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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

WOMEN'S MED GROUP PROFESSIONAL CORPORATION	:	Case No. A 2200704
d/b/a WOMEN'S MED DAYTON	:	Judge Alison Hatheway
c/o B. Jessie Hill	:	
ACLU of Ohio	:	
4506 Chester Ave.	:	**[PROPOSED] FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
Cleveland, OH 44103	:	
	:	
PLANNED PARENTHOOD SOUTHWEST OHIO REGION	:	
c/o Fanon A. Rucker	:	
The Cochran Firm		
119 E. Court St., Suite 102	:	
Cincinnati, OH 45202	:	
	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
BRUCE VANDERHOFF	:	
Director, ODH		
246 N. High Street	:	
Columbus, OH 43215	:	
	:	
OHIO DEPARTMENT OF HEALTH	:	
246 N. High Street	:	
Columbus, OH 43215	:	
	:	
	:	
Defendants.		

INTRODUCTION

1. This case challenges Ohio's continuing attacks on reproductive freedom in its efforts to shut down Ohio's abortion providers, including the last two ambulatory surgical facilities that perform procedural abortions[1] in southwest Ohio. If both of these facilities are forced to stop providing procedural abortion, access to this care in southwest Ohio will be virtually eliminated overnight.

2. Clinics that provide procedural abortion must maintain an ambulatory surgical facility ("ASF") license. Plaintiffs' ASFs have provided safe procedural abortion care in Ohio for decades. Despite this, Ohio has adopted an unwarranted and onerous ASF licensing scheme that provides no medical or health benefits to patients and that the Ohio Department of Health ("ODH") exploits at every turn to try to deny ASF licenses to Plaintiffs through arbitrary and unjustifiable enforcement actions.

3. To maintain an ASF license, a clinic must either have a written transfer agreement ("WTA") with a local hospital or be granted a variance from that requirement by ODH ("WTA Requirement"). R.C. 3702.303.[2]

4. The requirement to have a WTA is part of a deliberate strategy to severely reduce abortion access statewide by imposing and enforcing medically unnecessary laws and regulations. In 1999, there were 22 clinics in Ohio providing procedural abortion. Today there are only six clinics providing procedural abortion, and only two clinics—Plaintiffs' two clinics—

[1] There are two main methods of abortion: medication abortion and procedural abortion. *See infra* ¶¶ 27–29.

[2] The penalties for operating an ASF without a license include civil penalties between one thousand and two hundred and fifty thousand dollars and/or daily civil penalties between one thousand and ten thousand dollars for each day that the ASF operates. R.C. 3702.32(A); Ohio Adm.Code 3701-83-05.1(A).

provide abortion south of Columbus. Three of the other procedural abortion providers are in the Cleveland area and the fourth is in Columbus. Plaintiffs' two clinics are in jeopardy of being forced to stop providing procedural abortion because of this medically unnecessary requirement.

5. Despite Plaintiffs' best efforts, they have not been able to obtain and/or retain WTAs with local hospitals given hostility to abortion, as demonstrated not only by public harassment but also by the legislature in the form of numerous restrictions passed over the years explicitly designed to shut down clinics, with no medical or health justification. Plaintiffs have instead been forced to rely on Ohio's onerous, medically unjustified framework for a variance from the requirement to maintain a WTA. The variance requirements target abortion providers and threaten access to abortion, including by forcing abortion providers to establish increasingly difficult-to-obtain agreements with "backup" doctors.

6. Upon information and belief, Plaintiffs' ASFs are the only two ASFs in Ohio that have ever needed to seek a variance from the requirement to maintain a WTA.

7. On November 7, 2023, Ohioans voted in favor of adding an explicit right to abortion to the Ohio Constitution: They approved Issue 1, which added the Right to Reproductive Freedom with Protections for Health and Safety (the "Amendment") to the Ohio Constitution. Ohio Constitution, Article I, Section 22. The Amendment took effect on December 7, 2023. *Id.* The Ohio Constitution now provides that "[e]very individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on contraception, fertility treatment, continuing one's own pregnancy, miscarriage care, and abortion." *Id.* at (A). The Ohio Constitution further provides that "[t]he State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" a person's "voluntary exercise of this right," or against "a person or entity that assists an individual

exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." *Id.* at (B).

8. Plaintiffs now challenge the WTA and variance requirements under the Ohio Constitution. These requirements include the WTA Requirement, R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), and ODH's arbitrary enforcement and implementation of the requirements for a variance ("Statutory Variance Requirements"), R.C. 3702.304, as well as the law prohibiting public hospitals from entering into a WTA with ASFs providing abortion ("Public Hospital Ban"), R.C. 3727.60, the law mandating that an ASF license is automatically suspended if a variance request is denied or not ruled upon within 60 days of submission ("Automatic Suspension Provision"), R.C. 3702.309, and Substitute Senate Bill 157 ("SB 157")—the law prohibiting doctors who work with public medical schools or universities from serving as a backup doctor for purposes of an ASF WTA variance application,[3] R.C. 3702.305 (collectively, the "WTA and Variance Requirements").[4]

[3] A full copy of SB 157 is attached hereto as Exhibit A.

[4] Ohio's ASF licensing requirements for clinics providing procedural abortion is the subject of ongoing federal litigation in *Planned Parenthood Southwest Ohio Region v. Vanderhoff*. No. 1:15-cv-568 (S.D.Ohio 2015). Plaintiffs continue to seek relief for federal constitutional violations caused by this framework in federal court, and the Automatic Suspension Provision is currently preliminarily enjoined. *Planned Parenthood Sw. Ohio Region v. Hodges*, 138 F. Supp. 3d 948 (S.D.Ohio 2015). SB 157, another more recent element of the WTA and Variance Requirements, is not the subject of that litigation; it was enacted in December 2021 and challenged in this case in February 2022. *Vanderhoff* raises only federal constitutional claims, and all parties in that litigation agreed that Ohio state constitutional claims should be raised in state court. Defs.' Suppl. Br. Art. I, Sec. 22 Ohio Const., *Planned Parenthood Sw. Ohio Region v. Vanderhoff*, No. 1:15-cv-568 (S.D.Ohio Dec. 8, 2023), ECF No. 202; Pls.' Resp. Nov. 8, 2024 Notation Order, *Planned Parenthood Sw. Ohio Region v. Vanderhoff*, No. 1:15-cv-568 (S.D.Ohio Dec. 8, 2023), ECF No. 203.

9. Without ASF licenses, Plaintiffs will be unable to provide procedural abortion care, resulting in tremendous harm to Plaintiffs and their patients and impermissibly interfering with their ability to provide and obtain abortion services.

10. If Plaintiffs' ASF licenses are revoked, people needing procedural abortions will be forced to travel hundreds of miles round trip to the next closest procedural abortion provider, and, due to a statutory waiting period, make that trip twice, or stay overnight, in order to access procedural abortion.

11. Over two-thirds of the abortion care provided at Plaintiffs' clinics is procedural abortion. Procedural abortion is the only abortion method available in Ohio for patients who are over 10 weeks pregnant. It is also the only method available at any point in pregnancy for patients for whom medication abortion is contraindicated (i.e., patients for whom a specific disease, condition, or prior medical history indicates that medication abortion should not be used).

12. Although abortion is very safe, and in fact much safer than childbirth, unnecessarily delaying abortion care increases the risks associated with the procedure. If Plaintiffs' ASFs are forced to stop providing care because of Ohio's anti-abortion WTA and Variance Requirements and ODH's arbitrary enforcement thereof, many patients seeking procedural abortions will be significantly delayed in accessing this vital, time-sensitive, and constitutionally protected health care until later in pregnancy, when the procedure not only carries greater health risks but is also more expensive. Other people will be prevented from obtaining abortion care from a trusted medical provider altogether. Some patients will seek to terminate their pregnancies outside the medical system, or they will have to travel out of state to obtain care, if they can afford to do so. Others will be forced to carry a pregnancy to term against

their wishes. These harms will be disproportionately suffered by Black women and other people of color in Ohio who access abortion at higher rates than white Ohioans and face more barriers to accessing healthcare in general, including abortion, than do white people.[5]

13. Relief from this Court is necessary to prevent grievous harm to Plaintiffs and their patients, and to protect Ohioans' constitutional right to make and carry out their own reproductive decisions, obtain essential health care, and thereby determine the course of their own lives.

PARTIES

A. Plaintiffs

14. Plaintiff Women's Med Group Professional Corporation d/b/a Women's Med Dayton ("WMD"), which formerly operated under the name Women's Med Center of Dayton ("WMCD"),[6] has owned and operated a clinic that provides abortion care in Kettering, Ohio since 1983. WMD and its predecessors have been providing abortions in the Dayton area since 1973. WMD provides procedural abortions, pregnancy testing, and birth control services. WMD provides abortions up to 21 weeks 6 days of pregnancy as measured from a patient's last menstrual period, or "LMP."

15. WMD cannot obtain a WTA with a local hospital and must obtain a variance from ODH to maintain its ASF license. As a result, whenever WMD must find a new backup doctor in

[5] *See, e.g.*, Center for Reproductive Rights, National Latina Institute for Reproductive Health & SisterSong Women of Color Reproductive Justice Collective, *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care* (2014), https://reproductiverights.org/wp-content/uploads/2020/12/CERD_Shadow_US_6.30.14_Web.pdf.

[6] WMCD was forced to completely shut down as a result of ODH's actions in 2019. It thereafter reopened under a new license as WMD. This Complaint will use "WMD" to refer to that entity throughout.

response to ODH's variance denials or because a backup doctor resigns, relocates, or can no longer endure anti-abortion harassment, WMD staff must spend many hours that would otherwise be spent on patient care attempting to identify, recruit, contract with, and maintain qualifying backup doctors who comply with ODH's medically unnecessary requirements.

16. If WMD loses its ASF license, it will no longer be able to provide abortion care after 10 weeks LMP and will be forced to deny care to anyone for whom medication abortion is contraindicated. Patients who are unable to obtain procedural abortions at WMD will thus face physical, financial, and emotional barriers to obtaining abortion care. This will interfere with patients' exercise of their constitutional rights by delaying them from obtaining abortions or preventing them from accessing abortion entirely.

17. WMD sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

18. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have been providing abortions in southwest Ohio since 1929. PPSWO provides gynecological care, birth control, pregnancy testing, and abortion at seven health centers in southwest Ohio. PPSWO's ASF, located in Cincinnati, provides procedural abortions through 21 weeks 6 days LMP.

19. PPSWO cannot obtain a WTA with a local hospital and must obtain a variance from ODH to maintain its ASF license. As a result, whenever PPSWO must find a new backup doctor in response to ODH's variance denials or because a backup doctor resigns, relocates, or can no longer endure anti-abortion harassment, PPSWO staff must spend many hours that would otherwise be spent on patient care attempting to identify, recruit, contract with, and maintain

qualifying backup doctors who comply with ODH's medically unnecessary requirements.

20. If PPSWO loses its ASF license, it will no longer be able to provide abortion care after 10 weeks LMP and will be forced to deny care to anyone for whom medication abortion is contraindicated. Patients who are unable to obtain procedural abortions at PPSWO will face physical, financial, and emotional obstacles to obtaining abortion care. This will interfere with patients' exercise of their constitutional rights by delaying them from obtaining abortions or preventing them from accessing abortion entirely.

21. PPSWO sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

B. Defendants

22. Defendant Bruce Vanderhoff is the Director of ODH. He is authorized to deny Plaintiffs' variance requests; suspend, refuse to renew, or revoke Plaintiffs' ASF licenses; order Plaintiffs' ASFs to cease operations; and/or impose civil penalties on Plaintiffs' ASFs in accordance with the WTA Requirement, ODH's arbitrary enforcement and implementation of the Statutory Variance Requirements, the Public Hospital Ban, Automatic Suspension Provision, and SB 157. He is sued in his official capacity.

23. Defendant ODH is the agency with the authority to deny Plaintiffs' variance requests; suspend, refuse to renew, or revoke Plaintiffs' ASF licenses; order Plaintiffs' ASFs to cease operations; and/or impose civil penalties on Plaintiffs' ASFs in accordance with the WTA Requirement, ODH's arbitrary enforcement and implementation of the Statutory Variance Requirements, the Public Hospital Ban, Automatic Suspension Provision, and SB 157.

JURISDICTION & VENUE

24. The Court has jurisdiction over this complaint pursuant to R.C. 2721.02, 2727.02, and 2727.03.

25. Venue is proper in this Court pursuant to Civ.R. 3(C)(6), because Plaintiff PPSWO provides procedural abortions in Hamilton County, and thus the claims for relief arise in part in Hamilton County.

FACTUAL ALLEGATIONS

A. Abortion in Ohio

26. Legal abortion in the United States is very safe.[7]

27. There are two main methods of abortion: medication abortion and procedural abortion. Both medication abortion and procedural abortion are effective in terminating a pregnancy.

28. Medication abortion typically involves a combination of two pills, mifepristone and misoprostol, which expel the contents of the uterus in a manner similar to a miscarriage after the patient has left the clinic and in a location of the patient's choosing, typically at home.

29. Despite sometimes being referred to as "surgical abortion," procedural abortion is not what is commonly understood to be "surgery," as it involves no incisions. In a procedural abortion, the clinician uses suction from a thin, flexible tube, alone or in conjunction with instruments, to empty the contents of the patient's uterus.

30. Plaintiffs provide procedural abortion up to 21 weeks and 6 days LMP, which is the legal limit for abortion in Ohio.[8]

[7] National Academies of Sciences, Engineering & Medicine, *The Safety & Quality of Abortion Care in the United States* 51–78, 162–63 (2018), http://nap.edu/24950 (accessed Apr. 4, 2024).

[8] A full-term pregnancy is approximately 40 weeks LMP. R.C. 2919.201 prohibits abortions at or after 22 weeks LMP.

31. The majority of abortion care provided by Plaintiffs' clinics is procedural abortion care.

32. Because Ohio law restricts medication abortion to the first 10 weeks of pregnancy,[9] procedural abortion is the only method of abortion available after 10 weeks LMP, and for some, it is the only method available at any point in pregnancy. For example, a patient may be allergic to one of the medications used in medication abortion or may have medical conditions that make procedural abortion relatively safer. Some patients strongly prefer procedural abortion, because, for example, they perceive it to be less painful or because it can be done quickly at the health center and may allow them to return to work, childcare, or other responsibilities shortly afterward. Additionally, other patients may need procedural abortion for personal reasons, including reasons related to intimate partner violence, where it could be dangerous for a partner or person in the patient's home to know that the patient is having an abortion, or reasons related to lack of safe housing, where the patient may have no safe place to expel the pregnancy.

[9] R.C. 2919.123 restricts Ohio abortion providers to prescribing the first drug in the medication abortion regimen according to the federally approved label, which indicates use of mifepristone only up to 10 weeks LMP. *See* U.S. Food & Drug Administration, *Mifeprex (mifepristone) Information* (last updated Mar. 23, 2023), https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information (accessed Apr. 4, 2024). Accordingly, Plaintiffs provide medication abortion up to 10 weeks (70 days) LMP.

B. Abortion Safety

33. Because legal abortion carries so few risks, the vast majority of abortions can be and are safely provided in an outpatient setting.[10]

34. Abortion rarely results in complications. Most of the rare complications related to abortion are safely and appropriately handled by Plaintiffs in the outpatient setting.

35. In the exceedingly rare case that a patient requires hospital-based care, Plaintiffs' policies and procedures ensure that the patient receives that care as quickly as possible.

36. Regardless of whether an ASF has a WTA with a local hospital, appropriate care is ensured because hospitals provide necessary care to patients who need it. Hospitals must comply with the federal Emergency Medical Treatment and Active Labor Act ("EMTALA"), which requires hospitals to stabilize all emergency patients and treat them unless transfer to another facility is indicated. 42 U.S.C. 1395dd(b). In fact, Miami Valley Hospital in Dayton has confirmed that it will treat WMD's patients in an emergency.

37. As a result, WTAs and backup doctor agreements do nothing to increase patient safety or health and are not medically necessary. Instead, requiring such agreements only serves to burden and interfere with patients' exercise of their constitutional right to abortion by threatening clinic closures.

38. Lack of access to abortion services, by contrast, decreases patient safety and threatens patients' health. Continuing a pregnancy against one's will can pose a risk to one's

[10] In 2022, over 80 percent of abortions in Ohio were performed in an ASF, including Plaintiffs' ASFs. Fewer than 1 percent of abortions were performed in a hospital. Ohio Department of Health, *Induced Abortions in Ohio, 2022 Report*, 22 (2023), https://odh.ohio.gov/know-our-programs/vital-statistics/resources/vs-abortionreport2022 (accessed Apr. 4, 2024) ("ODH 2022 Report").

physical, mental, and emotional health, as well as to the stability and well-being of one's family, including existing children.

C. Ohio's Anti-Abortion WTA and Variance Requirements

39. For over two decades, the State of Ohio has used the WTA and Variance Requirements to target abortion providers for harassment and to attempt to close their ASF clinics. The Ohio legislature has openly discussed how new legislation in this area could be used to target abortion providers in general and Plaintiffs in particular. When legislation alone has failed to close clinics, ODH has stepped in and invented its own arbitrary rules out of whole cloth specifically targeted to close Plaintiffs' ASFs. When Plaintiffs are able to readjust to comply with these unnecessary, arbitrary, and improper rules, ODH invents new ones in an attempt to place ASF licenses out of reach.

1. Written Transfer Agreement Statute

40. In 1995, Ohio passed a law requiring ASFs to obtain a license from ODH. In 1999, ODH notified abortion facilities in Ohio that they needed to apply for such a license.

41. Ohio law currently requires that abortion clinics that provide procedural abortions have a WTA in order to be licensed. The current law, R.C. 3702.303(A), states:

> Except as provided in division (C) of this section, an ambulatory surgical facility shall have a written transfer agreement with a local hospital that specifies an effective procedure for the safe and immediate transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ambulatory surgical facility is necessary, including when emergency situations occur or medical complications arise. A copy of the agreement shall be filed with the director of health.

42. A "local" hospital cannot be further than 30 miles from an ASF with which the local hospital has a WTA under section 3702.303 of the Revised Code. R.C. 3702.3010.

43. Similarly, ODH regulations require all ASFs to have a WTA "for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise." Ohio Adm.Code 3701-83-19(E).

44. Hospitals' religious and political opposition to abortion, and/or hospitals' fear of the harassment and intimidation they and their doctors would face if they were to enter into a WTA with an abortion clinic, deters them from entering into WTAs with abortion clinics.

45. As a result, the WTA Requirement has been difficult, and impossible in some cases, for abortion clinics to meet. Over the years, WMD and PPSWO have been unable to obtain or maintain a WTA and have been required to apply for variances from the requirement in order to maintain their ASF licenses.

46. The WTA Requirement disproportionately harms abortion providers. Upon information and belief, as of March 4, 2024, Plaintiffs' ASFs were the only ASFs that have ever needed or sought variances from Ohio's WTA Requirement. Upon information and belief, of the almost 300 ASFs currently active in Ohio,[11] not a single ASF in Ohio has applied for a WTA variance, except for abortion providers.

2. Changes to the WTA and Variance Process

47. For many years, the WTA requirement was imposed by administrative rule, and Defendant ODH could grant a "waiver" or "variance" of the WTA rule to ASFs that provided procedural abortion, just as it could for any of the other regulatory rules for ASFs. And the agency did just that, granting variances to those clinics that could demonstrate that they met the requirement "in an alternative manner." *See* Ohio Adm.Code 3701-83-14(C)(1).

[11] Ohio Department of Health, *Health Care Provider Report and Information Extract, Facility Listing, ASF*, https://publicapps.odh.ohio.gov/EID/reports/EID_Report_Criteria.aspx (accessed Apr. 4, 2024) (select "Facility Listing" and "Ambulatory Surgical Facility").

48. In 2006, the United States Court of Appeals for the Sixth Circuit upheld the administrative rule requiring a WTA as applied to Plaintiff WMD because it recognized that, at that time, ODH could grant a waiver or variance of the requirement. *Women's Med. Professional Corp. v. Baird*, 438 F.3d 595 (6th Cir.2006).

49. At the time of *Baird*, an abortion clinic could apply for a variance or waiver from the WTA regulation under the same standard applied to any other waiver or variance request: by demonstrating for a variance that "the requirement has been met in an alternative manner," or by demonstrating for a waiver that the ASF would suffer "undue hardship" from the requirement and that granting the waiver would not "jeopardize the health and safety of any patient." Ohio Adm.Code 3701-83-14(C).

50. In 2008, ODH determined that WMD's relationship with three backup doctors who had admitting privileges at a local hospital satisfied the requirement to have a WTA "in an alternative manner," and thereby granted a WTA variance to WMD.

51. Yet, in December 2011, ODH made WTA variances even harder to obtain and maintain by requiring ASFs to apply for a WTA variance annually, at the same time that the ASF applied for its license renewal. Upon information and belief, at the time of this informal rule change, WMD and its affiliated Cincinnati clinic (which shuttered in 2017 due to its inability to obtain a WTA or variance) were the only ASFs in the state with WTA variances.

52. In 2013, as part of the omnibus budget bill House Bill 59 ("HB 59"), the Legislature altered the ASF licensing scheme with respect to the WTA provisions. As discussed below, because of R.C. 3702.303 and R.C. 3702.304 (two of the provisions enacted under HB 59), the waivers available at the time of *Baird* are no longer an option.

53. The changes to the ASF requirements in HB 59 were designed to reduce access to abortion. For example, upon its introduction in committee, then-State Senator Joseph Ueker stated, "Someone has to stand up for the rights of the unborn."[12] Similarly, when then-Governor John Kasich refused to use his line-item veto to eliminate the provisions, his spokesperson stated that "[t]he governor is pro-life and we believe these are reasonable policies to help protect human life."[13] Michael Gonidakis, president of Ohio Right to Life, stated regarding the section: "Ohio has a history of advancing common-sense pro-life initiatives. We are very conscious not to overreach. . . . We believe in the incremental approach: one step at a time, advancing legislation that will withstand court scrutiny."[14]

54. HB 59 altered the WTA requirement in three critical respects. First, the WTA requirement, which was originally imposed only by regulation, was incorporated into statute. R.C. 3702.303(A).

55. Second, HB 59 amended the ASF licensing provisions to specifically target abortion providers seeking a WTA by prohibiting any "public hospital" from "[e]nter[ing] into a written transfer agreement with an ambulatory surgical facility in which nontherapeutic abortions are performed or induced." R.C. 3727.60(B)(1) (Public Hospital Ban). The ban applies only to those clinics that provide any abortions where the pregnancy would not endanger the life of the

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[12] Ann Sanner, *Abortion-Related Issues Remain Part of Ohio Budget*, Associated Press (June 6, 2013), https://www.the-review.com/story/news/2013/06/05/abortion-related-issues-remain-part/19351116007/ (accessed Apr. 5, 2024).

[13] Juliet Eilperin, *Abortion Limits at State Level Return Issue to National Stage*, Washington Post (July 5, 2013), http://www.washingtonpost.com/politics/abortion-limits-at-state-level-return-issue-to-the-national- stage/2013/07/05/f86dd76c-e3f1-11e2-aef3-339619eab080_story.html (accessed Apr. 5, 2024).

[14] Rachel Weiner, *What Makes Ohio's New Abortion Law Unique*, Washington Post (July 1, 2013), http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/01/what-makes-ohios-new-abortion-law-unique/ (accessed Apr. 5, 2024).

mother or is the result of rape or incest reported to law enforcement. *Id.* The ban does not apply to any other ASF in the state. *See id.*

56. Ohio law prohibits physicians with staff membership or professional privileges at a public hospital from using "that membership or those privileges as a substitution for, or alternative to, a written transfer agreement for purposes of a variance application" for an ASF that performs abortions. R.C. 3727.60(B)(2).

57. On information and belief, the legislature drafted the definition of "public hospital" broadly, in part with the intent to include University of Cincinnati Medical Center ("UCMC") so that an existing WTA between UCMC and PPSWO would be terminated under the law.

58. Third, HB 59 eliminated the possibility of a waiver and provided a new variance application process, which applies only to ASFs seeking a WTA variance—that is, upon information and belief, only to abortion-providing ASFs such as Plaintiffs.

59. Ohio law now sets forth the procedure and minimum requirements for ASFs that cannot obtain a WTA with a local hospital to obtain a variance from that requirement.

60. Prior to HB 59, variance requirements had not been codified. *See* Ohio Adm.Code 3701-83-14(C).

61. But HB 59 established a new, onerous application process that applies only to ASFs seeking WTA variances (which, in practice, is only Plaintiffs' abortion clinics), distinct from the ordinary regulatory process that applies to all other types of variance applications. R.C. 3702.304 (Statutory Variance Requirements).

62. Now, because of HB 59, a WTA "waiver" is no longer available, and the ODH Director can grant a "variance" only if an applicant submits a "complete variance application"

that contains agreements with "one or more" backup doctors possessing admitting privileges at a minimum of one local hospital, but not a public hospital, and that contains verification that the hospital has been informed of the physician's agreement with the abortion clinic and that the physician has committed to providing backup coverage for the abortion clinic when necessary. *Id.*; R.C. 3727.60(B)(2).

63. As discussed in greater detail *infra*, even though the ODH Director may grant variances with an application including at least one backup doctor, ODH continues to move the goalposts, insisting on additional backup doctors beyond what is statutorily required, mandating that backup doctors meet certain requirements, and only communicating those requirements through variance denials without any advance warning to Plaintiffs.

64. Even though a variance denial can be and has served as the sole basis for revocation and/or non-renewal of an ASF license for any clinic that lacks a WTA, providers have no right to administratively appeal a variance denial. Ohio law explicitly states that "[t]he refusal of the director to grant a variance or waiver, in whole or in part, shall be final and shall not be construed as creating any rights to a hearing under Chapter 119. [sic] of the Revised Code." Ohio Adm.Code 3701-83-14(F); *see also* R.C. 3702.304(A), (C); *Women's Med Ctr. of Dayton v. Dept. of Health*, 2019-Ohio-1146, 133 N.E.3d 1047, ¶ 3 (2d Dist.).

3. Automatic Suspension Provision

65. When it became clear that clinics were able to continue to provide abortion care under the existing statutory scheme, in 2015, as part of the biennial omnibus budget measure House Bill 64 ("HB 64"), the Ohio Legislature enacted yet another law designed to shut down abortion clinics by complicating the variance process.

66. Under HB 64, an ASF's license is automatically suspended if a WTA variance request is denied, and a variance is automatically deemed denied after 60 days if not ruled upon (Automatic Suspension Provision). R.C. 3702.309(A).[15] Thus, if a WTA variance application is either explicitly denied by the director of ODH, or if the variance application is considered denied because the 60-day deadline has expired, the ASF's license is automatically suspended. An ASF must cease operations immediately upon the suspension of its license. R.C. 3702.30(E)(1); Ohio Adm.Code 3701-83-03(A).

67. Like HB 59, the purpose of this provision is to target abortion clinics and to restrict abortion access across the state. No other ASF requesting a variance from any other requirement is subject to these harsh penalties—these provisions apply only to an ASF seeking a WTA variance, and not to ASFs seeking variances from any other requirement. During the Senate floor debate over HB 64, a state senator who is a former president of Ohio Right to Life made clear that these amendments were targeted at and meant to specifically apply to abortion clinics.[16] Upon the law's signing, Ohio Right to Life issued a press release praising the Automatic Suspension Provision for its ability to shut down abortion clinics, and specifically referencing WMD as a clinic that could be shut down as a result of the law's passage.[17]

[15] These provisions are part of the Plaintiffs' federal case, and the automatic suspension provision is currently preliminarily enjoined on federal procedural due process grounds. *Hodges*, 138 F. Supp. 3d at 961.

[16] Senate Session, The Ohio Channel (June 18, 2015), http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=146746&startTime=9777 (accessed Apr. 5, 2024); Peggy Lehner, LinkedIn, https://www.linkedin.com/pub/peggy-lehner/8/943/461 (listing her role as President of Ohio Right to Life from 1984–1988) (accessed Apr. 5, 2024).

[17] Katherine Franklin*, Governor Kasich Signs Pro-Life Budget*, Ohio Right to Life (June 30, 2015), http://www.ohiolife.org/governor_kasich_signs_pro_life_budget (accessed Apr. 5, 2024).

68. Providers are denied both pre- and post-deprivation hearing rights by the Automatic Suspension Provision. While HB 64 indicates that a provider's license could be reinstated pursuant to an order issued in accordance with Chapter 119 of the Revised Code, R.C. 3702.309(A)(3), an abortion provider will in fact have no meaningful right of appeal under Chapter 119. That is because, as discussed above, Ohio law explicitly states that "[t]he refusal of the director to grant a variance or waiver, in whole or in part, shall be final and shall not be construed as creating any rights to a hearing under Chapter 119. [sic] of the Revised Code." Ohio Adm.Code 3701-83-14(F); R.C. 3702.304(A), (C). Moreover, the automatic suspension of a license does not trigger any right to appeal under Chapter 119 because the automatic suspension does not qualify as an agency "adjudication" under R.C. 119.06. An "adjudication" does not include "acts of a ministerial nature," R.C. 119.01(D), such as the automatic suspension of an abortion provider's license following a variance denial. As a consequence, an abortion provider also cannot substantively appeal the suspension of its ASF license either pre- or post-deprivation because it has no right to appeal the underlying variance denial.

69. The Automatic Suspension Provision was scheduled to take effect on September 29, 2015, and, absent an injunction, would have left all ASFs with pending variance applications subject to immediate licensure suspension at any time without any pre-deprivation process. The federal district court in *Planned Parenthood Southwest Ohio Region v. Vanderhoff* entered a Temporary Restraining Order preventing the Automatic Suspension Provision from going into effect on September 30, 2015, and a Preliminary Injunction of the Automatic Suspension Provision on October 13, 2015. TRO, *Planned Parenthood Sw. Ohio Region v. Hodges*, No. 1:15-cv-568 (S.D.Ohio Sept. 30, 2015), ECF No. 25; *Hodges*, 138 F. Supp. 3d at 961.

4. SB 157

70. After previous efforts to shutter the two Plaintiff clinics failed, in December 2021 the Ohio Legislature passed SB 157, adding yet another layer to this arbitrary, unnecessary, and complicated enforcement scheme by imposing new restrictions on who may serve as a backup doctor as part of an ASF variance application.

71. Under SB 157, codified at R.C. 3702.305, a physician who serves as a backup doctor for purposes of a variance application must attest to two things:

> (1) The physician does not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college . . . , any state hospital, or other public institution.
>
> (2) The physician is not employed by or compensated pursuant to a contract with, and does not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college as defined in section 3345.12 of the Revised Code, any state hospital, or other public institution.

R.C. 3702.305(A).

72. In other words, doctors who work with public medical schools or universities in a teaching or consulting capacity are prohibited from serving as backup doctors, even though teaching is a fundamental component of medical practice and education and thus many doctors provide instruction to learners in some capacity. SB 157 stands to drastically limit the pool of potential backup doctors.

73. If a physician enters into a backup doctor agreement with an abortion clinic while associated with a hospital or practice affiliated with a state university or college, the Director must rescind the abortion clinic's variance.

74. If clinics are unable to find suitable backup doctors, they will be unable to obtain variances, their ASF licenses will be revoked, and they will no longer be able to provide

procedural abortion care, resulting in significant harm to Plaintiffs and patients seeking procedural abortions in Ohio.

75. On February 25, 2022, Plaintiffs challenged SB 157 before this Court and sought emergency relief in response to ODH's premature enforcement of SB 157 by denying a variance to WMD based on SB 157, months before it took effect. On March 2, 2022, this Court issued a Temporary Restraining Order prohibiting Defendants from revoking or refusing to renew Plaintiff WMD's ASF license or otherwise preventing WMD from providing procedural abortion for reasons related to noncompliance with SB 157. Entry Granting Pls.' Mot. TRO (Mar. 2, 2022). On April 15, 2022, this Court preliminarily enjoined Defendants from the same until June 21, 2022, the date by which SB 157 required compliance under its terms. Entry Granting Pls.' Mot. Prelim. Inj. (Apr. 15, 2022). On June 17, 2022, this Court issued a second Preliminary Injunction, finding that Plaintiffs demonstrated a substantial likelihood of success on their patients' substantive due process claim and thus enjoining Defendants from "revoking or refusing to renew Plaintiffs' [ASF] license or otherwise preventing WMD from providing procedural abortion services for reasons related to non-compliance with SB 157." Entry Granting Pls.' Mot. Prelim. Inj. at 3–6 (June 17, 2022).

5. ODH's Arbitrary, Unnecessary, and Improper Requirements for Abortion Clinics

76. ODH's ongoing actions demonstrate that it will not stop until Plaintiffs' licenses have been revoked. Whether through arbitrary, unnecessary, and improper requirements that are specially crafted to deny Plaintiffs' variance requests and enforced without notice, or through enforcement of an unnecessary and likely unconstitutional statute before it even takes effect, ODH will invent any basis to deny Plaintiffs' variance requests and revoke their licenses.

77. As set forth above, because no local hospitals are willing or able to sign WTAs with Plaintiffs, Plaintiffs must seek variances from ODH to maintain their ASF licenses and continue providing procedural abortion care. Pursuant to the Statutory Variance Requirements, to obtain a variance from the WTA Requirement, a clinic must have a written agreement with "one or more" backup doctors who, among other requirements, maintains admitting privileges at a local, nonpublic hospital. R.C. 3702.304(B).

78. The hostile climate in southwest Ohio makes it extremely difficult to find even one backup doctor to support a variance. There was a national campaign to harass and shame the Dayton doctors who provide backup services to WMD's patients. An anti-abortion group plastered the doctors' faces on trucks next to a photograph purporting to depict an aborted fetus, drove the truck through each doctor's neighborhood, and parked the trucks at the hospital and outside of doctors' respective homes and work sites. This and other harassment take place solely to intimidate and discourage these doctors from serving as backup doctors for WMD and from agreeing to admit WMD's patients to a hospital.

79. In 2015, ODH began—without notice—to require abortion clinics to have at least four backup doctors in order to obtain a variance (the "Four Backup Doctor Requirement"). This new requirement was communicated through the denial of a PPSWO variance request; the letter explaining the denial stated that listing "only three" backup doctors did not meet the Director's expectations for patient health and safety. ODH, *PPSWO: Denial of Variance Request* (Sept. 25, 2015), attached as Ex. B. ODH had not previously informed PPSWO or WMD that four backup doctors were required, and the Four Backup Doctor Requirement is found nowhere in the relevant statutes or regulations. Under R.C. 3702.304, a variance may be granted for an

application that lists only one backup doctor, and PPSWO had previously been granted a WTA variance from ODH with three backup doctors.

80. As soon as ODH informed PPSWO of the need for a fourth backup doctor, PPSWO diligently searched for a fourth doctor. On Monday, September 28, 2015, PPSWO signed a contract with a fourth backup doctor and submitted a new variance request to ODH adding the fourth backup doctor. ODH granted PPSWO's variance request listing four backup doctors on November 27, 2015.

81. From 2015 to October of 2019, WMD was able to stay open and continue providing services while it sought administrative review of ODH's decision to not renew or revoke WMD's license on the basis of lacking four backup doctors. *See Women's Med Ctr. of Dayton*, 2019-Ohio-1146, 133 N.E.3d 1047. The Second District eventually concluded that the variance denial leading to ODH's decision to not renew or to revoke WMD's license was not a judicially reviewable determination and that, because WMD did not have a WTA or a variance from the WTA Requirement, ODH was entitled to not renew or to revoke its license. *See id.* at ¶ 55. No court ever ruled on whether the variance denial itself was proper.

82. While administrative review of ODH's denial of WMD's 2015 variance application was pending, it diligently searched for a fourth backup doctor. In June of 2019, WMD found one when a local physician became eligible to serve as a backup doctor due to a change in employment. WMD submitted its application for license renewal, including a variance request listing four backup doctors, on July 25, 2019.

83. On August 27, 2019, WMD submitted a new license application to ODH, supported by a complete variance application listing four backup doctors, so that, in the event it did not prevail in the administrative process, it would be able to provide uninterrupted services.

84. On September 23, 2019, 59 days after WMD filed its July 25, 2019 variance request listing four backup doctors as part of its license renewal application, ODH rejected the renewal application and declined to rule on the variance request. ODH deemed the application "no longer relevant." In the same letter, ODH informed WMD it would "promptly" rule on the license application and variance request that had been filed by WMD on August 27, 2019.

85. On October 25, 2019, exactly 60 days after the August 27, 2019, license application was filed, ODH approved the variance request that was part of that new license application but did not issue a new license.

86. On October 29, 2019, WMD exhausted its administrative remedies, thus finalizing the revocation of its license.

87. Having lost the license under which it had been providing safe, legal care for decades and unable to obtain a new license despite meeting every requirement, including ODH's arbitrary four backup doctor rule, WMD was forced to abruptly stop providing procedural abortion services on October 29, 2019.

88. Despite being aware that the license WMD had been operating under had been revoked and that WMD's application, including a variance that had been granted days earlier, was pending, ODH delayed issuing the new license. As a result, WMD was unable to provide any patients with procedural abortion for two weeks, leaving patients in southwest Ohio with only one procedural abortion provider.

89. WMD received notice on November 12, 2019 that ODH had issued WMD a new license effective November 5, 2019.

90. After a years-long battle to secure a license, both Plaintiffs had ASF licenses by the start of 2020. From March 25, 2020 through July 1, 2021, ODH suspended all licensing

action, including renewals and revocations of ASF licenses, due to the COVID-19 health emergency.

91. When licensing action resumed, so too did ODH's practice of crafting new arbitrary, unnecessary, and improper requirements to deny variances, and therefore ASF licenses, to abortion clinics.

92. ODH began, informally and without notice to Plaintiffs, adding new requirements for acquiring a variance that were medically unnecessary and lacking in any statutory basis. In addition to the Four Backup Doctor Requirement, ODH arbitrarily decided that all four backup doctors must be OBGYNs and have staff voting privileges at the hospital at which they have admitting privileges.

93. Plaintiffs had no notice of these requirements prior to August 2021. These requirements are found nowhere in the relevant statutes or regulations.

94. While ODH granted PPSWO's variance request on August 30, 2021, ODH communicated these new requirements in an August 30, 2021 letter denying WMD's September 14, 2020 variance request, which rejected two of the four backup doctors WMD listed in support of its request. One of the rejected physicians—a general surgeon—had been part of the 2019 variance request that ODH granted. On August 30, 2021, the Director rejected that physician on the basis that she was not an OBGYN. The Director rejected the other physician on the ground that, although he had admitting privileges at a local hospital, he did not have staff *voting*

privileges.[18] The denial did not explain how these two new requirements would enhance patient care or safety.

95. On that same date (August 30, 2021), ODH proposed to revoke and not renew WMD's ASF license because of the denial of its variance application that was based solely on noncompliance with these two new arbitrary requirements that Plaintiffs only became aware of in the denial letter.

96. Plaintiffs then submitted new materials. WMD submitted a variance request to ODH on November 30, 2021. This request met all of ODH's requirements, including the arbitrary, unnecessary, and improper new requirements that clinics have four backup doctors who are all OBGYNs with voting privileges at the hospitals where they have admitting privileges.

97. SB 157 was signed into law on December 22, 2021 and was scheduled to go into effect 90 days later, on March 23, 2022.

98. By SB 157's terms, clinics that have been granted a variance from the WTA Requirement had 90 days from the effective date, until June 21, 2022, to submit the required physician attestations. Under its terms, if the Director determined that a clinic had failed to demonstrate compliance by June 21, 2022, the Director was required to rescind that clinic's variance.

[18] The denial letter stated that the doctor was rejected because he had "affiliate status," rather than "active status" admitting privileges. The only difference between the two is that a physician with active status admitting privileges can vote on matters affecting the medical staff and physicians with affiliate status admitting privileges cannot.

99. On January 28, 2022, ODH informed WMD that its November 30, 2021 variance request was denied. Despite acknowledging that SB 157 was not yet in effect,[19] ODH began enforcing SB 157 in response to WMD's November 2021 application. The sole reason listed for the denial was "the four backup physicians' clear relationship with Wright State Physicians [a physician group affiliated with a state university medical school] and the clear public policy directives contained within Sub. S.B. 157." ODH, *WMD 2021 License Renewal Variance Request* (Jan. 28, 2022), attached as Ex. C. ODH followed up with a letter on January 31, 2022, proposing to revoke and not renew WMD's license. ODH, *WMD: Proposed Denial and Revocation of License* (Jan. 31, 2022), attached as Ex. D.

100. The Ohio legislature had not even passed SB 157 when WMD submitted its variance request on November 30, 2021, and SB 157 was not in effect on January 28, 2022, when Defendants applied its terms to deny WMD's variance request, nor on January 31, 2022, when Defendants proposed to revoke and not to renew WMD's license.

101. SB 157 was not in effect on March 3, 2022, the date on which ODH stated that they could revoke WMD's license for noncompliance with SB 157.

102. ODH's enforcement of SB 157's requirements before its effective date was clearly unlawful. Because noncompliance with SB 157 was the sole reason for denying WMD's November 30, 2021 variance request, WMD should rightly have been granted a variance. Consistent with the terms of SB 157, WMD should have had until June 21, 2022, 90 days after SB 157's effective date, to comply with SB 157.

[19] ODH's letter states that SB 157 would take effect March 22, 2022, but it appeared to be one day off. According to the Ohio State Legislature's website, SB 157 was to take effect on March 23, 2022. *See* Ohio Legislature GA 134, Senate Bill 157, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-157 (accessed Apr. 5, 2024).

103. Similarly, at the commencement of this litigation, ODH had taken steps indicating it might soon enforce SB 157 against PPSWO as well. Because PPSWO held a variance that remained in effect, pursuant to the language of SB 157 itself, PPSWO had until June 21, 2022, to comply with the substantive provisions of SB 157 and to submit the required documentation to ODH. Nonetheless, ODH sent a letter to PPSWO on February 23, 2022, stating that, while ODH recognized that SB 157 did not even go into effect until late March 2022, PPSWO would be required to submit attestations that its backup doctors meet SB 157's requirements by Sunday, February 27, 2022. ODH, *PPSWO: Application for Existing Variance to WTA Requirement and Application of SB 157* (Feb. 23, 2022), attached as Ex. E. ODH thus unilaterally, unlawfully, and without basis moved the compliance deadline up approximately four months.

104. PPSWO responded to ODH conveying its understanding that, because PPSWO currently held a variance from the WTA Requirement, it was not yet required to comply with SB 157 and to submit documentation of that compliance with ODH. Vorys Legal Counsel, *Re: PPSWO* (Feb. 25, 2022), attached as Ex. F.

105. PPSWO's backup physicians are associated with public medical schools or universities.

106. Since the issuance of the injunctions in this case, discussed *supra*, Plaintiffs have continued to submit timely variance applications.[20]

D. Impact of Ohio's Anti-Abortion WTA and Variance Requirements and ODH's Arbitrary Enforcement

107. Without ASF licenses, Plaintiffs cannot provide procedural abortion. If Plaintiffs could no longer provide procedural abortion, abortion after 10 weeks of pregnancy would be wholly unavailable in southwest Ohio. The WTA and Variance Requirements and ODH's arbitrary enforcement of these requirements thus threaten to decimate abortion access in southwest Ohio. The very purpose of the challenged provisions of Ohio's ASF licensing scheme is to burden, interfere with, and discriminate against patients seeking abortion care and Plaintiffs as entities assisting Ohioans exercising their right to access abortion care.

108. Because of the ASF licensing framework, Plaintiffs are constantly at risk of losing or being unable to renew their licenses and variances if one of their backup doctors resigns,

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[20] Following this Court's injunction, each of ODH's letters to Plaintiffs' requests for a variance from the WTA Requirement have provided the following response:

> Based on publicly available information, at least one of the back-up consulting physicians listed in [Plaintiff's] variance request is associated with a medical school or osteopathic medical school affiliated with a state university or college in contradiction to the provisions of O.R.C. 3702.305. [Plaintiff's] variance request is clearly in violation of the statute. As you know, despite this statutory requirement, the Department of Health is currently enjoined by a June 17, 2022 order of the Hamilton County Court of Common Pleas from preventing the "provi[sion of] procedural abortion services for reasons related to non-compliance with [O.R.C. 3702.305]." As a result, [Plaintiff's] variance request cannot be denied at present. But for this order, I would be statutorily required to deny the request. Please be aware that action necessary to enforce Ohio law will be taken when the injunction is lifted - assuming [Plaintiff] is still in violation of the provisions of O.R.C. 3702.305, or if other factors support a lawful denial at that time.

See ODH, *PPSWO and WMD Requests for Variance to WTA Requirement* (Mar. 19, 2024) (providing examples for both Plaintiffs), attached as Ex. G.

relocates, or can no longer endure anti-abortion harassment, or if ODH imposes yet another burdensome and medically unnecessary requirement without notice.

109. Defendants' arbitrary enforcement of the medically unnecessary ASF licensing scheme has, for years, threatened to suspend Plaintiffs' ability to provide procedural abortion. The WTA and Variance Requirements make the right to access abortion vulnerable and subject to interference.

110. There is no patient health or medical justification for requiring an ASF providing procedural abortion to have a WTA with a hospital. Nor is there any health or medical justification for requiring an ASF that cannot obtain a WTA to have one (let alone four) backup doctor agreement with a doctor who does not teach or provide instruction at a medical school associated with a state university or college. These requirements serve only to directly and indirectly burden and interfere with Plaintiffs' ability to provide procedural abortion care and, thus, Plaintiffs' patients' ability to access abortion care.

111. If permitted to enforce the WTA and Variance Requirements to force Plaintiffs to stop providing procedural abortion, Defendants' actions will deprive Plaintiffs and their patients of their constitutional rights. Many Ohioans, including Plaintiffs' patients and Dayton- and Cincinnati-area residents, would be deprived of their constitutional right under Article I, Section 22: being required to seek care elsewhere burdens those patients who would have otherwise sought abortion care at PPSWO or WMD, interfering with the exercise of their right. Those patients who cannot overcome the burdens of seeking procedural care elsewhere will be fully prevented from accessing procedural abortion care despite the Ohio Constitution's guarantee that the State shall not burden, interfere with, and discriminate against access to abortion care.

112. Because of Ohio's law requiring that patients make two trips to an abortion clinic prior to receiving an abortion, any person who would have sought a procedural abortion at Plaintiffs' clinics will be required to travel to another city twice, or secure lodging for an extended stay, in order to obtain procedural abortion care. This additional travel and/or additional expenses will dramatically increase the costs of seeking abortion care, burdening patients who seek procedural abortion care and delaying and possibly even preventing many people from accessing abortion.[21]

113. Being forced to stop providing procedural abortions will irreparably harm Plaintiffs, their physicians, and other staff. Because the majority of the care that Plaintiffs provide is procedural abortion, Plaintiffs would need to terminate, furlough, or otherwise reduce staff. PPSWO would need to shut down its ASF. WMD may permanently close its clinic. Dr. Haskell, WMD's owner, would find that he is forced to close a business that he spent nearly his entire career building and running. Even if Plaintiffs were eventually able to resume providing procedural abortion, such a reduction in their workforce would make it difficult to return to normal operations. In addition, there would be ongoing patient confusion about the availability of services.

114. Having to abruptly stop providing this care, including by cancelling scheduled appointments and having to turn patients away, would be extremely damaging to Plaintiffs. Even if Plaintiffs are not forced to close as a result of being unable to provide procedural abortion, they cannot repair the damage to their reputation in the community as trusted providers of reproductive health care. Plaintiffs' businesses face these devastating potential harms precisely

[21] This law has been challenged in *Preterm-Cleveland v. Yost*, Franklin C.P. No. 24 CV 002634 (Mar. 29, 2024).

because they provide procedural abortion. Upon information and belief, only ASFs providing abortion care have ever needed to seek a variance from the WTA Requirement. Only ASFs providing abortion care have been subject to the Four Backup Doctor Requirement or the requirement that backup doctors be OBGYNs with hospital voting privileges. And only ASFs providing abortion care have been subject to the requirements of SB 157 or threatened with the premature enforcement of its terms.

115. If WMD loses its ASF license and is unable to provide procedural abortions while PPSWO continues to hold a license, it will be challenging for PPSWO to absorb all of the patients who would otherwise have obtained care at WMD without patients facing significant delays in obtaining the care they need, if they can access care at all. The same would be true if PPSWO loses its ASF license; it will be challenging for WMD to absorb all of the patients who would otherwise have obtained care at PPSWO without patients facing significant delays in obtaining the care they need, if they can access care at all.

116. Reducing or eliminating access to procedural abortion in southwest Ohio will have a disproportionate impact on the lives of Black women, other people of color, and people who are poor or have low incomes. In 2021, Black people made up only 13.1 percent of Ohio's population but more than 48 percent of people who obtained abortions in Ohio.[22] The risks of forced pregnancy are particularly acute for Black women. ODH statistics show that Black

[22] U.S. Census Bureau, *Quick Facts: Ohio*, (2023), https://www.census.gov/quickfacts/fact/table/OH/ (accessed Apr. 5, 2024); ODH 2022 Report at 3.

women in Ohio are 1.5 to 2.5 times more likely than white women to die of causes related to pregnancy.[23]

117. Black women are more likely to face structural barriers to obtaining quality health care throughout their lives. These barriers, including racial discrimination, economic inequality, lack of access to comprehensive health education, and other social determinants of health, severely limit Black women's access to health care in general and exacerbate difficulties in accessing reproductive health care, including abortion.[24]

CLAIMS FOR RELIEF

COUNT I—The Right to Reproductive Freedom—WTA and Variance Requirements

118. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

119. Under the Ohio Constitution, every individual has "a right to make and carry out one's own reproductive decisions" including the decision to obtain an abortion. Ohio Constitution, Article I, Section 22(A)(5).

[23] According to Ohio statistics from 2008–2016, non-Hispanic Black women were more than 2.5 times as likely to die from pregnancy-related causes than their white counterparts. Ohio Department of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008–2016*, at 19 (2019), https://bit.ly/3uZraej (accessed Apr. 3, 2024). However, in 2017–2018, due to the adoption of new criteria employed by ODH "to determine the pregnancy-relatedness of unintentional overdose deaths, an increased number of unintentional overdose deaths were determined to be pregnancy related in 2017 and 2018," and the majority of those occurred among non-Hispanic white women. Ohio Department of Health, *A Report on Pregnancy-Related Deaths in Ohio 2017–2018*, at 4, 28 (2022), http://bit.ly/4b1iSXx (accessed Apr. 3, 2024). Nevertheless, in 2017 and 2018 ODH noted that "pregnancy-related deaths due to causes other than overdose [still] occurred disproportionately among non-Hispanic Black women," with the statistics showing that Black women are 1.5 times as likely to die from pregnancy-related causes other than overdose than their white counterparts. *Id.*

[24] *See, e.g.*, Center for Reproductive Rights et al., *supra* fn. 5.

120. The State may not "burden, penalize, prohibit, interfere with, or discriminate against either:" (1) an individual's exercise of their right to an abortion or (2) "a person or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." *Id.* Section 22(B).

121. By imposing unnecessary and medically unjustifiable obstacles in the path of patients seeking abortion care and those seeking to assist them by providing that care, including by threatening to entirely prohibit access to procedural abortion for some patients, and by singling out abortion care for uniquely onerous regulation, the WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) directly and indirectly "burden, penalize, prohibit, interfere with, [and] discriminate against" both an individual's exercise of their right to abortion and persons and entities that assist an individual in exercising this right.

122. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) are not "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care."

123. Accordingly, the WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) violate Article I, Section 22 of the Ohio Constitution by depriving Plaintiffs' patients

of this fundamental right, causing them to suffer significant constitutional, medical, emotional, and other harms. Plaintiffs and their patients have no adequate remedy at law to address these harms.

COUNT II—Substantive Due Process—WTA and Variance Requirements—Plaintiffs' Patients

124. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

125. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) infringe on Plaintiffs' patients' right to previability abortion, privacy, and bodily autonomy guaranteed by the Ohio Constitution, without adequate justification, in violation of Ohioans' rights under Article I, Sections 1, 16, and 20 of the Ohio Constitution.

126. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) subject Plaintiffs' patients to irreparable harm for which no adequate remedy at law exists because they will be prevented entirely from obtaining an abortion in Ohio or be greatly delayed or otherwise significantly burdened in doing so, resulting in significant constitutional, medical, emotional, financial, and other harm.

COUNT III—Substantive Due Process—WTA and Variance Requirements—Plaintiffs

127. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

128. By depriving Plaintiffs of their licenses, the continued operation of their businesses, and their ability to provide constitutionally protected care to patients, all without sufficient justification or notice of what is required in order to continue to operate, the WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) separately and in combination violate the substantive due process rights of Plaintiffs to continue to operate their businesses, under Article I, Sections 1, 16, and 20 of the Ohio Constitution.

129. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) separately and in combination subject Plaintiffs to irreparable harm for which no adequate remedy at law exists because, if enforced, Plaintiffs will be forced to cease providing procedural abortion care at their ASF businesses, resulting in patients being significantly burdened, delayed, or prevented entirely from accessing procedural abortions and resulting in constitutional, business and other harms to Plaintiffs.

COUNT IV—Procedural Due Process—Automatic Suspension Provision—Plaintiffs

130. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

131. By depriving Plaintiffs of their protected property interests without affording them any procedural protections, the Automatic Suspension Provision (R.C. 3702.309) violates Plaintiffs' right to procedural due process under Article I, Sections 1 and 16 of the Ohio Constitution.

COUNT V—Declaratory Judgment

132. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

133. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 will impose significant harm on Plaintiffs and their patients, as set forth herein. In addition, Plaintiffs and their patients will be unconstitutionally deprived of their rights to reproductive freedom and due process.

134. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

135. Pursuant to R.C. 2721.01, *et seq.*, Plaintiffs request that the Court find and issue a declaration that:

a. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) violate Article I, Section 22 of the Ohio Constitution by burdening, penalizing, prohibiting, interfering with, and discriminating against both an individual's right to make and carry out one's own reproductive decisions, including the decision to have an abortion, and a person or entity that assists an individual in exercising that right.

b. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) violate Article I, Sections 1, 16, and 20 of the Ohio Constitution because their enforcement will infringe on Plaintiffs' patients' ability to access procedural abortion in Ohio in violation of their due process rights.

c. The WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 (R.C. 3702.303, Ohio Adm.Code 3701-83-19(E), R.C. 3702.304, 3727.60, 3702.309, and 3702.305) violate Article I, Sections 1, 16, and 20 of the Ohio Constitution because they deprive Plaintiffs of their ability to continue to operate their businesses, pursue their professions, and provide constitutionally protected care to patients without due process of law, including by empowering ODH to deprive Plaintiffs without sufficient justification or notice of what is required in order to continue to operate.

d. The Automatic Suspension Provision, R.C. 3702.309, violates Article I, Sections 1 and 16 of the Ohio Constitution because it will deprive Plaintiffs of their protected property interests without affording them any procedural protections.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To maintain the existing preliminary injunction, restraining Defendants, their employees, agents, and successors in office from enforcing SB 157.

B. To issue a permanent injunction restraining Defendants, their employees, agents, and successors in office from enforcing the WTA Requirement, Statutory Variance

Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157.

C. To enter a judgment declaring that the WTA Requirement, Statutory Variance Requirements, ODH's arbitrary enforcement thereof, the Public Hospital Ban, Automatic Suspension Provision, and SB 157 violate the Ohio Constitution and other Ohio law.

D. To award Plaintiffs their fees and costs.

E. To grant such other and further relief as the Court deems just and proper.

Dated: April 15, 2024

Respectfully Submitted,

/s/ Rachel Reeves

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* Motion for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on April 15, 2024, a copy of the foregoing [Proposed] First Amended Complaint for Declaratory and Injunctive Relief has been filed with the Hamilton County Clerk of Courts. I further certify that on April 15, 2024, the foregoing was served on counsel for all Defendants via email.

/s/ Rachel Reeves
Rachel Reeves
(Pro Hac Vice 23855)

EXHIBIT A

(134th General Assembly)
(Substitute Senate Bill Number 157)

AN ACT

To amend sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3702.305 (3702.3011); and to enact new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code to require reports to be made after a child is born alive following an abortion or attempted abortion, to establish certain civil or criminal penalties for failing to preserve the health or life of such a child, and to make changes regarding variances from written transfer agreements.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22 be amended; section 3702.305 (3702.3011) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code be enacted to read as follows:

Sec. 2919.13. (A) No person shall purposely take the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman.

(B) No person who performs an abortion shall purposely fail to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the health or life of a child who is alive when removed from the uterus of the pregnant woman.

(C)(1) Whoever violates division (A) of this section is guilty of abortion manslaughter, a felony of the first degree.

(2) Whoever violates division (B) of this section and the child dies as a result of the person's failure to take the measures described in that division is guilty of abortion manslaughter, a felony of the first degree.

(3) Whoever violates division (B) of this section and the child survives notwithstanding the person's failure to take the measures described in that division is guilty of failure to render medical care to an infant born alive, a felony of the first degree.

(D)(1) A woman on whom an abortion is performed or attempted may file a civil action for the wrongful death of the woman's child against a person who violates division (A) of this section.

(2) A woman on whom an abortion is performed or attempted may file a civil action for injury, death, or loss to person or property against a person who violates division (B) of this section.

(3) A woman who prevails in an action filed under division (D)(1) or (2) of this section shall receive both of the following from the person who committed the act:

(a) Compensatory and exemplary damages in an amount determined by the trier of fact;

(b) Court costs and reasonable attorney's fees.

Sec. 3701.79. (A) As used in this section and in sections 3701.791 and 3701.792 of the

Revised Code:

(1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.

(2) "Abortion report" means a form completed pursuant to division (C) of this section.

(3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.

(4) "Department" means the department of health.

(5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.

(6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.

(7) "Postabortion care" means care given after the uterus has been evacuated by abortion.

(B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.

(C) The attending physician shall complete an individual abortion report for the abortion of each zygote, blastocyte, embryo, or fetus the physician performs. The report shall be confidential and shall not contain the woman's name. The report shall include, but is not limited to, all of the following, insofar as the patient makes the data available that is not within the physician's knowledge:

(1) Patient number;

(2) The name and address of the facility in which the abortion was performed, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;

(3) The date of the abortion;

(4) If a surgical abortion, the method of final disposition of the fetal remains under Chapter 3726. of the Revised Code;

(5) All of the following regarding the woman on whom the abortion was performed:

(a) Zip code of residence;

(b) Age;

(c) Race;

(d) Marital status;

(e) Number of previous pregnancies;

(f) Years of education;

(g) Number of living children;

(h) Number of zygotes, blastocytes, embryos, or fetuses previously aborted;

(i) Date of last induced abortion;

(j) Date of last live birth;

(k) Method of contraception at the time of conception;

(l) Date of the first day of the last menstrual period;

(m) Medical condition at the time of the abortion;

(n) Rh-type;

(o) The number of weeks of gestation at the time of the abortion.

(6) The type of abortion procedure performed;

(7) Complications by type;

(8) Written acknowledgment by the attending physician that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the following:

(a) A test result indicating Down syndrome in an unborn child;

(b) A prenatal diagnosis of Down syndrome in an unborn child;

(c) Any other reason to believe that an unborn child has Down syndrome.

(9) Type of procedure performed after the abortion;

(10) Type of family planning recommended;

(11) Type of additional counseling given;

(12) Signature of attending physician.

(D) The physician who completed the abortion report under division (C) of this section shall submit the abortion report to the department within fifteen days after the woman is discharged.

(E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.

(F) A copy of the abortion report shall be made part of the medical record of the patient of the facility in which the abortion was performed.

(G) Each hospital shall file monthly and annual reports listing the total number of women who have undergone a post-twelve-week-gestation abortion and received postabortion care. The annual report shall be filed following the conclusion of the state's fiscal year. Each report shall be filed within thirty days after the end of the applicable reporting period.

(H) Each case in which a physician treats a post abortion complication shall be reported on a postabortion complication form. The report shall be made upon a form prescribed by the department, shall be signed by the attending physician, and shall be confidential.

(I)(1) Not later than the first day of October of each year, the department shall issue an annual report of the abortion data reported to the department for the previous calendar year as required by this section. The annual report shall include at least the following information:

(a) The total number of zygotes, blastocytes, embryos, or fetuses that were aborted;

(b) The number of abortions performed on Ohio and out-of-state residents;

(c) The number of abortions performed, sorted by each of the following:

(i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;

(ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;

(iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;

(iv) The marital status of the woman on whom the abortion was performed;

(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;

(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;

(vii) The county in which the abortion was performed;

(viii) The type of abortion procedure performed;

(ix) The number of zygotes, blastocytes, embryos, or fetuses previously aborted by the woman on whom the abortion was performed;

(x) The type of facility in which the abortion was performed;

(xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(2) The report also shall indicate the number and type of the abortion complications reported to the department either on the abortion report required under division (C) of this section or the postabortion complication report required under division (H) of this section.

(3) In addition to the annual report required under division (I)(1) of this section, the department shall make available, on request, the number of abortions performed by zip code of residence.

(J) The director of health shall implement this section and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of its requirements. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Sec. 3701.792. (A) The director of health shall develop a child survival form to be submitted to the department of health in accordance with division (B) of this section each time a child is born alive after an abortion or attempted abortion. In developing the form, the director may consult with obstetricians, maternal-fetal specialists, or any other professionals the director considers appropriate. The form shall include areas for all of the following to be provided:

(1) The patient number for the woman on whom the abortion was performed or attempted;

(2) The name, primary business address, and signature of the attending physician described in section 3701.79 of the Revised Code who performed or attempted to perform the abortion;

(3) The name and address of the facility in which the abortion was performed or attempted, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;

(4) The date the abortion was performed or attempted;

(5) The type of abortion procedure that was performed or attempted;

(6) The gestational age of the child who was born;

(7) Complications, by type, for both the woman and child;

(8) Any other information the director considers appropriate.

(B) The attending physician who performed or attempted an abortion in which a child was born alive after that event shall complete a child survival form developed under division (A) of this section. The physician shall submit the completed form to the department of health not later than fifteen days after the woman is discharged from the facility.

A completed child survival form is confidential and not a public record under section 149.43

of the Revised Code.

(C) A copy of the child survival form completed under this section shall be made part of the medical record maintained for the woman by the facility in which the abortion was performed or attempted.

(D) Each facility in which an abortion was performed or attempted and in which a child was born alive after that event shall submit monthly and annual reports to the department of health listing the total number of women on whom an abortion was performed or attempted at the facility and in which a child was born alive after that event, delineated by the type of abortion procedure that was performed or attempted. The annual report shall be submitted following the conclusion of the state's fiscal year. Each monthly or annual report shall be submitted not later than thirty days after the end of the applicable reporting period.

(E) Not later than the first day of October of each year, the department shall issue an annual report of the data submitted to the department for the previous calendar year as required by this section. At a minimum, the annual report shall specify the number of women on whom an abortion was performed or attempted and in which a child was born alive after that event, delineated by the type of abortion procedure that was performed or attempted and the facility in which the abortion was performed or attempted. The report shall not contain any information that would permit the identity of a woman on whom an abortion was performed or attempted or any child to be ascertained.

(F) No person shall purposely fail to comply with the child survival form submission requirement described in division (B) of this section or the copy maintenance requirement described in division (C) of this section.

(G) No person shall purposely fail to comply with the monthly or annual report submission requirements described in division (D) of this section.

(H) A woman on whom an abortion is performed or attempted may file a civil action against a person who violates division (F) or (G) or this section. A woman who prevails in an action filed under this division shall receive both of the following from the person who committed the violation:

(1) Damages in the amount of ten thousand dollars;

(2) Court costs and reasonable attorney's fees.

Sec. 3701.99. (A) Whoever violates division (C) of section 3701.23, division (C) of section 3701.232, division (C) of section 3701.24, division (D)(2) of section 3701.262, or sections 3701.46 to 3701.55 of the Revised Code is guilty of a minor misdemeanor on a first offense; on each subsequent offense, the person is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section 3701.82 of the Revised Code is guilty of a misdemeanor of the first degree.

(C) Whoever violates section 3701.352 or 3701.81 of the Revised Code is guilty of a misdemeanor of the second degree.

(D) Whoever violates division (F) or (G) of section 3701.792 of the Revised Code is guilty of a felony of the third degree.

Sec. 3702.305. (A) In addition to the attachments specified in division (B)(3)(a) of section 3702.304 of the Revised Code, a variance application must contain or include as attachments, for each consulting physician described in division (B)(2) of that section, a signed statement in which the physician attests to both of the following:

(1) The physician does not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college as defined in section 3345.12 of the Revised Code, any state hospital, or other public institution.

(2) The physician is not employed by or compensated pursuant to a contract with, and does not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college as defined in section 3345.12 of the Revised Code, any state hospital, or other public institution.

(B) No physician shall engage in any of the activities described in division (A)(1) or (2) of this section while serving as a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code.

(C) If, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code has violated the prohibition in division (B) of this section, the director shall rescind the variance.

Sec. 3702.3010. A local hospital shall not be further than thirty miles from an ambulatory surgical facility:

~~(A) With~~ with which the local hospital has a written transfer agreement under section 3702.303 of the Revised Code~~; or~~.

~~(B) Whose consulting physicians under a variance granted under section 3702.304 of the Revised Code have admitting privileges at the local hospital.~~

Sec. ~~3702.305~~ 3702.3011. The director of health may impose conditions on any variance the director has granted under section 3702.304 of the Revised Code. The director may, at any time, rescind the variance for any reason, including a determination by the director that the facility is failing to meet one or more of the conditions or no longer adequately protects public health and safety. The director's decision to rescind a variance is final.

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to grant a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate if the individual applying for or holding the license or certificate is found by the board to have committed fraud during the administration of the examination for a license or certificate to practice or to have committed fraud, misrepresentation, or deception in applying for, renewing, or securing any license or certificate to practice or certificate to recommend issued by the board.

(B) Except as provided in division (P) of this section, the board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons:

(1) Permitting one's name or one's license or certificate to practice to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to maintain minimal standards applicable to the selection or administration of

drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Except as provided in section 4731.97 of the Revised Code, selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports under sections 307.621 to 307.629 of the Revised Code to a child fatality review board; does not include providing any information, documents, or reports under sections 307.631 to 307.6410 of the Revised Code to a drug overdose fatality review committee, a suicide fatality review committee, or hybrid drug overdose fatality and suicide fatality review committee; does not include providing any information, documents, or reports to the director of health pursuant to guidelines established under section 3701.70 of the Revised Code; does not include written notice to a mental health professional under section 4731.62 of the Revised Code; and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by section 2305.33 or 4731.62 of the Revised Code upon a physician who makes a report in accordance with section 2305.33 or notifies a mental health professional in accordance with section 4731.62 of the Revised Code. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any license or certificate to practice issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for

intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Violation of the conditions of limitation placed by the board upon a license or certificate to practice;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose license or certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and

final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's license or certificate. For the purpose of this division, any individual who applies for or receives a license or certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except as provided in division (F)(1)(b) of section 4731.282 of the Revised Code or when civil penalties are imposed under section 4731.225 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of section 3701.79 of the Revised Code or of any abortion rule adopted by the director of health pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or

suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing an application for or holding a license or certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for licensure or certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's license or certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure or certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a license or certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's license or certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for their determination.

The board may reinstate a license or certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board

order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;

(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's medical record;

(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;

(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;

(33) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(35) Failure to supervise an acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for providing that supervision;

(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

(37) Assisting suicide, as defined in section 3795.01 of the Revised Code;

(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;

(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;

(40) Performing or inducing an abortion at an office or facility with knowledge that the office

or facility fails to post the notice required under section 3701.791 of the Revised Code;

(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;

(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;

(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(44) Failure to comply with the requirements of section 2919.171, 2919.202, or 2919.203 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 or 2919.202 of the Revised Code;

(45) Practicing at a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the person operating the facility has obtained and maintains the license with the classification;

(46) Owning a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the facility is licensed with the classification;

(47) Failure to comply with any of the requirements regarding making or maintaining medical records or documents described in division (A) of section 2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code;

(48) Failure to comply with the requirements in section 3719.061 of the Revised Code before issuing for a minor a prescription for an opioid analgesic, as defined in section 3719.01 of the Revised Code;

(49) Failure to comply with the requirements of section 4731.30 of the Revised Code or rules adopted under section 4731.301 of the Revised Code when recommending treatment with medical marijuana;

(50) Practicing at a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless the person operating that place has obtained and maintains the license with the classification;

(51) Owning a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless that place is licensed with the classification;

(52) A pattern of continuous or repeated violations of division (E)(2) or (3) of section 3963.02 of the Revised Code;

(53) Failure to fulfill the responsibilities of a collaboration agreement entered into with an athletic trainer as described in section 4755.621 of the Revised Code;

(54) Failure to take the steps specified in section 4731.911 of the Revised Code following an abortion or attempted abortion in an ambulatory surgical facility or other location that is not a hospital when a child is born alive.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall

be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license or certificate to practice or certificate to recommend. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of that section shall provide for a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be

supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, or in conducting an inspection under division (E) of section 4731.054 of the Revised Code, the board may question witnesses, conduct interviews, administer oaths, order the taking of depositions, inspect and copy any books, accounts, papers, records, or documents, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board.

(a) Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

(b) On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

(c) A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee or agent designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence, usual place of business, or address on file with the board. When serving a subpoena to an applicant for or the holder of a license or certificate issued under this chapter, service of the subpoena may be made by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery. If the person being served refuses to accept the subpoena or is not located, service may be made to an attorney who notifies the board that the attorney is representing the person.

(d) A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for under section 119.094 of the Revised Code.

(4) All hearings, investigations, and inspections of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(5) A report required to be submitted to the board under this chapter, a complaint, or information received by the board pursuant to an investigation or pursuant to an inspection under division (E) of section 4731.054 of the Revised Code is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations or inspections and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants

unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver of that nature is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an investigation or inspection, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

(a) The case number assigned to the complaint or alleged violation;

(b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;

(c) A description of the allegations contained in the complaint;

(d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license or certificate to practice or certificate to recommend without a prior hearing:

(1) That there is clear and convincing evidence that an individual has violated division (B) of this section;

(2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license or certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in

accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within seventy-five days after completion of its hearing. A failure to issue the order within seventy-five days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's license or certificate to practice. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

(I) The license or certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date of the individual's second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code. In addition, the license or certificate to practice or certificate to recommend issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after suspension shall be considered practicing without a license or certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license or certificate is automatically suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall do whichever of the following is applicable:

(1) If the automatic suspension under this division is for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the board shall enter an order suspending the individual's license or certificate to practice for a period

of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's license or certificate to practice.

(2) In all circumstances in which division (I)(1) of this section does not apply, enter a final order permanently revoking the individual's license or certificate to practice.

(J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's license or certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a license or certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a license or certificate issued under this chapter shall not be effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license or certificate to practice. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license or certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a license or certificate made under the provisions of this chapter may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a license or certificate to practice in accordance with this chapter or a certificate to recommend in accordance with rules adopted under section 4731.301 of the Revised Code shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

(4) At the request of the board, a license or certificate holder shall immediately surrender to the board a license or certificate that the board has suspended, revoked, or permanently revoked.

(N) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan

purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(O) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

(P) The board shall not refuse to issue a license to an applicant because of a conviction, plea of guilty, judicial finding of guilt, judicial finding of eligibility for intervention in lieu of conviction, or the commission of an act that constitutes a criminal offense, unless the refusal is in accordance with section 9.79 of the Revised Code.

Sec. 4731.911. (A) As used in this section:

(1) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.

(2) "Hospital" means a hospital registered with the department of health under section 3701.07 of the Revised Code.

(B) A physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive shall immediately take the following steps upon the child's birth:

(1) Provide post-birth care to the newborn in accordance with prevailing and acceptable standards of care;

(2) Call for assistance from an emergency medical services provider;

(3) Arrange for the transfer of the newborn to a hospital.

SECTION 2. That existing sections 2919.13, 3701.79, 3701.99, 3702.305, 3702.3010, and

4731.22 of the Revised Code are hereby repealed.

SECTION 3. Each ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code shall, within ninety days of the effective date of section 3702.305 of the Revised Code as enacted by this act, submit to the Director of Health, in the form and manner specified by the Director, a signed statement in which the physician attests to compliance with the limitations established by section 3702.305 of the Revised Code, as enacted by this act. If the Director determines that a facility has failed to demonstrate compliance, the Director shall rescind the variance.

Sub. S. B. No. 157 134th G.A.

Robert R. Cupp

Speaker _____ *of the House of Representatives.*

Matthew C. Huffman

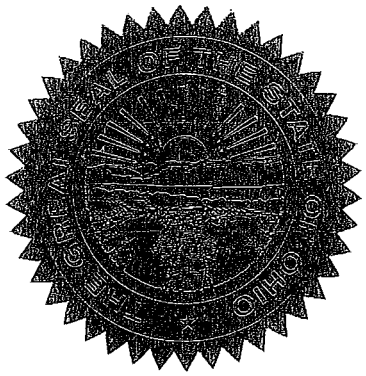
President _____ *of the Senate.*

Passed December 15, 2021

Approved December 22, 2021

Mike DeWine

Governor.



Sub. S. B. No. 157 134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 22ND day of DECEMBER, A. D. 2021.

Secretary of State.

File No. 61 Effective Date MARCH 23, 2022

(134th General Assembly)
(Substitute Senate Bill Number 157)

AN ACT

To amend sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3702.305 (3702.3011); and to enact new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code to require reports to be made after a child is born alive following an abortion or attempted abortion, to establish certain civil or criminal penalties for failing to preserve the health or life of such a child, and to make changes regarding variances from written transfer agreements.

Introduced by

Senators Johnson, Huffman, S.

Cosponsors: Senators Cirino, Brenner, Lang, Hottinger, Antani, Romanchuk, Hoagland, Wilson, O'Brien, Schaffer, Roegner, Blessing, Gavarone, Hackett, McColley, Peterson, Reineke

Representatives Abrams, Click, John, Schmidt, Baldridge, Bird, Carfagna, Carruthers, Creech, Cross, Cutrona, Edwards, Ferguson, Fraizer, Ghanbari, Ginter, Grendell, Gross, Hall, Hillyer, Hoops, Johnson, Jones, Jordan, Kick, Koehler, Lipps, Loychik, Manchester, McClain, Merrin, Miller, K., Plummer, Powell, Richardson, Riedel, Roemer, Stein, Stephens, Stewart, Stoltzfus, Swearingen, White, Wiggam, Wilkin, Young, T., Speaker Cupp

Passed by the Senate,

October 27, 2021

Passed by the House of Representatives,

December 8, 2021

Filed in the office of the Secretary of State at Columbus, Ohio, on the

2ND day of DECEMBER, A. D. 2021

Secretary of State.

Concurred in House amendments on December 15, 2021

EXHIBIT B

OHIO DEPARTMENT OF HEALTH

246 North High Street
Columbus, Ohio 43215

614/466-3543
www.odh.ohio.gov

John R. Kasich/Governor

Richard Hodges/Director of Health

SEP 25 2015

Jennifer L. Branch
Gerhardstein & Branch
432 Walnut Street, Suite 400
Cincinnati, Ohio 45202

Re: Planned Parenthood Southwest Ohio Region: Denial of Variance Request
ID # 0286AS

Dear Ms. Branch:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and O.A.C. 3701-83-19, and after careful review and consultation with the department's medical director, I am denying the variance request of Planned Parenthood Southwest Ohio Region (PPSWO) for the 2015 license period.

On November 20, 2014, I granted PPSWO's request for a variance from the written transfer agreement (WTA) requirements for license years 2013 and 2014. That approval was conditioned on backup agreements with four named physicians: David B. Schwartz, M.D., Michael Draznik, M.D., Tori Anderson, M.D., and Kate Hewitt, M.D. By letter dated January 26, 2015, PPSWO informed the department that Michael Draznik, M.D., would be unable to continue as a backup physician as of February 1, 2015. PPSWO did not propose a replacement for Dr. Draznik.

The variance expired when PPSWO's 2014 ambulatory surgical facility license expired. For the 2015 license period, the facility was required to submit either a WTA with a hospital as required by R.C. 3702.303 and O.A.C. 3701-83-19(E) or a new variance request.

On May 26, 2015, you submitted PPSWO's variance request from the WTA requirement for the 2015 license period. The new variance request contains back-up agreements with three named physicians: David B. Schwartz, M.D., Tori Anderson, M.D., and Kate Hewitt, M.D.

As you know, the written transfer agreement requirements in R.C. 3702.303 and O.A.C. 3701-83-19 are designed to protect patient health and safety. Variances from these requirements are for limited circumstances in which the facility can still achieve the purposes of a WTA, where compliance with the WTA requirement would impose an undue hardship, and where the proposed alternative method of compliance meets or exceeds the protections afforded by the statute and rule. R.C. 3702.304. PPSWO's provision of only three named back-up physicians does not meet my expectation that a variance provide the same level of patient health and safety that a written transfer agreement with a local hospital assures for 24/7 back-up coverage.

Exhibit B

Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14, the denial of PPSWO's application for a variance shall be final and shall not be construed as creating any rights to a hearing under Chapter 119 of the Revised Code.

If you have any questions regarding this decision, please contact Heather Coglianese, Senior Legal Counsel, at 614-466-4882.

Sincerely,

Richard Hodges, MPA
Director of Health

EXHIBIT C

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt.Governor

Bruce Vanderhoff, MD, MBA, Director

January 28, 2022

Via e-mail and regular U.S. mail
Jessie Hill
Associate Dean for Research and Faculty Development
Judge Ben C. Green Professor of Law
Case Western Reserve University School of Law
11075 East Blvd.
Cleveland, Ohio 44106

Re: Women's Med Dayton
2021 License Renewal Variance Request

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19, Sub. S.B. 157 (134th General Assembly), and after careful review and consideration, I am denying Women's Med Dayton's November 30, 2021 request for a variance for its 2021 license renewal.

As you know, the written transfer agreement (WTA) requirements in R.C. 3702.303 and O.A.C. 3701-83-19 are designed to protect patient health and safety. Variances from these requirements are for limited circumstances in which the facility can still achieve the purposes of a WTA, where compliance with the WTA requirement would impose an undue hardship, and where the proposed alternative method of compliance meets or exceeds the protections afforded by the statute and rule. R.C. 3702.304. Four of the backup physicians submitted, Dr. Sheela Barhan, Dr. Janice Duke, Dr. David Dhanraj, and Dr. Reisinger-Kindle are credentialed as obstetrician/gynecologists with full active status admitting privileges at Miami Valley Hospital.

In addition, based on information contained in the November 30th application and publicly available information, all four proposed back-up physicians are employed by or compensated pursuant to a contract with, or provide instruction and consultation to Wright State University Boonshoft School of Medicine via their employment by and/or affiliation with Wright State Physicians. Wright State Physicians is composed of more than 100 physicians affiliated with the Wright State University Boonshoft School of Medicine. (https://wrightstatephysicians.org/find-a-doctor/) The Wright State University Boonshoft School of Medicine and Wright State Physicians are partners in providing training to medical students and delivering health care to the region. (https://wrightstatephysicians.org/about/)

According to the Wright State Physicians website (https://wrightstatephysicians.org/ob-gyn/physicians/):

- Sheela M. Barhan, M.D. is Associate Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology

246 North High Street
Columbus, Ohio 43215 U.S.A.
614 I 466-3543
www.odh.ohio.gov

- Janice M. Duke, M.D. is Associate Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology

- David N. Dhanraj, M.D. is Chair and Assistant Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology

- Keith Reisinger-Kindle, D.O. is Instructor/Faculty, WSU Boonshoft School of Medicine

Sub. S.B. 157 (134th General Assembly) was signed by Governor DeWine on December 22, 2021. The bill, among other provisions, provides that backup physicians may not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. The bill further provides that backup physicians may not be employed by or compensated pursuant to a contract with, and may not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college. The bill specifically provides that if, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code has violated the prohibition in division (B) of this section [teaching, providing instruction, being employed by, under contact or affiliated with a state university or college], the director shall rescind the variance. Sub. S.B. 157 becomes effective March 22, 2022.

Given the four backup physicians' clear relationship with Wright State Physicians and the clear public policy directives contained within Sub. S.B. 157, I am denying Women's Med Dayton's November 30, 2021 variance request.

Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14, the denial of Women's Med Dayton's applications for a variance shall be final and shall not be construed as creating any rights to a hearing under Chapter 119 of the Revised Code.

If you have any questions regarding this variance, please contact James Hodge, Bureau Chief, Bureau of Regulatory Operations, at 614-644-6220.

Sincerely,

Bruce Vanderhoff, MD, MBA
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations
Lance Himes, Interim General Counsel

EXHIBIT D

Ohio | Department of Health

Mike DeWine, Governor **Bruce Vanderhoff, MD, MBA**, Director
Jon Husted, Lt.Governor

January 31, 2022
Via e-mail and certified U.S. mail

Women's Med Dayton
Attn: Aerin Trick, Administrator
1401 E. Stroop Rd
Dayton Ohio 45429

Martin Haskell, MD
P.O. 43100
Cincinnati, OH 45243

Re: Women's Med Dayton
License Number: 1247AS
Case Number:
Proposed Denial and Revocation of License

Dear Ms. Trick and Dr. Haskell:

On August 30, 2021, I denied a variance for reasons related to Women's Med Dayton's health care facility license (ambulatory surgical facility), "Women's Med Dayton" Written Transfer Agreement, "WTA" requirements and Women's Med Dayton's use of Dr. Dhanraj as a backup physician and Dr. Dunn's credentials. By separate letter on the same date, I proposed to issue an Order revoking and refusing to renew the 2021 license. On September 20, 2021, Women's Med Dayton timely requested a hearing. On October 13, 2021, Women's Med Dayton submitted its license renewal application for November 5, 2021 - November 5, 2022. On November 12, 2021, I again denied a variance of the WTA requirements upon finding Dr. Dunn was not credentialed as an OB/GYN. On January 28, 2022, I denied Women's Med Dayton's November 30, 2021 request for a variance for its license renewal because the doctors in Women's Med Dayton's proposed variance are affiliated with Wright State and the public policy directives contained within Sub. S.B. 157 (134th General Assembly) precludes a backup from being affiliated with a state university or college.

In this communication, I hereby propose to issue an Order revoking and refusing to renew Women's Med Dayton's license in accordance with Revised Code (R.C.) Chapter 119 and R.C. 3702.32(D)(2) and Ohio Administrative Code (O.A.C.) 3701-83-05.1(C)(2) due to violations of R.C. 3702.303, 3702.304 and OA.C. 3701-83-1(E). R.C. 3702.303(A) requires an ambulatory surgical facility have a written transfer agreement with a local hospital for the safe and immediate transfer of patients when medical care is needed beyond that which can be provided in the facility. O.A.C. 3701-83-1(E) requires an

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Columbus, Ohio 43215 U.S.A. www.odh.ohio.gov

ambulatory surgical facility have a written transfer agreement with a hospital for the transfer of patient in the event of medical complications, emergency situations, and for other needs as they arise.

Specifically, Women's Med Dayton does not meet the requirements of R.C. 3702.303 because it does not have a written transfer agreement with "a local hospital that specifies an effective procedure for the safe and immediate transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ambulatory surgical facility is necessary, including when emergency situations occur, or medical complications arise." The inability to meet the requirements of R.C. 3702.303 is a result of the denial of the variance in the January 28, 2022 letter, because Women's Med Dayton's WTA physicians are associated with a state university. R.C. 3702.304, Sub. S.B. 157 (134th General Assembly). Additionally, Women's Med Dayton does not meet the requirements of OAC 3701-83-19(E) because it does not have a written transfer agreement "with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise."

If you wish to have a hearing, **you must request a hearing** before me or my duly authorized representative concerning my proposal to revoke, and refuse to renew the license to operate Women's Med Dayton. **Such a request must be made in writing and received within 30 days of receipt of this notice** and should be directed to Ohio Department of Health, Office of General Counsel 246 North High Street Columbus Ohio 43215. A request is considered timely if it is received by the Department of Health via facsimile at 614-564-2509, email to ODHlegal@odh.ohio.gov, hand-delivery or ordinary United States mail within 30 days of the date of receipt of this letter.

At any hearing, you may appear in person or be represented by your attorney, you may present evidence, and you may examine witnesses appearing for and against you. You also may present your position, contentions, and arguments in writing. If you are a corporation or LLC, you must be represented at the hearing by an attorney licensed to practice in the state of Ohio. Pursuant to R.C. 119.07 you may remain in operation while the administrative proceedings take place. Please be advised that if you do not request a hearing within thirty days of receipt of this letter, I may revoke and/or refuse to renew Women's Med Dayton's health care facility license.

If you have questions about this notice, please contact the Bureau of Regulatory Operations at 614-644-6220.

Sincerely,

Bruce Vanderhoff, M.D., MBA
Director of Health

Enclosures: August 30, 2021 ODH Variance Denial Notice, August 30, 2021 ODH License Denial and Proposed Revocation, November 12, 2021 ODH Variance Renewal Resubmission Denial Notice, January 28, 2022 ODH Variance Renewal Resubmission Denial Notice

C: Jessie Hill

CMRR: 7017 3380 0000 3163 3874 (Women's Med Dayton)
7017 3380 0000 3163 3867 (Martin Haskell, MD)

EXHIBIT E

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt.Governor

Bruce Vanderhoff, MD, MBA, Director

February 23, 2022

Via email only:
Lisa Pierce Riez
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
lpreisz@vorys.com

Re: Planned Parenthood of Southwest Ohio - December 29, 2021, Application for Existing Variance to the Hospital Transfer Agreement Requirement and application of S.B. 157, effective March 22, 2022.

Dear Attorney Pierce Riesz,

The Department is requesting additional information related to Planned Parenthood of Southwest Ohio's pending Application for Variance to the hospital transfer agreement received December 29, 2021. Please provide the Department with the following by February 27, 2022.

- Attestation by the physicians and the facility that the backup physicians identified in the application (p.4/138) comply with Sub. S.B. 157 (134th General Assembly).

Sub. S.B. 157 (134th General Assembly) was signed by Governor DeWine on December 22, 2021. The bill, among other provisions, provides that backup physicians may not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a sate university or college. The bill further provides that backup physicians may not be employed by or compensated pursuant to a contract with, and many not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college. The bill specifically provides that if, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section of 3702.303 or the Revised Code has violated the prohibition in division (B) of the this section [teaching, providing instruction, being employed by, under contract or affiliated with a state university or college], the director shall rescind the variance. Sub. S.B. 157 becomes effective March 22, 2022. Given the clear public policy directives contained with Sub.S.B. 157, the Department requests information that details the physicians' status vis a vis state universities and colleges.

Please submit this information to me in writing at the following email address: James.Hodge@odh.ohio.gov

Please feel free to contact me if you have any questions.

Sincerely,

James Hodge

James Hodge, Chief
Bureau of Regulatory Operations

246 North High Street
Columbus, Ohio 43215 U.S.A.

614 I 466-3543
www.odh.ohio.gov

EXHIBIT F

VORYS

Vorys, Sater, Seymour and Pease LLP
Legal Counsel

52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

614.464.6400 | www.vorys.com

Founded 1909

Lisa Pierce Reisz
Direct Dial (614) 464-8353
Direct Fax (614) 719-4919
Email lpreisz@vorys.com

February 25, 2022

VIA E-MAIL

Mr. James Hodge, Chief
Bureau of Regulatory Operations
Ohio Department of Health
246 North High Street
Columbus, OH 43215

Re: Planned Parenthood Southwest Ohio Region

Dear Mr. Hodge:

On behalf of our client, Planned Parenthood Southwest Ohio Region ("PPSWO"), I write to respond to your letter of February 23, 2022, requesting additional information. We have reviewed your request, and PPSWO is unclear why it is being made. On August 30, 2021, ODH granted PPSWO's variance request which was submitted on July 2, 2021. At this point, PPSWO has no variance application pending with ODH, and there has been no change in PPSWO's compliance with Ohio's currently applicable variance law.

In your letter, you reference PPSWO's "pending Application for Variance to the hospital transfer agreement received December 29, 2021." To be clear, PPSWO's December 29, 2021 submission to ODH was **NOT** an application for another variance. Indeed, as noted above (and in that December 29, 2021 submission), PPSWO currently has a valid variance in place which runs through the end of its current renewal period so no additional variance application was needed either in December 2021 or now.

Instead, PPSWO's December 29, 2021 submission was done to comply with the requirements of H.B. 110 and section 291.80 and show its compliance with Ohio's variance requirements contained in O.R.C. § 3702.304 as amended by H.B. 110 last summer.

Here is the requirement that PPSWO's December 29, 2021 submission was intended to meet as an ASF with a current variance in place:

Section 291.80. Each ambulatory surgical facility that has been granted

> a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code shall, within ninety days of the effective date of section 3702.304 of the Revised Code as amended by this act (H.B. 110), submit to the director of health a complete variance application, in the form and manner specified by the director, demonstrating compliance with the requirements established by divisions (B)(2) and (3)(a) of section 3702.304 of the Revised Code, as amended by this act. If the director determines that a facility has failed to demonstrate compliance, the director shall rescind the variance.

H.B. 110 became effective on September 30, 2021. Therefore, PPSWO was required to make a submission showing compliance with the new requirements of H.B. 110 within 90 days of the effective date or risk the rescission of its current variance. PPSWO's re-submission of its complete variance request on December 29, 2021 was done solely to comply with this requirement.

Since December 29, 2021, PPSWO has received no indication from ODH that it has not demonstrated compliance with the current variance requirements of O.R.C. § 3702.304 as amended by H.B. 110. Therefore, its current variance, which was granted on August 30, 2021, is valid through its current license renewal period.

PPSWO will timely submit its license renewal materials for the 2022 licensing period.[1] If PPSWO is still not able to obtain a written transfer agreement from a local hospital as required by Ohio's ASF licensure requirements, it will submit another variance request for its 2022 renewal with information showing that it is compliant with Ohio's existing variance requirements as further amended by S.B. 157. Those requirements, however, are not even effective yet, and, therefore, are not relevant to PPSWO's current variance.

Please let me know if you have any questions.

Very truly yours,

Lisa Pierce Reisz

LPR/lpr

[1] ODH has not informed PPSWO when its current renewal period expires, and while the ODH website shows that PPSWO has an active ASF license, it does not list relevant dates for the current renewal period. Given the suspension of licensing actions due to the COVID-19 health emergency through July 1, 2021, PPSWO's July 2, 2021 application and ODH's August 30, 2021 grant of PPSWO's current variance, PPSWO believes that its current renewal period should run through August 2022.

EXHIBIT G

March 19, 2024

Via email only:
Ms. Lisa Pierce Riez
Epstein Becker Green
250 West Street, Suite 300
Columbus, Ohio 43215
LPierceReisz@ebglaw.com

Re: Planned Parenthood of Southwest Ohio – January 19, 2024, Request for Variance to the Hospital Transfer Agreement Requirement

Dear Ms. Lisa Pierce Riez:

I write in response to Planned Parenthood of Southwest Ohio's (PPSWO) request for a variance to the hospital transfer agreement requirement dated January 19, 2024.

Based on publicly available information, at least one of the back-up consulting physicians listed in PPSWO's variance request is associated with a medical school or osteopathic medical school affiliated with a state university or college in contradiction to the provisions of O.R.C. 3702.305. PPSWO's variance request is clearly in violation of the statute.

As you know, despite this statutory requirement, the Department of Health is currently enjoined by a June 17, 2022 order of the Hamilton County Court of Common Pleas from preventing the "provi[sion of] procedural abortion services for reasons related to non-compliance with [O.R.C. 3702.305]." As a result, PPSWO's variance request cannot be denied at present. But for this order, I would be statutorily required to deny the request. Please be aware that action necessary to enforce Ohio law will be taken when the injunction is lifted - assuming PPSWO is still in violation of the provisions of O.R.C. 3702.305, or if other factors support a lawful denial at that time.

Sincerely,

Bruce Vanderhoff, M.D., MBA
Director of Health

March 19, 2024

Via email only:
B. Jessie Hill
11075 East Boulevard
Cleveland, Ohio 44106
Jessie.hill@case.edu

Re: Women's Med Dayton – January 23, 2024, Request for Variance to the Hospital Transfer Agreement Requirement

Dear Ms. B. Jessie Hill:

I write in response to Women's Med Dayton's (Women's Med) request for a variance to the hospital transfer agreement requirement dated January 23, 2024.

Based on publicly available information, at least one of the back-up consulting physicians listed in Women's Med's variance request is associated with a medical school or osteopathic medical school affiliated with a state university or college in contradiction to the provisions of O.R.C. 3702.305. Women's Med's variance request is clearly in violation of the statute.

As you know, despite this statutory requirement, the Department of Health is currently enjoined by a June 17, 2022 order of the Hamilton County Court of Common Pleas from preventing the "provi[sion of] procedural abortion services for reasons related to non-compliance with [O.R.C. 3702.305]." As a result, Women's Med's variance request cannot be denied at present. But for this order, I would be statutorily required to deny the request. Please be aware that action necessary to enforce Ohio law will be taken when the injunction is lifted - assuming Women's Med is still in violation of the provisions of O.R.C. 3702.305, or if other factors support a lawful denial at that time.

Sincerely,

Bruce Vanderhoff, M.D., MBA
Director of Health