



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 31, 2012

Rose Health Services Company
c/o Allentown Medical Services
2200 Hamilton Street
Suite 200
Allentown, PA 18104

Rose Health Services Company
c/o American Women's Services
320 Fort Duquesne Blvd.
Suite 325
Pittsburgh, PA 15222

Julia E. Gabis
Julia E. Gabis & Associates
401 East Elm Street, 2nd Floor
Conshohocken, PA 19428

**RE: DEPARTMENT OF HEALTH, Bureau of Facility Licensure and
Certification v. ROSE HEALTH SERVICES COMPANY, d/b/a/ Allentown
Medical Services and American Women's Services, Docket No.**

Dear Rose Health Services Company and Ms. Gabis:

Enclosed for filing please find an Order to Show Cause which has been filed with the Docket Clerk for the Department of Health.

Sincerely,

Audrey Feinman Miner
Senior Counsel

Enclosures

cc: Rose Health Services Company

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH, :
Bureau of Facility Licensure and Certification :

v.

DOCKET

ROSE HEALTH SERVICES COMPANY, :
d/b/a/ Allentown Medical Services and American: :
Women's Services :

TO: ROSE HEALTH SERVICES COMPANY

NOTICE OF RIGHTS AND RESPONSIBILITIES

THE ACCOMPANYING ORDER TO SHOW CAUSE HAS BEEN ISSUED TO YOU DIRECTING YOU TO ANSWER FULLY THE AVERMENTS CONTAINED IN THAT ORDER PURSUANT TO WHICH THE BUREAU OF FACILITY LICENSURE AND CERTIFICATION IS PURSUING THE REVOCATION OF ABORTION FACILITY REGISTRATIONS ISSUED TO ROSE HEALTH SERVICES COMPANY D/B/A ALLENTOWN MEDICAL SERVICES AND ROSE HEALTH SERVICES COMPANY D/B/A/ AMERICAN WOMEN'S SERVICES. THE ORDER TO SHOW CAUSE INSISTITUES A FORMAL ADMINISTRATIVE ACTION IN WHICH THE REVOCATION ACTION SET FORTH IN 28 PA. CODE §29.43(d) AND SANCTIONS SET FORTH IN 40 P.S. § 1303.313(f) MAY BE IMPOSED AGAINST YOU IF YOU ARE FOUND GUILTY OF ANY OF THE CHARGES AGAINST YOU.

IF YOU ELECT TO DEFEND AGAINST THE ALLEGATIONS SET FORTH IN THE ORDER TO SHOW CAUSE, YOU ARE DIRECTED, IN ACCORDANCE WITH 1 PA. CODE § 35.37, TO FILE A WRITTEN RESPONSE TO THE AVERMENTS IN THE ORDER WITH LOIS FEGER, DOCKET CLERK, ROOM 825 HEALTH AND WELFARE BUILDING, 625 FORSTER STREET, HARRISBURG, PA 17120-0701, WITHIN TEN (10) DAYS AFTER SERVICE OF THE ORDER UPON YOU. AN ORIGINAL AND TWO COPIES MUST BE SUBMITTED. MERE GENERAL DENIALS UNSUPPORTED BY SPECIFIC FACTS WILL NOT CONSTITUTE AN ANSWER. FAILURE TO FILE AN ANSWER WITHIN THE TIME ALLOWED SHALL BE DEEMED A DEFAULT AND RELEVANT FACTS AVERRED IN THE ORDER TO SHOW CAUSE MAY BE DEEMED ADMITTED. IF YOU FAIL TO RESPOND, THE ABORTION FACILITY REGISTRATIONS ISSUED TO YOU WILL BE REVOKED AND SANCTIONS IMPOSED. MATTERS IN DEFENSE OR MITIGATION OF THE CHARGES, WHICH ARE NOT AVERRED IN THE ANSWER, ARE TO BE AVERRED IN NEW MATTER. YOU MAY BE PRECLUDED FROM PRESENTING EVIDENCE OR

RAISING DEFENSES AT THE HEARING THAT YOU HAVE NOT PLED AS NEW MATTER.

ANY DOCUMENT YOU FILE WITH THE HEARING OFFICER YOU MUST ALSO SERVE ON OTHER PARTIES TO THIS MATTER. A DOCUMENT FILED WITH THE HEARING OFFICER MUST INCLUDE THE ABOVE CAPTION AND DOCKET NUMBER AND BE ACCOMPANIED BY A CERTIFICATE OF SERVICE.

UNLESS YOU WAIVE THE RIGHT TO A FORMAL HEARING, A FORMAL HEARING WILL BE HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE AGENCY LAW, THE ACT OF APRIL 28, 1978, P.L. 202, NO. 53, 2 PA. C.S. §§ 501-508, AND THE GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE, 1 PA. CODE § 31.1 *ET SEQ.* YOU WILL BE GIVEN AN OPPORTUNITY TO APPEAR AND BE HEARD IN PERSON OR THROUGH COUNSEL, AND TO QUESTION AND CROSS-EXAMINE WITNESSES, TO OFFER EVIDENCE AND ADVOCATE YOUR POSITION, AND TO OBJECT TO ANY EVIDENCE ANOTHER PARTY TO THE PROCEEDING ATTEMPTS TO PRESENT.

CONTINUANCES WILL BE GRANTED FOR GOOD CAUSE ONLY. REQUESTS FOR CONTINUANCES MUST BE FILED IN WRITING AT LEAST TEN (10) DAYS PRIOR TO THE DATE OF THE HEARING. THIS REQUIREMENT WILL BE WAIVED ONLY UPON THE SHOWING OF GOOD CAUSE. IF YOU HAVE NOT RETAINED COUNSEL OR DISENGAGE COUNSEL PRIOR TO THE HEARING, A REQUEST FOR CONTINUANCE TO RETAIN COUNSEL WILL NOT BE CONSIDERED AS A VALID REASON FOR THE GRANTING OF A CONTINUANCE ON THE DAY OF THE HEARING.

IF AN INTERPRETER IS REQUIRED, A REQUEST FOR AN INTERPRETER MUST BE FILED IN WRITING AT LEAST TWENTY (20) DAYS PRIOR TO THE DATE OF THE HEARING.

POSTHEARING BRIEFS MAY BE FILED PROVIDED THAT A REQUEST TO DO SO IS RESERVED ON THE RECORD AT THE HEARING.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Bureau of Facility Licensure and Certification

v.

ROSE HEALTH SERVICES COMPANY,
d/b/a/ Allentown Medical Services and American
Women's Services

DOCKET

ORDER TO SHOW CAUSE

AND NOW, this 31 day of January 2012, this order is hereby issued directing ROSE HEALTH SERVICES COMPANY, doing business as Allentown Medical Services and American Women's Services (Rose), to answer the following averments and to show cause why the Department of Health, Bureau of Facility Licensure and Certification (Department), should not revoke its registrations to operate abortion facilities in the Commonwealth and impose a civil monetary penalty of \$18,000:

1. Pursuant to section 3207(b) of the Abortion Control Act (ACA), 18 Pa.C.S. § 3207(b), the Department registers freestanding facilities at which abortions may be performed (freestanding abortion facilities).
2. Registration of a facility signifies the Department's approval of the facility to perform abortions within this Commonwealth. 28 Pa. Code § 29.43(a).
3. The Department has issued to Rose a registration to operate a freestanding abortion facility at 320 Fort Duquesne Blvd., Suite 325, Pittsburgh, Pennsylvania, which operates under the fictitious name AMERICAN WOMEN'S SERVICES.

4. The current registration issued to Rose for American Women's Services expires on October 13, 2012.

5. The Department has issued to Rose a registration to operate a freestanding abortion facility at 2200 Hamilton Street, Suite 200, Allentown, Pennsylvania, which operates under the fictitious name ALLENTOWN MEDICAL SERVICES.

6. The current registration issued to Rose for Allentown Medical Services expires on March 31, 2012.

7. The regulations issued by the Department under the ACA require "[e]ach medical facility [to] arrange for at least one physician who is board eligible by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology to be available either as a staff member or as a consultant for the purposes of providing consultation as needed and to advise staff members with respect to maintenance of a satisfactory quality of treatment." 28 Pa. Code § 29.33(4). Hereinafter, this provision is referred to as the "board eligible" requirement.

8. For both American Women's Services and Allentown Medical Services, the physician on staff who is board eligible is Dr. Richard Efreem Gordon, Pennsylvania Department of State License No. MD021046E.

9. During the week of January 2, 2012, Dr. Gordon announced that he was resigning from Allentown Medical Services and that the week of January 2 would be his last week of service.

10. As of Monday, January 9, 2012, Allentown Medical Services – a freestanding abortion facility registered with the Department – did not have a board eligible physician

available for new patients either as a staff member or as a consultant as required by 28 Pa. Code § 29.33(4).

11. Upon information and belief, Allentown Medical Services did not have a board eligible physician available for new patients either as a staff member or as a consultant as required by 28 Pa. Code § 29.33(4) until January 20, 2012.

12. Upon information and belief, American Women's Services – a freestanding abortion facility registered with the Department – does not have a board eligible physician available for new patients either as a staff member or as a consultant as required by 28 Pa. Code § 29.33(4).

13. The ACA regulations (28 Pa. Code §§ 29.31-29.43) provide that “facility approval for performance of abortions may be revoked if [the regulations are] not adhered to.” 28 Pa. Code § 29.43(d).

14. Section 315 of the Medical Care Availability and Reduction of Error (MCARE) Act requires abortion facilities that perform 100 or more abortions during a calendar year to report serious events, incidents and infrastructure failures consistent with the requirements of Section 313 of the MCARE Act. 40 P.S. § 1303.315.

15. Section 313(c) of the MCARE Act mandates that an abortion facility “report the occurrence of an infrastructure failure to the department within 24 hours of the [abortion] facility's confirmation of the occurrence or discovery of the infrastructure failure.” 40 P.S. § 1303.313(c).

16. The MCARE Act defines “infrastructure failure” as “[a]n undesirable or unintended event, occurrence or situation involving the infrastructure of a medical facility or the discontinuation or significant disruption of a service which could seriously compromise patient safety.” 40 P.S. § 1303.302.

17. Section 313(f) of the MCARE Act provides that failure to report an infrastructure failure as required by the MCARE Act is a basis for revocation of Department approval to operate an abortion facility pursuant to 28 Pa. Code § 29.43. 40 P.S. § 1303.313(f)

18. Section 313(f) of the MCARE Act provides that an abortion facility that fails to report an infrastructure failure may be subject to an administrative penalty of \$1,000 per day imposed by the Department. 40 P.S. § 1303.313(f).

19. Upon information and believe, Dr. Gordon informed Allentown Medical Services of his resignation on January 2, 2012.

20. Allentown Medical Services failed to report the resignation of Dr. Gordon.

21. With Dr. Gordon's resignation and no other board eligible physician made available for new patients either as a staff member or as a consultant, Allentown Medical Services – a freestanding abortion facility registered with the Department – has failed to meet the requirements of the “board eligible” requirement of the ACA regulations.

22. The resignation of Dr. Gordon constitutes an infrastructure failure as defined by the MCARE Act.

23. The Department affirmatively sought confirmation of Dr. Gordon's resignation, which was confirmed by the patient safety officer for Allentown Medical Services on January 11, 2012.

24. Allentown Medical Services failed to report or confirm its infrastructure failure for a total of nine (9) days.

25. American Women's Services failed to report the resignation of Dr. Gordon.

26. With Dr. Gordon's resignation and no other board eligible physician made available either as a staff member or as a consultant, American Women's Services – a freestanding

abortion facility registered with the Department – has failed to meet the requirements of the “board eligible” requirement of the ACA regulations.

27. The Department affirmatively sought confirmation of Dr. Gordon’s resignation, which was confirmed by the patient safety officer for American Women’s Services on January 11, 2012.

28. The resignation of Dr. Gordon constitutes an infrastructure failure for American Women’s Services as defined by the MCARE Act.

29. American Women’s Services failed to report or confirm its infrastructure failure for a total of nine (9) days.

COUNT I

30. Paragraphs 1-28 are incorporated by reference.

31. The failure of Allentown Medical Services, from January 9, 2012 until January 20, 2012, to have a board eligible physician available for new patients either as a staff member or as a consultant violates 28 Pa. Code § 28.33(4) and is grounds for revocation of Department approval to operate an abortion facility under 28 Pa. Code § 29.43(d).

COUNT II

32. Paragraphs 1-28 are incorporated by reference.

33. The failure of American Women’s Services, since January 9, 2012, to have a board eligible physician available for new patients either as a staff member or as a consultant violates 28 Pa. Code § 28.33(4) and is grounds for revocation of Department approval to operate an abortion facility under 28 Pa. Code § 29.43(d).

COUNT III

34. Paragraphs 1-30 are incorporated by reference.

35. The failure of Allentown Medical Services to report its infrastructure failure as defined by the MCARE Act is grounds for revocation of Department approval to operate an abortion facility under 28 Pa. Code § 29.43(d).

COUNT IV

36. Paragraphs 1-28 and 31-32 are incorporated by reference.

37. The failure of American Women's Services to report its infrastructure failure as defined by the MCARE Act is grounds for revocation of Department approval to operate an abortion facility under 28 Pa. Code § 29.43(d).

COUNT V

38. Paragraphs 1-30 and 33-34 are incorporated by reference.

39. The failure of Allentown Medical Services to report its infrastructure failure as defined by the MCARE Act is grounds for the imposition of a civil monetary penalty of \$1,000 per day, for a total of \$9,000.

COUNT VI

40. Paragraphs 1-28, 31-32 and 35-36 are incorporated by reference.

41. The failure of American Women's Services to report its infrastructure failure as defined by the MCARE Act is grounds for the imposition of a civil monetary penalty of \$1,000 per day, for a total of \$9,000.

By: Audrey Feinman Miner
Audrey Feinman Miner
I.D. No. 41659
Senior Counsel
Department of Health

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Bureau of Facility Licensure and Certification

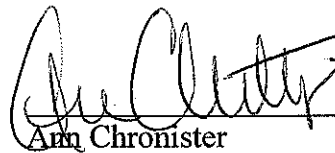
v.

ROSE HEALTH SERVICES COMPANY,
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DOCKET

VERIFICATION

I, Ann Chronister, hereby verify, subject to the penalties in 18 Pa. C.S. §4904, relating to unsworn falsification of testimony, that I am the Director of the Bureau of Facility Licensure and Certification of the Department of Health, and that I am authorized to execute this Verification on behalf of the Department, that I am familiar with the factual averments set forth in the Department's foregoing Order to Show Cause, and that the factual averments therein are true and correct to the best of my knowledge, information and belief.



Ann Chronister
Director
Bureau of Facility Licensure and
Certification
Department of Health

Date: 1/31/2012

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Bureau of Facility Licensure and Certification

v.

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ROSE HEALTH SERVICES COMPANY,
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CERTIFICATE OF SERVICE

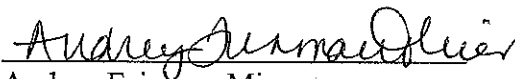
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED THE FOREGOING Order to Show Cause and Notice of Rights and Responsibilities upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code § 33.32 (relating to service by a participant).

Service by US First Class Mail

Rose Health Services Company
c/o Allentown Medical Services
2200 Hamilton Street
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Allentown, PA 18104

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Attorney for Bureau of Facility Licensure
and Certification

Date: 31 January, 2012