

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

WOMEN'S MEDICAL GROUP  
PROFESSIONAL CORPORATION, *et al.*,

*Plaintiffs,*

v.

VANDERHOFF, *et al.*,

*Defendants.*

Case No. A 2200704

Judge Alison Hatheway

**PLAINTIFFS' SECOND MOTION FOR  
PRELIMINARY INJUNCTION;  
REQUEST FOR HEARING**

**MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Civ.R. 65, Plaintiffs Women's Med Group Professional Corporation d/b/a Women's Med Dayton ("WMD") and Planned Parenthood Southwest Ohio Region ("PPSWO") respectfully move this Court for a preliminary injunction to prevent Defendants from revoking or refusing to renew Plaintiffs' licenses or otherwise preventing Plaintiffs from providing procedural abortion services for reasons related to noncompliance with 2021 Am.S.B. No. 157 ("SB 157").

As explained in the accompanying Memorandum in Support, its attached Affidavits, the Complaint, and its attached exhibits, injunctive relief is necessary to prevent imminent and irreparable injury to Plaintiffs and their patients. Without relief from this Court, Defendants will be able to revoke WMD's ambulatory surgical facility ("ASF") license as early as June 21, 2022, and PPSWO's ASF license as early as July 21, 2022. For the reasons set out in the attached Memorandum, SB 157 violates Plaintiffs' and their patients' rights to substantive due process and Plaintiffs' and their patients' rights to equal protection of the laws, and depriving Plaintiffs of their ASF licenses will irreparably harm Plaintiffs and their patients.

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Plaintiffs request a hearing on this Motion, and Plaintiffs request that this Court waive the bond requirement.

Dated: May 26, 2022

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**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF SECOND MOTION FOR  
PRELIMINARY INJUNCTION**

Plaintiffs Women’s Med Group Professional Corporation d/b/a Women’s Med Dayton (“WMD”) and Planned Parenthood Southwest Ohio Region (“PPSWO”) have provided high-quality, constitutionally protected reproductive health care—including procedural abortion—to the people of Southwest Ohio for decades. If this Court does not act, that care will abruptly stop due to Plaintiffs’ inability to comply with the arbitrary, excessively burdensome, and medically unnecessary requirements of 2021 Am.S.B. No. 157 (“SB 157”).<sup>1</sup> Because WMD is unable to comply with SB 157 and remains open only because of the Court’s current preliminary injunction, which expires on June 21, 2022, WMD’s ambulatory surgical facility (“ASF”) license will be subject to revocation as early as June 21, 2022. Affidavit of W.M. Martin Haskell, M.D. (“Haskell Aff.”), attached as exhibit No. 1, ¶¶ 44-57. In addition, because PPSWO is also unable to comply with SB 157, and because the law granted ASFs until June 21, 2022 to demonstrate compliance, the Ohio Department of Health (“ODH”) can immediately on June 21, 2022 give PPSWO 30 days notice of its intent to revoke its license, which would take effect on July 21, 2022. Affidavit of Kersha Deibel (“Deibel Aff.”), attached as exhibit No. 2, ¶¶ 22, 26-33.

If Plaintiffs’ ASF licenses are revoked, they will no longer be able to provide procedural abortion. As a result, there will be no procedural abortion provider in Ohio south of Columbus. The sole reason for this is the Plaintiffs’ inability to comply with SB 157, which prohibits ASFs

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<sup>1</sup> In additions to its variance provisions, SB 157 includes provisions pertaining to medical care to “a child born by attempted abortion who is alive when removed from the uterus.” SB 157 §§ 2919.13, 3701.79, 3701.792, 3701.99. Plaintiffs challenge here only the provisions of SB 157 that apply to the ASF variance process, and all references to SB 157 herein are to the variance provisions (§§ 3702.305, 3702.3010).

from contracting with backup doctors who are affiliated with or provide instruction or other services to a public medical school, for the purposes of supporting the ASF's request for a variance from Ohio's written transfer agreement ("WTA") requirement.<sup>2</sup>

Plaintiffs are certain to succeed on their claim that SB 157 violates Plaintiffs' and their patients' substantive due process rights under Article I, sections 1, 16, and 20 of the Ohio Constitution because the Defendants cannot show that SB 157 is narrowly tailored to advance a compelling governmental interest. Plaintiffs are also certain to succeed on their claim that SB 157 violates the Plaintiffs' equal protection rights under Article I, section 2 of the Ohio Constitution because it discriminatorily infringes on fundamental rights and singles out Plaintiffs for disparate treatment based on animus. This Court should therefore act once again to prevent an unconstitutional deprivation of Plaintiffs' and Plaintiffs' patients' rights and to avoid irreparable harm to Plaintiffs and their patients, who will be delayed in, face additional barriers to, or be altogether prevented from, obtaining constitutionally protected abortion care.

## **FACTUAL BACKGROUND**

### **A. Abortion Safety**

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<sup>2</sup> More precisely, SB 157 provides that any physician who serves as a backup or "consulting physician" as required to support a variance application must attest that:

(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.

[and]

(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.

R.C. § 3702.305(A).

Abortion is one of the safest procedures in modern medicine, much safer than giving birth. Haskell Aff. ¶ 12. Complications rarely occur and complications requiring hospital-based care are extremely rare. *Id.* If a complication requiring hospital care does occur, federal law, the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd(b), and both WMD’s and PPSWO’s policies and procedures ensure that the patient will receive the best available care as quickly as possible. Haskell Aff. ¶¶ 12–14; Deibel Aff ¶ 9. In the past five years, PPSWO has provided over 16,334 abortions, and only four of those patients have needed to be transferred to a hospital, where they received appropriate care and were released. Deibel Aff ¶ 9. Over the past 10 years, physicians at WMD performed 20,887 procedural abortions, of which nine (less than .05%) required transfer to a hospital, where the patients were successfully treated and released. Haskell Aff. ¶ 14.

#### **B. Pre-Existing Licensing Framework and SB 157**

Despite the well-documented safety of abortion provision nationally and in Ohio, Ohio has adopted a medically unnecessary, burdensome, and arbitrary licensing scheme that provides no health or safety benefits. SB 157 is the latest addition to this scheme, which is designed to shutter Plaintiffs’ ASFs.

Clinics that provide procedural abortion must maintain an ASF license. Haskell Aff ¶ 17; Deibel Aff. ¶ 10. To maintain an ASF license, a clinic must either have a WTA with a local hospital or be granted a variance from that requirement by the Director of ODH. R.C. § 3702.303. To obtain a variance from the WTA requirement, a clinic must have, among other things, a written agreement with at least one backup doctor who has admitting privileges at a local hospital within 25 miles of the ASF. R.C. § 3702.304. In addition, those consulting (i.e., backup) physicians must attest that they actively practice “clinical medicine” within 25 miles of

the ASF, that they are “familiar with the facility and its operations,” and they “agree[] to provide notice to the facility of any changes in the physician's ability to provide back-up coverage.” R.C. § 3702.304(B)(3). Each physician must also have “a valid license to practice medicine and surgery or osteopathic medicine and surgery,” but the statute does not specify any particular specialization that the physician must possess. R.C. § 3702.303(B)(3)(d). Finally, each physician must notify the hospital where the physician possesses admitting privileges of the physician’s agreement to serve in this capacity. R.C. § 3702.303(B)(3)(e). In addition, ODH has expanded the scope of the current statutes and regulations by requiring that abortion clinics seeking a variance have at least four backup doctors, all of whom must be obstetrician/gynecologists (“OBGYNs”) and have voting privileges at their hospital. *See Haskell Aff.* ¶ 49.

SB 157 builds on this already unnecessary scheme and makes it extremely difficult—indeed, impossible for Plaintiffs—to obtain a variance, and therefore an ASF license, by drastically limiting the pool of potential backup physicians. Under SB 157, 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 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. Plaintiffs understand, and it has not been disputed by Defendants, that the only ASFs in Ohio that require variances from the WTA requirement are the two abortion facilities in Southwest Ohio, and therefore they are the only ASFs affected by this

law.<sup>3</sup> Compl. ¶ 46 (alleging upon information and belief that Plaintiffs are the only two ASFs in the state requiring variances from the WTA requirement).

During the hearings prior to SB 157's passage, the bill's supporters made it clear that the bill was designed to single out Plaintiffs and shut them down. Although on its face SB 157 refers to all ASFs, the legislative process leading to SB 157's adoption leaves no doubt that the legislature specifically intended to disadvantage and burden abortion providers. First, it was included in a bill entitled "Regards Child Born Alive After Attempted Abortion," making clear that the law was intended to restrict abortion. Summary of SB 157, <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-157>. Second, the only government interest articulated for the bill, repeated throughout the legislative hearings, was a supposed purpose to prohibit the expenditure of state funds to support abortion.<sup>4</sup> Third, the statements of Senator Niraj J. Antani, who represents the district where WMD is located, indicate the true purpose of the bill—to permanently shut down WMD and others. Calling SB 157 "the most consequential

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<sup>3</sup> This is no coincidence. Many Ohio hospitals have been reluctant to enter into WTAs with abortion clinics. Haskell Aff. ¶ 18; Deibel Aff. ¶ 11. Further, Ohio law prohibits abortion clinics – and only abortion clinics – from entering into a WTA with a "public hospital," R.C. § 3727.60, thus making the already difficult task of securing a WTA even more challenging.

<sup>4</sup> See, e.g., *Third Consideration of S.B. 157 before the Ohio Senate*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Niraj J. Antani, beginning at 36:46), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021>; *Hearing on S.B. 157 Before the H. Families, Aging, and Human Services Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (proponent testimony of Robert Tuttle, beginning at 2:02:00), <https://ohiochannel.org/video/ohio-house-families-aging-and-human-services-committee-11-18-2021>; *Id.* (proponent testimony of Jerry Freewalt, beginning at 1:47:14); *Id.* (proponent testimony of Mary Parker, beginning at 1:11:59); *Hearing on S.B. 157 Before the S. Government Oversight and Reform Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Robert McColley, beginning at 10:53), <https://www.ohiochannel.org/video/ohio-senate-government-oversight-and-reform-committee-10-27-2021>.

amendment that we have done since the original transfer agreement law,”<sup>5</sup> Antani lamented the fact that WMD had “[u]nfortunately” managed to stay open despite the earlier passed transfer agreement law and variance requirements, and suggested that the added requirements would force the clinic to shut down and thus would “tangibly save lives in Dayton, Ohio, [and] in Southwest Ohio.”<sup>6</sup>

SB 157 was signed into law on December 22, 2021 and became effective 90 days after passage, on March 23, 2022. By its terms, SB 157 gave clinics with variances until June 21, 2022 to comply with its requirements.

### **C. Plaintiffs’ Efforts to Comply with SB 157**

Neither WMD nor PPSWO has been able to obtain a WTA with a local hospital. Haskell Aff. ¶ 18; Deibel Aff. ¶ 11. Thus, both Plaintiffs must be granted variances to maintain their ASF licenses and continue providing procedural abortion care. R.C. § 3702.303. Yet, despite their best efforts, neither WMD nor PPSWO has been able to identify four backup doctors who meet the arbitrary requirements of SB 157. Thus, absent action from this Court, ODH will be able to revoke WMD’s license as soon as June 21, 2022, and PPSWO’s license as soon as July 21, 2022.

#### **1. WMD**

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<sup>5</sup> *Third Consideration of S.B. 157 before the Ohio Senate, 2021 Leg., 134th Sess. (Ohio 2021)* (statement of Sen. Niraj J. Antani, beginning at 36:46), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021>.

<sup>6</sup> *See id.* (“Women’s Med Center, which is in my district, the abortion clinic in Kettering, has ... been unable to get a transfer agreement. Their variance has been on the ropes for the past seven years. In fact, former health director Hodges denied that variance multiple times. That went straight through and was denied again. Unfortunately, then-Director Acton ended up approving a subsequent application.”).



Despite operating safely for nearly 40 years, WMD has been in licensing disputes with Defendants for decades. Haskell Aff. ¶¶ 19-43. Throughout this time, ODH has repeatedly changed the variance requirements without notice, rejecting WMD's applications based on newly-minted rules that were not contained in any statute or regulation. As explained in WMD's prior motion, Pls.' Mot. for TRO & Prelim. Inj. 3-5, ODH rejected WMD's most recent variance request on January 28, 2022, because of WMD's four backup physicians' "clear relationship with Wright State Physicians and the clear public policy directives contained within Sub. S.B. 157," although SB 157 was not yet in effect. Haskell Aff. ¶ 43. Because this Court enjoined ODH's attempt to prematurely enforce SB 157, WMD is currently able to provide procedural abortions.

Since SB 157 was passed, WMD has tried to find alternative backup physicians who meet the requirements of SB 157 and the other requirements of Ohio law, as well as those requirements that are not found anywhere in Ohio law but that ODH has nonetheless applied to variance applications in the past. Through those efforts, it has become apparent that if SB 157 is enforced, there are no physicians that would qualify to serve as backup doctors for WMD.

All four of WMD's current backup physicians are disqualified by SB 157 because they are all affiliated with and compensated by Wright State University, which is a public medical school. Haskell Aff. ¶¶ 43, 45. In addition to the four backup physicians listed on its variance application, WMD has heard from several OBGYNs who have admitting privileges with Premier Health (which owns Miami Valley Hospital) that they would be willing to serve as backup doctors if they were permitted to do so by Ohio law. However, all of those physicians work with residents and medical students from WSU and, because they work with residents and medical

students, they also hold clinical professor titles at WSU.<sup>7</sup> Haskell Aff. ¶ 55. As ODH’s January 28, 2022 variance denial indicates, this disqualifies all of those other physicians from serving. Haskell Aff. Exh. G.

There are only two hospital systems that have both emergency departments and obstetrics and gynecology (OBGYN) departments located within 25 miles of WMD: Premier Health (which owns Miami Valley Hospital in Dayton and Atrium Hospital in Middletown) and Kettering Health.<sup>8</sup> Haskell Aff. ¶ 50. Both of these hospital systems host residents and medical students from Wright State University Medical School, which is a public medical school, in their Obstetrics and Gynecology departments. *Id.* All of the attending OBGYN physicians (i.e., physicians who have completed their residencies) who are on staff at these hospitals work closely with and provide practical instruction to those residents and medical students. Haskell Aff. ¶ 51. Thus, under the terms of SB 157, the attending physicians at these hospitals are at least “indirectly” providing instruction at Wright State University Medical School, meaning that all of the otherwise qualified physicians located within 25 miles of WMD are disqualified from serving as backup physicians by SB 157. *Id.* In addition, one of the two hospital systems—Kettering Health—is affiliated with the Seventh Day Adventist Church and has made it clear to WMD in the past that it would not enter into, or allow physicians on its staff to enter into, an agreement

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<sup>7</sup> Medical residency is an extended period of practical instruction in a doctor’s intended area of specialization, and that instruction is provided almost exclusively through working closely with, and under the supervision of, attending physicians in that area of specialization or related areas. In Ohio, only attending physicians who are members of a hospital’s medical staff may admit patients to the hospital. Residents are not permitted to admit patients. Haskell Aff. ¶ 51 n.5.

<sup>8</sup> In addition, the Wright-Patterson Air Force Base Hospital, which is located approximately 13.5 miles from WMD, has an OBGYN department but, because it is a military hospital, it is not available to receive patients from WMD. *Id.* ¶ 54.

with an ASF that provides abortions. Haskell Aff. ¶ 53. The only other major hospitals located within 25 miles of WMD are Dayton Children’s Hospital and the Dayton VA (Veterans Affairs) Medical Center, neither of which has an OBGYN department.<sup>9</sup> Haskell Aff. ¶ 54.

## 2. PPSWO

PPSWO had a WTA with the University of Cincinnati Medical Center (“UCMC”) until 2013, when Ohio passed a law prohibiting public hospitals from entering into a WTA with an ASF that provides abortions. R.C. § 3727.60(B)(1); Deibel Aff. ¶ 11. PPSWO has been unable to secure a WTA with another local hospital since that time, despite approaching all of the local hospitals that qualify repeatedly over the years. *Id.*

PPSWO is currently operating under a variance that was granted by ODH on August 30, 2021. Deibel Aff. ¶ 20. Under current law, that variance remains in effect through the end of PPSWO’s next license-renewal period. Nonetheless, on February 23, 2022, ODH sent a letter to PPSWO in response to correspondence from PPSWO related to a separate bill, inquiring about PPSWO’s compliance with SB 157, although SB 157 was not yet in effect and providers with variances were not yet required to comply with it. Deibel Aff. ¶ 22. PPSWO responded to ODH on February 25, 2022 to convey its understanding that, because PPSWO currently holds a variance, it has until June 21, 2022, to comply with SB 157 and to submit documentation of that compliance with ODH. Deibel Aff. ¶ 24. PPSWO further indicated that it was working to attempt to comply with SB 157. *Id.*

When PPSWO learned of the passage of SB 157, its staff began working to determine whether it could comply. Deibel Aff. ¶ 26. PPSWO staff initially interviewed each of PPSWO’s

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<sup>9</sup> WMD did not approach small, specialized hospitals such as Riverview Health Institute, which bills itself as a “private luxury hospital,” <https://www.riverviewhealthinstitute.com/>, that do not have emergency rooms and OBGYN departments. Haskell Aff. ¶ 54 n.6.

four current backup doctors to determine whether they met SB 157's requirements and learned that only one of the four qualified. *Id.*

This is not surprising, as University of Cincinnati medical students and residents are trained at all of the area hospitals, so it is extremely difficult to identify a local OBGYN with admitting privileges who does not provide instruction for a public medical school. Deibel Aff. ¶ 27. Moreover, of the four hospital systems within 25 miles of PPSWO, Christ is the only option for backup doctors: the University of Cincinnati is a public hospital, whereas Mercy Health is Catholic affiliated and will not work with or allow its physicians to work with an abortion provider. Deibel Aff. ¶ 28. TriHealth is similarly religiously affiliated and has refused to respond to PPSWO's prior inquiries. *Id.*

Despite this, PPSWO staff began conducting extensive outreach in the medical community to attempt to identify additional doctors who meet the requirements of SB 157 as well as all of the preexisting written transfer agreement variance requirements and who would be willing to enter into a backup agreement. Deibel Aff. ¶ 29. This outreach included speaking with at least seven providers affiliated with the University of Cincinnati, who in turn reached out to their own networks. *Id.* None of these efforts yielded any suitable backup doctors. *Id.*

PPSWO then worked off a list of approximately 40 physicians affiliated with The Christ Hospital ("Christ"), the hospital at which PPSWO's current backup doctors have privileges, contacting those who were determined by PPSWO to qualify and who might potentially be willing to serve as backups. Deibel Aff. ¶ 30. Although these efforts resulted in identifying two OBGYN physicians employed by Christ who were willing to enter into backup doctor agreements and who complied with SB 157's requirements, they were not permitted by the hospital to do so. *Id.* Finally, PPSWO reached out again to physicians who initially seemed uncertain about whether they would

serve as backup doctors, but no one was willing to help. Deibel Aff. ¶ 32. Among the reasons they cited were that they did not want their names in the press, that they did not want to bring attention to their practices, and that being associated with an abortion provider puts them and their families and colleagues in danger. *Id.* Thus, while PPSWO continues to seek a qualifying backup doctor, at this point it has only one backup doctor who can meet SB 157’s requirements. Deibel Aff. ¶ 33.

### **C. Impact of SB 157**

If WMD and PPSWO are forced to stop providing procedural abortions,<sup>10</sup> this would irreparably harm Plaintiffs and their patients. Because of the great need for abortion care in Ohio, coupled with the state’s requirement that patients make a separate visit to the health center prior to their abortion to receive state-mandated information, *see* R.C. § 2317.56(B), Plaintiffs will be forced to cancel existing appointments and stop scheduling future procedural abortion appointments in advance of June 21, 2022 (for WMD), and July 21, 2022 (for PPSWO). Haskell Aff. ¶ 57. Even if other clinics in Ohio can absorb these additional procedural abortion patients from WMD and PPSWO, many already have wait times of two weeks or more. Haskell Aff. ¶ 60. Moreover, because WMD likely cannot remain in operation permanently if it is unable to provide procedural abortions, WMD could be forced to permanently close its doors. Haskell Aff. ¶ 59. Yet, WMD is a valued member of its community, and patients rely upon WMD for comprehensive reproductive health care—of which procedural abortion is an essential part.

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<sup>10</sup> Patients in Ohio may obtain two types of abortion: medication abortion and procedural (or “surgical”) abortion. Medication abortion is a method of ending an early pregnancy by taking medications that cause the woman to undergo a process similar to an early miscarriage. Medication abortion is available in Ohio through 70 days LMP. Procedural abortion does not involve any incision, but rather involves the removal of the contents of the uterus with suction aspiration, alone or in conjunction with instruments. Haskell Aff. ¶ 11.

Haskell Aff. ¶¶ 60-61. Such a disruption in abortion access for Southwest Ohio patients would gravely impact the lives of people who need access to abortion, with disproportionate harm falling on Black people, other people of color, and people with low incomes.<sup>11</sup>

The closure or reduction in services at Plaintiffs' clinics will leave patients with fewer options for care, which will in turn impose financial and logistical barriers, as well as increased health risks, upon people seeking abortion care. The logistics and costs of travel to another city are particularly daunting for patients with lower incomes. Approximately 75% of women seeking abortions in the United States were either poor or low-income. Affidavit of Carolette Norwood, Ph.D. ("Norwood Aff."), attached as exhibit No. 3, ¶ 27. Consequently, many patients already struggle to afford an abortion, to make child care arrangements, and to arrange time off from work. Norwood Aff. ¶ 26; Haskell Aff. ¶ 62. These difficulties are exacerbated by the fact that many low-wage workers do not get paid for time off work and therefore must forgo additional wages in order to travel to seek care. Norwood Aff. ¶ 22.

Even someone who is working full-time and earning significantly above the minimum wage, and who would not be classified as "poor" or "low-income," may struggle to pay for basic

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<sup>11</sup> Over 60% of WMD's patients have incomes at or below 120% of the federal poverty line. Haskell Aff. ¶ 62. Moreover, in 2021, Black people made up only 13.1% of Ohio's population but more than 48% of people who obtained abortions in Ohio. Ohio Dept. of Health, *Induced Abortions in Ohio, 2020*, 3 (2020), <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/vs-abortionreport2020> ("ODH 2020 Report"); United States Census Bureau, Quick Facts: Ohio, <https://www.census.gov/quickfacts/fact/table/OH/>. 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. *See, e.g.*, Center for Reproductive Rights, National Latina Institute for Reproductive Health, and SisterSong Women of Color Reproductive Justice Collective, *Reproductive Injustice: Racial and Gender Discrimination in U.S. Health Care* (2014), [https://reproductiverights.org/wp-content/uploads/2020/12/CERD\\_Shadow\\_US\\_6.30.14\\_Web.pdf](https://reproductiverights.org/wp-content/uploads/2020/12/CERD_Shadow_US_6.30.14_Web.pdf).

living expenses. *Norwood Aff.* ¶ 23. For these individuals, even small unexpected expenses can cause significant financial strain: indeed, nearly 40% of American adults report that, when faced with a hypothetical unexpected expense of \$400, they would be unable to pay it using cash or savings. *Id.* ¶ 24.

In addition, although abortion is an extremely safe procedure, the risks increase as the pregnancy advances, as do the costs of an abortion procedure. *Haskell Aff.* ¶¶ 64-65. Thus, as patients are forced to delay their procedure due to long wait times at clinics, they may also be forced to come up with more money, causing them to delay their procedure even further, as they acquire the additional funds to cover the additional costs of the procedure and the accompanying travel, childcare, and lost wages. *Norwood Aff.* ¶¶ 15, 29; *Haskell Aff.* ¶ 65. For some patients, these additional logistical and financial burdens may be too great, and they may be unable to travel to another clinic to receive an abortion. *Norwood Aff.* ¶¶ 49-50.

## ARGUMENT

Plaintiffs are entitled to a preliminary injunction because SB 157 violates their patients' rights to privacy and Plaintiffs' fundamental liberty and property rights under Article I, sections 1, 16, and 20 of the Ohio Constitution, as well as Plaintiffs' rights to equal protection of the laws under Article I, section 2 of the Ohio Constitution. Defendants cannot show that SB 157 is narrowly tailored to advance any compelling government interest to justify its intrusion on constitutionally protected rights. Moreover, the only purpose articulated during the legislative process for singling out abortion-providing ASFs for this burdensome treatment—avoiding the use of state funds to support abortion—lacks even a rational basis and demonstrates the animus underlying this law.

Because Plaintiffs are likely to succeed on the merits of these two claims, Plaintiffs and their patients will sustain irreparable harm without an injunction, no third parties will be harmed by an injunction, and the public interest favors an injunction, this Court should preliminarily enjoin Defendants from revoking or refusing to renew Plaintiffs' licenses or otherwise preventing Plaintiffs from providing procedural abortion services for reasons related to noncompliance with SB 157.

#### **A. Standard of Review**

A party seeking a preliminary injunction must demonstrate “that the moving party has a substantial likelihood of success in the underlying suit; that the moving party will suffer irreparable harm if the order does not issue; that no third parties will be harmed if the order is issued; [and] that the public interest is served by issuing the order.” *City of Cincinnati v. City of Harrison*, 1st Dist. Hamilton No. C-090702, 2010-Ohio-3430, ¶ 8, citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267–68, 747 N.E.2d 268 (1st Dist.2000). The purpose of a preliminary injunction is to preserve the status quo. *Martin v. Flick*, 150 N.E.2d 314, 316 (1st Dist.1958). For the reasons stated below, Plaintiffs meet this standard. Injunctive relief will preserve the status quo by maintaining Plaintiffs' ability to continue to provide safe, time-sensitive, constitutionally protected health care to their patients without interruption.

#### **B. Likelihood of Success on the Merits**

##### **1. SB 157 Violates Substantive Due Process.**



Under Sections 1, 16, and 20 of Article I of the Ohio Constitution, Plaintiffs' patients have a fundamental liberty interest in accessing abortion.<sup>12</sup> Despite their good-faith efforts, Plaintiffs cannot find four OBGYNs with admitting privileges at a hospital within a 25-mile radius that do not have any direct or indirect association with state hospitals or medical schools. Thus, if Defendants enforce the requirements of SB 157, Plaintiffs will be forced to stop providing procedural abortions, leaving patients in Southwest Ohio with no procedural abortion option, and no option at all after 10 weeks LMP, for hundreds of miles.

Because SB 157 burdens Plaintiffs' and their patients' fundamental rights, it is subject to strict scrutiny. Yet, SB 157 does not further any compelling state interest. To the contrary, it harms public health by eliminating access to essential and constitutionally protected procedural abortion care in a huge swath of the state. Further, it is not narrowly tailored to meet any health-related purpose. In addition, it violates Plaintiffs' fundamental property and liberty interests without advancing a compelling government interest. Because SB 157 cannot survive constitutional scrutiny, Plaintiffs are likely to succeed on their claims that SB 157 violates Plaintiffs' patients' due process rights.

***a. SB 157 Violates Plaintiffs' Patients' Fundamental Right to Privacy.***

SB 157 infringes on the well-established liberty interests of Ohioans. "In light of the broad scope of 'liberty' as used in the Ohio Constitution, it would seem almost axiomatic that the right of a woman to choose whether to bear a child is a liberty within the constitutional

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<sup>12</sup> Plaintiffs have third-party standing to bring claims on behalf of their patients. *Planned Parenthood Sw. Ohio Region v. Ohio Dep't. of Health*, Hamilton C.P. No. A 2100870, Entry Granting Pls.' Second Mot. for Prelim. Inj., at 3-4 (Jan 31, 2022), attached as exhibit No. 4. ("[T]hird-party standing [for abortion providers] is available in circumstances like these.") (citing cases).

protection.” *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 691, 627 N.E.2d 570 (1993). See also *State v. Lowe*, 112 Ohio St.3d 507, 861 N.E.2d 512 (2007); *Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993). When legislation infringes on fundamental rights, the Ohio Constitution requires it to survive strict scrutiny to be upheld as constitutional.<sup>13</sup> *State v. Williams*, 88 Ohio St.3d 513, 728 N.E.2d 342 (2000). “Under the strict-scrutiny standard, a statute unconstitutionally infringes upon a fundamental right unless the statute is necessary to promote a compelling governmental interest and is narrowly tailored to achieve that interest.” *Oliver v. Feldner*, 7th Dist. Noble No. CA-290, 149 Ohio App.3d 114, 121, ¶40, 776 N.E.2d 499 (2002). See also *State v. Burnett*, 93 Ohio St.3d 419, 430, 755 N.E.2d 857 (2001). The burden rests on the State to show that its interest is compelling and that the law is narrowly tailored. *In re Jud. Campaign Complaint Against O’Toole*, 2014-Ohio-4046, 141 Ohio St.3d 355, 361, ¶20, 24 N.E.3d 1114.

SB 157 fails this test. The State cannot show that SB 157’s prohibition on physicians serving as backup doctors based on direct or indirect affiliation with a state university furthers any compelling interest. Defendants claim that SB 157 was “intended to provide for the health and safety of Ohio citizens.” Defs.’ Resp. in Opp. to Pls.’ Mot. for Prelim. Inj., 25. However, they do not—and cannot—explain how any public health interest is served by *preventing* physicians from serving as backup doctors for Plaintiffs. Plaintiffs have provided safe, constitutionally protected care in their communities for decades. Deibel Aff. ¶¶ 4, 9; Haskell Aff. ¶¶ 5, 14. The State has not shown, and cannot show, that backup doctor agreements are in any way necessary for the provision of safe abortions. But even if they did provide some benefit, the

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<sup>13</sup> Although both the Ohio and federal constitutions protect the fundamental liberty right to abortion, Ohio courts are not bound to apply the federal courts’ undue burden test. *Preterm Cleveland*, 692, n.5 (noting that the Ohio court need not follow the federal undue burden standard and may instead use a more protective standard).

State cannot show that physicians who lack an association with a state school provide safer or better care than those associated with a state school. By adding new restrictions onto ODH's already arbitrary and onerous licensing requirements, SB 157 does nothing other than erect yet another obstacle to abortion access that is entirely unrelated to any compelling state interest.<sup>14</sup>

Further, SB 157 fails strict scrutiny because it is not narrowly tailored. *State v. Burnett*, 93 Ohio St.3d at 429 (“A statute is narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.”) (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)). Barring most physicians in the area from serving as backup doctors—including highly qualified physicians who are entrusted with the task of training residents and medical students—is self-evidently not even a rational way, let alone the only way, of protecting patients’ health and safety. Far from narrowly tailored, SB 157 is a broad and arbitrary sweep that does not advance health or safety whatsoever.

***b. SB 157 Violates Plaintiffs’ Fundamental Rights to Liberty and Property***

If SB 157 is enforced, Defendants will also deprive Plaintiffs of their liberty and property interests by preventing them from providing procedural abortions, harming their businesses, and preventing their staff from pursuing their professions. The Ohio Constitution protects Plaintiffs’ liberty and property interests in their ASF licenses, in the continuation of their businesses, and in their staff’s pursuit of their chosen profession. See *Asher Invest. Inc. v. City of Cincinnati*, 122 Ohio App.3d 126, 136, 701 N.E.2d 400 (1st Dist.1997), citing *State v. Cooper*, 71 Ohio App.3d 471, 594 N.E.2d 713 (4th Dist.1991) (recognizing that a party has “a constitutionally protected property interest in running his business free from unreasonable and arbitrary interference from

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<sup>14</sup>To the extent Defendants point to a different interest, such as preventing taxpayer funds from subsidizing abortion, that interest fails even the rational-basis test, see *infra* pp. 20-22, and certainly cannot meet strict scrutiny.

the government”); *Cooper*, 71 Ohio App.3d at 474, quoting *In re Thornburg*, 55 Ohio App. 229, 234, 9 N.E.2d 516 (8th Dist. 1936) (“[T]he right to engage in a lawful business is a property right[.]”); Pls.’ Mot. for TRO & Prelim. Inj. 12-13. As this Court has recognized, abortion providers have a fundamental liberty interest in their ability to continue their business because “a person’s right to obtain an abortion is inextricably bound up with the doctor’s ability to provide that care.” *Planned Parenthood Sw. Ohio Region v. Ohio Dep’t. of Health*, Hamilton C.P. No. A 2100870, Entry Granting Pls.’ Second Mot. for Prelim. Inj., at 10 (Jan 31, 2022). These interests are infringed by SB 157, *see* *Haskell Aff.* ¶¶ 44, 57-59; *Deibel Aff.* ¶¶ 34, 36, and for the reasons described above, SB 157’s infringement of those rights cannot survive constitutional review.

## **2. SB 157 Violates Plaintiffs’ Right to Equal Protection and Benefit of the Laws.**

The Ohio Constitution’s guarantee of equal protection is found in Article I, Section 2, which provides that:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

This provision effectively “requires that the government treat all similarly situated persons alike.” *Sherman v. Ohio Pub. Emps. Retirement Sys.*, Slip Opinion 2020-Ohio-4960, ¶ 14, citing *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 6.

In violation of this constitutional guarantee, SB 157 singles out procedural abortion providers with unnecessary and unreasonable restrictions that do not apply to similarly situated ASFs that do not provide abortions. SB 157 is motivated by a “bare desire to harm” a politically unpopular group—abortion providers—and therefore lacks a legitimate governmental purpose.

*See, e.g., Lawrence v. Texas*, 539 U.S. 558, 583 (2003) (“Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be ‘drawn for the purpose of disadvantaging the group burdened by the law.’”) (quoting *Romer v. Evans*, 517 U.S. 620, 633 (1996)); *City of Akron v. Rasdan*, 105 Ohio App.3d 164, 173, 663 N.E.2d 947 (1995) (“[A] statutory prohibition is constitutionally valid if it bears a real and substantial relationship to the public’s health, safety, morals, or general welfare and is not unreasonable or arbitrary.”) (emphasis omitted).

SB 157 is the most recent in a long line of targeted laws, motivated by animus, that make it increasingly difficult for abortion providers to operate as licensed ASFs in Ohio. While SB 157’s variance provisions may appear on their face to apply to all ASFs, there is no question that procedural abortion clinics are the sole target of this legislation. To Plaintiffs’ knowledge, they are the only ASFs that require variances from the WTA requirement and therefore the only ASFs affected by SB 157. Indeed, the provisions making changes to the variance requirement were added as an amendment to a bill, entitled “Regards Child Born Alive After Attempted Abortion,” which explicitly targets abortion providers in its other provisions. Summary of SB 157, <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-157>.

Moreover, all discussion of these variance provisions in committee and on the floor of the Ohio Senate and Ohio House of Representatives revolved entirely around abortion clinics.<sup>15</sup>

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<sup>15</sup> *See, e.g., Hearing on S.B. 157 Before the S. Government Oversight and Reform Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) <https://www.ohiochannel.org/video/ohio-senate-government-oversight-and-reform-committee-10-27-2021> (Sen. Robert McColley introduces the amendment containing the variance-related provisions starting at 10:53); *Hearing on S.B. 157 Before the H. Families, Aging, and Human Services Comm.*, 2021 Leg., 134th Sess. (Ohio 2021), <https://ohiochannel.org/video/ohio-house-families-aging-and-human-services-committee-11-18-2021> (beginning at 1:15); *Third Consideration of S.B. 157 before the Ohio Senate*, 2021 Leg.,

Indeed, proponents of the amended bill argued that the purpose of the variance provisions is to prevent taxpayer dollars from supporting abortion—a claim that is nonsensical if SB 157 is to be understood as general legislation affecting all ASFs in Ohio.<sup>16</sup> SB 157 thus targets only abortion providers, achieving its goals of making it exceedingly difficult—and for Plaintiffs, impossible—to meet the requirements of licensure, while not placing any of these burdens on ASFs that do not provide abortions.

Because this discrimination impinges on both Plaintiffs’ patients’ fundamental right to privacy and Plaintiffs’ fundamental property and liberty rights in their licenses and their occupations, it is subject to strict scrutiny. See, e.g. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 481 (2007) (“When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies.”). Yet, as explained above, *supra* pp. 16-17, it does not come close to meeting this demanding test.

Indeed, SB 157 does not even meet the rational-basis test, because its differential treatment of abortion providers does not bear a rational relationship to a legitimate government interest. See *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 28. Rational basis review,

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134th Sess. (Ohio 2021), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021> (beginning at 24:56).

<sup>16</sup> See, e.g., *Third Consideration of S.B. 157 before the Ohio Senate*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Niraj J. Antani, beginning at 36:46), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021>; *Hearing on S.B. 157 Before the H. Families, Aging, and Human Services Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (proponent testimony of Robert Tuttle, beginning at 2:02:00), <https://ohiochannel.org/video/ohio-house-families-aging-and-human-services-committee-11-18-2021>; *Id.* (proponent testimony of Jerry Freewalt, beginning at 1:47:14); *Id.* (proponent testimony of Mary Parker, beginning at 1:11:59); *Hearing on S.B. 157 Before the S. Government Oversight and Reform Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Robert McColley, beginning at 10:53), <https://www.ohiochannel.org/video/ohio-senate-government-oversight-and-reform-committee-10-27-2021>.

while more deferential than intermediate or strict scrutiny, “does not mean toothless scrutiny.” *Id.* See also *id.* at ¶ 58 (striking down statute under rational-basis test after finding that the classification in the statute was overbroad and the state’s interests—while legitimate—did not justify the overbreadth); *State v. Noling*, 2016-Ohio-8252, 149 Ohio St.3d 327, 332 (striking down statute under rational-basis test after finding that the state’s asserted interest was “subverted by the statutory scheme”).

SB 157’s variance requirements bear no relation to any possible legitimate government interest that the State could put forward. Throughout the legislative process, proponents of the variance provisions claimed that these requirements furthered the state’s interest in preventing tax dollars from being used for abortion.<sup>17</sup> Yet, SB 157’s variance provisions have no impact on public funds and thus no rational relationship to this stated purpose. Abortion clinics contract with the back-up doctors to provide care in the event of an emergency that requires patient transfer to a hospital—not to provide abortions. And SB 157’s language is so broad that it even prohibits clinics from contracting with a back-up doctor who provides *unpaid* instruction—on any subject at all—at any public institution. R.C. § 3702.305(A)(1). Finally, under existing Ohio law, the use of public funds for abortion is already prohibited. R.C. § 9.04. SB 157’s variance provisions are thus

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<sup>17</sup> *Hearing on S.B. 157 Before the S. Government Oversight and Reform Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Robert McColley, beginning at 10:53), <https://www.ohiochannel.org/video/ohio-senate-government-oversight-and-reform-committee-10-27-2021>; *Hearing on S.B. 157 Before the H. Families, Aging, and Human Services Comm.*, 2021 Leg., 134th Sess. (Ohio 2021) (proponent testimony of Robert Tuttle, beginning at 2:02:00), <https://ohiochannel.org/video/ohio-house-families-aging-and-human-services-committee-11-18-2021>; *Id.* (proponent testimony of Jerry Freewalt, beginning at 1:47:14); *Id.* (proponent testimony of Mary Parker, beginning at 1:11:59); *Third Consideration of S.B. 157 before the Ohio Senate*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Niraj J. Antani, beginning at 36:46), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021>.

completely divorced from any supposed concern about the use of public funds for abortion, and therefore they fail rational basis review. *See Mole*, 149 Ohio St.3d at 233, ¶ 58.<sup>18</sup>

The drastic overbreadth and lack of fit between the state’s interests and SB 157’s provisions can only be explained by the State’s true motivation in passing the targeted restrictions: animus towards abortion providers. *See Romer*, 517 U.S. at 632 (finding that the “sheer breadth [of the challenged amendment] is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects”). Indeed, “[t]he Constitution’s guarantee of equality must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group.” *Noling*, 149 Ohio St.3d at 330 (internal quotation marks omitted) (quoting *United States. v. Windsor*, 570 U.S. 744, 770 (2013), citing *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534-35 (1973)); *see also id.* (noting that “the Equal Protection Clause of the Ohio Constitution is coextensive with, or stronger than, that of the federal Constitution”). Finally, as noted above, there is no shortage of evidence in the record of the Ohio General Assembly’s disdain for and moral disapproval of abortion providers. *Supra* pp. 4-5. In addition to numerous statements indicating the purpose of SB 157 was to target abortion providers and no other ASFs, at least one of the bill’s supporters publicly complained that that WMD remained open and providing abortion care, and suggested that the legislation would “save lives in Dayton, Ohio, [and] in Southwest Ohio” by shuttering Plaintiffs’

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<sup>18</sup> Moreover, to the extent that the existing transfer agreement law and variance requirements might be claimed to advance a state interest in protecting the health and safety of abortion patients, SB 157 actually subverts this interest by prohibiting highly qualified and experienced physicians—medical school instructors—from serving as a back-up doctors.



ASFs.<sup>19</sup> These comments only make more clear what is already apparent: SB 157 is both irrational and motivated by unconstitutional animus toward Plaintiffs based on their status as abortion providers.

SB 157 cannot survive rational basis review for the additional reason that the only other asserted purpose of the statute—public health—is “not served, and [is] arguably dis-served” by SB 157. *State v. Reine*, 2003-Ohio-50, 2003 WL 77174, \*3 (Ohio Ct. App. Jan. 10, 2003). A physician’s association with a state medical school is entirely unrelated to that physician’s ability to provide safe care as a backup doctor. Barring these physicians from serving as backup doctors serves only to reduce access to safe procedural abortions. SB 157 thus lacks a “reasonable fit” between the state’s purpose and the means chosen to advance that purpose.” *State v. Small*, 162 Ohio App.3d 375, 382-83, 833 N.E.2d 774 (2005).

**C. Plaintiffs and Their Patients Will Suffer Irreparable Harm If Defendants Are Not Enjoined from Enforcing SB 157.**

Plaintiffs have demonstrated that enforcement of SB 157 will cause irreparable injury to them, their physicians and other staff, and their patients. Without relief from this Court, WMD faces the risk of being forced to cease procedural abortion care as of June 21, and PPSWO will be forced to do so on or shortly after July 21. Thus, patients in Southwest Ohio who need procedural abortions will be forced to travel to Columbus or beyond. *Haskell Aff.* ¶ 60; *Norwood Aff.* ¶¶ 12-13.

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<sup>19</sup> *Third Consideration of S.B. 157 before the Ohio Senate*, 2021 Leg., 134th Sess. (Ohio 2021) (statement of Sen. Niraj J. Antani, beginning at 36:46), <https://www.ohiochannel.org/video/ohio-senate-10-27-2021>.

It is axiomatic that a finding of a threatened or impaired constitutional right amounts to irreparable injury. *Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001); *see also Am. Civ. Liberties Union of Kentucky v. McCreary Cnty.*, 354 F.3d 438, 445 (6th Cir.2003), citing *Elrod v. Burns*, 427 U.S. 347, 373, (1976); *Michigan State A. Phillip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) (“[W]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” (citation omitted)); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir.2012). Because Plaintiffs’ and their patients’ constitutional rights will be impaired without relief from this Court, they will suffer irreparable injury if the enforcement of SB 157 is not enjoined.

Further, leaving Ohio with no procedural abortion provider south of Columbus would impose severe burdens on Plaintiffs’ patients, many of whom are low-income. *Norwood Aff.* ¶¶ 22-27. Those patients may forgo other necessities as they struggle to cover the increased costs associated with intercity travel—including not just the cost of the travel itself, but also related expenses such as child care and lost wages. *Norwood Aff.* ¶ 41. Patients in Southwest Ohio seeking abortions will suffer delays in accessing care, resulting in additional, unnecessary risks to their health. *Haskell Aff.* ¶¶ 64-65; *Norwood Aff.* ¶ 14. Ultimately, some may be unable to access the abortion care that they need. *Norwood Aff.* ¶ 14. Severely burdening patients in obtaining procedural abortions in this way inflicts serious physical, emotional, and psychological consequences that alone constitute irreparable harm, as numerous courts have recognized. *See, e.g., Planned Parenthood of Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir.2014); *Planned Parenthood of Wis., Van Hollen*, 738 F.3d 786, 795–96; *EMW Women’s Surgical Ctr., P.S.C. v. Meier*, 373 F.Supp.3d 807, 825 (W.D.Ky.2019), *aff’d sub nom. EMW Women’s Surgical Ctr.*,

*P.S.C. v. Friedlander*, 960 F.3d 785 (6th Cir.2020). This harm cannot be compensated once this challenge is concluded.

If Plaintiffs are required to stop providing procedural abortion, they too face irreparable harm that cannot be compensated once this litigation is concluded, including being forced to scale back operations and lay off staff, and WMD may be forced to permanently close. Haskell Aff. ¶ 59; Deibel Aff. ¶ 36. WMD faces damage to its reputation as a trusted provider of reproductive healthcare in the Dayton community. Haskell Aff. ¶ 4. Such damage cannot be repaired. *See, e.g., Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir.1977) (finding of irreparable harm justified because “Planned Parenthood’s good will was imperiled by the prospect of having to interrupt its services”); *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 599 (6th Cir. 2001), citing *Basicomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992) (loss of “established goodwill” constitutes irreparable harm). Dr. Haskell, WMD’s owner, could find himself forced to close a business that he spent nearly his entire professional life building and running. All of these harms will have a devastating impact on WMD’s current patients as well as anyone seeking abortion in Dayton. Haskell Aff. ¶¶ 60-61. An order enjoining enforcement of SB 157 is warranted to avoid these imminent, grave, and irreparable harms.

**D. No Third Parties Will Be Harmed and The Public Interest Will Be Served.**

No third parties will be harmed if Defendants are enjoined. Plaintiffs have been providing safe, constitutionally protected health care in accordance with all applicable laws for decades. Haskell Aff. ¶ 13. Indeed, Plaintiffs’ most recent variance applications meet all of ODH’s requirements. *Id.* Ex. F. As this Court has explained, “the public has a particularly strong interest in a speedy injunction. . . where temporary relief would merely preserve the status quo on which

Ohioans seeking [abortion] have come to rely. In fact, the public interest will be served by allowing [abortion providers] to continue providing, and their patients to continue accessing, essential and constitutionally protected health care[.]” *Planned Parenthood Sw. Ohio Region. v. Ohio Dept. of Health*, Hamilton C.P. No. A 2101148, Entry Granting Pls.’ Mot. for Prelim. Inj., at 13 (Apr. 20, 2021), attached as exhibit No. ; *see also* Entry Granting Pls.’ Mot. for Prelim. Inj., at 1-2 (Apr. 15, 2022).

Moreover, “a great[] public interest exists in ensuring governments and governmental officials operate within the confines of constitutional restrictions and prohibitions. . . . ‘[I]t is always in the public interest to prevent violation of a party’s constitutional rights.’” *Lamar Advantage GP Co. v. City of Cincinnati*, Hamilton C.P. No. A-18-04105, 114 N.E.3d 805, 829 (2018), quoting *Miller v. City of Cincinnati*, 709 F.Supp.2d 605, 627 (S.D. Ohio 2008); *see also Am. Civ. Liberties Union Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 649 (6th Cir. 2015), quoting *Miller v. City of Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010) (“[I]t is always in the public interest to prevent violation of a party’s constitutional rights.” (internal quotations omitted)); *Michigan State*, 833 F.3d at 669; *Am. Freedom Defense Initiative v. Suburban Mobility Auth. for Reg’l Transp.*, 698 F.3d 885, 896 (6th Cir. 2012) (“[T]he public interest is promoted by the robust enforcement of constitutional rights”); *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir.1994).

#### **E. A Bond Is Not Necessary.**

This Court should use its discretion to waive the Civ. R. 65(C) bond requirement here, where the relief sought will result in no monetary loss to Defendants. *See Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 793, 673 N.E.2d 182 (10th Dist.1996) (courts have discretion to issue preliminary injunctions without requiring bond); *see*

also *Molton Co. v. Eagle-Picher Indus.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming decision to require no bond because of “the strength of [the plaintiff’s] case and the strong public interest involved”); *Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 804 (S.D. Ohio 2019) (waiving bond).

### CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to issue a preliminary injunction, prohibiting Defendants from revoking or refusing to renew Plaintiffs’ ASF licenses or otherwise preventing Plaintiffs from providing procedural abortion services because of noncompliance with SB 157.

Dated: May 26, 2022

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**CERTIFICATE OF SERVICE**

I certify that on May 26, 2022 a copy of the foregoing Motion for Preliminary Injunction 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**

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# **EXHIBIT 1**





## 5.24.22 Haskell Affidavit.pdf

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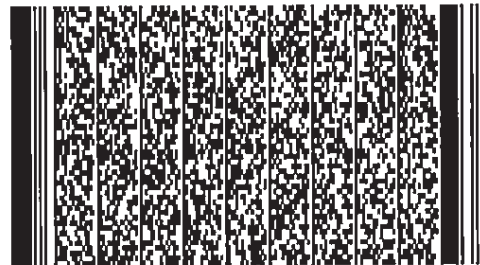
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### E-Signature Summary

**E-Signature 1: W Martin Haskell (WMH)**  
May 24, 2022 05:59:33 -8:00 [080A8B46C7B3] [73.205.54.188]  
martyh@fortemgt.com (Principal) (Personally Known)

**E-Signature Notary: Theresa M Sabo (TMS)**  
May 24, 2022 05:59:33 -8:00 [428FCFC9081F] [65.60.141.105]  
tess.sabo@gmail.com  
I, Theresa M Sabo, did witness the participants named above electronically sign this document.



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IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

WOMEN'S MEDICAL GROUP  
PROFESSIONAL CORP., *et al.*,

*Plaintiffs,*

v.

VANDERHOFF, *et al.*,

*Defendants.*

Case No. A2200704

Judge Alison Hatheway

**AFFIDAVIT OF W.M. MARTIN HASKELL, M.D. IN SUPPORT OF PLAINTIFF'S  
SECOND MOTION FOR PRELIMINARY INJUNCTION**

I, W.M. Martin Haskell, M.D., being duly sworn on oath, do depose and state as follows:

1. I am the sole shareholder and Medical Director of Women's Med Group Professional Corporation ("WMGPC"), which has owned and operated a clinic that provides abortion care in Kettering, Ohio since 1983. WMGPC currently holds an Ambulatory Surgical Facility ("ASF") license under the business name Women's Med Dayton ("WMD").<sup>1</sup>

2. I submit this affidavit in support of Plaintiffs' Second Motion for Preliminary Injunction to prevent the Ohio Department of Health from revoking or refusing to renew Plaintiffs' licenses or otherwise preventing Plaintiffs from providing procedural abortion services for reasons related to noncompliance with SB 157. I am hereby incorporating and restating in relevant part below my first Affidavit in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

3. I am over the age of eighteen, I am competent to testify, and I make this affidavit

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<sup>1</sup> Prior to 2019, the business was named Women's Med Center Dayton. I will use WMD throughout this affidavit to refer to WMD and WMCD, since the clinic and its ownership have remained the same since 1983.



based on personal knowledge.

4. As explained below, despite its record of providing safe, compassionate abortion care in the Dayton, Ohio area for nearly forty years, WMD may have to cease providing procedural abortion care if SB 157 is allowed to go into effect, because I have been unable to locate physicians who meet that law's arbitrary and medically unnecessary requirements and who are able to serve as backup physicians to support WMD's variance application. In fact, I do not believe that there exist any physicians that meet the law's requirements that also meet the other requirements for backup physicians under Ohio law.

#### **WMGPC and Abortion Care**

5. WMGPC and its predecessor organizations have provided reproductive health care in Ohio since 1973. WMGPC is a corporation organized under the laws of the State of Ohio.

6. WMGPC provides pregnancy testing, abortion, and birth control.

7. WMGPC has operated a licensed ASF providing abortions at 1401 E. Stroop Road in Kettering, Ohio, since 2008. Prior to that date, since 1983, WMGPC and its predecessor organizations provided abortions without needing to obtain an ASF license.

8. Currently, WMD provides abortions up to 21 weeks, 6 days of pregnancy as dated from the first day of the patient's last menstrual period ("LMP").

9. In 2021, 3378 abortions were performed at WMD, of which 1979 were procedural abortions. 37% (736) of those procedural abortions were performed after 10 weeks LMP.

10. Patients seek abortion for a variety of deeply personal reasons, including familial, medical, financial, and personal. Some people have abortions because they conclude that it is not the right time in their lives to have a child or to add to their families; some to preserve their life or health; some because they receive a diagnosis of a severe fetal medical condition or



anomaly; some because they have become pregnant as a result of rape; and others because they choose not to have children.

11. Patients in Ohio may obtain two types of abortion: medication abortion and surgical (or “procedural”) abortion. Medication abortion is a method of ending an early pregnancy by taking medications that cause the woman to undergo a process similar to an early miscarriage. Medication abortion is available in Ohio through 70 days LMP. Surgical abortion, despite its name, does not involve any incision, but rather involves the removal of the contents of the uterus with suction aspiration, alone or in conjunction with instruments.

12. Legal abortion is one of the safest and most common procedures in contemporary medicine, and complications are rare both at WMD and nationwide. Nationwide, “only a fraction of a percent” of abortion patients experience a complication requiring hospitalization. National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the U.S.* 55 (2018). In fact, the risk of mortality from abortion is approximately 12.5 times lower than from childbirth. *Id.* at 74 (estimating that the risk of death is 0.7 per 100,000 after a legal abortion, and 8.8 per 100,000 for childbirth).

13. The overwhelming majority of abortions are performed during the first trimester of pregnancy, when the gestational age of the fetus is at or less than fourteen weeks LMP. And because abortions are so safe, they are almost always provided in an outpatient setting.

14. The vast majority of the rare complications from abortion are minor and are treated successfully in an outpatient setting, including at our ASF by our excellent physicians. Notwithstanding the fact that more serious complications requiring hospital treatment are exceedingly rare, our ASF is prepared for them. My staff follows established, written protocols that are consistent with the highest standard of medical care for each patient transferred. Over



the past 10 years, physicians at WMD performed 20,887 procedural abortions. Of those, 9 (less than .05%) required transfer to a hospital where the patients were successfully treated and released. There has never been a death from an abortion performed at any WMGPC-operated facility.

### **WMD's ASF License and Written Transfer Agreement**

15. Ohio law requires ASFs, including abortion clinics, to obtain a written transfer agreement (“WTA”) with a nonpublic hospital within thirty miles of the clinic or to seek a variance from that WTA requirement.

16. Before WMD was required to have a WTA, any patient needing hospitalization from any clinic I owned or operated was treated by physicians to whom I made direct referrals.<sup>2</sup> But even if I had not made those direct referrals, my patients would have received the necessary care. Indeed, virtually all hospitals—and certainly those in Dayton—must comply with the federal Emergency Medical Treatment & 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 addition, Miami Valley Hospital has assured WMD that it would treat WMD patients in an emergency. Exhibit (“Ex.”) A.

17. In 2002, the ASF rules were first applied to WMD. In October 2002, WMD applied to ODH for an ASF license. The application met the statutory requirements for a license in all respects.

18. At the time of its application, WMD had a WTA with Miami Valley Hospital. However, the following month, in November 2002, Miami Valley Hospital rescinded the WTA

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<sup>2</sup> I previously owned a clinic in Cincinnati, and I currently also operate a clinic in Indianapolis, Indiana. My Cincinnati clinic stopped providing procedural abortion in 2014 after ODH revoked its ASF license, and I closed that clinic completely in 2017.



after pressure from a Board member who did not want the hospital to be associated with an abortion clinic.

19. Thus, while WMD's ASF application was pending, WMD requested a waiver of the WTA Requirement because it had alternative arrangements in place for admitting patients to a hospital in emergency and non-emergency situations. WMD met all the other statutory requirements for an ASF license except the WTA Requirement.

20. Nonetheless, in January 2003, ODH denied WMD's waiver request and ASF license application and issued a cease-and-desist order demanding that the clinic close immediately. Litigation over ODH's actions ensued, and the U.S. Court of Appeals for the Sixth Circuit ultimately decided that the State had violated WMGPC's right to procedural due process by attempting to shut the clinic down without first affording us a hearing. *See Women's Med. Prof'l Corp v. Baird*, 438 F.3d 595 (6th Cir. 2006); *Women's Med. Prof'l Corp v. Baird*, SDOH Case No. 2:03-cv-162. After that decision, WMGPC appealed ODH's order through the administrative process while seeking backup physicians. WMGPC was unsuccessful in its administrative appeal, but before we could seek judicial review and a stay from the Montgomery County Court of Common Pleas, ODH again attempted to shut us down by prematurely issuing a cease-and-desist order. We sought and received a temporary restraining order from a federal court preventing enforcement of that order.

21. In 2008, WMGPC applied for a variance to the WTA Requirement, identifying 3 backup physicians who could admit our patients to a local hospital and setting out our hospital transfer protocol. ODH granted this variance request.



22. ODH also granted a variance to my Cincinnati clinic in 2010 based on the fact that I and another doctor working at the clinic had courtesy admitting privileges at a Cincinnati hospital, without requiring *any* additional backup physicians. Ex. B.

23. In December 2011, ODH changed its internal rules for processing variance requests and required ASFs to apply for a variance annually at the time that the ASF applied for its license renewal. Since this rule change, WMD has filed timely license renewal and variance applications each year. Under Ohio law, ASFs with pending license renewal applications can continue operating as long as the renewal application is timely filed. Ohio Rev. Code § 119.06.

24. On June 30, 2015, Ohio's biennial budget bill, H.B. 64, was enacted. That law provided that, if ODH fails to act on a variance request within 60 days or if it denies a variance request, ODH will automatically suspend the clinic's ASF license ("Automatic Suspension Provision"). Absent the Automatic Suspension Provision in H.B. 64, as noted above, ASFs with pending license renewal applications could continue operating as long as the renewal application was timely filed.

25. WMD joined with Planned Parenthood of Southwest Ohio in challenging the constitutionality of H.B. 64 in federal court. WMD and PPSWO moved for, and received, a temporary restraining order, and subsequently a preliminary injunction, preventing enforcement of the Automatic Suspension Provision on the ground that it deprived the clinics of their property interest in the continuation of their businesses without due process. *Planned Parenthood Sw. Ohio Region v. Hodges*, 138 F. Supp. 3d 948, 961 (S.D. Ohio 2015).

26. On September 25, 2015, after the federal lawsuit was filed and a mere four days before the Automatic Suspension Provision was scheduled to go into effect, ODH denied WMD's variance application. Although WMD had listed three backup doctors in its variance



application (as it had on the previous variance that had been granted), ODH arbitrarily decided, in denying that application, that it would now require *four* backup doctors. WMD appealed that decision through the administrative process and thus was able to remain in operation until all of its administrative and judicial remedies were exhausted, in 2019.

27. While administrative review of ODH's denial of WMD's 2015 variance application was pending, it diligently searched for a fourth backup doctor. In June of 2019, it found one when a local physician became eligible to serve as a backup physician due to a change in employment.

28. WMD submitted its application for license renewal, including a variance request listing four backup doctors, on July 25, 2019. On August 27, 2019, out of an abundance of caution in case the state decided that it could not renew WMD's earlier license because the administrative and judicial review process for that license had ended, WMD applied for a new license, supported by a complete variance application listing four backup doctors. On September 23, 2019, sixty days after WMD filed a variance request listing four backup doctors as part of its license renewal application, ODH rejected the renewal application and declined to rule on the variance request. ODH deemed the application "no longer relevant" because it took the position that the license had expired after judicial review ended and therefore it could not be renewed. In the same letter, ODH informed WMD it would "promptly" rule on the new license application and variance request that had been filed by WMD on August 27, 2019.

29. On October 25, 2019, exactly sixty days after it was filed, ODH approved the variance request that was part of the new license application (but did not issue a new license). Despite the fact that WMD has been safely treating patients for decades, this was only the second time in its history that ODH has granted WMD a variance from the WTA requirement that it has





been unable to meet since 2002. On both occasions in which ODH granted the variances, WMD had been litigating in federal court against ODH's attempts to shut it down.

30. On October 29, 2019, WMD exhausted its administrative remedies as to the 2015 license under which it had been operating, thus finalizing the revocation of its license. Having lost the license under which it had been providing safe, legal care and unable to obtain a new license despite meeting every requirement, including ODH's arbitrary four backup physician rule, WMD was forced to abruptly stop providing surgical abortion services on October 29, 2019.

31. Despite being aware that the license WMD had been operating under had been revoked and that WMD's application, including a variance that had been granted days earlier, was pending, ODH delayed issuing the new license. As a result, WMD was unable to provide any patients with surgical care for two weeks.

32. Recognizing that the loss of its current ASF license was imminent and ODH would not imminently issue a new license, WMD moved for emergency relief from a federal court so that no patients would be denied care. That request was ultimately denied as moot after WMD finally received notice on November 12, 2019 that ODH issued WMD a new license effective November 5, 2019, through November 20, 2020.

33. From March 25, 2020 through July 1, 2021, ODH suspended all licensing action, including renewals and revocations, due to the COVID-19 health emergency. As a result, WMD is currently operating under the license issued in 2019.

34. In September 2020, WMD submitted a variance request and license renewal request for 2020, listing four backup doctors with admitting privileges at Miami Valley Hospital ("MVH"), which is approximately 5 miles away from WMD.



35. Even though the variance request included four backup doctors who each had admitting privileges at a local hospital and met all of the statutory variance requirements, ODH denied WMD's variance request on August 30, 2021. In the letter explaining the denial, ODH claimed that two of the four listed backup doctors were not qualified. According to ODH, one was disqualified, even though she had previously been accepted as a backup doctor, because she was not an OBGYN, but rather a general surgeon, and the other physician was disqualified because, although he possessed full clinical privileges at MVH, he lacked hospital staff voting rights.<sup>3</sup> In a letter dated August 30, 2021, ODH informed WMD it proposed to revoke and not to renew WMD's ASF license.<sup>4</sup>

36. The two physicians who were disqualified by ODH are more than capable of caring for WMD patients in the extremely rare event that hospital care is needed.

37. On September 13, 2021 WMD submitted a new variance request and simultaneous request that ODH reconsider the August 30 variance denial, explaining (1) that the non-OBGYN was a general surgeon who is well-qualified to treat WMD's patients, and OBGYN specialization was neither medically necessary nor legally required; and (2) staff voting rights have nothing to do with a doctor's qualifications or ability to admit or treat patients at the hospital where they have admitting privileges. WMD further informed ODH that the doctor who lacked voting rights had acquired them in August 2021. Ex. D.

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<sup>3</sup> The August 30 letter from ODH stated that one of WMD's backup doctors had "affiliate status," not "active status" admitting privileges. Ex. C. Our September 13 response explained that the only difference between affiliate status and active status was the inability to vote on matters affecting the medical staff. Ex. D.

<sup>4</sup> WMD requested a hearing on the proposed 2020 license revocation decision on September 20, 2021. A hearing has not yet been scheduled on that decision.



38. On October 13, 2021, WMD filed its annual ASF license renewal application for 2022, relying on the pending renewed variance request.

39. On November 12, 2021, ODH notified WMD that it would not reconsider its decision on the variance and denied the renewed variance request WMD submitted on September 13, 2021. While the Director agreed that his objection based on one backup doctor's lack of voting rights was no longer an issue, he continued to maintain that the general surgeon who had previously qualified was no longer an acceptable backup doctor. Ex. E.

40. On November 30, 2021, WMD requested a new variance. That variance request listed four backup doctors, all of whom are OBGYNs with voting rights at Miami Valley Hospital, where they all have full, active admitting privileges and voting rights. Ex. F.

41. In December, I learned that the Ohio General Assembly had passed Senate Bill 157 ("SB 157"), which (among other things) provides that backup physicians may not work, consult, or teach, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. Governor Mike DeWine signed SB157 into law, with an effective date of March 23, 2022.

42. All four of the backup physicians who supported our November 30, 2021 variance request are on the faculty of, provide instruction for, and are compensated in part under contracts with Wright State University, which is a state university.

43. On January 28, 2022, my attorney forwarded me ODH's decision on my November 30 variance request, which had been emailed to her that day. The letter stated that WMD's variance request was denied. It noted that all four of the backup physicians listed on the request were "credentialed as obstetrician/gynecologists with full active status admitting privileges at Miami Valley Hospital." However, it stated that the Director of the Department of



Health was nonetheless denying the variance because of “the four backup physicians’ clear relationship with Wright State Physicians and the clear public policy directives contained within” SB 157, while also admitting that “S.B. 157 becomes effective March 22, 2022 [*sic*].” Ex. G.

44. WMD has been able to continue providing procedural abortions only because the Court blocked ODH’s unconstitutional attempts to prematurely enforce SB 157.

45. I have read the text of SB 157, and it is my understanding that it provides that backup physicians who support an ASF’s variance application may not work, consult, or teach, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college. All four of the backup physicians who supported our November 30, 2021 variance request are on the faculty of, provide instruction for, and are compensated in part under contracts with Wright State University, which is a state university.

46. Since SB 157 was passed, I have tried to find alternative backup physicians who meet the requirements of SB 157 and the other requirements of Ohio law, as well as those requirements that are not found anywhere in Ohio law but that ODH has nonetheless applied to variance applications in the past. Specifically, I supervised one of the physicians who provides abortions at WMD, who took responsibility for conducting outreach to local hospitals and physicians. However, as a result of those efforts I have learned that there are currently no physicians who qualify to serve as backup physicians for WMD if SB 157 is enforced.

47. Under Ohio Revised Code section 3702.303, in order to obtain a variance from the WTA requirement, an ASF must provide, among other things, an agreement signed by “one or more consulting physicians who have admitting privileges at a minimum of one local hospital that is located within a twenty-five mile radius of the facility, memorializing the physician or



physicians' agreement to provide back-up coverage when medical care beyond the level the facility can provide is necessary.” Ohio Rev. Code § 3702.303(B)(2)

48. In addition, those consulting (or backup) physicians must attest that they actively practice “clinical medicine” within twenty-five miles of the ASF, that they are “familiar with the facility and its operations,” and they “agree to provide notice to the facility of any changes in the physician's ability to provide back-up coverage.” *Id.* § 3702.303(B)(3). Each physician must also have “a valid license to practice medicine and surgery or osteopathic medicine and surgery,” but the statute does not specify any particular specialization that the physician must possess. *Id.* § 3702.303(B)(3)(d). Finally, each physician must notify the hospital where the physician possesses admitting privileges of the physician’s agreement to serve in this capacity. *Id.* § 3702.303(B)(3)(3).

49. On top of these statutory requirements, ODH has invented and applied several additional requirements to variance applications made by WMD. According to its decision on WMD’s most recent variance application, ODH now requires no fewer than four backup physicians to support a variance application (although it previously accepted a smaller number); that those physicians all be obstetrician/gynecologists (OB/GYNs) (although it previously accepted a general surgeon); and that they all possess voting privileges at the hospital where they also hold admitting privileges.

50. There are only two hospital systems that have both emergency departments and obstetrics and gynecology (OB/GYN) departments located within twenty-five miles of WMD: Premier Health (which owns Miami Valley Hospital in Dayton and Atrium Hospital in Middletown) and Kettering Health. Both of these hospital systems host residents and medical



students from Wright State University Medical School, which is a public medical school, in their Obstetrics and Gynecology departments.

51. All of the attending OB/GYN physicians (i.e., physicians who have completed their residencies) who are on staff at these hospitals work closely with and provide practical instruction to those residents and medical students.<sup>5</sup> Under the terms of SB 157, it is my understanding that the attending physicians at these hospitals are at least “indirectly” providing instruction at Wright State University Medical School. Thus, all of the otherwise qualified physicians located within 25 miles of WMD are disqualified from serving as backup physicians by SB 157.

52. Indeed, it would be unsafe for attending OB/GYN physicians at Premier to work without residents or medical students, because attending physicians performing OB/GYN surgeries generally require assistance from another physician, and without residents and students, there would not be enough personnel at Premier available to assist in this capacity.

53. In addition, Kettering Health is affiliated with the Seventh Day Adventist Church and has made it clear to me in the past that it would not enter into, or allow physicians on its staff to enter into, an agreement with an ASF that provides abortions.

54. The only other major hospitals located within twenty-five miles of WMD are Dayton Children’s Hospital and the Dayton VA (Veterans Affairs) Medical Center, neither of

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<sup>5</sup> Medical residency is an extended period of practical instruction in one’s intended area of specialization, and that instruction is provided almost exclusively through working closely with, and under the supervision of, attending physicians in that area of specialization or related areas. In Ohio, only attending physicians who are members of a hospital’s medical staff may admit patients to the hospital. Residents are not permitted to admit patients.



which has an OB/GYN department.<sup>6</sup> In addition, the Wright-Patterson Air Force Base Hospital, which is located approximately 13.5 miles from WMD, has an OBGYN department but, because it is a military hospital, it is not available to receive patients from WMD.

55. In addition to the four backup physicians listed on our November 30 variance application, my physician has spoken with several OB/GYNs who have admitting privileges with Premier Health (Miami Valley Hospital), who would be willing to serve as backup doctors if they were permitted to do so by Ohio law. However, all of those physicians work with residents and medical students from WSU and, because they work with residents and medical students, they also hold clinical professor titles at WSU.

56. If WMD loses our ASF license, we will be unable to provide procedural abortions. Thus, the Greater Dayton area will be left without a procedural abortion provider.

57. If we do not receive protection against WMD's license being revoked by ODH, we will have to stop providing procedural abortions immediately on June 21, 2022. In fact, because some abortion procedures—particularly, those that take place at or after 15 weeks LMP—take more than one day to complete, WMD will have to stop scheduling those patients for procedures before June 21, 2022, since ODH can revoke WMD's license at any time beginning on that date. In addition, I will likely need to lay off numerous staff members almost immediately.

58. If WMD has to suddenly cease providing procedural abortions, we will suffer loss of patient trust, and loss of our ability to provide abortions to our patients.

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<sup>6</sup> WMD did not approach small, specialized hospitals such as Riverview Health Institute, which bills itself as a “private, luxury hospital,” <https://www.riverviewhealthinstitute.com/>, that do not have emergency rooms and OBGYN departments.



59. I am certain that, without the ability to provide procedural abortions, WMD would not be able to stay open for very long. In fact, my Cincinnati clinic closed in large part because it could no longer offer procedural abortions. Thus, if I knew there was no prospect of regaining an ASF license, I would close WMD permanently.

60. Our patients – the vast majority of whom have low incomes and extremely limited resources – will suffer significant harm if our ASF is closed. If the nearest procedural abortion clinic–PPSWO–is also required to cease performing abortions, there will be no provider of procedural abortions in Ohio south of Columbus. And even if PPSWO can continue providing procedural abortions for some period of time after July 21, it is unlikely that PPSWO would be able to absorb all of WMD’s procedural abortion patients during that time. In fact, some clinics in Ohio already have wait times of two weeks or more. Thus, some patients who would ordinarily have sought a surgical abortion at WMD could be forced to travel hundreds of miles to clinics in other parts of the state.

61. WMD’s closure would harm our patients greatly. Our patients have written numerous letters over the years, thanking us and our backup physicians for keeping WMD open. These letters demonstrate the range of circumstances that our patients are facing. For example, the partner of one patient wrote, “We needed this... Without this, my life, her life, and the fetus’ life would never have the chance to reach the full potential any person has the right to....So THANK YOU a million times and I hope you keep helping people just like us.” Another patient wrote, “I am a cancer patient and have lupus so being pregnant is not safe for me. I have done treatments during my 7 weeks of pregnancy. Thank you for keeping the choice alive.” Another patient simply wrote, “Thank you for keeping this clinic open and giving me my choice.”





62. Most of WMD's patients live in poverty or have low incomes; in 2021, approximately 61% of our patients had incomes at or below 120% of the poverty line. Consequently, many of our patients already struggle to afford an abortion, to make child care arrangements, and to arrange time off from work to reach our ASF, making travel to another city a significant hurdle to obtaining an abortion.

63. Even if the other procedural abortion clinics in Ohio could accept some of our patients, wait times for all patients will grow, delaying the procedure for some of our patients.

64. Although abortion is an extremely safe procedure, the risks do increase as the pregnancy advances.

65. Further, the costs of an abortion procedure also increase with gestational age. Thus, as patients are forced to delay their procedure due to long wait times at clinics, they may also be forced to come up with more money, causing them to delay their procedure even further, as they acquire the additional funds to cover the additional costs of the procedure and the accompanying travel, childcare, and lost wages.

66. For some women, these additional logistical and financial burdens may be too great, and they may be unable to travel to another clinic in the state to receive an abortion.

67. My training in medicine began in 1968 and I received my medical license in Alabama in 1973. I have seen first-hand the devastating infections, complications, sterility, and even death that resulted from illegal abortions and self-induced abortions prior to 1973 when abortions were legalized in this country. Though some may continue to have access to abortion, I am concerned that some other patients will resort to desperate measures and attempt to obtain abortions under conditions that are not safe. This number will surely grow if safe and legal procedural abortions become unavailable in Southwest Ohio.



FURTHER AFFIANT SAYETH NAUGHT.

W Martin Haskell  
Signed on 2022/05/24 05:59:33 -00


W.M. Martin Haskell, M.D.

State of Ohio

County of Franklin

05/24/2022

Sworn to or affirmed and subscribed before me on this \_\_\_\_ day of May, 2022.

  
Signed on 2022/05/24 06:59:33 -00

Signature of Notary Public



Notarial act performed by audio-visual communication

32DA3C5A-C2B7-491B-8C10-C3F8B2A18DC2 -- 2022/05/24 05:56:22 -6:00 --- Remote Notary



**MVH** Miami Valley Hospital

1401 E. Stroop Street  
Covington, Ohio 45429  
Telephone: 513-240-8100

November 19, 2002

Martin Haskell, M.D.  
Women's Medical Center  
1401 E. Stroop Rd.  
Kettering, Ohio 45429

RE: Termination of Transfer Agreement

Dear Dr. Haskell:

Pursuant to the Term and Termination section of the Transfer Agreement Between Miami Valley Hospital and Women's Medical Center, Miami Valley Hospital is hereby providing thirty days written notice of its intent to terminate the Agreement. As of December 20, 2002, the Transfer Agreement will no longer be in effect. Of course, the Miami Valley Hospital Emergency and Trauma Center will be available to any of your patients that have an emergency medical condition.

Sincerely,



Deb Mals  
Vice-President of Operations

A member of Premier Health Partners

**EXHIBIT A**



# OHIO DEPARTMENT OF HEALTH

246 North High Street  
Columbus, Ohio 43215

614/466-3543  
www.odh.ohio.gov

ted Strickland/Governor

Alvin D. Jackson, M.D./Director of Health

**OCT 21 2010**

Ms. Valerie Haskell  
Lebanon Road Medical Building, LLC  
6650 Given Road  
Cincinnati, Ohio 45243

**Subject: Variance Request of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center**

Dear Ms. Haskell,

This letter is in response to your September 15, 2010, correspondence on behalf of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center requesting a variance from the transfer agreement requirement set forth in paragraph (E) of the Ohio Administrative Code ("O.A.C.") rule 3701-83-19. Paragraph (E) of O.A.C. rule 3701-83-19 requires every ambulatory surgery facility ("ASF") to "have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, or for other needs as they arise." However, O.A.C. rule 3701-83-14 gives me the discretion to grant a variance from the transfer agreement requirement upon a showing that an ASF meets the intent of the requirement in an alternate manner.

In your September 15, 2010 letter, you specifically identified Drs. Haskell and Kade as having admitting privileges at The Jewish Hospital (Dr. Haskell) and The Christ Hospital (Dr. Kade). You have provided evidence of each physician's appointment to the courtesy staff of these hospitals and this information along with admitting privileges of these two physicians has been verified by a member of my staff with each hospital's medical staff office. You have further provided a copy of the Lebanon Road Surgery Center Emergency Medical Protocol to be followed where a Lebanon Road Surgery Center emergency patient is in need of hospital services.

After reviewing your correspondence and evaluating the information contained therein, I find that the proposed alternative to a written transfer directly between the ASF and a hospital provides for the continuity of care and the timely and unimpeded acceptance and admission of the ASF's emergency patients at a Cincinnati area hospital. Because the intent of the transfer agreement requirement is being met in an alternative manner, I hereby grant Lebanon Surgery Center a conditional variance from the requirement. This variance is conditioned upon: 1) the continued association with Lebanon Road Surgery Center of the two physicians named with admitting privileges to a Cincinnati area hospital; 2)

**EXHIBIT B**

Lebanon Road Surgery Center

Subject: Variance Request of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center

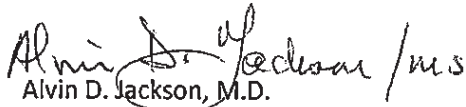
Page 2

the strict adherence to the Lebanon Road Surgery Center Emergency Protocol by all staff of the ASF; 3) the continued provision of timely and quality back-up emergency care by the physicians who provide services at this ASF; and 4) the provision of the letters of courtesy staff reappointments to The Jewish Hospital and The Christ Hospital medical staff as approved by the respective hospitals' medical staff offices.

Should the reappointment letters not be provided to this department in a timely manner, this variance will no longer be valid after September 30, 2011, the expiration date for the current privileges for Dr. Haskell at The Jewish Hospital. It is noted that the current privileges for Dr. Kade at The Christ Hospital expire February 28, 2012, at which time a reappointment letter must be sent to this department.

If you have any questions concerning this matter, please contact Roy Croy, R.S., C.P.H.Q., Chief of the Bureau of Community Health Care Facilities and Services, at (614)387-0801.

Sincerely,

Handwritten signature of Alvin D. Jackson, M.D. in cursive script.

Alvin D. Jackson, M.D.

Director of Health



## Department of Health

**Mike DeWine, Governor**  
**Jon Husted, Lt. Governor**

**Bruce Vanderhoff, MD, MBA, Director**

August 30, 2021

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  
2020 Variance Request and April 21, 2020 Variance Modification

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19 and after careful review and consideration, I am denying the variance request of Women's Med Dayton submitted on September 14, 2020, for its 2020 license renewal. I am also denying the 2020 variance modification submitted on April 21, 2020, substituting Dr. David Dhanraj for Dr. Jerome Yaklic, whose admitting privileges at Miami Valley Hospital ended on April 30, 2020.

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. Women's Med Dayton's use of Dr. Dhanraj as a backup physician is not sufficient as Dr. Dhanraj currently has affiliate status privileges at Miami Valley Hospital and not active status privileges.

As an additional reason for the denial, Dr. Dunn is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital.

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.

246 North High Street  
Columbus, Ohio 43215 U.S.A.

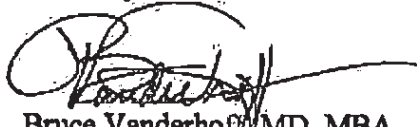
614 | 466-3543  
[www.odh.ohio.gov](http://www.odh.ohio.gov)

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

**EXHIBIT C**

If you have any questions regarding this variance, please contact Lisa Eschbacher, General Counsel, at 614-466-4882.

Sincerely,



Bruce Vanderhoff MD, MBA  
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations  
Lisa Eschbacher, General Counsel



B. Jessie Hill  
Associate Dean for Research and Faculty Development  
Judge Ben C. Green Professor of Law

11075 East Boulevard  
Cleveland, Ohio 44106-7148

phone 216.368.0553  
fax 216.368.2086  
jessie.hill@case.edu

law.case.edu

September 13, 2021

Mr. James Hodge  
Chief, Bureau of Regulatory Operations  
Ohio Department of Health  
246 North High Street  
Columbus, OH 43215

Re: Women's Med Dayton  
Request for Variance to the Hospital Transfer Agreement Requirement

Dear Mr. Hodge:

I represent Women's Med Group Professional Corporation (WMGPC) and Women's Med Dayton (WMD).

Jennifer Branch, who previously represented WMGPC and WMD, wrote on September 14, 2020 to request a variance to O.R.C. § 3702.303, which requires ASFs have a written transfer agreement (WTA) with a local hospital. A variance is necessary because WMD, a facility that provides surgical abortions, has requested a written transfer agreement with all of the local hospitals, but none has agreed to provide a WTA. By letter dated August 30, 2021, Director Bruce Vanderhoff denied this variance request.<sup>1</sup>

It is my understanding that WMD does not have a right to request a hearing from ODH regarding the variance denial. O.R.C. § 3702.304(C); O.A.C. 3701-83-14; *Women's Med Ctr. of Dayton v. Dep't of Health*, 133 N.E.3d 1047, 1049 (Ohio Ct. App.), *appeal not allowed*, 156 Ohio St. 3d 1492 (2019). However, because the August 30 variance denial was based on incorrect understandings of the factual premises underlying WMD's request, and because ODH's consideration of this variance request may benefit from addition information provided herein, I

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<sup>1</sup> It is my understanding that Ohio HB 197 (133rd Gen. Assem.) and Ohio HB 404 (133rd Gen. Assem.) had extended ODH's time for responding to this request to August 30, 2021 (sixty days after July 1, 2021).

**EXHIBIT D**



am now writing to re-apply for a variance on behalf of WMD, or in the alternative, to request reconsideration of the August 30 variance denial.

For the following reasons, WMD meets the requirements for a variance from the WTA requirement set forth in O.R.C. § 3702.304(B):

1. Application of the WTA requirement to WMD would cause it undue hardship, because as noted above, WMD has been unable to obtain a WTA from any local hospital. If the WTA requirement were applied to WMD, it would therefore be unable to continue operating, resulting in closure of the business and loss of its and its owner's constitutionally protected property rights. As explained in more detail below, WMD's alternative to a written transfer agreement provides patients with the same or higher level of safety and protection as a written transfer agreement would provide.

WMD has contracted with Drs. Barhan, Duke, Dunn, and Dhanraj to provide backup physician services (Attachment 1). WMD also has a contract with Wright State Physicians Women's Health Care (WSPWHC) to provide backup coverage. (Attachment 2). The four backup physicians have full, unrestricted, and active admitting privileges at Miami Valley Hospital (MVH) and have agreed to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of WMD's emergency patients.

Drs. Barhan, Duke, and Dhanraj are credentialed with admitting privileges in Obstetrics and Gynecology without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3). Dr. Dunn is credentialed with admitting privileges in General Surgery without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3).

The Director's August 30 letter explains that a variance was denied in part because Dr. Dhanraj, one of WMD's four backup physicians, "currently has affiliate status privileges at Miami Valley Hospital and not active status privileges." WMD respectfully submits that this statement does not accurately reflect Dr. Dhanraj's ability to admit patients and is not a proper basis for denying the variance. At the time of application, Dr. Dhanraj possessed full, unrestricted privileges in obstetrics and gynecology at MVH.<sup>2</sup> Although Dr. Dhanraj was listed

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<sup>2</sup> By email dated August 23, 2021, at 4:00 p.m., you requested the following information, to be provided by the close of business on August 25, 2021:

- Documentation that explains what each backup physician is permitted to do under their respective admitting privileges at Miami Valley Hospital, including any restrictions on procedures that can be performed or areas of the hospital that are restricted.
- The number of miles between each backup physician's clinical practice and Women's Med Dayton.

as “Affiliate (non-vote)” on the admitting privileges list submitted to Mr. Hodge on August 25, 2021, his inability to vote on matters affecting the medical staff was entirely due to the fact that he first joined the MVH staff in April 2020 and, according to the MVH Bylaws, physicians must be on staff for at least one year in order to acquire voting rights. (Attachment 4). Dr. Dhanraj’s non-voting status had no impact whatsoever on the scope of his clinical privileges at MVH or his ability to admit and care for patients. In fact, Dr. Dhanraj was hired to chair the Obstetrics and Gynecology Department at Wright State School of Medicine with responsibility for overseeing the training of resident physicians at Miami Valley Hospital. (Attachment 11). Therefore, Dr. Dhanraj’s non-voting status was not a proper basis for denial of the variance.

In addition, since Dr. Dhanraj was re-credentialed by MVH in August 2021, he has now acquired voting rights and his current status is therefore “Active (voting).” (Attachment 3).

The Director denied WMD’s variance for the additional reason that Dr. Dunn “is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital.” As indicated by the attached Privileges List for Dr. Dunn (Attachment 3), and as confirmed in my email to you dated August 25, 2021, she has full, active privileges in general surgery at MVH. She is also board certified in general surgery. (Attachment 5). The fact that Dr. Dunn’s privileges and credentials are in general surgery rather than obstetrics/gynecology does not undermine patient health and safety. There would be no greater benefit to patient safety if WMD had a WTA. A WTA would entail that a patient facing a complication would be sent to the emergency room to be evaluated by an emergency room physician and the appropriate specialist consulted by the emergency room physician. Dr. Dunn, who is the former Dean of the Wright State Boonshoft School of Medicine, is able to admit patients to MVH and consult the relevant specialist in the case of a complication that would be beyond her expertise, just as an emergency room physician would do.<sup>3</sup> (Attachment 12). Indeed, ODH accepted Dr. Dunn as a backup physician for WMD in support of its 2019 variance application, which was granted.

WMD also has a written policy ensuring coverage by the backup physicians who can admit patients to a hospital in the event that a patient experiences a surgical complication, an

- 
- The number of miles between Miami Valley Hospital and Women’s Med Dayton.
  - Board certification(s) held by each backup physician

On August 24, 2021, you also asked me “to confirm the privilege status for both Dr. Barhan and Dr. Duke[.] Are their statuses, ‘active,’ or ‘affiliated? It is not clear from the letter provided.” By email dated August 25, 2021, I responded to all of these requests and confirmed that “all 4 doctors have active privileges at MVH,” because I understood the question to refer to the physicians’ ability to admit patients and treat them at the hospital, not their medical staff voting status.

<sup>3</sup> In fact, some complications that could arise—such as bowel perforation—would be managed by a general surgeon rather than an OB/GYN.

emergency, or other medical need and needs to be transferred from WMD to the hospital. (Attachment 6).

2. The contracts between WMD and its four backup physicians who have admitting privileges at MVH, memorializing their agreement to provide backup coverage when medical care beyond the level the facility can provide is necessary, are attached. (Attachment 1).

3a. Drs. Barhan, Dhanraj, Duke, and Dunn are familiar with WMD and its operations and its policy. Each backup physician contract verifies this. (Attachment 1).

3b. All four physicians' primary practice location is Five Rivers Center for Women's Health, which is on the Miami Valley Hospital campus. It is about a 5-minute walk to the hospital. They have a secondary practice location in the Sugar Camp Medical Building, 400 Sugar Camp Circle, which is 1.6 miles or about a 5-minute drive to MVH. The distance from WMD to MVH is 5.8 miles, or approximately a 14-minute drive. (Attachment 7).

3c. WMD has a record of the name, telephone numbers, and practice specialties of each backup physician. (Attachment 6).

3d. Drs. Barhan, Dhanraj, Duke, and Dunn currently have active status with the Ohio State Medical Board and possess current medical licenses. None of the four backup physicians has had any action taken against them by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. Nor does any physician have a pending action or a complaint under review by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. (Attachment 8).

3e. All backup physicians are credentialed with admitting privileges in Gynecology or General Surgery without restrictions at Miami Valley Hospital. All backup physicians have notified MVH that they are consulting for WMD and that they have agreed to provide backup services. (Attachment 9).

4a. WMD's patient hospital transfer protocol (Attachment 6) and backup physician credentialing protocol (Attachment 10), which ensure continuity of care for any patient who may need to be transferred to a hospital, are attached. The facility's written policy explains how the attending physician will use the backup physicians to admit patients to a local hospital in an emergency, complication, or other medical need. The policy includes a plan which ensures that a substitute doctor is available to admit patients to

local hospitals in the event the four named backup physicians are temporarily unavailable and unable to admit patients to local hospitals. Drs. Barhan, Dhanraj, Duke, and Dunn affirm that they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4b. Drs. Barhan, Dhanraj, Duke, and Dunn agreed in their contracts to immediately inform WMD of any circumstances that may impact their ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMD's emergency patients. (Attachment 1). Drs. Barhan, Duke, Dhanraj, and Dunn agree they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4c. WMD's written protocol ensures that a copy of the patient's medical record is transmitted contemporaneously with the patient to hospital. (Attachment 6)

This variance request is a good faith attempt to comply with Ohio law. WMD has not been informed by ODH of any additional rules or regulations that apply to a variance request. If ODH implements any additional rules, WMD requests ODH to notify WMD.

If you need any additional information or have any questions, please contact me at the address and phone number above, or by email to [bjh11@case.edu](mailto:bjh11@case.edu)

Sincerely,



B. Jessie Hill

C: Heather Coglianese

Encls. Attachment 1 Backup physician agreements  
Attachment 2 WSPWHC agreement  
Attachment 3 Privilege lists  
Attachment 4 MVH Medical Staff Bylaws  
Attachment 5 Board certifications  
Attachment 6 WMD Backup Physician and Hospital Transfer protocol dated 4/2020  
Attachment 7 Maps  
Attachment 8 Verifications of license status with the Ohio Medical Board

Attachment 9 Notifications

Attachment 10 WMD Backup Physician credentialing protocol dated 8/26/19

Attachment 11 Dhanraj CV

Attachment 12 Dunn CV



Department  
of Health

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Bruce Vanderhoff, MD, MBA, Director

November 12, 2021

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  
2020 Variance Request Resubmission

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19 and after careful review and consideration, I am denying the September 13, 2021 request for reconsideration of my August 30, 2021, decision to deny Women's Med Dayton's variance request for its 2020 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. Documentation provided by Women's Med Dayton showed that Dr. Dhanraj currently has active privileges at Miami Valley Hospital. I find that Dr. Dhanraj's privileges are acceptable.

However, the request for reconsideration did not provide sufficient additional information to resolve my concern that Dr. Dunn is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital. Because Dr. Dunn is not an obstetrician/gynecologist, I am denying the request for reconsideration and my decision to deny the variance request remains unchanged.

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.

246 North High Street  
Columbus, Ohio 43215 U.S.A.

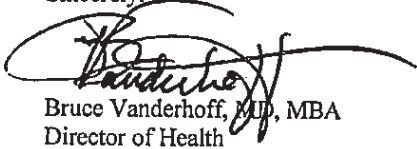
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**EXHIBIT E**

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, MUP, MBA  
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

B. Jessie Hill  
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November 30, 2021

Mr. James Hodge  
Chief, Bureau of Regulatory Operations  
Ohio Department of Health  
246 North High Street  
Columbus, OH 43215

VIA EMAIL

Re: Women's Med Dayton  
Request for Variance to the Hospital Transfer Agreement Requirement

Dear Mr. Hodge:

I represent Women's Med Group Professional Corporation (WMGPC) and Women's Med Dayton (WMD).

I write to request a variance to O.R.C. § 3702.303, which requires ASFs have a written transfer agreement (WTA) with a local hospital. A variance is necessary because WMD, a facility that provides surgical abortions, has requested a written transfer agreement with all of the local hospitals, but none has agreed to provide a WTA. Please consider this variance application in support of WMD's pending license renewal application.

For the following reasons, WMD meets the requirements for a variance from the WTA requirement set forth in O.R.C. § 3702.304(B):

1. Application of the WTA requirement to WMD would cause it undue hardship, because as noted above, WMD has been unable to obtain a WTA from any local hospital. If the WTA requirement were applied to WMD, it would therefore be unable to continue operating, resulting in closure of the business and loss of its and its owner's constitutionally protected property rights. As explained in more detail below, WMD's alternative to a written transfer agreement provides patients with the same or higher level of safety and protection as a written transfer agreement would provide.

**EXHIBIT F**



WMD has contracted with Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle to provide backup physician services (Attachment 1). WMD also has a contract with Wright State Physicians Women's Health Care (WSPWHC) to provide backup coverage. (Attachment 2). The four backup physicians have full, unrestricted, and active admitting privileges at Miami Valley Hospital (MVH) and have agreed to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of WMD's emergency patients.

Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle are credentialed with active admitting privileges in Obstetrics and Gynecology without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3).

WMD also has a written policy ensuring coverage by the backup physicians who can admit patients to a hospital in the event that a patient experiences a surgical complication, an emergency, or other medical need and needs to be transferred from WMD to the hospital. (Attachment 4).

2. The contracts between WMD and its four backup physicians who have admitting privileges at MVH, memorializing their agreement to provide backup coverage when medical care beyond the level the facility can provide is necessary, are attached. (Attachment 1).

3a. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle are familiar with WMD and its operations and its policy. Each backup physician contract verifies this. (Attachment 1).

3b. All four physicians' primary practice location is Five Rivers Center for Women's Health, which is on the Miami Valley Hospital campus. It is about a 5-minute walk to the hospital. They have a secondary practice location in the Sugar Camp Medical Building, 400 Sugar Camp Circle, which is 1.6 miles or about a 5-minute drive to MVH. The distance from WMD to MVH is 5.8 miles, or approximately a 14-minute drive. (Attachment 5).

3c. WMD has a record of the name, telephone numbers, and practice specialties of each backup physician. (Attachment 4).

3d. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle currently have active status with the Ohio State Medical Board and possess current medical licenses. None of the four backup physicians has had any action taken against them by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. Nor does any physician have a pending action or a complaint under review by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. (Attachment 6).

3e. All backup physicians are credentialed with admitting privileges in Gynecology or General Surgery without restrictions at Miami Valley Hospital. All backup physicians have

notified MVH that they are consulting for WMD and that they have agreed to provide backup services. (Attachment 7).

4a. WMD's patient hospital transfer protocol (Attachment 4) and backup physician credentialing protocol (Attachment 8), which ensure continuity of care for any patient who may need to be transferred to a hospital, are attached. The facility's written policy explains how the attending physician will use the backup physicians to admit patients to a local hospital in an emergency, complication, or other medical need. The policy includes a plan which ensures that a substitute doctor is available to admit patients to local hospitals in the event the four named backup physicians are temporarily unavailable and unable to admit patients to local hospitals. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle affirm that they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

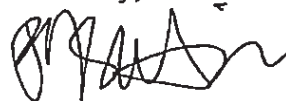
4b. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle agreed in their contracts to immediately inform WMD of any circumstances that may impact their ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMD's emergency patients. (Attachment 1). Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle agree they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4c. WMD's written protocol ensures that a copy of the patient's medical record is transmitted contemporaneously with the patient to hospital. (Attachment 4)

This variance request is a good faith attempt to comply with Ohio law. WMD has not been informed by ODH of any additional rules or regulations that apply to a variance request. If ODH implements any additional rules, WMD requests ODH to notify WMD.

If you need any additional information or have any questions, please contact me at the address and phone number above, or by email to [bjh11@case.edu](mailto:bjh11@case.edu).

Sincerely,



B. Jessie Hill

cc: Heather Coglianese

Encls. Attachment 1 Backup physician agreements  
Attachment 2 WSPWHC agreement

- Attachment 3 Privilege lists
- Attachment 4 WMD Backup Physician and Hospital Transfer protocol dated 4/2020
- Attachment 5 Maps
- Attachment 6 Verifications of license status with the Ohio Medical Board
- Attachment 7 Notifications
- Attachment 8 WMD Backup Physician credentialing protocol dated 8/26/19



# 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 (134<sup>th</sup> 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 30<sup>th</sup> 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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Columbus, Ohio 43215 U.S.A.

614 | 466-3543  
[www.odh.ohio.gov](http://www.odh.ohio.gov)

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**EXHIBIT G**

- 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

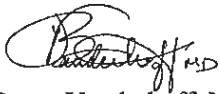
Sub. S.B. 157 (134<sup>th</sup> General Assembly) was signed by Governor DeWine on December 22, 2021. The bill, among other provisions, provides that backup physicians may not teach or provide instruction, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state 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



Department  
of Health

Mike DeWine, Governor

Bruce Vanderhoff, MD, MBA, Director

Jon Husted, Lt. Governor

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 (134<sup>th</sup> 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 (134<sup>th</sup> 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](mailto: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 A**

**MVH Miami Valley Hospital**

1401 E. Stroop Street  
Clayton, Ohio 45301

Telephone: 937-233-2100

November 19, 2002

Martin Haskell, M.D.  
Women's Medical Center  
1401 E. Stroop Rd.  
Kettering, Ohio 45429

RE: Termination of Transfer Agreement

Dear Dr. Haskell:

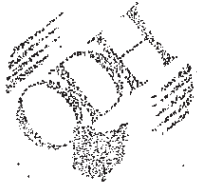
Pursuant to the Term and Termination section of the Transfer Agreement Between Miami Valley Hospital and Women's Medical Center, Miami Valley Hospital is hereby providing thirty days written notice of its intent to terminate the Agreement. As of December 20, 2002, the Transfer Agreement will no longer be in effect. Of course, the Miami Valley Hospital Emergency and Trauma Center will be available to any of your patients that have an emergency medical condition.

Sincerely,



Deb Mals  
Vice-President of Operations

# **EXHIBIT B**



# OHIO DEPARTMENT OF HEALTH

246 North High Street  
Columbus, Ohio 43215

614/466-3543  
www.odh.ohio.gov

Ted Strickland/Governor

Alvin D. Jackson, M.D./Director of Health

**OCT 21 2010**

Ms. Valerie Haskell  
Lebanon Road Medical Building, LLC  
6650 Given Road  
Cincinnati, Ohio 45243

**Subject: Variance Request of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center**

Dear Ms. Haskell,

This letter is in response to your September 15, 2010, correspondence on behalf of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center requesting a variance from the transfer agreement requirement set forth in paragraph (E) of the Ohio Administrative Code ("O.A.C.") rule 3701-83-19. Paragraph (E) of O.A.C. rule 3701-83-19 requires every ambulatory surgery facility ("ASF") to "have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, or for other needs as they arise." However, O.A.C. rule 3701-83-14 gives me the discretion to grant a variance from the transfer agreement requirement upon a showing that an ASF meets the intent of the requirement in an alternate manner.

In your September 15, 2010 letter, you specifically identified Drs. Haskell and Kade as having admitting privileges at The Jewish Hospital (Dr. Haskell) and The Christ Hospital (Dr. Kade). You have provided evidence of each physician's appointment to the courtesy staff of these hospitals and this information along with admitting privileges of these two physicians has been verified by a member of my staff with each hospital's medical staff office. You have further provided a copy of the Lebanon Road Surgery Center Emergency Medical Protocol to be followed where a Lebanon Road Surgery Center emergency patient is in need of hospital services.

After reviewing your correspondence and evaluating the information contained therein, I find that the proposed alternative to a written transfer directly between the ASF and a hospital provides for the continuity of care and the timely and unimpeded acceptance and admission of the ASF's emergency patients at a Cincinnati area hospital. Because the intent of the transfer agreement requirement is being met in an alternative manner, I hereby grant Lebanon Surgery Center a conditional variance from the requirement. This variance is conditioned upon: 1) the continued association with Lebanon Road Surgery Center of the two physicians named with admitting privileges to a Cincinnati area hospital; 2)

Lebanon Road Surgery Center

Subject: Variance Request of Lebanon Road Medical Center LLC dba Lebanon Road Surgery Center

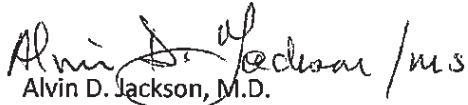
Page 2

the strict adherence to the Lebanon Road Surgery Center Emergency Protocol by all staff of the ASF; 3) the continued provision of timely and quality back-up emergency care by the physicians who provide services at this ASF; and 4) the provision of the letters of courtesy staff reappointments to The Jewish Hospital and The Christ Hospital medical staff as approved by the respective hospitals' medical staff offices.

Should the reappointment letters not be provided to this department in a timely manner, this variance will no longer be valid after September 30, 2011, the expiration date for the current privileges for Dr. Haskell at The Jewish Hospital. It is noted that the current privileges for Dr. Kade at The Christ Hospital expire February 28, 2012, at which time a reappointment letter must be sent to this department.

If you have any questions concerning this matter, please contact Roy Croy, R.S., C.P.H.Q., Chief of the Bureau of Community Health Care Facilities and Services, at (614)387-0801.

Sincerely,

Handwritten signature of Alvin D. Jackson, M.D. in cursive script.

Alvin D. Jackson, M.D.

Director of Health

# **EXHIBIT C**



**Department  
of Health**

**Mike DeWine, Governor**  
**Jon Husted, Lt. Governor**

**Bruce Vanderhoff, MD, MBA, Director**

August 30, 2021

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  
2020 Variance Request and April 21, 2020 Variance Modification

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19 and after careful review and consideration, I am denying the variance request of Women's Med Dayton submitted on September 14, 2020, for its 2020 license renewal. I am also denying the 2020 variance modification submitted on April 21, 2020, substituting Dr. David Dhanraj for Dr. Jerome Yaklic, whose admitting privileges at Miami Valley Hospital ended on April 30, 2020.

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. Women's Med Dayton's use of Dr. Dhanraj as a backup physician is not sufficient as Dr. Dhanraj currently has affiliate status privileges at Miami Valley Hospital and not active status privileges.

As an additional reason for the denial, Dr. Dunn is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital.

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.

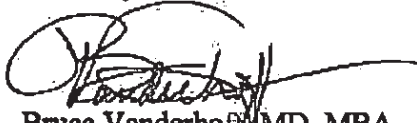
246 North High Street  
Columbus, Ohio 43215 U.S.A.

614 | 466-3543  
[www.odh.ohio.gov](http://www.odh.ohio.gov)

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

If you have any questions regarding this variance, please contact Lisa Eschbacher, General Counsel, at 614-466-4882.

Sincerely,



Bruce Vanderhoff MD, MBA  
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations  
Lisa Eschbacher, General Counsel



# **EXHIBIT D**



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

B. Jessie Hill  
Associate Dean for Research and Faculty Development  
Judge Ben C. Green Professor of Law

11075 East Boulevard  
Cleveland, Ohio 44106-7148

phone 216.368.0553  
fax 216.368.2086  
jessie.hill@case.edu

law.case.edu

September 13, 2021

Mr. James Hodge  
Chief, Bureau of Regulatory Operations  
Ohio Department of Health  
246 North High Street  
Columbus, OH 43215

Re: Women's Med Dayton  
Request for Variance to the Hospital Transfer Agreement Requirement

Dear Mr. Hodge:

I represent Women's Med Group Professional Corporation (WMGPC) and Women's Med Dayton (WMD).

Jennifer Branch, who previously represented WMGPC and WMD, wrote on September 14, 2020 to request a variance to O.R.C. § 3702.303, which requires ASFs have a written transfer agreement (WTA) with a local hospital. A variance is necessary because WMD, a facility that provides surgical abortions, has requested a written transfer agreement with all of the local hospitals, but none has agreed to provide a WTA. By letter dated August 30, 2021, Director Bruce Vanderhoff denied this variance request.<sup>1</sup>

It is my understanding that WMD does not have a right to request a hearing from ODH regarding the variance denial. O.R.C. § 3702.304(C); O.A.C. 3701-83-14; *Women's Med Ctr. of Dayton v. Dep't of Health*, 133 N.E.3d 1047, 1049 (Ohio Ct. App.), *appeal not allowed*, 156 Ohio St. 3d 1492 (2019). However, because the August 30 variance denial was based on incorrect understandings of the factual premises underlying WMD's request, and because ODH's consideration of this variance request may benefit from addition information provided herein, I

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<sup>1</sup> It is my understanding that Ohio HB 197 (133rd Gen. Assem.) and Ohio HB 404 (133rd Gen. Assem.) had extended ODH's time for responding to this request to August 30, 2021 (sixty days after July 1, 2021).

am now writing to re-apply for a variance on behalf of WMD, or in the alternative, to request reconsideration of the August 30 variance denial.

For the following reasons, WMD meets the requirements for a variance from the WTA requirement set forth in O.R.C. § 3702.304(B):

1. Application of the WTA requirement to WMD would cause it undue hardship, because as noted above, WMD has been unable to obtain a WTA from any local hospital. If the WTA requirement were applied to WMD, it would therefore be unable to continue operating, resulting in closure of the business and loss of its and its owner's constitutionally protected property rights. As explained in more detail below, WMD's alternative to a written transfer agreement provides patients with the same or higher level of safety and protection as a written transfer agreement would provide.

WMD has contracted with Drs. Barhan, Duke, Dunn, and Dhanraj to provide backup physician services (Attachment 1). WMD also has a contract with Wright State Physicians Women's Health Care (WSPWHC) to provide backup coverage. (Attachment 2). The four backup physicians have full, unrestricted, and active admitting privileges at Miami Valley Hospital (MVH) and have agreed to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of WMD's emergency patients.

Drs. Barhan, Duke, and Dhanraj are credentialed with admitting privileges in Obstetrics and Gynecology without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3). Dr. Dunn is credentialed with admitting privileges in General Surgery without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3).

The Director's August 30 letter explains that a variance was denied in part because Dr. Dhanraj, one of WMD's four backup physicians, "currently has affiliate status privileges at Miami Valley Hospital and not active status privileges." WMD respectfully submits that this statement does not accurately reflect Dr. Dhanraj's ability to admit patients and is not a proper basis for denying the variance. At the time of application, Dr. Dhanraj possessed full, unrestricted privileges in obstetrics and gynecology at MVH.<sup>2</sup> Although Dr. Dhanraj was listed

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<sup>2</sup> By email dated August 23, 2021, at 4:00 p.m., you requested the following information, to be provided by the close of business on August 25, 2021:

- Documentation that explains what each backup physician is permitted to do under their respective admitting privileges at Miami Valley Hospital, including any restrictions on procedures that can be performed or areas of the hospital that are restricted.
- The number of miles between each backup physician's clinical practice and Women's Med Dayton.

as “Affiliate (non-vote)” on the admitting privileges list submitted to Mr. Hodge on August 25, 2021, his inability to vote on matters affecting the medical staff was entirely due to the fact that he first joined the MVH staff in April 2020 and, according to the MVH Bylaws, physicians must be on staff for at least one year in order to acquire voting rights. (Attachment 4). Dr. Dhanraj’s non-voting status had no impact whatsoever on the scope of his clinical privileges at MVH or his ability to admit and care for patients. In fact, Dr. Dhanraj was hired to chair the Obstetrics and Gynecology Department at Wright State School of Medicine with responsibility for overseeing the training of resident physicians at Miami Valley Hospital. (Attachment 11). Therefore, Dr. Dhanraj’s non-voting status was not a proper basis for denial of the variance.

In addition, since Dr. Dhanraj was re-credentialed by MVH in August 2021, he has now acquired voting rights and his current status is therefore “Active (voting).” (Attachment 3).

The Director denied WMD’s variance for the additional reason that Dr. Dunn “is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital.” As indicated by the attached Privileges List for Dr. Dunn (Attachment 3), and as confirmed in my email to you dated August 25, 2021, she has full, active privileges in general surgery at MVH. She is also board certified in general surgery. (Attachment 5). The fact that Dr. Dunn’s privileges and credentials are in general surgery rather than obstetrics/gynecology does not undermine patient health and safety. There would be no greater benefit to patient safety if WMD had a WTA. A WTA would entail that a patient facing a complication would be sent to the emergency room to be evaluated by an emergency room physician and the appropriate specialist consulted by the emergency room physician. Dr. Dunn, who is the former Dean of the Wright State Boonshoft School of Medicine, is able to admit patients to MVH and consult the relevant specialist in the case of a complication that would be beyond her expertise, just as an emergency room physician would do.<sup>3</sup> (Attachment 12). Indeed, ODH accepted Dr. Dunn as a backup physician for WMD in support of its 2019 variance application, which was granted.

WMD also has a written policy ensuring coverage by the backup physicians who can admit patients to a hospital in the event that a patient experiences a surgical complication, an

- 
- The number of miles between Miami Valley Hospital and Women’s Med Dayton.
  - Board certification(s) held by each backup physician

On August 24, 2021, you also asked me “to confirm the privilege status for both Dr. Barhan and Dr. Duke[.] Are their statuses, ‘active,’ or ‘affiliated? It is not clear from the letter provided.” By email dated August 25, 2021, I responded to all of these requests and confirmed that “all 4 doctors have active privileges at MVH,” because I understood the question to refer to the physicians’ ability to admit patients and treat them at the hospital, not their medical staff voting status.

<sup>3</sup> In fact, some complications that could arise—such as bowel perforation—would be managed by a general surgeon rather than an OB/GYN.

emergency, or other medical need and needs to be transferred from WMD to the hospital. (Attachment 6).

2. The contracts between WMD and its four backup physicians who have admitting privileges at MVH, memorializing their agreement to provide backup coverage when medical care beyond the level the facility can provide is necessary, are attached. (Attachment 1).

3a. Drs. Barhan, Dhanraj, Duke, and Dunn are familiar with WMD and its operations and its policy. Each backup physician contract verifies this. (Attachment 1).

3b. All four physicians' primary practice location is Five Rivers Center for Women's Health, which is on the Miami Valley Hospital campus. It is about a 5-minute walk to the hospital. They have a secondary practice location in the Sugar Camp Medical Building, 400 Sugar Camp Circle, which is 1.6 miles or about a 5-minute drive to MVH. The distance from WMD to MVH is 5.8 miles, or approximately a 14-minute drive. (Attachment 7).

3c. WMD has a record of the name, telephone numbers, and practice specialties of each backup physician. (Attachment 6).

3d. Drs. Barhan, Dhanraj, Duke, and Dunn currently have active status with the Ohio State Medical Board and possess current medical licenses. None of the four backup physicians has had any action taken against them by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. Nor does any physician have a pending action or a complaint under review by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. (Attachment 8).

3e. All backup physicians are credentialed with admitting privileges in Gynecology or General Surgery without restrictions at Miami Valley Hospital. All backup physicians have notified MVH that they are consulting for WMD and that they have agreed to provide backup services. (Attachment 9).

4a. WMD's patient hospital transfer protocol (Attachment 6) and backup physician credentialing protocol (Attachment 10), which ensure continuity of care for any patient who may need to be transferred to a hospital, are attached. The facility's written policy explains how the attending physician will use the backup physicians to admit patients to a local hospital in an emergency, complication, or other medical need. The policy includes a plan which ensures that a substitute doctor is available to admit patients to

local hospitals in the event the four named backup physicians are temporarily unavailable and unable to admit patients to local hospitals. Drs. Barhan, Dhanraj, Duke, and Dunn affirm that they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4b. Drs. Barhan, Dhanraj, Duke, and Dunn agreed in their contracts to immediately inform WMD of any circumstances that may impact their ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMD's emergency patients. (Attachment 1). Drs. Barhan, Duke, Dhanraj, and Dunn agree they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4c. WMD's written protocol ensures that a copy of the patient's medical record is transmitted contemporaneously with the patient to hospital. (Attachment 6)

This variance request is a good faith attempt to comply with Ohio law. WMD has not been informed by ODH of any additional rules or regulations that apply to a variance request. If ODH implements any additional rules, WMD requests ODH to notify WMD.

If you need any additional information or have any questions, please contact me at the address and phone number above, or by email to [bjh11@case.edu](mailto:bjh11@case.edu)

Sincerely,



B. Jessie Hill

C: Heather Coglianese

Encls. Attachment 1 Backup physician agreements  
Attachment 2 WSPWHC agreement  
Attachment 3 Privilege lists  
Attachment 4 MVH Medical Staff Bylaws  
Attachment 5 Board certifications  
Attachment 6 WMD Backup Physician and Hospital Transfer protocol dated 4/2020  
Attachment 7 Maps  
Attachment 8 Verifications of license status with the Ohio Medical Board

Attachment 9 Notifications

Attachment 10 WMD Backup Physician credentialing protocol dated 8/26/19

Attachment 11 Dhanraj CV

Attachment 12 Dunn CV

# **EXHIBIT E**





Department  
of Health

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Bruce Vanderhoff, MD, MBA, Director

November 12, 2021

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  
2020 Variance Request Resubmission

Dear Ms. Hill:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, and 3701-83-19 and after careful review and consideration, I am denying the September 13, 2021 request for reconsideration of my August 30, 2021, decision to deny Women's Med Dayton's variance request for its 2020 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. Documentation provided by Women's Med Dayton showed that Dr. Dhanraj currently has active privileges at Miami Valley Hospital. I find that Dr. Dhanraj's privileges are acceptable.

However, the request for reconsideration did not provide sufficient additional information to resolve my concern that Dr. Dunn is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital. Because Dr. Dunn is not an obstetrician/gynecologist, I am denying the request for reconsideration and my decision to deny the variance request remains unchanged.

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.

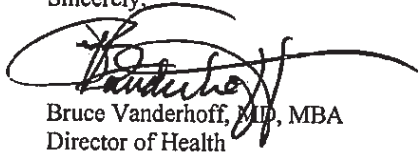
246 North High Street  
Columbus, Ohio 43215 U.S.A.

614 | 466-3543  
[www.odh.ohio.gov](http://www.odh.ohio.gov)

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services.

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

Sincerely,

A handwritten signature in black ink, appearing to read "B. Vanderhoff", with a large, sweeping flourish extending to the right.

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

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations

# **EXHIBIT F**



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

B. Jessie Hill  
Associate Dean for Research and Faculty Development  
Judge Ben C. Green Professor of Law

11075 East Boulevard  
Cleveland, Ohio 44106-7148

phone 216.368.0553  
fax 216.368.2086  
jessie.hill@case.edu

law.case.edu

November 30, 2021

Mr. James Hodge  
Chief, Bureau of Regulatory Operations  
Ohio Department of Health  
246 North High Street  
Columbus, OH 43215

VIA EMAIL

Re: Women's Med Dayton  
Request for Variance to the Hospital Transfer Agreement Requirement

Dear Mr. Hodge:

I represent Women's Med Group Professional Corporation (WMGPC) and Women's Med Dayton (WMD).

I write to request a variance to O.R.C. § 3702.303, which requires ASFs have a written transfer agreement (WTA) with a local hospital. A variance is necessary because WMD, a facility that provides surgical abortions, has requested a written transfer agreement with all of the local hospitals, but none has agreed to provide a WTA. Please consider this variance application in support of WMD's pending license renewal application.

For the following reasons, WMD meets the requirements for a variance from the WTA requirement set forth in O.R.C. § 3702.304(B):

1. Application of the WTA requirement to WMD would cause it undue hardship, because as noted above, WMD has been unable to obtain a WTA from any local hospital. If the WTA requirement were applied to WMD, it would therefore be unable to continue operating, resulting in closure of the business and loss of its and its owner's constitutionally protected property rights. As explained in more detail below, WMD's alternative to a written transfer agreement provides patients with the same or higher level of safety and protection as a written transfer agreement would provide.

WMD has contracted with Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle to provide backup physician services (Attachment 1). WMD also has a contract with Wright State Physicians Women's Health Care (WSPWHC) to provide backup coverage. (Attachment 2). The four backup physicians have full, unrestricted, and active admitting privileges at Miami Valley Hospital (MVH) and have agreed to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of WMD's emergency patients.

Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle are credentialed with active admitting privileges in Obstetrics and Gynecology without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3).

WMD also has a written policy ensuring coverage by the backup physicians who can admit patients to a hospital in the event that a patient experiences a surgical complication, an emergency, or other medical need and needs to be transferred from WMD to the hospital. (Attachment 4).

2. The contracts between WMD and its four backup physicians who have admitting privileges at MVH, memorializing their agreement to provide backup coverage when medical care beyond the level the facility can provide is necessary, are attached. (Attachment 1).

3a. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle are familiar with WMD and its operations and its policy. Each backup physician contract verifies this. (Attachment 1).

3b. All four physicians' primary practice location is Five Rivers Center for Women's Health, which is on the Miami Valley Hospital campus. It is about a 5-minute walk to the hospital. They have a secondary practice location in the Sugar Camp Medical Building, 400 Sugar Camp Circle, which is 1.6 miles or about a 5-minute drive to MVH. The distance from WMD to MVH is 5.8 miles, or approximately a 14-minute drive. (Attachment 5).

3c. WMD has a record of the name, telephone numbers, and practice specialties of each backup physician. (Attachment 4).

3d. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle currently have active status with the Ohio State Medical Board and possess current medical licenses. None of the four backup physicians has had any action taken against them by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. Nor does any physician have a pending action or a complaint under review by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. (Attachment 6).

3e. All backup physicians are credentialed with admitting privileges in Gynecology or General Surgery without restrictions at Miami Valley Hospital. All backup physicians have

notified MVH that they are consulting for WMD and that they have agreed to provide backup services. (Attachment 7).

4a. WMD's patient hospital transfer protocol (Attachment 4) and backup physician credentialing protocol (Attachment 8), which ensure continuity of care for any patient who may need to be transferred to a hospital, are attached. The facility's written policy explains how the attending physician will use the backup physicians to admit patients to a local hospital in an emergency, complication, or other medical need. The policy includes a plan which ensures that a substitute doctor is available to admit patients to local hospitals in the event the four named backup physicians are temporarily unavailable and unable to admit patients to local hospitals. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle affirm that they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

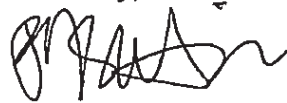
4b. Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle agreed in their contracts to immediately inform WMD of any circumstances that may impact their ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMD's emergency patients. (Attachment 1). Drs. Barhan, Dhanraj, Duke, and Reisinger-Kindle agree they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4c. WMD's written protocol ensures that a copy of the patient's medical record is transmitted contemporaneously with the patient to hospital. (Attachment 4)

This variance request is a good faith attempt to comply with Ohio law. WMD has not been informed by ODH of any additional rules or regulations that apply to a variance request. If ODH implements any additional rules, WMD requests ODH to notify WMD.

If you need any additional information or have any questions, please contact me at the address and phone number above, or by email to [bjh11@case.edu](mailto:bjh11@case.edu).

Sincerely,



B. Jessie Hill

cc: Heather Coglianese

Encls. Attachment 1 Backup physician agreements  
Attachment 2 WSPWHC agreement

Attachment 3 Privilege lists  
Attachment 4 WMD Backup Physician and Hospital Transfer protocol dated 4/2020  
Attachment 5 Maps  
Attachment 6 Verifications of license status with the Ohio Medical Board  
Attachment 7 Notifications  
Attachment 8 WMD Backup Physician credentialing protocol dated 8/26/19

# **EXHIBIT G**





# 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 (134<sup>th</sup> 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 30<sup>th</sup> 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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Columbus, Ohio 43215 U.S.A.

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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 (134<sup>th</sup> 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 H**



# 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 (134<sup>th</sup> 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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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 (134<sup>th</sup> 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](mailto: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 2**

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

WOMEN'S MEDICAL GROUP  
PROFESSIONAL CORP., *et al.*,

*Plaintiffs,*

v.

VANDERHOFF, *et al.*,

*Defendants.*

Case No. A 2200704

Judge Alison Hatheway

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**AFFIDAVIT OF KERSHA DEIBEL IN SUPPORT OF PLAINTIFFS' SECOND MOTION  
FOR PRELIMINARY INJUNCTION**

I, Kersha Deibel, being duly sworn on oath, do depose and state as follows:

1. I am the President and Chief Executive Officer of Planned Parenthood Southwest Ohio Region ("PPSWO").

2. My responsibilities at PPSWO involve overseeing the services and programs provided by our health centers. I am therefore familiar with the services we provide and the patients we treat. This affidavit is based upon my personal knowledge and knowledge I have acquired in the course of my duties with PPSWO.

3. I submit this affidavit in support of Plaintiffs' Second Motion for Preliminary Injunction to prevent the Ohio Department of Health ("ODH") from revoking or refusing to renew Plaintiffs' Ambulatory Surgical Facility ("ASF") licenses or otherwise preventing Plaintiffs from performing procedural abortions for reasons related to noncompliance with SB 157. I am hereby incorporating and restating below the relevant assertions from my prior Affidavit of Kersha Deibel in Support of Plaintiff's Motion for Temporary Restraining Order Followed by Preliminary Injunction, dated February 25, 2022.



### **PPSWO and Its Services**

4. PPSWO is a nonprofit corporation organized under the laws of the State of Ohio and headquartered in Cincinnati, Ohio. PPSWO and its predecessor organizations have provided health care in Ohio since 1929.

5. PPSWO provides affordable, respectful, and high-quality care to tens of thousands of patients in southwest Ohio. PPSWO provides a broad range of medical services, including birth control; annual gynecological examinations; cervical pap smears; diagnosis and treatment of vaginal infections; testing and treatment for certain sexually transmitted infections; HIV testing; pregnancy testing; and medication and procedural abortions.

6. PPSWO provides procedural abortions at its ambulatory surgical facility (“ASF”) in Cincinnati. PPSWO or a predecessor organization has provided procedural abortions in this location since 1974. Currently, PPSWO provides procedural abortions up to 21 weeks, 6 days of pregnancy as dated from the first day of the patient’s last menstrual period (“LMP”). PPSWO provides medication abortion up to 70 days, or 10 weeks, LMP.

7. In calendar year 2019, 75% of the abortions provided at PPSWO’s ASF were procedural abortions. In calendar year 2020, this number declined for reasons related to the COVID-19 pandemic: 64% of abortions provided at PPSWO’s ASF were procedural abortions. The percentage increased again in 2021 to 71% procedural abortions. In 2019, 1,321 procedural abortions were performed after 10 weeks LMP; in 2020, 1,239 procedural abortions were performed after 10 weeks LMP; and in 2021, 1,075 procedural abortions were performed after 10 weeks LMP.

8. 50% of PPSWO’s abortion patients in 2021 had incomes at or below 110% of the federal poverty line.

9. Abortion is extremely safe and complications rarely occur. When complications do occur, the vast majority are minor and are successfully treated at our ASF. Notwithstanding that more serious complications are extremely rare, our ASF is prepared for them. In the past five years we have provided over 16,334 abortions, and only four of those patients needed to be transferred to a hospital. All received appropriate treatment and were released.

**PPSWO's ASF License**

10. PPSWO has operated with an ASF license since 2000, after it was informed by ODH that its provision of abortion services qualified it as an ASF. Ohio law requires that ASFs have a written transfer agreement (“WTA”) with a local hospital, or obtain a variance from that requirement from ODH.

11. Until 2013, PPSWO complied with that requirement by having a WTA with University of Cincinnati Medical Center (“UCMC”), but UCMC was forced to terminate that agreement in 2013 when Ohio passed a law prohibiting public hospitals from entering into a WTA with an ASF that provides abortions. R.C. 3727.60(B)(1). PPSWO has been unable to secure a WTA with another local hospital since that time, despite approaching all the local hospitals that qualify repeatedly over the years. PPSWO has therefore needed to re-apply annually for a variance from the WTA requirement.

12. Prior to the expiration of the WTA with UCMC, PPSWO submitted an application for a variance supported by contracts with several backup doctors with privileges at a local hospital who agreed to provide care to PPSWO's patients. However, in October 2014, ODH—apparently ignoring that application—informed PPSWO that PPSWO was not in compliance with the ASF licensing requirements because of the lack of a WTA and threatened to revoke PPSWO's license.

13. Because of ODH's threatened revocation of PPSWO's ASF license and PPSWO's exposure to substantial civil penalties, PPSWO was forced to file litigation seeking to enjoin ODH from taking actions to revoke its ASF license. *See* Complaint, *Planned Parenthood Southwest Ohio Region v. Hodges*, No. 1:14-cv-00867 (S.D.Ohio Nov. 10, 2014), ECF No. 1. In response to this litigation, ODH granted PPSWO's variance request in November 2014, and the litigation was dismissed without prejudice.

14. PPSWO's next license-renewal request and new variance request were submitted in May 2015. In September 2015, ODH denied PPSWO's request for a variance, stating that the three backup doctors PPSWO had identified in support of its application were insufficient, and appearing to require four backup doctors, even though ODH had approved previous PPSWO variances with only three. That same month, ODH proposed to revoke and not renew PPSWO's ASF license.

15. When ODH informed PPSWO of the need for a fourth backup doctor, PPSWO began a search, signed a contract with a fourth backup doctor, and submitted a new variance request to ODH, which ODH granted in November 2015. At the same time, ODH notified PPSWO that it would be required to submit a new variance request by April 1, 2016, which was 60 days in advance of the expiration of PPSWO's license, due to R.C. 3702.304(A)(2).

16. PPSWO diligently applied for new variances on March 31, 2016; March 31, 2017; March 31, 2018; and March 21, 2019, each time listing four backup doctors. ODH granted each of these variances.

17. On December 20, 2019, PPSWO notified ODH that one of its backup doctors had resigned. As a result, ODH rescinded PPSWO's variance on December 26, 2019. PPSWO

contracted with a replacement backup doctor less than two weeks later on January 8, 2020, and submitted a new variance request that same day.

18. ODH never ruled on PPSWO's January 8, 2020, variance request. Therefore, PPSWO re-filed this variance request 60 days later on March 30, 2020, and again on March 31, 2021, and July 2, 2021.

19. During this same time period, ODH suspended all licensing action, including renewals and revocations, from March 25, 2020, through July 1, 2021, due to the COVID-19 health emergency.

20. On August 30, 2021, ODH granted PPSWO's July 2, 2021, variance request, which was consolidated with all other pending variance requests. Under current law, that variance remains in effect through the end of PPSWO's next license-renewal period.

21. In July 2021, the Ohio legislature passed Am. Sub. H.B. 110 ("HB 110"), 134th Gen. Assemb. (2021), which modified several requirements for a variance, including the maximum distance between an ASF and its backup physicians' practice locations and hospitals. *See* R.C. 3702.304(B). HB 110 further requires that ASFs that had been granted a variance submit documentation demonstrating compliance with HB 110's new requirements within ninety days of its September 30, 2021, effective date, and permits ODH to rescind the variance if the ASF fails to demonstrate compliance. HB 110, § 291.80. The backup physicians who support PPSWO's current variance complied with HB 110, so PPSWO submitted the required documentation to ODH on December 29, 2021.

22. On February 23, 2022, ODH sent a letter to PPSWO in response to its December 2021 submission. *See* Letter from James Hodge, Chief of the Bureau of Regulatory Operations at ODH, to Lisa Pierce Riesz, Counsel for PPSWO, LLP (Feb. 23, 2022), attached hereto as Exhibit

A. The letter did not raise any concern with PPSWO's compliance with HB 110, but instead inquired about PPSWO's compliance with Ohio S.B. 157, 134th Gen. Assemb. (2021) ("SB 157"), which I understand did not go into effect until March 23, 2022 and did not require providers with current variances to demonstrate compliance until June 21, 2022. I further understand that SB 157 provides, among other things, that backup physicians may not work, consult, or teach, directly or indirectly, at a medical school or osteopathic medical school affiliated with a state university or college.

23. ODH's letter asked PPSWO to submit by Sunday, February 27, 2022, attestations that its backup physicians meet SB 157's requirements, despite that the law does not require such attestations until June 21, 2022.

24. PPSWO responded to ODH on February 25, 2022 to convey its understanding that, because PPSWO currently holds a variance from the WTA, it has until June 21, 2022, to comply with SB 157 and to submit documentation of that compliance with ODH. PPSWO further indicated that it was working to attempt to comply with SB 157. *See* Letter from Lisa Pierce Reisz to James Hodge (Feb. 25, 2022), attached hereto as Exhibit B.

25. Following the Court's entry of the temporary restraining order and preliminary injunction in this matter prohibiting ODH from revoking or refusing to renew Plaintiff Women's Med Dayton's ("WMD's") license until June 21, 2022, ODH has not pressed PPSWO further to prematurely demonstrate compliance with SB 157.

**PPSWO'S Attempts to Comply with SB 157**

26. When we learned of the passage of SB 157, PPSWO's staff began working to determine whether we could comply. We initially interviewed each of our four current backup doctors to determine whether they met SB 157's requirements. Only one of the four qualified, as

that physician owns his own practice, has admitting privileges at The Christ Hospital (“Christ”), and does not teach.

27. This is not surprising, as University of Cincinnati medical students and residents are trained at all the area hospitals, which makes finding a local OB/GYN with admitting privileges who does not provide instruction for a public medical school extraordinarily difficult.

28. Moreover, of the four hospital systems within 25 miles of PPSWO’s Cincinnati ASF with facilities appropriate for patient transfers (an emergency department and OB/GYN department),<sup>1</sup> Christ is the only workable option for us to find backup doctors. The University of Cincinnati is a public hospital. Mercy Health is a Catholic hospital and adheres to certain religious directives, *see* the U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (5th Ed.2009) , Fifth Edition, United States Conference of Catholic Bishops,<sup>2</sup> which prohibits it from working with or allowing its physicians to work with abortion providers.<sup>3</sup> TriHealth is also a religiously-affiliated hospital system.<sup>4</sup> We send correspondence to both Mercy and TriHealth hospitals annually seeking to enter into WTAs and we never receive any response.

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<sup>1</sup> There are rehabilitation hospitals and children’s hospitals within 25 miles of our Cincinnati ASF, but these facilities do not have emergency departments or OB/GYN departments.

<sup>2</sup> MercyHealth, *Spiritual Care at Mercy Health*, <https://www.mercy.com/about-us/mission/spiritual-care> (accessed May 23, 2022).

<sup>3</sup> MercyHealth, *Spiritual Care at Mercy Health* <https://www.mercy.com/about-us/mission/spiritual-care>; U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, at 26 (5th Ed.2009, available at

<https://www.mercy.com/-/media/mercy/about-us/mission/ethical-religious-directives-catholic-health-care-services-fifth-edition-2009.ashx?la=en> (“45. Abortion . . . is never permitted. . . . Catholic health care institutions are not to provide abortion services, even based upon the principle of material cooperation. In this context, Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers.”).

<sup>4</sup> TriHealth, *Mission and Values*, <https://www.trihealth.com/about-trihealth/mission-and-values/> (accessed May 23, 2022).

29. In this context, we began working to attempt to identify additional doctors who meet the requirements of SB 157 as well as all of the preexisting WTA variance requirements, and who would be willing to enter into a backup agreement with us. We reached out to supportive doctors in the community to see if they knew of anyone who might qualify, including at least seven providers affiliated with the University of Cincinnati, who in turn reached out to their own networks. These efforts resulted in a few names and contact numbers being provided to us, but none worked out.

30. We then worked down a list of approximately 40 physicians affiliated with Christ, the hospital at which our current backup doctors have privileges. We eliminated some physicians as possibilities based upon our own research regarding their hospital and academic responsibilities, and we contacted the others. These efforts resulted in us identifying two obstetrician/gynecologist (“OB/GYN”) physicians employed by Christ who were willing to enter into backup doctor agreements and who complied with SB 157’s requirements. However, when these employee physicians notified the hospital that they intended to enter into backup doctor agreements with us, they were told by the hospital that this was an unapproved activity. Our current doctors with admitting privileges at Christ are not employees of the hospital.

31. We also identified one other physician with admitting privileges at Christ who we thought could comply with SB 157, but later realized this physician works with University of Cincinnati residents at another hospital.

32. When we determined that none of the doctors who had agreed to help us were workable options, we reached out again to those who were on the fence, but no one was willing to help. Among the reasons they cited were that they did not want their names in the press, they

did not want to bring attention to their practices, and that being associated with an abortion provider would put them, their families, and their colleagues in danger.

33. We are continuing to reach out to anyone we can think of who might be able to help, but at this point we still only have one backup doctor who can meet SB 157's requirements.

**Impact**

34. Because we cannot comply with SB 157, after June 21 we will have our variance rescinded, followed by ODH taking action to revoke our license. Our understanding is that ODH is required to give us 30 days' notice before that revocation would be effective, and after that point we would lose our license and no longer be able to provide procedural abortions. This would mean we could no longer provide abortion after 10 weeks LMP, and we will be forced to deny care to any patients whose pregnancies are earlier than 10 weeks LMP for whom a medication abortion is contraindicated. If both PPSWO and WMD lose their licenses and are both unable to provide procedural abortions, there will be no procedural abortion provider, and no abortion access at all after 10 weeks LMP, in Ohio south of Columbus.

35. Patients who must travel long distances to obtain procedural abortions will face physical, financial, and emotional obstacles to obtaining abortion care. This will result in patients being delayed or prevented entirely from obtaining abortions.

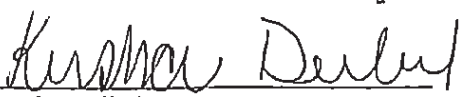
36. If PPSWO loses its ASF license, it will be forced to lay off staff and shut down its ASF.

37. PPSWO staff are already spending 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.




38. If WMD loses its ASF license and is unable to provide procedural abortions while PPSWO continues to hold a license for a 30-day period, 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.

FURTHER AFFIANT SAYETH NAUGHT.

  
Kersha Deibel

Signed before me this 24 day of May, 2022





CLAUDIA VILLANUEVA  
Notary Public, State of Ohio  
My Commission Expires 06-17-2024

# **EXHIBIT A**



## 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](mailto: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 (134<sup>th</sup> General Assembly).

Sub. S.B. 157 (134<sup>th</sup> 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 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](mailto: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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# **EXHIBIT B**



Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

614.464.6400 | [www.vorys.com](http://www.vorys.com)

Founded 1909

Lisa Pierce Reisz  
Direct Dial (614) 464-8353  
Direct Fax (614) 719-4919  
Email [lprieisz@vorys.com](mailto:lprieisz@vorys.com)

February 25, 2022

VIA E-MAIL

Mr. James Hodge, Chief  
Bureau of Regulatory Operations  
Ohio Department of Health  
246 North High Street  
Columbus, OH 43215

Re: Planned Parenthood Southwest Ohio Region

Dear Mr. Hodge:

On behalf of our client, Planned Parenthood Southwest Ohio Region (“PPSWO”), I write to respond to your letter of February 23, 2022, requesting additional information. We have reviewed your request, and PPSWO is unclear why it is being made. On August 30, 2021, ODH granted PPSWO’s variance request which was submitted on July 2, 2021. At this point, PPSWO has no variance application pending with ODH, and there has been no change in PPSWO’s compliance with Ohio’s currently applicable variance law.

In your letter, you reference PPSWO’s “pending Application for Variance to the hospital transfer agreement received December 29, 2021.” To be clear, PPSWO’s December 29, 2021 submission to ODH was **NOT** an application for another variance. Indeed, as noted above (and in that December 29, 2021 submission), PPSWO currently has a valid variance in place which runs through the end of its current renewal period so no additional variance application was needed either in December 2021 or now.

Instead, PPSWO’s December 29, 2021 submission was done to comply with the requirements of H.B. 110 and section 291.80 and show its compliance with Ohio’s variance requirements contained in O.R.C. § 3702.304 as amended by H.B. 110 last summer.

Here is the requirement that PPSWO’s December 29, 2021 submission was intended to meet as an ASF with a current variance in place:

Section 291.80. Each ambulatory surgical facility that has been granted

# VORYS

Legal Counsel

Mr. James Hodge, Chief

February 25, 2022

Page 2

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 3702.304 of the Revised Code as amended by this act (H.B. 110), submit to the director of health a complete variance application, in the form and manner specified by the director, demonstrating compliance with the requirements established by divisions (B)(2) and (3)(a) of section 3702.304 of the Revised Code, as amended by this act. If the director determines that a facility has failed to demonstrate compliance, the director shall rescind the variance.

H.B. 110 became effective on September 30, 2021. Therefore, PPSWO was required to make a submission showing compliance with the new requirements of H.B. 110 within 90 days of the effective date or risk the rescission of its current variance. PPSWO's re-submission of its complete variance request on December 29, 2021 was done solely to comply with this requirement.

Since December 29, 2021, PPSWO has received no indication from ODH that it has not demonstrated compliance with the current variance requirements of O.R.C. § 3702.304 as amended by H.B. 110. Therefore, its current variance, which was granted on August 30, 2021, is valid through its current license renewal period.

PPSWO will timely submit its license renewal materials for the 2022 licensing period.<sup>1</sup> If PPSWO is still not able to obtain a written transfer agreement from a local hospital as required by Ohio's ASF licensure requirements, it will submit another variance request for its 2022 renewal with information showing that it is compliant with Ohio's existing variance requirements as further amended by S.B. 157. Those requirements, however, are not even effective yet, and, therefore, are not relevant to PPSWO's current variance.

Please let me know if you have any questions.

Very truly yours,



Lisa Pierce Reisz

LPR/lpr

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<sup>1</sup> ODH has not informed PPSWO when its current renewal period expires, and while the ODH website shows that PPSWO has an active ASF license, it does not list relevant dates for the current renewal period. Given the suspension of licensing actions due to the COVID-19 health emergency through July 1, 2021, PPSWO's July 2, 2021 application and ODH's August 30, 2021 grant of PPSWO's current variance, PPSWO believes that its current renewal period should run through August 2022.

# **EXHIBIT 3**





## 5.24 Norwood Affidavit.pdf

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**E-Signature 1: Carolette Norwood Nishikawa (CNN)**  
May 24, 2022 13:08:04 -8:00 [89DB8A354289] [207.172.130.20]  
norwoodnishikawa@me.com (Principal) (Personally Known)

**E-Signature Notary: Theresa M Sabo (TMS)**  
May 24, 2022 13:08:04 -8:00 [7683CD9B7DF3] [65.60.141.105]  
tess.sabo@gmail.com

I, Theresa M Sabo, did witness the participants named above electronically sign this document.



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IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

WOMEN'S MEDICAL GROUP  
PROFESSIONAL CORPORATION, *et al.*,

*Plaintiffs,*

v.

VANDERHOFF, *et al.*,

*Defendants.*

Case No. A2200704

Judge Alison Hatheway

**AFFIDAVIT OF CAROLETTE NORWOOD, PH.D., IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION FOR PRELIMINARY INJUNCTION**

I, Carollette Norwood, Ph.D., being duly sworn on oath, do depose and state as follows:

1. I am a Professor and the Department Head of Sociology and Criminology at Howard University in Washington, DC. My areas of expertise include gender, race, poverty, and access to sexual and reproductive health care.

2. I received my Ph.D. in Sociology with concentrations in Demography (the statistical study of populations) and International Development from the University of Nebraska-Lincoln in December 2004. I also have an M.A. in Liberal Arts with a concentration in African and African American Studies, which I received from Louisiana State University in Baton Rouge, Louisiana, in 1999, and B.A. degrees in Sociology and French, also from Louisiana State University.

3. I joined the faculty at Howard University in August 2021. Before that, from September 2006 to August 2021, I was a Professor of Sociology in Africana Studies (7.5 years), then Women's, Gender, and Sexuality Studies (7.5 years) at the University of Cincinnati in Cincinnati Ohio ("UC"). From 2004 to 2006, I was an Assistant Professor in the Department of



Sociology at St. Mary's College in Notre Dame, Indiana. From 2002 to 2003, I was an Andrew W. Mellon Fellow in Demography at the University of Montreal in Quebec.

4. My current research lies at the intersection of poverty, gender, race, and disparities in sexual and reproductive health. My work has spanned various geographic settings, including in Ohio. I have published on these topics in peer-reviewed journals, and I am finishing a book manuscript on my research in this area, tentatively entitled *Jim Crow Geography: Mapping the Intersection of Gender, Race, and Sexuality in Cincinnati Urban Space*. I was awarded a \$20,000 Provost award from UC in support of my work on this book.

5. I have presented my research at numerous professional conferences and have been invited to lecture on my research at numerous academic institutions and community events. I have also served as a reviewer for the National Science Foundation, as well as for various peer-reviewed journals, including *Gender and Society*, *African Journal of Reproductive Health*, *Social Science Quarterly*, *World Medicine & Health Policy*, and *Journal of Family Issues*. I have also served as a book reviewer for Vanderbilt University Press.

6. In 2017, I was awarded a three-year renewable grant from the Ohio Policy Evaluation Network to support my reproductive justice and health policy work, together with other researchers from UC, Case Western Reserve University, and the Ohio State University. I was named a Taft Center Fellow from 2017 to 2018, and I have received funding for my research from The Cincinnati Project, an organization based at UC that supports research aimed at understanding and reducing economic, racial, gender, and health inequalities in Cincinnati. In 2020, I was awarded a \$30,000 grant from the Greater Cincinnati Women's Fund to study the economic mobility of Black women in Cincinnati and in May 2022 I received an additional \$20,000 to continue my work on Black Women and Economic Mobility funded by Goldman



Sachs and the Urban Institute.

7. In my current research, I explore the lived experiences of Black women at the intersection of gender, race, sexuality, social class, and geography, and how these experiences affect sexual health and overall well-being. I combine rigorous analysis of statistics, which I learned through my training in sociology and demography, with in-depth face-to-face interviews of women who are living in impoverished neighborhoods in Ohio. This work focuses largely on urban Black communities in Southwest Ohio. Using this methodology, I have gained a profound understanding of the lived experiences of poor women in Ohio.

8. My curriculum vitae, which sets forth my experience and credentials in greater detail and contains a full list of my publications, is attached as Exhibit A to this declaration.

#### **I. FACTUAL BASIS OF OPINIONS ASSERTED HEREIN**

9. I submit this affidavit in support of Plaintiffs' Second Motion for Preliminary Injunction. The opinions stated in this report are based on my knowledge and experience as a sociologist and demographer, including my research, writing, review of the relevant literature, and oral interviews with women living in poverty. All of these opinions are stated with a reasonable degree of professional certainty.

10. I understand that under current Ohio law, clinics that provide procedural abortion must maintain an Ambulatory Surgical Facility ("ASF") license,<sup>1</sup> which requires a clinic to either have a written transfer agreement ("WTA") with a local hospital or be granted a variance from that requirement by ODH.<sup>2</sup> I also understand that plaintiffs Women's Med Dayton ("WMD") and Planned Parenthood Southwest Ohio Region ("PPSWO") are both procedural abortion providers

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<sup>1</sup> Ohio Admin. Code § 3701-83-19(E).

<sup>2</sup> Ohio Rev. Code Ann. § 3702.303.



that need a variance from the WTA requirement.

11. I understand that WMD and PPSWO are unable to comply with SB 157's new variance requirements and would be forced to stop performing procedural abortions if SB 157 were to go into effect. I also understand that WMD might close entirely if it is unable to provide procedural abortion services.

12. I understand that WMD and PPSWO are the only procedural abortion providers in Southwest Ohio and two of only six procedural abortion providers in the entire state of Ohio. I further understand that if WMD and PPSWO are forced to stop performing procedural abortions, the next closest provider of procedural abortion services in Ohio is in Columbus: Planned Parenthood of Greater Ohio's East Columbus Surgical Center ("PPGOH"). In addition, I have been informed by counsel that WMD provided 1979 procedural abortions and 1399 medication abortions in 2021 and that PPSWO provided 2560 procedural and 927 medical abortions in 2021.

13. Finally, I have been informed that if women are unable to obtain care in Columbus, some of the Southwest Ohio patients could be forced to travel further to Cleveland or Akron in order to access services. This also means that patients may have to contact multiple facilities in multiple cities before finding a clinic that is able to provide the care they need.

## II. IMPACT OF SB157 ON PATIENTS IN OHIO

14. Through my research, I am familiar with the challenges that low-income patients face in attempting to access health care. As I explain below, the travel distance to access abortion services imposes significant additional costs and social-psychological stress on patients seeking abortions, disproportionately burdening those who are poor or low-income, many of whom are Black. It is my opinion that the loss of procedural abortion services in Dayton and Cincinnati will prevent or delay many poor and low-income women from obtaining abortions by



significantly increasing the distances that patients will be forced to travel to obtain such services. Indeed, such delay may push some patients past the point at which they can legally obtain an abortion at all in Ohio (*i.e.*, 21 weeks, 6 days). In addition, the inability to access procedural abortion care in Southwest Ohio will jeopardize some women’s confidentiality and/or employment, and impose other significant harms.

15. The cost of an abortion procedure continues to increase as the pregnancy advances. This can create a vicious cycle: women’s abortions are delayed because they need to raise additional funds; the delay means that the procedure is more expensive; women must then delay again to raise more money to pay for the more expensive procedure; and so on.

16. As I discuss below, poverty itself is a vicious cycle. People who are poor or low-income, even when they are making ends meet, are just one unexpected expense away from a major financial crisis that can result in eviction, hunger, or escalating medical problems that go untreated because of economic hardship. Seemingly “minor” expenses or small emergencies can be devastating for poor or low-income women’s safety and ability to meet their basic needs for months and years to come.

### A. Poverty in Ohio

17. In the United States, poverty is defined by income thresholds. The United States Department of Health and Human Services (“HHS”) defines the 2022 federal poverty level as a single person who makes less than \$13,590 per year, and up to \$23,030 for a family of three — *e.g.*, a single mother and two children.<sup>3</sup> People who make less than the federal poverty level are

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<sup>3</sup> U.S. Dep’t of Health & Human Servs., *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs* (2022), <https://aspe.hhs.gov/poverty-guidelines>. This figure uses the federal poverty “guidelines” rather than the federal poverty threshold, because the federal poverty guidelines are simpler and more current.



classified in the academic literature as “poor,” “impoverished,” or living “in poverty.”<sup>4</sup> Poverty rates vary by gender and race. Women have a higher poverty rate than men in Ohio (14.8% compared to 12.4%).<sup>5</sup> And approximately 28.4% of Black Ohioans but only 10.8% of white Ohioans live at or below the poverty level.<sup>6</sup>

18. Poverty rates do not tell the full story, however. It is well-accepted that the federal poverty level is out of date and that even people with incomes above the poverty level lack the means to support themselves in today’s economy. Recognizing that people who are low income (but are not classified as poor) may need assistance in meeting basic needs, federal, state, and local social programs thus set eligibility requirements for public assistance to encompass people who are above the federal poverty level. According to the National Center for Childhood Poverty, “[r]esearch suggests that, on average, families need an income of about twice the federal poverty threshold [200% of the federal poverty line] to meet their most basic needs.”<sup>7</sup> Families earning below 200% of the federal poverty line are generally classified as “low income.”<sup>8</sup> In Ohio, more than 23% of families meet this criteria and are thus classified as low-

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<sup>4</sup> See, e.g., Ctr. for Poverty & Inequality Research, University of California, Davis, *How Is Poverty Measured in the United States?*, <https://poverty.ucdavis.edu/faq/how-poverty-measured-united-states>.

<sup>5</sup> U.S. Census Bureau, *American Community Survey S1701: Poverty Status in the Past 12 Months*, <https://data.census.gov/cedsci/table?t=Income%20and%20Poverty&g=0400000US39>. These data are from 2020, the most recent year for which they are available.

<sup>6</sup> *Id.*

<sup>7</sup> Nat’l Ctr. for Children in Poverty, *United States Demographics of Low-Income Children*, <https://www.nccp.org/demographic/>.

<sup>8</sup> *Id.*



income.<sup>9</sup> For a family of three, a household income of less than \$46,060 is considered low income. For an individual, an annual income of less than \$27,180 is considered low income.

19. Even 200% of the federal poverty line is not considered a living wage. The MIT Living Wage Calculator estimates the minimum income needed by a family of three (single parent, two children) to be \$85,453 per year in Ohio; that figure is \$87,795 in Montgomery County (where Dayton is located) and \$89,561 in Hamilton County (where Cincinnati is located).<sup>10</sup> These numbers are significantly higher than the “low income” cut off threshold, *see* above.

20. The minimum wage in Ohio is currently \$9.30 per hour, or \$19,344 per year (based on 2,080 hours/year).<sup>11</sup> Thus, a single mother with two children working 40 hours per week at minimum wage for 52 weeks would be classified as “poor.” Even if she earned *twice* the minimum wage and worked 40 hours per week for 52 weeks, a single mother with two children would still be classified as “low-income” and would earn less than half of the living wage for a family of three in Ohio. In the Cincinnati region, even after obtaining higher education, such as a Bachelor’s degree, 32% of employed Black women make less than \$15 per hour (i.e., less than

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<sup>9</sup> U.S. Census Bureau, *American Community Survey S1702: Poverty Status in the Past 12 Months of Families*, <https://data.census.gov/cedsci/table?q=ohio&t=Poverty&tid=ACSST1Y2019.S1702>. These data are from 2020, the most recent year for which they are available.

<sup>10</sup> Amy K. Glasmeier, Living Wage Calculator, Massachusetts Institute of Technology (2020), [livingwage.mit.edu](https://livingwage.mit.edu).

<sup>11</sup> Ohio Department of Commerce, 2022 Minimum Wage Poster, <https://com.ohio.gov/static/documents/2022-MW-Poster.pdf>.





twice the minimum wage in Ohio) compared to 11% of white men.<sup>12</sup>

21. According to Policy Matters Ohio, in 2021, “[f]our of Ohio’s 10 most common occupations, employing about 452,900 Ohioans, paid so little that a worker with a family of three would need food aid to feed their family.”<sup>13</sup>

22. It is also worth noting that minimum- and low-wage workers often do not get paid vacation or sick days.<sup>14</sup> This creates barriers to accessing necessary medical care and can further exacerbate health disparities based on income. According to the Institute for Women’s Policy Research, 41% of working parents at or below 200% of the poverty line have no access to paid sick leave, vacation days, personal days, or any other form of compensated leave.<sup>15</sup> If a minimum or low-wage worker is able to get time off from work, they likely have to forgo wages. Indeed, many low-wage workers are not even able to take unpaid time off without potentially being replaced or having to disclose the reason why they are taking time off.

23. Even someone who is working full-time and earning significantly above the minimum wage, and who would not be classified as “poor” or “low-income,” may struggle to

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<sup>12</sup> Women’s Fund of the Greater Cincinnati Found. & Univ. of Cincinnati Econ. Ctr., *Realizing the Potential of an Equitable Economy: Centering Black Women’s Upward Mobility in the Cincinnati Region* at 10 (April 2021).

<sup>13</sup> Policy Matters Ohio, *Still working for too little in Ohio* (April 28, 2022), <https://www.policymattersohio.org/research-policy/fair-economy/work-wages/still-working-for-too-little-in-ohio>.

<sup>14</sup> See U.S. Dep’t of Labor Bureau of Labor Statistics, USDL-21-1690, News Release, *Employee Benefits in the United States—March 2021* at 1, 17 (Sept. 23, 2021), <https://www.bls.gov/news.release/pdf/ebs2.pdf>.

<sup>15</sup> Andrea Lindemann Gilliam, *An Introduction to Paid Time Off Banks*, Institute for Women’s Policy Research (June 20, 2012), <https://iwpr.org/iwpr-general/an-introduction-to-paid-time-off-banks/>.



pay for basic living expenses.<sup>16</sup> For example, as the U.S. Department of Housing and Urban Development explains, “[Families] who pay more than 30 percent of their income for housing” are considered cost-burdened and “may have difficulty affording necessities such as food, clothing, transportation and medical care.”<sup>17</sup> Families who pay more than 50% of their income on housing are considered “severe[ly] rent burdened.”<sup>18</sup> Nearly half (47%) of Ohio renters are cost-burdened, and 25% are severely housing cost-burdened.<sup>19</sup>

24. Even small unexpected expenses can cause significant financial strain, regardless of whether an individual is low-income. Nearly 40% of American adults report that, when faced with a hypothetical unexpected expense of \$400, they would be unable to pay it using cash or savings.<sup>20</sup>

#### **B. Barriers to Accessing Abortion Care**

25. My research has familiarized me with the significant obstacles that poor women face in obtaining the health care they need—in particular, the difficulties that travel poses for

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<sup>16</sup> The Center for Community Solutions, *State of Ohio*, <https://www.communitysolutions.com/wp-content/uploads/2018/04/Ohio2018.pdf> (2018 figures).

<sup>17</sup> U.S. Dep’t of Housing & Urban Dev., *Rental Burdens: Rethinking Affordability Measures*, [https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_092214.html#:~:text=HUD%20defines%20cost%2Dburdened%20families,of%20one's%20income%20on%20rent](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html#:~:text=HUD%20defines%20cost%2Dburdened%20families,of%20one's%20income%20on%20rent).

<sup>18</sup> *Id.*

<sup>19</sup> Ohio Hous. Fin. Agency, *Ohio Housing Needs Assessment* at 8 (2019), <https://ohiohome.org/news/documents/2019-HousingNeedsAssessment.pdf>.

<sup>20</sup> Bd. of Governors of the Fed. Rsrv. Sys., *Report on the Economic Well-Being of U.S. Households in 2018 - May 2019*, <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm>.



low-income and nearly low-income women. As I explain below, the travel distance to access abortion services imposes significant additional costs and social-psychological stress on women seeking abortions, disproportionately burdening those who are poor or low-income, many of whom are also Black.

26. People seeking abortion care in Ohio already face an unexpected, but extremely time-sensitive, expense. I understand that the cost of a first trimester procedural abortion varies, but in Ohio is several hundred dollars. I further understand that Medicaid in Ohio does not cover abortion care except in rare instances and even private insurance often does not cover abortion care. The cost of the procedure is only compounded by the need to gather funds to pay for transportation to and from the abortion clinic, which may not be in a patient's community, arrange for childcare<sup>21</sup>, and account for lost wages that may result from missing work for appointments.<sup>22</sup> Because Ohio law requires patients to make two separate trips to an abortion clinic before an abortion, patients will have to arrange for transportation, childcare, and account for potential lost wages twice.

27. These burdens are likely to affect the majority of women seeking abortion in Ohio. Research demonstrates that women who seek abortion care in the United States are disproportionately poor and low-income. In 2014, 49% of women having abortions in the United States had incomes below 100% of the federal poverty level, and another 26% had incomes

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<sup>21</sup> 59% of abortion patients already have at least one child. Guttmacher Inst., *Induced Abortion in the United States Fact Sheet* (Sept. 2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

<sup>22</sup> *See supra* ¶ 22.



below 200% of the federal poverty level.<sup>23</sup> Thus, approximately 75% of women seeking abortions in the United States were either poor or low-income. These burdens will also disproportionately harm Black women, who comprise almost 30% of abortion patients.<sup>24</sup>

28. Even transportation costs that might seem inconsequential to middle-income or wealthy individuals can be extremely onerous for people below or close to the poverty line. For this reason, a law that forces poor women to travel even slightly greater distances to access health care can create an insurmountable burden. For example, I interviewed one woman who had to suspend her mental health treatment because she did not have enough bus fare each month to travel approximately two to five miles each way.

29. For poor and low-income women, the intercity travel that will be required to seek a procedural abortion if WMD and PPSWO lose their ASF licenses presents significant challenges that will delay numerous women in obtaining an abortion, and prevent others altogether. In some cases, the additional time, expense, and lost income from this additional travel could restrict women's ability to buy food or other necessities; jeopardize their employment; jeopardize the confidentiality of their pregnancy and abortion decision, including from abusive partners or former partners, thus exposing them to greater risk of violence; and impose other significant burdens. Moreover, because the cost of an abortion procedure increases as the pregnancy advances, some women will be forced to delay their abortions even further while they gather the needed funds, which means that the cost of the procedure will continue to rise.

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<sup>23</sup> Jenna Jerman et al., Guttmacher Inst., *Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008 (2016)*, <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

<sup>24</sup> *Id.*



30. I am also aware that Ohio law imposes a 24-hour waiting period for abortion and that women must make at least two trips to the clinic: one for the mandatory counseling information; the second for the abortion procedure. I also understand that there are scenarios that might require any given patient to make a third trip to the clinic. For example, for women seeking abortions later in pregnancy, the abortion procedure requires two days. That means either that the woman's transportation costs are tripled, or that she must pay for a hotel room for at least one night. In either scenario, she also incurs the costs of child care and lost wages for two or more days.

31. In addition, many abortion clinics require that someone accompany the patient home after her procedure if she received a sedative or other form of anesthesia; therefore, for some women, the cost of traveling to an abortion clinic out of town for the procedure may actually be double—*e.g.*, the cost of *two* round-trip bus tickets.

32. If a low-income woman has access to a reliable car, she could drive to Columbus, Cleveland, Akron, or Toledo in order to access abortion services. However, many low-income women cannot afford to own a car, which requires paying not only the cost of the car itself, but also for its maintenance, gas, insurance, and parking for urban residents. Car ownership is just not feasible for those who are already strapped for cash or living on meager incomes. A study by the National Highway Administration (NHTSA) indicates that, in 2009, roughly 24% of households in poverty do not own a vehicle. By contrast, over 98% of households with incomes greater than \$100,000 per year own at least one vehicle.<sup>25</sup>

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<sup>25</sup> Federal Highway Administration, *FHWA NHTS Brief: Mobility Challenges for Households in Poverty 2* (2014), at 2, <https://nhts.ornl.gov/briefs/PovertyBrief.pdf>.



33. Even if a poor or low-income woman lives in a household that has a car, it may be too unsafe or unreliable for a lengthy trip. Also, a poor or low-income woman may not be able to afford the price of gas for a lengthy trip. The rising cost of gas in Ohio may make even a short trip unaffordable.<sup>26</sup>

34. Because of their limited access to reliable cars, poor and low-income women are far more likely to use public transportation as their primary source of transportation than any other group. But their public transportation options are very limited, especially in Ohio. As one Ohio Department of Transportation report explained, “Ohio transit agencies are largely organized around municipal and county boundaries. As a result, they are not always able to take people where they want and need to go.”<sup>27</sup> In addition, the excessive wait times, lack of security for bus stops, and lack of infrastructure (benches and covered structures) makes taking public transport an unpleasant option.

35. According to my research, many low-income women rely on informal ride services, known as “bootlegs,” for both intracity and intercity transportation. Bootlegs are essentially unregulated taxi services, operated through informal networks. The bootleg driver, who may be an acquaintance or who may be a complete stranger, provides transportation in exchange for cash or, more frequently, a bartered good or service. For example, one woman I

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<sup>26</sup> The average price of gas in Ohio in April 2022 was \$4.007 per gallon, as compared to \$2.676 in April 2021 and \$1.934 in 2020. U.S. Energy Information Administration, *Ohio Regular All Formulations Retail Gasoline Prices*, <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pets&s=emm epmr pte soh dpg&f=m> (last updated May 16, 2022).

<sup>27</sup> Ohio Department of Transportation, *Ohio Statewide Transit Needs Study Final Report* (2015), at 2, <http://www.dot.state.oh.us/Divisions/Planning/Transit/TransitNeedsStudy/Documents/OhioStatewideTransitNeedsStudyFinalReport.pdf>.



interviewed provided hair styling services to her bootleg driver in exchange for a ride to meet me for an interview, because she was unable to afford a cash payment and did not have access to any other form of transportation. Although such arrangements are common, they can also be unreliable and bring risks to the woman's safety.

36. Those who can manage to get a ride by car also may face a breach of privacy—whether because they must ask a family member or acquaintance, or because a bootlegger turns out to be an acquaintance. When poor women are forced to reveal personal and intimate details about their lives because they are in need of help—whether because they need money to pay a bill, or need help accessing abortion services—they feel they are being stripped of a measure of human dignity. This potential breach of privacy may lead women not to rely on bootleggers, family members, or acquaintances for transportation to the abortion clinic.

37. Nor can low-income women generally rely on ride-sharing services such as Uber and Lyft for intercity transportation. Not only are these services costly, they also require a smartphone and a credit card, either or both of which are out of reach for many low-income women.

38. It is well-established that the transportation problems described above inhibit poor and low-income people's access to health care. For instance, according to a 2013 article reviewing the literature on the topic, approximately 25% of low-income patients miss or reschedule health care appointments because they lack transportation.<sup>28</sup> Another study specifically found that 30.5% of poor individuals living in urban Dayton reported that

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<sup>28</sup> Samina T. Syed, et al., *Traveling Towards Disease: Transportation Barriers to Health Care Access*, 38 J. Community Health. 976, 987 (2013).



transportation was a barrier to accessing health care.<sup>29</sup> (Similar percentages reported that child care (35.8%) and taking time off work (30.8%) were barriers.)<sup>30</sup> Minority patients—in particular, Black and Hispanic patients—are disproportionately likely to be hindered in their access to treatment by transportation difficulties.<sup>31</sup>

39. Even if a poor or low-income patient is able to secure transportation, she still faces additional barriers that are amplified by increases in travel distance to an abortion provided. As noted above, many low-wage workers are not even able to take unpaid time off. Some employers also require workers to disclose the reason why they are taking time off. This means that it may be difficult for a worker to take time off to travel for an abortion—especially if the trip takes several days—and impossible to keep her abortion confidential from her supervisor or other employees. If a low-income worker is able to get time off, she is likely to forgo wages—a significant financial blow, on top of the substantial costs of transportation and lodging.

40. As noted above, many patients will also need to arrange child care in order to travel for an abortion, in addition to the costs of the travel itself. Low-income mothers cite problems finding, affording, or trusting childcare providers as one of the primary obstacles in their lives. They experience childcare difficulties when seeking work, attending higher education programs, attending meetings with social service agencies, or going to medical appointments. Additionally, evening and overnight childcare can be quite expensive, if it is available at all.

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<sup>29</sup> Syed M. Ahmed, et al., *Barriers to Healthcare Access in a Non-Elderly Urban Poor American Population*, 9 *Health & Social Care in the Community* 445, 448 (2002).

<sup>30</sup> *Id.*

<sup>31</sup> Syed, *supra*, at 998.





41. In order to meet the high, unexpected, and time sensitive costs of an abortion procedure, travel to Columbus or beyond, and other associated costs such as childcare, people with extremely limited resources must employ strategies to quickly raise funds that come at great risk to their financial, and in some cases physical, wellbeing and that of their families. First, many women will be forced to make financial sacrifices by forgoing other necessities, such as by not paying for rent or utilities, drastically reducing their food budgets, or delaying or going entirely without necessary medical care.

42. Second, some will be forced to take out high-interest payday loans or turn to loan sharks or other predatory lenders, which can end up throwing them into a deeper cycle of debt because of the high interest rate and fees.

43. Third, due to limited access to job opportunities and financial resources, some will feel like they are forced to engage in work outside of the mainstream economy (such as sex work) in order to procure funds on an expedited basis. Thus, the steps some women will take to raise money may themselves be harmful and could subject them to criminal liability. In my research, I have interviewed women with few options of finding work in the formal economy, who instead do what they need to do just so they can meet the basic necessities, like food. For example, one woman whose mother was dying of brain cancer told me that she started doing sex work around age fourteen to help support her family.

44. Fourth, some women will try to borrow money from friends and family members, but coming up with the funds may be difficult for those individuals, who are likely to also lack financial resources for unexpected emergencies. For example, I spoke to one woman who turned to her boyfriend for help to pay for an abortion; by the time he was able to help her raise the \$700 she needed, however, it was too late to obtain one from any accessible provider. In



addition, seeking to borrow money from people in their community will also necessarily jeopardize the confidentiality of their decision to have an abortion, and may be subject to the friend or family member's views about abortion. I have interviewed women who could not borrow needed funds from a loved one because that individual was opposed to abortion and refused to provide financial assistance.

45. Urgently seeking the resources to obtain abortion care from others can be dangerous. Some people facing such challenges in accessing abortion care may find themselves staying or reuniting with an abusive partner in order to access financial assistance. In my research, I have interviewed women who initiated relationships with violent former partners in order to obtain financial help for necessities, including to pay for an abortion. In addition, women in abusive relationships will likely be unable to conceal their pregnancies and/or their abortion decisions from their partners if they need to rely on them to pay for the abortion procedure. Women have shared with me the difficulties they face in tolerating abuse in order to alleviate an economic crisis or cover emergency expenses.

46. The intersecting burdens in the lives of poor women may combine to make out-of-town travel for abortion care both particularly urgent—as in the case of rape or incest, an unsafe home environment, or compromised physical or mental health—and particularly difficult. In addition to a lack of financial resources, poor overall health, fear of violence from partners or from strangers, and difficulty managing the demands of daily life are significant burdens that severely complicate poor women's ability to travel to another city to obtain needed health care.

47. It is self-evident that managing all of the expenses and logistical complications of navigating to an out-of-town clinic and then traveling back home would be particularly challenging, if not insurmountable, for many low-income individuals, especially after having had



a *medical procedure*. I understand that it is normal after an abortion for a woman to have cramping, bleeding, fatigue, and/or nausea. It truly stretches the imagination to expect a person who (like many low-income people) has rarely left her own neighborhood to travel to an unfamiliar city, navigate one or more public bus systems, have an abortion, and then wait for one or more buses in order to make an hours-long trip back home—perhaps with the expectation that she will attend to work or child care responsibilities immediately upon her return.

### III. CONCLUSION

48. Based on my research and close familiarity with the challenges that low-income women face accessing health care, it is my expert opinion that the onerous and costly travel from Dayton or Cincinnati to Columbus would deter and even prevent a significant percentage of low-income women from seeking the abortion care they need.

49. If forced to travel even further, to Cleveland or Akron, to access procedural abortion services, the complicated and lengthy journey and costs of transportation, gas, child care, and lost wages (plus the likelihood of at least one overnight stay, given the length of the trip and the timing of public transit options), would almost certainly be prohibitive for many low-income women.

50. Given the substantial logistical, financial, and psychological barriers in the way of poor women seeking abortion care in another city, it is my opinion that significant numbers of low-income women in Southwest Ohio will be prevented from obtaining abortions if WMD and PPSWO are forced to shut down. Moreover, many of those low-income women who are able to access abortion will be able to do so only at great cost to their financial, and in some cases physical, wellbeing, and may forgo the ability to keep their abortion decision confidential.



FURTHER AFFIANT SAYETH NAUGHT.

Carolette Norwood Nishikawa  
Signed on 2022/05/24 13:04:04 -0500

Carolette R. Norwood, Ph.D.

State of Ohio

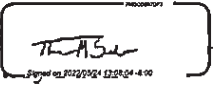
County of Franklin

05/24/2022

Sworn to or affirmed and subscribed before me this 24th day of May, 2022.

(Seal)



No.   
Signed on 2022/05/24 13:28:04 -0500

Notarial act performed by audio-visual communication

540F1E51-5FD4-4C57-8B85-CF70A774CC79 --- 2022/05/24 12:48:28 -8:00 --- Remote Notary



# **EXHIBIT A**

## **Carolette R. Norwood, PhD**

Professor and Department Chair of Sociology and Criminology  
Pronouns: she|her|her

### **Howard University**

Douglas Hall, Building 23 | 2419 6th Street NW | Suite 201A |  
Washington, DC 20059 | Phone: 202-806-6853 | Carolette.norwoodni@howard.edu

### **Education**

- 2004, Ph.D., Sociology with concentrations in Demography and International Development,  
University of Nebraska-Lincoln, Lincoln, NE.
- 2002-2003, Andrew W. Mellon Fellow Doctoral Student Exchange in African Demography,  
Université de Montréal, Montréal, Québec H3C 3J7.
- 1999, M.A., Liberal Arts with concentration in African and African American Studies, Louisiana  
State University, Baton Rouge, LA 70803.
- 1997, B.A., Sociology, Louisiana State University, Baton Rouge, LA 70803.
- 1997, B.A., French, Louisiana State University, Baton Rouge, LA 70803.

### **Academic Appointments**

- 2021 to Present, Department Chair and Full Professor, Department of Sociology and  
Criminology, Howard University.
- 2015-2021, Associate Professor, Department of Women's, Gender, and Sexuality Studies,  
University of Cincinnati.
- 2014-2015, Associate Professor, Department of Africana Studies, University of Cincinnati,  
September.
- 2006-2013, Assistant Professor, Department of Africana Studies, University of Cincinnati,  
September.
- 2004-2006, Assistant Professor, Department of Sociology, Saint Mary's College (Notre Dame,  
IN) August.
- 2012-2014, Visiting Summer Fellow, Center for AIDS Prevention Studies, Health Disparities in  
Minority Communities Collaborative Program, University of California – San Francisco.

### **Administrative Positions**

- 2019 - 2021, Assistant Department Head, Women's, Gender, and Sexuality Studies, University  
of Cincinnati.
- 2019 - present, Director of Social Justice Certificate Program, University of Cincinnati.
- 2007-2012, Advisor to Minors, Africana Studies, University of Cincinnati.

### **Research Areas of Specialization**

- Race and Health Disparities, Urbanization, Jim Crow Geographies, Segregation  
Gendered Violence  
Africana/Black Feminism  
Reproductive Justice and Sexual health  
Women's Roles in Development and Microfinance/Microcredit/Informal Banking

## **Study Abroad**

2011, University of Ghana-Legon, Accra, Ghana West Africa, Faculty-led Study Abroad Course for the Honors College at University of Cincinnati.

2000, University of Ghana-Legon, Accra, Ghana West Africa, Summer Exchange Program.

## **Language**

French, earned Bachelors of Arts in French (working knowledge)

## **Certification and Internships**

2005, Certified Red Cross HIV Education and Prevention Instructor, Chicago, IL.

2004 (July), University of California- Santa Barbara, Center for Spatially Integrated Social Science.

2001 (Summer), Bureau of United States Census, Division of Population Estimates and Projection.

## **Current Research Projects**

*Black Women's Economic Mobility in Cincinnati Urban Space*, Urban Institute and Goldman Sachs One Million Black Women Research Partnership. Amount: \$20K. Period: May 2022- Present (Lead Researcher: Carolette Norwood).

*Black Women in Cincinnati and Economic Mobility*, commissioned research by the Greater Cincinnati Women's Fund, \$30K, Period: June 2020- Present, (Lead Researcher: Carolette Norwood).

Community Based Participatory Research, Sexual and Reproductive Health in Cincinnati Low Income Neighborhoods, OPEN (Ohio Policy Evaluation Network), \$238K, Period: January 2018- Present (Lead Researcher: Carolette Norwood).

## **Under Review**

Niven, David; Combs, Barbara; Cover, Benjamin, Norwood, Carolette, Rossiter, Kayln, and Michael Solimine. "The Boundaries of Confusion Racial Disparities in State House and Congressional District Line Congruity" 2022. *Journal of Race, Ethnicity, and Politics*

## **PUBLICATIONS**

Norwood, C.; Jacquez, F.; Carr, T.; Murawsky, S.; Beck, K.; Tuttle, A. Reproductive Justice, Public Black Feminism in Practice: A Reflection on Community-Based Participatory Research in Cincinnati. *Societies* 2022,12,17. <https://doi.org/10.3390/soc12010017>

Norwood, C. "New Directions in Black Feminist Sociology: The Politic of Space at the Intersection of Race, Class, Gender, and Sexuality." 2021 In Zakiya Luna and Whitney Pirtle (eds) *Black Feminist Sociology: Perspectives and Praxis* (Routledge Press).

Norwood, C. "Misrepresenting Reproductive Justice: A Black Feminist Critique of the "Protecting Black Life." *Signs: Journal of Women in Culture and Society*, 46(3).2021

Norris, A., Payal Chakraborty<sup>1</sup>, Kaiting Lang, Robert Hood<sup>1</sup>, Sarah Hayford, Lisa Keder, Danielle Bessett, Molly Broscoe, **Carolette Norwood**, Michelle McGowan "The Abortion Access in Ohio's Changing Legislative Context." *American Journal of Public Health*, 110(8):1228-1234.

- Jones HJ., Norwood CR, Bankston K, & Bakas, T. 2019. "Developing a Framework for a Stress Reduction Wellness Intervention Targeted to Midlife Black Women." *Journal of Cardiovascular Nursing*, 35(6): 483-490.
- Jones HJ, Norwood CR, Bankston K. 2019. "Leveraging Community Engagement to Develop Culturally Tailored Stress Management Interventions in Midlife Black Women." *Journal Psychosocial Nursing and Mental Health Services*, 57 (3): 32-38.
- Norwood, C. 2018. "Mapping Intersections of Violence on Black Women's Sexual Health within the Jim Crow Geographies of Cincinnati Neighborhoods." *Frontiers: A Journal of Women's Studies*, 39 (2): 97-135.
- Norwood, C. 2018. "Decolonizing My Hair, Unshackling My Curls: An Autoethnography of What Makes My Natural Hair Journey a Black Feminist Statement." *International Feminist Journal of Politics*, 20(1): 69-84.
- Norwood, C. 2017. "Why Microcredit Borrowing Projects Are – At Best- A Limited Response to Poverty and Women's Inequality. Scholar Strategy Network," <https://scholars.org/brief/why-microcredit-borrowing-projects-are—best—limited-response-poverty-and-womens-inequality>.
- Norwood, C. and Zhang, Y. 2015. "Condom Attitudes and Use among African American College Women Students." *Journal of Black Sexuality and Relationships*, 2(1): 83-99.
- Awad, G., Norwood, C., Taylor, D., Martinez, M., McClain, S., Jones, B., Holman, A., Chapman-Hilliard, C. 2015. "Body Image Concerns Among African American College Women." *Journal of Black Psychology*, 41(6), 540-564.
- Norwood, C. 2014. "Where the women at? A Sociological Discussion of Haggai from a Feminist Perspective." In Stacy Davis' *Haggai and Malachi* with Liturgical Press.
- Norwood, C. 2014. "Microcredit and Women's Empowerment in Rural Ghana." *Journal International and Development Studies*, (4), 128-58.
- Norwood, C. 2013. "Perspectives in Africana Feminism." *Sociology Compass*, 7(3), 225-236.
- Norwood, C. 2011. "Factors that influence HIV testing among non-marginalized African American women." *American Journal of Health Studies*, 26(4): 208-216.
- Norwood, C. 2011. "Women, Microcredit and Family Planning Practices: A Case Study from Rural Ghana." *Journal of Asian and African Studies*, 46(2): 169-183.
- Norwood, C. 2009. "Rethinking the Integration of Women in Population Development Initiatives." *Journal of Development in Practice*, 19 (7): 906-911.
- Norwood, C. 2005. "Macro Promises of Microcredit- A Case of a local eSusu in Rural Ghana." *Journal of International Women's Studies*, 7(1): 1-7.

#### **BOOK REVIEW (INVITED)**

- Norwood, C. 2012. *African Feminist Politic of Knowledge: Tension, Challenges and Possibilities* by Akosua Adomako Ampofo and Signa Arnfred. Uppsala, Sweden: Nordic Africa Institute, 2010, 234. *Gender and Society*, 26(1): 152-54.



## **REFERENCE SOURCES**

2000. Norwood, Carolette. "MULTIVARIATE ANALYSIS" in World of Sociology – Encyclopedia, ed. Palmisano, Joseph M., Gale Group.
2000. Norwood, Carolette. "IMPERIALISM" in World of Sociology – Encyclopedia, ed. Palmisano, Joseph M., Gale Group.
2000. Norwood, Carolette. "COLONIZATION" in World of Sociology – Encyclopedia, ed. Palmisano, Joseph M., Gale Group.
2000. Norwood, Carolette. "DECOLONIZATION" in World of Sociology – Encyclopedia, ed. Palmisano, Joseph M., Gale Group.
2000. Norwood, Carolette. "POST-COLONIZATION" in World of Sociology – Encyclopedia, ed. Palmisano, Joseph M., Gale Group.

## **Manuscripts in Progress**

- Mikaela Smith, Michelle McGowan, Payal Chakraborty, Robert B. Hood, Danielle Bessett, Carolette Norwood, Meredith Field, Alison H. Norris "Falling abortion access in Kentucky, 2007-2019," Journal Article.
- Norwood, C. "Jim Crow Geography: Mapping the intersection of gender, race, and sexuality in urban space," Monograph.
- Norwood, C. and Martinez, A. "Spatial & Statistical Analysis of STI and HIV/AIDS in Cincinnati Neighborhood Context," Journal Article (to be submitted Fall 2020).
- Norwood, C. "Not Our Mother's Doll: The New Black Barbie and the Commercialization of Natural Hair," Journal Article (to be submitted Fall 2020).
- Norwood, C. Angry, Incompetent Black woman, Don't speak so harsh to me!: White Tears and White Women's Fragility An Autoethnography of a Black woman Who Navigate White Space, Journal Article (to be submitted Spring 2021).
- Norwood, C., Carr, T., Hill, J., and Taylor, S. "Why Reproductive Justice Matters: A Policy Evaluation of How Ohio Family Service Programs and the 6-week Abortion Ban Fail Women" (to be submitted Summer 2021).
- Norwood, C., Gaynor, T. Jones, C. and Blesset, B. "Black Feminist Social Justice." Edited Volume Monograph (to be submitted Summer 2022).

## **INVITED LECTURE /PRESENTATION**

- Black Feminist Sociology, University of Washington, Department of Sociology, Savery Hall Room 409, Thursday, May 26, 2022.
- Paul Robeson Conference panel on Reproductive Justice 101 and the Future of *Roe v. Wade*, Columbia University Law School, March 2, 2022
- Black Women Rising: Where we've been, Where we are, and Where we're going, Colored Conversations Podcast, February 23, 2022.
- "Intersecting Violence at the Intersections of Race, Gender, Sexuality and Space" Colorado Department of Justice, Sex Offender Management Board, February 18, 2022.
- Jim Crow Geography: The Politic of Spatial Confinement and the Legacy of Health Injustice, Fort Lee Public Library, February 08, 2022.
- Alexandria City High School, Majoring in Sociology, January 12, 2022.
- "Remembering Bell Hooks: a conversation on black feminism, sociology and beyond" Washington University in St. Louis Tuesday December 21 2021.

Unapologetically Speaking: Unpacking Black Feminism, National Underground Railroad Freedom Center, March 11, 2021.

7<sup>th</sup> Annual Cincinnati Project Symposium, University of Cincinnati, "Socially-Just Community Partnered Research," March 5, 2021.

Sociology of Black Health Care, University of Cincinnati, "In Pursuant of Health Justice: Jim Crow Health Infrastructure in Cincinnati", February 26, 2021.

The Minority Health Disparities Initiative, University of Nebraska-Lincoln, "The Politic of Spatial Confinement: Jim Crow Geographies, Sexual and Reproductive Health Disparities, and Housing Insecurity from the Progressive Era to the 21<sup>st</sup> Century," October 2020.

Colloque "Féminismes Noir" (Colloquium in Black Feminisms) Campus Condorcet à Aubervilliers Paris, France, March 3-5, 2020.

Peaslee Community Center, Urban Residency Teaching Program, the American City Since 1940: Class, Race, Gender, Culture, Space, invited to lead lecture on Patrisse Khan-Cullor's *When They Call You A Terrorist, A Black Lives Matter Memoir*, September 26, 2019.

Harvard University, Interdisciplinary Approaches for Female Success in Academia, April 20-21, 2018.

The Cincinnati Project, University of Cincinnati, "Jim Crow Geography: Cincinnati Urban Reservation and the Ordinary Lives of Black Women." February 2016.

Urban Health Colloquium Series, University of Cincinnati, Department of Sociology, TAFT center, "Structural, Spatial and Interpersonal Violence and Black Women's Sexual Health in High HIV Prevalent Neighborhoods in Cincinnati." May 2014.

Invited Plenary Speaker on Health Disparities session title "Womb to Womb: The Persisting Influence of Health Disparities Across the Lifecourse." National Council of Family Research, November 2012.

Sociology Colloquium Series, University of Cincinnati TAFT Research Center, "Condom Use and HIV Risk Among African American Women College Students." May 2012.

University of Cincinnati School of Medicine, "Public Health and Microfinance." March 2011.

Tulane University School of Medical, "Healthcare Disparities." April 2009.

"Strategies in Research Methods." Tulane University School of Medical, September 2008.

University of Cincinnati Sociology Colloquium, "Women's status and HIV/AIDS risk prevention strategies: A mixed-method evaluation of the effects of Microcredit Participation in Yaoundé, Cameroon." October 2007.

Saint Mary's College, "Microcredit in Africa." April 2005.

#### **INVITED PANEL PRESENTATIONS**

The National Underground Railroad Freedom Center, "Unapologetically Speaking: Unpacking Black Feminism" Thursday, March 11<sup>th</sup>, 2021.

The Cincinnati Project 7<sup>th</sup> Annual Symposium, "The Art and Science of Socially Just Community Partnered Research" Friday, March 5, 2021.

"Institutional Racism in Healthcare Panel," Cincinnati Start Up Week, October 30, 2020, Virtual Meeting (Zoom).

"Addressing Sexual Health for National Public Health Week," with panelist Bob Kirkcaldy, Tavon Hall, Eric Washington and Jason Blackard, April 3, 2019, Department of Public Health, University of Cincinnati, Kowaleski Hall Room 141.

- “Doing Community Health Research” for the UC Global Med *Community Health Speaker Series* (other speakers included Dr. Chris Lewis and Roseanne Hountz), Friday October 19, 2018 Annie Laws Conference Room #407.
- “Sexual Assault On the Margins” with panelist Amy Schlag, Patrice Delean, Amina Darish and Dalenna Garcia-Tayeb, April 6, 2017, African American Cultural Resource Center, University of Cincinnati, Harambe Room.
- “Old South” with panelist Brandy Turnbow, Christina Brown, moderated by Amy Lind. October 8, 2015, University of Cincinnati, Annie Laws Conference Room #407.
- “Tavis Smiley’s The Rich and the Rest of Us: A Poverty Manifesto” Taft Symposium, Taft Research Center, University of Cincinnati, April 2013.
- “Women of Color Faculty Round Table.” College of Arts and Science, University of Cincinnati, March 2013.
- “Globalization and its Future.” Taft Research Center, University of Cincinnati, February 2012.
- “Women’s Status, HIV Risk Reduction Strategies and Microcredit Participation” (for Women’s History Month), Saint Mary’s College, March 2005.
- “Feminist Methodologies in Research.” McGill University, May 2003.

#### **SELECTED RESEARCH PRESENTATIONS**

- “Not Our Mother’s Afro Movement: The 21<sup>st</sup> century Black women’s Natural Hair Transition in Diasporic Representations.” Washington DC, Georgetown University, American Comparative Literature Association (ACLA), March 7-10, 2019.
- “Spatial & Statistical Analysis of STI and HIV/AIDS by Neighborhood Context.” New Orleans, La. American Association of Geographers (AAG) annual conference, April 10-14, 2018.
- “Jim Crow Cincinnati: Gender, Race, and Violence in Urban Space.” Cincinnati, OH. Taft Center Fellow Presentation, with interlocutor Dr. Nikki Jones (UC Berkeley, African American Studies), February 27, 2018.
- Structural Violence as Urban Renewal Policy: A Look at Gentrification and the Force Relocation of Black Women Within and Across Cincinnati’s Jim Crow neighborhoods.” Baltimore, MD. National Women’s Studies Association, November 16-19, 2017.
- “Navigating Gender, Race, Sexuality and Space: Assessing the Impact of Gendered Violence on Black Women’s Sexual Health in Jim Crow Cincinnati Neighborhoods.” Notre Dame, Indiana, Intersectional Inquiries and Collaborative Action: Gender and Race, March 2-4, 2017
- “Girlhood Interrupted: Struggle, Survival, and Cost of Strong Black Womanhood.” Notre Dame, Indiana, Intersectional Inquiries and Collaborative Action: Gender and Race, March 2-4, 2017
- “Boarder Violence: Black women on the Cincinnati Urban Reservation.” Montreal, QC, Canada. National Women’s Studies Association, November 10-13, 2016.
- “Decolonizing Feminist Studies: Bridging the Feminist African Diaspora Across Settler and Occupied Territories” on Panel Decolonizing Women’s Studies through African Feminist Interventions. Montreal, QC, Canada. National Women’s Studies Association, November 10-13, 2016.

- “Structural, Spatial and Interpersonal Violence AND Black Women's Sexual Health in High HIV Prevalent Neighborhoods in Cincinnati.” Philadelphia, PA. American Black Sexologist Conference, Oct. 1-3, 2016
- “Gendered Violence in Ghana and the Failed Promise of Microcredit.” Feminist Transgressions, National Women’s Studies Association, Paper Presentation in session 508 Invisible Injustices in Postcolonial African Contexts. San Juan, Puerto Rico. November 13-16, 2014.
- “Navigating Gender, Race, Sexuality and Place in a Spatial Context of HIV Prevalence Neighborhoods in Cincinnati.” American Public Health Association 141st Annual Meeting & Exposition. Oral Presentation in session 4116: Role of place in sexual health and HIV, Boston, MA. November 2-6, 2013.
- “Navigating Intersectionality, A Look at African American Women in a Spatial Context of Sexual Health Disparities in HIV/AIDS.” National Council of Family Studies, Phoenix, AZ. October 31-November 03, 2012.
- “HIV and Condom Use among African American college women students.” North Central Sociological Association, Pittsburg, PA. April 12-15, 2012.
- “HIV and Condom Use Among Non-marginalized African American women.” National Council of Black Studies, Atlanta, GA. March 7-10, 2012.
- “Assessing Racial Identity Salience on HIV AIDS Testing.” National Council of Black Studies, Cincinnati, OH. March 16-19, 2011.
- “The Deafening Silence of HIV and AIDS risk in the US Black Community: African American Women, HIV/AIDS Testing and Condom Use.” Midwest Sociological Association and North Central Sociological Association, Chicago, IL. March 31- April 3, 2010.
- “The Feminization of HIV and AIDS in Africa: How the Politics of Population Control Neglects Women’s Reproductive Health.” The 25<sup>th</sup> Annual Symposium on African American Culture and Philosophy. November 6-7, 2009.
- “Mitigating HIV with Women’s Empowerment, A look at urban women in Yaoundé, Cameroon.” Midwest Sociological Association, Des Moines, IA. April 2-5, 2009.
- “Pedagogical Cultures: Teaching in Different Academic Environments.” North Central Sociological Association, Cincinnati, OH. March 27-29, 2008.
- “Women’s Status, HIV Risk Reduction Strategies and Microcredit Participation: A Mixed-Method Evaluation of the Effects of Microcredit Participation in Yaoundé, Cameroon.” American Sociological Association, Montreal, QC. August 11-14, 2006.
- “Desegregated Fertility: A Spatial Proximity Analysis of Black and White Biracial Fertility in the United States.” Population Association of America, Los Angeles, CA. March 30 -April 1, 2006.

#### **MEDIA (INVITED) PRESENTATION/DISCUSSANT**

- “Unapologetically Speaking: Unpacking Black Feminism” WVXU with Tana Weingartner, Monday, March 8, 2021.
- “Campus Sexual Assault and Ways to Prevent It” 101.5 SOUL WBDZ-FM, Class in Session, November 2, 2017 <https://www.facebook.com/ClassinSession2/posts/184117052147491>.

“Evolving Attitudes On Interracial Marriages” WVXU/WMUB, Cincinnati NPR, All Things Considered, May 19. 2016 <http://wvxu.org/post/evolving-attitudes-interracial-marriages#stream/0>.

## FUNDING AND GRANTS

Norwood, Carolette (PI), *Black Women's Economic Mobility in Cincinnati Urban Space*, Urban Institute and Goldman Sachs One Million Black Women Research Partnership, May 2022. Amount: \$20K.

Norwood, Carolette (PI), *African American Women and Economic Mobility*, Commissioned Qualitative Research Study, The Women's Fund of the Greater Cincinnati Foundation, February 2020. Amount: \$30K.

Toward an Open Monograph Ecosystem (TOME Provost Award) (\$20,000): Funding period 2018-19. Project Title: Jim Crow Geography: Mapping the Intersections of Gender, Race, and Sexuality in Cincinnati Urban Space.

Reproductive Justice in Urban Cincinnati (\$236,000) anonymous donor: Funding period 2018-2020: Project Title: Community-Based Participatory Research: Sexual and Reproductive Health in Cincinnati.

The Cincinnati Project, University of Cincinnati, (\$2,500, Awarded). Funding Period: 2016-present. Project title: Navigating Gender, Race, Place and Space in Urban Neighborhoods  
Third Century Faculty Research Materials Grant (\$1,500, Awarded), Funding Period: April 2015. Project title: A Spatial Analysis of HIV/AIDS in the Cincinnati Metropolitan Area 1990-2010.

Center for AIDS Prevention Studies, Health Disparities in Minority Communities Collaborative Program. 6 Week Stipend \$36K for 3 Summers and Research Grant for Pilot Study \$25K. Funding Period 2012-2014. Project title: Navigating Gender, Race Place and Space in Urban Neighborhoods.

Taft Research Center, Direct Research Cost Grant, University of Cincinnati, (\$1000.00, Awarded). Funding Period 2007. Project Title: Women's Status and HIV/AIDS Risk prevention strategies: A mixed-method evaluation of the effects of Microcredit Participation in Yaoundé, Cameroon (PI: Carolette Norwood, PhD).

Faculty Research Support Grant, University of Cincinnati (\$6500.00, Awarded). Funding Period 2006. Project Title: Women's Status and HIV/AIDS Risk Prevention Strategies: A Mixed-Method Evaluation of the Effects of Microcredit Participation in Yaoundé, Cameroon (PI: Carolette Norwood, PhD).

Summer Research Grant from Vice President and Faculty of Dean's office. Saint Mary's College, (\$5000.00, Awarded) Funding Period 2004-2005. (PI: Carolette Norwood, PhD).

Center for Women's Intercultural Leadership Co-Sponsorship Grant, Saint Mary's College (\$900.00, Awarded). Funding Period 2005. Project title: Women, HIV and Microcredit in Africa (PI: Carolette Norwood, PhD).

Ford Foundation Funded Human Rights, Human Diversity Predoctoral Dissertation Research Award (\$5000.00, Awarded) Funding Period: 2001-2002. Project Title: Microeconomic schemes in rural Ghana: A mixed-method evaluation of microcredit membership on women's empowerment, and family planning practices (PI: Carolette Norwood, PhD).

2000. Science, Technology, and Research Scholars (STARS) summer fellowship (\$5000.00, Awarded).

#### **INTERNAL AWARDS AND FELLOWSHIPS**

Taft Research Center Competitive Lecture Grant, Mario Small, University of Cincinnati (\$██████, Awarded). Funding Period 2018. Project Title: Heterogeneity and American Ghettos. (PI: Carolette Norwood, PhD).

Taft Center Fellowship, Funding Period 2017-18: University of Cincinnati (1 year, 100% research time, Awarded). Project Title: Navigating Race, Sex, and Sexuality in Spatial Context of High HIV Prevalence (PI: Carolette Norwood, PhD).

Taft Research Center Competitive Lecture Grant, Marlon M. Baily, University of Cincinnati (\$██████, Awarded). Funding Period 2017. Project Title: Butch Queens UP In Pumps: Gender, Performance and Ballroom Culture in Detroit (PI: Carolette Norwood, PhD).

Taft Faculty Release Fellowship, Funding Period 2014-15: University of Cincinnati (100% research time, Awarded). Project Title: Navigating Race, Sex, and Sexuality in Spatial Context of High HIV Prevalence (PI: Carolette Norwood, PhD).

Office of Diversity and Inclusion, Lecture Grant, Tamara Beauboeuf-Lafontant, University of Cincinnati (\$██████, Awarded). Funding Period 2016. Project Title: The Strong Black Woman: A Half-Told Tale of Voice, Race, and the Body (PI: Carolette Norwood, PhD).

Taft Research Center Competitive Lecture Grant, Tamara Beauboeuf-Lafontant, University of Cincinnati (\$██████, Awarded). Funding Period 2016. Project Title: The Strong Black Woman: A Half-Told Tale of Voice, Race, and the Body (PI: Carolette Norwood, PhD).

UC International Awards Grants for Developing New International Experiences, University of Cincinnati, (\$2500 Awarded, \$700 departmental matched funds). Funding Period 2012-13. Project title: Introduction to Africana Studies.

Taft Research Center Competitive Lecture Grant, University of Cincinnati (\$2300.00, Awarded). Funding Period 2012. Project Title: Women, Population and Development (PI: Carolette Norwood, PhD).

Center for the Enhancement of Teaching & Learning (CET&L) grant (\$1000.00, Awarded). Funding Period 2007. Project Title: Women's Studies and Urban Studies Initiative: Core Curriculum Development and Service Learning.

Faculty Development Council Individual Grant, University of Cincinnati (\$3650.00, Awarded). Funding Period 2007. Project Title: Learning Structural Equation Modeling. University of Michigan, Inter-university Consortium for Political and Social Research (ICPSR), Summer Program in Quantitative Research Methods "Structural Equation Models and Latent Variables: An Introduction," Summer 2009.

Intercultural Travel for Student Groups led by Faculty/Staff Coordinator, Saint Mary's College (\$500.00, Awarded). Funding Period 2005. Project title: Urban Sociology Field Trip to Chicago.

2002-2003. Andrew W. Mellon Doctoral Exchange Fellowship, Université de Montréal, African Demography 2002-2003 (\$15,000.00, Awarded).

2001-2002. University of Nebraska-Lincoln, Teaching Assistantship, Larson Minority Fellowship (\$2500.00, Awarded) .

2000-2001. University of Nebraska-Lincoln, Teaching Assistantship, Larson Minority Fellowship (\$2500.00, Awarded).

1999-2000. University of Nebraska-Lincoln, Teaching Assistantship, Larson Minority Fellowship (\$2500.00 Awarded).

### **RECOGNITION FOR EXCELLENCE IN RESEARCH**

2018 (April 13), Utafiti Award Excellence in Research, Celebration of Black Excellence from the Black Faculty Association.

### **TEACHING AWARDS**

2011 Nomination Letter, Commencement Planning Committee, University of Cincinnati

2009 African American Cultural and Research Center, University of Cincinnati

2007 Darwin T. Turner Scholars Program, University of Cincinnati

### **ADVISING EXPERIENCE**

*Associate Professor, University of Cincinnati, Department of Women's Gender and Sexuality Studies*

Course taught

- US Black Feminism
- Comparative Black Feminism (graduate seminar)
- Feminist Research Methods (I, II) (graduate seminar)
- Black Women in the US
- Reproductive Political Justice

*Assistant Professor, University of Cincinnati, Department of Africana Studies*

Course taught

- Sociology of the Black Community (I, II, III)
- Black Feminism
- Black Health Care
- Seminar in Gentrification
- Senior Capstone
- Introduction to Africana Studies
- Introduction to Africana Studies (Online)
- Women, Population and Development (Study Abroad to Ghana for Honors College)

*Assistant Professor, Saint Mary's College (Notre Dame, IN), Department of Sociology*

Course taught

- Quantitative, Qualitative and Feminist Research Methodology
- Women, Population and Development (special topics)
- Urban Sociology
- Nationality and Race Relations
- Social Problems
- Introduction to Sociology

*Advising at University Cincinnati*

***PhD Committee (Member), University of Cincinnati***

- Victory Baah-Binney, Victory “Liberated ‘Trokosi’ Women in Ghana.” Department of Counselor Education and Supervision, University of Cincinnati, 2015-2021.
- McCuistian, Caravella, “Community Collaboration to Address Transactional Sex Among Substance Using Women for HIV Prevention”, University Cincinnati, Department of Psychology, 2017-2019.

***Thesis Committees (Chair, Co-Chair\*), University of Cincinnati***

- Devonte Stewart, “Performing Queerness: A Content Analysis of Professional Television Wrestlers from the Midcentury (1950) to the Second millennium (2020),” Spring 2020-present.
- Aparna Singh, “Women’s Experiences During Natural Disaster: A Case Study of the 2015 Nepal Earthquake,” 2016-2018.
- Gabrielle Simmons, “Literature and the Possibilities of Alternative Black Girlhood” 2016-2018.
- Haya Abusway, “Deploying the Domestic: The Utilization of Palestinian Women in Modern Warfare” Department of Women, Gender and Sexuality Studies, 2015- 2017.
- Maria C. Castro, “The Intersections of Sex Work and Motherhood” Department of Women, Gender and Sexuality Studies, 2016- Present.
- Bisola Sosan, “The Fruits of Our Labor: Reading Toni Morrison’s *Beloved* as an Oneric Space” School of Architecture and Design of the College of Design, Architecture, Art and Planning, 2016- 2018.
- \*Amber Davis, “Economic Empowerment for All: An Examination of Economic Development for Low-, Middle, and High-Income Women in Maha Sarakham, Thailand” Department of Community Planning in College of Design, Architecture, Art and Planning (DAAP). 2017

***Thesis Committees (Member), University of Cincinnati***

- Maggie Kane, “Decoding Discipline: ‘Appropriate’ Femininity and Disparate School Discipline Practices” Department of Women’s, Gender, and Sexuality Studies. 2019-Present
- Azia Carnes, “Black Women’s Lives Matter: Examining the Lack in Awareness of Violence and Injustice Against African American Women Overtime.” Department of Women’s, Gender, and Sexuality Studies. 2019
- Nehal Elmeligy, “Making a Scene: How Young Women in Cairo Challenge Patriarchy in the Public Sphere.” Department of Women’s, Gender, and Sexuality Studies. 2018
- Christopher Colizza, “The Sociological Impact of Rotating Savings and Credit Associations: The Impact of ROSCAs on Women/Families in Ethiopia.” Department of Planning, University of Cincinnati. 2010
- Latoya Moore, "The Spatial Distribution of Antipoverty Nonprofits and the Shifting Geography of Need: A Look at Cincinnati, OH." Department of Planning, University of Cincinnati. 2009
- Randi Moore, “Paradoxical Possibilities: Black Women, Resistance, and the Politics of Respectability.” Department of Women’s Studies, University of Cincinnati. 2009



Rwebiita Atucungwiire. "The Illusion of Gender Equality and Poverty Alleviation in Uganda."  
Department of Women's Studies, University of Cincinnati. 2007

### **Professional Development in Teaching**

Center for Enhance Teaching and Learning (CETL), Study Abroad Institute, 1 week, May 2013  
Center for Enhance Teaching and Learning (CETL), Lesson Study Research Institute, 7 Weeks,  
April 2012-June 2012

### **PROFESSIONAL SOCIETIES**

Present: American Sociological Association (ASA), National Women's Studies Association (NWSA)

Past: Alpha Kappa Delta Honor Society (AKD), American Geography Association (AAG), the National Council of Black Studies (NCBS), the American Sociological Association (ASA), Population Association of America (PAA), the Midwest Sociological Association (MSA), and the North Central Sociological Association (NCSA)

### **SERVICE IN THE PROFESSION**

Reviewer for

*Feminism & Psychology* (2022)

*Hypatia – A Journal of Feminist Philosophy*

*Journal of Women's Health*

*Souls- A Critical Journal of Black Politics*

*Social Identities: Journal for the Study of Race, Nation and Culture*

*Women, Gender & Families of Color*

*Journal of Marriage and Family*

*Journal of Black Psychology*

*The Howard Journal of Communication*

*Journal Reviewer for African Journal of Reproductive Health*

*Gender and Society*

*Sociological Focus*

*Social Science Quarterly*

*World Medical & Health*

*European Journal of Development Research*

*Journal of Family Issues*

Reviewer for

National Science Foundation (invited) 2012.

Reviewer/Panelist for Boren Fellowship for International Study, Washington DC (African Division, invited) 2011, 2012, and 2013.

Chair of Undergraduate and Graduate Student Paper Competition, North Central Sociological Association (NCSA), 2009, 2010, 2011, 2012 and 2013.

Council Member (elected), North Central Sociological Association (NCSA), 2006-2009.

Committee for Women in the Profession (elected), Midwest Sociological Association (MSA) 2008-2010.

*Reviewer for*

Tenure and Promotion to Associate Professor, Dr. Alyssa Robillard at the Arnold School of Public Health at the University of South Carolina (Summer 2017).

**SERVICE AT THE UNIVERSITY**

College governance, committee work, college-wide activities, etc.

Marshalls and Rhodes Scholar Nominee Committee, Fall 2019

Yates Scholar Program Evaluator, Spring 2019

UC TAFT Research Support Committee, 2013-2014; 2019-present

The Cincinnati Project Advisory Board, 2017-2019

UC Women's Center, Black Feminist Symposium, 2016-2017; 2019

Women's Gender Sexuality Studies (WGSS) Graduate Committee, 2013-2014

UC International, African Strategy Committee, 2012, 2013

UC International, African Ambassador's Meeting and Dinner, Fall 2012

UC International Vice Provost Search Committee 2012-2013

Women's Studies Undergraduate Curricular Committee 2007-2008; 2008-2009; 2009-2010;

**Department Service and Committees**

Director of Social Justice Certificate, 2019 – Present

Advisory Council, Department of Women's, Gender, and Sexuality Studies, 2019-present  
Chair, WGSS Lecture Series Coordinator (In conversation with Dani McClain author of *We Live for the We: The Political Power of Black Motherhood* at Charles Phelps Taft Research Center), Spring 2019

Chair, Social Justice Ad Hoc Committee, 2019-present

Chair, Reappointment and Tenure Committee (Dr. JT Roane), 2019

Chair, Scholarship and Awards Committee, 2019

Chair, Search Committee, Open Rank Faculty Position, Urban Future's Scholar 2016-2017.

Member, Reappointment and Promotion Committee (Carolyn Peterson), 2015

Events Coordinator, WGSS, 2015 –2017; spring 2019.

Undergraduate Minor's Advisor, 2007-2008; 2008-2009; 2009-2010; 2010-2011; 2012-2013.

Curriculum Committee 2010-2011; 2011-2012.

Junior Search Committee, 2007, 2010.

Minor/Major Data Base, Winter 2009 – 2010.

Public relations (webpage and department brochures), 2008-2009

Search Committee, Winter 2007.

Department Retreat 2010-2011; 2011-2013; 2012-2013.

Travel Committee 2012-2013.

Study Aboard to University Ghana, Honor's College, Fall 2011.  
Exploring the Study Aboard course development to University West Indies St. Augustine,  
May 2013.

### **Student Mentoring**

#### Yates Fellow Mentor

- Devonte Stewart, 2019- present
- Gabrielle Simmons, 2016 – 2018

#### Putting Retention 1st in the Zest for Excellence (PRIZE) Faculty mentor to:

- Tyrick Allen 2009, 2010, and 2011
- Heather Cooper 2010, 2011, and 2012

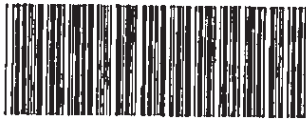
#### Research Mentor (Independent Studies)

- Michelle Siddiqui, Fall 2019 – to present
- Erika Nyguen, Summer 2019, Fall 2019, Spring 2020
- Lonnie Jennings, Spring 2020
- Devonte Stewart, Spring 2020
- Ariel Shaw, Spring 2020
- Juliana Madzia, 2015-2018

### **SERVICE IN THE COMMUNITY AND PARTNERSHIPS**

- Peaslee Neighborhood Community Center, Board of Directors, 2019-Present.
- OTR Community Housing, 1227 Vine St, Cincinnati, OH.
- The Community Builders, Inc 3539 Reading Road, the Avondale Town Center, Cincinnati, OH.
- Cradle Cincinnati, 3333 Burnet Ave, Cincinnati, OH.
- Cincinnati Birth Center, 841 Lincoln Ave, Cincinnati, OH.
- CO-Hear Community Engagement and Strategy, 1160 140th Ave NE suite e & f, Bellevue, Cincinnati, Ohio.
- Josephine's Clinic, 1953 Central Ave, Cincinnati, OH 45214
- Caracole Inc. (provides HIV prevention and testing services for the community and affordable housing and case management for individuals and families living with HIV/AIDS), 2016 to 2018.
- Greater Cincinnati World Affairs Council, NKU, Highland Heights, KY 41099.
- Stop AIDS, 220 Findlay Street, Cincinnati, OH, 2010 – 2011.
- International Family Resource Center, 200 McFarland Street, Cincinnati, OH, 2006-2008.

# **EXHIBIT 4**



D134029885

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

ENTERED  
JAN 31 2022

PLANNED PARENTHOOD SOUTHWEST OHIO  
REGION, *ET AL.*,

*Plaintiffs,*

-vs.-

OHIO DEPARTMENT OF HEALTH, *ET AL.*,

*Defendants.*

CASE NO. A 2100870

JUDGE ALISON HATHEWAY

ENTRY GRANTING PLAINTIFFS'  
SECOND MOTION FOR  
PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs Planned Parenthood Southwest Ohio Region, et al.'s Second Motion for Preliminary Injunction. This case involves a challenge to Am.S.B. No. 27, 2020 Ohio Laws File 77 ("SB27"), which requires embryonic and fetal tissue after a procedural abortion (also known as a surgical abortion) to be cremated or interred. On January 28, 2022, the Court heard Oral Arguments on the Motion.

The Court, having considered Plaintiffs' Second Motion for Preliminary Injunction, State Defendants' Brief in Opposition, and Plaintiffs' Reply and having fully reviewed the positions of the parties, hereby **GRANTS** Plaintiffs' Second Motion for Preliminary Injunction. Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them are **PRELIMINARILY ENJOINED** from enforcing SB27 until final judgment is entered in this case.

**I. BACKGROUND**

Plaintiffs Planned Parenthood Southwest Ohio Region ("PPSWO"), Dr. Sharon Liner, Planned Parenthood of Greater Ohio ("PPGOH"), Preterm-Cleveland ("Preterm"), Women's Med Group Professional Corporation ("WMGPC"), and Northeast Ohio Women's Center ("NEOWC") (collectively "Plaintiffs") are health care providers in the state of Ohio who provide reproductive

health care, including procedural abortions. Plaintiffs, who represent all providers of procedural abortion in the state, raise due-process and equal-protection claims under the Ohio Constitution and pursuant to the Declaratory Judgment Act, R.C. 2721.03, against SB 27, which was signed into law on December 30, 2020. Under this Court’s previous order, Defendants are currently enjoined from enforcing the law until 30 days after the implementing rules took effect—that is, until February 8, 2022. Defendants are the Ohio Department of Health (“ODH”), ODH Director Bruce Vanderhoff, the State Medical Board of Ohio, and county and city prosecutors charged with enforcing the criminal penalties set forth in the law.

**A. Abortion Provision in Ohio**

Plaintiffs represent the following facts regarding abortion provision in Ohio, which Defendants do not dispute. Plaintiffs state there are two main methods of abortion: medication abortion and procedural abortion, and that both are effective in terminating a pregnancy. Procedural abortion is the only method of abortion available after ten weeks in pregnancy, and for some patients, it is the only method available at any gestation. According to ODH data, in 2019, more than 61 percent of abortions in the state were procedural abortions.

**B. SB27**

SB27 requires that “fetal remains” (which it defines as “the product of human conception that has been aborted,” R.C. 3726.01(C)) from a procedural abortion be disposed of only by cremation or interment. A patient who has a procedural abortion may decide whether to dispose of fetal remains by cremation or interment and may determine the location of such disposition. R.C. 3726.03(A).

Failure to comply with SB27 would subject Plaintiffs and their physicians to significant penalties, including criminal penalties. Noncriminal penalties include license suspension or

revocation for both abortion facilities and physicians, fines, damages, and court injunctions. *See* Ohio Adm.Code 3701-83-05(C); Ohio Adm.Code 3701-83-05.1(B), (C)(2), (C)(4), and (F); Ohio Adm.Code 3701-83-05.2(F); R.C. 3702.32(D); R.C. 2317.56(G)(1) and (2); R.C. 4731.22(B)(21) and (23); R.C. 4731.225(B); R.C. 3701.79(J). Defendants ODH and the State Medical Board have independent enforcement authority.

## II. ANALYSIS & DISCUSSION

### A. Standard

A party seeking a preliminary injunction must demonstrate “that the moving party has a substantial likelihood of success in the underlying suit; that the moving party will suffer irreparable harm if the order does not issue; that no third parties will be harmed if the order is issued; that the public interest is served by issuing the order.” *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267–68, 747 N.E.2d 268 (1st Dist.2000).

### B. Plaintiffs Are Substantially Likely to Succeed on Their Claims.

#### I. *Plaintiffs are likely to prevail against Defendants’ threshold challenges to their standing and the availability of relief they seek.*

State Defendants raise two threshold challenges to Plaintiffs’ claims, but Plaintiffs are likely to prevail on both issues.

*First*, State Defendants argue that Plaintiffs lack third-party standing to bring claims on behalf of their patients. But, as decades of precedent have confirmed and as this Court has previously held, “[t]hird-party standing is available in circumstances like these.” *Planned Parenthood Southwest Ohio Region. v. Ohio Dept. of Health*, Hamilton C.P. No. A 2101148 (Apr. 19, 2021) (“PPSWO Telemedicine Op.”), at 5; *June Med. Servs. L.L.C. v. Russo*, \_\_\_ U.S. \_\_\_, 140 S.Ct. 2103, 2118, 207 L.Ed.2d 566 (2020) (plurality opinion); *id.* at 2139 fn.4 (Roberts, C.J., concurring). Indeed, the Ohio Supreme Court has stated that “[t]here may be . . . ‘circumstances

where it is necessary to grant a third party standing to assert the rights of another.” *Util. Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 49 (“PUC”), quoting *Kowalski v. Tesmer*, 543 U.S. 125, 129–130, 125 S.Ct. 564, 160 L.Ed.2d 519 (2004); *see also, e.g., State v. Madison*, 160 Ohio St.3d 232, 2020-Ohio-3735, 155 N.E.3d 867, ¶ 95, *cert. denied, sub nom. Madison v. Ohio*, \_\_\_ U.S. \_\_\_, 141 S.Ct. 2597, 209 L.Ed.2d 733 (2021) (mem.); *Cincinnati City School Dist. v. State Bd. of Edn.*, 113 Ohio App.3d 305, 314, 680 N.E.2d 106 (10th Dist.1996); *compare Women’s Med. Professional Corp. v. Voinovich*, 911 F.Supp. 1051, 1058 (S.D. Ohio 1995), citing *Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976) (plurality opinion), *aff’d*, 130 F.3d 187 (6th Cir.1997).

Further, a long line of federal precedent—which this Court may look to by analogy—confirms third-party standing is available both (1) to “abortion providers [who] invoke the rights of their actual or potential patients in challenges to abortion-related regulations,” and (2) where “enforcement of [a] challenged restriction against the litigant would result indirectly in the violation of third parties’ rights.” (Emphasis deleted.) *June Med. Servs.* at 2118–19 (plurality opinion), quoting *Kowalski* at 130; *see also id.* at 2139 fn.4 (Roberts, C.J., concurring); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 881–87, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (plurality opinion); *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 440 fn.30, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983), *overruled on other grounds by Casey* at 881–82; *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 62, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976); *Doe v. Bolton*, 410 U.S. 179, 188, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973); *compare Griswold v. Connecticut*, 381 U.S. 479, 481, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).



State Defendants claim that Plaintiffs have not shown that their patients are hindered from bringing claims of their own. Defendants Ohio Dept. of Health, Director Bruce Vanderhoff, and State Medical Board of Ohio's Response in Opposition to Plaintiffs' Second Motion for Preliminary Injunction ("Opp. Br.") at 7. Even if such a separate showing were required, precedent establishes that abortion patients are hindered from asserting their own claims, given the time-sensitive and private nature of pregnancy and the decision to have an abortion. *See Singleton* at 117–18 (plurality opinion). In any case, third-party standing is a prudential—not jurisdictional—consideration even under federal law. *See, e.g., June Med. Servs.*, 140 S.Ct. at 2117–20 (plurality opinion); *id.* at 2139 fn.4 (Roberts, C.J., concurring). Plaintiffs are therefore likely to prevail against Defendants' third-party standing argument.

*Second*, State Defendants argue that Plaintiffs lack a cause of action for their claims. State Defendants "ignore the availability of relief under Ohio's Declaratory Judgment Act" ("DJA"). PPSWO Telemedicine Op. at 6, citing R.C. 2721.03, *Pack v. City of Cleveland*, 1 Ohio St.3d 129, 438 N.E.2d 434 (1982), at paragraph one of the syllabus; *see also generally* Opp. Br. at 8–10. As this Court and other Ohio courts have held, the DJA "provides a 'legislative enactment' on which Plaintiffs may rely to seek declaratory and injunctive relief for due-process and equal-protection violations[.]" PPSWO Telemedicine Op. at 6; R.C. 2721.09; R.C. 2727.02; *see also, e.g., State v. Williams*, 88 Ohio St.3d 513, 521, 728 N.E.2d 342 (2000); *Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 45; *Riverside v. State*, 2d. Dist. Montgomery No. 26024, 2014-Ohio-1974, ¶ 30–38. Moreover, "[e]ven if the [DJA] did not supply a cause of action for the Plaintiffs to seek declaratory and injunctive relief," the Ohio Constitution's "guarantees of equal protection and substantive due process under Article I, Sections 1, 2, 16, 20, and 21 are self-executing because they are 'sufficiently precise . . . to provide clear guidance to courts with respect

to their application.” PPSWO Telemedicine Op. at 7, quoting *Williams* at 521; *see also In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.3d 803, ¶ 24–25; *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 469, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 99–104; *Stolz v. J & B Steel Erectors, Inc.*, 155 Ohio St.3d 567, 2018-Ohio-5088, 122 N.E.3d 1228, ¶13, citing *Arbino* at ¶ 48–49; *In the Matter of Adoption of Y.E.F.*, 163 Ohio St.3d 521, 2020-Ohio-6785, 171 N.E.3d 302, ¶ 15.

**2. Plaintiffs are substantially likely to succeed on their claims that SB27 violates the Ohio Constitution’s guarantee of due process.**

The Ohio Supreme Court has on numerous occasions recognized a fundamental substantive-due-process right under the Ohio Constitution that extends to matters involving privacy, procreation, and bodily integrity and autonomy. *See, e.g., Stone v. City of Stow*, 64 Ohio St.3d 156, 160–63, 593 N.E.2d 294 (1992). The Ohio Constitution’s protection for substantive-due-process rights is distinct from that accorded under the U.S. Constitution because the Ohio Constitution provides a “remedy by due course of law” to “every person, for an injury done to him in his land, goods, *person*, or reputation.” (Emphasis added.) Ohio Constitution, Article I, Section 16. Deprivation of reproductive autonomy falls squarely within the meaning of an injury done to one’s person under the Ohio Constitution. Moreover, Article I, Section 21 of the Ohio Constitution, which “[p]reserv[es] [] the freedom to choose health care and health care coverage” for Ohioans, confirms that freedom of choice in health care is a fundamental right. Given the breadth of the Ohio Constitution’s guarantees of bodily autonomy, privacy, and freedom of choice in health care, strict scrutiny must apply to a law that infringes on this protection for patients and their medical providers. *See also* PPSWO Telemedicine Op. at 8–9.

State Defendants argue that rational basis review applies because SB27 does not regulate abortion. But SB27, on its face, applies to abortion providers who provide, and patients who obtain,

procedural abortions. Abortion providers cannot provide procedural abortions without complying with SB27. *See Women's Med. Professional Corp. v. Baird*, 438 F.3d 595 (6th Cir.2006). Strict scrutiny applies, and State Defendants have not shown that SB27 meets its demands. Indeed, they make no arguments at all under the strict scrutiny standard, despite the burden being on them to show SB27 survives strict scrutiny.

SB27 is not narrowly tailored to serve a compelling state interest. State Defendants argue SB27 furthers an interest in proper disposal of tissue after a procedural abortion. But it is unclear why this is so when Plaintiffs' current method of disposing of this tissue—incineration—is generally the same process as cremation, and infectious waste requirements that applied to this tissue before SB27 still apply to disposal of tissue removed from a patient's body after a medical procedure, including tissue from the identical procedure providers utilize to aid patients after a miscarriage.

State Defendants also argue that SB27 furthers an interest in "respect for unborn life." *Opp. Br.* at 13. But the State does not require health care facilities to dispose of identical tissue after miscarriage and infertility treatments by cremation or interment, thus casting strong doubt on the State's claimed purposes. Finally, while State Defendants claim SB27 increases patient choice in disposition of tissue, it actually does the opposite by limiting disposition to *only* cremation or interment—disposition options that patients can already choose under the requirements that previously applied to disposal of tissue from a procedural abortion. In sum, SB27 is not narrowly tailored to serve any compelling state interest.

Even if strict scrutiny did not apply, SB27 could not survive the federal undue burden standard.<sup>1</sup> That standard requires courts to “consider the burdens a law imposes on abortion access together with the benefits those laws confer” and “weigh[] the asserted benefits against the burdens.” *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2309–10, 2195 L.Ed.2d 665 (2016). As explained above, SB27 imposes substantial burdens on patients seeking procedural abortion. Plaintiffs present convincing evidence that SB27 will operate as an effective ban on procedural abortions before approximately 13 weeks of pregnancy, as measured from the first day of a patient’s last menstrual period (“LMP”),<sup>2</sup> when most patients obtain procedural abortions, and a complete ban on abortions between 10 and 13 weeks LMP; that patients will be forced to delay their procedures until later in pregnancy, when abortion carries greater risks and is more expensive; and that the law will otherwise substantially increase the cost of obtaining an abortion. Additionally, the law may prevent abortion patients seeking to identify or convict a perpetrator of

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<sup>1</sup> Ohio precedent recognizes that the Ohio Constitution’s Due Course clause is at least as protective of individual rights as the federal due process clause, including in the abortion context. *See, e.g., Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993).

<sup>2</sup> Plaintiffs present convincing evidence, which State Defendants do not dispute, that they cannot reliably separate embryonic and fetal tissue (which must be cremated or interred under SB27) from other pregnancy tissue (which remains subject to infectious waste regulations and cannot be cremated or interred) prior to around 13 weeks of LMP, and thereby risk violating either SB27 or infectious waste regulations if they provide procedural abortions prior to that time. State Defendants appear to take the position that pregnancy tissue from a procedural abortion need not be separated, and that all of it must be cremated or interred, thereby potentially relieving Plaintiffs and their patients of the burden of not being able to provide or obtain procedural abortions until approximately 13 weeks LMP. Opp. Br. at 24–25. But State Defendants’ statements on this point are muddled and in tension with arguments they make elsewhere indicating that some tissue from procedural abortions can be sent to third parties without violating SB27’s requirements. In any case, Plaintiffs are not required to rely on State Defendants’ mid-litigation assurances. *See EMW Women's Surgical Ctr., P.S.C. v. Friedlander*, 960 F.3d 785, 805–06 (6th Cir.2020) (subsequent history omitted). Moreover, even if this particular burden is mitigated, Plaintiffs’ evidence demonstrates that SB27 would still impose significant burdens, such that Plaintiffs are substantially likely to succeed on their due-process claim.

sexual assault or seeking to diagnose a medical condition from sending the tissue to a pathology or crime lab without providers risking violating SB27.

**3. Plaintiffs are substantially likely to succeed on their claims that SB27 violates the Ohio Constitution's guarantee of equal protection.**

The Ohio Constitution's guarantee of equal protection, found in Article I, Section 2, "requires that the government treat all similarly situated persons alike." *Sherman v. Ohio Pub. Emps. Retirement Sys.*, 163 Ohio St.3d 258, 2020-Ohio-4960, 169 N.E.3d 602, slip op. ¶ 14, citing *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 6. SB27 does not do so. Instead, it singles out patients who obtain and providers who perform procedural abortion for unnecessary restrictions that do not apply to similarly situated persons—including those who obtain or perform other medical procedures such as miscarriage management or in vitro fertilization that involve the disposition of identical embryonic or fetal tissue. It imposes severe burdens on "pregnant wom[e]n" who need procedural abortions, R.C. 3726.03, without any countervailing benefit. And SB27 targets abortion providers with severe sanctions for violations of its requirements that do not apply to other medical providers, including providers who treat miscarriage using the same medical procedure.

The parties again disagree as to the appropriate level of review to apply. The Court agrees with Plaintiffs that SB27 warrants strict scrutiny because it burdens a fundamental right to substantive due process in matters involving privacy, procreation, bodily autonomy, and freedom of choice in health care decision making, *see above*, and because it expressly discriminates against women—a suspect class. *Williams*, 88 Ohio St.3d at 530, 728 N.E.2d 342, quoting *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976). State Defendants argue instead that "the undue-burden test applies, and the equal-protection claims collapse into that analysis." Opp. Br. at 18. But Plaintiffs bring constitutional claims under the

Ohio Constitution, which provides distinct protections under the due course of law clause in Article I, Section 16 and the equal protection clause in Article I, Section 2, and the claims must be analyzed separately. *See Morris v. Savoy*, 61 Ohio St.3d 684, 691–692, 576 N.E.2d 765 (1991); *Simpkins v. Grace Brethren Church of Delaware*, 149 Ohio St.3d 307, 2016-Ohio-8118, ¶ 45. Finally, strict scrutiny applies to both Plaintiffs’ and their patients’ equal-protection claims, as a person’s right to obtain an abortion is inextricably bound up with the doctor’s ability to provide that care. *See, e.g., Planned Parenthood Assn. of Utah v. Herbert*, 828 F.3d 1245, 1260 (10th Cir.2016); *Planned Parenthood of Mid-Missouri & E. Kansas v. Dempsey*, 167 F.3d 458, 464 (8th Cir.1999); *Planned Parenthood of Cent. & N. Arizona v. Arizona*, 718 F.2d 938, 944 (9th Cir.1983).

SB27 does not survive strict scrutiny—and once again State Defendants make no arguments that it does. There is no compelling state interest in applying SB27’s requirements only to tissue from procedural abortion and not to identical tissue resulting from physician management of miscarriage, during which providers utilize a procedure identical to procedural abortion to remove embryonic or fetal tissue (and other pregnancy tissue) from a patient undergoing a miscarriage. In vitro fertilization (“IVF”) clinics are not required to comply with SB27’s mandates when they dispose of pre-implantation embryos either. *See Whole Woman’s Health v. Smith*, 338 F.Supp.3d 606, 641–42 (W.D.Tex.2018), *appeal filed*, No. 18-50730 (5th Cir. Sep. 7, 2018). Indeed, SB27’s requirements appear even more restrictive than pre-existing disposal requirements for human bodies under Ohio law, by limiting disposal options to interment or cremation and requiring that cremation of tissue from a procedural abortion be at an Ohio-licensed crematory, R.C. 3726.02(B), and that locations for interring tissue provided by the abortion provider be at Ohio-registered cemeteries, Ohio Adm.Code 3701-46-01(B)(1)(b). *Compare* R.C. 3705.01(J) (stating dead human bodies can be interred or cremated, can be removed from the state, donated,

or disposed of pursuant to “other authorized means”). There is no compelling state interest to which SB27 is narrowly tailored for such differential treatment. Even if this Court were to hold that strict scrutiny did not apply here, it would nevertheless enjoin SB27 because the law could not satisfy even rational-basis review for these same reasons.

***4. Plaintiffs are substantially likely to succeed on their claims that SB27 is unconstitutionally vague.***

This Court preliminarily enjoins Defendants from enforcing SB27 for the additional reason that it is impermissibly vague in several key respects. First, the Court agrees with Plaintiffs that the term “fetal remains” is vague because it does not specify whether it includes pregnancy tissue such as the placenta, gestational sac, and umbilical cord, and therefore does not provide “fair notice” to Plaintiffs as to how they must dispose of this other, non-embryonic or fetal tissue, *see State v. Tanner*, 15 Ohio St.3d 1, 3, 472 N.E.2d 689 (1984), and will force them to “steer far wider of the unlawful zone” than if the law were not vague by not providing procedural abortions until around 13 weeks LMP. *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

Second, SB27 invites “arbitrary, capricious and generally discriminatory enforcement,” *Tanner* at 3, because it leaves providers unsure of whether they can send embryonic and fetal tissue from procedural abortion to pathologists and crime labs without risking the law’s penalties. Plaintiffs represent (and State Defendants do not dispute) that they cannot control whether the pathologists—who are sometimes located in another state—and crime labs to whom they send tissue will cremate and inter the tissue, and it is unclear under the statute whether Plaintiffs will be subject to penalties if these third parties fail to do so.

Third, SB27 does not address whether embryonic and fetal tissue can be simultaneously cremated. Despite State Defendants’ claims that individual cremation is required, such a

requirement is not apparent from either the face of the law itself nor from the pre-existing regulations in Ohio law governing cremation. Plaintiffs represent that they will thus be forced to “steer far wider of the unlawful zone” by contracting with vendors to individually cremate tissue, thereby burdening their patients. *Grayned* at 109.

Finally, SB27 states that cremation must occur at Ohio-licensed crematories. R.C. 3726.02(B). And the law’s implementing rules require that the interment options provided by abortion providers be at Ohio-registered cemeteries. Ohio Adm.Code 3701-46-01(B)(1)(b). But it is unclear whether this means that all tissue from procedural abortions must be disposed in state, or whether it requires only that the tissue that is disposed in state must be disposed at a licensed or registered entity.

Because SB27 fails to provide fair notice, invites arbitrary enforcement, and forces Plaintiffs to steer far wider of the unlawful zone than if the law provided clear guidelines, resulting in severe burdens to Plaintiffs and their patients, it is unconstitutionally vague.

**C. Plaintiffs and Their Patients Will Suffer Irreparable Harm Absent Relief.**

“A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury as well.” *Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001). Plaintiffs have shown a likelihood of success on the merits of their claims that enforcement of SB27 will deprive them and their patients of their constitutional rights of due process and equal protection, and so “a finding of irreparable harm follows.” PPSWO Telemedicine Op. at 11.

Contrary to State Defendants’ assertion, and as this Court holds above, SB27 is a restriction on abortion. SB27 would severely impede access to abortion, and its enforcement would irreparably harm Plaintiffs and their patients. Plaintiffs have submitted ample evidence detailing the non-compensatory harms SB27 will cause to themselves and to their patients, including



significantly delaying patients in obtaining abortions and preventing patients from obtaining abortions. SB27 will also irreparably harm Plaintiffs because it will force them to deny or delay requested care.

**D. No Third Parties Will Be Harmed and the Public Interest Will Be Served.**

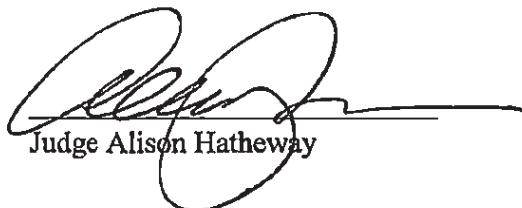
“[T]he state cannot be harmed when an unconstitutional law does not go into effect.” *Newburgh Heights v. State*, 2021-Ohio-61, 166 N.E.3d 632, ¶ 76 (8th Dist.); *see also* PPSWO Telemedicine Op. at 13. Plaintiffs have demonstrated that they are substantially likely to succeed on their due-process and equal-protection claims and therefore preventing this violation of their and their patients’ constitutional rights is in the public interest.

**III. CONCLUSION**

For the foregoing reasons, Plaintiffs’ Second Motion for Preliminary Injunction is hereby **GRANTED**. Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them are **PRELIMINARILY ENJOINED** from enforcing SB27 until final judgment is entered in this case. The Court hereby sets the Civ. R. 65(C) bond requirement at \$0.00.

**IT IS SO ORDERED.**

Dated: 1-31-2022

  
Judge Alison Hatheway

# **EXHIBIT 5**

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

PLANNED PARENTHOOD  
SOUTHWEST OHIO REGION, *et al.*,

*Plaintiffs,*

v.

OHIO DEPARTMENT OF HEALTH, *et al.*,

*Defendants.*

Case No. A 2101148

Judge Alison Hatheway

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**ENTRY GRANTING PLAINTIFFS' MOTION  
FOR A PRELIMINARY INJUNCTION**

This matter comes before the Court on Plaintiffs Planned Parenthood Southwest Ohio Region, et al.'s Motion for a Preliminary Injunction. This case involves a challenge to Senate Bill 260 (adding R.C. 2919.124(A)(1), (B)) ("SB 260" or "the Act"), which will bar a physician from providing an "abortion-inducing drug" to a "pregnant woman," unless the doctor is "physically present at the location where the initial dose of the drug or regimen of drugs is consumed" when the patient consumes that dose. In effect, SB 260 bars the provision of medication abortion via telemedicine ("TMAB").

This Court previously entered a temporary restraining order preventing Defendants from enforcing SB 260, which was slated to take effect on April 12, 2021. Defendants Ohio Department of Health ("ODH"), Ohio State Medical Board, and ODH Director Stephanie McCloud filed an opposition to the motion for a preliminary injunction. The local prosecutors named as Defendants did not file an opposition but were provided notice of the pending motion and an opportunity to be heard at the preliminary-injunction hearing. Upon review of the parties' additional filings, exhibits, and applicable law, and consideration of the parties' arguments during the hearing before this

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Court on April 19, 2021, the Court now enjoins all Defendants in this case from enforcing SB 260 until such time as the Court enters final judgment.

As discussed in more detail below, the Court finds that Plaintiffs have met their burden of showing that SB 260 is substantially likely to violate the equal-protection and substantive-due-process rights of Plaintiffs and their patients and will cause irreparable harm. The Court further finds that the preliminary injunction will not harm third parties, and that preventing enforcement of a statute likely to be held unconstitutional is in the public interest.

## **I. BACKGROUND**

Plaintiffs Planned Parenthood Southwest Ohio Region (“PPSWO”), Planned Parenthood of Greater Ohio (“PPGOH”), and Dr. Sharon Liner are health care providers in the state of Ohio who provide reproductive health care, including TMAB. Plaintiffs challenge SB 260, raising equal-protection and substantive-due-process claims under the Ohio Constitution. Defendants are the ODH, ODH Director Stephanie McCloud, the State Medical Board of Ohio, and county prosecutors charged with enforcing the criminal penalties set forth in the law. SB 260 was originally set to take effect April 12, 2021. The Court issued a temporary restraining order on April 7, 2021, and heard argument on the preliminary injunction motion on April 19, 2021.

### **A. Abortion in Ohio and Plaintiffs’ TMAB Services**

Plaintiffs have presented evidence to support the following facts regarding abortion provision in Ohio and their TMAB services, which Defendants do not dispute. Plaintiffs state there are two main methods of abortion, medication abortion and procedural abortion, and that both are effective in terminating a pregnancy. Medication abortion is available in Ohio up to 10 weeks of pregnancy, and involves patients taking two different medications one to two days apart. Because of state law requirements, patients must make two visits to a health center to obtain an abortion, at least 24 hours apart: the first for state-mandated informed consent and an ultrasound, and the

second for the abortion itself, or in the case of medication abortion, to receive and take the initial medication in the regimen. State law requires that the first visit be in person with a physician, so for their initial visit all of Plaintiffs' patients visit one of Plaintiffs' surgical facilities, in either Cincinnati, East Columbus, or Bedford Heights, which have a physician present at all times. Patients obtaining a medication abortion have the option for their second visit to return to a surgical facility or to visit one of Plaintiffs' TMAB locations in Dayton or Hamilton (for PPSWO patients), or in Mansfield or Youngstown (for PPGOH patients), where they can have their second appointment via video conference with a physician located at one of the surgical facilities. At that second visit, Plaintiffs confirm patients are certain in their decision to have an abortion, and the physician dispenses the first of the two medications (mifepristone). Patients take the second medication in the regimen (misoprostol) one to two days after the second visit at a location of their choosing, usually at home.

**B. SB 260**

SB 260 bars a physician from providing an "abortion-inducing drug" to a "pregnant woman," unless the doctor is "physically present at the location where the initial dose of the drug or regimen of drugs is consumed" when the patient consumes that dose. SB 260, § 1 (adding R.C. 2919.124(B)). The law effectively bans the TMAB services described above. A violation of SB 260 is a fourth-degree felony, which in Ohio carries a potential prison term of between six and eighteen months. *Id.* (adding R.C. 2919.124(E)); *see* R.C. 2929.14(A)(4). SB 260 likewise provides that licensed physicians are "subject to sanctioning" by the state medical board for violations of the Act. SB 260, § 1 (adding R.C. 2919.124(E), which cross-references R.C. 4731.22); *see also* R.C. 2925.01(W)(17).

SB 260 does not affect the provision by telemedicine of medication used to manage miscarriage, *see* SB 260, § 1 (adding R.C. 2919.124(B) (applying only where medication is given

to a “pregnant woman”)); *id.* (adding R.C. 2919.124(C) (applying only where medication is given for the purpose of inducing abortion)), even though Plaintiffs treat miscarriage using the exact same medication regimen they use to provide medication abortion, and the health risks of these two treatments are comparable, if not higher among miscarriage patients. Nor does SB 260 restrict the use of telemedicine for other healthcare services. Instead, in recent years, Ohio has taken steps to reduce legal and regulatory barriers to telemedicine, including by requiring insurance coverage for telemedicine services and adopting flexible licensing and prescribing rules to facilitate telemedicine services. Ohio allows medications with far more serious risk profiles than those used in medication abortion to be prescribed via telemedicine, including controlled substances and opioids. To date, neither party has identified any other provision of state law that restricts the use of telemedicine only for a particular type of care, or that requires a physician to be physically present when a patient takes a medication prescribed by the physician.

Plaintiffs have presented party and expert affidavits demonstrating that SB 260’s enforcement would completely eliminate access to the second-day medication abortion visits in Butler, Mahoning, and Richland counties, and would force patients in those areas to travel significantly farther to obtain an abortion, possibly well over 100 miles. Plaintiffs have also submitted evidence, based on high-quality research, that increases in travel distance to an abortion provider, even increases significantly less than those at issue here, reduce abortion attainment and carry other financial, physical and emotional costs for patients. These costs will delay patients’ access to abortion, some to such an extent that they are no longer eligible for medication abortion, if they remain eligible for abortion in Ohio at all.

## II. ANALYSIS AND DISCUSSION

As final relief, Plaintiffs seek an Order from this Court declaring the Act unconstitutional, and a permanent injunction barring its enforcement. The purpose of a preliminary injunction is to preserve the status quo prior to entry of the final order. *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist. 2000). A party seeking preliminary relief must demonstrate that the moving party has a substantial likelihood of success in the underlying suit; that the moving party will suffer irreparable harm if the order does not issue; that no third parties will be harmed if the order is issued; and that the public interest is served by issuing the order. *Id.* at 267–68.

### A. Plaintiffs Are Substantially Likely to Succeed on Their Claims.

#### 1. *Plaintiffs are likely to prevail against Defendants' threshold challenges to their standing and the availability of relief they seek.*

At the outset, the Court addresses two threshold arguments made by Defendants as to the availability of relief for Plaintiffs' claims. First, Defendants contend that, to the extent Plaintiffs bring claims on behalf of their patients, those claims are barred because Plaintiffs lack third-party standing. As Plaintiffs explain, and Defendants appear to agree, this argument applies only to a subset of claims brought by Plaintiffs. Plaintiffs also bring equal-protection and due-process claims on their own behalf, and Defendants do not challenge the standing of Plaintiffs with respect to those claims.

As to Plaintiffs' equal-protection and due-process claims on behalf of their patients, the Court concludes that the Plaintiffs have third-party standing. SB 260 imposes criminal and civil penalties on abortion providers, and, if enforced, will result in a deprivation of patients' rights under the Ohio Constitution. Third-party standing is available in Ohio courts in circumstances like these, as confirmed by Ohio case law and federal court precedent, which Defendants agree this

Court may look to by analogy to interpret the third-party standing doctrine as it applies in Ohio state courts. *See June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2118–19, 207 L.Ed.2d 566 (2020) (plurality opinion), citing *Kowalski v. Tesmer*, 543 U.S. 125, 130, 125 S. Ct. 564, 160 L.Ed.2d 519 (2004); *see also id.* at 2139 fn. 4 (Roberts, C.J., concurring); *State v. Madison*, 160 Ohio St.3d 232, 2020-Ohio-3735, 155 N.E.3d 867, ¶ 95, *reconsideration denied*, 160 Ohio St.3d 1410, 2020-Ohio-4574, 153 N.E.3d 116 (Table), ¶ 20, *petition for cert. docketed, sub nom. Madison v. Ohio*, U.S. No. 20-1171 (Feb. 25, 2021).

Second, Defendants contend that the constitutional rights asserted by Plaintiffs cannot be remedied in this lawsuit because the provisions on which Plaintiffs rely are not self-executing. The Court rejects this argument on two grounds. First, Defendants ignore the availability of relief under Ohio’s Declaratory Judgment Act, which provides that “any person whose rights, status, or other legal relations are affected by” a constitutional provision or statute “may have determined any question of construction or validity arising under the” constitutional provision or statute “and obtain a declaration of rights, status, or other legal relations under it.” R.C. 2721.03; *Pack v. City of Cleveland*, 1 Ohio St.3d 129, 438 N.E.2d 434 (1982), at paragraph one of the syllabus. This statute provides a “legislative enactment” on which Plaintiffs may rely to seek declaratory and injunctive relief for due-process and equal-protection violations in this case. *See State v. Williams*, 88 Ohio St.3d 513, 521, 728 N.E.2d 342 (2000); *Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 45; *Karches v. City of Cincinnati*, 38 Ohio St.3d 12, 526 N.E.2d 1350 (1988), at paragraph one of the syllabus; *Riverside v. State*, 2d. Dist. Montgomery No. 26024, 2014-Ohio-1974, ¶ 30–38; *see also* R.C. 2721.09 (“[W]hen necessary or proper, a court of record may grant further relief based on a declaratory judgment or decree previously



granted under this chapter.”). Plaintiffs therefore need not show that the constitutional provisions on which they rely are self-executing.

Second, even if the Declaratory Judgment Act did not supply a cause of action for the Plaintiffs to seek declaratory and injunctive relief, however, the Ohio Constitution’s guarantees of equal protection and substantive due process under Article I, Sections 1, 2, 16, 20, and 21 are self-executing because they are “sufficiently precise . . . to provide clear guidance to courts with respect to their application.” *Williams* at 521; *see, e.g., In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.3d 803, ¶ 24–25; *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 469, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 99–104; *Stolz v. J & B Steel Erectors, Inc.*, 155 Ohio St.3d 567, 2018-Ohio-5088, 122 N.E.3d 1228, ¶ 13, citing *Arbino* at ¶ 48–49; *In the Matter of Adoption of Y.E.F.*, Slip Opinion No. 2020-Ohio-6785, ¶ 15; *State ex rel. Brown v. Summit Cty. Bd. of Elections*, 46 Ohio St.3d 166, 169, 545 N.E.2d 1256 (1989).

**2. Plaintiffs are substantially likely to succeed on their claim that SB 260 will violate their and their patients’ constitutional right to equal protection.**

The Ohio Constitution’s guarantee of equal protection, found in Article I, Section 2, “requires that the government treat all similarly situated persons alike.” *Sherman v. Ohio Pub. Emps. Retirement Sys.*, Slip Opinion No. 2020-Ohio-4960, ¶ 14, citing *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 6.

SB 260 does not do so. Instead, it imposes felony criminal penalties and professional sanctions on abortion providers for providing medication abortion using telemedicine, while leaving other physicians, including physicians who treat miscarriage using the exact same medications, unrestricted in their telemedicine delivery. SB 260 also denies “pregnant wom[e]n” access to safe, effective health care via telemedicine, and all the benefits such care brings, without any countervailing benefit. SB 260, § 1 (adding R.C. 2919.124(B)).

Although Defendants contend that abortion providers are not similarly situated to other medical providers, including doctors treating miscarriage or offering comparable or higher-risk services by telemedicine, the Court disagrees. A disfavored class need not identify its mirror image to demonstrate that a similarly situated class of people is treated more favorably than the litigant. Rather, the question is whether the two classes are similarly situated with respect to the purpose of the challenged law. *See, e.g., Conley v. Shearer*, 64 Ohio St.3d 284, 288–89, 595 N.E.2d 862 (1992) (emphasizing that laws “shall have an equality of operation on persons according to their relation,” quoting *City of Dayton v. Keys*, 21 Ohio Misc. 105, 114, 252 N.E.2d 655 (C.P.1969)); *see also, e.g., LSCP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 860 (Iowa 2015) (cautioning that if courts make “intricate distinctions between purported classes of similarly situated individuals,” “almost every equal protection claim could be resolved against the plaintiffs on the ‘similarly situated’ requirement”). The distinctions on which Defendants rely between miscarriage and abortion have nothing to do with the purpose of protecting women, for which SB 260 is advanced.

The parties disagree as to the appropriate level of review to apply to Plaintiffs’ equal-protection challenge to SB 260. The Court agrees with Plaintiffs that SB 260 warrants strict scrutiny. By effectively banning a method of abortion, SB 260 burdens a fundamental right to substantive due process in matters involving privacy, procreation, bodily autonomy, and freedom of choice in health care decision making, *see, e.g., Stone v. City of Stow*, 64 Ohio St.3d 156, 160–63, 593 N.E.2d 294 (1992).

SB 260 cannot survive strict scrutiny, which requires a compelling government interest and narrow tailoring of a statute to further that interest, because Defendants have not shown any medical benefit from SB 260, and the record evidence instead shows that SB 260 will harm patients’ health by reducing access to abortion. Defendants have the burden of demonstrating SB

260's permissibility under strict scrutiny, *State ex rel. Brown v. Summit Cty. Bd. of Elections*, 46 Ohio St.3d 166, 168, 545 N.E.2d 1256 (1989); *Conley* at 289, but they do not dispute that any complications from medication abortion would occur long after a patient leaves a health center and takes mifepristone, such that the physical (instead of virtual) presence of a doctor during a TMAB patient's second-day appointment would have no impact on how such complications would be treated. Defendants' only evidence at this stage of litigation are U.S. Food and Drug Administration ("FDA") documents. Those documents support, rather than refute, Plaintiffs' contention that SB 260 is unnecessary to protect patient health. They confirm that, despite the FDA's regulation of mifepristone, the agency does not prohibit dispensing of this medication via telemedicine. Defendants' Response in Opposition to Plaintiffs' Motion, Exhibit 2. Indeed, as support for the FDA's most recent approval of mifepristone, the agency reviewed studies on the drug's safety, including a study that assessed outcomes of TMAB specifically, and found those studies supported the conclusion that mifepristone is safe and effective for its intended use.

Even if this Court were to hold that strict scrutiny did not apply here, it would nevertheless enjoin SB 260 because the law could not satisfy even rational-basis review, much less intermediate scrutiny. For the same reasons as with strict scrutiny, the State would fail to meet its burden under intermediate scrutiny of demonstrating an "exceedingly persuasive" justification for SB 260's sex-based classification and that the classification is "substantially related" to the State's interests in the law. *See United States v. Virginia*, 518 U.S. 515, 533, 116 S. Ct. 2264, 135 L.Ed.2d 735 (1996).

Under rational basis review, despite purportedly advancing an interest in patient safety, in application, SB 260 imposes differential treatment on individuals engaged in like conduct, including through the application of severe criminal penalties and professional sanctions. In particular, that SB 260 bans telemedicine for dispensing mifepristone to a patient seeking an

abortion, but permits telemedicine for dispensing mifepristone to a patient experiencing a miscarriage, reveals that it is in no way responsive to the purported risks of mifepristone. Even with the benefit of Defendants' defense of SB 260, the Court cannot discern any rational basis for SB 260. *Conley*, 64 Ohio St.3d at 289, 595 N.E.2d 862; *see also State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, 75 N.E.3d 141, ¶ 22; *State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Emp. Relations Bd.*, 22 Ohio St.3d 1, 488 N.E.2d 181 (1986), paragraph 2 of the syllabus.

SB 260, therefore, must be enjoined, as it is substantially likely to violate Plaintiffs' and their patients' right to equal protection under the Ohio Constitution.

**3. *Plaintiffs are substantially likely to succeed on their claim that SB 260 will violate their and their patients' constitutional right to substantive due process.***

The Ohio Supreme Court has on numerous occasions recognized a fundamental substantive-due-process right under the Ohio Constitution that extends to matters involving privacy, procreation, and bodily integrity and autonomy. *See, e.g., Stone*, 64 Ohio St.3d at 160–63, 593 N.E.2d 294. The Ohio Constitution's protection for substantive-due-process rights is distinct from that accorded under the U.S. Constitution because the Ohio Constitution provides a "remedy by due course of law" to "every person, for an injury done to him in his land, goods, *person*, or reputation." Ohio Constitution, Article I, Section 16 (emphasis added). Deprivation of reproductive autonomy falls squarely within the meaning of an injury done to one's person under the Ohio Constitution. Moreover, Article I, Section 21 of the Ohio Constitution confirms that freedom of choice in health care is a fundamental right. Given the breadth of the Ohio Constitution's guarantee of bodily autonomy, privacy, and freedom of choice in health care, strict scrutiny must apply to a law that infringes on this protection for patients and their medical providers. As explained above, SB 260 does not meet the demands of strict scrutiny.

Even under the federal undue-burden standard, SB 260 could not survive. That standard requires courts to “consider the burdens a law imposes on abortion access together with the benefits those laws confer” and “weigh[] the asserted benefits against the burdens.” *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2309, 2195 L.Ed.2d 665 (2016). Under this standard, Plaintiffs are likely to succeed on their substantive due process claim. As previously explained, there is no medical benefit from SB 260, that would outweigh the burden placed on patients seeking medication abortion, such as increasing their travel distance to obtain an abortion and by imposing numerous other attendant harms, which will delay patients in obtaining an abortion and prevent some from obtaining a medication abortion altogether.

Defendants urge this Court to instead jettison balancing of benefits and burdens under the federal undue-burden standard, citing a recent concurrence by Chief Justice Roberts in *June Medical Services*. After the Court’s own review of the precedent in this area, it does not agree that the Chief Justice Roberts’s concurrence changed the undue-burden test. *See, e.g., Planned Parenthood of Indiana & Kentucky, Inc. v. Box*, 991 F.3d 740 (7th. Cir.2021), *petition for cert. docketed*, U.S. No. 20-1375 (Apr. 1, 2021). Even if it did, however, SB 260 would still fail that test because (as the Court concluded above) it is not reasonably related to a legitimate state interest and it imposes a substantial obstacle to pre-viability abortion. *June Med. Servs.*, 140 S. Ct. at 2138, 207 L.Ed.2d 566 (Roberts, C.J., concurring in the judgment), quoting *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 877, 112 S. Ct. 2791, 120 L.Ed.2d (1992) (plurality opinion).

**B. Plaintiffs and Their Patients Will Suffer Irreparable Harm Absent Relief.**

In light of the Court’s findings above that Plaintiffs and their patients will be deprived of their constitutional rights to due process and equal protection unless SB 260 is enjoined, a finding of irreparable harm follows. “[I]mpair[ment]” of a constitutional right “mandates a finding of

irreparable injury.” *Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001). Moreover, the record demonstrates that without relief, Plaintiffs will be forced to cease providing TMAB. *See, e.g.*, Plaintiffs’ Memorandum in Support of Motion for Temporary Restraining Order Followed by Preliminary Injunction Exhibit 1, Affidavit of Sharon Liner, M.D., ¶ 52; *id.* Exhibit 2, Affidavit of Adarsh Krishen, M.D., M.M.M., ¶ 24; Plaintiffs’ Reply in Support of Preliminary Injunction Exhibit 4, Reply Affidavit of Adarsh Krishen, M.D., M.M.M., ¶ 5–9. Many patients will have to travel significantly farther to obtain an abortion, in some cases up to 100 miles or more, thus encountering barriers to care that will delay and that may ultimately preclude patients from accessing constitutionally protected care. The record also demonstrates that increased travel will carry other financial, physical, and emotional costs for patients for which they cannot be made whole after judgment.

Although Defendants refer to these harms as speculative, the Court sees nothing speculative about them. Plaintiffs have submitted sworn affidavits from health care providers based on their experience working with abortion patients and providing abortion care, along with expert affidavits from national experts, including individuals who are experts in telemedicine and medication abortion. The Court also takes notice of the State’s own data, which shows that thousands of patients who obtain abortions in Ohio each year reside in the counties where the Plaintiffs currently offer TMAB. *See id.* Exhibit 3, ODH, *Induced Abortions in Ohio, 2019*, at 14–15 table 4 (Sept. 2020). Plaintiffs’ evidence of irreparable harm is more than sufficient at this stage of litigation.

**D. No Third Parties Will Be Harmed and the Public Interest Will Be Served by an Injunction.**

No third parties would be harmed if Defendants are enjoined. Plaintiffs have been providing TMAB safely for more than a year, so Defendants cannot claim any threat to public health or safety. Moreover, “the state cannot be harmed when an unconstitutional law does not go into effect.” *Newburgh Heights v. State*, 8th Dist. Cuyahoga Nos. 109106 and 109114, 2021-Ohio-61, ¶ 76.

In addition, the public has a particularly strong interest in a speedy injunction here where temporary relief would merely preserve the status quo on which Ohioans seeking TMAB have come to rely. In fact, the public interest will be served by allowing Plaintiffs to continue providing, and their patients to continue accessing, essential and constitutionally protected health care, particularly in the midst of the COVID-19 pandemic.

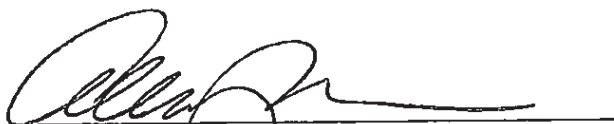
### III. CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion for a Preliminary Injunction is hereby **GRANTED**. All Defendants and their officers, successors, agents, servants, employees, attorneys and those persons in active concert or participation with them are **PRELIMINARILY ENJOINED** from enforcing SB 260 until final judgment is entered in this case.

Because Defendants face no risk of financial loss from the injunction, and in light of the Plaintiffs’ role as nonprofit health care providers, the Court hereby sets Plaintiffs’ Civ.R. 65(C) bond requirement at \$0.00.

**IT IS SO ORDERED.**

Dated: 4-19-2021

  
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Judge Alison Hatheway  
Court of Common Pleas  
Hamilton County, Ohio