

Virginia Health Group
8316 Arlington Blvd
Fairfax, VA 22031

April 25, 2016

Marissa Levine, M.D.
Commissioner of Health
Virginia Department of Health

Re: Request for Informal Fact-Finding Conference.

Dear Dr. Levine,

We are writing to you pursuant to the written instructions contained in the April 21, 2016 letter of Mr. Frederick Kyle, the Director of the Division of Acute Care regarding our request for an Informal Fact-Finding Conference.

Our previous Administrator, Ms. Ebony Fobbs, had followed the Department of Health's written instructions by requesting an informal fact-finding conference. However, in Mr. Kyle's letter, he informed us that the Department of Health did not think that an informal conference "will be necessary" and provided us with four days in which to submit to you written notification "stating grounds and providing a factual basis for good cause standing". While we have not retain an attorney, nevertheless, we will try to do our best to state our position in this letter and leave it to your kind discretion to decide whether or not to grant us the opportunity to engage in an informal discussion with the Department of Health.

Despite the recent events, we do not see ourselves in an adversarial position with the Department of Health. We believe that we share with the Department the mutual goal of providing safe, high-quality care to the women of Virginia. We would like to work collaboratively with the Department toward our mutual goal. We would hope that the Department of Health would share this approach and be willing to work collaboratively with us and with all health care providers toward the betterment of healthcare across the Commonwealth of Virginia. That is the first reason that we request an informal fact-finding conference. It can't hurt anyone, and if we ever get our license back, it will only help us to improve as health care providers.

On the last day that the surveyors were in our office, they stated that they would return at 12:00 noon on Monday, April 11, 2016, to provide us with an "exit interview". We viewed this exit interview as very important because it would provide us an opportunity to engage in a dialogue with the surveyors, to help us to understand and to learn what they thought we did wrong, and how they thought the matters should be corrected. Because we take this matter so seriously, a team from our Administration Department drove all the way from New Jersey and convened in the office at appointed hour of 12:00 noon to meet with the surveyors for the exit interview. This team included the DOO, our Compliance Officer, our Administrator, and our District Manager. Unfortunately, the Department's surveyors never showed up and we were never afforded an exit interview.

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That is the second reason that we are requesting this informal fact-finding conference. We have been denied any opportunity to engage in any dialogue or discussion with the Department, regarding the survey of our facility. All that happened was that the surveyors came and surveyed, without engaging in any discussion on how to improve. Then we received your suspension letter. Then we received the Department's written Statement of Deficiencies (some of which we factually dispute, don't understand, or medically disagree with). But there has been no dialogue or discussion of any sort. How can we learn anything from the Department of Health, if the Department of Health won't even talk to us?

The third reason that we are requesting this informal fact-finding conference is because we think that it is in the interest of the Department of Health. We believe that it is in the interest of the Department of Health to improve the quality of health care for the people of Virginia. We believe that one of the goals of the Department of Health should be to assist the Health Care providers to raise the level of care.

The fourth reason that we are requesting this informal fact-finding conference is that we believe that, despite the 52 pages of deficiencies that we were dismayed to receive, we believe that we are not fundamentally irredeemable health care providers who should not be afforded the opportunity to correct these problems and return to providing health care. This is important. In Google's words, we "are not evil". The Fairfax office, under the previous Administrator, may have let things lapse, but we believe that we can prove that our team is quite capable of turning the office around and providing appropriate health care. For example, we would like to remind the Department that Virginia Health Group has been providing family planning and first trimester abortion services for more than a decade without a single serious complication and without a single serious infection. Furthermore, we have previously undergone, and passed, two other Department of Health inspections, under our previous Administrators, Ms. Krystle Mayeski and Ms. Tamika Cunningham. In fact, the last inspection of the Fairfax office found only a few deficiencies which were corrected. In addition, only a few days ago, DOH surveyors conducted an inspection of our Virginia Beach facility and passed the facility with only a few deficiencies which are being corrected. Our Virginia Beach facility is guided by the same Medical Director and the same administrative team, but with a different Administrator. So, we think this proves that all of this proves that it is quite possible for our team to meet DOH standards. We are not beyond hope.

The fifth reason that we are requesting an informal fact-finding conference is that we have already corrected many of the deficiencies cited and we would like the opportunity to present evidence of this, informally, to the Department in the hope that perhaps the Department might even lift the suspension. What have we already done? The employment of our previous Administrator, Ms. Ebony Fobbs, has been terminated for, among other things, poor job performance, failure to adhere to standards. She has been replaced by our previous Administrator effective today 04/25/2016 by Ms. Krystle Mayeski. As mentioned above, Ms. Mayeski, previously ran a top-notch facility, so much so that at the last DOH inspection, there were only a few deficiencies noted. Incidentally, please kindly accept this letter as our written notice to the Department of a change of Administrator. Although we realize that we have not provided the Department with 30 days' notice of the change in Administrator, we are giving the Department as much notice as possible. Ms. Mayeski's first day back in the position of Administrator is only today, and since our license is currently suspended anyway, we hope that the Department will accept and approve Ms. Mayeski as the new Administrator for the facility.

What other corrections have already been made? All expired medications have been discarded. The expired autoclave sterilization indicator tape has been discarded. Incidentally, we believe, though we are not sure, that the Department is not alleging that expired medications or indicator tape were actually used for patient care – only that there was a failure to timely discard these expired items. This is just one

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example of many things that we could learn and understand more fully at an informal fact-finding conference. In addition, all medical records have been safely and securely stored. Locks have been installed on the two unlocked closets that the surveyors found to hold boxes of records. Additionally, the team has been cleaning the facility and improving the cosmetic appearance of the office. We have contacted companies and are in the process of scheduling preventive maintenance on all equipment in the facility. Policies and procedure are being reviewed. Training has begun. And the Department's statement of deficiencies is being reviewed and a Plan of Correction is being prepared. All of these steps are being undertaken and will hopefully, be concluded by the time of the informal fact-finding conference. An informal fact-finding conference will afford us an opportunity to present this information to the Department.

The sixth reason we are asking for an informal fact-finding conference is that, at that time, we may possibly ask for licensure reinstatement. While we may not be able to completely correct every single deficiency by May 11, 2016, nevertheless, perhaps the Department might even look sufficiently favorably upon the actions that we have already implemented to conclude that we are not an "imminent danger" to the public and to permit us to resume seeing patients while we correct the rest of the deficiencies.

The seventh reason we are asking for an informal fact-finding conference is that even if the Department declines our request to lift our suspension at the time of the conference, if nothing else, an informal conference would give us an opportunity to ask the Department if they think we are taking the right steps and to offer us suggestions for how to improve. It gives us a chance to ask if there is anything else the Department would like us to do? It gives us a chance to learn what the Department is looking for and to implement any suggestions made. Perhaps there are additional suggestions that are not in the Statement of Deficiencies. Without an informal conference, we might never know.

The eighth reason that we are asking for an "informal fact-finding conference" is precisely because it is informal. It is an opportunity to meet informally with the Department. As previously mentioned, the attitude that we have is that we want to work *collaboratively* with the Department. We believe that we are not adversaries. We both have the same goal of quality patient care. While we recognize that the Department has a fundamental oversight responsibility and a duty to protect the public, which gives it legitimate legal authority over us, as it should have, nevertheless, our mutual interests are aligned. We believe that the best professional attitude that we can adopt, and we hope the Department will adopt to some degree, is one of mutual collaboration toward the improvement of health care. Toward that end, meeting informally in a conference setting provides an informal mechanism for dialogue regarding the improvement in the quality of patient care.

The ninth reason that we request an informal fact-finding conference is because we believe that there is little down-side to the Department. What harm can come out of a sincere dialogue to improve the quality of care ? Furthermore good may possible come up out of this conference. We are willing to drive to your department offices, so it should not inconvenience the Department. So we believe there is reason not to have this informal conference.

The tenth, and last, reason that we request an informal fact-finding conference is legal. Mr. Kyle used legal language in asking us to write "stating grounds and providing a factual basis for good cause standing". We hope that we have already persuaded you that it is in the interest of all parties to conduct the informal conference with us, regardless of any legal disagreements. Again, we would prefer not to adopt an adversarial stance. Nevertheless, Mr. Kyle challenged our "grounds" and our "standing", so we

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will attempt to respond. At its core, we believe our “standing” and our “grounds” rest on several issues, including:

1. As a licensee of the State, we have been temporarily deprived of our property right to our license. The basis of this is that we are an “imminent danger” to the public and to our staff. We should have the right to challenge this determination. We maintain that we are not, at least at this time, an imminent danger to anyone.

2. We believe, we think, that we factually dispute many of the stated “facts” in the Statement of Deficiencies. We should have the opportunity to challenge the alleged facts that we dispute. To provide just one of many examples, the Department alleges that we did not have an Administrator because our previous Administrator first told the surveyors that she was not the Administrator and that we did not have an Administrator. However, the very next day, she told the Department’s surveyors that she was the “acting Administrator”. Then, about a week later, she signed her name to the very letter requesting this informal conference as the “Administrator” of the facility. Our position is that regardless of what one may think about the quality of our previous Administrator (which we concede was less than perfect), nevertheless, the simple fact is that we did have an Administrator. The Human Resources employment file documents this. This is just one example of many “facts” in the Statement of Deficiencies that we think we dispute.

3. We say that we “think” and “believe” that we dispute many of the “facts” alleged in the Statement of Deficiencies because some of these “facts” are unclear. In some instances, there may be ambiguity in what the Department is alleging we did wrong. Consequently, we are not necessarily sure about whether or not we have a factual dispute. This is something that could get sorted out at an informal conference. Once we understand precisely, exactly, what the Department alleges we did or did not do, then we will better understand whether or not we dispute the alleged fact. It might turn out that we fully agree with the Department about the alleged deficiency, and we will then work diligently to correct it. Or it may turn out that we disagree, factually, with the allegation. Without the informal conference it is difficult to know.

We have already provided the example of the expired medications and sterilizing tape. The Department never explicitly states that these medications or tape were actually inappropriately used. They simply state that they were not discarded. We do not disagree that they were not timely discarded. However, if the Department is alleging or implying that these expired items were actually used in patient care, then we vehemently dispute this alleged fact. An informal conference would provide a mechanism for both parties to fully understand the other’s positions and to sort out this ambiguity, and to address this factual dispute, if there is a factual dispute.

For another example, as noted in our last letter to you requesting a variance for a construction requirements, we thought, based upon your suspension letter, that the Department was alleging that we used unsterilized instruments on new patients after being previously used on another patient. If that is what the Department is actually alleging, then we agree most heartedly with your determination that such an action would pose an “imminent danger” to the public and any such facility who actually did such a thing should have their license immediately suspended. We also vehemently deny ever doing this and adamantly dispute

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this alleged “fact” (if this is a fact that is being alleged). This denial is based upon interviews with our Medical Director, former Administrator, and our staff. IF this is what the Department is alleging, then we most definitely request a fact-finding conference to dispute this false allegation. However, when reading the Statement of Deficiencies, it was no longer clear to us that the Department was actually alleging this. It was, possibly, perhaps, implied. But it was never explicitly stated. Consequently, we are left in the dark as to what, exactly, is the Department alleging we did wrong?

Shouldn't we be provided an opportunity to understand what is being alleged against us? Isn't this a matter of fundamental fairness? Of due process?

4. We may have disagreements with the Department regarding the Standard of Care. There may be some instances where we do not dispute the facts, but we dispute the Department's conclusion that these facts represent a departure from the Standard of Care. In particular, we abide by the standards of the American College of Obstetricians and Gynecologists, the World Health Organization, the National Abortion Federation, and the Planned Parenthood Federation of America. All of these respected organizations agree that first trimester abortion procedures are not sterile procedures. Indeed, you yourself, Commissioner Levine, have implicitly agreed with this correct determination by granting exemptions to abortion providers in Virginia from construction guidelines that would require special ventilation requirements that are normally utilized in hospital operating rooms. While we don't disagree with all of the infection prevention and infection control deficiencies cited in our Statement of Deficiencies, and we do agree with the Department that in several areas we need to improve, nevertheless, in some instances, it seems that the surveyors, who may be accustomed to surveying hospitals, are applying infection prevention standards of sterile procedures to the non-sterile procedure of early pregnancy termination. These issues about Standard of Care could possibly be sorted out at an informal fact-finding conference.

In conclusion, Commissioner Levine, we want to work collaboratively with the Department toward the improvement in quality of care for patients. We have been denied the opportunity for an exit interview. Now the Department seems to want to deny us an informal conference, as well. Why? We don't understand the Department's hesitation in meeting with us. We want to work with you. We agree that we need to improve, and we want to improve and work with the department. Won't you help us?

For the ten reasons cited in this letter, we believe that holding an informal fact-finding conference would be in the best interests of the Department of Health, of Virginia Health Group, and of the people of Virginia, and we respectfully request that you grant us this opportunity.

In the event that you decide to deny our request for an informal fact-finding conference because of some legal issue that we do not understand, then we respectfully request an informal meeting with the surveyors and/or Department officials in order to address the issues raised in this letter.

If you have any questions or concerns, please do not hesitate to contact me.

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Thank you for your time and attention to this letter and this request.

Respectfully submitted,

Kirsy Japs
Director of Operations
Virginia Health Group

cc: Mr. Frederick Kyle
Mr. Eric Bodin