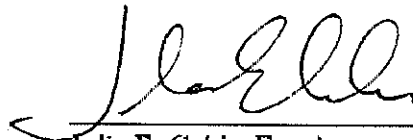


**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH**

**Facility ID 00058701  
Rose Health Services Company d/b/a  
American Women's Services  
320 Fort Duquesne Boulevard, Suite 325  
Pittsburgh, PA 15222**

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

Rose Health Services Company d/b/a American Women's Services, by and through its undersigned counsel, hereby appeals the April 17, 2012 Order of the Director of the Bureau of Facility Licensure and Certification, and requests an administrative hearing on an expedited basis.



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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 00058701  
Rose Health Services Company d/b/a  
American Women's Services  
320 Fort Duquesne Boulevard, Suite 325  
Pittsburgh, PA 15222**

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") exceeded its authority and 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. The revocation of Rose's Approval is invalid because the Department failed to provide Rose with reasonable notice and an opportunity to be heard.

4. Rose admits that for a short period of time it did not have a physician on site to provide services. By way of further answer, Rose did not seek to or go into "inactive status." To the contrary, Rose advised the Department by letter dated April 23, 2012 that Rose had retained a physician to be on site to provide abortions, but the Department refused to rescind the revocation. The Department exceeded its statutory authority in determining that Rose's registration was in 'an impermissible "inactive" status'" and revoking Rose's Approval. The statutes cited by the Department as authority for the revocation (the Medical Care Availability and Reduction of Error Act (MCARE), the Administrative Code of 1929 and the Abortion Control Act and the regulations promulgated thereunder) do not provide the Department with the authority to create a category of "inactive" status nor to revoke Rose's Approval based on the Department's arbitrary, capricious and unreasonable classification of Rose as being in "inactive" status.

5. In revoking Rose's Approval, the Department acted in an arbitrary and capricious manner and committed errors of law.

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

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

a. Rose did not experience an "infrastructure failure." The temporary absence of a physician to provide abortion services resulting in the temporary closure of an office does not seriously compromise patient safety and thus does not constitute a permanent infrastructure failure as defined by MCARE, 40 P.S. §1303.302. In the absence of a permanent

infrastructure failure, the Department had no basis to revoke Rose's approval.

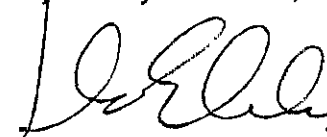
b. Rose has complied with all statutory and regulatory requirements.

1. Rose had no obligation to advise the Department that one of its attending physicians had resigned.
2. 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. Moreover, Rose did not lead the Department to believe that the attending physician was the ob-gyn staff consultant required by 29 Pa. Code Section 28.33(4). To the contrary, Rose advised the Department in writing in February 2012 that the attending physician was *not* the ob-gyn staff consultant, but the Department disregarded that information.

8. 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, Rose has conducted its abortion facility in compliance with all legal requirements.

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

Respectfully submitted,



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401 East Elm Street, Suite 200  
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**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH**

**Facility ID 00058701  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served a true and correct copy of Rose's Answer to Order, via facsimile and first-class mail on May 15, 2012 on the following counsel of record:

Audrey Feinman Miner, Esquire  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
Bureau of Professional &  
Occupational Affairs  
Penn Center  
2601 North Third Street  
Harrisburg, PA 17105

Date: May 15, 2012



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