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June 20, 2014

State Health Commissioner  
Office of Licensure and Certification  
9960 Mayland Drive, Suite 401  
Henrico, VA 23233

Re: A Capital Women's Clinic Request for Temporary Variance

Dear Commissioner:

This letter serves a request by A Capital Women's Health Clinic (the "Facility"), licensed to Shelley Abrams, Executive Director (the "Healthcare Provider") for a temporary variance (pursuant to 12VAC5-412.90) of the Regulations for Licensure of Abortion Facilities, 12 VAC-5-412, specifically Part VII related to design and construction titled "Local and State Codes and Standards." 12 VAC5-412.370.

The Healthcare Provider is committed to providing high quality care to Virginia's women and takes medically appropriate measures to protect the safety of patients and to ensure that a standard of high quality care is met. Consistent with the commitment to operate a Facility that ensures that Virginia women have access to high quality reproductive health care, the Healthcare Provider has sought and received a license renewal to continue operating through April 30, 2015.

The Facility has taken steps to comply with 12 VAC5-412, including retiling the Mechanical Room Floor, removing all metal paper towel dispensers, and creating and instituting a new policy to acquire background checks only from the Virginia State Police, among others. The Facility has also gathered information about the cost of complying with Part VII, and found it prohibitive.

In 2012 the Healthcare Provider submitted a detailed plan (the "Plan") to bring the facility into full compliance with Part VII within two years. The Plan included details about compliance steps and demonstrated in detail how patient safety, patient care, and the services offered would not be affected adversely during operation of the Facility. Thus, the current operation reflected in the Plan shows how patients would be protected upon the grant of a temporary variance. Its operation already ensures the protection and well-being of patients.

The Healthcare Provider requests a temporary variance because compliance with the architectural requirements in Part VII have little or no relation to patient safety and quality of care, but would impose prohibitively high costs and burdens on the Healthcare Provider. The high costs and burdens imposed by Part VII constitute -- in and of themselves -- impractical hardships in their application to the unique attributes of the Facility.

The Healthcare Provider's full compliance with Part VII may also be unnecessary given recent developments. On May 11, 2014, Governor McAuliffe issued an Executive Directive (ED-1) in which he acknowledged that Part VII "placed unprecedented construction requirements on [abortion] facilities" and expressed concern "that these new restrictions may negatively impact women's access to necessary health services."

In announcing the Executive Directive, the Governor issued a news release in which he made the following statement: "I am concerned that the extreme and punitive regulations adopted last year jeopardize the ability of most women's health centers to keep their doors open and place in jeopardy the health and reproductive rights of Virginia women."

Accordingly, in ED-1, the Governor requested an accelerated review of Part VII, seeking advice on "whether new regulations should be promulgated, or whether any existing regulations should be amended or repealed."

It would be contrary to common sense – and arguably inappropriate -- to pursue an aggressive, burdensome, and expensive compliance program with respect to Part VII when an Executive Directive of the Commonwealth deems Part VII an unprecedented construction requirement that may negatively impact women's access to necessary health services and the Commonwealth is commencing a process to determine whether Part VII should be amended or repealed.

In addition to the Executive Directive, Part VII is under judicial review before the Circuit Court for Arlington County in *Falls Church Healthcare Center v. Virginia Board of Health, et al.*, Case No. CL 13-1362. The Court overruled a demurrer that had been filed by the Commonwealth and upheld the right of Falls Church Healthcare Center ("FCHC") to be heard on the merits of its challenge to Part VII and other aspects of the emergency regulations adopted by the Board of Health. The case is scheduled to be heard in August 2014.

In its appeal, FCHC has asked the Court to set aside the Regulations for Licensure of Abortion Facilities (12 VAC5-10 to -370) in their entirety. Alternatively, FCHC asked the Court to set aside the portions of the regulations pertaining to license renewal, temporary variances, and the building regulations contained in Part VII.

The Healthcare Provider understands that this ongoing litigation may resolve whether undertaking compliance with Part VII is necessary and, at the very least, may provide additional guidance with respect to compliance.

In sum, it would be unreasonable to require the Healthcare Provider to expend large sums of money on significant architectural changes that have no bearing on patient safety, care or service offerings given the pendency of an Executive Directive and litigation that may render such expenditures unnecessary – expenditure that would undermine the principal purpose of the Facility to provide access to reproductive health services and to spend resources on medically appropriate means of assuring patient health and safety.

During the pendency of the review to be initiated pursuant to the Executive Directive and the litigation commenced by FCHC, the Healthcare Provider requests that this letter, its license renewal application, and its Plan be deemed to satisfy the Guidance Document dated October 25,

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2012, issued by the Virginia Department of Health Office of Licensure and Certification.

Accordingly, the Healthcare Provider requests grant of a temporary variance for the Facility until April 30, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley Abrams", written in a cursive style.

Shelley Abrams, Administrator

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