

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH

Facility ID 00028701
Rose Health Services Company d/b/a
Allentown Medical Services
2200 Hamilton Street, Suite 200
Allentown, PA 18104

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MAY 14 2012

OFFICE OF THE SECRETARY
SECRETARY OF HEALTH

**NOTICE OF APPEAL AND
REQUEST FOR AN EXPEDITED HEARING**

Rose Health Services Company d/b/a Allentown Medical Services, by and through its undersigned counsel, hereby appeals the April 10, 2012 Order of the Director of the Bureau of Facility Licensure and Certification, and requests an administrative hearing on an expedited basis.



Julia E. Gabis, Esquire
Mandy C. Rosenblum, Esquire
Julia E. Gabis & Associates
401 East Elm Street, Suite 200
Conshohocken, PA 19428

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH**

ANSWER TO ORDER

**Facility ID 00028701
Rose Health Services Company d/b/a
Allentown Medical Services
2200 Hamilton Street, Suite 200
Allentown, PA 18104**

Rose Health Services Company ("Rose"), by and through its undersigned counsel, hereby files an Answer to the Order in the above-captioned matter and, in support thereof, avers as follows:

1. In revoking Rose's approval to operate as an abortion facility ("Approval") under the Pennsylvania Abortion Control Act, 18 Pa. C.S. §3207(h), without reasonable notice and without an opportunity to be heard before the revocation, the Department of Health ("Department") violated Rose's statutory rights under the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §504, and Rose's state and federal constitutional right to due process.

2. The Department had no basis to revoke Rose's Approval without reasonable notice and an opportunity to be heard since there was no immediate and serious threat to the health and safety of Rose's patients, in that Rose was temporarily closed at the time the Department issued the revocation order.

3. Rose specifically denies that it experienced a permanent infrastructure failure as alleged by the Department in the Order. The loss of a physical location in which to offer services does not seriously compromise patient safety and thus does not constitute a permanent infrastructure failure as defined by the Medical Care Availability and Reduction of Error

(MCARE) Act, 40 P.S. §1303.302. In the absence of a permanent infrastructure failure, the Department had no basis to revoke Rose's Approval. By way of further answer, the loss of Rose's physical location in which to offer services was caused by the illegal actions of Rose's landlord who engaged in self-help to lock Rose out of its office, in violation of Pennsylvania law, which actions were taken with the encouragement and financial support of anti-abortion groups and individuals.

4. Rose has reason to believe that the landlord and/or anti-abortion representatives informed the Department of the landlord's actions as part of a concerted and on-going effort with the Department to put Rose out of business in violation of Rose's constitutional rights.

5. The Department included a letter with the Order in which the Department made certain additional allegations not incorporated into the Order.

6. For the record, these allegations are completely unfounded and untrue:

a. Rose had no obligation to advise the Department that one of its attending physicians had resigned. By way of further answer, the Department was aware in February 2012 that Rose had an attending physician available to provide abortion services;

b. Rose had no obligation to report as an infrastructure failure the resignation of one of its attending physicians since the resignation did not constitute an infrastructure failure;

c. Rose had no obligation to report that its lease expired on March 31, 2012;
and

d. Rose had no obligation to advise the Department that it was continuing to operate as a hold-over tenant.

7. Rose denies that it is unwilling and unable to comply with the requirements of the law established and designed to assure the health and safety of patients. To the contrary, the

Department conducted an unannounced survey of Rose on or about September 21, 2011 at which time the Department determined that Rose was in compliance with the Department's regulations governing abortion facilities and required no plan of correction.

For the foregoing reason, Rose respectfully requests an expedited hearing and requests that the revocation be rescinded immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Julia E. Gabis", written over a horizontal line.

Julia E. Gabis, Esquire
Attorney No. 28477
Julia E. Gabis & Associates
401 East Elm Street, Suite 200
Conshohocken, PA 19428

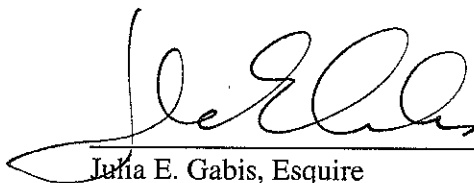
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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of May, 2012, served the foregoing **NOTICE OF APPEAL AND REQUEST FOR EXPEDITED HEARING and ANSWER TO ORDER** on behalf of Rose Health Services Company via facsimile and first-class mail upon the following:

Audrey Feinman Miner, Esquire
Pennsylvania Department of Health
Office of Legal Counsel
825 Health and Welfare Building
Harrisburg, PA 17120



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