

June 18, 2019

Via email to: [BAC@health.mo.gov](mailto:BAC@health.mo.gov); [William.Koebel@health.mo.gov](mailto:William.Koebel@health.mo.gov)

William Koebel  
Administrator, Section for Health Standards and Licensure  
Missouri Department of Health and Senior Services  
P.O. Box 570  
Jefferson City, Missouri 65102-0570

*Re: June 13, 2019 Statement of Deficiencies*

Dear Mr. Koebel:

Reproductive Health Services of Planned Parenthood of the St. Louis Region (“Planned Parenthood”) is in receipt of your “Complaint Investigation Statement of Deficiencies” dated June 13, 2019, which demonstrates a severe departure from public health standards, including: misstating medical facts to serve a political interest, violating patient confidentiality, relying on severely outdated research and research conducted by anti-abortion advocates, shifting demands and creating new demands without a basis in medicine, mandating that physicians conduct medically unnecessary pelvic exams, creating an atmosphere of fear among medical residents and fellows, and refusing to comply with state regulations for licensing health care facilities.

Planned Parenthood takes our responsibility to provide the best possible care for our patients very seriously. We are committed to the highest medical, legal, and ethical standards. The health and safety of our patients is our top priority. Ensuring the health and safety of our patients is central to our mission and fundamental to every person who works at Planned Parenthood. Because we are committed to our patients and providing them the best care, we are deeply concerned with the Department’s weaponization of the regulatory process.

Most troubling is the lengths the Department will go to fulfill the years-long campaign to target Planned Parenthood and deliver on Governor Parson’s promise to end abortion access in Missouri and prevent patients from accessing the health care they seek.

### **The Department’s Shifting Positions**

The Department’s ever-shifting positions have wrought real harm on patients. For instance, until last year, the Department did not enforce the pelvic exam requirement for medication abortion because the outdated requirement was written before approval of medication abortion in the

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United States, and it is medically unnecessary for that method of abortion. However, as a direct result of the Department's decision to require a medically unnecessary and invasive pelvic exam before every medication abortion, the state knowingly forced our doctors to make an impossible choice between their ethical responsibilities to do no harm and keeping medication abortion accessible. As a result, medication abortion has effectively been eliminated in Missouri.

And now, during this licensure renewal process, the Department again moved the goalposts on the pelvic exam requirement this time for surgical abortion. Although the Department has been aware for years that Planned Parenthood performs pelvic exams on the day of the abortion, which is when it is medically relevant and is all the regulation requires, the Department has now determined that the same regulation requires physicians to perform an additional, medically unnecessary pelvic exam at least 72 hours before the abortion—despite that the patient will nevertheless need an identical pelvic exam when they return on the day of the abortion procedure. Planned Parenthood reluctantly agreed to this demand, knowing that abortion access for the entire state could otherwise be eliminated. Despite Planned Parenthood's hopes that the Department would relent and renew our license, it still did not.

In the few weeks' time Planned Parenthood has provided the additional, medically unnecessary pelvic exam, it has confirmed just how harmful and traumatic it is to force patients to undergo a medically unnecessary pelvic exam. The additional invasive exam forces physicians to make an impossible choice between a patient-centered practice grounded in sound medical ethics and evidence or providing care at all. Planned Parenthood is dedicated to providing our patients with high-quality health care—care that is respectful and nonjudgmental—and we have done so for decades. A fundamental attribute of quality care is patient-centeredness, which means “providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions.”<sup>1</sup> We believe continuing to force an additional invasive and uncomfortable pelvic exam on patients on the patient education day, when it is not medically indicated, and when the patient will have the identical exam on the day of her abortion procedure, is not patient-centered; it is disrespectful and dehumanizing, and borders on state-sanctioned assault. This is contrary to our mission. This is true for all our patients, but especially for survivors of sexual trauma and for minors having their first pelvic exam. And for these reasons, unless medically indicated, Planned Parenthood will no longer require patients seeking a surgical abortion to undergo a pelvic exam on the patient counseling day, which the State requires be at least 72 hours before the procedure.

There is a long and sad history of the medical community forcing medically unnecessary vaginal exams on women—a history the Department seeks to perpetuate in Missouri.<sup>2</sup>

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<sup>1</sup> National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Care Services; Board on Population Health and Public Health Practice; Committee on Reproductive Health Services: *Assessing the Safety and Quality of Abortion Care in the U.S.*, Washington (DC): National Academies Press (US); 2018 Mar.

<sup>2</sup> E.g., Eli Y. Adashi, MD, MS, *JAMA Forum: Teaching Pelvic Examination Under Anesthesia Without Patient Consent* (Jan. 16, 2019), <https://newsatjama.jama.com/2019/01/16/jama-forum-teaching-pelvic-examination-under-anesthesia-without-patient-consent/>.

As another example, although the Department advised a court that physicians training to provide abortion care could practice under the supervision of attending physicians, the Department now has conveniently shifted its understanding. What the Department once deemed acceptable—for residents to provide abortion care under the supervision of attending physicians—it suddenly deemed a “deficiency.” And at the same time, the Department has repeatedly demanded to interview residents and fellows who have received abortion training at Planned Parenthood, despite never previously requiring such interviews as part of its licensing process. Without reason, the State has demanded to interview these doctors in training while acknowledging doing as much could lead to board review or criminal proceedings. The Department has even shifted the basis for its investigation, previously stating the investigation was prompted by a complaint yet recently acknowledging in court that it had received no complaint but instead had initiated the investigation on its own accord.

The Department second guesses the care patients receive based on the very few known complications, which fall within anticipated and low complication rates, that can occur from time to time. At the same time, the Department fails to consider the risk of maternal morbidity and even mortality from carrying to term and delivering. Indeed, Missouri ranks 42nd in the nation for maternal mortality. It also fails to acknowledge its own role in limited access to abortion care. Missouri women deserve better.

The statement of deficiencies, moreover, is replete with instances in which the Department has substituted its own second-guessing for the considered, evidence-based, and tested judgment of experienced, highly trained clinicians who are experts and specialists in the provision of abortion care and who are providing that care pursuant to nationally recognized standards and guidelines.

Rather than rely on medicine and fact, the Department has chosen to rely in large part on anti-abortion propaganda, literature from the '70s, and misrepresentations of fact. Its opinions are not supported by medical literature or the guidance of professional organizations with specialized expertise regarding the standard of care.

The statement of deficiencies, moreover, exaggerates a handful of known complications from abortion to suggest a widespread problem at Planned Parenthood when, in fact, Planned Parenthood’s low complication rate is well within published rates.

Missourians are the unfortunate victims of the Department’s campaign. By limiting access to abortion, patients are forced to seek care across state lines (in states with fewer medically unnecessary restrictions), risking their jobs, income, privacy, and much more.

Indeed, the Department itself has already breached patient confidentiality. Although its statement of deficiencies contains patient-identifying information, the Department released the document to the public. As a direct result of the Department compromising these patients’ privacy and confidentiality, anti-abortion extremists have already published pictures and other details about one of the patients described in the statement of deficiencies.

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### **The Department's Delay**

While the Department has requested a "specific, detailed" response that includes "feasible remedial measures" addressing each alleged "deficiency" in the 62-page statement of deficiencies, it contains many vague, unsupported, and baseless claims that make it difficult or impossible to respond as the Department requests.

In addition, the timeline issued by the Department deprives Planned Parenthood of the normal ten business days granted to other regulated entities during the licensing process. Your characterization of an "accelerated timeline imposed by the court's order" is of the Department's own making. The Court intervened only because the Department refused to comply with the licensure statutes and cooperate with Planned Parenthood in the required back-and-forth process. Again, this is an unusual departure from the licensing process other regulated entities experience. This is not the first time a court has had to intervene and compel the Department to follow the licensure laws.

As you are aware, this licensing process has dragged on since the Department refused several requests to respond to our April 9 plan of correction. The Department sat on the plan for nearly six weeks until May 20—about 29 business days later—knowing our license was set to expire May 31. Planned Parenthood promptly submitted revised plans of correction on May 22 and 28, resolving all deficiencies arising out of the annual inspection. Although Planned Parenthood did all it was required to do under the licensing laws—and more—the Department refused again to abide by the statutes: the Department refused to renew our license or even make any decision on the renewal application. We were then forced to take the Department to court. The Court, as you know, found that the Department's decision to indefinitely delay a decision on our renewal application likely conflicted with the licensing statutes and ordered the Department to make a decision on the application by Friday, June 21.

Despite the accelerated timeframe and the lack of clarity as to the Department's concerns, Planned Parenthood has endeavored to supply the required information and to work in good faith to resolve any outstanding issues. We look forward to the Department's response and working with the Department to ensure Missourians can continue accessing abortion care in their home state.

Sincerely,

Kawanna Shannon  
Director of Surgical Services