

No. 11-30296

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IN THE  
**United States Court of Appeals**  
**for the Fifth Circuit**

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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.*

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

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

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FORM APPROVED

## Health Standards Section

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER  <b>BO0004600</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED  <b>01/27/2011</b>
NAME OF PROVIDER OR SUPPLIER  <b>CAUSEWAY MEDICAL CLINIC</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>3044 RIDGELAKE DRIVE METAIRIE, LA 70002</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	Explicit Statements-01  An unannounced licensing survey was conducted from 1/26/2011 through 1/27/2011.	S 000		
S4405	GOVERNING BODY  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, and procedures formulated in accordance with these licensing standards. All bylaws, rules, policies, and procedures formulated in accordance with these licensing standards shall be in writing, revised as necessary, and reviewed annually. If, due to type of ownership or other reasons, it is not possible or practical to establish a governing body, as such, then documents shall reveal the person(s) who are legally responsible for the conduct of the facility and are also responsible for carrying out the functions and obligations contained herein pertaining to the governing body. B. The responsibilities of the governing body shall include, but not be limited to: 2. acting upon recommendations from the	S4405	<i>accepted 6/6/2011 H. Dulin</i>	

DHH/Health Standards Section

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

STATE FORM

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TITLE

*Vice-Pres*

(X6) DATE

*6/3/11*

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S4405	Continued From page 1  medical staff relative to medical staff appointments;  Based on record review and interview the governing body failed to: A) adopt and approve a policy/procedure to ensure the clinic followed the law (Louisiana Children's Code Article 603, La. R.S. 40.80, and La. R.S. 40.80.1) regarding mandatory reporting of carnal knowledge, incest, and rape of minors. Review of 14 sampled patients seeking voluntary termination of pregnancies revealed 4 of the 14 to be minors (Patients #1, #2, #3, and #4). B) failed to ensure physicians practicing at the facility had been approved for appointment by the governing body for 2 of 2 physicians (Physician S2 and S5). Findings:  A. Review of La. Children's Code Article 603 provides a definition of mandatory reporters and abuse. A mandatory reporter is as any of the following individuals performing their occupational duties: Health practitioners, including physicians, surgeons, physical therapists, dentists, residents, interns, hospital staff members, podiatrists, chiropractors, licensed nurses, nursing aides, dental hygienist, emergency medical technicians, paramedics, optometrists, medical examiners, or coroners. . . Abuse is defined as any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child . . . The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.	S4405	<b>S4405 (A)</b>  1)& 2): N/A; 3) The Governing Body will amend the current written policy entitled "Policy on the Reporting of Suspected Child Abuse and Neglect" (which is found in the facility's policy and procedure manual) to include requiring the attending 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 by the minor patient will be documented in the patient's medical record and used by clinic staff to assist in determining if reporting is required according to Louisiana law. 4) The clinic director monitored by the medical director will review medical records of minor patients on a monthly basis to ensure compliance. 5) June 21, 2011.	

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S4405	<p>Continued From page 2</p> <p>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 thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater. . .</p> <p>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 has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between age of the victim and age of the offender is greater than two years, but less than four years.</p> <p>Medical Record review revealed Patient #1 was 14 years old (Date of Birth 2/19/1996). Patient #1 had a procedure to terminate her pregnancy at the facility on 1/20/2011. Review of Patient #1's "Report of Induced Termination of Pregnancy" Form revealed the father of the unborn child to be "unknown". There was no documented evidence that the physician or staff attempted to obtain the required state reporting information regarding the age of the father of Patient #1's unborn child or whether sexual contact had been consensual or forced.</p> <p>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's "Report of Induced Termination of Pregnancy"</p>	S4405	<p><b>S4405 (B)</b></p> <p>1)&amp; 2): N/A; 3) The Governing Body will ensure that all physician files contain evidence of Governing Body approval for appointment to the medical staff. 4) The clinic director monitored by the Governing Body will review physician files on an annual basis to ensure compliance. 5) June 21, 2011.</p>		

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S4405	<p>Continued From page 3</p> <p>Form revealed the father of the unborn child to be "unknown". There was no documented evidence that the physician or staff attempted to obtain the required state reporting information regarding the age of the father of Patient #2's unborn child or whether sexual contact had been consensual or forced.</p> <p>Medical Record review revealed Patient #3 was 15 years old (Date of Birth 8/11/1995). Patient #3 had a procedure to terminate her pregnancy at the facility on 12/30/2010. Review of Patient #3's "Report of Induced Termination of Pregnancy" Form revealed the father of the unborn child to be "unknown". There was no documented evidence that the physician or staff attempted to obtain the required state reporting information regarding the age of the father of Patient #3's unborn child or whether sexual contact had been consensual or forced.</p> <p>Medical Record review revealed Patient #4 was 15 years old (Date of Birth 12/30/1994). Patient #4 had a procedure to terminate her pregnancy at the facility on 12/29/2010. Review of Patient #4's "Report of Induced Termination of Pregnancy" Form revealed the father of the unborn child to be "unknown". There was no documented evidence that the physician or staff attempted to obtain the required state reporting information regarding the age father of Patient #4's unborn child or whether sexual contact had been consensual or forced.</p> <p>During a face to face interview on 1/26/2011 at 10:10 a.m., Assistant S4 indicated she was the staff responsible for filling out the form titled, "Report of Induced Termination of Pregnancy". S4 indicated the form was reviewed and signed by the physician performing the procedure after she had completed the form. S4 further indicated</p>	S4405		

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S4405	<p>Continued From page 4</p> <p>it had never been the practice of the facility to ask any questions regarding the father of the unborn child for any patients, which included minors (Patient #1, #2, #3, and #4). S4 indicated she wrote "unknown" in the blank on the form regarding the age of the father. S4 stated that she never asked any patients about the father of the unborn child.</p> <p>During a face to face interview on 1/26/2011 at 10:30 a.m., Administrator S1 indicated there was no policy in the facility regarding mandatory reporting of abuse of minors as it relates to carnal knowledge, incest, or rape. S1 further indicated it had not been the practice at the facility to obtain the sexual history of minors regarding the age of the father of the unborn child to determine if reporting would be required as per Louisiana Law.</p> <p>B) Review of the facility's "Medical Staff Bylaws, Rules and Policies (no documented date of adoption, revisions, or review)" presented by the facility as current revealed in part, "The medical care provided to the patients of the clinic is the ultimate responsibility of it's governing body. It is the policy of the governing body to delegate the function of medical care to the medical staff. The medical staff is responsible for the delivery of healthcare services. The following bylaws, rules and policies are those under which the medical staff shall operate. 1. Physicians are responsible to the governing body. 2. Recommendations for physicians to join the medical staff will be made to the governing body for consideration. Physicians utilized by the clinic shall be licensed by the state of Louisiana. 11. Abortions will not exceed 24 weeks (LMP/(Last Monthly Period)) so long as the physician performing the procedure</p>	S4405			

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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  This Rule is not met as evidenced by: §4409. Personnel  A. Medical Staff  2. The medical staff shall formulate and adopt bylaws, rules, and policies for the proper conduct of its activities and recommend to the governing body physicians who are considered eligible for membership on the medical staff. Such bylaws, rules, and policies must be in writing and must be approved by the governing body.	S4409		

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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 compliance with licensing standards.

Enclosed for your completion and prompt response is the STATE FORM (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, Required Components for the Plan of Correction, 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 SIGNIFICANT 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 Informal Dispute Resolution 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, Informal Dispute Resolution Process, 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.**