

Exhibit E



STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH

Donald E. Williamson, MD
State Health Officer

May 18, 2015

Gloria Gray
West Alabama Women's Center, Inc.
535 Jack Warner Pkwy., Ste. 1
Tuscaloosa, AL 35404

Dear Ms. Gray:

Re: Request for Waiver of Abortion or Reproductive Health Center
Rule 420-5-1-.03, *Ala. Admin. Code*, for West Alabama Women's Center

This letter is in response to the request for a waiver of certain provisions of the State Board of Health ("Board") Rules for Abortion or Reproductive Health Centers submitted by you on behalf of West Alabama Women's Center ("WAWC"). The rule provisions sought to be waived relate to continuing medical care, specifically those requiring that:

- (1) Each abortion or reproductive health center have available to its patients a physician with admitting privileges at a local hospital to provide care for complications arising from an abortion twenty-four hours a day, seven days a week. If no physician at the center can meet this requirement, then the center must enter into a written contract with an outside physician who has local hospital privileges permitting that physician to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures necessary to treat abortion-related complications. The contract with the outside physician must require him or her to agree to be available to treat and manage all complications for the center's patients that may reasonably arise as a result of abortion. Rule 420-5-1-.03(6)(b), *Ala. Admin. Code*.
- (2) When the physician with local hospital admitting privileges (whether an outside or substitute physician meeting all the requirements) is not available to treat and manage complications for the center's abortion patients, the center must cease performing abortions 72 hours in advance of the physician unavailability. Rule 420-5-1-.03(6)(c), *Ala. Admin. Code*.

Your request for a waiver provides that the physician with local hospital admitting privileges long associated with WA WC has retired and that a replacement physician seeking full-

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time employment with W A WE has been denied privileges by the local hospital. Efforts to engage an outside covering physician with the required privileges have not been successful. It further provides that, historically, both WA WE and the physician seeking full-time employment have excellent safety records and that complications from abortion are rare.

The Board's rule relating to waivers - Rule 420-1-2-.09, *Ala. Admin. Code* - provides that "[w]aivers ... are not favored actions, and may be granted only where, in the judgment of the State Health Officer or the Board, the conditions of this rule have been satisfied." This same rule goes on to provide that to be considered for a waiver it must be demonstrated that "[a]pproval of the waiver ... will not unreasonably increase the risk of harm to the public or undermine the public health purpose furthered by the rule." It further allows waivers to be granted only for a specified period of time.

Your request has failed to demonstrate that approval of the waiver will not unreasonably increase the risk of harm to the public or undermine the public health purpose furthered by the rule provisions involved. The availability of a physician with local hospital staff privileges has been deemed essential to protecting the patients of Alabama's abortion or reproductive health centers. While it may be an infrequent event that a patient experiences a complication during an abortion procedure requiring an immediate visit to a hospital emergency department or admission to a hospital for treatment of a complication, it can cause serious harm when it does occur. Lastly, you appear to request a permanent waiver of these requirements which is not allowed by the applicable rule. For these reasons, your request for waiver is denied.



Donald E. Williamson, M.D.
State Health Officer

cc: W.T. Geary, Jr., M.D.
P. Brian Hale