

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

REPRODUCTIVE HEALTH SERVICES)
OF PLANNED PARENTHOOD OF THE)
ST. LOUIS REGION,)
)
Petitioner,)
)
v.)
)
MISSOURI DEPARTMENT OF HEALTH AND)
SENIOR SERVICES,)
)
Respondent.)

AHC No. 19-0879

FILED June 26, 2019 ADMINISTRATIVE HEARING COMMISSION

**RESPONDENT’S OBJECTION TO FILING STATEMENT OF
DEFICIENCIES UNDER SEAL**

Respondent Missouri Department of Health and Senior Services (the “Department”) respectfully opposes Petitioner’s request to file the Department’s June 13, 2019 Statement of Deficiencies under seal. For the reasons stated in Respondent’s Motion to Unseal filed in *Reproductive Health Services v. Parson* in St. Louis City Circuit Court, which has been provided to the Commission and which is herein incorporated by reference, Missouri law directs that the Statement of Deficiencies should not be placed under seal.

Section 197.230.3 provides that “investigation . . . reports” of abortion facilities “shall be made available to the public.” § 197.230.3, RSMo. The Department’s Statement of Deficiencies is an “investigation report” whose public disclosure is required by Missouri law. Moreover, section 197.477 provides that, “upon completion of the final report of an inspection or evaluation of a health facility or agency . . . the department of health and senior services may disclose to the public reports of the inspections or evaluations showing the standards by which the inspections or evaluations were conducted, whether such standards were met, and, if such standards were not

met, in what manner they were not met and how the facility proposed to correct or did correct the deficiencies.” § 197.477, RSMo. The Statement of Deficiencies is subject to public disclosure under both of these provisions of law.

Petitioner contends that the Statement of Deficiencies should be placed under seal because it contains HIPAA-protected and/or private health information. This is incorrect. HIPAA does not apply because the Department’s Division of Regulation and Licensure, which produced the report, is not a “covered entity” under HIPAA. Federal regulations define “covered entity” to include three things: (1) “a health plan,” (2) “a health care clearinghouse,” and (3) “a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.” 45 C.F.R. § 160.103. The Division of Regulation and Licensure is not a “health care plan,” a “health care clearinghouse,” or a “health care provider.” *Id.* Consistent with the regulatory definition, the Department has determined that “only a few specific bureaus and units [within the Department] satisfy the definition of ‘covered entity’” under HIPAA. *See* Mo. Dep’t of Health and Senior Services, *Health Insurance Portability and Accountability Act*, at <https://health.mo.gov/information/hipaa/>. These covered bureaus and units do not include the Division of Regulation and Licensure. *See* MO. DEP’T OF HEALTH AND SENIOR SERVICES, ADMINISTRATIVE MANUAL, § 19.3, at 1 (July 23, 2010) (“The Division of Regulation and Licensure performs regulatory and licensing (‘health oversight’) functions and is not a covered entity.”).

Moreover, the Statement of Deficiencies does not contain personal health information. Consistent with its universal practice for all such reports, the Department carefully omitted all personal identifying information of any patient or staff member in preparing the report. The Statement of Deficiencies does not contain “identifiers of the individual or of relatives, employers,

or household members of the individual,” such as “names,” address information that includes “geographic subdivisions smaller than a State,” “telephone numbers,” “fax numbers,” “electronic email addresses,” “Social Security numbers,” or similar information. 45 C.F.R. § 164.514(b)(2)(i).

RHS has contended that, because the Statement includes details about medical treatment of anonymous patients, “the information could be used alone or in combination with other information to identify an individual who is a subject of the information.” 45 C.F.R. § 164.514(b)(2)(ii). But the only information that RHS has identified that could plausibly be used with other information to identify specific patient(s) is information regarding dates of treatment. Out of caution, to avoid any risk of personal identification of any individual patient, the Department has prepared a redacted version of its Statement of Deficiencies that omits calendar dates of patient treatment, as well as any other information that might raise any risk of personal identification. The Department respectfully requests that redacted version of the Statement of Deficiencies be filed publicly, while the unredacted version be maintained under seal. This proposed redacted version will be hand-delivered to the Commission for *in camera* inspection and served on Petitioner’s counsel by email.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above was mailed electronically in compliance with 1
C.S.R. 15-3.270(2)(A)(4), this 26th day of June, 2019, to:

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