No. 11-30296

IN THE United States Court of Appeals for the Fifth Circuit

CHOICE INCORPORATED OF TEXAS, doing business as Causeway Medical Clinic; BOSSIER CITY MEDICAL SUITE, INCORPORATED; DELTA CLINIC OF BATON ROUGE, INCORPORATED; MIDTOWN MEDICAL, L.L.C.; WOMEN'S HEALTH CARE CENTER, INCORPORATED; JOHN DOE, M.D., Plaintiffs – Appellants,

v.

BRUCE D. GREENSTEIN, in his official capacity as Secretary of the Louisiana Department of Health and Hospitals, Defendant – Appellee.

> On Appeal from the United States District Court for the Middle District of Louisiana

APPELLEE'S MOTION TO SUPPLEMENT RECORD AND MOTION FOR EXTENSION OF TIME TO FILE BRIEF

Fernin F. Eaton LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS 628 North 4th Street Baton Rouge, LA 70821-3836

Steven H. Aden ALLIANCE DEFENSE FUND 801 G Street, N.W., Suite 509 Washington, DC 20001 JAMES D. "BUDDY" CALDWELL Louisiana Attorney General S. KYLE DUNCAN (Bar No. 25038) Appellate Chief

LOUISIANA DEPARTMENT OF JUSTICE P.O. Box 94005 Baton Rouge, LA 70804-9005 Telephone: (225) 326-6716 Fax: (225) 326-6793 E-mail: DuncanK@ag.state.la.us

Counsel for Appellee

Case: 11-30296 Document: 00511509720 Page: 3 Date Filed: 06/15/2011

PRINTED: 05/18/2011 FORM APPROVED

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER BO0004600				(X2) MULTIF A. BUILDING B. WING	PLE CONSTRUCTION	COMPL	(X3) DATE SURVEY COMPLETED 01/27/2011		
	ROVIDER OR SUPPLIER	;	STREET ADDI 3044 RIDG METAIRIE,	ELAKE DRI	TATE, ZIP, CODE VE	*			
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S 000	An unannounced licensing survey was conducted from 1/26/2011 through 1/27/2011.			S 000					
S4405	GOVERNING BOD	Y		S4405					
	This Rule is not met as evidenced by: §4405. Governing Body A. The abortion facility must have a governing body which meets at least annually. The governing body is the ultimate authority of the facility, and as such, it shall approve and adopt all bylaws, rules, policies, an			Halleling					
	standards. All bylaws, rules, polici formulated in accordance with the be in writing,	dance with these lice es, and procedures ese licensing standa ry, and reviewed ani	rds shall	1/02/1					
	due to type of ownership or oth practical to establish a gover documents shall reveal the person(s for the	er reasons, it is not p ming body, as such,) who are legally res ty and are also respo	possible or then ponsible	elpter "	×				
	carrying out the functions an pertaining to the governing bo B. The responsibilit include, but not be I	nd obligations contair dy ies of the governing	ned herein body shall	ae					
ORATORY		Ballent L	TATIVE'S SIGNA	TURE	TITLE VICE-Pres	6	(X6) DATE		
ATE FORM	A	REC HEAL	EIVE	NC.	OC11	If continuat	on sheet 1 of 2		

	STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER. BO0004600			(X2) MULTIPLE CONSTRUCTION A BUILDING B WING		(X3) DATE SURVEY COMPLETED 01/27/2011	
NAME OF	PROVIDER OR SUPPLIER		STREET ADD	RESS, CITY, ST	ATE, ZIP CODE		
CAUSE	VAY MEDICAL CLINIC	; ,		ELAKE DRIV	E		
(X4) ID PREFIX TAG	(EACH DEFICIENCY	TEMENT OF DEFICIENCIE MUST BE PRECEDED BY SC IDENTIFYING INFORM	FULL	ID PREFIX TAG	PROVIDER'S PLAN OF CORREC (EACH CORRECTIVE ACTION SHO CROSS-REFERENCED TO THE APPR DEFICIENCY)	ULD BE	(X5) COMPLETE DATE
S4405	Based on record re governing body faile A) adopt and appro ensure the clinic fol Children's Code Art La. R.S. 40.80.1) re of carnal knowledge Review of 14 samp termination of pregr be minors (Patients B) failed to ensure p facility had been ap governing body for S2 and S5). Findi A. Review of La. Ch provides a definition abuse. A mandator following individuals duties: Health prac surgeons, physical interns, hospital sta chiropractors, licens dental hygienist, em paramedics, optome coroners. Abuse following acts which physical, mental, or of the child. The any sexual act with or the aiding or toler caretaker of the chil any other person or pornographic displa	dical staff appointme view and interview the ed to: we a policy/procedur lowed the law (Louis ticle 603, La. R.S. 40 egarding mandatory re- e, incest, and rape of led patients seeking nancies revealed 4 of #1, #2, #3, and #4). physicians practicing proved for appointm 2 of 2 physicians (Ph ngs: hildren's Code Article n of mandatory report y reporter is as any of s performing their occ titioners, including pl therapists, dentists, in ff members, podiatri- sed nurses, nursing a hergency medical tec- etrists, medical exam is defined as any on a seriously endanger emotional health an involvement of the a parent or any othe ration by the parent of d's sexual involvement the child's involvement s, or any other invo- activity constituting a	e to iana 80, and reporting f minors. voluntary f the 14 to at the ent by the hysician 603 ters and of the cupational hysicians, residents, sts, aides, chnicians, niners, or e of the the d safety child in r person, or the ent with ent in lvement	S4405	S4405 (A) 1)& 2): N/A; 3) The Governi Body will amend the current written policy entitled "Polic the Reporting of Suspected Child Abuse and Neglect" (which is found in the facility policy and procedure manual, include requiring the attendin physician or clinic staff to ask any minor patient the age of the father of the fetus as well as whether the sexual contact was forced. The information given the minor patient will be documented in the patient's medical record and used by cl staff to assist in determining it reporting is required accordin Louisiana law. 4) The clinic director monitored by the medical director will review medical records of minor patie on a monthly basis to ensure compliance. 5) June 21, 2011.	y on 's) to g he is he by linic f g to ents	

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S4405 (B)La. R.S. 40 80 provides that felony carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is shufteen years of age, when the wichtin is not the offender and when the difference between the age of the offender and when the age of the offender is four years or greater. La. R.S. 40.80.1 provides that misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older but jess than seventeen years of age or older but jess than seventeen years of age or older but less than seventeen years of age or older but less than seventeen years of age or older but he offender is greater than two years, but less than four years.S4405 (B)Medical Record review revealed Patient #1 was 14 years old (Date of Birth 2/19/1996). Patient #11 had a procedure of Patient #12 unborn child or whether sexual contact had been consensual or forced.S4405 (B)Medical Record review revealed Patient #2 was 15 years old (Date of Birth 7/29/1995). Patient #2 had a procedure to terminate her pregnancy at the facility on 1/08/2011. Review of Patient #2 was 15 years old (Date of Birth 7/29/1995). Patient #2 had a procedure to terminate her pregnancy at the facility on 1/08/2011. Review of Patient #2 was 15 years old (Date of Birth 7/29/1995). Patient #2 had a procedure to terminate her pregnancy at the facility on 1/08/2011. Review of Patient #2 was to years old (Date of Birth 7/29/1995). Patient #2 had a proc	PREFIX	(EACH DEFICIENCY	MUST BE PRECEDED BY	FULL	PREFIX	(EACH CORRECTIVE ACTION SHO CROSS-REFERENCED TO THE APP	OULD BE	COMPLETE
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CAUSEV	VAY MEDICAL CLINIC	;		, LA 70002			
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	 any questions regarchild for any patient (Patient #1, #2, #3, wrote "unknown" in regarding the age of she never asked any the unborn child. During a face to face to face to a f	he practice of the fac rding the father of the is, which included mi and #4). S4 indicate the blank on the form of the father. S4 state by patients about the respective on 1/26/2 strator S1 indicated to ity regarding mandate of minors as it relates or rape. S1 further in actice at the facility to f minors regarding the porn child to determine required as per Louis cility's "Medical Staff no documented date or review)" presente vealed in part, "The patients of the clinic ty of it's governing body to deleg care to the medical s onsible for the delive The following bylaw se under which the m 1. Physicians are resily. 2. Recommendate e medical staff will be ly for consideration. y the clinic shall be li iana. 11. Abortions w	e unborn nors ed she n ed that father of 2011 at there was fory s to carnal dicated it o obtain re age of ne if siana Bylaws, of d by the medical is the bdy. It is ate the taff. The ery of vs, rules nedical sponsible tions for e made censed vill not	S4405			
	long as the physician tandards Section	MP/(Last Monthly Pe n performing the proc	cedure				

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	TATEMENT OF DEFICIENCIES ND PLAN OF CORRECTION (X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER BO0004600		(X2) MULTIPLE CONSTRUCTION A BUILDING B. WING		(X3) DATE SURVEY COMPLETED 01/27/2011		
	POVIDER OR SUPPLIER		STREET AD	DRESS. CITY, S	TATE, ZIP CODE		
SAUSEMAX MEDICAL CLINIC 3044 RIDG			GELAKE DRI LA 70002				
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S4405	Continued From page 5 determines that the fetus is not viable". Physicians S2 and S5 are the only physicians who practice in the abortion facility. Review of credentialing files for S2 and S5 revealed the only credentialing information to be a copy of the physicians' current Medical License, CDS (Controlled Dangerous Substance) license, and DEA (Drug Enforcement Agency) license. Review of the entire credentialing files revealed no documented evidence of approval for appointment to the medical staff by the governing body. During a face to face interview on 1/26/2011 at 10:30 a.m., Administrator S1 confirmed there was no documented evidence in the files of Physicians S2 and S5 regarding Governing Body approval for appointment to the medical staff.		S4405				
S4409	PERSONNEL			S4409			
	This Rule is not met as evidenced by: §4409. Personnel A. Medical Staff						
	bylaws, rules, and policies f activities and recommend to the g who are considered eligible medical staff.	f shall formulate and for the proper conduc governing body phys for membership on t and policies must be governing body.	ct of its icians he			. ,	

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Bobby Jindal GOVERNOR



Bruce D. Greenstein SECRETARY

State of Louisiana

Department of Health and Hospitals Bureau of Health Services Financing

IMPORTANT NOTICE- PLEASE READ CAREFULLY

DATE: 05/23/2011

TO: ADMINISTRATOR Causeway Medical Clinic

FROM: HEALTH STANDARDS SECTION

RE: ANNUAL LICENSING SURVEY RESULTS

CERTIFIED MAIL:7009 0080 0001 0215 8070

On January 27, 2011, a survey was conducted at your facility by the Department of Health and Hospitals, Health Standards Section, to determine if your facility was in compliance with licensing standards established by the State of Louisiana. This survey found deficiencies in your facility whereby corrections are required to assure <u>compliance</u> with licensing standards.

Enclosed for your completion and prompt response is the <u>STATE FORM</u> (STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (PoC)). A PoC for the deficiencies must be submitted within 10 working days after your receipt of the STATE FORM. In the column "Completion Date," enter a projected date of correction. An explicit date must be shown and shall not exceed 30 days from today's letter dated 05/23/2011. Please refer to the enclosed memorandum, <u>Required Components for the Plan of Correction</u>, for guidance in developing your PoC. Failure to submit an acceptable PoC by the date indicated below may result in the imposition of specified remedies. The STATE FORM must be signed and dated by the administrator or other authorized official as indicated. The <u>SIGNIFICANT</u> FINDINGS form, if enclosed, does not require a PoC, but the facility is expected to sign, date, and return the form.

You have one opportunity to question citations of deficient practice through an <u>Informal Dispute</u> <u>Resolution</u> process. To be given such an opportunity you must send your written request, specifying the deficient practice(s) that you are disputing and why you are questioning these, to: DHH/Health Standards Section, Attention IDR Program Manager, P.O. Box 3767, Baton Rouge, LA 70821-3767. The request must be made within 10 days of receipt of your STATE FORM. Again, this is an informal dispute resolution and it is not necessary for your attorney to be present, however, if you wish for your attorney to be included in the informal dispute resolution, please advise this office. Please refer to the enclosed memorandum, <u>Informal Dispute Resolution Process</u>, for further information.

Please provide this PoC by June 5, 2011 Mail the completed original and properly signed/dated PoC to: Health Standards Section, Attention Program Manager, P.O. Box 3767, Baton Rouge, Louisiana 70821-3767.

500 Laurel St • Suite 100 (70801-1811) • P.O. Box 3767 • Baton Rouge, Louisiana 70821-3767 Phone #: 225/342-0138 • Fax #: 225/342-5292 • WWW.DHH.LA.GOV "An Equal Opportunity Employer"

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