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FOR IMMEDIATE RELEASE

November 16, 2010

NEWS RELEASE**Charges Declined Against Clinic Doctor**

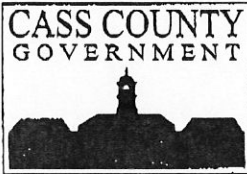
FARGO - Cass County State's Attorney Birch P. Burdick announces he has declined to file criminal charges against a physician who practiced medicine at the Red River Women's Clinic and whose license to practice medicine in North Dakota had temporarily lapsed.

Based upon a report by a member of the public, the Fargo Police Department investigated Dr. L. L. Thorndike for practicing medicine in Fargo on September 30, 2010, when at the time she did not hold a current license to practice medicine in North Dakota. The sole reason she was unlicensed in North Dakota at that time was her failure to timely renew her North Dakota license on June 30, 2010. Thorndike periodically practices in North Dakota. She had been licensed in North Dakota from November 2007 through June 2010. She remained licensed to practice medicine in other states. The North Dakota Board of Medical Examiners has since renewed her license which is now "active" and "unconditioned".

A further summary of the law enforcement investigation and this office's review of the matter is contained within the enclosed memorandum.

- end -

Note: Pursuant to the North Dakota Rules of Professional Conduct, the Comment to Rule 3.6 regarding Trial Publicity, you are informed that a criminal charge is merely an accusation and that a defendant is presumed innocent until and unless proven guilty.



**STATES ATTORNEY'S OFFICE
REPORT DECLINE MEMORANDUM**

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Suspect: Lori L. Thorndike

Agency: Fargo Police Dept.

Officer: Inv. Chris Nichtern

Prosecutor: Birch Burdick

Complainant: member of
public, not victim

Report Number: ICR#10-14243

SAO Number: 10-CR-00978

Date: November 16, 2010

The Fargo Police Department submitted the referenced report for consideration of criminal charges. The relevant potential criminal charges would be under: (1) N.D.C.C. §43-17-34, which makes it a B misdemeanor for any person to practice medicine without complying with N.D.C.C. Chap. 43-17, including N.D.C.C. §43-17-24 forbidding anyone to practice medicine without a current registration certificate issued by the ND State Board of Medical Examiners ("BOMEX"); and/or (2) N.D.C.C. §14-02.1-04(6), which makes it a B felony for anyone other than a physician licensed under N.D.C.C. Chap. 43-17 to perform an abortion.

Background

Under N.C.C.C. Chap. 43-17, persons practicing medicine in ND are required to register annually. Dr. Lori L. Thorndike ("Thorndike") lives out of state and periodically practices medicine at the Red River Women's Clinic ("Clinic") in Fargo. The nature of her medical practice triggers the provisions of N.D.C.C. Chap. 14-02.1 (Abortion Control Act). On or about October 29, 2010, it came to the attention of the Fargo Police Department and BOMEX that Thorndike's license to practice medicine in ND had not been renewed after it expired on June 30, 2010. Thorndike performed a number of abortions at the Clinic on September 30, 2010.

According to the BOMEX website, Thorndike initially obtained her ND license on November 16, 2007. In reviewing the BOMEX website on November 10, 2010, Thorndike's license was listed as "active – unconditioned" with an expiration date of June 30, 2011. The website lists no disciplinary or licensure action. Based upon information within the investigative report and separately confirmed by members of my staff, Thorndike is licensed to practice medicine in Colorado and South Dakota.

Based upon my telephone conversation with BOMEX representatives, I understand BOMEX has access to a database which lists disciplinary actions involving physicians around the nation. BOMEX does not have any information reflecting disciplinary actions involving Thorndike.

According to the investigative report, both Thorndike and Clinic staff report that her failure to timely renew her ND medical registration in June was inadvertent. I have no information to suggest that on September 30, 2010, Thorndike's license to practice medicine in Colorado and South Dakota was inactive. I have no information to suggest she has been disciplined for her actual medical practices, and more particularly the available information indicates she has not. I have no information to suggest she was unfit to practice medicine on September 30, 2010. A routine criminal history check shows no prior violations regarding medical licensure, or for anything else. I have no information to suggest she has violated ND requirements other than to belatedly renew her ND medical registration, which appears to have been an administrative oversight.

Specific Laws

N.D.C.C. §14-02.1-01 states the purpose of the Abortion Control Act ("Act") is "to protect unborn human life and maternal health within present constitutional limits". The 1975 legislative history accompanying the original passage of this Act reflects that the United State's Supreme Court's Roe v. Wade decision in 1973, together with a declaration from a U.S. District Judge in North Dakota in 1974, invalidated previously existing state law regarding abortion practices. The legislative sponsor of the Act explained that the Act was intended to re-establish some controls on abortion practices within a constitutional framework (comments by Rep. Leroy Erickson, Judiciary Committee, January 28, 1975). N.D.C.C. §14-02.1-04(1) states that only a licensed physician, using medical standards applicable to all other surgical procedures, may perform an abortion. N.D.C.C. §14-02.1-04(5) makes it an A misdemeanor for a *licensed physician* to violate the provisions of N.D.C.C. §14-02.1-04. N.D.C.C. §14-02.1-04(6) makes it a B felony for *anyone other than a licensed physician* to perform an abortion. In a separate chapter, N.D.C.C. §43-17-34 states that anyone who practices medicine without complying with that chapter, including the registration requirement, and anyone who violates that chapter for which another penalty is not provided, is guilty of a B misdemeanor.

Accordingly, it appears a person performing brain surgery

or organ transplantation without a license may be guilty of a B misdemeanor (maximum penalty: 30 days of incarceration and a \$1,000 fine). However a person performing an abortion without a license may be guilty of a B felony (maximum penalty: 10 years of incarceration and a \$10,000 fine). I am unable to conceive of a reason why it would be a B misdemeanor to practice brain surgery without a license, but a B felony to perform an abortion without a license, when the person performing the procedures is otherwise a qualified physician, previously registered in ND, without having been disciplined, revoked or suspended for her medical practices, remained licensed in other states, applied for renewal upon discovering she was not currently licensed in ND and was granted a renewal by BOMEX. Although the legislative history does not provide detail, I believe it likely the B felony provision of N.D.C.C. §14-02.1-04 was enacted to dissuade a medically untrained person from performing abortions in a back alley, so to speak.

As for N.D.C.C. §43-17-34, there seems to be at least four general scenarios to which the B misdemeanor provision might be applied: (1) the person is not medically trained and has never been licensed as a physician; (2) the person has been trained and licensed as a physician, but their license has been suspended or revoked through a disciplinary process due to poor medical practices which have or could endanger patients; (3) the person is aware they are not registered to practice medicine in ND, or they are aware their registration has expired, and they are purposely *thumbing their nose* at the registration requirement; or (4) a person has neglected to timely renew their license. (Obviously a variety of other situations may fall between those scenarios.) As for those four, the first two scenarios seem most serious because they represent patient safety issues. The third represents a willful flaunting of the law. Of the four scenarios, the fourth regarding neglect to timely renew is the least problematic. In Thorndike's circumstances, I have no information to suggest her untimely renewal reflects either a patient safety concern or a willful flaunting of the law. Furthermore, Thorndike remained licensed in other states, has no prior disciplinary violations, there is no suggestion she is unfit to practice medicine, she immediately sought re-registration upon the matter being brought to her attention, BOMEX has since renewed her license to practice medicine in ND, and she was forthcoming and cooperative with law enforcement, BOMEX and this office. N.D.C.C. §§43-17-26.1 and -30 provides a mechanism for BOMEX to address untimely renewals, such as through additional late fees. N.D.C.C. §§43-17-30.1 through -34, and N.D.C.C. Chap. 43-17.1, also empower BOMEX to

investigate, take disciplinary action and restrain and enjoin people in various circumstances.

Application of the Law


Past prosecutorial practices can provide helpful guides for future practices. Although there are some limits on the availability of information about prior practices, I am unaware of circumstances akin to Thorndike's where either my office, or other state's attorneys, have criminally charged a person for failure to timely renew their medical license. In somewhat related circumstances, where nurses have neglected to timely renew their licenses, and later renewed, I have notified those nurses of the licensure law (N.D.C.C. §43-12.1-15), the importance of timely renewal and explained that future lapses may trigger a review for criminal charges.

Conclusion

Under Thorndike's circumstances, given the stated purpose of the Abortion Control Act, the general context of the criminal provisions in N.D.C.C. §14-02.1-01 and §43-17-34, having reviewed the related legislative history, and for all the reasons described above, I believe the administrative mechanisms available to BOMEX through the ND Century Code provide a suitable remedy for Thorndike's failure to timely renew her registration. She has now renewed and has an active and unconditioned license in ND. I leave entirely to BOMEX the determination of what, if any, administrative remedy might be appropriate.

Accordingly, I find no reason to charge Thorndike with a crime for the temporary lapse in her license, and I decline to do so.

If other facts later arise that you believe shed a different perspective on the facts herein, then please provide me that supplemental information and we will review it at that time.

 R. B. Rieder 11/16/10