

# ABORTION ON TRIAL

December 7, 2020

New Mexico Environment Department  
Department of Occupational Safety and Health Administration  
P.O. Box 5469  
Santa Fe, NM 87502

New Mexico Department of Health  
1190 S St Francis Dr N4100  
Santa Fe, NM 87505

This letter is to file a complaint for violations of the New Mexico Occupational Health and Safety Regulations by Dr Franz Theard and New Mexico Regulation 11.5.1 NMAC Section 16. Women's Reproductive Clinic of Sunland Park is engaging in dangerous practices which has left one employee dead and another one in ICU due to contraction of Covid-19. The clinic has failed to report this as required by law.

On August 7, 2020 adopted regulations to the Emergency Medical Act, this act requires employees to report positive cases of Covid-19 within 4 hours. The regulation states as follows: "**Within four (4) hours** of learning that an employee of tested positive for coronavirus disease 2019 (COVID-19) each employer shall report the positive test to the bureau at the email, telephone or facsimile number of specified in Subsection B of this section." 11.5.1 NMAC Section 16 (Emphasis Added)

Women's Reproductive Clinic of Sunland Park is owned and operated by Franz Theard MD. Recently, it has been confirmed that Franz Theard was in the Intensive Care Unit for Covid-19 related problems and that Nurse Manager Gloria Martinez has passed away from Covid-19. (see email included from Mark Bracken as exhibit "A")

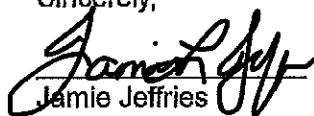
The New Mexico Department of Health has no enteries of any Rapid Response Team notifications and the NM OSHA Department has no record that Women's Reproductive Clinic or Franz Theard fulfilled their duty under New Mexico Regulation 11.5.1 NMAC Section 16. (see inspection of public records requests attached as exhibit "B" and "C")

Abortion is an elective procedure undertaken by women 20-34. According to Dr David Scrase, this happens to be the same age group of people with the highest infection rate. Further, the close proximity of the patient and the use of a vacuum asperation machine may lead to the aerosolization of droplets which contain the Covid-19 virus. As such, Women's Reproductive Clinic of Sunland Park could be the source of a super spreader event. All patients of Dr Theard's clinic should be notified of the infection that has killed one staff member and hospitalized another. This will enable patients to protect themselves and their families.

Due to the extreme infection at Women's Reproductive Clinic of Sunland Park, the Department of Health should immediately implement protective measures for abortion clinics, such as limiting abortions to in state residents, quarantining medical staff who travel from out of state and mandatory Covid-19 testing for woman choosing elective abortions prior to procedure. If they test positive, women undergoing abortions should be encouraged to delay their procedure until such time as their symptoms are fully resolved to schedule their abortion. This will protect patients themselves in the clinic and staff who are in direct contact with patients.

Finally, a full investigation of Women's Reproductive Clinic of Sunland Park should commence immediately. The Department of Health should ensure safe written policies and procedures are in place for preventing Covid-19 are initiated, proper hygiene polices are maintained, ensuring proper use of PPE, ensuring adequate ventalation is in place and a process for notifying patients is maintained by the clinic. It is further demanded that maximum penalties be imposed by the state for failing to comply with 11.5.1 NMAC Section 16, as Dr Theard and Women's Reproductive Clinic of Sunland Park have compromised the safety of staff, patients and the general public for failing to notify the New Mexico Environment Department of this extreme public health crisis they have created at the Women's Reproductive Clinic of Sunland Park.

Sincerely,



Jamie Jeffries  
Executive Director  
Abortion on Trial  
8500 Menaul Blvd NE Suite A-410  
Albuquerque, NM 87112  
(505)275-1700

cc: Representative Greg Schmedes  
Representative David Gallegos  
Representative Rod Montoya  
Steve Pearce, Republican Party of NM  
Ethel Maharq, New Mexico Right to Life  
Vincent Torres, Family Policy Alliance  
Mark Cavaliere, Southwest Coalition for Life  
Michael J. Seibel, Esq.

**Mark Bracken**

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**From:** Mark Bracken  
**Sent:** Friday, December 4, 2020 9:47 AM  
**To:** mikeseibel@qwestoffice.net  
**Cc:** Jose Vega; Bobbi Lavango; Dyana Nordberg  
**Subject:** Dr. Theard

Mike,

It was a pleasure talking to you this morning. As I explained, our office has not received any phone calls or voice messages from your office and no one has any recollection of talking to you or anyone from your office. Our office phones do not have caller ID so if you do not leave a message, we have no record of you calling.

We also have not received any letters, emails, or faxes from your office since the letter sent by Mr. Vega on October 7, 2020. I have copied Mr. Vega on this email so you may also respond and talk to him personally. Mr. Vega's cell phone is 915-549-1537. You may reach either Mr. Vega or myself anytime. I have also included my cell phone so you may reach me outside the office.

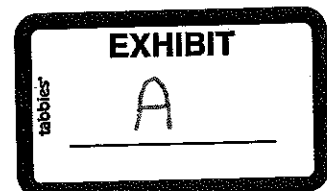
Please respond with a HIPAA compliant authorization from your client so we may provide you with a copy of your client's medical records, as soon as possible. As I also explained, Dr. Theard has been in the hospital with COVID and his Office Manager recently passed away from COVID. We are working with Dr. Theard and his office to provide you with the requested records as soon as we have the signed authorization and have the records.

Please do not hesitate to call me anytime.

Mark

Mark A. Bracken  
**Robles, Bracken & Hughes, PLLC**  
310 N. Mesa, Suite 700  
El Paso, Texas 79901  
(915) 544-1144 (office)  
(915) 260-0666 (cell)  
(915) 544-1288 (fax)  
[mbracken@rbch.net](mailto:mbracken@rbch.net)

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**Mark Bracken**

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**From:** Mail Delivery System <MAILER-DAEMON@mxr.mfg.slteprotect.com>  
**To:** mikeseibel@qwestoffice.net  
**Sent:** Friday, December 4, 2020 9:47 AM  
**Subject:** Undeliverable: Dr. Theard

This is the mail system at host mxr.mfg.slteprotect.com.

I'm sorry to have to inform you that your message could not be delivered to one or more recipients. It's attached below.

For further assistance, please send mail to postmaster.

If you do so, please include this problem report. You can delete your own text from the attached returned message.

The mail system

<mikeseibel@qwestoffice.net>: host 192.168.31.3[192.168.31.3] said: 552 5.2.2  
<mikeseibel@qwestoffice.net> Quota exceeded (mailbox for user is full) (In  
reply to end of DATA command)

November 9, 2020

2020-739

Law Office of Michael J. Seibel  
Attorney at Law  
P.O. Box 14066  
Albuquerque, NM 87191  
505-332-1015

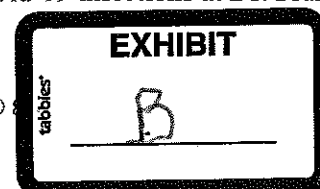
VIA Email: [sherricorley@qwestoffice.net](mailto:sherricorley@qwestoffice.net)

Dear Mr. Michael J. Siebel:

This letter acknowledges that on October 22, 2020, the New Mexico Department of Health ("DOH") received your public record request made pursuant to the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 et. seq. You requested the following public records:

**REQUEST:**

1. Pursuant to the New Mexico Inspection of Public Records Act. Please produce all notes, documents, emails, telephone messages, recordings, electronically stored information, or any other documentation that evidence any correspondence between Hilltop Women's Reproductive Clinic 500 E Schuster Ave Ste B El Paso, TX 79902 their employees, agents, and the New Mexico Department of Health it's employees and agents from March 11, 2020 through October 20, 2020.
2. Pursuant to the New Mexico Inspection of Public Records Act, Please produce all notes, documents, emails, telephone messages recordings, electronically stored information, or any other documentation that evidence any correspondence between Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 their employees, agents, and the New Mexico Department of Health it's employees and agents from March 11, 2020 through October 20, 2020.
3. Pursuant to the New Mexico Inspection of Public Records Act, please produce all notes, documents, emails, telephone messages recordings, electronically stored information, or any other documentation that evidence any correspondence between Dr. Franz Theard MD 5290 McNutt Rd #106 Santa Teresa, NM 88008 his employees, agents, and the New Mexico Department of Health it's employees and agents from March 11, 2020 through October 20, 2020.
4. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any notes, documents, emails, telephone messages recordings, electronically stored information, or any other documentation that evidence any reports of any Covid-19 infections at Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 between March 11, 2020 through October 20, 2020.
5. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any notes, documents, emails, telephone messages recordings, electronically stored information, or any other documentation that evidence any reports of any Covid-19 infections at Dr. Franz



Theards 5290 McNutt Rd #106 Santa Teresa, NM 88008 between March 11, 2020 through October 20, 2020.

6. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidence any actions taken by the New Mexico Department of Health or the Rapid Response Team for Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 between March 11, 2020 through October 20, 2020.
7. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidence any actions taken by the New Mexico Department of Health or the Rapid Response Team for Dr. Franz Theards 5290 McNutt Rd #106 Santa Teresa, NM 88008 medical office between March 11, 2020 through October 20, 2020.
8. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidences any correspondence or order directing Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 to close because of Covid-19 incidents between March 11, 2020 through October 20, 2020.
9. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidences any correspondence or order directing Dr. Fran Theards 5290 McNutt Rd #106 Santa Teresa, NM 88008 to close because of Covid-19 incidents between March 11, 2020 through October 20, 2020.
10. Pursuant to the New Mexico Inspection of Public Records Act, Please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidences any contact tracing performed by the New Mexico Department of Health as a result of any Covid-19 infections reported at Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 between March 11, 2020 through October 20, 2020.
11. Pursuant to the New Mexico Inspection of Public Records Act, please produce copies of any documents, notes emails, telephone messages recordings, electronically stored information, or other memoranda that evidences any contact tracing performed by the New Mexico Department of Health as a result of any Covid-19 infections reported at Dr. Franz Theards 5290 McNutt Rd #106 Santa Teresa, NM 88008 between March 11, 2020 through October 20, 2020.

Please redact HIPPA public health information from this request.

RESPONSE:

The New Mexico Department of Health does not have documents responsive to your request.

If you have any questions related to this request, please contact our office via email at [DOH-IPRA@state.nm.us](mailto:DOH-IPRA@state.nm.us).

The individual(s) responsible for the information being disclosed is Jesse Tremaine, Chief Privacy Officer and Deniece Griego-Martinez, Records Custodian.

Sincerely,

/S/

Deniece Griego-Martinez  
Records Custodian

**LAW OFFICE OF MICHAEL J. SEIBEL**  
**Attorney at Law**

November 12, 2020

New Mexico OSHA  
525 Camino De Los Marquez Suite 3  
Santa Fe, NM 87505  
FAX (505) 476-8734

Via Fax: (505) 476-8734

Dear Records Clerk:

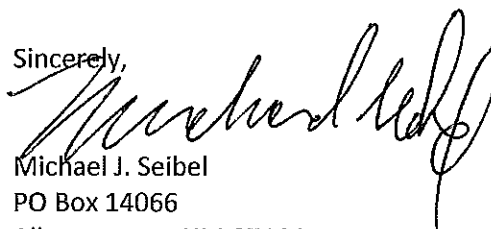
Please find enclosed an inspection of public records request.

1. Pursuant to the New Mexico Inspection of Public Records Act, Please produce all reports of Covid-19 infections reported to NM OSHA pursuant to 11 NMAC 5.1.16, from the Women's Reproductive Clinic of Sunland Park, NM 5290 McNutt Rd #106 Santa Teresa, NM 88008 and their employees, from August 7, 2020 through November 12, 2020.
2. Pursuant to the New Mexico Inspection of Public Records Act, Please produce all reports of Covid-19 infections reported to NM OSHA pursuant to 11 NMAC 5.1.16, from Dr. Franz Theard MD 5290 McNutt Rd #106 Santa Teresa, NM 88008 and his employees, from August 7, 2020 through November 12, 2020.

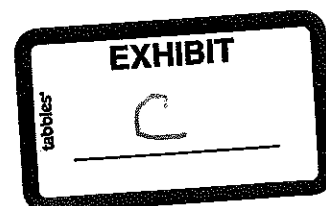
Please redact all HIPAA public health information from this request.

I agree in advance to pay reasonable copying charges. Please let me know if the cost is going to exceed \$250.00. I would prefer the records in an electronic form.

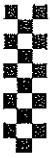
Sincerely,



Michael J. Seibel  
PO Box 14066  
Albuquerque, NM 87191  
(505)332-1015







**From:** [Kandis, Kandis, NMEN](mailto:Kandis.Martinez@westoffice.net)  
**To:** [michaelseibel@westoffice.net](mailto:michaelseibel@westoffice.net)  
**Cc:** [Records, Westoffice, NMEN](mailto:Records@westoffice.net); [Genoway, Robert, NMEN](mailto:Genoway, Robert, NMEN)  
**Subject:** IPRA 20.11.08\_11.27.20  
**Date:** Monday, November 30, 2020 4:35:04 PM  
**Attachments:** [image004.png](#)  
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[image015.png](#)  
[image016.png](#)  
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[image018.png](#)

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November 25, 2020

Michael J. Seibel  
Email: [Michaelseibel@westoffice.net](mailto:Michaelseibel@westoffice.net)

RE: Request to Inspect Public Records

Dear Mr. Seibel:

This letter acknowledges receipt of your November 12, 2020 Inspection of Public Records Act (IPRA) request regarding records relating to the Women's Reproductive Clinic of Sunland Park.

After a thorough search of our records, both physical and electronic, the Occupational Health and Safety Bureau has determined no related records were found for the Women's' Reproductive Clinic of Sunland Park relating to COVID-19 Infections from August 7, 2020 through November 12, 2020.

If you have any questions or desire additional information, feel free to contact me at (505) 490-1451 or Robert Genoway at (505) 476-8718.

Sincerely,

Kandis Martinez  
Occupational Health & Safety Bureau

Cc: Department Public Records Custodian (via email [environment.records@state.nm.us](mailto:environment.records@state.nm.us))