failed to ensure staff followed the policy for utilization of PPE (personal protective equipment) during decontamination of soiled instruments. The appropriate PPE was not available in the instrument decontamination/sterilization room.
- The facility failed to follow safe medication practices by storing medications in the decontamination/sterilization room, and storing medications side by side in the refrigerator and locked cabinet with laboratory reagents and miscellaneous supplies.
- The facility failed to package semi-critical equipment (vaginal speculums) to protect from cross-contamination during storage.
- The facility stored supplies in corrugated boxes in the decontamination/sterilization room.

Please respond in writing providing evidence/documentation that each of these items has been fully addressed and corrected.

If you have further questions, you may contact our office at 573-751-6083 or via email at the address noted below.

Sincerely,



John Langston, Administrator
John.Langston@health.mo.gov
Bureau of Ambulatory Care
Missouri Department of Health & Senior Services



Missouri Department of Health and Senior Services

P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
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Peter Lyskowski
Director



Jeremiah W. (Jay) Nixon
Governor

November 2, 2016

Vicki Casey (vicki.casey@ppgreatplains.org)
Comprehensive Health of Planned Parenthood Great Plains
711 North Providence Road
Columbia, Mo 65203

Re: Comprehensive Health of Planned Parenthood Great Plains – Columbia Survey

Dear Ms. Casey:

The Department received the application for licensure of the Columbia Planned Parenthood location as an abortion facility. Department staff conducted an onsite survey of the location on October 11, 2016 to determine compliance with the terms of the 2010 settlement agreement and applicable statutes and regulations, including the Ambulatory Surgical Center Licensing Law (Section 197.200, RSMo, et seq.) and Chapter 188, RSMo (Regulation of Abortions).

Listed below are items the survey indicated were not in compliance. Until a written response is provided describing how all items below have been addressed, including acceptable evidence of compliance, an abortion facility license cannot be issued.

19 CSR 30-30.060(1)(B) 12. The administrator shall be responsible for ensuring that the provisions of Chapter 188 RSMo, Regulation of Abortions, are adhered to.

- Sections 188.027 and 188.080, RSMo, require that all physicians performing or inducing abortions have clinical privileges at a hospital which offers obstetrical or gynecological care located within thirty miles of the location at which the abortion is performed or induced. Neither of the facility's two physicians had the required privileges.
- Section 188.047 requires that tissue removed at the time of the abortion be submitted to a pathologist for necessary reporting. The facility did not have a finalized agreement with a pathologist to provide the required services.

19 CSR 30-30.060(1)(C)4. Physicians performing abortions at the facility shall have staff privileges at a hospital within fifteen (15) minutes' travel time from the facility or the facility shall show proof there is a working arrangement between the facility and a hospital within fifteen (15) minutes' travel time from the facility.

- The facility did not have a documented working arrangement with a hospital within the required proximity.
- Neither of the facility's two physicians had the required privileges.

19 CSR 30-30.060(1)(C)1. The medical staff shall develop and, with the approval of the governing body, shall adopt policies governing physician activities in the abortion facility. Medical staff membership shall be limited to physicians.

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- The facility policy failed to limit medical staff membership to physicians. The policy stated that advance practice registered nurses could be a member of the medical staff.

19 CSR 30-30.060(1)(C)3. The governing body, acting upon recommendations of the medical staff, shall approve or disapprove appointments. Written criteria shall be developed for privileges extended to each member of the staff. A formal mechanism shall be established for recommending to the governing body delineation of privileges, curtailment, suspension or revocation of privileges and appointments and reappointments to the medical staff.

- The facility had two physicians on staff. Not all components of a fully credentialed file had been completed for the physicians, including a formal approval of internal facility privileges, appointment to the medical staff, a National Practitioner's Data Bank check, or certifications from BNDD or DEA.

19 CSR 30-30.060(1)(B)8. The facility shall establish a program for identifying and preventing infections and for maintaining a safe environment.

- The facility failed to demonstrate compliance with facility's established Infection Prevention Program, based on Association for the Advancement of Medical Instrumentation standards.
 - o The facility did not maintain an autoclave log with the required components tracked (lot number, specific contents of the lot or load, exposure time and temperature, name and initials of the operator, results of biological testing).
 - o The facility failed to have the supplies necessary for high level disinfection of vaginal ultrasound probes.

19 CSR 30-30.060(3)(J). Each abortion facility shall develop a quality assurance program that includes all health and safety aspects of patient care and shall include a review of appropriateness of care. Results of the quality assurance program shall be reviewed at least quarterly by the administrator, director of patient care, a representative of the medical staff and the governing body.

- The facility did not have a quality assurance program specific to their facility that included the required elements. Facility staff indicated a system-wide QAPI program that had removed elements required by Missouri rules some time before:
 - o Intraoperative and postoperative complications
 - o All cases that resulted in a length of stay of more than twelve (12) hours, and
 - o All cases in which the gestational age was determined to be beyond eighteen (18) weeks.

19 CSR 30-30.060(3)(K). The quality assurance program must show evidence of action taken as a result of the identification of the problems.

- The facility program did not show identification of problems or follow-up of problems.

19 CSR 30-30.060(4)(C). All tissue obtained from abortions, except tissue submitted to a pathologist for analysis, shall be submerged in a preservative solution and shall be transported in a leakproof container to a facility with a waste sterilizer or an incinerator approved by the Department of Natural Resources. If kept for more than twelve (12) hours, all tissue shall be refrigerated.

- The facility failed to produce a final agreement with a pathologist.
- The facility did not have a preservative solution onsite.
- The facility did not have an agreement, approved by the Department of Natural Resources, with a waste sterilizer.
- The facility could not demonstrate whether adequate refrigeration space was available for preservation.

19 CSR 30-30.060(4)(E). Anti-Rh immune globulin therapy shall be given to all Rh negative patients upon completion of the abortion procedure.

- The facility failed to stock the required anti-Rh immune globulin.

19 CSR 30-30.060(3)(I). An emergency tray equipped to treat seizures, bleedings, anaphylactic shock, respiratory arrest and cardiac arrest shall be immediately available to the procedure room and recovery room.

- The facility had two lists of supplies, one for medical and one for surgical abortion procedures. Some necessary medications and supplies were not onsite or had not yet been ordered for either type of procedure (including filter needles, one milliliter syringes, and cervical needles from the surgical supply list).

19 CSR 30-30.070(2)(N). The recovery room . . . shall be of sufficient size to accommodate at least four (4) recovery beds or recliners for each procedure room. There shall be three feet (3') of clear space on both sides and at the foot of each recovery bed or recliner.

- Required space within the recovery room is not sufficient for at least four (4) recliners with three feet of clear space on both sides and at the foot of each recovery recliner. When this location was previously licensed in 2015, the facility had requested and been granted a variance for three (3) recliners. However, at that time the facility was only approved to provide medication procedures. It is now the facility's intent to also perform surgical procedures. The letter from the department dated July 15, 2015 states that the variance "will remain in effect until there is a change in procedure type performed at [the facility.]" The facility may submit a revised variance request in writing in accordance with 19 CSR 30-30.070(1).

19 CSR 30-30.070(2)(X). A patient toilet with lavatory shall be located convenient to the recovery room. This room shall be equipped with a constant running exhaust.

- The toilet room next to the recovery room has an exhaust fan which runs only when the light to the room is turned on and is activated by the same switch. A constant running exhaust in the patient toilet facility is specifically required in the 2010 settlement agreement (page 17).

Please respond in writing providing evidence/documentation that each of these items has been fully addressed and corrected.

If you have further questions, you may contact our office at 573-751-6083 or via email at the address noted below.

Sincerely,



John Langston, Administrator
John.Langston@health.mo.gov
Bureau of Ambulatory Care
Missouri Department of Health & Senior Services

EXHIBIT C

LAW OFFICES
ARTHUR BENSON & ASSOCIATES

ARTHUR BENSON
JAMIE KATHRYN LANSFORD

4006 CENTRAL STREET
KANSAS CITY, MISSOURI 64111-2236
816-531-6565 • 816-531-6688 FAX

EMAIL: abenson@bensonlaw.com
jlansford@bensonlaw.com
WEBSITE: www.bensonlaw.com

November 11, 2016

VIA EMAIL: John.Langston@health.mo.gov

John Langston
Administrator, Bureau of Ambulatory Care
Missouri Department of Health and Senior Services
912 Wildwood
PO Box 570
Jefferson City, MO 65102-0570

Dear Mr. Langston:

Comprehensive Health of Planned Parenthood Great Plains (“Planned Parenthood”) is in receipt of your letters dated November 2, 2016 regarding DHSS’s surveys of Planned Parenthood’s Columbia and Kansas City health centers, and we write to provide an initial response to those letters.

First and foremost, we are very disappointed to learn that DHSS intends to enforce Missouri’s clearly unconstitutional requirements that facilities that provide abortion be licensed as ambulatory surgical centers and that physicians who provide abortions have local hospital admitting privileges. As we have indicated in previous correspondence to the Department, the United States Supreme Court has made clear in *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *as revised* (June 27, 2016), that these requirements, which do not promote women’s health, impose an undue burden on women’s access to abortion.

Moreover, while we will provide detailed responses to your letters in due course, we wanted to promptly note a few items for your reconsideration. In particular, with regard to the status of the admitting privileges of the physician at the Brous health center in Kansas City, we have learned that due to a clerical error, those privileges were changed by Menorah Medical Center in 2015 to non-surgical privileges. The hospital has indicated that the physician will need to go through a reappointment process to return his privileges to a clinical/surgical level. That process is underway. However, as you know, this physician does have surgical privileges at Overland Park Regional Medical Center which, while not specifically listed in the 2010 settlement agreement, is the same distance from the Brous health center as Menorah Medical Center and provides similar services. Given the similarity between the two hospitals, any conceivable patient health and safety benefit from having surgical privileges at Menorah Medical Center would be equally met by this physician’s existing privileges – especially given that the Brous health center seeks to provide only medication abortion, a non-surgical service.

John Langston
November 11, 2016
Page Two

With regard to the Columbia health center, since the survey was completed Planned Parenthood has secured a written transfer agreement with a hospital within 15 minutes' travel time of this health center. This fulfills the requirement of 19 CSR 30-30.060(1)(C)(4). A number of the remaining items you identified with respect to the Columbia facility seem far from a basis on which to deny licensing. For example, we find it inexplicable that DHSS is deeming the Columbia health center's current waiver regarding the number of recliners in the recovery room insufficient and is requiring a new waiver application, and that DHSS is finding the facility's bathroom fan insufficient, as both these current conditions were approved by DHSS for purposes of the facility's license that recently expired in June 2016 -- and, indeed, have been approved consistently since the settlement agreement was entered, for the provision of both medication and surgical abortion. In addition, several of the items included in the letter regarding the Columbia health center required only minor policy adjustments, which, as you know, were already completed by the time the Brous health center survey occurred (and, presumably, is why those items were not listed in the letter regarding Brous). The remaining items in your letter require only minor administrative adjustments and the stocking of basic supplies necessary for the provision of abortion services, which, as an experienced abortion provider, Planned Parenthood is of course prepared to have in place.

However, it seems that trying to remedy these minor issues would be a waste of Planned Parenthood's resources as long as DHSS continues to enforce the physician privileges requirement. Therefore, please advise us within the next 7 days whether the information provided above regarding Planned Parenthood's physicians' privileges and the Columbia health center's transfer agreement changes DHSS's position about physician privileges.

Thank you for your consideration.

Sincerely,



Arthur Benson

Melissa Cohen
Planned Parenthood Federation of America
123 William Street
New York, NY 10038
(212) 261-4649

John Langston
November 11, 2016
Page Three

cc via email:

Nikki Loethen
General Counsel
Missouri Department of Health and Senior Services
Nikki.loethen@health.mo.gov

cc via U.S. Mail:

Chris Koster
Missouri Attorney General
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102

Daniel Knight
Boone County Prosecuting Attorney
705 E. Walnut St
Columbia, MO 65201-4485

Jean Peters Baker
Jackson County Prosecutor
Jackson County Courthouse
415 E 12th Street
Kansas City, MO 64106

EXHIBIT D



Missouri Department of Health and Senior Services

P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466

Peter Lyskowski
Director



Jeremiah W. (Jay) Nixon
Governor

November 18, 2016

Via email to abenson@bensonlaw.com

Arthur Benson
Arthur Benson & Associates
4006 Central Street
Kansas City, Missouri 64111-2236

Re: Comprehensive Health of Planned Parenthood Great Plains – Kansas City and Columbia facilities

Dear Mr. Benson:

This is in response to your November 11, 2016, letter to me regarding physician privileges at the Kansas City and Columbia, Missouri Planned Parenthood facilities.

Regarding physician privileges at the Kansas City facility, the 2010 settlement agreement states (page 19), “PPKM represents that medication abortion at the Broussard Center is provided by a physician licensed to practice in Missouri who has privileges to perform surgery either at Menorah Medical Center or Research Medical Center. This will fulfill the physical presence requirements of 19 CSR 30-30.060(3) and (3)(A) and (3)(D) and the staff privileges requirement of 19 CSR 30-30.060(1)(C)4.”

Your letter states that the Kansas City facility has a physician with surgical privileges at Overland Park Regional Medical Center who would provide medication abortions. Such privileges do not comply with the settlement agreement. Until the facility is in compliance with the privileges requirement of the settlement agreement, an abortion facility license cannot be granted, even if all other deficiencies identified in the department’s November 2, 2016, letter were corrected.

Regarding the Columbia facility, your letter states that the facility “has secured a written transfer agreement with a hospital within 15 minutes’ travel time” from the facility “which fulfills 19 CSR 30-30.060(1)(C)4.”¹ The department has not received a copy of this agreement and is therefore unable to confirm whether it complies with the regulation. Regardless, the facility still must comply with 19 CSR 30-30.060(1)(B)12, which states, “The administrator shall be responsible for ensuring that the provisions of Chapter 188 RSMo, Regulation of Abortions, are adhered to.” Sections 188.027 and 188.080, RSMo,

¹ Regulation 19 CSR 30-30.060(1)(C)4 states, “Physicians performing abortions at the facility shall have staff privileges at a hospital within fifteen (15) minutes’ travel time from the facility or the facility shall show proof there is a working arrangement between the facility and a hospital within fifteen (15) minutes’ travel time from the facility.”

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require that all physicians performing or inducing abortions have clinical privileges at a hospital which offers obstetrical or gynecological care located within thirty miles of the location at which the abortion is performed or induced. Neither of the facility's two physicians have the required privileges. Until the facility is in compliance with the privileges requirement, an abortion facility license cannot be granted, even if all other deficiencies identified in the department's November 2, 2016, letter were corrected.

Additionally, page two of your letter states, "A number of the remaining items you identified with respect to the Columbia facility seem far from a basis on which to deny licensing." To be clear, the department has not denied licensure; the department has identified the deficiencies that must be corrected before licensure could be granted.

If you have additional questions, you may contact our office at (573) 751-6083 or via email at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "John Langston". The signature is fluid and cursive, with the first name "John" and last name "Langston" clearly distinguishable.

John Langston, Administrator

John.Langston@health.mo.gov

Bureau of Ambulatory Care

Missouri Department of Health & Senior Services