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Solemnity of the Mother of God

URGENT via Priority Mail, Email, and Facsimile

The Honorable Kristina Box
via kbox@isdh.in.gov and
Indiana State Department of Health
State Health Commissioner
2 North Meridian Street, 4A
Indianapolis, IN 46204

Randall Snyder
via rsnyder1@isdh.in.gov and
Indiana State Department of Health
Director of Acute Care Division
2 North Meridian Street
Indianapolis, IN 46204

Re: *Notice of the Legal Obligation of the Indiana State Department of Health (“ISDH”) to Deny the Abortion Clinic Application of Whole Women’s Health Alliance (“WWHA”)*

Dear Dr. Kristina Box:

I write in opposition to the application of WWHA (a Texas Corporation), to operate an abortion clinic in South Bend, and I write on behalf of a number of similarly situated Indiana groups and citizens, including The Life Center of South Bend, TLC Advocates, 40-Days-for-Life, South Bend, Inc., Hoosiers for Life, Indiana Liberty Coalition, Madalyn’s Hope, the Apostolate of Divine Mercy in Service of Life, Marriage and the Family, and the abortion-mothers who were denied their informed consent due to the ISDH’s failure to properly regulate the Women’s Pavilion in South Bend.

Be advised that in addition to the notice supplied in this letter, the parties represented herein are again launching the “Answer the C.A.L.L. (Citizens Against Licensing the Lawless)” campaign to urge the ISDH to consider all of the evidence concerning WWHA’s reputation and history of violations when applying Indiana’s laws related to the licensing of abortion clinics. The need for another “Answer the C.A.L.L.” campaign is highlighted by ISDH’s recent failure to properly regulate the Women’s Pavilion in South Bend, enabling that clinic to illegally operate for years while leaving a trail of victimized mothers and families (as evidenced below). The undersigned will be representing any additional groups or persons that are interested in signing-on to the campaign to enforce their rights against the inaction and transgressions of ISDH.

I. Executive Summary: ISDH’s Obligation Is To Deny WWHA’s Application.

The application of the Texas abortion chain, WWHA, must be denied per I.C. 16-21-2-11(a)(1) and and 40 I.A.C. 26-2-5(1) because WWHA’s history of violations at all of its abortion clinics demonstrates that it is “not of reputable and responsible character,” and WWHA’s application contains evidence that it is on course to mirror the illegal operations of the Women’s Pavilion in regards to its administering of RU486. That WWHA will not comply with Indiana’s laws is substantiated by its past history of significant violations in other states as well as the Texas applicant’s brazen choice for the same “Administrator” who operated the Women’s Pavilion during the numerous violations of the law cited herein, including the systematic denial

of informed consent to scores of Indiana mothers.¹ This reckless decision is exacerbated by the plans of WWHA to utilize an itinerant physician with no support system in place in South Bend, a point recently raised by local physicians (discussed below). A reasonable presumption, then, is that WWHA will not comply with Indiana’s laws. If the Indiana legislative mandates are to matter, such as I.C. 16-21-2-11(a)(1), and, if 40 I.A.C. 26-2-5(1) is to have any utility, WWHA’s application must be denied.

For ISDH to approve the Texas-based abortion clinic would impose great cost on the citizens of Indiana – hundreds of thousands of dollars on surveys and enforcement actions, it would greatly increase the violations of Indiana’s laws (which are currently not occurring at all in Northern Indiana). Additionally, as transcribed at a County Council meeting last week, emergency rooms and OBGYN offices will be taxed dealing with the complications that result from the medical abortion process, including being forced to negotiate the treatment when there is still a live unborn child as a result of a botched medical abortion. Based on the local physicians’ experience with Women’s Pavilion, the circumstances surrounding WWHA’s application, with only medical abortions being performed and the itinerant abortionist being out of town, the impact on the South Bend medical community could be significant.

ISDH’s approval of WWHA’s application would likewise victimize Indiana mothers who are currently being assisted by the numerous crisis pregnancy organizations. Mothers facing a crisis pregnancy in Northern Indiana have a plentitude of complete resources readily available to them such as adoption, medical, financial, or legal assistance, and shelter from homelessness or domestic violence, to support them and their unborn child. Moreover, for the mother who still desires an abortion, there is no undue burden placed on her as she can get an abortion at Planned Parenthood of Merrillville, Indiana, which is only 65 miles from South Bend, and she can consult with Planned Parenthood of Mishawaka, a couple miles from South Bend.

Accordingly, given the legal deficiencies of WWHA’s application as well as the costs and other harms that would be inflicted on Indiana’s citizenry, approval of WWHA’s application would be arbitrary, capricious, and an abuse of discretion.² An abortion clinic in South Bend, to be had at such great expense, when it is not needed by the mothers in South Bend, is simply not mandated by the law. There is no legal basis – neither constitutionally, statutorily, or

¹ At a minimum, WWHA’s hiring of the Women’s Pavilion’s past “Administrator” demonstrates a disregard for its reputation as well as its responsibility to comply with Indiana laws. Even if WWHA argues that it does not intend to systematically violate Indiana’s laws governing abortions as the Women’s Pavilion did, its negligent choice of Women’s Pavilion’s “Administrator” shows that WWHA is not “responsible.”

² By referencing the “arbitrary, capricious and abuse of discretion” rule, the undersigned is using shorthand for the full standard of obtaining judicial relief when a person has been prejudiced by an agency, which, in this case would entail showing that the ISDH’s decision was (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. I.C. § 4-21.5-5-14(d). To be clear, this would not be the only relevant standard for seeking the relief available to the class of injured Hoosiers, but it will play a role.

regulatorily – that compels ISDH to approve WWHA’s application. Indeed, to approve of WWHA’s application, under these conditions, would also signify ISDH’s refusal to take note of the Indiana legislature’s previous finding that the protection of unborn children is a compelling state interest. Thus, there is no rational basis for ISDH to spurn the desires of the Indiana citizenry by obligating Indiana taxpayers to fund the regulation of another violation-prone abortion clinic.

II. ISDH’s Past Performance in Regulating the Women’s Pavilion in South Bend Undercut the Laws of Indiana and Proved to be Overly Costly and Ineffective.

Acknowledging that the ISDH has experienced turnover in personnel over the past year, including at its helm, the following recitation of history is provided regarding the ISDH and its relationship with the Indiana pro-life groups and individuals that are taking a stand against the licensing of lawless abortion clinics/abortionists. It is also highly relevant to the current inquiry and the necessity of the applicant to be “of reputable and responsible character.”

The entirety of the laborious history between Women’s Pavilion and ISDH need not be reiterated here; a summary of that recent history will suffice to make the necessary point that Indiana cannot afford to re-visit this scenario. The surveys by ISDH, stretched out to be conducted only biennially (much to a rogue abortion clinic’s advantage), continually led to voluminous citations against Women’s Pavilion, including informed consent violations and practices that were harmful to a woman’s health. (See 2010, 2012, and 2014 Survey Reports) These then led to enforcement actions, *i.e.*, agreements, handled by ISDH personnel and sometimes the Attorney General’s office. Furthermore, during this same time period, Women’s Pavilion was prosecuted for failing to comply with statutory reporting violations, taxing local prosecutors and Indiana’s judicial system.

This significant waste of taxpayer monies, due to ISDH’s inappropriate licensing of irresponsible applicants, is only part of the damage done to Indiana’s citizenry.³ Mothers, presumptively protected by the laws in place, are also harmed when abortionists and abortion clinics are able to take advantage of ISDH’s willingness to license clinics that are not “reputable and responsible.” It was three years ago to the day (and just months after the 2014 Survey Inspection) that the undersigned was hired to enforce Indiana’ informed consent law against Women’s Pavilion, given the complaint of a mother who was given the first pill of the medical abortion process without informed consent. The affidavit of that mother who is still mourning to this day is attached hereto as Exhibit 1 and demonstrates what vigilant pro-lifers assumed was the case in 2014 -- that Women’s Pavilion was performing medical abortions without the informed consent of the mothers seeking counseling on abortion.

That the Women’s Pavilion’s violation of the informed consent law was systemic was confirmed with more evidence procured by the vigilante efforts of TLC Advocates. For

³ The enforcement of the pro-life laws of Indiana in regards to abortion clinics was placed solely with ISDH who “shall make all . . . inspections in response to an alleged breach of this chapter or rules adopted under this chapter.” I.C. 15-21-1-10(a); see also I.C. 16- 21-2-2.5; see also I.C. 16-21-2-2.5, 2.6.

instance, a statement by one of TLC Advocates, provided to the ISDH, testified to a telephone conversation with the Women’s Pavilion staff wherein the administration admitted that they would perform a medical abortion without informed consent. When the ISDH failed to act upon this complaint, another TLC Advocate telephoned Women’s Pavilion and audiotaped the conversation wherein the Women’s Pavilion administration again admitted that they performed medical abortions without Indiana’s informed consent laws. Even with this accumulating and momentous evidence, ISDH did not act, and the number of informed consent violations grew.

This recalcitrance by the ISDH to enforce the informed consent law, and ISDH’s intentions to settle past violations of the Women’s Pavilion – such intentions being normal for ISDH but being discovered only through a document request⁴ – inspired a coalition of Indiana pro-life groups to launch the “Answer the C.A.L.L.” campaign on Ash Wednesday of 2015. (See 2/17/15 Press Release as Exhibit 2, attached hereto) Thousands of signatures were gathered, protests were held, the legal case to force the enforcement of Indiana’s laws was prepared, and the media was kept informed. Additionally, the vigilante efforts of TLC Advocates, in gathering evidence of the mounting informed consent violations, continued and was submitted to ISDH.

In June of 2015, the ISDH finally acted, conducted a Survey Inspection of Women’s Pavilion, and found 10 out of 10 violations in the Women’s Pavilion files they inspected.⁵ These findings, the resulting validation of TLC Advocates’ complaints, and ISDH’s refusal to renew Women’s Pavilion’s license is attached hereto as Exhibit 3. It is unclear why ISDH waited so long to react to the illegal operations of Women’s Pavilion, in the face of very compelling evidence – whether the ISDH is understaffed or simply unmotivated to enforce Indiana’s pro-life laws. It is also unclear why ISDH did not immediately shut down Women’s Pavilion and penalize them heavily as they are authorized to do. (See I.C. 16- 21-3-1(6); see also I.C. 16-21-3-2, 16-21-2-2.6, 16-21-1-10)

Accordingly, in the absence of ISDH enforcing the revocation of Women’s Pavilion’s license, the coalition of pro-life constituents referenced above dutifully solicited evidence from mothers who were abortion clients of Women’s Pavilion, and over 50 complaints of informed consent violations were submitted to the ISDH. Sadly, as set forth in the correspondence constituting Exhibit 4, attached hereto, the ISDH not only permitted Women’s Pavilion to

⁴ The groups represented by this notice intend to submit a records request for the entirety of the file accumulated in response to WWHA’s application. Because ISDH is still collecting documents, the undersigned prefers to wait until all documents to be collected are collected. To make a showing of a lack of due diligence concerning the “reputable and responsible” determination and to make the “arbitrary and capricious” showing, the entirety of the file will be necessary. In the event that the ISDH denies WWHA’s application, prior to the records request referenced herein, no such records request will be necessary.

⁵ The fascinating nature of the ISDH’s findings in response to the TLC Advocates’ complaints – that there was not one patient file in compliance with the informed consent law – cannot be overstated. It validates all of the complaints of the TLC Advocates and shows a blatant disregard of Indiana’s laws, even those that carry a criminal penalty. This brazen-ness by the Women’s Pavilion “Administrator” should be an absolute bar to licensing. WWHA’s choice of the same “Administrator,” and WWHA’s own voluminous record of violations, would be enough evidence for a reasonable person to deny WWHA’s application.

continue operating without penalty, but it would not process further complaints by the TLC Advocates on the grounds that they were “repetitious.” As if a rapist can only be prosecuted for one of many rapes, or a murderer prosecuted for only one of many murders, or a thief charged with one of many thefts, this rationale is so bereft of reason and justice that it can only point to the desire of ISDH to look-the-other-way in the face of criminal wrongdoing by an abortion clinic and exculpate a systematic illegal abortion operation doing great harm to Indiana women.⁶ Pressure on ISDH remained constant including protests and education of the public. (See Handbill and Press Release, Exhibit 5, attached hereto)

Finally, as a matter of background, lest the ISDH point to the revocation of the Women’s Pavilion license as a response to the above allegations of malfeasance, the history of the ISDH for at least the past decade – as demonstrated by the survey reports and “enforcement actions” that followed – was for the decision-makers at ISDH to fail to hold Women’s Pavilion accountable for their transgressions against the women of Indiana, and to enable Women’s Pavilion to continue their systemic violations as long as Women’s Pavilion would sign-off on an agreement to “do better next time.” Summing up the background, then, the citizens of Indiana have been cheated from having a regulatory body willing to enforce Indiana laws, and the ISDH has left a trail of frustrated constituents and a landscape of harmed women who were victims of an abortion clinic determined to undermine the pro-life laws of the Indiana legislature.⁷ Those constituents, along with the other pro-life groups, state representatives, and medical professionals are again standing at ISDH’s door asking for ISDH to make the proper findings and render the proper – legal – decision regarding WWHA’s application for an abortion clinic.

III. WWHA Cannot Show, As Required, That It Is “Reputable And Responsible.”

With so much at stake in approving an abortion clinic that can meet the health and safety standards of Indiana law, it was logical and necessary for the legislature to require that abortion clinic applicants submit an application “showing that the applicant is of reputable and responsible character.” I.C. 16-21-2-11(a)(1); 410 I.A.C. 26-2-5(1). It is a legitimate threshold because non-reputable and irresponsible abortion clinics will by nature inflict harm on Indiana citizens and unfairly impose significant costs on the taxpayers. And note that this threshold is stated in the conjunctive – it requires that the applicant is both “reputable *and* responsible.” If the applicant is missing either one of these character attributes, the application must be denied. As the evidence cited herein demonstrates, WWHA is a far cry from meeting the “reputable and responsible” requirement, and, accordingly, to approve WWHA’s application for an abortion clinic would be arbitrary, capricious and an abuse of discretion.

⁶ If not for the extraordinary vigilante efforts of the TLC Advocates, the persistence of the pro-life constituents, the extraordinary readiness of TLC Legal to bring suit, and the fortitude of the Attorney General’s office once all the above was set in motion, there is no reason to conclude that Women’s Pavilion would not be operating still today with no regard to the Indiana laws concerning informed consent.

⁷ In line with the ISDH’s treatment of the TLC Advocate’s complaints regarding the harm being done to the clients of the Women’s Pavilion, the ISDH took an adverse position to the plans of The Life Center to install a Safe Haven Baby Box on-site of The Life Center, next to the Women’s Pavilion.

The impossibility of WWHA showing it is “of reputable and responsible character” is threefold. First of all, public records and public discussion show that WWHA’s character is not reputable and it is objectively very poor in terms of compliance with abortion clinic regulations. Second, WWHA’s designation of “the person to be in charge of the institution,” per I.C. 16-21-2-11(b)(4), choosing on its application the same “Administrator” that operated the Women’s Pavilion during its reign of systematic illegal operations – demonstrates that WWHA is not concerned with its reputation and could not be more irresponsible in showing its commitment to following Indiana law. Thirdly, WWHA’s response to the legitimate concerns of Indiana citizens – the medical care to be delivered and the availability of follow-up to compensate for the risk of complications, is non-existent.

A. ISDH Must Deny WWHA’s Application Because WWHA Is Not In The Least Bit “Reputable.”

To be of reputable character is to enjoy good repute and be held in esteem. WWHA does not enjoy that attribute. Indeed, WWHA is known as the abortion clinic chain with a notoriously poor compliance record. There simply is too much noise about them for it not to be true, and, ultimately, “you are what your record says you are.”⁸ An article by Abby Johnson, a former abortion clinic worker in Texas, tells it like it is in a very recent report, based on the inspection reports and statements by witnesses with first hand knowledge. (See 10/27/17 “Whole Woman’s Health Exposed, /AbbyJohnson/ 2 0 1 7/ 9 / 6 / Whole-Womens-Health-Exposed, attached hereto as Exhibit 6) The article itself incorporates 50 pages of government inspection reports on which the article is based. (*Id.*) The pervasiveness of WWHA’s obliquitous reputation was also acknowledged by the recent headlines of the WASHINGTON FREE BEACON, a national news agency: “Texas Abortion Clinics Marred with Health, Safety Issues, Inspection Reveals.” (See article attached hereto as Exhibit 7)

These recent articles are not rhetorical pieces – they are based upon and motivated by the startling inspection reports and testimony. “The documents show a widespread problem of health violations at WWH clinics.” (*Id.*) A look at some of the underlying documents shows that these Texas clinics by WWHA are repeat offenders and not reputable in any sense of the word. (See, e.g., 12/29/15 Inspection Report for WWHA San Antonio, TX, attached hereto as Exhibit 7.1; 12/02/15 Inspection Report for WWHA McAllen, TX, attached hereto as Exhibit 7.2; Exhibit 6, *supra*). Furthermore, it is something that has been going on for a long time as the attached article from 2011 demonstrates, citing the fines against WWHA in Austin and McAllen. (See 12/1/11 “Over \$83,000 in Fines Assessed in Texas for Illegal Dumping of Aborted Baby Remains,” Exhibit 8 attached hereto; see also Exhibit 6, *supra*, attached hereto)

The unflattering reputation of WWHA is something that has been noticed by many of the

⁸ This quote, which is one of the poignant truisms by NFL Coach Bill Parcells, as well as other dandies, can be found at http://www.azquotes.com/author/11297-Bill_Parcells.

⁹ The timely article was posted by *Charles Fain Lehman* On October 27, 2017, and is found at <http://freebeacon.com/issues/texas-abortion-clinics-marred-health-safety-issues-inspection-reveals/>.

watchdog organizations. As THE DAILY CALLER NEWS FOUNDATION commented: “[a] slew of Whole Woman’s Health (WWH) abortion clinics miserably failed inspection reports between 2011 and 2017,” and citing to the Free Beacon article referenced above. (See THE DAILY CALLER, “Abortion Clinics Are Crawling With Dirty Health Violations, Report Finds,” by Grace Carr, 10/27/17, attached hereto as Exhibit 9) The sloppiness negatively effects women’s health as set forth in the May 19, 2014 article by Cheryl Sullenger, “Why Should Abortionists have Admitting Privileges? Look at these Botched Abortions at Just One Clinic,” found at LifeNews.com. (See Exhibit 10 attached hereto)

And it is not just the Texas clinics of WWH. The other clinics in Maryland and Illinois have similar violations problems as summarized in Exhibit 11, attached hereto. (Excerpts from chart found at unsafereport.org/wp-content/uploads/2016/12/Unsafe-Chart.pdf) Violations have been a consistent theme of WWH’s operations for a while, as summarized by Operation Rescue, attached hereto as Exhibit 8 (12/1/2011 “Over \$83,000 in Fines Assessed in Texas for Illegal Dumping of Aborted Baby Remains”)¹⁰ Accordingly, when the volume and depth of the violations, along with their consistency from state to state, are considered, it would be irrational to conclude that WWH is reputable.

Lastly, WWH went to extreme lengths in its application to defy the “reputable” requirement by appointing as its “administrator,” Liam Lynn Morley (see Exhibit 12, attached hereto), the same administrator who managed the Women’s Pavilion -- a habitual offender of the laws of Indiana which cost taxpayers and the abortion mothers who sought Women’s Pavilion’s assistance.¹¹ As reported by the South Bend Tribune, “Liam Morley is listed as the proposed clinic's administrator. She was an employee for several years at the clinic Klopfer ran (See Exhibit 13, attached hereto). She stated in more than one interview that neither she nor the group she heads – “Pro Choice South Bend” – was involved in the effort to launch a clinic in South Bend. (See, *e.g.*, *id.*) Clearly, then, it is WWH that sought-out Ms. Morley and would have been aware of her past experience with Women’s Pavilion when the clinic was engaging in a culture of illegality. Hardly the pick any reasonable person would make if that reasonable person was trying to satisfy the “reputable” requirement in order to be licensed.

The fact that WWH chose the Women’s Pavilion’s operator to be its administrator validates the concern of the local medical community that WWH fits the same compliance profile as Women’s Pavilion. (See Exhibit 13, attached hereto, WSBT News Reporting on 12/6/17 County Council Meeting) That makes the point of Northern Indiana family physician Laura McGuire all the more poignant when she stated at the Council Meeting that she’s “concerned about the former South Bend abortion clinic, which was shut down after failing to

¹⁰ The article can be found at www.operationrescue.org/archives/over-83000-in-fines-assessed-in-texas-for-illegal-dumping-of-aborted-baby-remains/

¹¹ Searches on social media by the TLC Advocates confirm that this is the same “Lynn Morley” or “Liam Lynn Morley” that operated the Women’s Pavilion for the last several years of the clinic’s operations (see Exhibit 12a, attached hereto), during which the TLC Advocates accumulated evidence – including an audio recording – of the Women’s Pavilion’s practice of bypassing the informed consent law.

procedures to the state, and we know that there is an organization here [WWHA] that has the same kind of profile as Dr. Klopfer" (*Id.*) During the two hour meeting, a number of other members of the medical community recited their concerns of the shaky reputation of WWHA.

The violation-prone operations of the Texas group are an even more serious concern to the medical community because of the lack of a plan to deal with complications or recovery of the patients of WWHA's circuit doctor, Dr. Jeffrey Glazer. (See *id.*, Exhibit 13, attached hereto; Exhibit 15, attached hereto, 12/7/17 S.B. Tribune reporting "Group of Doctors Speak Against South Bend Abortion Clinic") The medical community in Northern Indiana complained that WWHA would "burden the medical community" and that "local hospitals will be compelled to provide treatment to women with complications from medication-induced abortions." (Exhibit 15, attached hereto) The doctors went into detail over the two hour process describing the complications that do arise on a statistical basis and how in the past that they have been forced to deal with them. They also lamented that a circuit doctor, likely in South Bend for one day per week, and continuously traveling, would not be available for any follow care, and was not a good match for WWHA's plan of medical abortions. Given WWHA's horrid compliance record, and the fact that their proposed physician is commonly traveling between his practice in Indianapolis and two other states, this is an authentic issue that deserves an authentic response.

Part of the reason why the clients represented by this letter, and the undersigned, waited until now to provide this legal opinion to ISDH is that we were waiting to see how or if WWHA would respond to any of the inquiries or criticisms regarding their application to locate in South Bend. Instead of responding with evidence that WWHA is reputable and responsible, WWHA has only responded with political rhetoric. The legitimate concerns of Indiana citizens regarding WWHA's compliance problems, the similarities of WWHA with Women's Pavilion, and the health and safety concerns raised by WWHA's application was met with venomous political attacks:

- As part of the South Bend Tribune's reporting on the application, October 14, 2017, the President and CEO of WWHA stated in an email attributed to her: "It is our commitment to go into places that are underserved and where women have suffered because so many clinics have shuttered due to continued political interference. South Bend women and families deserve access to high quality abortion care services..." (Exhibit 14, attached hereto)
- A couple weeks after that statement, the President and CEO of WWHA issued another political motivation to their application: "As we witness ongoing attempts by the Trump administration to bully and block women who need abortion care, I'm proud to announce that we are expanding our healthcare work, to open . . . the clinic in South Bend as soon as we can. . . . to combat abortion stigma." (Exhibit 16, attached hereto, WNDU coverage of WWHA application)¹²

¹² In that same WNDU coverage, the quote of Shelly Dodson, Center Director of All-Options in Indiana, shows the mistaken political motivations of WWHA's continuous diatribe against President Trump, Vice President Pence, and the pro-life legislature of Indiana: "We are thrilled that Whole Woman's Health

- In response to the complaints of the medical community the WWHA responded with this statement: “[A]ccess to quality abortion services has been continually decimated in Mike Pence’s Indiana communities, such as South Bend, and ... we are committed to improving people’s lives by providing access to the best medical care, which include the full range of reproductive health services for women.” (Exhibit 15, attached hereto)
- WWHA has not provided a response to the mounting concerns by the South Bend medical community, and they declined to interview on that topic or any of the other topics such as the financial burden on taxpayers given its similarity to the Women’s Pavilion debacle or the fact that mothers are getting the services they need in South Bend, the president and CEO of WWHA instead declared generically that WWHA clinics are "committed to improving people's lives by providing access to the best medical care, which included the full range of reproductive health services for women."¹³ (Exhibit 13, attached hereto)

It stands to reason then that the concerns of the elected officials, the Northern Indiana pro-life community filling the needs of pregnant mothers, the medical community in South Bend have legitimate concerns about the “reputation” of WWHA and that reputation cannot be sufficiently rehabilitated with so much water under the bridge. The ISDH is left with no choice except to deny the application of WWHA on the basis of WWHA’s horrid compliance record, its similarities with the costly Women’s Pavilion debacle, its decision to hire the administrator of Women’s Pavilion during its lawless rein that led to its closure, and the fact that WWHA’s plan of a circuit doctor is problematic in the dispensation of medical abortions – which occurs out of the abortion clinic a day or three after the initial pill – and will impose a significant cost on the medical community.

There is no legal requirement, Constitutional or otherwise that requires ISDH to do anything other than to deny the Texas group’s application. Even if the “undue burden” standard was relevant here, and it is not, no undue burden exists in Northern Indiana for a mother seeking an abortion to get her abortion counseling within a couple miles, and, if an abortion is still desired, only travel 65 miles. Accordingly, WWHA’s disrepute, and there being no undue burden, for the ISDH to anything other than deny WWHA’s application would be arbitrary, capricious and an abuse of discretion.

will be opening a clinic in South Bend, and look forward to having another provider to refer clients to in Indiana, reducing their need to travel out of state to find the abortion care they need." (Exhibit 16, attached hereto) It is false and misleading to say that abortion-minded mothers need to go out of state for abortions services when they can travel a couple miles to the Planned Parenthood of Mishawaka, for abortion counseling, or they can go straight to the Planned Parenthood of Merrillville for a medical or surgical abortion.

¹³ WWHA’s generic statements do not constitute evidence of “reputation,” and given the factual record of WWHA’s performance at its number of clinics, the generic statements are completely false. Again, “you are what your record says you are.” (See *supra* note 8)

B. ISDH Must Deny WWHA’s Application Because WWHA Is Not “Responsible.”

Even if the ISDH found WWHA to be “reputable” – an improbable hypothetical – WWHA does not meet the “responsible” criterion as part of I.C. 16-21-2-11(a)(1) and 410 I.A.C. 26-2-5(1). “Responsible” is not an ambiguous term, and is often defined by having “obligations” or “accountability,” and “liable to be called on to answer.” And to state again, both criterion, “reputable” and “responsible,” must be met despite the similarities between the two requirements. To the extent that the evidence showing WWHA is not “reputable” is the same as the evidence to show that WWHA is not “responsible,” the relevant portions above will be referenced instead of being repeated in their entirety.

For many of the same reasons cited above, WWHA falls woefully short of meeting the “responsible” requirement. There are hundreds of pages of violations and penalties demonstrating how irresponsible WWHA is. (See *supra* pp. 5 - 8) Would WWHA dare to say that its record of violations and penalties constitutes “responsible” conduct? WWHA would condemn itself with its own words if such a statement were made; in WWHA’s instance, it is best to remain silent and plead the 5th. Simply put, no reasonable person would argue that WWHA’s compliance record and willingness to comply with the law demonstrate “responsible” character.

WWHA’s irresponsibility is further shown by the choice of its “Administrator,” choosing the former administrator of the Women’s Pavilion – the same administrator whose tenure encompassed the years of illegally dispensing RU486 without informed consent. (See *supra* pp 2 - 5) The charges levied against Women’s Pavilion were very serious, especially the statutory rape charges and the informed consent violations that bear criminal penalties. To hire the same Administrator who was just one of the few staff members of Women’s Pavilion during this time sends a clear message of severe irresponsibility.

WWHA demonstrates its lack of “responsibility” by concocting a business model with an absentee “Medical Director,” the doctor/abortionist, who will likely not be in town or available when his patients take the second pill of the chemical cocktail known as RU486, which causes the patient to undergo contractions and expel the fetus.¹⁴ Even using the figures proposed by the abortion industry (which are not supported by the experiential data collected by watchdog groups), the complication rate for medical abortions is at 5.2%.¹⁵ Accordingly, is it responsible

¹⁴ Mifepristone (mifeprex) is the first pill of the RU486 pill process and the first pill kills the unborn child by cutting-off the child’s nutrition, and, then, the second pill, Misoprostol, taken at home by the mother causes her to undergo contractions in order to expel her child wherever she happens to be at that time. For a description of the history of RU486, and the process used by the abortion industry (albeit from a pro-life perspective), see www.40daysforlife.com/2017/12/08/ru-486/.

¹⁵ “Incidence of Emergency Department Visits and Complications After Abortion” by Advancing New Standards in Reproductive Health (“ANSIRH”), Ushma D. Upadhyay, PhD, *et. al.*, published in OBSTETRICS & GYNECOLOGY: January 2015 - Volume 125 - Issue 1 - pp. 175–183, p.1, found online at http://journals.lww.com/greenjournal/fulltext/2015/01000/Incidence_of_Emergency_Department_Visits

to devise a business model using a circuit doctor who will unlikely not be available for follow up when the mother takes the second pill at home or wherever she is at that time? The complication prone medical abortion process screams for an ever-ready doctor so that every complication does not end up in the emergency room. An agreement with a local doctor who has admitting privileges to a local hospital does not reduce this need for immediate care by mothers experiencing complications from the second pill.

Since, complication rates for medical abortions are much higher than surgical abortions (again, with medical abortions being 5.2%),¹⁶ is WWHA behaving responsibly when it has requested, through its attorneys, for the waiver of certain abortion clinic requirements so that they do not have to adhere to all of the laws on the books for such clinics? should there not be more of regulatory imposition on WWHA's proposed business model in order to protect Indiana mothers? Do not Indiana citizens, not interested in a medical problem being imposed on them, deserve more than political rhetoric (see *supra* pages 8-9) in response to the complications that arise from medical abortions? WWHA's request and business model are irresponsible.

How can WWHA claim that they are "responsible" when its proposed business model imposes emergencies and immediate-care-questions on others, especially considering that most of those others do not want to handle it. This was a common refrain of the medical community in South Bend as they brought their concerns to the County Council. (See Exhibits 13, 14, and 15 attached hereto) The medical profession in South Bend has sounded the alarm, and WWHA can only muster political rhetoric to justify its business plan. Is that responsible? Even if the complication rates are as low as the abortion industry says they are for medical abortions, 5.2 %, there still will be a significant impact on the medical community of South Bend unless there is a plan in place to deal with the emergencies and the post-RU486 dispensation. Accordingly, since there is no plan in place beyond an "agreement" with a doctor in the area who has admitting privileges, which of course does not lessen the impact on the local medical community, WWHA's plan is irresponsible.

WWHA's inability to demonstrate that it is "responsible" in the face of such serious matters demands that the ISDH deny WWHA's application. The concerns of the legislature which drafted the legislation requiring clinic applicants to be "reputable and responsible" should be followed. The concerns of the individual elected officials – both state and federal – should be listened-to given that their position enables them to see that mothers are being cared-for in Northern Indiana, and abortion services are still available to those who desire them. The Northern Indiana citizens who do not want their taxes spent on a violation-prone, out-of-state

[and.29.aspx](#).

¹⁶ *Id.* at p. 1. Although this study was done by the abortion industry, it still admits that "complication rates are underestimated by low follow-up rates." (p. 1) Watchdog groups claim that only one out of 10 complications are reported. See www.40daysforlife.com/2017/12/08/ru-486/. That certainly has been the experience of the local watchdog groups like TLC Advocates and 40 Days for Life, South Bend, who have witnessed firsthand that the complication rate for these medical abortions is much higher than reported by the abortion industry. (Cf. Exhibit 1, attached hereto, describing the regret of a mother who experienced a medical abortion)

organization should be taken seriously. And last, but not least, the medical community in South Bend who do not want to be responsible for the complications of WWHA provide a relevant and persuasive reason for denying WWHA's application. What is irrelevant and demonstrative of the irresponsibility of WWHA is treating the matter as a political matter deserving only of political rhetoric instead of real facts responsive to the issues at hand.

The ISDH is left with no choice except to deny the application of WWHA on the basis of WWHA's horrid compliance record, its similarities with the costly Women's Pavilion debacle, its decision to hire the administrator of Women's Pavilion during its lawless rein that led to its closure, and the fact that WWHA's plan of a circuit doctor is problematic in the dispensation of medical abortions – which occurs out of the abortion clinic a day or three after the initial pill – and will impose a significant cost on the medical community.

As stated above, there is no legal requirement, Constitutional or otherwise that requires ISDH to do anything other than to deny the Texas group's application. Even if the "undue burden" standard was relevant here, and it is not, no undue burden exists in Northern Indiana for a mother seeking an abortion to get her abortion counseling within a couple miles, and, if an abortion is still desired, to travel 65 miles. Accordingly, WWHA's inability to meet the "reputable and responsible" requirement, and the "undue burden" standard being inapplicable, the ISDH would prejudice Northern Indiana citizens and the medical community by granting WWHA's application, and, accordingly, granting the application would be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. (I.C. 4-21.5-5-14(d))

IV. Conclusion

With new leadership at ISDH, there is an opportunity here for that new leadership to build a trusting relationship with the constituents here in the Northern portion of the state. These same constituents had their faith in ISDH severely shaken after years of licensing the lawlessness of the Women's Pavilion. ISDH's lack of zeal to enforce the laws against the Women's Pavilion, and ISDH's evasive conduct in prosecuting and shutting down an operation that admitted it was systemically violating the criminal laws of the state related to informed consent.

We are also calling on the Attorney General's office and the Governor's office to do their part in ensuring that Indiana's citizens are heard and that the ISDH does not abuse its discretion, go outside the existing law and evidence, and inflict great harm on our community in Northern Indiana. We note that the current Attorney General, Curtis Hill, Jr., has stated that he is "an advocate for the people." We will call him to be just that. We will bring this issue to the populace, elected officials, the ISDH and the courts. We plan on continuing to promote a great deal of attention on this issue through the media, social media, and public protests.

We will be there to encourage and support your efforts to do the just and legal action necessitated by the law and facts governing this matter. Lest there be any concern over a WWHA lawsuit when its application is denied, consider that a blessing. The opportunity to do

justice in this instance is well worth the time, energy, and expense. The entirety of the international pro-life community would applaud and support your effort to dispel current myths regarding medical abortions and educate the world with the salient truths concerning the physical effects and complications, the psychological effect on mothers, and the deplorable state of compliance with the current – yet insufficient – regulations governing the medical abortion industry.

Please feel free to contact me regarding any of the above, and I will keep you informed of the growing number of similarly situated clients pleading with ISDH to Answer the C.A.L.L.

Sincerely,



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EXHIBIT LIST

- Exhibit 1: M [REDACTED] Witness Statement
- Exhibit 2: “Answer the C.A.L.L.” campaign (2/17/15) and press release
- Exhibit 3: TLC Advocates’ complaints upheld by ISDH
- Exhibit 4: Letters to and from state regarding lack of prosecution of Women’s Pavilion
- Exhibit 5: Handbills and press release protesting ISDH handling of Women’s Pavilion
- Exhibit 6: 10/27/17 “Whole Woman’s Health Exposed” by Abby Johnson
- Exhibit 7: Article in WASHINGTON FREE BEACON re: violations at TX clinics
 - Exhibit 7.1: Violation reports for WWHA clinic in San Antonio, TX
 - Exhibit 7.2: Violation reports for WWHA clinic in Macallum, TX
- Exhibit 8: Article re: fines against WWHA clinics in TX
- Exhibit 9: Article in Daily Caller re: violations of WWHA clinics
- Exhibit 10: Article in LifeNews re: botched abortions at WWHA in Austin
- Exhibit 11: Chart showing IL and MD violations at WWHA
- Exhibit 12: Application and identification of the “Administrator”
- Exhibit 13: WSBT coverage of doctors protesting proposed WWHA clinic in South Bend
- Exhibit 14: SB Tribune reporting on WWHA’s plans to open abortion clinic in South Bend
- Exhibit 15: SB Tribune reporting on medical communities’ complaints regarding WWHA
- Exhibit 16: WNDU coverage of WWHA’s intentions to do clinic in South Bend