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ALLIANCE DEFENSE FUND
Defending Our First Liberty

June 17, 2010

Hon. Alan Levine
Secretary, La. Department of Health and Hospitals
P.O. Box 629
Baton Rouge, LA 70821-0629

Re: **Proceedings against Delta Clinic of Baton Rouge, Inc.**
State ID: BO0004642; Complaint No. 9AB28180

Dear Secretary Levine:

This correspondence addresses the above-numbered complaint file of the DHH Bureau of Health Services Financing ("BHSF"), and the state's authority to initiate immediate action to protect the public's health. As you acknowledged to the media this spring, this is an urgent matter that merits the full attention of your department. It is my view that existing state and federal laws mandate closure of the facility at issue.

A review of the public records of this file proves that the Delta Clinic of Baton Rouge, Inc., ("Delta Clinic"), has engaged in a long pattern of abuses and countless violations of state and federal statutes. While we commend the BHSF finding that this abortion "facility's actions or inactions created the substantial probability that serious harm or death would result to a patient(s) if the situation was not corrected,"[1] and the resulting assessment of $3,000.00 in civil monetary fines, we believe that existing law, and the protection of public health, require much heavier civil and criminal penalties. It seems clear the operations of this abortion clinic can and should be halted.

I. Complaint Background

In a letter dated October 15, 2009, I wrote to the DHH Office of Public Health to request an investigation of specific allegations raised about the Delta Clinic by numerous concerned citizens. This was an urgent matter, since the Delta Clinic is one of Louisiana's largest and most active abortion providers, and has a well-documented history of dangerous non-compliance with both federal and state laws dating back to at least 1997. Due to the severe injury of several women at the Delta Clinic, a 1999 investigation by WAFB-TV in Baton Rouge revealed extensive violations of the sanitary code and other existing regulations, which led ultimately to the

[1] January 20, 2010, letter from Erin Rabalais, RN, BHSF Health Standards Section Chief, to Sylvia Cochran of Delta Clinic, p. 1.

suspension of Delta Clinic physicians and the enactment of new abortion industry regulatory provisions by the Louisiana Legislature.

As you know, in response to my letter in October, an unannounced DHH licensure and complaint survey was conducted at the Delta Clinic from December 2-7, 2009. A letter dated January 20, 2010, from Erin Rabalais, RN, BHSF Health Standards Section Chief, to Sylvia Cochran, Delta Clinic manager, reported the following results of the survey: "At that time it was determined that the facility was out of compliance with the federal and/or state rules," and "had deficient practices, including immediate jeopardy" in the areas of Personnel, Infection Control, and Pharmaceutical Services.

Ms. Rabalais' letter to Ms. Cochran further explained that DHH had decided to assess civil fines for these violations totaling $3,000.00, and that Delta Clinic could request an informal reconsideration of the decision, and/or pursue an administrative appeal. Delta Clinic chose to do neither, and promptly submitted a check for payment of the meager fines on January 25, 2010. DHH further requested a "plan of correction" of the numerous violations, which Delta Clinic submitted on January 19, 2010, and then revised and resubmitted sometime on or after February 3, 2010.

Pursuant to my public records request of February 19, 2010, the DHH Bureau of Legal Services mailed me a 138 page packet concerning the case file for this matter. The contents of the attached, 41-page revised Statement of Deficiencies and Plan of Correction ("the Statement") are extraordinary—including many stunning admissions by the Delta Clinic. Due to the serious nature of these numerous violations of state and federal law, we urge you and other state officials to consider halting the operations of Delta Clinic, and imposing much higher civil penalties and appropriate criminal prosecution available under existing statutes.

II. Specific Findings

In the Statement, Delta Clinic officials frankly *admitted* to several categories of serious legal violations. I summarize the violations here, with reference to each specific page of the Statement, for the benefit of laypersons that may be copied on this letter.

DELTA CLINIC'S VIOLATIONS	STMT. PAGE
"Governing Board failed to ensure that the Clinic had an effective quality assurance program [including employee occurrences, patient occurrences, infections, grievances, ectopic pregnancies, medical re-aspiration, surgical re-aspiration, follow ups, chart completion, daily cleaning, quality controls, and confidentiality]."	2-3
"Governing Board failed to formally identify problem prone areas" [or] "monitor and evaluate the appropriateness of patient care and the performance of medical staff."	3
Failed to ensure sterilization of syringes and intravenous injections, and to prevent infection and cross-contamination	5,6, 10

DELTA CLINIC'S VIOLATIONS	STMT. PAGE
Failed to document: the name, time, route, dose and/or rate of administration of drugs to sedate patients; monitoring of sedated patients' cardiac status, respiratory status or level of consciousness; start and end time of surgical abortion procedures	5
Failed to provide pre-abortion counseling as mandated by law (R.S. 40:1299.35.6)	5
Failed to maintain confidentiality of patient records	5
Failed to provide required records to OPH Vital Records Registry	5
Failed to decontaminate equipment (vaginal probes) between patient uses, thereby increasing the risks of transmitting bacteria and other infectious diseases	6, 34
Failed to ensure single dose intravenous fluid was used only for one patient, thereby increasing the risk of cross-contamination and putting patients at increased risk for infection	9
Failed to ensure appropriate standards of medical practice	9, 18
Failed to follow law regarding mandatory reporting of carnal knowledge of minors	10-11
Failed to properly label or measure/monitor doses of narcotics, or their expiration dates	11
For patients receiving conscious sedation, failed to document the name of medications given, the dosage, the route, the time and push rate, and the person giving the medication	11
Delta admits: "By not monitoring the patients, they could fall into a deep sleep; have adverse respiratory and/or cardiac activity that may require emergency intervention"	16
Failed to follow even the Standards of Practice outlined in the 2009 National Abortion Federation Clinical Policy Guidelines	17
Failed to document start and end times of surgical abortion procedures (the longer the procedures, the greater the risk of infections)	20
Failed to provide information and individual and private counseling to all patients as required by law	20
Failed to ensure pre-op assessments are performed and documented, risking undiagnosed medical conditions that may be contraindicated	24-26
Failed to maintain confidentiality of patient information and records in violation of federal and state law	25, 27
Failed to submit accurate and complete information to Office of Public Health Vital Records registry (La.'s single source of statistics on safety and number of abortions performed)	27-28

DELTA CLINIC'S VIOLATIONS	STMT. PAGE
Incredibly, Delta fraudulently pre-printed all of its state forms ("Report of Induced Termination of Pregnancy Performed in Louisiana") to contain typed data indicating "Father (of fetus)" was "unknown," and typed data indicating there were no complications with any abortion performed.	27-28
Delta admits the forms were pre-printed with the above data—as well as other pre-printed question responses—already completed prior to seeing any patients	27-28
Failed to ensure that outdated supplies, that could cause serious and adverse reactions, were not used on patients	29
Failed to follow aseptic techniques by pre-filling syringes with Nubain and Promethazine with no hub covers and storing them in non-sterile zip-lock bags thus putting patients at risk of bacterial and/or septic infections	31-33
Failed to properly store, safeguard, handle and distribute intravenous medications administered in the facility	36
Failed to ensure that physician's standing orders were timed, dated, and signed by physicians	39
Failed to secure stamped and pre-signed prescription pads (with patient name left blank), by leaving them out in the reception area where they could be stolen and used for criminal activities	40

III. Appropriate Penalties under Existing Law

In spite of this extraordinary list of legal violations, a March 26, 2010, report in The Advocate newspaper indicated that DHH believes it lacks sufficient authority to take decisive action against Delta Clinic and its personnel. However, both federal and state laws are clear on these matters, and appear to provide DHH with substantial power to protect the public health in this situation.

A. DHH Licensing Authority

As you know, DHH is responsible for the licensing of abortion facilities pursuant to R.S. 40:2175.1, *et seq*. The rules are contained in the Louisiana Administrative Code, Title 48, Chapter 44. According to § 4403(A), no outpatient abortion facility can be operated in Louisiana without an appropriate license issued by DHH. R.S. 40:2175.6(G) currently specifies: "The procedure of denial, suspension, or revocation of a license, and appeal therefrom, shall be the same as provided for the licensing of hospitals as contained in R.S. 40:2110."

According to R.S. 40:2110(A):

> The secretary may **deny, suspend or revoke a license** in any case in which he finds that there has been a substantial failure of the applicant or licensee to comply with the requirements of this Part or the rules, regulations and minimum standards

adopted by the department, provided in all such cases the secretary shall furnish the applicant or licensee thirty days written notice specifying reasons for the action.

The subsequent paragraphs of that section provide substantial due process and procedural safeguards for "any applicant or licensee who feels aggrieved by the action of the secretary," including options to suspensively appeal the action of the secretary to an appellate board, and ultimately to the district court for the Parish of East Baton Rouge.

Upon the denial, suspension or revocation of a license, the secretary is then authorized to initiate an action in the name of the state against any person or governmental unit for an **injunction** restraining or preventing such person or governmental unit from the "establishment, conduct, management, or operation of a hospital without a license." (R.S. 40:2112).

In its current session, the Legislature voted in recent days to pass House Bill No. 1370, a measure to amend and reenact R.S. 40:2175.6(G) and to enact R.S. 40:2175.6(H) and (I), relative to the licensure and regulation of outpatient abortion facilities. The new law, which is currently awaiting the Governor's signature, will expressly provide even greater, and more streamlined, authority to DHH. However, that enhanced authority is not necessary in the handling of a case as egregious as the Delta file. Whether under the existing law or its revisions, the outcome should be the same.

B. Other Penalties

Based on the many admitted violations set forth above, DHH is justified in revoking the license held by Delta Clinic and enjoining all of its operations. Moreover, since many of the violations listed above also carry with them specific civil and criminal penalties, it seems clear that DHH has an affirmative duty to forward these matters to the attention of the appropriate prosecutorial authorities.

For example, Delta Clinic admitted in its Statement that it failed to provide pre-abortion counseling as mandated by R.S. 40:1299.35.6. Failure to comply with this statute provides a basis for both criminal and civil penalties, in addition to malpractice actions, professional disciplinary actions and wrongful death actions. (R.S. 40:1299.35.6(F) and (G)).

Delta Clinic also admitted in its Statement that it failed to maintain confidentiality of patient records. According to § 4415(E)(2) of Title 48 of the Louisiana Administrative Code, any person who knowingly discloses patient identifiable information in violation of said section shall be subject to punishment under federal law (42 U.S.C. § 1320d-6), which includes fines, imprisonment or a combination of both.

On page 18 of Delta Clinic's Statement, Delta Clinic admitted that it failed to report the carnal knowledge of minors as required by law. Under R.S. 14:403, mandatory reporters who fail to report such crimes shall be guilty themselves of a misdemeanor and shall be subject to fines, imprisonment or a combination of both.

Delta Clinic readily admitted that it failed to gather and report complete information to the Office of Public Health Vital Records registry. According to R.S. 40:66, failure to complete the forms required by law shall be considered a misdemeanor punishable by fines, imprisonment or a combination of both.

The failure of Delta Clinic to submit complete statutorily required information to the Vital Records registry—Louisiana's single source of statistics on the safety and number of abortions performed each year—has some striking implications. The Delta Clinic is one of the largest and most active abortion clinics in the state and region. If Delta Clinic's reports on the number of abortions it performed and the number of complications it encountered are much lower than the actual figures (a fact to which Delta has frankly admitted), then that necessarily means *all recent state and federal abortion statistics, which are derived in part from these numbers, have thus been grossly underestimated.* DHH and the federal Centers for Disease Control and Prevention should thus be required to revise their annual statistical reports for the past several years, and notify all agencies and interested persons and organizations that their data is now unreliable.

IV. Conclusion

It is imperative that DHH take immediate action in this case to protect the health of the general public, and certainly the women who may unknowingly seek the services of the Delta Clinic. This facility's long pattern of flagrant abuses of the law and basic safety standards cannot be tolerated. All should agree the meager $3,000.00 fine that has been assessed is a woefully inadequate penalty.

If I can provide you with any additional information, please do not hesitate to contact me. I thank you in advance for your attention to this matter and your dedicated public service.

Very sincerely yours,

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J. Michael Johnson
Senior Legal Counsel

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Attachments:
DHH public records re: Delta Clinic, State ID: BO0004642 – Part I
DHH public records re: Delta Clinic, State ID: BO0004642 – Part II