

EXHIBIT A-I

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Missouri Department of Health and Senior Services

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Randall W. Williams, MD, FACOG
Director



Michael L. Parson
Governor

May 23, 2019

Cathy Williams, Interim President & CEO
Reproductive Health Services of Planned Parenthood
425 Forest Park Avenue
St. Louis, MO 63108

Re: Response to Revised Plan of Correction

Dear Ms. Williams:

We are in receipt of your revised Plan of Correction, dated yesterday, regarding the ongoing deficiencies noted in our letter of May 20, 2019. The Department accepts the revised Plan of Correction in reference to the deficiency identified in L-1103 regarding pelvic examinations not being performed at a time that could influence the choice of the procedure on the condition that the proposed change is implemented immediately and monitoring of ongoing continued compliance with this requirement is also implemented immediately. The Department also accepts the revised Plan of Correction in reference to the deficiency identified in L-1131 regarding infection-control standards. However, your response fails to address continuing concerns regarding quality of care, standard of care, and statutory and regulatory compliance. These continuing concerns include, but are not necessarily limited to, the following:

First, your proposed Plan of Correction regarding compliance with the same-physician requirement of Missouri's informed consent law fails to comport with the requirements of that statute. The statute provides that "the physician who is to *perform or induce* the abortion shall, at least seventy-two hours prior to such procedure, inform the woman orally and in person of . . . []" the immediate and long-term medical risks to the woman as specified in the statute. § 188.027.6, RSMo (emphasis added). Under the statute, the physician who performs the physician portion of the informed consent must be the same physician who "performs or induces" the abortion. Your response contends that the Circuit Court of Jackson County stated that, under the State's interpretation of the statute, "when multiple doctors are involved in *the continuum of care* before, during, and after a procedure that any one of those physicians could provide the required information." May 22 POC, at 5 (quoting Judgment/Order at 6, in Case No. 1716-CV24109 (Oct. 16, 2017)) (emphasis added). Respectfully, to the extent that the Circuit Court was attributing this interpretation to the State, it misconstrued the State's position, which is set forth in our brief in that case (which you also quote): "When there are two or more physicians who are substantially involved in *performing or inducing* the abortion, any one of those physicians may satisfy section 188.027.6 by providing informed consent." May 22 POC, at 5. Moreover, your Plan of Correction fails to note that the Circuit Court explicitly rejected the interpretation on which you now rely. In the same paragraph you quote, the Court stated that this interpretation "expands the language of subsection 6 beyond its written words." In other words, the interpretation on which you now rely was never advanced by the State and was rejected by the Circuit Court. Under the statute, where two or more physicians are involved in performing or inducing an abortion, the informed-consent process must

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be performed by a physician who is actively involved in “performing or inducing” the abortion, not merely (as your response indicates) “substantially involved in a patient’s care.” Thus, your proposed revision to address this issue—*i.e.*, to require that the physician who performed the informed consent process must be “physically present” during the abortion procedure—is insufficient. To “perform or induce” the abortion under the statute, the physician who performed the informed consent process, at the very least, must play a substantial and active role in performing or inducing the abortion—mere physical presence is not enough. Contrary to your response, moreover, our May 20 letter did not acknowledge that there were no deficiencies with regard to Patient #7 and Patient #10. We acknowledged in the letter that your proposed Plan of Correction characterized the supervising physicians as actively participating in inducing the abortions for these patients. However, we specifically noted that we have been unable to verify the extent of your compliance with this requirement given that several physicians have refused to participate in interviews and that the Plan of Correction failed to provide adequate assurance of compliance and identify the systemic changes necessary to assure that the deficient practice would not recur.

In addition, the continued refusal of several physicians to cooperate in interviews regarding our ongoing complaint investigation obstructs our ability to verify that your facility “is in compliance with all requirements of applicable statutes and regulations,” as required before a license can be renewed under 19 CSR 30-30.050(2)(I). Previously, we have requested that seven physicians who have provided patient care at your facility participate in interviews regarding medical records retrieved from your facility during the complaint investigation. Five of those physicians have refused to participate in interviews at all. Three of those five physicians who have refused to participate in interviews are not residents, but fully qualified physicians who have an ongoing professional relationship with your facility. You have taken the position that you lack authority to compel these physicians to participate in interviews because they are independent contractors, not employees. But it is the duty and responsibility of your facility to cooperate and ensure that all physicians who provide patient care at your facility are available for interviews during the Department’s investigation. The physicians’ refusal to cooperate in interviews is unprecedented and departs from longstanding practice at your facility and virtually every other regulated facility. And you have provided no clear indication of what steps you have taken, if any, to secure the cooperation of these physicians.

Instead, you have offered to produce for interviews two attending physicians, Dr. Eisenberg and Dr. McNicholas, on the ground that they supervised the care provided by the other physicians that the Department is seeking to interview. As I have repeatedly advised RHS, interviewing the attending or supervising physicians before interviewing the physicians who actually provided patient care contradicts well-established investigative standards that we apply in all investigations. Investigative standards dictate that the individuals directly involved in patient care should be interviewed first, followed by interviews of supervisors or managers with less direct involvement in the incidents being reviewed. By requesting that we interview the attending physicians before we have been able to interview the other five physicians, you are effectively requesting special treatment, and a departure from well-established investigative practices that we apply to other facilities in similar investigations.

That said, in the interest of achieving a resolution of these issues as quickly as possible, we are willing to interview Dr. McNicholas and Dr. Eisenberg immediately, as early as tomorrow morning, May 24. To be clear, we are agreeing to interview the attending physicians out of order under protest, emphasizing

that this is a departure from investigative practices followed in similar investigations at other facilities. And we emphasize that we are *not* withdrawing our request to interview the other five physicians whom we have requested for interviews. In addition to producing Dr. McNicholas and Dr. Eisenberg, we also require that you make the other requested physicians available—especially the three fully qualified physicians who have an ongoing professional relationship with your facility—without any further delay. As noted in my May 20 letter, our complaint investigation has identified a large number of potential deficient practices requiring explanation by the physicians directly involved in patient care, as well as the attending physicians. Moreover, we reserve the right to seek follow-up interviews with Dr. McNicholas and Dr. Eisenberg in the event that we have additional questions following the interviews of the other physicians.

Please respond promptly with the availability of Dr. McNicholas and Dr. Eisenberg for interview.

Sincerely,



William Koebel, Administrator
Section for Health Standards and Licensure
Missouri Department of Health and Senior Services