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**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**WOMEN'S MEDICAL GROUP
PROFESSIONAL CORPORATION
d/b/a WOMEN'S MED DAYTON**
c/o B. Jessie Hill
ACLU of Ohio
4506 Chester Ave.
Cleveland, OH 44103

**PLANNED PARENTHOOD
SOUTHWEST OHIO REGION**
c/o Fanon A. Rucker
The Cochran Firm
119 E. Court St., Suite 102
Cincinnati, OH 45202

Plaintiffs,

vs.

BRUCE VANDERHOFF
Director, ODH
246 N. High Street
Columbus, OH 43215

OHIO DEPARTMENT OF HEALTH
246 N. High Street
Columbus, OH 43215

Defendants.

Case No. **A2200704**

Judge _____

**COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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HAMILTON COUNTY**

FEB 25 2022

COMMON PLEAS COURTS

INTRODUCTION

1. This is a constitutional challenge to the 134th Ohio General Assembly's Substitute Senate Bill No. 157 ("SB 157"), seeking declaratory and injunctive relief. Ambulatory surgical centers ("ASFs"), including procedural abortion providers, without written transfer agreements ("WTAs") must contract with backup doctors in order to maintain their ASF licenses. SB 157 amends Ohio's already unnecessarily onerous licensing scheme for procedural abortion providers by drastically limiting the pool of potential backup doctors. It requires backup doctors to certify that they "do[] not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college" and that they "[are] not employed by or compensated pursuant to a contract with, and do[] not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college[.]" Doctors who engage in these activities are prohibited from serving as backup doctors. If clinics are unable to find backup doctors, their ASF licenses will be revoked and they will no longer be able to provide procedural abortion care, resulting in significant harm to Plaintiffs and their patients seeking procedural abortions in Ohio. Although SB 157 does not take effect until March 23, 2022 and, by its terms, gives clinics an additional 90 days after the effective date—until June 21, 2022—to comply, Defendants are already enforcing the law against Plaintiff Women's Med Dayton ("WMD"), and have taken steps indicating that they may soon enforce the law against Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO"). A copy of SB 157 is attached hereto as Exhibit A.

2. Plaintiffs' ASFs have provided safe procedural abortion care in Ohio for decades. Abortion is very safe and far safer than giving birth. Complications requiring hospital treatment

occur in only a fraction of a percent of all abortions.¹ In the rare event that a complication requiring hospital-based care does occur, federal law² and Plaintiffs' policies and procedures ensure that the patient will receive the best available care as quickly as possible.

3. Despite this, Ohio has adopted an onerous and unwarranted licensing scheme that provides no health or safety benefits to patients and that the Ohio Department of Health (“ODH”) exploits at every turn to deny ASF licenses to Plaintiffs through arbitrary and unjustifiable enforcement actions.

4. Clinics that provide procedural abortion must maintain an ASF license. To maintain an ASF license, a clinic must either have a written transfer agreement (“WTA”) with a local hospital or be granted a variance from that requirement by ODH. R.C. 3702.303. Pursuant to statute, to obtain a variance from the WTA requirement, a clinic must have a written agreement with at least one backup doctor who, among other things, maintains admitting privileges at a local hospital. R.C. 3702.304. ODH has unilaterally expanded the scope of these statutes by requiring that abortion clinics—and only abortion clinics—seeking a variance have agreements with at least four backup doctors who are obstetrician-gynecologists (“OBGYNs”) and who maintain staff voting privileges as well as admitting privileges at a local hospital.

5. SB 157 now makes it even more difficult, if not impossible, for abortion clinics to obtain a variance—and therefore an ASF license—by further limiting the pool of potential backup physicians. Under SB 157, backup physicians may not teach or provide instruction,

¹ Natl. Academies of Sciences, Eng. & Medicine, *The Safety & Quality of Abortion Care in the United States*, at 77–78, 162–63 (2018), available at <http://nap.edu/24950> (accessed Feb. 24, 2022).

² The Emergency Medical Treatment & Active Labor Act, commonly referred to as EMTALA, requires hospitals to stabilize all emergency patients, and treat them unless transfer to another facility is indicated. 42 U.S.C. § 1395dd(b).

directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. The law further states that backup physicians may not be employed by or compensated pursuant to a contract with, and may not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college.

6. Despite Plaintiffs' best efforts, Plaintiffs have not been able to obtain WTAs with local hospitals. Thus, Plaintiffs must obtain variances to maintain their ASF licenses and continue providing procedural abortion care.

7. Each of Plaintiffs' most recently granted variance requests relied on backup doctors who would be disqualified solely because of SB 157. As a result, Plaintiffs are in danger of ODH revoking their ASF licenses under SB 157.

8. Although SB 157 is not set to take effect until March 23, 2022, ODH has already begun to enforce it. In January 2022, ODH denied the variance application of WMD solely because it relied on backup doctors who would be disqualified under SB 157. The denial letter is attached hereto as Exhibit B.

9. Similarly, ODH sent a letter to PPSWO on February 23, 2022 asking PPSWO to submit by Sunday, February 27, 2022, attestations that its backup doctors meet SB 157's requirements. The letter is attached hereto as Exhibit D.

10. ODH's denial of WMD's variance based on SB 157 months prior to SB 157's effective date of March 23, 2022, and request for attestations from PPSWO regarding SB 157 months ahead of time, constitute unlawful premature enforcement of SB 157.

11. By its terms, SB 157 gives ASFs that have variances 90 days after its effective date—until June 21, 2022—to come into compliance with the new requirements and to submit attestations to ODH documenting that compliance. In the absence of Defendants' premature

enforcement of SB 157, Plaintiffs would have had until June 21, 2022 to come into compliance with its requirements. Instead, because of ODH's arbitrary decision, WMD faces imminent risk of losing its ASF license, and PPSWO is at risk of ODH taking steps to rescind its current variance and subsequently revoke its ASF license.

12. The penalties for operating an ASF without a license include civil penalties between one thousand and two hundred and fifty thousand dollars and/or daily civil penalties between one thousand and ten thousand dollars for each day that the ASF operates. Ohio Adm. Code 3701-83-05.1(A); R.C. 3702.32(A).

13. Without ASF licenses, Plaintiffs will be unable to provide procedural abortion care, resulting in tremendous burdens to Plaintiffs and their patients.

14. Procedural abortion is the most common method of abortion in Ohio, accounting for more than half of all abortions, and it is the only abortion method available for patients who are over ten weeks pregnant. It is also the only method available at any point in pregnancy for patients for whom medication abortion is contraindicated.

15. Plaintiffs' clinics are the only procedural abortion providers in Southwest Ohio and two of only six procedural abortion providers in the entire state. Three of the other procedural abortion providers are in the Cleveland area and the fourth is in Columbus.

16. If Plaintiffs' ASF licenses are revoked, people needing procedural abortions would be forced to travel hundreds of miles round-trip to the next closest procedural abortion providers, and, due to a statutory waiting period, make that trip twice, or stay overnight, in order to access procedural abortion. Moreover, the Planned Parenthood in Columbus, the only procedural abortion provider that would be left outside of the Cleveland area, already has an approximate two-week wait for appointments.

17. Although abortion is very safe, and in fact much safer than childbirth, unnecessarily delaying abortion care increases the risks associated with the procedure. Because of SB 157, many patients seeking procedural abortions will be significantly delayed in accessing this vital, time-sensitive and constitutionally-protected health care until later in pregnancy, when the procedure not only carries greater health risks, but is also more expensive. Other people will be prevented from obtaining abortion care from a trusted medical provider altogether. Some patients will seek to terminate their pregnancies outside the medical system, or have to travel out of state to obtain care, if they can afford to do so. Others will be forced to carry a pregnancy to term against their wishes. These harms will be disproportionately suffered by Black women and other people of color in Ohio who both access abortion at higher rates than white people and who face more barriers to accessing healthcare in general, and abortion specifically, than white people.³

18. Relief from this Court is necessary to prevent grievous harm to Plaintiffs and their patients, and to ensure patients are able to exercise their constitutionally protected right to obtain essential health care and thereby determine the course of their own lives.

PARTIES

A. Plaintiffs

19. Plaintiff Women's Medical Group Professional Corporation d/b/a Women's Med Dayton ("WMD") has owned and operated a clinic that provides abortion care in Kettering, Ohio since 1983. WMD and its predecessors have been providing abortions in the Dayton area since

³ See, e.g., Center for Reproductive Rights, National Latina Institute for Reproductive Health & SisterSong Women of Color Reproductive Justice Collective, *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care* (2014), available at https://reproductiverights.org/wp-content/uploads/2020/12/CERD_Shadow_US_6.30.14_Web.pdf.

1973. WMD cannot obtain a WTA with a local hospital and must obtain a variance from ODH to maintain its ASF license. Because WMD's current backup doctors would be disqualified under SB 157, WMD is in danger of ODH revoking its ASF license if SB 157 is enforced. Moreover, SB 157 will require WMD staff to spend many hours that would otherwise be spent on patient care attempting to identify, recruit, contract with, and maintain new backup doctors who comply with SB 157's medically unnecessary requirements. And they must do so on an annual basis, or more frequently, as part of the annual variance process and any time a backup doctor resigns or succumbs to anti-abortion harassment. If WMD loses its ASF license, it will no longer be able to provide abortion care after ten weeks of pregnancy as measured from the first day of a patient's last menstrual period ("LMP") and will be forced to deny care to anyone for whom medication abortion is contraindicated. Patients who are unable to obtain procedural abortions at WMD will face physical, financial, and emotional obstacles to obtaining abortion care. This will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. WMD sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

20. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in Southwest Ohio since 1929. PPSWO's ASF, located in Cincinnati, provides procedural abortions. PPSWO cannot obtain a WTA with a local hospital and must obtain a variance from ODH to maintain its ASF license. Because PPSWO's current variance relies on backup doctors who would be disqualified under SB 157, PPSWO is in danger of ODH denying its variance and revoking its ASF license if SB 157 is enforced. Moreover, SB 157 will require PPSWO staff to

spend many hours that would otherwise be spent on patient care attempting to identify, recruit, contract with, and maintain new backup doctors who comply with SB 157's medically unnecessary requirements. And they must do so on an annual basis, or more frequently, as part of the annual variance process and any time a backup doctor resigns or succumbs to anti-abortion harassment. If PPSWO loses its ASF license, it will no longer be able to provide abortion care after ten weeks LMP and will be forced to deny care to anyone for whom medication abortion is contraindicated. Patients who are unable to obtain procedural abortions at PPSWO will face physical, financial, and emotional obstacles to obtaining abortion care. This will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. PPSWO sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

B. Defendants

21. Defendant Bruce Vanderhoff is the Director of ODH. He can deny Plaintiffs' variance requests; suspend, refuse to renew, or revoke Plaintiffs' ASF licenses; order Plaintiffs' ASFs to cease operations; and/or impose civil penalties on Plaintiffs' ASFs for violations of SB 157. He is sued in his official capacity.

22. Defendant ODH is the agency with the power to deny Plaintiffs' variance requests; suspend, refuse to renew, or revoke Plaintiffs' ASF licenses; order Plaintiffs' ASFs to cease operations; and/or impose civil penalties on Plaintiffs' ASFs for violations of SB 157.

JURISDICTION & VENUE

23. The Court has jurisdiction over this complaint pursuant to R.C. sections 2721.02, 2727.02, and 2727.03.

24. Venue is proper in this Court pursuant to Civ.R. 3(C)(6), because Plaintiff PPSWO provides procedural abortions in Hamilton County, and thus the claims for relief arise in part in Hamilton County.

FACTUAL ALLEGATIONS

A. Abortion in Ohio

25. Legal abortion in the United States is very safe.⁴

26. There are two main methods of abortion: medication abortion and procedural abortion. Both medication abortion and procedural abortion are effective in terminating a pregnancy.

27. Medication abortion involves a combination of two pills, mifepristone and misoprostol, which expel the contents of the uterus in a manner similar to a miscarriage after the patient has left the clinic and in a location of the patient's choosing, typically at home.

28. Despite sometimes being referred to as "surgical abortion," procedural abortion is not what is commonly understood to be "surgery," as it involves no incisions. In a procedural abortion, the clinician uses suction from a thin, flexible tube, alone or in conjunction with instruments, to empty the contents of the patient's uterus.

29. Plaintiffs provide procedural abortion for patients up to 21 weeks and 6 days LMP, which is the legal limit for abortion in Ohio.⁵

⁴ Natl. Academies of Sciences, Eng. & Medicine, *The Safety & Quality of Abortion Care in the United States*, at 77–78, 162–63 (2018), available at <http://nap.edu/24950> (accessed Feb. 24, 2022).

⁵ A full-term pregnancy is approximately 40 weeks LMP. R.C. 2919.201 prohibits abortions at or after 22 weeks LMP.

30. According to data from ODH, in 2019, more than 61 percent of abortions in the state were procedural abortions.⁶ In 2020, this number declined for reasons related to the COVID-19 pandemic, but still more than half of abortions in the state were procedural abortions.⁷

31. Because Ohio law restricts medication abortion to the first ten weeks of pregnancy,⁸ procedural abortion is the only method of abortion available after ten weeks LMP, and for some, it is the only method available at any point in pregnancy. For example, a patient may be allergic to one of the medications used in medication abortion or may have medical conditions that make procedural abortion relatively safer. Some patients strongly prefer procedural abortion, including because they perceive it to be less painful or because it can be done quickly at the health center and may allow them to return to work, childcare, or other responsibilities shortly afterward. Additionally, other patients may need procedural abortion for personal reasons, including reasons related to abuse, where it could be dangerous for a partner or person in their home to know that the patient is having an abortion, or reasons related to lack of safe housing, where the patient may have no safe place to expel the pregnancy.

⁶ Ohio Dept. of Health, *Induced Abortions in Ohio, 2019*, 23 (2020), available at <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/vital-statistics/resources/vs-abortionreport2019> (accessed Feb. 24, 2022) (“ODH 2019 Report”).

⁷ Ohio Dept. of Health, *Induced Abortions in Ohio, 2020*, 23 (2021), available at <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/vital-statistics/resources/vs-abortionreport2020> (accessed Feb. 24, 2022) (“ODH 2020 Report”).

⁸ R.C. 2919.123 restricts Ohio abortion providers to prescribing the first drug in the medication abortion regimen according to the federally approved label, which allows use of mifepristone only up to ten weeks LMP. See U.S. Food & Drug Administration, *Mifeprex (mifepristone) Information* (last updated Feb. 24, 2022), available at <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>. Accordingly, Plaintiffs provide medication abortion up to ten weeks (70 days) LMP.

B. Abortion Safety

32. Because legal abortion is so safe, the vast majority of abortions can be and are safely provided in an outpatient setting.⁹

33. Abortion rarely results in complications. Most of the rare complications related to abortion are safely and appropriately handled in the outpatient setting.

34. Plaintiffs provide high-quality care in the rare event that a complication occurs.

35. In the exceedingly rare case that a patient requires hospital-based care, Plaintiffs' policies and procedures ensure that the patient receives that care as quickly as possible.

36. Regardless of whether an ASF has a WTA with a local hospital, appropriate care is also ensured because hospitals provide necessary care to patients who need it. Hospitals must comply with the federal Emergency Medical Treatment & Active Labor Act, which requires hospitals to stabilize all emergency patients, and treat them unless transfer to another facility is indicated. 42 U.S.C. § 1395dd(b) (commonly referred to as "EMTALA"). In fact, Miami Valley Hospital in Dayton has confirmed that it will treat WMD's patients in an emergency.

37. As a result, WTAs do nothing to increase patient safety or health and are not medically necessary.

38. Lack of access to abortion services, by contrast, clearly decreases patient safety and threatens patients' health. Continuing a pregnancy against one's will can pose a risk to one's physical, mental, and emotional health, as well as to the stability and well-being of one's family, including existing children.

⁹ In 2020, over 90 percent of abortions were performed in an ASF, including Plaintiffs' ASFs, and another 8.8 percent were provided in another type of outpatient facility. ODH 2020 Report at 22.

C. Pre-Existing ASF Licensing Framework

39. For almost two decades, the state of Ohio has used the ASF licensing scheme to target abortion providers for harassment and close their ASF businesses. The Ohio legislature openly discusses how new legislation in this area can be used to target abortion providers in general and Plaintiffs in particular. When legislation alone has failed to close providers, ODH steps in and invents and simultaneously enforces its own arbitrary rules specifically targeted to close Plaintiffs' ASFs. When Plaintiffs are able to adjust to comply with these unnecessary, arbitrary and improper rules, ODH invents new ones to ensure ASF licenses remain out of reach.

40. Ohio's pre-existing licensing framework is the subject of ongoing federal litigation. *Planned Parenthood of Southwest Ohio v. Vanderhoff*, No. 1:15-cv-568 (S.D. Ohio 2015). Plaintiffs continue to seek relief for constitutional violations caused by this framework in federal court. *Id.* SB 157 is not the subject of federal litigation, however, as it was just enacted in December 2021.

1. Written Transfer Agreement Statute

41. Ohio law requires that abortion clinics that provide procedural abortions have a WTA. The current law, R.C. 3702.303(A), states:

Except as provided in division (C) of this section, an ambulatory surgical facility shall have a written transfer agreement with a local hospital that specifies an effective procedure for the safe and immediate transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ambulatory surgical facility is necessary, including when emergency situations occur or medical complications arise. A copy of the agreement shall be filed with the director of health.

42. A "local" hospital cannot be further than 30 miles from an ambulatory surgical facility with which the local hospital has a WTA under section 3702.303 of the Revised Code. R.C. 3702.3010.

43. Ohio law also prohibits any “public hospital” from “enter[ing] into a written transfer agreement with an ambulatory surgical facility in which nontherapeutic abortions are performed or induced.” R.C. 3727.60(B)(1). The ban applies only to clinics that provide abortions and does not apply to any other ASF in the state.

44. In addition, hospitals’ religious and political opposition to abortion, and/or hospitals’ fear of the harassment and intimidation they and their doctors would face if they were to enter into a WTA with an abortion clinic, deter hospitals from entering into WTAs with abortion clinics.

45. As a result, the WTA requirement has been difficult, and impossible in some cases, for abortion clinics to meet. Over the years, WMD and PPSWO have been unable to obtain or maintain a WTA and have been required to apply for variances from the requirement in order to maintain their ASF licenses.

46. Upon information and belief, as of 2018, abortion clinics were the only ASFs that have ever needed or sought variances from Ohio’s WTA requirement.

2. Variance Statute

47. Ohio law also sets forth the procedure for ASFs that cannot obtain a WTA with a local hospital to obtain a variance from that requirement. Specifically, R.C. 3702.304 states:

(A)(1) The director of health may grant a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code if the ambulatory surgical facility submits to the director a complete variance application, prescribed by the director, and the director determines after reviewing the application that the facility is capable of achieving the purpose of a written transfer agreement in the absence of one. The director’s determination is final.

...

(B) A variance application is complete for purposes of division (A)(1) of this section if it contains or includes as attachments all of the following:

(1) A statement explaining why application of the requirement would cause the facility undue hardship and why the variance will not jeopardize the health and safety of any patient;

(2) A letter, contract, or memorandum of understanding signed by the facility and one or more consulting physicians who have admitting privileges at a minimum of one local hospital . . ., memorializing the physician or physicians' agreement to provide back-up coverage when medical care beyond the level the facility can provide is necessary;

(3) For each consulting physician described in division (B)(2) of this section:

(a) A signed statement in which the physician attests to all of the following:

(i) The physician actively practices clinical medicine within [the mandatory] radius of the facility.

(ii) The physician is familiar with the facility and its operations.

(iii) The physician agrees to provide notice to the facility of any changes in the physician's ability to provide back-up coverage. (b) The estimated travel time from the physician's main residence or office to each local hospital where the physician has admitting privileges;

(c) Written verification that the facility has a record of the name, telephone numbers, and practice specialties of the physician;

(d) Written verification from the state medical board that the physician possesses a valid license to practice medicine and surgery or osteopathic medicine and surgery issued under Chapter 4731. of the Revised Code;

(e) Documented verification that each hospital at which the physician has admitting privileges has been informed in writing by the physician that the physician is a consulting physician for the ambulatory surgical facility and has agreed to provide back-up coverage for the facility when medical care beyond the care the facility can provide is necessary.

(4) A copy of the facility's operating procedures or protocols that, at a minimum, do all of the following:

(a) Address how back-up coverage by consulting physicians is to occur, including how back-up coverage is to occur when consulting physicians are temporarily unavailable;

(b) Specify that each consulting physician is required to notify the facility, without delay, when the physician is unable to expeditiously admit patients to a local hospital and provide for continuity of patient care;

(c) Specify that a patient's medical record maintained by the facility must be transferred contemporaneously with the patient when the patient is transferred from the facility to a hospital.

(5) Any other information the director considers necessary.

(C) The director's decision to grant, refuse, or rescind a variance is final.

(D) The director shall consider each application for a variance independently without regard to any decision the director may have made on a prior occasion to grant or deny a variance to that ambulatory surgical facility or any other facility.

48. Ohio law prohibits physicians with staff membership or professional privileges at a public hospital "to use that membership or those privileges as a substitution for, or alternative to, a written transfer agreement for purposes of a variance application" for an ASF that performs abortions. R.C. 3727.60(B)(2).

49. Even though a variance denial can be and has served as the sole basis for revocation and/or non-renewal of an ASF license for any clinic that lacks a WTA, providers have no right to administratively appeal a variance denial. Ohio law explicitly states that "the refusal of the director to grant a variance or waiver, in whole or in part, shall be final and shall not be construed as creating any rights to a hearing under Chapter 119 of the Revised Code." Ohio Adm.Code 3701-83-14(F); R.C. 3702.304(A) and (C).¹⁰

3. ODH's Arbitrary, Unnecessary and Improper Requirements for Abortion Clinics.

50. ODH's unlawful premature enforcement of SB 157 is just the latest in a long string of actions demonstrating that ODH will not stop until Plaintiffs' licenses have been

¹⁰ Additionally, under Ohio law, a variance is automatically denied after 60 days if not ruled on and an ASF's license automatically suspended if ODH fails to rule on a variance request within 60 days or if ODH denies a variance request. R.C. 3702.309(A). These provisions are part of the Plaintiffs' federal case, and the automatic suspension provision is currently preliminarily enjoined. *Planned Parenthood of Southwest Ohio v. Vanderhoff*, No. 1:15-cv-568 (S.D. Ohio 2015), ECF Nos. 25 & 28.

revoked. Whether it is arbitrary, unnecessary, and improper requirements which are specially crafted to deny their variance requests and are enforced with no notice, or enforcement of an unnecessary and likely unconstitutional statute that is not even in effect yet, ODH will invent any basis to deny Plaintiffs' variance requests and revoke their licenses.

51. In 2015, ODH began—without notice—to require abortion clinics to have at least four backup physicians in order to obtain a variance (the “Four Backup Doctor Requirement”). This new requirement was communicated through the denial of a PPSWO variance request that listed three backup physicians.

52. The Four Backup Doctor Requirement is found nowhere in the relevant statutes or regulations.

53. The hostile climate in Southwest Ohio makes it extremely difficult to find even one backup doctor to support a variance. There has been a national campaign to harass and shame the Dayton doctors who provide backup services to patients of WMD. An anti-abortion group plastered the doctors' faces on trucks next to a photograph purporting to depict an aborted fetus, drove the truck through each doctor's neighborhood, and parked the trucks at the hospital and outside of their respective homes and work sites. This and other harassment takes place solely to intimidate and discourage the doctors from serving as backup physicians for WMD.

54. Finding four backup physicians to support a variance has been even more difficult, and at times, impossible.

55. After a years-long battle to secure a license, Plaintiffs both had ASF licenses by the start of 2020. From March 25, 2020 through July 1, 2021, ODH suspended all licensing action, including renewals and revocations of ASF licenses, due to the COVID-19 health emergency.

56. When licensing action resumed, so too did ODH's practice of inventing arbitrary, unnecessary and improper requirements to deny variances, and therefore licenses, to abortion clinics.

57. ODH began, informally and without notice to Plaintiffs, adding new requirements for acquiring a variance that were medically unnecessary and lacking in any statutory basis. In addition to the Four Backup Doctor Requirement, ODH arbitrarily decided that all four backup doctors must be OBGYNs and have staff voting privileges at the hospital at which they have admitting privileges.

58. Plaintiffs had no notice of these requirements prior to August 2021. These requirements are found nowhere in the relevant statutes or regulations.

59. While ODH granted PPSWO's variance request on August 30, 2021, ODH communicated these new requirements in an August 23, 2021 letter denying WMD's September 14, 2020 variance request, which rejected two of the four backup doctors WMD listed in support of its request. One of the rejected physicians—a general surgeon—had been part of the 2019 variance request that ODH granted, but in September 2020, the Director rejected that doctor on the basis that she was not an OBGYN. The Director rejected the other physician on the ground that, although he had admitting privileges at a local hospital, he did not have staff *voting* privileges.¹¹ The denial did not explain how these two new requirements would enhance patient care or safety.

¹¹ The denial letter stated that the doctor was rejected because he had “affiliate status,” rather than “active status” admitting privileges. The only difference between the two is that a physician with active status privileges can vote on matters affecting the medical staff and physicians with affiliate status admitting privileges cannot.

60. In November of 2021, ODH proposed to revoke and not to renew WMD's ASF license because of the denial of its variance that was based solely on noncompliance with these two new arbitrary requirements.

D. SB 157

61. SB 157 adds yet another layer to this arbitrary, unnecessary, and complicated enforcement scheme.

62. SB 157 prohibits physicians who are employed by or compensated pursuant to a contract with, and provide instruction or consultation to, a medical school associated with a state university or college and those who teach or provide instruction, directly or indirectly, at medical school affiliated with a state university or college from serving as a backup doctor in support of a variance. Under SB 157, in addition to meeting all of the statutory requirements for a backup physician under R.C. 3702.304, a physician must also sign a statement attesting that they do not engage in any activities that would prohibit them from serving as backup doctors for clinics.

63. If a physician enters into a backup physician agreement with an abortion clinic while associated with a hospital or practice affiliated with a state university or college, the Director shall rescind the abortion clinic's variance.

64. SB 157 was signed into law on December 22, 2021 and is scheduled to go into effect 90 days later on March 23, 2022.

65. By SB 157's terms, clinics that have been granted a variance from the WTA requirement have 90 days from the effective date, until June 21, 2022, to submit the required physician attestations. If the Director determines that a clinic has failed to demonstrate compliance by June 21, the Director shall rescind that clinic's variance.

E. ODH's Premature Enforcement of SB 157

66. Despite acknowledging in its letter to WMD that SB 157 is not yet in effect,¹² ODH has already begun enforcing SB 157.

67. In support of its November 2021 license application, WMD submitted a variance request to ODH on November 30, 2021. This request met all of ODH's requirements, including the arbitrary, unnecessary and improper new requirements that clinics have four backup physicians who are all OBGYNs with voting privileges at the hospitals where they have admitting privileges.

68. On January 28, 2022, ODH informed WMD that its November 30, 2021 variance request was denied. The sole reason listed for the denial was "the four backup physicians' clear relationship with Wright State Physicians and the clear public policy directives contained within Sub. S.B. 157[.]" Ex. B. ODH followed up with a letter on January 31, 2022, proposing to revoke and not renew WMD's license. The letter is attached hereto as Exhibit C.

69. The Ohio legislature had not even passed SB 157 when WMD submitted its variance request on November 30, 2021.

70. SB 157 was not in effect on January 28, 2022, when the Defendants applied the law to deny WMD's variance request or on January 31, 2022, when Defendants proposed to revoke and not to renew WMD's license.

71. SB 157 will not be in effect on March 3, 2022, when ODH intends to revoke WMD's license for noncompliance with SB 157.

¹² ODH's letter states that SB 157 goes into effect March 22, 2022, but it appears to be one day off. According to the Ohio State Legislature's website, SB 157 goes into effect March 23, 2022. See Ohio Legislature GA 134, Senate Bill 157, available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-157> (accessed Feb. 24, 2022).

72. ODH's enforcement of SB 157 before its effective date is clearly unlawful. Because noncompliance with SB 157 is the sole reason for denying WMD's November 30, 2021 variance request, WMD should rightly have a variance now. Thus, consistent with the terms of SB 157, WMD should have until June 21, 2022, 90 days after SB 157's effective date, to comply with SB 157, and it is working to comply with it.

73. Similarly, ODH has taken steps indicating it may soon enforce SB 157 against PPSWO as well. Because PPSWO currently holds a variance that remains in effect, pursuant to the language of SB 157 itself, PPSWO has until June 21, 2022 to comply with the substantive provisions of SB 157 and to submit the required documentation to ODH. Nonetheless, ODH sent a letter to PPSWO on February 23, 2022 stating that, while ODH recognized that SB 157 does not even go into effect until late March, PPSWO would be required to submit by Sunday, February 27, 2022 attestations that its back-up physicians meet SB 157's requirements. ODH appears to be unilaterally and without basis moving the compliance deadline up approximately four months.

74. PPSWO intends to respond to ODH to convey its understanding that, because PPSWO currently holds a variance from the WTA requirement, it has until June 21, 2022, to comply with SB 157 and to submit documentation of that compliance with ODH. In the meantime, PPSWO is already working to attempt to comply with SB 157.

F. SB 157 Irreparably Harms Plaintiffs and Their Patients

75. Unless this Court blocks enforcement of SB 157 altogether, Defendants will deny any variance request that includes backup doctors who do not meet the arbitrary requirements of SB 157, and will revoke Plaintiffs' ASF licenses. Without ASF licenses, Plaintiffs will be unable to provide procedural abortions.

76. In the absence of Defendants' premature enforcement of SB 157, WMD would have had until June 21, 2022—90 days after SB 157's effective date—to come into compliance with its requirements. Instead, because of ODH's arbitrary decision, WMD faces imminent risk of losing its ASF license. While PPSWO has been granted a variance and therefore should have until June 21, 2022 to comply with SB 157, PPSWO is at risk of ODH taking steps to prematurely enforce SB 157, rescind its current variance and subsequently revoke its ASF license.

77. As a result of ODH's enforcement of SB 157, including its enforcement prior to the law's effective date and without notice, Plaintiffs will be deprived of their substantive due process and procedural due process rights. Many Ohioans, including Plaintiffs' patients, will be deprived of their constitutional right to abortion.

78. Being forced to stop providing procedural abortions will irreparably harm Plaintiffs, their physicians, and other staff. Although Plaintiffs could continue to provide medication abortion, because the majority of the care that Plaintiffs provide is procedural abortion, Plaintiffs would need to terminate, furlough, or otherwise reduce staff, who as a result would likely seek employment elsewhere. PPSWO would need to shut down its ASF, and WMD may permanently close its clinic. Dr. Haskell, WMD's owner, would find that he is forced to close a business that he spent nearly his entire career building and running. Even if Plaintiffs were eventually able to resume providing procedural abortion, such a reduction in their workforce would make it difficult to return to normal operations, and there would be ongoing patient confusion about the availability of services.

79. Even if Plaintiffs are not forced to close as a result of being unable to provide procedural abortion, they cannot repair the damage to their reputation in the community as

trusted providers of reproductive health care, including procedural abortions. Having to abruptly stop providing this care will be extremely damaging to Plaintiffs.

80. ODH's enforcement of SB 157 against Plaintiffs will also have a devastating impact on Dayton- and Cincinnati-area patients who will be left without any access to procedural abortion services.

81. Medication abortion is available in Ohio but must be accessed in the first ten weeks of pregnancy. If Plaintiffs could no longer provide procedural abortion, abortion after ten weeks of pregnancy would be wholly unavailable in Southwest Ohio.

82. If Plaintiffs are forced to stop providing procedural abortion, any person who would have sought a procedural abortion at these clinics, including Plaintiffs' patients with scheduled procedures, will be forced to seek procedural abortion elsewhere, and to travel hundreds of miles in order to access that care.

83. Because of Ohio's law requiring that patients make two trips to an abortion clinic prior to receiving an abortion, any person who would have sought a procedural abortion at Plaintiffs' clinics will be required to travel to another city twice, or secure lodging for an extended stay there, in order to receive abortion care. This additional travel and/or additional expenses will dramatically increase the costs of seeking abortion care, delaying and even preventing many people from accessing abortion.

84. If WMD loses its ASF license and is unable to provide procedural abortions while PPSWO continues to hold a license, PPSWO will not be able to absorb all of the patients who would otherwise have obtained care at WMD without patients facing significant delays in obtaining the care they need.

85. Reducing or eliminating access to procedural abortion in Southwest Ohio will have a disproportionate impact on the lives of Black women, other people of color, and people who are poor or have low incomes. In 2021, Black people made up only 13.1 percent of Ohio’s population but more than 48 percent of people who obtained abortions in Ohio.¹³ Recent ODH statistics show that Black women are 2.5 times more likely than white women to die from pregnancy-related causes.¹⁴

86. Black women are more likely to face structural barriers to obtaining quality health care throughout their lives. These barriers, including racial discrimination, economic inequality, lack of access to comprehensive health education, and other social determinants of health, severely limit Black women’s access to health care in general and exacerbate difficulties in accessing reproductive health care, including abortion.¹⁵

CLAIMS FOR RELIEF

COUNT I—Substantive Due Process—Plaintiffs’ Patients

87. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

¹³ ODH 2020 Report at 3; U.S. Census Bureau, *Quick Facts: Ohio*, available at <https://www.census.gov/quickfacts/fact/table/OH/>.

¹⁴ Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008–2016*, 19 (2019), available at <https://odh.ohio.gov/know-our-programs/pregnancy-associated-mortality-review/Reports/Pregnancy-Associated-Deaths-Ohio-2008-2016>.

¹⁵ See, e.g., Center for Reproductive Rights, National Latina Institute for Reproductive Health & SisterSong Women of Color Reproductive Justice Collective, *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care* (2014), available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17560_E.pdf.

88. By significantly burdening, delaying, or preventing entirely, patients from accessing procedural abortions, SB 157 infringes on Plaintiffs' patients' right to previability abortion, privacy, and bodily autonomy guaranteed by the Ohio Constitution, without adequate justification, in violation of Ohioans' rights under Article I, Sections 1, 16, and 20 of the Ohio Constitution.

89. If SB 157 is enforced, Plaintiffs' patients will be subject to irreparable harm for which no adequate remedy at law exists because they will be prevented entirely from obtaining an abortion in Ohio or be greatly delayed or otherwise burdened in doing so, resulting in significant constitutional, medical, emotional, financial, and other harm.

COUNT II—Substantive Due Process—Plaintiffs

90. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

91. By depriving Plaintiffs of their licenses, the continued operation of the businesses, and their ability to provide constitutionally protected care to patients, without sufficient justification, SB 157 violates the substantive due process rights of Plaintiffs to continue to operate their businesses, under Article I, Sections 1, 16, and 20 of the Ohio Constitution.

92. If SB 157 is enforced, Plaintiffs will be subject to the irreparable harm for which no adequate remedy at law exists because they will be forced to cease operation of their ASF businesses resulting in patients being significantly burdened, delayed, or prevented entirely from accessing procedural abortions and resulting in constitutional, business and other harms to Plaintiffs.

COUNT III—Substantive Due Process—Premature Enforcement—Plaintiffs

93. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

94. Defendants' arbitrary enforcement of SB 157 prior its effective date violates Plaintiffs' substantive due process rights to continue to operate their businesses, under Article I, Sections 1, 16, and 20 of the Ohio Constitution.

95. If Defendants are not enjoined from enforcing SB 157 before it has become effective, Plaintiffs will be subject to irreparable harm for which no adequate remedy at law exists by being deprived of their liberty and property interests without due process, thereby causing them to suffer significant constitutional and other harm, and Plaintiffs' patients will be denied constitutionally protected care.

COUNT IV— Procedural Due Process—Plaintiffs

96. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

97. By serving as the sole basis for the variance denial which cannot be appealed and which can serve as the sole basis for depriving Plaintiffs of their ASF licenses and the continued operation of their businesses—thereby preventing Plaintiffs from providing procedural abortion and pursuing their professions—SB 157 violates Plaintiffs' right to procedural due process under Article I, Sections 1 and 16 of the Ohio Constitution.

98. If Defendants are not enjoined from enforcing SB 157, Plaintiffs will be subject to irreparable harm for which no adequate remedy at law exists by being deprived of their liberty and property interests without due process, thereby causing them to suffer significant constitutional and other harm.

COUNT V—Procedural Due Process—Premature Enforcement—Plaintiffs

99. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

100. Defendants' enforcement of SB 157 prior to its effective date violates Plaintiffs' right to procedural due process under Article I, Sections 1 and 16 of the Ohio Constitution.

101. If Defendants are not enjoined from enforcing SB 157 before it has become effective, Plaintiffs will be subject to irreparable harm for which no adequate remedy at law exists by being deprived of their liberty and property interests without due process, thereby causing it to suffer significant constitutional and other harm.

COUNT VI—Equal Protection—Plaintiffs

102. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

103. By arbitrarily and irrationally singling out Plaintiffs because they are abortion providers, and treating them differently from other ASFs without adequate justification, SB 157 violates Plaintiffs' right to equal protection under Article I, Section 2 of the Ohio Constitution.

104. If Defendants are not enjoined from enforcing SB 157, Plaintiffs will be subject to irreparable harm for which no adequate remedy at law exists by being deprived of their liberty and property interests, causing them to suffer significant constitutional and other harm.

COUNT VII—Declaratory Judgment

105. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 86.

106. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. SB 157 will impose significant

harm on Plaintiffs and their patients, as set forth herein. In addition, Plaintiffs and their patients will be unconstitutionally deprived of their rights to due process and/or equal protection.

107. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

108. Pursuant to R.C. 2721.01, *et seq.*, Plaintiffs request that the Court find and issue a declaration that:

a. SB 157 violates Article I, Sections 1, 16 and 20 of the Ohio Constitution because it will deprive Plaintiffs of their ability to continue to operate their businesses and pursue their professions without due process of law.

b. SB 157 violates Article I, Sections 1, 16, and 20 of the Ohio Constitution because it will have a devastating effect on Plaintiffs' patients' ability to access procedural abortions in Ohio in violation of their due process rights.

c. SB 157 violates Article I, Section 2 of the Ohio Constitution because it arbitrarily and irrationally singles out procedural abortion providers and treats them differently from other ASFs in violation of their rights to equal protection.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To immediately issue a temporary restraining order and preliminary injunction, restraining Defendants, their employees, agents, and successors in office from enforcing SB 157 until 90 days after the effective date, as the statute requires, and further injunctive relief including, but not limited to, a permanent injunction restraining Defendants, their employees, agents, and successors in office from enforcing SB 157.

B. To enter a judgment declaring that SB 157 violates the Ohio Constitution and other Ohio law.

C. To award Plaintiffs their fees and costs.

D. To grant such other and further relief as the Court deems just and proper.

Dated: February 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 25, 2022 a copy of the foregoing Complaint for Declaratory and Injunctive Relief has been filed with the Hamilton County Clerk of Courts. I further certify that a copy of the foregoing was served via electronic mail upon counsel for the following parties:

BRUCE VANDERHOFF

Director, ODH
Email: ara.mekhjjan@ohioago.gov
Email: crystal.richie@ohioago.gov

OHIO DEPARTMENT OF HEALTH

Email: ara.mekhjjan@ohioago.gov
Email: crystal.richie@ohioago.gov

I further certify that counsel for Plaintiffs has filed a Written Request for Service form requesting that a copy of the foregoing to be served via express mail service upon the following parties:

BRUCE VANDERHOFF

Director, ODH
246 N. High Street
Columbus, OH 43215

OHIO DEPARTMENT OF HEALTH

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/s/ Elizabeth Watson
Elizabeth Watson* PHV #25769
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EXHIBIT A

AN ACT

To amend sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3702.305 (3702.3011); and to enact new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code to require reports to be made after a child is born alive following an abortion or attempted abortion, to establish certain civil or criminal penalties for failing to preserve the health or life of such a child, and to make changes regarding variances from written transfer agreements.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22 be amended; section 3702.305 (3702.3011) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code be enacted to read as follows:

Sec. 2919.13. (A) No person shall purposely take the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman.

(B) No person who performs an abortion shall purposely fail to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the health or life of a child who is alive when removed from the uterus of the pregnant woman.

(C)(1) Whoever violates division (A) of this section is guilty of abortion manslaughter, a felony of the first degree.

(2) Whoever violates division (B) of this section and the child dies as a result of the person's failure to take the measures described in that division is guilty of abortion manslaughter, a felony of the first degree.

(3) Whoever violates division (B) of this section and the child survives notwithstanding the person's failure to take the measures described in that division is guilty of failure to render medical care to an infant born alive, a felony of the first degree.

(D)(1) A woman on whom an abortion is performed or attempted may file a civil action for the wrongful death of the woman's child against a person who violates division (A) of this section.

(2) A woman on whom an abortion is performed or attempted may file a civil action for injury, death, or loss to person or property against a person who violates division (B) of this section.

(3) A woman who prevails in an action filed under division (D)(1) or (2) of this section shall receive both of the following from the person who committed the act:

(a) Compensatory and exemplary damages in an amount determined by the trier of fact;

(b) Court costs and reasonable attorney's fees.

Sec. 3701.79. (A) As used in this section and in sections 3701.791 and 3701.792 of the

Revised Code:

- (1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.
 - (2) "Abortion report" means a form completed pursuant to division (C) of this section.
 - (3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.
 - (4) "Department" means the department of health.
 - (5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.
 - (6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.
 - (7) "Postabortion care" means care given after the uterus has been evacuated by abortion.
- (B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.
- (C) The attending physician shall complete an individual abortion report for the abortion of each zygote, blastocyte, embryo, or fetus the physician performs. The report shall be confidential and shall not contain the woman's name. The report shall include, but is not limited to, all of the following, insofar as the patient makes the data available that is not within the physician's knowledge:
- (1) Patient number;
 - (2) The name and address of the facility in which the abortion was performed, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;
 - (3) The date of the abortion;
 - (4) If a surgical abortion, the method of final disposition of the fetal remains under Chapter 3726. of the Revised Code;
 - (5) All of the following regarding the woman on whom the abortion was performed:
 - (a) Zip code of residence;
 - (b) Age;
 - (c) Race;
 - (d) Marital status;
 - (e) Number of previous pregnancies;
 - (f) Years of education;
 - (g) Number of living children;
 - (h) Number of zygotes, blastocytes, embryos, or fetuses previously aborted;
 - (i) Date of last induced abortion;
 - (j) Date of last live birth;
 - (k) Method of contraception at the time of conception;
 - (l) Date of the first day of the last menstrual period;

- (m) Medical condition at the time of the abortion;
 - (n) Rh-type;
 - (o) The number of weeks of gestation at the time of the abortion.
 - (6) The type of abortion procedure performed;
 - (7) Complications by type;
 - (8) Written acknowledgment by the attending physician that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the following:
 - (a) A test result indicating Down syndrome in an unborn child;
 - (b) A prenatal diagnosis of Down syndrome in an unborn child;
 - (c) Any other reason to believe that an unborn child has Down syndrome.
 - (9) Type of procedure performed after the abortion;
 - (10) Type of family planning recommended;
 - (11) Type of additional counseling given;
 - (12) Signature of attending physician.
- (D) The physician who completed the abortion report under division (C) of this section shall submit the abortion report to the department within fifteen days after the woman is discharged.
- (E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.
- (F) A copy of the abortion report shall be made part of the medical record of the patient of the facility in which the abortion was performed.
- (G) Each hospital shall file monthly and annual reports listing the total number of women who have undergone a post-twelve-week-gestation abortion and received postabortion care. The annual report shall be filed following the conclusion of the state's fiscal year. Each report shall be filed within thirty days after the end of the applicable reporting period.
- (H) Each case in which a physician treats a post abortion complication shall be reported on a postabortion complication form. The report shall be made upon a form prescribed by the department, shall be signed by the attending physician, and shall be confidential.
- (I)(1) Not later than the first day of October of each year, the department shall issue an annual report of the abortion data reported to the department for the previous calendar year as required by this section. The annual report shall include at least the following information:
- (a) The total number of zygotes, blastocytes, embryos, or fetuses that were aborted;
 - (b) The number of abortions performed on Ohio and out-of-state residents;
 - (c) The number of abortions performed, sorted by each of the following:
 - (i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;
 - (ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;
 - (iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;
 - (iv) The marital status of the woman on whom the abortion was performed;

(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;

(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;

(vii) The county in which the abortion was performed;

(viii) The type of abortion procedure performed;

(ix) The number of zygotes, blastocytes, embryos, or fetuses previously aborted by the woman on whom the abortion was performed;

(x) The type of facility in which the abortion was performed;

(xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(2) The report also shall indicate the number and type of the abortion complications reported to the department either on the abortion report required under division (C) of this section or the postabortion complication report required under division (H) of this section.

(3) In addition to the annual report required under division (I)(1) of this section, the department shall make available, on request, the number of abortions performed by zip code of residence.

(J) The director of health shall implement this section and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of its requirements. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Sec. 3701.792. (A) The director of health shall develop a child survival form to be submitted to the department of health in accordance with division (B) of this section each time a child is born alive after an abortion or attempted abortion. In developing the form, the director may consult with obstetricians, maternal-fetal specialists, or any other professionals the director considers appropriate. The form shall include areas for all of the following to be provided:

(1) The patient number for the woman on whom the abortion was performed or attempted;

(2) The name, primary business address, and signature of the attending physician described in section 3701.79 of the Revised Code who performed or attempted to perform the abortion;

(3) The name and address of the facility in which the abortion was performed or attempted, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;

(4) The date the abortion was performed or attempted;

(5) The type of abortion procedure that was performed or attempted;

(6) The gestational age of the child who was born;

(7) Complications, by type, for both the woman and child;

(8) Any other information the director considers appropriate.

(B) The attending physician who performed or attempted an abortion in which a child was born alive after that event shall complete a child survival form developed under division (A) of this section. The physician shall submit the completed form to the department of health not later than fifteen days after the woman is discharged from the facility.

A completed child survival form is confidential and not a public record under section 149.43

of the Revised Code.

(C) A copy of the child survival form completed under this section shall be made part of the medical record maintained for the woman by the facility in which the abortion was performed or attempted.

(D) Each facility in which an abortion was performed or attempted and in which a child was born alive after that event shall submit monthly and annual reports to the department of health listing the total number of women on whom an abortion was performed or attempted at the facility and in which a child was born alive after that event, delineated by the type of abortion procedure that was performed or attempted. The annual report shall be submitted following the conclusion of the state's fiscal year. Each monthly or annual report shall be submitted not later than thirty days after the end of the applicable reporting period.

(E) Not later than the first day of October of each year, the department shall issue an annual report of the data submitted to the department for the previous calendar year as required by this section. At a minimum, the annual report shall specify the number of women on whom an abortion was performed or attempted and in which a child was born alive after that event, delineated by the type of abortion procedure that was performed or attempted and the facility in which the abortion was performed or attempted. The report shall not contain any information that would permit the identity of a woman on whom an abortion was performed or attempted or any child to be ascertained.

(F) No person shall purposely fail to comply with the child survival form submission requirement described in division (B) of this section or the copy maintenance requirement described in division (C) of this section.

(G) No person shall purposely fail to comply with the monthly or annual report submission requirements described in division (D) of this section.

(H) A woman on whom an abortion is performed or attempted may file a civil action against a person who violates division (F) or (G) or this section. A woman who prevails in an action filed under this division shall receive both of the following from the person who committed the violation:

- (1) Damages in the amount of ten thousand dollars;
- (2) Court costs and reasonable attorney's fees.

Sec. 3701.99. (A) Whoever violates division (C) of section 3701.23, division (C) of section 3701.232, division (C) of section 3701.24, division (D)(2) of section 3701.262, or sections 3701.46 to 3701.55 of the Revised Code is guilty of a minor misdemeanor on a first offense; on each subsequent offense, the person is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section 3701.82 of the Revised Code is guilty of a misdemeanor of the first degree.

(C) Whoever violates section 3701.352 or 3701.81 of the Revised Code is guilty of a misdemeanor of the second degree.

(D) Whoever violates division (F) or (G) of section 3701.792 of the Revised Code is guilty of a felony of the third degree.

Sec. 3702.305. (A) In addition to the attachments specified in division (B)(3)(a) of section 3702.304 of the Revised Code, a variance application must contain or include as attachments, for each consulting physician described in division (B)(2) of that section, a signed statement in which the physician attests to both of the following:

(1) The physician does not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college as defined in section 3345.12 of the Revised Code, any state hospital, or other public institution.

(2) The physician is not employed by or compensated pursuant to a contract with, and does not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college as defined in section 3345.12 of the Revised Code, any state hospital, or other public institution.

(B) No physician shall engage in any of the activities described in division (A)(1) or (2) of this section while serving as a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code.

(C) If, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code has violated the prohibition in division (B) of this section, the director shall rescind the variance.

Sec. 3702.3010. A local hospital shall not be further than thirty miles from an ambulatory surgical facility:

~~(A) With~~ with which the local hospital has a written transfer agreement under section 3702.303 of the Revised Code; ~~or,~~

~~(B) Whose consulting physicians under a variance granted under section 3702.304 of the Revised Code have admitting privileges at the local hospital.~~

Sec. ~~3702.305~~ 3702.3011. The director of health may impose conditions on any variance the director has granted under section 3702.304 of the Revised Code. The director may, at any time, rescind the variance for any reason, including a determination by the director that the facility is failing to meet one or more of the conditions or no longer adequately protects public health and safety. The director's decision to rescind a variance is final.

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to grant a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate if the individual applying for or holding the license or certificate is found by the board to have committed fraud during the administration of the examination for a license or certificate to practice or to have committed fraud, misrepresentation, or deception in applying for, renewing, or securing any license or certificate to practice or certificate to recommend issued by the board.

(B) Except as provided in division (P) of this section, the board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons:

(1) Permitting one's name or one's license or certificate to practice to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to maintain minimal standards applicable to the selection or administration of

drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Except as provided in section 4731.97 of the Revised Code, selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports under sections 307.621 to 307.629 of the Revised Code to a child fatality review board; does not include providing any information, documents, or reports under sections 307.631 to 307.6410 of the Revised Code to a drug overdose fatality review committee, a suicide fatality review committee, or hybrid drug overdose fatality and suicide fatality review committee; does not include providing any information, documents, or reports to the director of health pursuant to guidelines established under section 3701.70 of the Revised Code; does not include written notice to a mental health professional under section 4731.62 of the Revised Code; and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by section 2305.33 or 4731.62 of the Revised Code upon a physician who makes a report in accordance with section 2305.33 or notifies a mental health professional in accordance with section 4731.62 of the Revised Code. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any license or certificate to practice issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for

intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Violation of the conditions of limitation placed by the board upon a license or certificate to practice;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose license or certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and

final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's license or certificate. For the purpose of this division, any individual who applies for or receives a license or certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except as provided in division (F)(1)(b) of section 4731.282 of the Revised Code or when civil penalties are imposed under section 4731.225 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of section 3701.79 of the Revised Code or of any abortion rule adopted by the director of health pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or

suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing an application for or holding a license or certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for licensure or certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's license or certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure or certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a license or certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's license or certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for their determination.

The board may reinstate a license or certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board

order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;

(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's medical record;

(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;

~~(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;~~

(33) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(35) Failure to supervise an acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for providing that supervision;

(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

(37) Assisting suicide, as defined in section 3795.01 of the Revised Code;

(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;

(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;

(40) Performing or inducing an abortion at an office or facility with knowledge that the office

or facility fails to post the notice required under section 3701.791 of the Revised Code;

(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;

(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;

(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(44) Failure to comply with the requirements of section 2919.171, 2919.202, or 2919.203 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 or 2919.202 of the Revised Code;

(45) Practicing at a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the person operating the facility has obtained and maintains the license with the classification;

(46) Owning a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the facility is licensed with the classification;

(47) Failure to comply with any of the requirements regarding making or maintaining medical records or documents described in division (A) of section 2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code;

(48) Failure to comply with the requirements in section 3719.061 of the Revised Code before issuing for a minor a prescription for an opioid analgesic, as defined in section 3719.01 of the Revised Code;

(49) Failure to comply with the requirements of section 4731.30 of the Revised Code or rules adopted under section 4731.301 of the Revised Code when recommending treatment with medical marijuana;

(50) Practicing at a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless the person operating that place has obtained and maintains the license with the classification;

(51) Owning a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless that place is licensed with the classification;

(52) A pattern of continuous or repeated violations of division (E)(2) or (3) of section 3963.02 of the Revised Code;

(53) Failure to fulfill the responsibilities of a collaboration agreement entered into with an athletic trainer as described in section 4755.621 of the Revised Code;

(54) Failure to take the steps specified in section 4731.911 of the Revised Code following an abortion or attempted abortion in an ambulatory surgical facility or other location that is not a hospital when a child is born alive.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall

be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license or certificate to practice or certificate to recommend. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of that section shall provide for a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be

supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, or in conducting an inspection under division (E) of section 4731.054 of the Revised Code, the board may question witnesses, conduct interviews, administer oaths, order the taking of depositions, inspect and copy any books, accounts, papers, records, or documents, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board.

(a) Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

(b) On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

(c) A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee or agent designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence, usual place of business, or address on file with the board. When serving a subpoena to an applicant for or the holder of a license or certificate issued under this chapter, service of the subpoena may be made by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery. If the person being served refuses to accept the subpoena or is not located, service may be made to an attorney who notifies the board that the attorney is representing the person.

(d) A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for under section 119.094 of the Revised Code.

(4) All hearings, investigations, and inspections of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(5) A report required to be submitted to the board under this chapter, a complaint, or information received by the board pursuant to an investigation or pursuant to an inspection under division (E) of section 4731.054 of the Revised Code is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations or inspections and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants

unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver of that nature is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an investigation or inspection, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (a) The case number assigned to the complaint or alleged violation;
- (b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license or certificate to practice or certificate to recommend without a prior hearing:

- (1) That there is clear and convincing evidence that an individual has violated division (B) of this section;
- (2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license or certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in

accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within seventy-five days after completion of its hearing. A failure to issue the order within seventy-five days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's license or certificate to practice. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

(I) The license or certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date of the individual's second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code. In addition, the license or certificate to practice or certificate to recommend issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after suspension shall be considered practicing without a license or certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license or certificate is automatically suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall do whichever of the following is applicable:

(1) If the automatic suspension under this division is for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 or 2919.124 of the Revised Code, the board shall enter an order suspending the individual's license or certificate to practice for a period

of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's license or certificate to practice.

(2) In all circumstances in which division (1)(1) of this section does not apply, enter a final order permanently revoking the individual's license or certificate to practice.

(J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's license or certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a license or certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a license or certificate issued under this chapter shall not be effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license or certificate to practice. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license or certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a license or certificate made under the provisions of this chapter may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a license or certificate to practice in accordance with this chapter or a certificate to recommend in accordance with rules adopted under section 4731.301 of the Revised Code shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

(4) At the request of the board, a license or certificate holder shall immediately surrender to the board a license or certificate that the board has suspended, revoked, or permanently revoked.

(N) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan

purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(O) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

(P) The board shall not refuse to issue a license to an applicant because of a conviction, plea of guilty, judicial finding of guilt, judicial finding of eligibility for intervention in lieu of conviction, or the commission of an act that constitutes a criminal offense, unless the refusal is in accordance with section 9.79 of the Revised Code.

Sec. 4731.911. (A) As used in this section:

(1) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.

(2) "Hospital" means a hospital registered with the department of health under section 3701.07 of the Revised Code.

(B) A physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive shall immediately take the following steps upon the child's birth:

(1) Provide post-birth care to the newborn in accordance with prevailing and acceptable standards of care;

(2) Call for assistance from an emergency medical services provider;

(3) Arrange for the transfer of the newborn to a hospital.

SECTION 2. That existing sections 2919.13, 3701.79, 3701.99, 3702.305, 3702.3010, and

4731.22 of the Revised Code are hereby repealed.

SECTION 3. Each ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code shall, within ninety days of the effective date of section 3702.305 of the Revised Code as enacted by this act, submit to the Director of Health, in the form and manner specified by the Director, a signed statement in which the physician attests to compliance with the limitations established by section 3702.305 of the Revised Code, as enacted by this act. If the Director determines that a facility has failed to demonstrate compliance, the Director shall rescind the variance.

Robert R. Lipp

Speaker _____ of the House of Representatives.

Matthew C. Huffman

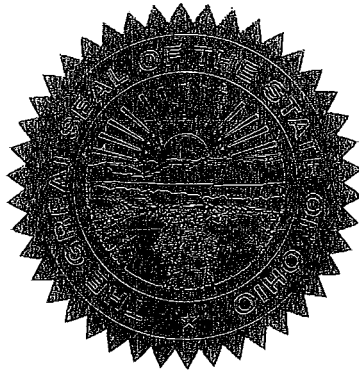
President _____ of the Senate.

Passed December 15, 2021

Approved DECEMBER 22, 2021

Mike DeWine

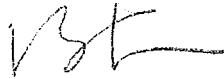
Governor.



Sub. S. B. No. 157

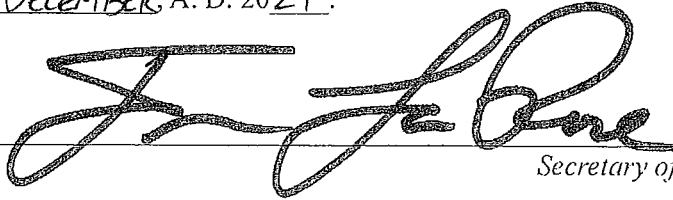
134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.



Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 22ND
day of DECEMBER, A. D. 2021.



Secretary of State.

File No. 61

Effective Date MARCH 23, 2022

(134th General Assembly)
(Substitute Senate Bill Number 157)

AN ACT

To amend sections 2919.13, 3701.79, 3701.99, 3702.3010, and 4731.22; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3702.305 (3702.3011); and to enact new section 3702.305 and sections 3701.792 and 4731.911 of the Revised Code to require reports to be made after a child is born alive following an abortion or attempted abortion, to establish certain civil or criminal penalties for failing to preserve the health or life of such a child, and to make changes regarding variances from written transfer agreements.

Introduced by

Senators Johnson, Huffman, S.
Cosponsors: Senators Cirino, Brenner, Lang, Hottinger, Antani, Romanchuk, Hoagland, Wilson, O'Brien, Schaffer, Roegner, Blessing, Gavarone, Hackett, McColley, Peterson, Reineke
Representatives Abrams, Click, John, Schmidt, Baldrige, Bird, Carfagna, Carruthers, Creech, Cross, Cutrona, Edwards, Ferguson, Fraizer, Ghanbari, Ginter, Grendell, Gross, Hall, Hillyer, Hoops, Johnson, Jones, Jordan, Kick, Koehler, Lippus, Loychik, Manchester, McClain, Merrin, Miller, K., Plummer, Powell, Richardson, Riedel, Roemer, Stein, Stephens, Stewart, Stoltzfus, Swearingen, White, Wiggam, Wilkin, Young, T., Speaker Cupp

Passed by the Senate,

October 27, 2021

Passed by the House of Representatives,

December 8, 2021

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

22nd day of DECEMBER, A. D. 2021


Secretary of State.

*CONCURRED IN HOUSE
AMENDMENTS ON
DECEMBER 15, 2021*

EXHIBIT B



Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Bruce Vanderhoff, MD, MBA, Director

January 28, 2022

Via e-mail and regular U.S. mail

Jessie Hill

Associate Dean for Research and Faculty Development

Judge Ben C. Green Professor of Law

Case Western Reserve University School of Law

11075 East Blvd.

Cleveland, Ohio 44106

Re: Women's Med Dayton
2021 License Renewal Variance Request

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19, Sub. S.B. 157 (134th General Assembly), and after careful review and consideration, I am denying Women's Med Dayton's November 30, 2021 request for a variance for its 2021 license renewal.

As you know, the written transfer agreement (WTA) requirements in R.C. 3702.303 and O.A.C. 3701-83-19 are designed to protect patient health and safety. Variances from these requirements are for limited circumstances in which the facility can still achieve the purposes of a WTA, where compliance with the WTA requirement would impose an undue hardship, and where the proposed alternative method of compliance meets or exceeds the protections afforded by the statute and rule. R.C. 3702.304. Four of the backup physicians submitted, Dr. Sheela Barhan, Dr. Janice Duke, Dr. David Dhanraj, and Dr. Reisinger-Kindle are credentialed as obstetrician/gynecologists with full active status admitting privileges at Miami Valley Hospital.

In addition, based on information contained in the November 30th application and publicly available information, all four proposed back-up physicians are employed by or compensated pursuant to a contract with, or provide instruction and consultation to Wright State University Boonshoft School of Medicine via their employment by and/or affiliation with Wright State Physicians. Wright State Physicians is composed of more than 100 physicians affiliated with the Wright State University Boonshoft School of Medicine. (<https://wrightstatephysicians.org/find-a-doctor/>) The Wright State University Boonshoft School of Medicine and Wright State Physicians are partners in providing training to medical students and delivering health care to the region. (<https://wrightstatephysicians.org/about/>)

According to the Wright State Physicians website (<https://wrightstatephysicians.org/ob-gyn/physicians/>):

- Sheela M. Barhan, M.D. is Associate Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology

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- Janice M. Duke, M.D. is Associate Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology
- David N. Dhanraj, M.D. is Chair and Assistant Professor, WSU Boonshoft School of Medicine Department of Obstetrics & Gynecology
- Keith Reisinger-Kindle, D.O. is Instructor/Faculty, WSU Boonshoft School of Medicine

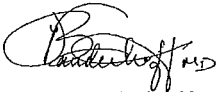
Sub. S.B. 157 (134th General Assembly) was signed by Governor DeWine on December 22, 2021. The bill, among other provisions, provides that backup physicians may not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. The bill further provides that backup physicians may not be employed by or compensated pursuant to a contract with, and may not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college. The bill specifically provides that if, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section 3702.303 of the Revised Code has violated the prohibition in division (B) of this section [teaching, providing instruction, being employed by, under contract or affiliated with a state university or college], the director shall rescind the variance. Sub. S.B. 157 becomes effective March 22, 2022.

Given the four backup physicians' clear relationship with Wright State Physicians and the clear public policy directives contained within Sub. S.B. 157, I am denying Women's Med Dayton's November 30, 2021 variance request.

Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14, the denial of Women's Med Dayton's applications for a variance shall be final and shall not be construed as creating any rights to a hearing under Chapter 119 of the Revised Code.

If you have any questions regarding this variance, please contact James Hodge, Bureau Chief, Bureau of Regulatory Operations, at 614-644-6220.

Sincerely,



Bruce Vanderhoff, MD, MBA
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations
Lance Himes, Interim General Counsel

EXHIBIT C



**Department
of Health**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Bruce Vanderhoff, MD, MBA, Director

January 31, 2022

Via e-mail and certified U.S. mail

Women's Med Dayton
Attn: Aerin Trick, Administrator
1401 E. Stroop Rd
Dayton Ohio 45429

Martin Haskell, MD
P.O. 43100
Cincinnati, OH 45243

Re: Women's Med Dayton
License Number: 1247AS
Case Number:
Proposed Denial and Revocation of License

Dear Ms. Trick and Dr. Haskell:

On August 30, 2021, I denied a variance for reasons related to Women's Med Dayton's health care facility license (ambulatory surgical facility), "Women's Med Dayton" Written Transfer Agreement, "WTA" requirements and Women's Med Dayton's use of Dr. Dhanraj as a backup physician and Dr. Dunn's credentials. By separate letter on the same date, I proposed to issue an Order revoking and refusing to renew the 2021 license. On September 20, 2021, Women's Med Dayton timely requested a hearing. On October 13, 2021, Women's Med Dayton submitted its license renewal application for November 5, 2021 - November 5, 2022. On November 12, 2021, I again denied a variance of the WTA requirements upon finding Dr. Dunn was not credentialed as an OB/GYN. On January 28, 2022, I denied Women's Med Dayton's November 30, 2021 request for a variance for its license renewal because the doctors in Women's Med Dayton's proposed variance are affiliated with Wright State and the public policy directives contained within Sub. S.B. 157 (134th General Assembly) precludes a backup from being affiliated with a state university or college.

In this communication, I hereby propose to issue an Order revoking and refusing to renew Women's Med Dayton's license in accordance with Revised Code (R.C.) Chapter 119 and R.C. 3702.32(D)(2) and Ohio Administrative Code (O.A.C.) 3701-83-05.1(C)(2) due to violations of R.C. 3702.303, 3702.304 and O.A.C. 3701-83-1(E). R.C. 3702.303(A) requires an ambulatory surgical facility have a written transfer agreement with a local hospital for the safe and immediate transfer of patients when medical care is needed beyond that which can be provided in the facility. O.A.C. 3701-83-1(E) requires an

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EXHIBIT H

ambulatory surgical facility have a written transfer agreement with a hospital for the transfer of patient in the event of medical complications, emergency situations, and for other needs as they arise.

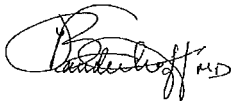
Specifically, Women's Med Dayton does not meet the requirements of R.C. 3702.303 because it does not have a written transfer agreement with "a local hospital that specifies an effective procedure for the safe and immediate transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ambulatory surgical facility is necessary, including when emergency situations occur, or medical complications arise." The inability to meet the requirements of R.C. 3702.303 is a result of the denial of the variance in the January 28, 2022 letter, because Women's Med Dayton's WTA physicians are associated with a state university. R.C. 3702.304, Sub. S.B. 157 (134th General Assembly). Additionally, Women's Med Dayton does not meet the requirements of OAC 3701-83-19(E) because it does not have a written transfer agreement "with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise."

If you wish to have a hearing, **you must request a hearing** before me or my duly authorized representative concerning my proposal to revoke, and refuse to renew the license to operate Women's Med Dayton. **Such a request must be made in writing and received within 30 days of receipt of this notice** and should be directed to Ohio Department of Health, Office of General Counsel 246 North High Street Columbus Ohio 43215. A request is considered timely if it is received by the Department of Health via facsimile at 614-564-2509, email to ODHlegal@odh.ohio.gov, hand-delivery or ordinary United States mail within 30 days of the date of receipt of this letter.

At any hearing, you may appear in person or be represented by your attorney, you may present evidence, and you may examine witnesses appearing for and against you. You also may present your position, contentions, and arguments in writing. If you are a corporation or LLC, you must be represented at the hearing by an attorney licensed to practice in the state of Ohio. Pursuant to R.C. 119.07 you may remain in operation while the administrative proceedings take place. Please be advised that if you do not request a hearing within thirty days of receipt of this letter, I may revoke and/or refuse to renew Women's Med Dayton's health care facility license.

If you have questions about this notice, please contact the Bureau of Regulatory Operations at 614-644-6220.

Sincerely,



Bruce Vanderhoff, M.D., MBA
Director of Health

Enclosures: August 30, 2021 ODH Variance Denial Notice, August 30, 2021 ODH License Denial and Proposed Revocation, November 12, 2021 ODH Variance Renewal Resubmission Denial Notice, January 28, 2022 ODH Variance Renewal Resubmission Denial Notice

C: Jessie Hill

CMRR: 7017 3380 0000 3163 3874 (Women's Med Dayton)
7017 3380 0000 3163 3867 (Martin Haskell, MD)

EXHIBIT D



Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Bruce Vanderhoff, MD, MBA, Director

February 23, 2022

Via email only:

Lisa Pierce Riez
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
lpriesz@vorys.com

Re: Planned Parenthood of Southwest Ohio - December 29, 2021, Application for Existing Variance to the Hospital Transfer Agreement Requirement and application of S.B. 157, effective March 22, 2022.

Dear Attorney Pierce Riesz,

The Department is requesting additional information related to Planned Parenthood of Southwest Ohio's pending Application for Variance to the hospital transfer agreement received December 29, 2021. Please provide the Department with the following by February 27, 2022.

- Attestation by the physicians and the facility that the backup physicians identified in the application (p.4/138) comply with Sub. S.B. 157 (134th General Assembly).

Sub. S.B. 157 (134th General Assembly) was signed by Governor DeWine on December 22, 2021. The bill, among other provisions, provides that backup physicians may not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. The bill further provides that backup physicians may not be employed by or compensated pursuant to a contract with, and any not provide instruction or consultation to, a medical school or osteopathic medical school affiliated with a state university or college. The bill specifically provides that if, at any time, the director of health determines that a consulting physician for an ambulatory surgical facility that has been granted a variance from the written transfer agreement requirement of section of 3702.303 or the Revised Code has violated the prohibition in division (B) of the this section [teaching, providing instruction, being employed by, under contract or affiliated with a state university or college], the director shall rescind the variance. Sub. S.B. 157 becomes effective March 22, 2022. Given the clear public policy directives contained with Sub.S.B. 157, the Department requests information that details the physicians' status vis a vis state universities and colleges.

Please submit this information to me in writing at the following email address: James.Hodge@odh.ohio.gov

Please feel free to contact me if you have any questions.

Sincerely,

James Hodge, Chief
Bureau of Regulatory Operations

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