



January 22, 2014

Oklahoma Office of the Attorney General
Attn: E. Scott Pruitt
313 NE 21st Street
Oklahoma City, OK 73105

To Whom It May Concern:

**Ref: Complaint against Dr. Nareshkumar Gandadal PATEL, License No. 14640; and,
Outpatient Services for Women, Abortion Facility License No. 9001**

I, Cheryl Sullenger, being of sound mind and judgment, do hereby make the following declaration of fact and complaint against Dr. Nareshkumar Gandadal Patel, License No. 14640, and Outpatient Services for Women, Facility License No. 9001.

Declaration of Fact

On March 18, 2013, Operation Rescue received from an anonymous source a number of documents from Dr. Patel and Outpatient Services for Women. Said documents were discarded in an unsecured, publicly accessible garbage bin, in a shared parking lot with other businesses. Documents provided evidence of legal violations on the part of the physician and abortion facility, and included protected medical information from dozens of clinic patients.

Further investigation revealed that Dr. Patel and Outpatient Services for Women routinely violate Oklahoma statute with regards to informed consent and the 24-hour waiting period.

Audio, documentary, and photographic evidence of all violations referenced herein are attached to this report.

1. Record-Keeping Violations and Improper Disposal of Confidential Information

In accordance with Oklahoma Statute Title 63 § 1-739 – Records, abortion facilities shall keep patient records in their permanent files for a period of not less than seven years.

All hospitals shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses worksheets, social service records and progress notes of patients. All abortion facilities and hospitals in which abortions are performed shall also keep certifications of medical necessity, certifications of nonviability, certifications of nonavailability, abortion reports and complication reports as required in this act. **Such records shall be maintained in the permanent files of the hospital for a period of not less than seven (7) years.**

The Oklahoma State Department of Health HIPAA Privacy Rules, the **Disposal of Confidential Information policy** (<http://www.health.state.ok.us/hipaa/disposal.html>) states:

In accordance with the Department of Libraries Archive and Records Commission mandated disposition schedules, **CONFIDENTIAL MATERIAL IS TO BE DESTROYED BY BURNING, SHREDDING, OR DESTROYED BY RECYCLING BY AN AGENCY WITH A STATE CONTRACT.** (emphasis in original)

Dr. Nareshkumar Gandlal Patel, his agent(s), and/or Outpatient Services for Women not only failed to properly maintain medical records for seven years, but also disposed of medical records without burning, shredding, recycling, or otherwise protecting patient privacy.

Sensitive documents were placed in the common trash where any person or animal poking through garbage could easily find and uncover such personal and confidential paperwork. Unsecured trashed records include, but are not limited to: original copies of patient consent forms, signed procedure logs, appointment calendars, financial information, and completed individual abortion forms, all containing patient identifying information.

Additionally, as these documents contain patients' payment information, there is question as to whether the facility is properly filing and reporting financial information for state reports and tax purposes.

2. Reporting Violations

According to the Oklahoma Statistical Reporting of Abortion Act, the responsible physician must fully complete and submit an Individual Abortion Form to the state for every abortion performed.

Oklahoma Statute 63 § 1-738k: Individual Abortion Form

C. Any physician performing abortions shall **fully complete and submit**, electronically, an Individual Abortion Form to the State Department of Health by the last business day of the calendar month following the month in which the physician performs an abortion, **for each abortion the physician performs.**

Oklahoma Statute 63 § 1-738-3a. Department of Health Website – Physician Reporting Requirements – Form For Physician – Notice – Rules

A....Physicians performing abortions shall complete and electronically submit the required forms to the Department no later than April 1 for the previous calendar year. Nothing in the report shall contain the name, address, or any other identifying information of any patient.

[...]

E. Reports that are not electronically submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a **late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period** the reports are overdue. Any physician required to report in accordance with this section who has not completed and electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

The March 18, 2013 documents from Outpatient Services for Women, owned and operated by Dr. Patel, include numerous original Individual Abortion Forms. These forms were original and incomplete, and were dated from the previous two weeks of business.

The presence of these forms in the public garbage bin brings up two important questions:

1. Is the physician even submitting Individual Abortion Forms in accordance with statute, or is he simply throwing these forms away?
2. In case the physician is, in fact, submitting the Individual Abortion Forms, is he fully completing the forms as required?

Copies of these Individual Abortion Forms are included with this complaint.

3. Improper Disposal of Medical Waste

Of further concern is the improper disposal of medical waste by Dr. Patel, his staff, and Outpatient Services for Women. In addition to patient records, the garbage bin contained bloody, used laminaria and broken, used tenaculum.

Oklahoma Administrative Code 252:515-23 prohibits the improper disposal of regulated medical waste, including untreated sharps and items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials.

The bloody laminaria and broken tenaculum both fall within these descriptions, and their improper disposal in an unsecured, open-air trash receptacle constitutes a direct violation of OAC, and present a direct risk to the health and well-being of the surrounding community.

Pictures of both the laminaria and tenaculum are attached to this letter.

4. Failure to protect and properly dispose of employment applications

Outpatient Services for Women also disposed of current employment application paperwork for two individuals who had recently applied to work at the facility. The paperwork included the name, contact information, and employment history for both applicants; and even the height, weight, and date of birth for one individual!

Both state and federal laws and administrative code require certain minimum retention schedules and disposal protocol for employment records, none of which were observed in either instance.

You will find copies of both applicants' paperwork attached to this document.

5. Failure to observe 24-hour voluntary and informed consent

On Wednesday, January 8, 2014, shortly after 1:00 PM, one of our assistants placed a phone call to Outpatient Services for Women to inquire about an abortion. The receptionist gave our assistant a web address, and told her to read the information and call back. Approximately thirty minutes later, our assistant called the clinic, and the receptionist scheduled a 17-week abortion for 9:30 AM the following day, January 9, at Outpatient Services for Women.

Our assistant was not given the name the physician who would perform the abortion, the medical risks associate with the second-trimester procedure, or other information required by Oklahoma Statute 63 § 1-738.2, nor was the information provided during a consultation in which our assistant was able to ask questions of the physician.

Oklahoma Statute 63 § 1-738.2. No Abortion Without Voluntary and Informed Consent - Confirmation that Patient has Received Information

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. not less than **twenty-four (24) hours prior to the performance of the abortion**, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:
 - (1) the name of the physician who will perform the abortion,**
 - (2) the medical risks associated with the particular abortion procedure to be employed,**
 - [...]
 - (4) the medical risks associated with carrying her child to term, and
 - (5) ...The physician or agent of the physician shall inform the pregnant woman that the web site and printed materials described in Section 1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,
 - b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,
 - c. the information required by this paragraph shall not be provided by a tape recording, but **shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,**
 - [...]
2. Not less than twenty-four (24) hours prior to the abortion, the woman is informed...
 - a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,
 - b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,
 - [...]
 - d. (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed **at least twenty-four (24) hours before the abortion** of the specific address of the Internet web site where the material can be accessed.

Non-compliance with these provisions is a serious infraction under Oklahoma law, and violators are subject to civil contempt, hefty fines, and the suspension or revocation of their medical license.

Oklahoma Statute 63 § 1-738.3e. Violations – Cause of Action – Civil Remedies

A. An abortion provider who knowingly **violates a provision of Section 2 of this act** shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

C. Any person who knowingly violates the terms of an injunction issued in accordance with this section **shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation,** Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such

contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the woman on whom an abortion is performed or attempted.

[...]

E. An abortion provider who performed an abortion in violation of Section 2 of this act **shall be considered to have engaged in unprofessional conduct for which the provider's certificate or license to provide health care services in this state may be suspended or revoked** by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

Petition

I request that the Oklahoma Attorney General conduct a complete investigation of the business practices of Dr. Nareshkumar Gandadal Patel and Outpatient Services for Women with regards to any and all allegations and evidence contained within this complaint, and take all necessary measures to secure the summary suspension of the medical license and facility license of Dr. Patel and Outpatient Services for Women, respectively, by the responsible state regulatory agency.

I further request that upon finding of any violations, the Attorney General or appropriate state agency prosecute Dr. Nareshkumar Gandadal Patel and Outpatient Services for Women to the fullest extent of the law.

Sincerely,



Cheryl Sullenger
Operation Rescue