

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

AHCA Nos. (CL) 2015011452

(AC) 2015011455

v.

License Nos. (CL) 800010456

(AC) 764

ORLANDO WOMEN'S CENTER, LLC,

Files Nos. (CL) 26966848

(AC) 13950035

Respondent.

Provider Types: Clinical Laboratory

Abortion Clinic

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration (hereinafter "the Agency") files this Administrative Complaint against the Respondent, Orlando Women's Center, LLC (hereinafter "the Respondent") pursuant to Sections 120.569 and 120.57, Florida Statutes, and alleges as follows:

NATURE OF THE ACTION

This is an administrative action to revoke the Respondent's licenses to operate a clinical laboratory and an abortion clinic.

PARTIES

1. The Agency is the licensing and regulatory authority over clinical laboratories and abortion clinics in Florida and enforces the applicable statutes and rules governing such facilities. Chs. 408, Part II, 483, 390, Fla. Stat., Chs. 59A-7, 59A-9, Fla. Admin. Code. The Agency may deny, revoke and suspend a license and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing statutes or applicable rules. §§ 408.813, 408.815, 483.201, 483.221, 390.018, Fla. Stat.

2. The Respondent was issued licenses by the Agency to operate a clinical laboratory

and an abortion clinic located at 1103 Lucerne Terrace, Orlando, Florida 32806, and was required at all times material to comply with the applicable statutes and rules. As the holder of such a license, the Respondent is a licensee. “Licensee” means “an individual, corporation, partnership, firm, association, or governmental entity, that is issued a permit, registration, certificate, or license by the Agency.” § 408.803(9), Fla. Stat. “The licensee is legally responsible for all aspects of the provider operation.” § 408.803(9), Fla. Stat. “Provider” means “any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802, [Florida Statutes].” § 408.803(11), Fla. Stat. Clinical laboratories are regulated by the Agency under Chapter 483, Florida Statutes and listed in Section 408.802, Florida Statutes. § 408.802(27), Fla. Stat. Abortion clinics are regulated by the Agency under Chapter 390, Florida Statutes, and listed in Section 408.802, Florida Statutes. § 408.802(3), Fla. Stat. The patients of abortion clinic are thus clients. “Client” means “any person receiving services from a provider.” § 408.803(6), Fla. Stat.

COUNT I

Arrest of Owner/Controlling Interest

Legal Requirements for Background Screening and Disqualifying Offenses

3. Under Florida law, level 2 background screening pursuant to Chapter 435 must be conducted through the Agency on each of the following persons, who are considered employees for the purposes of conducting screening under Chapter 435: (a) The licensee, if an individual. (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider. (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider. (d) Any person who is a controlling interest if the Agency has reason to believe that such person has been convicted of any offense prohibited by Section 435.04. For each controlling interest who has been convicted of any such offense, the

licensee shall submit to the Agency a description and explanation of the conviction at the time of license application. (e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee. § 408.809(1), Fla. Stat. (2015)

4. Under Florida law, "controlling interest" means: (a) The applicant or licensee; (b) A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; or (c) A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member. § 408.803(7), Fla. Stat. (2015)

5. Under Florida law, every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under Chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the Agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under Section 943.05(2)(g), the person must file a complete set of fingerprints with

the Agency and the Agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under Section 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until the person's background screening results are retained in the clearinghouse created under section 435.12, the Agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under Chapter 651, provided that: (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in section 435.04, and this section; (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and (c) Such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of Chapter 435 and this section using forms provided by the Agency. § 408.809(2), Fla. Stat. (2015).

6. Under Florida law, if an employer or Agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected

employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity. § 435.06(1), Fla. Stat. (2015).

7. Under Florida law, (a) an employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the Agency as provided under Section 435.07. (b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter. (c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to Section 435.07. (d) An employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of

employment. § 435.06(2)(a)-(d), Fla. Stat. (2015).

8. Under Florida law, any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed. § 435.06(3), Fla. Stat. (2015).

9. Under Florida law, the security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction: . . . Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor. § 435.04(2)(ss), Fla. Stat. (2015).

10. Under Florida law, in addition to the offenses listed in Section 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction: . . . Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony. § 408.809(4)(t), Fla. Stat. (2015).

Factual Allegations

11. According to the Respondent's license files, James Pendergraft owns more than

5% of the Respondent and is the Financial Officer of the Respondent.

12. With his ownership interest and position in the Respondent, Mr. Pendergraft is a “controlling interest” of the Respondent as that term is defined under Florida law.

13. In late 2015, Mr. Pendergraft was arrested for drug related offenses in South Carolina, which under Florida law, are disqualifying offenses.

14. Mr. Pendergraft has been criminally charged by the prosecuting authority in South Carolina for these drug related offenses, which are awaiting disposition.

15. As an owner and controlling interest of the Respondent, Mr. Pendergraft was required at all times to maintain a satisfactory Level 2 background screening result.

16. With his arrest and pending criminal charges, Mr. Pendergraft is disqualified and is no longer in compliance with Florida law.

Legal Authority for License Revocation

17. Under Florida law: “In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest: . . . A violation of this part, authorizing statutes, or applicable rules.” § 408.815(1)(c), Fla. Stat. (2015).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully seeks the revocation of the Respondent’s licenses.

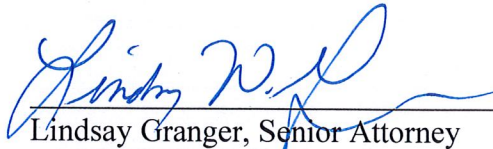
CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully seeks a final order that:

1. Makes findings of fact in favor of the Agency as set forth above.

2. Imposes the requested relief set forth above.

Respectfully submitted on this 14th day of January, 2016.



Lindsay Granger, Senior Attorney
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Office of the General Counsel
Agency for Health Care Administration
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Tallahassee, Florida 32308
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NOTICE OF RIGHTS

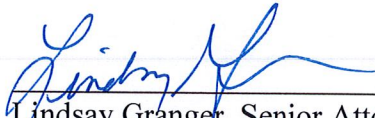
Pursuant to Section 120.569, F.S., any party has the right to request an administrative hearing by filing a request with the Agency Clerk. In order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), F.S., however, a party must file a request for an administrative hearing that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. Specific options for administrative action are set out in the attached Election of Rights form.

The Election of Rights form or request for hearing must be filed with the Agency Clerk for the Agency for Health Care Administration within 21 days of the day the Administrative Complaint was received. If the Election of Rights form or request for hearing is not timely received by the Agency Clerk by 5:00 p.m. Eastern Time on the 21st day, the right to a hearing will be waived. A copy of the Election of Rights form or request for hearing must also be sent to the attorney who issued the Administrative Complaint at his or her address. The Election of Rights form shall be addressed to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630, Facsimile (850) 921-0158.

Any party who appears in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or other qualified representative. Mediation under Section 120.573, F.S., is available if the Agency agrees, and if available, the pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form were served to the persons named below by the method designated on this 14th day of January, 2016.



Lindsay Granger, Senior Attorney
 Florida Bar No. 083377
 Office of the General Counsel
 Agency for Health Care Administration
 2727 Mahan Drive, Mail Stop #3
 Tallahassee, Florida 32308
 Telephone: (850) 412-3636
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 Lindsay.Granger@ahca.myflorida.com

Jack Plagge, Unit Manager Hospital and Outpatient Services Unit Agency for Health Care Administration (Electronic Mail)	Theresa DeCanio, Field Office Manager Local Field Office Agency for Health Care Administration (Electronic Mail)
Megan Clemente, Administrator (AC) Orlando Women's Center, LLC 1103 Lucerne Terrace Orlando, FL 32806-1016 Certified Mail - 91 7108 2133 3937 6310 3419	Harvey Roth, Administrator (CL) Orlando Women's Center, LLC 1103 Lucerne Terrace Orlando, FL 32806-1016 Certified Mail - 91 7108 2133 3937 6310 3402
Administrator Orlando Women's Center, LLC 609 Virginia Drive Orlando, FL 32803 Certified Mail - 91 7108 2133 3937 6310 3396	

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

Re: Orlando Women's Center, LLC

**AHCA Nos. 2015011452
2015011455**

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed agency action by the Agency for Health Care Administration (AHCA). The title may be Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine or Administrative Complaint. Your Election of Rights may be returned by mail or by facsimile transmission, **but must be filed within 21 days** of the day that you receive the attached proposed agency action. **If your Election of Rights with your selected option is not received by AHCA within 21 days of the day that you received this proposed agency action, you will have waived your right to contest the proposed agency action and a Final Order will be issued.**

(Please use this form unless you, your attorney or your representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.)

Please return your **Election of Rights** to this address:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
Telephone: 850-412-3630 Facsimile: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I admit to the allegations of facts and law contained in the Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) _____ I admit to the allegations of facts contained in the Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact contained in the Notice of Intent to Impose a Late Fee, Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing **OPTION THREE (3), by itself, is **NOT sufficient to obtain a formal hearing.** You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed agency action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:**

1. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Mediation under Section 120.573, Florida Statutes, may be available in this matter if the Agency agrees.

Licensee Name: _____

Contact Person: _____ Title: _____

Address: _____
Number and Street City Zip Code

Telephone No. _____ Fax No. _____

E-Mail(optional) _____

I hereby certify that I am duly authorized to submit this Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Print Name: _____ Title: _____

Tracking Number: 9171082133393763103396

delivered

- Expected Delivery Day: Tuesday, January 19, 2016

Product & Tracking Information

Postal Product:

- First-Class Mail®

Features:

- Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
January 19, 2016 , 1:40 pm	Delivered	ORLANDO, FL 32803
Your item was delivered at 1:40 pm on January 19, 2016 in ORLANDO, FL 32803.		
January 18, 2016 , 3:35 am	Departed USPS Destination Facility	ORLANDO, FL 32862
January 16, 2016 , 2:12 pm	Arrived at USPS Destination Facility	ORLANDO, FL 32862
January 15, 2016 , 9:29 pm	Departed USPS Facility	TALLAHASSEE, FL 32301
January 15, 2016 , 8:35 pm	Arrived at USPS Origin Facility	TALLAHASSEE, FL 32301
January 15, 2016 , 6:46 pm	Departed Post Office	TALLAHASSEE, FL 32309
January 15, 2016 , 5:42 pm	Picked Up	TALLAHASSEE, FL 32309
January 14, 2016	Pre-Shipment Info Sent to USPS	