

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

AMERICAN COLLEGE OF
OBSTETRICIANS AND
GYNECOLOGISTS, *et al.*,

Plaintiffs,

vs.

UNITED STATES FOOD AND DRUG
ADMINISTRATION; *et al.*,

Defendants.

CIV. NO. TDC-20-1320

**DECLARATION OF HONOR
MACNAUGHTON, M.D., IN
OPPOSITION TO DEFENDANTS'
RENEWED MOTION TO STAY THE
PRELIMINARY INJUNCTION AND
FOR AN INDICATIVE RULING
DISSOLVING THE PRELIMINARY
INJUNCTION**

Honor MacNaughton, M.D., declares and states as follows:

1. I make this declaration based on my own personal knowledge. If called to testify, I could and would do so competently as follows.

2. I am a Plaintiff in the above-captioned matter. I previously submitted declarations in support of Plaintiffs' motion for a preliminary injunction, in which I identified harms that the mifepristone in-person REMS requirements were causing my patients (and patients of the physicians I supervise) who need mifepristone for abortion or miscarriage care during the COVID-19 pandemic.

3. Shortly after this Court enjoined the in-person requirements, my colleagues and I began to deliver mifepristone to our eligible medication abortion patients through our hospital system's internal pharmacy.

4. Being able to obtain their abortion medications at home, without an unnecessary in-person trip to our clinic, has been a huge relief for the patients whose care I provide and supervise—enabling them to end their pregnancies earlier and more safely, without needless risks of viral exposure that jeopardizes their health and lives and that of their families.

5. For instance, shortly after we began delivering mifepristone under the injunction, a patient called who was so ill from her pregnancy that she had not slept or eaten in 5 days and said she was “going out of her mind.” Due to our reduced capacity for in-person visits during the pandemic, the first available in-person medication abortion appointment was not for another 5 days. In addition, coming to the health center for her appointment would have been very risky for this patient: she had significant risk factors for severe disease from COVID-19—obesity, tobacco use, and reactive airway disease. She told me she was so afraid of contracting COVID-19 that she had quit her job as a hair stylist in March to avoid viral exposure and had been isolating at home ever since. She was thrilled to learn of the delivery option. She was extremely grateful that she could have her telehealth visit on that same day, have her medication sent for delivery the next day instead of having to wait to come in person, and avoid the risk of exposure to the coronavirus as she traveled to our clinic to pick up the medication.

6. Another patient who was able to receive her medication by mail has three children and no childcare assistance during the pandemic. Because of concerns about the spread of COVID-19, my hospital system’s current policy is to strongly discourage parents from bringing their children to the parent’s medical appointments. We only allow it if the patient has no other alternative. Regardless, this patient had told us that it would have been difficult, if not impossible, for her to make an in-person trip to the clinic with all three children. As a result, if she had not been able to have her medication delivered to her, she would have had to wait to

schedule her appointment to come to the clinic until she could arrange for someone outside her household to care for her children—not only delaying her care, but also subjecting herself and all of her children to unnecessary risk of exposure to the coronavirus from contact with such a caretaker.

7. This is not an isolated incident. Throughout the pandemic and still today, I often treat patients who are struggling with childcare challenges due to school and daycare closures and/or concerns about the viral risks associated with in-person instruction even where such facilities are open. The Boston public schools have transitioned to exclusively remote learning because of spikes in coronavirus rates, and many other schools in the area are either closed or operating at reduced capacity.

8. I recently treated a pregnant patient with three children who desperately wanted an abortion. However, all three of her children were attending school remotely from home and there was no one with whom she could safely leave them. Nor did she feel comfortable bringing them to an appointment with her. Not only would that force all three of them to miss school, but she was very concerned about their safety and was unwilling to expose them to the COVID-19 risks inherent in traveling with them to the facility. Fortunately, because of the injunction, she was not forced to choose between protecting her and her children's safety and continuing an unwanted pregnancy.

9. We recently saw another patient in her early 20s who shares a home with two elderly relatives and a five-year-old child. This patient was extremely concerned about exposing herself and her household to the risk of contracting COVID-19 and had severely limited any activity outside the home. Indeed, no one in her household had been working outside of the home during the pandemic. This patient did not have a car; if she had had to come in person to an

appointment, she would have had to take public transportation or use a ride share—which she was avoiding during the pandemic to protect herself and those with whom she lives. Again, because of the injunction, she was not forced to jeopardize her health and the health of those with whom she lived to get the abortion care she needed.

10. Delivering medication under the Court’s injunction has gone very well. Once I conduct a telehealth visit with my patient, I order delivery of the medication from our internal pharmacy through our internal electronic medical record system. For every delivery of mifepristone to one of my patients, I see notes in the patient’s electronic medical record documenting each step of the delivery process, including confirmation of ultimate delivery to my patient. Since the Court entered the injunction and we began offering delivery of mifepristone to eligible patients, delivery has gone smoothly, with every patient receiving their medication on the scheduled day. In addition, no patient has experienced a complication requiring a procedural intervention; one patient for whom the initial treatment regimen was not completely effective received an additional dose of misoprostol, as recommended in the FDA-approved mifepristone labeling.


11. I understand that the government has asked this Court to dissolve or stay the injunction. I urge the Court not to do so. Our patients have been enormously relieved to have the option, where medically appropriate, to obtain their abortion medication and end their pregnancy safely from home—without the needless exposure risks and challenging travel and childcare logistics associated with traveling in person to our clinic during this public health crisis. My hospital system’s primary care outpatient clinics continue to operate at 20% capacity for adult in-person visits compared with before the pandemic, and our two reproductive health clinics are only open half days, twice a week—which means that in-person appointments are very limited.

Without the injunction, patients eligible for medication abortion via telehealth and delivery would face unnecessary delay in treatment. Because of the injunction, we can offer eligible patients medication abortion care on any day, without unnecessary delay.

12. With COVID-19 rates rising in Massachusetts and across the country, and projections of spiking rates this winter, I am deeply distressed at the prospect of having to again force our patients who need medication abortion care to endure the risks associated with making a wholly unnecessary trip to our health care facility.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2020.


Honor MacNaughton, M.D.