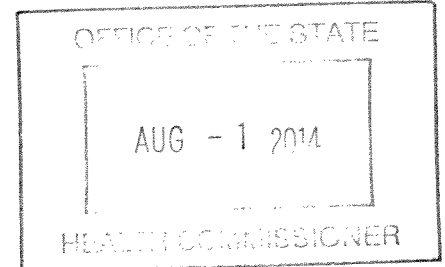


Richmond Medical Center for Women
118 North Boulevard
Richmond, Virginia 23220
(804) 359-5066 – phone (804) 353-2718 - fax



August 1, 2014

Marissa Levine, M.D.
State Health Commissioner
Virginia Department of Health
109 Governor Street, 13th floor
Richmond, Virginia 23219

Re: Richmond Medical Center for Women
Request for Temporary Variance

Dear Dr. Levine:

This letter serves as a request by W.K.G. and J, Incorporated, the Governing Body for Richmond Medical Center for Women (RMCW) for a temporary variance (pursuant to 12VAC5-412.90) of the Regulations for Licensure of Abortion Facilities, 12 VAC 5-412, specifically Part VII related to design and construction titled "Local and State Codes and Standards." 12 VAC5-412.370.

RMCW is committed to providing high quality care to Virginia's women and takes medically appropriate measures to protect the safety of patients and to ensure that a standard of high quality care is met. Consistent with the commitment to operate an abortion facility that ensures that Virginia women have access to high quality reproductive health care, RMCW has sought and received a license renewal to continue operating through April 30, 2015.

RMCW has taken steps to comply with 12 VAC5-412, including:

- Creating "dirty" and "clean" utility areas
- Creating a locked janitors closet
- Creating an area for the patient to change into her gown
- Updating the HVAC system to provide circulating air at the appropriate levels
- Installing a scrub sink outside of the procedure room
- Installing hand sanitization areas throughout the facility
- Evaluating electrical systems and making necessary adjustments
- Installing locks to secure restricted areas of facility
- Ambulance service can access the recovery area directly without having to use any corridors

RECEIVED
AUG 07 2014
VDH/OLC

The RMCW has also gathered information about the cost of complying with Part VII. An architect's evaluation concluded that the estimated cost to comply with the regulations was beyond the financial scope of our center. The estimate is exorbitantly high in part because the Center operates out of two buildings, one of which is two stories. The "annex" where procedures are performed is one story and has a ramp for the small step require to enter the building. The estimate was 1900% of our income for the 2013 fiscal year. Documents supporting this estimate are available at the facility.

Additionally, in 2012 the Healthcare Provider submitted a detailed plan (the "Plan") to bring the RMCW into full compliance with Part VII within two years. The Plan included details about compliance steps and demonstrated in detail how patient safety, patient care, and the services offered would not be affected adversely during operation of the Facility. Thus, the current operation reflected in the Plan shows how patients would be protected upon the grant of a temporary variance. The current operation reflected in the plan already ensures the protection and well-being of patients.

RMCW also requests a temporary variance because compliance with the architectural requirements in Part VII are virtually meaningless with respect to patient safety and would impose extraordinarily high costs and burdens. The high costs and burdens imposed by Part VII constitute -- in and of themselves -- impractical hardships in their application to the unique attributes of the Facility. While the impact on the RMCW is unique to the Facility, the Facility's position with respect to Part VII is not unique. Indeed, it is shared by the head of Virginia's executive branch.

On May 11, 2014, Governor McAuliffe issued an Executive Directive (ED-1) in which he acknowledged that Part VII "placed unprecedented construction requirements on [abortion] facilities" and expressed concern "that these new restrictions may negatively impact women's access to necessary health services."

In announcing the Executive Directive, Governor McAuliffe issued a news release in which he made the following statement: "I am concerned that the extreme and punitive regulations adopted last year jeopardize the ability of most women's health centers to keep their doors open and place in jeopardy the health and reproductive rights of Virginia women,"

Accordingly, in ED-1, the Governor requested an accelerated review of Part VII, seeking advice on "whether new regulations should be promulgated, or whether any existing regulations should be amended or repealed."

It would be contrary to common sense -- and arguably inappropriate -- to pursue an aggressive and extraordinarily expensive compliance program with respect to Part VII when an Executive Directive of the Commonwealth deems Part VII an unprecedented construction requirement that may negatively impact women's access to necessary health services and the Commonwealth is commencing a process to determine whether Part VII should be amended or repealed.

In addition to the Executive Directive, Part VII is under judicial review before the Circuit Court for Arlington County in *Falls Church Healthcare Center v. Virginia Board of Health, et al.*, Case No. CL 13-1362. The Court overruled a demurrer that had been filed by the

RECEIVED

AUG 07 2014

VDH/OLC

Commonwealth and upheld the right of Falls Church Healthcare Center (“FCHC”) to be heard on the merits of its challenge to Part VII and other aspects of the emergency regulations adopted by the Board of Health. The case is scheduled to be heard in August 2014.

In its appeal, FCHC has asked the Court to set aside the Regulations for Licensure of Abortion Facilities (12 VAC5-10 to -370) in their entirety. Alternatively, FCHC asked the Court to set aside the portions of the regulations pertaining to license renewal, temporary variances, and the building regulations contained in Part VII.

The RMCW understands that this ongoing litigation may resolve whether undertaking compliance with Part VII is necessary and, at the very least, may provide additional guidance with respect to compliance.

In sum, it would be unreasonable to require the RMCW to expend exorbitant sums of money that have no bearing on patient safety, care or service offerings given the pendency of an Executive Directive and litigation that would render such expenditures unnecessary – expenditure that would undermine the principal purpose of the Facility to provide access to reproductive health services and to spend resources on medically appropriate means of assuring patient health and safety.

During the pendency of the review to be initiated pursuant to the Executive Directive and the litigation commenced by FCHC, the RMCW requests that this letter, its license renewal application, and its Plan be deemed to satisfy the Guidance Document dated October 25, 2012, issued by the Virginia Department of Health Office of Licensure and Certification.

Accordingly, the Healthcare Provider requests grant of a temporary variance for the Facility until April 30, 2015.

You may reach me at (804) 359-5066 or on my cell phone (804) 539-9599.

Sincerely,



Jill C. Abbey, President
W.K.G. and J., Incorporated

RECEIVED
AUG 07 2014
VDH/OLC