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Admitted in CA, TN, VA & MO

July 31, 2014

SENT VIA EMAIL

Erik Bodin, Director
VDH Office of Licensure and Certification
9960 Mayland Drive, Suite 401
Henrico, Virginia 23233

Re: Public Comment on Regulations for Licensure of Abortion Facilities 12 VAC 5-412

Dear Director Bodin,

The American Center for Law and Justice (ACLJ), respectfully provides the following Comments on the *Review Announcement* issued on June 16, 2014, by the Virginia Department of Health (“VDH”)¹ concerning 12 VAC 5-412, Regulations for the Licensure of Abortion Facilities, and

whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important government functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.²

¹ *Review Announcement*, VIRGINIA REGULATORY TOWN HALL, <http://townhall.virginia.gov/L/comments.cfm?periodicreviewid=1316> (last visited July 31, 2014).

² *Id.*

The ACLJ objects to this review as unnecessary and an inappropriate use of the Governor's review power, as 12 VAC 5-412 was specifically promulgated to carry out changes in Virginia statutory law and was only in effect for less than a year when the Governor issued his Executive Directive to review the regulation. The Governor believes that the regulations jeopardize the health and reproductive rights of Virginia women.³ However, unsafe abortion does not further women's rights. Substandard abortion facility practices do not advance "reproductive health." To deny these propositions is to exalt abortion business profits over women's health and directly contradicts the Governor's duty to protect public health, safety, and welfare.⁴

By way of introduction, the ACLJ is a nonprofit, 501(c)(3) law firm and educational organization specializing in constitutional litigation. The ACLJ engages in advocacy, litigation, and education on issues within its area of expertise, including abortion regulation.

I. FACTUAL BACKGROUND

On March 26, 2011, the Virginia legislature passed, and then Governor, Robert McDonnell, signed into law Senate Bill 924.⁵ Effective July 1, 2011, the bill amended Va. Code § 32.1-127(B)(1) to include regulation of abortion clinics as hospitals.⁶ As described by Virginia's Legislative Information System, the law

[r]equires the Board of Health to promulgate regulations containing minimum standards for policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. This bill provides that minimum standards for construction, maintenance, operation,

³ *Governor McAuliffe Makes Major Women's Health Announcements*, GOVERNOR TERRY MCAULIFFE (May 12, 2014), <https://governor.virginia.gov/news/newsarticle?articleId=4807>.

⁴ Article V, § 7 of the Constitution of Virginia requires the Governor to "take care that the laws be faithfully executed." VA. CONST. art. V, § 7 (1971). Those laws include the Health Code laws, which are "essential to the general welfare of the citizens of [Virginia]." VA. CODE ANN. § 32.1-2. Thus, it is the Governor's duty to ensure public health, safety, and welfare through the faithful execution of the Health Code laws.

⁵ SB 924 Hospitals, nursing homes, etc.; regulations required of Board of Health, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?111+sum+SB924> (last visited July 31, 2014).

⁶ 2010 Va. SB 924 (codified as VA. CODE ANN. § 32.1-127).

staffing, equipping, staff qualifications and training, and conditions under which services may be provided, as well as requirements for policies related to infection prevention, disaster preparedness, and facility security for hospitals, nursing homes, and certified nursing facilities shall also apply to any facility in which five or more first trimester abortions per month are performed, and that such facilities, shall be classified as a category of hospital for the purposes of such requirements. This bill requires the Board of Health to promulgate regulations to implement the provisions of this act within 280 days of enactment.⁷

Effective June 20, 2013, the Board of Health (“Board”) promulgated 12 VAC 5-412, Regulations for the Licensure of Abortion Facilities.⁸ Numerous provisions in 12 VAC 5-412 mirror preexisting requirements for outpatient surgical hospitals, and in many cases are much less stringent.⁹ Currently, twenty-six states regulate abortion clinics as outpatient surgical centers.¹⁰

On May 12, 2014 Virginia Governor Terry McAuliffe issued Executive Directive 01, directing the Board to conduct a periodic review of regulations governing licensure of abortion facilities, 12 VAC 5-412, to “determine whether any new regulations, amendments, or a repeal of all or part of the regulations, is appropriate,”¹¹ despite the fact that the regulations had been in effect for less than a year. The Governor based his purpose for this review on his claim that the construction and maintenance requirements of 12 VAC 5-412 were “unprecedented,”¹² and thus justified an entire review of the regulations that the Governor deems extreme and punitive.¹³ The Supreme Court of the United States and the Fourth Circuit disagree. In upholding Virginia law regulating abortion clinics, the U.S. Supreme Court reiterated that “[t]he State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under

⁷ SB 924, *supra* note 5.

⁸ 12 VA. ADMIN. CODE § 5-412 (2013).

⁹ *See, e.g., id* § 5-410-1150 (1993); *Id.* § 5-410-280 (1993).

¹⁰ *State Policies in Brief, Targeted Regulation of Abortion Providers*, GUTTMACHER INSTITUTE, (July 1, 2014) http://www.guttmacher.org/statecenter/spibs/spib_TRAP.pdf.

¹¹ Exec. Directive 1 (May 12, 2014), *available at* <https://governor.virginia.gov/policy/executive-directives/ed-01/> [hereinafter ED-01].

¹² *Id.*

¹³ *Governor McAuliffe Makes Major Women’s Health Announcements*, *supra* note 3.

circumstances that insure maximum safety for the patient.”¹⁴ The 4th Circuit also upheld state abortion facility regulations, including construction requirements, stating that the regulations were based on “national standards” and were “appropriately focused on ensuring that abortion is ‘performed by medically competent personnel under conditions insuring maximum safety for the woman.’”¹⁵ The following will address the appropriate issues surrounding this review.

II. LEGAL ANALYSIS

A. THE GOVERNOR’S ATTEMPT TO REPEAL OR ALTER 12 VAC 5-412, A REGULATION MANDATED BY STATUTE AND IN EFFECT FOR LESS THAN A YEAR, IS INAPPROPRIATE AND UNDERMINES THE SEPARATION OF POWERS UNDER THE VIRGINIA CONSTITUTION.

Virginia’s Constitution provides even greater protection against Executive Branch encroachment upon Legislative powers than does the Federal Constitution. The Virginia Constitution, as does the Federal Constitution, requires the Executive branch to take care that the laws “be faithfully executed.”¹⁶ Unlike the Federal Constitution, however, Virginia added “[t]hat all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.”¹⁷

In keeping with Virginia’s solicitude for the separation of powers, Virginia does not grant broad discretion to administrative agencies. In fact, the General Assembly may only delegate its powers if it “establish[es] specific policies and fix[es] definite standards to guide the official, agency, or board in the exercise of the power.”¹⁸ Thus, “regulations . . . may not conflict with the authorizing statute,”¹⁹ or in any material way be “inconsistent with the authority of the

¹⁴ *Simopoulos v. Va.*, 462 U.S. 506, 519 (U.S. 1983) (quoting *Roe v. Wade*, 410 U.S. 113, 150 (1973)).

¹⁵ *Greenville Women’s Clinic v. Bryant*, 222 F.3d 157, 168 (4th Cir. S.C. 2000) (citations omitted).

¹⁶ VA. CONST. art. V, § 7 (1971).

¹⁷ *Id.* art. I, § 7.

¹⁸ *Bell v. Dorey Elec. Co.*, 248 Va. 378, 380, 448 S.E.2d 622, 623 (1994).

¹⁹ *Manassas Autocars, Inc. v. Couch*, 274 Va. 82, 87 (2007).

statutes that govern it.”²⁰ Va. Code § 32.1-127 itself requires specific minimum standards for regulation of abortion facilities. Thus, any attempt by the current administration to weaken or repeal the protections of 12 VAC 5-412 would be impermissible as “inconsistent with the statute that governs it.”²¹

B. 12 VAC 5-412 CARRIES OUT THE STATUTORY MANDATE AND IS NECESSARY FOR THE HEALTH AND WELFARE OF WOMEN IN VIRGINIA, CLEARLY SATISFYING THE THREE PRONGS OF THIS REVIEW.

Even if Governor McAuliffe’s proposed review of 12 VAC 5-412 were appropriate, the regulations survive any review, as they are necessary for and consistent with the objective of protecting the health and welfare of Virginia women and are further required by Va. Code § 32.1-127. In light of Virginia’s interest in protecting women in Virginia, the economic impact on small businesses, if any, from the regulations is appropriate. In addition, the regulations are clearly written and easily understandable. As such, the current review is unnecessary and the regulations should be retained in their entirety.

(i) Necessary for the Protection of Public Health, Safety, and Welfare

The Board “exists to provide leadership in planning and policy development . . . to implement a coordinated, prevention-oriented program that promotes and protects the health of all Virginians.”²² Moreover, the priority issues to be addressed by the Board include “[i]mprovement of Virginia’s public health infrastructure,” and “[i]mprovement in the health and well-being of all Virginians.”²³

In keeping with the legislative directive of setting minimum standards for infection prevention, one of the requirements of 12 VAC 5-412 is that abortion clinics adhere to the

²⁰ *Judicial Inquiry & review Comm’n v. Elliott*, 272 Va. 97, 115 (2006).

²¹ *Id.*

²² *Mission, Roles, Priorities and Function*, VIRGINIA DEPARTMENT OF HEALTH, <http://www.vdh.virginia.gov/Administration/BOH/mission.htm> (last visited July 14, 2014).

²³ *Id.*

provisions laid out in the Center for Disease Control’s (“CDC”) “Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care.”²⁴ The CDC states that the recommendations in its guide “reflect evidence-based guidelines,” and “represents the *minimum* infection prevention expectations for safe care in [outpatient] care settings.”²⁵ Thus, the requirement of 12 VAC 5-412 that abortion clinics meet these minimum standards prevents abortion clinics from continuing to operate at sub-par standards and implements protections for the health, safety, and welfare of Virginians.

Similarly, 12 VAC 5-412 requires abortion clinics to conform to “Part 1 and sections 3.1-1 through 3.1-8 and 3.7 of Part 3 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute.”²⁶ These Guidelines have a “63-year old history of . . . aid[ing] in the design and construction of health care facilities with “the desire . . . to see that the process continues to improve with each passing cycle.”²⁷ Some of the ongoing goals of the Guidelines include the following:

- Seek public input from a wider base, not only from professionals but from patients and other consumers.
- Encourage and sponsor research projects to support the evidence-based decision-making process.
- Work constantly to improve the process and the content of the Guidelines to keep it a dynamic document that truly reflects the state of the art.
- Have the courage and wisdom to adopt requirements that are forward looking and address the needs of the future, looking backward only to discover what not to do.
- Strive for a document that is credible, reasonable, and knowledge-based and that

²⁴ 12 VA. ADMIN. CODE § 5-412-220.

²⁵ *Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care*, CENTER FOR DISEASE CONTROL (2011), <http://www.cdc.gov/hai/pdfs/guidelines/ambulatory-care-04-2011.pdf> (emphasis added).

²⁶ 12 Va. ADMIN. CODE § 5-412-370.

²⁷ *Preface: 2010 Guidelines for Design and Construction of Health Care Facilities*, FACILITY GUIDELINES INSTITUTE (2010), http://www.fgiguideines.org/pdfs/2010_FGI_Guidelines_Preface.pdf.

will maintain the tradition of the American health care physical environment as the role model for other countries.

- Work with state agencies to adopt the most recent edition of the Guidelines so that health facility projects are regulated using current industry concepts.²⁸

Like the CDC guidelines, these guidelines are evidence based, time tested, and incorporate national standards.²⁹

Following the implementation of the law, the VDH reports indicated hundreds of egregious violations of the health code by Virginia abortions clinics. In fact, in 2012, not one abortion clinic in Virginia passed health inspections.³⁰ This fact alone supports the necessity of these regulations for the protection of public health, safety, and welfare. In addition to the violations documented by the VDH reports, there have been other concerns raised regarding the safety of abortion clinics,³¹ further supporting the necessity of the regulations.

The violations reported by the VDH, the most recent and egregious of which are charted below in Appendix A, include, but are not limited to, patient hospitalization due to severe bleeding that the clinic was unable to stop; reused and unsanitized vacutainers; dried blood on procedure tables, doors, and room walls; expired medication; improper cleaning of medical equipment; and other hygienic issues. Each of these violations presents a risk to the health and well-being of Virginians.

For example, the Alexandria Women's Health Clinic had fifteen repeat violations, ranging from administrative rules to health and safety requirements. The clinic stocked expired

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Search Results for Virginia*, ABORTIONDOCS.ORG, http://abortiondocs.org/search-results/2/?clinic_type&search&state=VA (last visited July 17, 2014).

³¹ *See e.g.*, Amy Jeter, *Owner of Beach Abortion Clinic had License Suspended in July*, Va Pilot (Mar. 10, 2011), <http://hamptonroads.com/2011/03/owner-beach-abortion-clinic-had-license-suspended-nj>; Eyal Press, *A Botched Abortion*, The New Yorker (Feb. 3, 2014), <http://www.newyorker.com/magazine/2014/02/03/a-botched-operation>; *The Abortion Centers*, STOP THE NEXT GOSNELL, <http://www.stopthenextgosnell.com/abortion-centers.html#sub-pardocors> (last visited July 30, 2014).

emergency medication for its patients, failed to clean post-procedure gurneys that had unaddressed rust and tape residue, used cloth chairs that could not be disinfected between patients, and chose not to implement fire safety training or disaster preparedness of any kind.

Falls Church Healthcare Center sent a patient to the hospital after the patient lost consciousness because she was hyperventilating when anesthesia was administered. The same facility in Falls Church reused vacutainers that were not disinfected between patients. The vacutainers had dried blood on them from prior patients. Dried blood was also found on procedure tables, doors, and room walls.

The Peninsula Medical Center for Women in Newport News failed to design or implement policies for counseling or hygiene. That facility also did not train its employees on infection prevention, failed to ensure that abortions were performed by qualified physicians, maintained no policy on minors, and failed to perform employee criminal background checks. The facility was in violation of building codes, zoning codes, and improperly stored its medications (many of which were expired). Dried blood was also found in recovery rooms, on chairs, and on procedure tables.

These unimaginable violations only present a sampling of the hundreds of violations found during the VDH inspections of abortion clinics and serve to support the legislature's necessity in enacting Senate Bill 924 in order to protect public health, safety, and welfare. The legislative mandate for minimum standards, coupled with the overwhelming proof of the egregious violations of the abortion facilities, more than satisfies the first prong of this review.

(ii) Economic Impact on Small Businesses

In Virginia, any agency regulation that affects small businesses should be made in a way that accomplishes the objectives of the applicable law with minimal adverse impact on small

businesses.³² The Governor claims that the construction requirements place an undue burden on these small businesses and “negatively impact women’s access” to obtaining abortions.³³ As stated above, Virginia has a significant interest in assuring its citizens safe and reliable medical care, including medical care for women. Furthermore, the construction requirements are simply holding abortion clinics to national standards.

As previously discussed, the Board was statutorily mandated to regulate abortion clinics as hospitals.³⁴ Thus, the regulations in 12 VAC 5-412, including the constructions standards the Governor cites as his main concern and reason for the review, are required. Therefore, this review is very limited with regard to the construction standards. It is disconcerting that the Governor would not want to ensure that abortion clinics adhere to nationally accepted minimum guidelines, as is required for other Virginia healthcare facilities. As for the Governor’s claim that these regulations are “unprecedented construction requirements,”³⁵ it is imperative to note that Virginia has, for the last *sixty-four* years,³⁶ instituted the same (if not more stringent) regulations for similar outpatient surgical hospitals.³⁷ Furthermore, there are twenty-five states that also regulate the construction standards of abortion clinics. These two facts wholly negate any validity to the Governor’s claim that the construction requirements mandated by the legislature and implemented in 12 VAC 5-412 are unprecedented.

Virginia’s interest in women’s safety and the fact that the regulations do not impose anything greater than a requirement to follow industry standards, outweighs any burden placed on the small business abortion clinics. As healthcare facilities, abortion clinics should be

³² VA. CODE ANN. § 2.2-4007.1 (2005).

³³ ED-01, *supra* note 11.

³⁴ VA. CODE ANN. § 32.1-127.

³⁵ ED-01, *supra* note 11.

³⁶ CODE 1950, § 32-301

³⁷ *See, e.g.*, 12 VA. ADMIN. CODE § 5-410-1350.

regulated in the same manner as other healthcare facilities, thus ensuring the safety and protection of women in Virginia. Amending or repealing any of the regulations for abortion clinics would mean allowing abortion healthcare facilities to operate below industry standards, while requiring all other healthcare facilities to meet those standards. Surely, this cannot be the intent of the Governor. The regulations in 12 VAC 5-412 carry out the legislative mandate in Va. Code Ann. § 32.1-127 that abortion clinics be regulated as hospitals with minimum standards for construction and maintenance and any economic impact is minimal at best, thus satisfying the second prong of this review.

(iii) Clearly Written and Easily Understandable

The regulations in 12 VAC 5-412 comply with Va. Code Ann. § 32.1-127. Moreover, these regulations generally replicate the same regulations that have governed outpatient hospitals for the past sixty-four years.³⁸ As such, with a proven sixty-four year history, they are obviously clearly written and easily understandable and satisfy the third and final prong of this review.

III. CONCLUSION

Governor McAuliffe's proposed review of regulation 12 VAC 5-412, as recently enacted, is inappropriate, as the regulations were carefully written to carry out the legislative directive that abortion clinics be regulated as hospitals, promulgating minimum standards for construction, maintenance, operation, staffing, equipping, staff qualifications and training, and conditions under which services may be provided, as well as requirements for policies related to infection prevention, disaster preparedness, and facility security. Any attempt to amend or repeal the regulations that directly carry out the mandate would be a violation of the separation of powers under the Virginia Constitution. In addition, even if the Governor's review was appropriate, 12 VAC 5-412 is necessary to protect women from the harmful effects of unregulated medical care

³⁸ 12 VA. ADMIN. CODE § 5-410-1350.

and more than satisfies the three prongs of this review. Therefore, the regulations should be retained in their current form.

Respectfully,

A handwritten signature in black ink, appearing to read "CeCe Heil". The signature is written in a cursive, flowing style.

CeCe Heil, Senior Counsel

APPENDIX A

Clinic	Most Recent and most Egregious Violations	Date of most recent violations:	Date of previous violations:
<p>Alexandria Women's Health Clinic 101 S. Whiting St. #215 Alexandria, VA 22304 (703) 370-0550</p>	<ul style="list-style-type: none"> • Expired emergency medication • Post-procedure gurneys had unaddressed rust and tape residue • Several expired medical instruments and expired drugs • The observations revealed the governing body had failed to replace chairs, a gurney and make changes to ensure reusable items were able to be disinfected between patients • Failure to ensure staff were trained and had annual training in proper infection prevention measures, correct hand washing technique, practiced safe injection practices by not having expired medications available for administration to patients, replace the facility's equipment • Failure to maintain oversight of the quality assurance program • Used cloth chairs which could not be disinfected between patients • No fire safety training/disaster 	<p>03/27/2013</p>	<p>07/19/2012</p>

	preparedness ³⁹		
Annandale Women & Family Center 2839 Duke St. Alexandria, VA 22314 (703) 751-4702	<ul style="list-style-type: none"> • Failure to ensure the bylaws had a provision for the selection and appointment of clinical staff and granting of clinical privileges • Failure to ensure policies and procedures for patients' rights were developed, implemented and annually reviewed • Failure to appoint administrator • Failure to ensure criminal background checks on employees who have access to controlled substances, not certified by the Board of Pharmacy • Failure to ensure a CPR trained staff member was available during abortions • Failure to ensure initial and ongoing training • No verification of the physician's, Nurse Anesthetist's, administrator's, Nurse Practitioner's, or owner's licenses • No information on how to file a complaint • Inadequate infection prevention plan and documentation • The sink in the laboratory had "hands only" twist knobs 	08/15/2012	No prior visit

³⁹ Alexandria Women's Health Clinic, Statement of Deficiencies and Plan of Correction, State of Virginia (Mar. 27, 2013), <http://abortiondocs.org/wp-content/uploads/2014/06/alexandrias-womens-health-clinic-1st-revisit-report-with-def-3-27-13.pdf>.

	<ul style="list-style-type: none"> • “Recovery I” area did not have sink or hand sanitizer for staff taking care of patients • Staff failed to clean equipment between patients • One of the procedure tables did not have an intact surface and could not be disinfected between patients: it had dried blood on it • Two stretchers did not have an intact surface and could not be disinfected between patients • Staff reused and did not disinfect sponges • Laundry was not washed at appropriate temperature and did not have separate processing area • Failure to ensure documentation of employees’ immunization records • Administration of narcotics without proper documentation • Expired drugs • Failure to ensure Schedule II-V drugs received, administered, and disposed of in accordance with Virginia’s Drug Control Act • Failure to ensure medical records were kept complete and accurate by including physician orders or the patient’s condition at discharge • Failure to have a policy for notifying the licensing agency if someone dies 		
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	<ul style="list-style-type: none"> • Failure to have fire and smoke detectors • Failure to comply with local zoning codes⁴⁰ 		
<p>Charlottesville Medical Center for Women 2321 Commonwealth Dr. Charlottesville, VA 22901 (434) 296-1000</p>	<ul style="list-style-type: none"> • Failure to ensure implementation of policies and procedures • Failure to ensure employee records contained written application, verification of training, experience, or education • Failure to implement policies on training and orientation • Failure to ensure discharge orders were signed • Failure to implement necessary controls to prevent spread of infections • Failure to do medical history and exams for patients • Failure to ensure patients met the criteria for discharge⁴¹ 	12/12/2012	08/01/2012
<p>Charlottesville Health Center – Planned Parenthood 2964 Hydraulic Rd. Charlottesville, VA 22901 (434) 973-4888</p>	<ul style="list-style-type: none"> • Failure to have provisions for selecting and appointing clinical staff and granting of clinical privileges • Failure to name administrator • Failure to verify licensure of professionals • Failure to obtain criminal 	08/03/2012	No prior visit

⁴⁰ Annandale Women & Family Center, Statement of Deficiencies and Plan of Correction, State of Virginia (Aug. 15, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/NOVA-Annandale-Women-Family-Center-Initial-LIC-POC-08-15-2012.pdf>.

⁴¹ Charlottesville Medical Center for Women, Statement of Deficiencies and Plan of Correction, State of Virginia (Dec. 12, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Richmond-Char-Charlottesville-Medical-Center-for-Women-Revised-LIC-POC-12-12-2012.pdf>.

	<p>record report of employees with access to controlled substances</p> <ul style="list-style-type: none"> • Failure to maintain policies to document ongoing training • Failure to provide patients with a way to file a complaint • Failure to have an expert infection preventionist • Tears in exam table and recovery chair • Failure to ensure documentation for discharge • Expired drugs and improper storage of drugs • Sharps stored in unsafe manner • Failure to comply with local zoning and building codes⁴² 		
<p>American Women's Services (Virginia Health Group) 8316 Arlington Blvd., Ste. 220 Fairfax, VA 22031 (800) 854-7280</p>	<ul style="list-style-type: none"> • Torn and dirty exam tables • Unsanitized equipment • Expired medication • Failure to provide patients with a way to file a complaint • Failure to have in writing the person appointed to act in absence of administrator • Failure to have job descriptions in manual • Failure to have process for verifying licenses • Failure to have clinical privileges for staff physician • Medical records of patients not reviewed 	08/07/2012	No prior visit

⁴² Charlottesville Planned Parenthood, Statement of Deficiencies and Plan of Correction, State of Virginia (Aug. 3, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Richmond-Char-Charlottesville-Planned-Parenthood-Initial-LIC-POC-9-13-12.pdf>.

	<ul style="list-style-type: none"> • No explanation of patient's condition at discharge on medical record • No policy for reporting patient or visitor deaths • Not in compliance with local building and zoning codes⁴³ 		
<p>Falls Church Healthcare Center 900 S. Washington St., Ste. 300 Falls Church, VA 22046 (703) 533-3700</p>	<ul style="list-style-type: none"> • Patient hospitalized for loss of consciousness following hyperventilation after anesthesia • Reused vacutainers. Some were not disinfected between patients and still had blood on them • Dried blood on procedure tables, doors, room walls • Unpackaged medical instruments with dust on them available for use on patients • Expired Medication • Rather than fixing the issues, they appealed to repeal or be exempt from the regulations On Revisit: • Failure to ensure job descriptions in manual • Expired medications and IV fluids • Failure to ensure non-expired emergency medication and IV fluids available for patients⁴⁴ 	12/06/2012 Patient Hospitalized: 06/27/13	08/02/2012
<p>Falls Church Center – Planned Parenthood 303 S. Maple Ave., Ste. 300</p>	<ul style="list-style-type: none"> • Employees not CPR certified • Unclean/torn exam room 	06/29/12	No prior visit

⁴³ Virginia Health Group, Statement of Deficiencies and Plan of Correction, State of Virginia (Aug. 7, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/NOVA-Virginia-Health-Group-Initial-LIC-POC-08-07-12.pdf>.

⁴⁴ Falls Church Healthcare Center, Statement of Deficiencies and Plan of Correction, State of Virginia (Dec. 6, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/NOVA-Falls-Church-Healthcare-Center-Revisit-POC-02-20-2013.pdf>.

<p>Falls Church, VA 22046 (703) 533-5651</p>	<p>tables and chairs</p> <ul style="list-style-type: none"> • Drugs and supplies improperly stored • Expired syringes stored with current syringes • Improper mixing of drugs • Staff administering Xanax, ibuprofen, and acetaminophen together without a physician's orders because "these are what we normally administer if the patient is a little anxious about the procedure" • Improper electrical maintenance on generators • Noncompliance with building/zoning codes⁴⁵ 		
<p>Amethyst Health Center for Women 9380 Forestwood Ln. #B Manassas, VA 20110 (703) 335-2779</p>	<ul style="list-style-type: none"> • Expired needles and syringes • Improper cleaning of surgical instruments • Undated IV bags, so staff could not know when they expired • Failure to confirm villi and fetal parts present after abortion • Expired drugs • Failure to properly administer Schedule II-V drugs • Incomplete making of medical records of patients⁴⁶ 	<p>12/11/2012</p>	<p>06/01/2012</p>
<p>Peninsula Medical Center for Women 10758 Jefferson Ave. #A</p>	<ul style="list-style-type: none"> • Dried old blood in recovery rooms/chairs and on procedure tables 	<p>05/31/2012</p>	<p>No prior visit</p>

⁴⁵ 911 Dispatch Transcript (Jun. 27, 2013), http://abortiondocs.org/wp-content/uploads/2013/08/Dispatch911_6-27-13_Falls-Church1.pdf; Pl Parenthood Metro Washington-Falls Church, Statement of Deficiencies and Plan of Correction, State of Virginia (Jun. 29, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/NOVA-Planned-Parenthood-of-Metro-Washington-Falls-Church-Initial-LIC.pdf>.

⁴⁶ Amethyst Health Center for Women, Inc., Statement of Deficiencies and Plan of Correction, State of Virginia (Dec. 11, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/NOVA-Amethyst-Health-Center-for-Women-2nd-Revised-POC-Info-04-02-2013.pdf>.

Newport News, VA 23601 (757) 599-6389	(despite staff insisting they were cleaned with bleach between each patient use). <ul style="list-style-type: none"> • Expired drugs • Improper storage of drugs • Noncompliance with building/zoning codes • No preventative safety checks on exam light, refrigerator, centrifuge, and suction machine • Failure to ensure necessary medical equipment and supplies available to patients • No medication dispensing policy • No specimen cups • Failure to have policies on counseling • No policies on hygiene • No training on infection prevention • No policy on minors • No policy to ensure that abortions are only done by qualified physicians • No job descriptions in personnel file • No criminal background checks • No documentation that physician is licensed • No policies for emergencies • No disclosure of ownership • Noncompliance with building/zoning codes⁴⁷ 		
A Tidewater Women’s Health Clinic	<ul style="list-style-type: none"> • Freezer had dried blood and afterbirth frozen to the 	05/10/2012	No prior visit

⁴⁷ Peninsula Medical Center for Women, Statement of Deficiencies and Plan of Correction, State of Virginia (May 31, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Tidewater-HR-Peninsula-Medical-Center-for-Women-Initial-LIC.pdf>.

<p>891 Norfolk Square Norfolk, VA 23502 (757) 461-0011</p>	<p>bottom and sides.</p> <ul style="list-style-type: none"> • All recovery room recliners were not cleaned or sanitized • Supplies for current day scheduled procedures were dirty and unsanitary • No criminal records check • Staff moved between areas without changing protective outerwear • Design of paper towel dispenser facilitated spread of infection • Water in a bucket used to rinse the suction pump lines was turbid with floating black particles • No proof of preventative maintenance on equipment • Improper storage of cleaning supplies • Improper use of the narcotic, Fentanyl • Improper mixing of drugs • Unlabeled vials • Rusty suction machine • Improper storage of oxygen tanks • Torn chairs • Improper maintenance of wallpaper to prevent mold growth • No separate area for soiled materials • Noncompliance with building/zoning codes⁴⁸ 		
<p>A Capitol Women's Health 1511 Starling Dr. Richmond, VA 23229 (804) 754-1928</p>	<ul style="list-style-type: none"> • Deficient criminal background checks • Improper infection prevention • Improper washing of 	<p>05/21/2012</p>	<p>No prior visit</p>

⁴⁸ A Tidewater Women's Health Clinic, Statement of Deficiencies and Plan of Correction, State of Virginia (May 10, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Tidewater-HR-A-Tidewater-Womens-Health-Center-Initial-LIC.pdf>.

	<ul style="list-style-type: none"> linens • Failure to have necessary medical equipment • Rusty suction machine • Noncompliance with building/zoning codes • The freezer used to store the “products of conception” is in the clean scrub area⁴⁹ 		
<p>Richmond Medical Center for Women 118 N. Blvd. Richmond, VA 23220 (804) 359-5066</p>	<ul style="list-style-type: none"> • Dried blood in exam rooms. • Dried Betadine on procedure table in exam rooms (used to clean area on patient before surgery) • Expired medication • No job descriptions • Improper infection prevention practices • Tears in leg rest pads • Unwrapped snacks for patients • Noncompliance with building/zoning codes⁵⁰ 	03/26/2013	05/16/2012
<p>Richmond Health Center – VA League for Planned Parenthood 201 N. Hamilton St. Richmond, VA 23221 (804) 254-1760</p>	<ul style="list-style-type: none"> • Patient hospitalized • Expired drugs • Improper storage of drugs • Noncompliance with building/zoning codes⁵¹ 	05/18/2012	No prior visit
<p>Roanoke Health Center – Planned Parenthood 2207 Peters Creek Rd. Roanoke, VA 24017 (540) 562-3457</p>	<ul style="list-style-type: none"> • Deficient criminal records check • Failure to ensure complaints resolved within 30 days 	07/21/2012	No prior visit

⁴⁹ A Capitol Women’s Health Clinic, Statement of Deficiencies and Plan of Correction, State of Virginia (May 21, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Richmond-Char-A-Capital-Womens-Health-Clinic-Initial-LIC-POC-05-21-2012.pdf>.

⁵⁰ Richmond Medical Center for Women, Statement of Deficiencies and Plan of Correction, State of Virginia (Mar. 26, 2013), <http://abortiondocs.org/wp-content/uploads/2014/06/richmond-medical-center-for-women-revisit-report-3-26-13.pdf>.

⁵¹ Virginia League for Planned Parenthood, Statement of Deficiencies and Plan of Correction, State of Virginia (May 18, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Richmond-Char-VA-League-for-Planned-Parenthood-Initial-LIC.pdf>; 911 Transcript (Oct. 26, 2012), <http://abortiondocs.org/wp-content/uploads/2013/05/PP-Richmond-VA-911-CAD-Transcript-Oct-26-2012.pdf>.

	<ul style="list-style-type: none"> • No policies for infection prevention • Failure to use safe injection practices • Outdated supplies • No sterilization of drug containers • Dried blood on procedure tables • Recovery recliners had a buildup of food particles • Did not disinfect equipment between patients • Inadequate employee health program • No policy for reporting violations • Noncompliance with building/zoning codes⁵² 		
<p>Roanoke Medical Center for Women 1119 2nd St. SW Roanoke, VA 24016 (540) 981-1246</p>	<ul style="list-style-type: none"> • Expired and undated medication • Vacutainers and other instruments not cleaned or not sanitized properly before reuse • No job descriptions in file • Tears in patient chairs⁵³ 	<p>03/27/2013</p>	<p>07/18/2012 12/19/2012</p>

⁵² Roanoke Planned Parenthood Health System, Statement of Deficiencies and Plan of Correction, State of Virginia (Jul. 21, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Southwest-Roanoke-Planned-Parenthood-Health-Systems-Initial-LIC.pdf>.

⁵³ Roanoke Medical Center for Women, Statement of Deficiencies and Plan of Correction, State of Virginia (Mar. 27, 2013), <http://abortiondocs.org/wp-content/uploads/2014/06/Roanoke-Medical-Center-for-Women-REVISIT-03-27-2013.pdf>.

<p>Newtown Medical Center – Planned Parenthood of Southeastern VA 515 Newtown Rd. Virginia Beach, VA 23462 (757) 499-7526</p>	<ul style="list-style-type: none"> • Incorrect cleaning of medical instruments • Staff was unable to identify which instruments were clean and which were dirty. • Expired medication • Employee who distributed and handled narcotics did not receive background checks and did not have to state that they had no pending criminal charges. • Patient Hospitalized due to severe bleeding which the clinic was unable to stop. • No disinfection of chairs and couches between patients⁵⁴ 	<p>03/11/2014 Patient Hospitalized: 10/14/2011</p>	<p>05/01/2012 12/04/2012</p>
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⁵⁴ Planned Parenthood of Southeastern Virginia, Statement of Deficiencies and Plan of Correction, State of Virginia (Mar. 11, 2014), <http://abortiondocs.org/wp-content/uploads/2014/06/Planned-Parenthood-of-Southeastern-Virginia-03-11-2014.pdf>; 911 Audio (Oct. 14, 2011), http://abortiondocs.org/wp-content/uploads/2012/01/101411_1047-515-newtown-rd-msc1-redacted-911-audio-s2.wav.

<p>Virginia Women's Wellness 224 Groveland Rd. Virginia Beach, VA 23452 (757) 306-4706</p>	<ul style="list-style-type: none"> • Reused glass vacuum jars for procedures. Clean and dirty jars were not separated nor cleaned properly and hygienically • Inadequate governing body and quality assurance program: failed to ensure the facility operations, policies, and procedures • Quality assurance program failed to identify unacceptable trends, such as: incomplete medical records, failure to log complaints, and a large complications log • Insufficient policies regarding patient care in cases of emergency or extenuating circumstances that would require reporting to the state licensing agency (i.e. mandated reporting in cases of abuse or neglect) • Failed to implement its own policy regarding facility maintenance, resulting in failure to keep the facility's structure in good repair and operating condition • Water damage in multiple places throughout the building, resulting in mold • Trash cans in inappropriate places and trash disposed of improperly • Failed to document the investigation of a complaint in the complaint log • Facility's designated 	<p>03/19/2014</p>	<p>05/09/2012 12/05/2012</p>
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	<p>person responsible for complaint resolution failed to identify, acknowledge, and investigate complaints for three patients with documented concerns</p> <ul style="list-style-type: none"> • Staff failed to comply with correct hand-washing techniques, use of standard precautions, and use of safe injection practices • Failed to implement proper cleaning of environmental surfaces between patients and to properly store cleaning agents • Facility failed to have written specific physician-defined criteria for discharge for twenty of twenty medical records reviewed • Improper storage of medications • Failed to maintain medical equipment appropriate to care for patients based on the level, scope, and intensity of services provided • Failed to maintain all drugs needed to manage potential emergencies consistent with the current standards of ACLS (Advanced Cardiac Life Support)⁵⁵ 		
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⁵⁵ Virginia Women’s Wellness, Statement of Deficiencies and Plan of Correction, State of Virginia (Mar. 19, 2014), <http://abortiondocs.org/wp-content/uploads/2014/06/Virginia-Womens-Wellness-03-19-2014.pdf>.

<p>Blacksburg Health Center – Planned Parenthood 700-J N. Main St. Blacksburg, VA 24060 (540) 951-5184</p>	<ul style="list-style-type: none"> • Governing body failed to ensure the facility had the required infection prevention policies, procedures and processes to prevent the spread of infection, and the required components for the quality improvement program • Governing body failed to address the requirement to notify the state licensing agency in the case of a change in ownership, nor did it have a policy, procedure, or process in place to do so • Governing body failed to incorporate a provision for selection and appointment of clinical staff and granting of clinical privileges in its bylaws • No documented method for the annual review of policies and procedures • No policy, procedure, or process for reporting health care practitioners to their appropriate board in case of violations • Failed to write discharge orders for three patients, as there was no policy, procedure, or process in place requiring physicians to write discharge orders • Failed to develop an infection prevention plan and written policies, procedures, and processes for infection prevention and control • Failed to disinfect sonogram procedure table between patients, and 	<p>9/13/2012</p>	<p>No prior visit</p>
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	<p>displayed generally inadequate hygiene measures.</p> <ul style="list-style-type: none"> • Inadequate employee health program • Inadequate policies, procedures, and processes for reporting conditions to the local health department • Failed to have the required emergency equipment, a suction apparatus, on site. • Inadequate keeping of medical records and lack of policies, procedures, and processes to do so • Induced terminations of pregnancies were not reported to the appropriate health department agency • Failed to meet certain guidelines for Design and Construction of Health Care Facilities⁵⁶ 		
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⁵⁶ Blacksburg Planned Parenthood, Statement of Deficiencies and Plan of Correction, State of Virginia (Jul. 31, 2012), <http://abortiondocs.org/wp-content/uploads/2014/06/Southwest-Blacksburg-Planned-Parenthood-Initial-LIC-POC-9-13-12.pdf>.