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[www.LLDF.org](http://www.LLDF.org)

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The Honorable Patrick Morrisey  
Office of the Attorney General of West Virginia

[regulatoryreview@wvago.gov](mailto:regulatoryreview@wvago.gov)

*comments sent via electronic communication*

#### ***Re: Call for Comments on Review of Abortion Laws***

Life Legal Defense Foundation is a California non-profit corporation dedicated to defending life, and to protecting the free speech rights of pro-life advocates. It supports efforts to hold abortion providers accountable for their failure to abide by applicable laws, including mandatory abuse reporting laws and health and safety laws and regulations. Based on our experience, we feel best equipped to focus our comments on topic number 5 (private accreditation versus government regulation).

#### ***The Need for Governmental Regulation:***

Years of observation of abortion practices throughout the nation has convinced us that abortion clinics require specific oversight and regulation by governmental agencies in order to comply with even basic health and safety standards.

#### ***Unique Position of Abortion Clinics***

As with any industry, regulations applied to abortion ought to be balanced with the desire to uphold individual liberty. As the potential risk to life and limb increases, so does the state's interest in regulation. Abortion clinics have a unique potential to detrimentally impact women's health and safety.

First, note that abortion is an invasive medical procedure. Whether performed surgically or through ingestion of medication, abortion has the potential to create life-threatening conditions for the mother. The practice of medicine is among the most heavily regulated professions in most states, and rightly so since physicians daily hold the lives of their patients in their hands.

Second, abortion clinics are usually stand-alone facilities that specialize in reproductive medicine only, often exclusively abortion. Because of this specialty, they can avoid the health and safety standards that would ordinarily be expected of a more general physician's practice. They are in a sense isolated from professional interaction. Women going in for abortion procedures are often weighed down with emotions of fear, vulnerability and guilt. They are thus less-likely to demand that the services rendered to them be done in a professional and safe environment. Even when their safety is affected, patients sometimes do not complain out of a sense of guilt that they have undergone an abortion.

In Birmingham Alabama, for example, there has been an ongoing battle to enforce applicable health and safety standards on a stand-alone abortion clinic. Members of the public observed injured patients being taken from the abortion clinic by ambulance. A subsequent inspection of the facility by the Department of Public Health resulted in a 76-page deficiency report (*available at* [http://adphnotes.state.al.us/hcfweb.nsf/d071913f859fe47d862571ce00736df8/54901a38aa188101862579d1006d3723/\\$FILE/NEW%20WOMAN%20ALL%20WOMEN%2020120301.PDF](http://adphnotes.state.al.us/hcfweb.nsf/d071913f859fe47d862571ce00736df8/54901a38aa188101862579d1006d3723/$FILE/NEW%20WOMAN%20ALL%20WOMEN%2020120301.PDF)). The clinic was eventually closed, and is currently embroiled in litigation as to its future, see <http://lldf.org/permanent-injunction-issued-against-birmingham-abortion-clinic/>.

Third, the physician-patient relationship at abortion facilities is unique. Often clinics are staffed by "circuit rider" physicians who spend one or two days at each clinic, moving on to the next location after performing their quota of abortions. This destroys any possibility of a normal doctor-patient relationship: if complications arise, the patient is likely not going to

see that doctor again. This can lead to the need for hospitalization of the patient. (Note that this industry practice has led some states to require abortion doctors to have admitting privileges at a local hospital prior to providing abortion. *See e.g.*, <http://www.lifenews.com/2013/04/16/judge-prevents-closing-of-last-abortion-clinic-in-mississippi/>.)

### *Inadequacy of Self-Regulation*

With regard to self-regulation, abortion support organizations have a woeful history. Consider that abortionist Kermit Gosnell had ties to the National Abortion Federation (NAF), a prominent abortion-regulation and referral organization. Although NAF, to their credit, eventually denied affiliation to Gosnell's Philadelphia "house of horrors" clinic, Gosnell continued to work out of a separate facility in Delaware that was NAF-affiliated, and from which practice he referred patients to his Philadelphia clinic. See the Philadelphia Grand Jury Report, <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf>. NAF took no steps to report Gosnell's violations of basic safety standards to applicable authorities. In the wake of the Grand Jury's findings that Gosnell had ties to NAF facilities in other states, the NAF disassociated those clinics—but only after public light was shed on the connection. In the meantime, conditions at these clinics were appalling. (Recall that Gosnell is the abortionist who was convicted of murder for killing children who were born alive following attempted abortion, and who was convicted of manslaughter for failing to give adequate life-saving care to his patient, among numerous other crimes.)

A similar situation is unfolding as relates to abortion Dr. Bruce Norman who performs abortions one day per month at the Birmingham, Alabama clinic formally known as New Women, All Women. This clinic is not NAF-affiliated. But Norman also provides abortion services at another clinic in Jackson, Mississippi, Jackson Women's Health Organization, and this clinic is NAF-affiliated. See <http://www.prochoice.org/Pregnant/find/ms.html>. Thus the doctor who provides abortions at an unaffiliated clinic that has a history of unmitigated health and safety violations, is allowed to provide abortions at an affiliated clinic in another

state—leaving one questioning the power of oversight exercised by the NAF. (For more information on the scandals and deficiencies of these clinics, *see* <http://lldf.org/permanent-injunction-issued-against-birmingham-abortion-clinic/>; <http://lldf.org/as-abortionist-faces-suit-by-alabama-department-of-public-health-a-mississippi-victim-is-rushed-to-the-hospital/>.)

Take another organization that claims to self-regulate: Planned Parenthood Federation of America. This organization has failed to ensure that its affiliated clinics uphold basic health and safety regulations. Consider the clinic in Wilmington Delaware that was closed following employee testimony as to unsanitary conditions, and “Meat-market-style, assembly-line abortions.” Five women were seriously injured before that clinic came under serious investigation by state health authorities. <http://www.lifenews.com/2013/04/10/planned-parenthood-closed-investigated-for-botched-abortions/>. *See also*, <http://www.sba-list.org/negligence>.

Finally, even if the national abortion-rights groups could provide adequate oversight, there is no obligation that clinics submit to this regulation, and woefully little incentive for them to do so. The result is that back alley clinics operate—undetected and undeterred—all over the country.

It thus becomes incumbent upon state and local government to regulate abortion within their jurisdictions for the safety and protection of women. All aspects of abortion practice should be regulated with an eye toward patient safety. Such minute regulation is necessary because time and again industry participants have proved that if they are not absolutely forced to comply, they will not do so. LLDF recommends that the great state of West Virginia consider adopting the strongest possible measures for the health and safety of the women in The Mountain State.

Respectfully Submitted,

*Dana Cody*, Executive Director, Life Legal Defense Foundation