

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

FILED June 24, 2019 ADMINISTRATIVE HEARING COMMISSION

<p>REPRODUCTIVE HEALTH SERVICES OF PLANNED PARENTHOOD OF THE ST. LOUIS REGION 4251 Forest Park Avenue St. Louis, MO 63018 (314/531-7526)</p> <p style="text-align:right">Petitioner,</p> <p>v.</p> <p>MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES Randall W. Williams, M.D., Director 912 Wildwood, P.O. Box 570 Jefferson City, MO 65102 (573/751-6400),</p> <p style="text-align:right">Respondent.</p>	<p>AHC No. _____</p>
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COMPLAINT

Petitioner Reproductive Health Services of Planned Parenthood of the St. Louis Region (“Planned Parenthood”) appeals the June 21, 2019 final decision of Respondent Department of Health and Senior Services (“DHSS”) to deny Petitioner’s abortion facility license renewal application. Respondent’s actions are contrary to law, arbitrary and capricious, not based on substantial evidence, unreasonable, and unconstitutional. Respondent’s decision should be overturned and Petitioner’s license should be renewed.

Parties

1. Petitioner Planned Parenthood is a not-for-profit corporation organized under the laws of Missouri. Planned Parenthood was previously licensed as an abortion facility by Respondent DHSS to provide abortion services at a health center in St. Louis, Missouri. The license was set to expire on May 31, 2019, but the expiration was prevented from going into effect

until Friday, June 28, 2019 by a temporary restraining order followed by a preliminary injunction issued by Judge Michael F. Stelzer of the Circuit Court of St. Louis, 22nd Judicial Circuit. *See Reproductive Health Services of Planned Parenthood of the St. Louis Region v. Parson et al.* (“*Planned Parenthood v. Parson*”), Case No. 1922-CC02395, May 31, 2019 Temporary Restraining Order (“TRO”); June 10, 2019 Preliminary Injunction Order (“PI”).

2. Respondent DHSS is a state agency created by section 192.005, RSMo. DHSS is charged with the licensure of abortion facilities. *See* §§ 197.200–.240, RSMo. Prior to litigation in *Planned Parenthood v. Parson*, DHSS had refused to make a decision on Petitioner’s license renewal application. After the Circuit Court ordered DHSS to make a determination, DHSS denied Petitioner’s license on June 21, 2019.

Jurisdiction

3. “Any person aggrieved by an official action of the department of health and senior services affecting the licensed status of a person under the provision of sections 197.200 to 197.240, including the refusal to grant, the grant, the revocation, the suspension, or the failure to renew a license, may seek a determination thereon by the administrative hearing commission pursuant to the provision of section 621.045 and it shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing, or exhaust any other procedure within the department of health and senior services.” § 197.221, RSMo.

4. Petitioner timely filed this Complaint. § 621.120, RSMo.

5. This Commission has jurisdiction over this matter pursuant to pursuant to § 197.221, RSMo.

Background

6. For over two decades, Petitioner Planned Parenthood has provided high-quality reproductive health care—including safe, legal abortion care—at its health center in St. Louis.

7. Until June 21, 2019, Petitioner has at all times applied for and received the necessary licenses and license renewals required to operate under Missouri’s various statutory and regulatory requirements.

8. In March of 2019, Respondent conducted an inspection as part of Petitioner’s routine license renewal process, as Petitioner’s existing license was set to expire on May 31, 2019. Thereafter, Respondent began issuing Petitioner a series of deficiency notices based on new interpretations of existing regulations—interpretations at odds with Respondent’s previous practices over the course of many years—and demanding a series of sit-down, audio-recorded interviews, including with medical residents who had not provided services at Petitioner’s clinic since the fall of 2018.

9. Once it became clear that Respondent was not going to grant Petitioner’s license renewal application by the May 31, 2019 expiration date, Petitioner filed suit in the Circuit Court of St. Louis, Missouri, 22nd Judicial District on May 28, 2019. A true and accurate copy of the Petition is attached hereto as Exhibit A (*Planned Parenthood v. Parson*, Verified Petition).

10. Petitioner simultaneously filed a motion for a temporary restraining order and preliminary injunction to prevent Petitioner’s license from expiring. A true and accurate copy of the Motion for Temporary Restraining Order and Preliminary Injunction is attached hereto as Exhibit B (*Planned Parenthood v. Parson*, Motion for Temporary Restraining Order and Preliminary Injunction).

11. After arguments, on May 31, 2019, the presiding judge, Hon. Michael F. Stelzer, granted the temporary restraining order, finding that Petitioner would suffer irreparable harm if its license were allowed to expire. A true and accurate copy of Judge Stelzer's temporary restraining order is attached hereto as Exhibit C (*Planned Parenthood v. Parson*, Order, May 31, 2019 ("TRO")).

12. Thereafter, on June 10, 2019, Judge Stelzer granted a preliminary injunction, again finding that Petitioner would suffer irreparable injury if its license were permitted to expire. A true and accurate copy of Judge Stelzer's preliminary injunction order is attached hereto as Exhibit D (*Planned Parenthood v. Parson*, Order, June 10, 2019 ("PI Order")).

13. Judge Stelzer further ordered Respondent to make a decision on Petitioner's license renewal application by June 21, 2019. *Id.*

14. On June 14, 2019, Respondent provided Petitioner with a 62-page Statement of Deficiency, rehashing subjects previously raised by Respondent and previously addressed by Petitioner (including the medical trainee issue, about which Petitioner had already agreed to abide by Respondent's new interpretation), and making incomprehensible allegations that Petitioner had no means to correct (e.g., recitations of patient medical charts, citations to journal articles from the 1970s, and misunderstandings of the basics of female anatomy, which do not appear to constitute deficiencies and for which it is unclear how a facility could offer proposed corrective action). A true and correct copy of the cover letter provided by Respondent is attached hereto as Exhibit E.¹

¹ Petitioner requests the ability to file the Statement of Deficiencies before the Commission under seal, as it includes protected health information of patients. During the Circuit Court proceedings, Judge Stelzer sealed the document at Petitioner's request, and a motion by Respondents to unseal the document was denied. For these reasons, the statement should be sealed before the Commission.

15. Respondent gave Petitioner three business days to respond, which Petitioner did to the best of its ability on June 18, 2019. A true and accurate copy of the cover letter to Petitioner's Plan of Correction is attached hereto as Exhibit F.²

16. On June 21, 2019, Petitioner received a letter from DHSS denying its application for a license renewal. A true and accurate copy of the June 21 letter is attached hereto as Exhibit G ("Denial Notice").

17. DHSS advised that this was a final decision, appealable to the Administrative Hearing Commission. *Id.* at 4–5.

18. Petitioner vigorously contests the grounds for denial.

19. Petitioner affirmatively states that its renewal application was complete and that all of the applicable requirements for licensure have been met.

20. Nothing in Missouri's statutory or regulatory scheme provides any basis or justification for Respondent's asserted grounds for license denial.

21. Respondent has, throughout the license renewal process up to and including the ultimate license denial, acted arbitrarily, capriciously, unreasonably, unlawfully, unconstitutionally, and in excess of its statutory and regulatory authority, including with respect to Respondent's shifting, arbitrary, and unreasonable interpretations of regulatory and statutory requirements which are not based on substantial evidence.

22. On information and belief, there are no special circumstances that would make an award of attorney fees and expenses in this case unjust.

² For the same reasons noted *supra*, Petitioner requests the ability to file its plan of correction under seal, as it necessarily repeats some of the same protected health information as Respondent's statement of deficiencies.

23. Petitioner may proceed pursuant to section 536.087, RSMo., to seek attorney fees and expenses for this case after final disposition of this case.

24. Petitioner incorporates by reference each and every allegation set forth in it Verified Petition before the Circuit Court in *Planned Parenthood v. Parson*. See Ex. A (*Planned Parenthood v. Parson*, Verified Pet.).

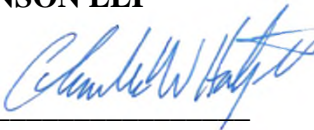
25. Petitioner further alleges that Respondent's actions violate the Missouri Constitution's guarantees of equal protection before the law, substantive due process, procedural due process, and the right to be free from unlawful searches and seizures, as noted in the Verified Petition before the Circuit Court in *Planned Parenthood v. Parson*. See Ex. A.

WHEREFORE, Petitioner hereby appeals Respondent's decision to deny its renewal application and requests that this Commission conduct a hearing in this matter and issue an Order directing Respondent to re-license Petitioner. Petitioner requests such other and additional relief as the Commission deems just and proper.

Dated: June 24, 2019

Respectfully submitted,

STINSON LLP

By: 

Charles W. Hatfield, MO No. 40363
Alixandra S. Cossette, MO No. 68114
230 W. McCarty Street
Jefferson City, Missouri 65101
Phone: (573) 636-6263
Facsimile: (573) 636-6231
chuck.hatfield@stinson.com
alixandra.cossette@stinson.com

Jamie L. Boyer, MO # 55209
7700 Forsyth Boulevard, Suite 1100

St. Louis, Missouri 63105
Phone: (314) 863-0800
Facsimile: (314) 863-9388
jamie.boyer@stinson.com

**PLANNED PARENTHOOD FEDERATION
OF AMERICA**

Jennifer Sandman*
Christine Clarke*
123 William St., 9th Floor
New York, NY 10038
Phone: (212) 541-780
Facsimile: (212) 247-6811
jennifer.sandman@ppfa.org
christine.clarke@ppfa.org

Richard Muniz*
1110 Vermont Ave., NW Ste. 300
Washington, D.C. 20005
Phone: (202) 973-4800
Facsimile: (202) 296-3480

*Attorneys for Reproductive Health Services of
Planned Parenthood of the St. Louis Region*

** Pro hac vice motion forthcoming*