

# EXHIBIT A-D

# EXHIBIT D



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April 16, 2019

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

Re: Interview Requests to Reproductive Health Services

Dear Mr. Koebel:

As I have previously communicated to Mr. Wille at your Department, my firm represents abortion facility licensee Reproductive Health Services of Planned Parenthood of the St. Louis Region (RHS). RHS understands that you are conducting an investigation of a patient complaint or complaints, and RHS has previously provided you documents you requested for that investigation, as well as allowing staff to answer your questions about those records and other matters. My understanding is that you previously requested to interview 2 doctors associated with RHS and now, by way of an email dated April 11, 2019, are requesting to interview 7 doctors and a nurse associated with RHS. Your email requested that RHS provide you with the interview availability for these practitioners by close of business today.

RHS has and will continue to cooperate with your investigation, as we take patient complaints very seriously, but at this time RHS is unable to provide the information requested. While these practitioners provide health care services at RHS most, including the practitioner you requested to interview first, have separate counsel. As a result, we have been actively working to reach their counsel and discuss this matter and their willingness to present for these interviews. **We have not completed that process and therefore request an additional two business days to complete the process and provide you with a response.**

Notably, we can find nothing in the law that obligates licensees, as part of their licensure requirements, to interrupt patient care and make these personnel available to be interviewed without some notice of topic or consequences for declining your request. Mr. Wille indicated that, if RHS fails to make these doctors available for unrestricted interviews, the Department "might" consider such failure grounds for discipline. Similarly, your email suggests renewal of RHS's license may be contingent on acceding to your interview request. I can find no basis in the law for that position.

The Department may of course take action against a license when it "finds that there has been a substantial failure to comply with the requirements of sections 197.200 to 197.240." § 197.220, RSMo. But nothing in sections 197.200 to 197.240, RSMo requires personnel to be made available for interviews or even requires the cooperation RHS has already been giving. Nor is declining to have personnel available to speak with inspectors a "substantial failure to comply"

with the licensure statutes. Section 197.230, RSMo governs inspections and investigations of abortion facilities. Conspicuously absent from any of the statutory requirements, including §197.230, RSMo, is an obligation on licensees to cooperate with inspections by making their staff and independent contractors available for interviews. Additionally, the regulations do not require it. Although the regulations allow the Department to investigate patient complaints, the regulations do not require the facility to make personnel available for interviews. Nor does the statute or regulations confer authority on the Department to discipline licensed medical providers.

The fact that the statutes and regulations do not contain any requirement to produce personnel for free-ranging interviews is significant. Other licensure statutes do impose discipline for failure to cooperate with an investigation. See §§334.100, 335.066, and 340.264, RSMo. The legislature conferred no similar authority on the Department with respect to ambulatory surgical centers and abortion facilities. See *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 32 (Mo. 1988); see also *State v. Reproductive Health Services*, 97 S.W.3d 54, 61 (Mo. 2002).

In addition to the lack of any statutory authority to compel these open-ended interviews, basic due process requires the Department to provide meaningful notice of the patient allegation, including its substance, and any possible sanctions for failure to comply. See *Jamison v. State, Dep't of Soc. Servs., Div. of Family Servs.*, 218 S.W.3d 399, 408–09 (Mo. 2007) (holding investigation "plainly insufficient" to warrant sanction because nurses "were not afforded specific notice of the allegation being investigated" and thus were not afforded "an opportunity to be heard at a meaningful time or in a 'meaningful manner'"); see also *Lewellen v. Franklin*, 441 S.W.3d 136, 146 (Mo. 2014) (due process requires notice of the "severity of the penalty that a State may impose" (internal quotation marks omitted)).

Separate from the question of legal authority, RHS has fully cooperated with your investigation to date and continues to desire this matter be resolved quickly so that it can continue to care for the women of Missouri without further interruption. To that end, RHS is willing to consider various options in order to provide investigators with the information they need including:

- RHS answering written questions posed by the Department;
- Recommending individual attending/supervising physicians answer written questions provided by the Department;
- Recommending individual attending/supervising physicians make themselves available for interviews after the Department provides a list of topics and agrees to reasonable limits.

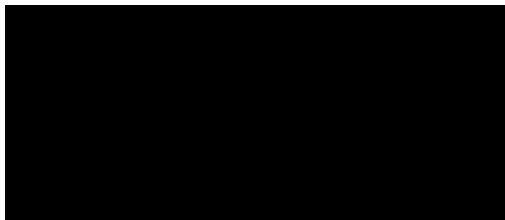
As we continue to attempt to reach the providers and their counsel, RHS requests that the Department seriously consider the above alternatives. RHS is open to any other suggestions you have on how to get the Department the information it needs without requiring its clinicians to participate in unlimited interviews. **In the interim, RHS requests that the Department provide us in writing with the basis for its authority to proceed with these interviews and the penalty for noncompliance.**

William Koebel  
April 16, 2019  
Page 3

I look forward to hearing from you.

Sincerely,

Stinson Leonard Street LLP



Charles W. Hatfield

CWH:ASC