

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

WOMEN’S HEALTH CENTER OF WEST
VIRGINIA,

Plaintiff,

v.

PATRICK MORRISEY *et al.*,

Defendants.

Civil Action No.

Hon.

**DECLARATION OF LOREE STARK IN SUPPORT OF PLAINTIFF’S EMERGENCY
MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Loree Stark declares and states the following:

1. I am the Legal Director of the American Civil Liberties Union of West Virginia and the counsel of record for Plaintiff Women’s Health Center of West Virginia in this case.
2. On Tuesday, March 31, 2020, Plaintiff became aware of the Governor of West Virginia’s Executive Order 16-20 (the “Order”). Citing the outbreak of the COVID-19 virus and West Virginia’s State of Emergency declaration, the Order prohibits “elective medical procedures.” According to the Order, those include all procedures that “are not immediately medically necessary to preserve the patient’s life or long-term health,” with three exceptions: 1) “procedures that cannot be postponed without compromising the patient’s long-term health,” 2) “procedures that cannot be performed consistent with other law at a later date,” and 3) “procedures that are religiously mandated.” The Order took effect on April 1, 2020. A copy of the Order is attached as Exhibit 1.
3. On April 1, 2020, I emailed a letter to Bill J. Crouch at the West Virginia Department of Health and Human Resources and Kishore K. Challa at the West Virginia Board

of Medicine to confirm our reading of the Order to allow WHC to continue providing abortions for its patients. A copy of the letter is attached as Exhibit 2.

4. My letter stated that WHC shares the Governor's commitment to reducing the spread of COVID-19 and protecting the health and safety of both patients and health care workers while continuing to ensure access to essential health services. My letter further stated our reading that the abortions WHC provides, including medication abortions, which are not "procedures" at all, may continue under the Order because they are urgent, medically necessary care. I requested that the Department of Health & Human Resources and the Board of Medicine confirm that both medication abortions and procedural abortions may continue under the Order and that the respective agencies do not intend to enforce the Order against WHC based on its provision of abortion services.

5. By letter dated April 1, 2020, Mark A. Spangler, Executive Director of the Board of Medicine, writing on behalf of the Medical Board, replied. Rather than respond substantively, he indicated merely that the Board had informed licensees of the existence of the Order and would post any further information it received about the Order on its COVID-19 website. A copy of the letter is attached as Exhibit 3.

6. The Governor and other state officials, including the Attorney General, held a press conference on April 1, 2020. During that press conference, the Attorney General stated that the Order applies to abortion facilities, which was never in doubt.

7. After the press conference, I emailed a letter to the Attorney General further seeking to confirm our understanding of the impact of the Order on WHC and its patients. I requested that he confirm that both medication abortions and procedural abortions may continue

under the Order and that he does not intend to enforce the Order against WHC based on its provision of abortion services. A copy of the letter is attached as Exhibit 4.

8. I subsequently received a letter on April 1, 2020, from Attorney General Morrissey stating that he would respond by April 2, 2020. A copy of the letter is attached as Exhibit 5.

9. On April 2, 2020, I received a letter from Attorney General Morrissey stating:

After consultation with the Governor's office, as the office which issued Executive Order No. 16-20 ("Order"), the Order's reference to "procedures" does not exclude procedures that require prescribing and administering medication in a hospital or clinic setting. Further, we do not agree that all "medication abortions and procedural abortions may continue under the Order." The Order applies broadly to all procedures, and no procedure is subject to a blanket exemption. Rather, one or more of the exceptions in the Order must be demonstrated on a case-by-case basis.

A copy of the letter is attached as Exhibit 6.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2020.

/s/ Loree Stark

Loree Stark

EXHIBIT 1

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 16-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the “State of Emergency Declaration”), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Executive Order 9-20 ordered, among other things, all individuals within the State of West Virginia to stay at home or their place of residence unless performing an essential activity, which term “essential activity” included travel for certain medical care and treatment; and

WHEREAS, further measures are necessary to protect the health, safety, and welfare of the public, to disrupt the spread of the virus, and to mitigate the impact of COVID-19, including the prohibition of elective medical procedures throughout the state; and

WHEREAS, prohibiting elective medical procedures is necessary during this state of emergency to protect the public health, safety, and welfare by further limiting the movement of persons and occupancy of premises throughout the state, and by conserving limited medical personnel, personal protective equipment, and other necessary medical equipment and supplies in light of existing and anticipated treatment needs for COVID-19 patients.

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, effective as of 12:00 AM, Eastern Standard Time, on the First day of April, Two Thousand Twenty, that all elective medical procedures are hereby prohibited; provided that patients will still have access to urgent, medically necessary procedures like those needed to preserve the patient's life or long-term health; and provided that this prohibition applies equally to all types of elective medical procedures performed in hospitals, offices, and clinics throughout the state. The term "elective" includes medical procedures that are not immediately medically necessary to preserve the patient's life or long-term health, except that procedures that cannot be postponed without compromising the patient's long-term health, procedures that cannot be performed consistent with other law at a later date, or procedures that are religiously mandated shall not be considered "elective" under this Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, this Thirty-first day of March, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.


GOVERNOR


SECRETARY OF STATE

EXHIBIT 2



West Virginia

P O Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

April 1, 2020

Bill J. Crouch, MPH
West Virginia Department of Health and Human Resources
One Davis Square, Suite 100 East
Charleston, WV 25301
sent via email: dhrsecretary@wv.gov

Kishore K. Challa, MD, FACC
West Virginia Board of Medicine
101 Dee Dr., Suite 103
Charleston, WV 25311
sent via email to be forwarded upon receipt: Mark.A.Spangler@wv.gov

Dear Mr. Crouch and Dr. Challa,

The ACLU of West Virginia represents Women’s Health Center of West Virginia (“WHC”), a licensed outpatient clinic in Charleston providing a range of reproductive health services, including medication and procedural abortion care. We seek to confirm our understanding of the impact of Executive Order No. 16-20 (Mar. 31, 2020), on the clinic and its patients. As you know, this Order took effect a few hours ago, at midnight.

We note at the outset that WHC shares the Governor’s commitment to reducing the spread of COVID-19 and protecting the health and safety of both patients and healthcare workers while continuing to ensure access to essential health services. To that end, WHC has already taken significant measures, consistent with public health guidelines, to mitigate this public health emergency—such as screening patients for COVID-19 upon arrival, imposing strict social distancing measures, and barring visitors.

The Executive Order bans “elective procedures,” which it defines as “medical procedures that are not immediately medically necessary to preserve the patient’s life or long term health.” It specifies that “procedures that cannot be postponed without compromising the patient’s long-term health, procedures that cannot be performed consistent with other law at a later date, or procedures that are religiously mandated shall not be considered ‘elective.’”

We believe that the abortions WHC provides may continue under the Order. First, because medication abortions entail the prescription and dispensing of two medications and are thus not “procedures,” they do not fall within the terms of the Order. Second, we believe that abortion procedures fall within the Order’s exceptions. As you may know, the American College of Obstetricians and Gynecologists, along with numerous other well-respected medical associations, issued a statement on March 18, 2020, on Abortion Access During the COVID-19 Outbreak. The medical groups stated:

To the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic,

abortion should not be categorized as such a procedure. It is an essential component of comprehensive health care. It is also a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible. The consequences of being unable to obtain an abortion profoundly impact a person's life, health, and well-being.¹

We further note that because West Virginia law severely restricts second-trimester abortion, *see* W. Va. Code §§ 16-2O-1, 16-2M-4, abortion is *always* a service that “cannot be performed consistent with other law at a later date,” once a patient has been forced past a certain number of weeks of pregnancy.

Please confirm by 4:00 ET today that you agree that both medication abortions and procedural abortions may continue under the Order, and that you do not intend to enforce the Order against WHC based on its provision of abortion services.

Sincerely,



Loree Stark
Legal Director
ACLU of West Virginia
lstark@acluwv.org
cell: 914-393-4614

¹ Am. Coll. of Obstetricians & Gynecologists, Am. Board of Obstetrics & Gynecology, Am. Ass'n of Gynecologic Laparoscopists, Am. Gynecological & Obstetrical Soc'y, Am. Soc'y for Reprod. Med., Soc'y for Acad. Specialists in Gen. Obstetrics & Gynecology, Soc'y of Fam. Plan., and Soc'y for Maternal-Fetal Med., *Joint Statement on Abortion Access During the COVID-19 Outbreak* (Mar. 18, 2020), <https://www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak>.

EXHIBIT 3



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

CATHERINE C. SLEMP, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

April 1, 2020

VIA EMAIL

Loree Stark, Legal Director
ACLU of West Virginia
PO Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org

Re: Executive Order 16-20

Dear Ms. Stark:

On behalf of the West Virginia Board of Medicine, I write in response to your correspondence of earlier today regarding the above-referenced gubernatorial Executive Order. The West Virginia Board of Medicine is the state agency charged with protecting the health and safety of the public through licensure, regulation and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs).

On March 16, 2020, Governor Justice, declared a State of Emergency to address the COVID-19 pandemic. During the declared state of emergency, the Board has been focusing its efforts on facilitating protection of the public by encouraging provider surge, sharing information regarding temporary regulation suspensions and COVID-19 with licensees, and reducing regulatory strain on providers and patients during these difficult times.

Throughout the course of the State of Emergency to date, there has been significant fluidity in terms of the roll-out of regulation suspension and COVID-19 response information. The Board strives to provide current information as soon as regulatory guidance becomes available from the appropriate parties. Earlier today, the Board provided the following information to its licensees regarding Executive Order 16-20:

On March 31, 2020, Governor Justice executed two new Executive Orders that affect West Virginia providers. Executive Order [16-20](#) bans elective medical procedures in all practice settings, effective today. The Executive Order defines elective procedures as "medical procedures that are not immediately medically necessary to preserve the patient's life or long-term health, except that procedures

Letter to Ms. Stark
April 1, 2020
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that cannot be postponed without compromising the patient's long-term health, procedures that cannot be performed consistent with other law at a later date, or procedures that are religiously mandated shall not be considered 'elective'[" The Executive Order also provides that "patients will still have access to urgent, medically necessary procedures like those needed to preserve the patient's life or long-term health[" If additional information regarding the elective procedure ban is provided by the Governor's Office or the Bureau for Public Health, the Board will post the information on its [COVID-19 webpage](#).

Thank you for your inquiry. Should you have additional questions regarding the applicability or interpretation of Executive Order 16-20, please consider reaching out to the West Virginia Bureau for Public Health.

For the Board,

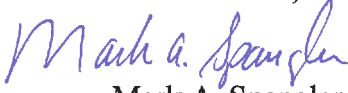

Mark A. Spangler

EXHIBIT 4



West Virginia

P O Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

April 1, 2020

Patrick Morrisey
State Capitol Complex, Bldg. 1, Room E-26
Charleston, WV 25305
sent via email: Patrick.J.Morrisey@wvago.gov; Vicki.L.Pendell@wvago.gov

Dear Attorney General Morrisey,

The ACLU of West Virginia represents Women’s Health Center of West Virginia (“WHC”), a licensed outpatient clinic in Charleston providing a range of reproductive health services, including medication and procedural abortion care. We seek to confirm our understanding of the impact of Executive Order No. 16-20 (Mar. 31, 2020), on the clinic and its patients. As you know, this Order took effect a few hours ago, at midnight.

We note at the outset that WHC shares the Governor’s commitment to reducing the spread of COVID-19 and protecting the health and safety of both patients and healthcare workers while continuing to ensure access to essential health services. To that end, WHC has already taken significant measures, consistent with public health guidelines, to mitigate this public health emergency—such as screening patients for COVID-19 upon arrival, imposing strict social distancing measures, and barring visitors.

We watched Governor Justice’s media briefing on COVID-19 today, April 1, 2020. We agree with the statement you made during that briefing that Executive Order No. 16-20 applies to abortion facilities, as it applies to all health care facilities. The Executive Order bans “elective procedures,” which it defines as “medical procedures that are not immediately medically necessary to preserve the patient’s life or long term health.” It specifies that “procedures that cannot be postponed without compromising the patient’s long-term health, procedures that cannot be performed consistent with other law at a later date, or procedures that are religiously mandated shall not be considered ‘elective.’”

We believe that the abortions WHC provides may continue under the Order. First, because medication abortions entail the prescription and dispensing of two medications and are thus not “procedures,” they do not fall within the terms of the Order. Second, we believe that abortion procedures fall within the Order’s exceptions. As you may know, the American College of Obstetricians and Gynecologists, along with numerous other well-respected medical associations, issued a statement on March 18, 2020, on Abortion Access During the COVID-19 Outbreak. The medical groups stated:

To the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure. It is an essential component of comprehensive health care. It is also a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible. The consequences

of being unable to obtain an abortion profoundly impact a person's life, health, and well-being.¹

We further note that because West Virginia law severely restricts second-trimester abortion, *see* W. Va. Code §§ 16-2O-1, 16-2M-4, abortion is *always* a service that “cannot be performed consistent with other law at a later date,” once a patient has been forced past a certain number of weeks of pregnancy.

Please confirm by 5:00 ET today that you agree that both medication abortions and procedural abortions may continue under the Order, and that you do not intend to enforce the Order against WHC based on its provision of abortion services.

Sincerely,



Loree Stark
Legal Director
ACLU of West Virginia
lstark@acluwv.org
cell: 914-393-4614

¹ Am. Coll. of Obstetricians & Gynecologists, Am. Board of Obstetrics & Gynecology, Am. Ass'n of Gynecologic Laparoscopists, Am. Gynecological & Obstetrical Soc'y, Am. Soc'y for Reprod. Med., Soc'y for Acad. Specialists in Gen. Obstetrics & Gynecology, Soc'y of Fam. Plan., and Soc'y for Maternal-Fetal Med., *Joint Statement on Abortion Access During the COVID-19 Outbreak* (Mar. 18, 2020), <https://www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak>.

EXHIBIT 5



State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

April 1, 2020

Loree Stark
Legal Director
ACLU of West Virginia
PO Box 3952
Charleston, WV 25339
Via e-mail to lstark@acluwv.org

Dear Ms. Stark,

I am in receipt of your letter and will discuss it with the relevant regulatory agency tomorrow. We will respond by tomorrow at 3:00 p.m.

Sincerely,

A handwritten signature in cursive script that reads "Patrick Morrisey".

Patrick Morrisey
Attorney General

EXHIBIT 6



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

April 2, 2020

Loree Stark, Legal Director
ACLU of West Virginia
PO Box 3952
Charleston, WV 25339-3952

Dear Ms. Stark:

Our Office provides the following information in further response to your April 1, 2020 letter. After consultation with the Governor's office, as the office which issued Executive Order No. 16-20 ("Order"), the Order's reference to "procedures" does not exclude procedures that require prescribing and administering medication in a hospital or clinic setting. Further, we do not agree that all "medication abortions and procedural abortions may continue under the Order." The Order applies broadly to all procedures, and no procedure is subject to a blanket exemption. Rather, one or more of the exceptions in the Order must be demonstrated on a case-by-case basis.

Sincerely,

A handwritten signature in black ink that reads "Patrick Morrissey".

Patrick Morrissey
West Virginia Attorney General