

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2013 JAN 17 A 11:42

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA No. 2012010631

RENDITION NO.: AHCA-13- 0020 -S-OLC

SOUTHWEST FLORIDA WOMEN'S
CLINIC, INC.,

Respondent.

FINAL ORDER

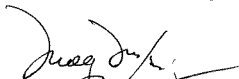
Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The Election of Rights form advised of the right to an administrative hearing.
3. The parties have since entered into the attached Settlement Agreement. (Ex. 2)

Based upon the foregoing, it is **ORDERED**:

4. The Settlement Agreement is adopted and incorporated by reference into this Final Order. The parties shall comply with the terms of the Settlement Agreement.
5. The Administrative Complaint is voluntarily withdrawn.

ORDERED at Tallahassee, Florida, on this 17 day of January, 2013



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 17th day of January, 2013



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Bldg. #3, Mail Stop #3
Tallahassee, Florida 32308-5403
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Ali A. Azima, Administrator Southwest Florida Women's Clinic, Inc. 710 Pondella Road, Unit 2 North Fort Myers, Florida 33903 (U.S. Mail)
Deborah Leoci, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

Case No. 2012010631

SOUTHWEST FLORIDA WOMEN'S CLINIC, INC.,

Respondents.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration (hereinafter "the Agency"), by and through its undersigned counsel, and files this Administrative Complaint against the Respondents, SOUTHWEST FLORIDA WOMEN'S CLINIC, INC., (hereinafter "the Respondent"), pursuant to Sections 120.569, and 120.57, Florida Statutes (2011), and alleges:

NATURE OF THE ACTION

This is an action to impose an administrative fine against an abortion clinic in the amount of FIVE HUNDRED DOLLARS (\$500.00) pursuant to Section 390.018, Florida Statutes (2011).

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter pursuant to sections 120.569 and 120.57, Florida Statutes (2011).
2. The Agency has jurisdiction over the Respondent pursuant to Sections 20.42 and 120.60, and Chapters 408, Part II, and 390, Florida Statutes (2011).
3. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code.

PARTIES

4. The Agency is the licensing and regulatory authority that oversees abortion clinics in Florida and enforces the applicable statutes and rules governing such facilities. Chapters 408, Part II, and 390, Florida Statutes (2011); Chapter 59A-9, Florida Administrative Code. The Agency may deny, revoke, and suspend any license issued to an abortion clinic and impose an administrative fine for a violation of the Health Care Licensing Procedures Act, the authorizing statutes or the applicable rules. Sections 408.813, 408.815, 390.018, Florida Statutes (2011).

5. The Respondent was issued a license (License Number 883) by the Agency to operate an abortion clinic located at 710 Pondella Road, Unit 12, North Fort Myers, Florida 33903, and was at all material times required to comply with the applicable statutes and rules. The Respondent's license included the performance of second trimester abortions. Ali A. Azima, M.D., is listed as the licensee of the Facility on the records of the Agency and Southwest Florida Women's Clinic, Inc., is listed as the corporation and principal addressee of the Facility on the records of the Florida Division of Corporations.

COUNT I

The Respondent Failed To Ensure That Surgical Instruments Were Cleaned And Checked For Function After Use To Ensure Proper Operation In Violation Of Rule 59A-9.0225(7), Florida Administrative Code

6. The Agency re-alleges and incorporates by reference paragraphs one (1) through five (5).

7. Pursuant to Florida law, equipment maintenance: When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to insure proper operation, and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall

be thoroughly tested for proper calibration before returning it to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.

All anesthesia and surgical equipment shall have a written preventive maintenance program developed and implemented. Equipment shall be checked and tested in accordance with the manufacturer's specifications at designated intervals, not less than annually, to ensure proper operation and a state of good repair.

All surgical instruments shall have a written preventive maintenance program developed and implemented. Surgical instruments shall be cleaned and checked for function after use to ensure proper operation and a state of good repair.

Rule 59A-9.0225(7), Florida Administrative Code.

8. On or about May 31, 2012, the Agency conducted a Relicensure Survey of the Respondent's facility.

9. Based on observation during the clinic tour and staff interview, the clinic failed to provide a written preventive maintenance program for the autoclave sterilization machine. The clinic failed to follow the manufacturer's specifications for periodic checking and testing to insure proper operation.

10. On May 31, 2012 at 9:15 a.m. during a tour of the clinic the autoclave machine was observed in the back room. The inspection date on the label attached to the autoclave was April 2008. The instrument tray was a dark brown and dust was on the autoclave door.

11. During an interview with the Nurse she stated, "I clean it once a month. That sticker was put on when we had to get it fixed. It still works, the indicator strips turns dark brown. This is a steam sterilizer." A review of the autoclave Manufacturer's Manual noted it should be cleaned once a week. The Nurse was not able to provide a history of testing, maintenance, or cleaning of the sterilizer.

12. The Respondent was given a mandatory correction date of June 30, 2012.

13. On or about August 14, 2012, the Agency conducted a Follow-Up Survey to the May 31, 2012 Relicensure Survey of the Respondent's facility.

14. Based on observation during the clinic tour and staff interview, the clinic failed to provide a written preventive maintenance program for the autoclave sterilization machine. The clinic failed to follow the manufacturer's specifications for periodic checking and testing to insure proper operation and failed to provide documentation of a maintenance program ensuring reused equipment is sanitization.

15. On August 14, 2012 at 2:45 a.m. during a tour of the clinic the autoclave was observed in the back room. The date on the label attached to the autoclave was June 29, 2012, the nurse stated, it was put on when we had to get it fixed. The clinic was able to provide a form from Clinical Equipment Repair, LLC dated July 3, 2012.

16. On August 14, 2012 at 2:45 a.m. during an interview the nurse stated, "I clean it once or twice in the month. I might have cleaned it twice since the annual survey. I do not have a log." The clinic was not able to provide a log as noted in the plan of correction submitted to the field office, "We will also begin to keep a log of the dates the autoclave is cleaned." Furthermore, the clinic was not able to provide a policy.

17. The Respondent was cited for a violation pursuant to Section 390.018, Florida Statutes (2011).

18. Pursuant to Florida law, in addition to the requirements of Part II of Chapter 408, Florida Statutes, the Agency may impose a fine upon the clinic in an amount not to exceed \$1,000 for each violation of any provision of Chapter 390, Florida Statutes, Part II of Chapter 408, or the applicable rules. Section 390.018, Florida Statutes (2011).

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration,

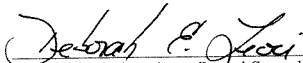
intends to impose an administrative fine against the Respondent in the amount of FIVE HUNDRED DOLLARS (\$500.00).

CLAIM FOR RELIEF

WHEREFORE, the Petitioner, State of Florida, Agency for Health Care Administration, respectfully requests the Court to grant the following relief:

1. Enter findings of fact and conclusions of law in favor of the Agency.
2. Impose an administrative fine against the Respondent in the amount of FIVE HUNDRED DOLLARS (\$500.00) against the Respondent.
3. Order any other relief that the Court deems just and appropriate.

Respectfully submitted on this 17th day of October, 2012.



Deborah E. Leoci, Assistant General Counsel
Florida Bar No. 0814423
Agency for Health Care Administration
Office of the General Counsel
2295 Victoria Avenue, Room 346C
Fort Myers, Florida 33901
Telephone: (239) 335-1253

NOTICE

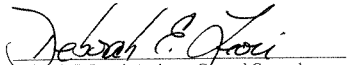
RESPONDENT IS NOTIFIED THAT IT/HE/SHE HAS A RIGHT TO REQUEST AN ADMINISTRATIVE HEARING PURSUANT TO SECTIONS 120.569 AND 120.57, FLORIDA STATUTES. THE RESPONDENT IS FURTHER NOTIFIED THAT IT/HE/SHE HAS THE RIGHT TO RETAIN AND BE REPRESENTED BY AN ATTORNEY IN THIS MATTER. SPECIFIC OPTIONS FOR ADMINISTRATIVE ACTION ARE SET OUT IN THE ATTACHED ELECTION OF RIGHTS.

ALL REQUESTS FOR HEARING SHALL BE MADE AND DELIVERED TO THE ATTENTION OF: *THE AGENCY CLERK, AGENCY FOR HEALTH CARE ADMINISTRATION, 2727 MAHAN DRIVE, BLDG #3, MS #3, TALLAHASSEE, FLORIDA 32308; TELEPHONE (850) 412-3630.*

THE RESPONDENT IS FURTHER NOTIFIED THAT IF A REQUEST FOR HEARING IS NOT RECEIVED BY THE AGENCY FOR HEALTH CARE ADMINISTRATION WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THIS ADMINISTRATIVE COMPLAINT, A FINAL ORDER WILL BE ENTERED BY THE AGENCY.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form has been served to: Ali A. Azima, Administrator and Registered Agent for Southwest Florida Women's Clinic, Inc., 710 Pondella Road, Unit 12, North Fort Myers, Florida 33903, by United States Certified Mail, Return Receipt No. 7011 2000 0001 4884 9300 on this 17th day of October, 2012.



Deborah E. Leoci, Assistant General Counsel
Florida Bar No. 0814423
Agency for Health Care Administration
Office of the General Counsel
2295 Victoria Avenue, Room 346C
Fort Myers, Florida 33901
Telephone: (239) 335-1253

Copies furnished to:

<p>Ali A. Azima Administrator and Registered Agent for Southwest Florida Women's Clinic, Inc. 710 Pondella Road, Unit 12 North Fort Myers, Florida 33903 (U.S. Certified Mail)</p>	<p>Deborah E. Leoci, Assistant General Counsel Office of the General Counsel Agency for Health Care Administration 2295 Victoria Avenue, Room 346C Fort Myers, Florida 33901</p>
	<p>Harold Williams, Field Office Manager Agency for Health Care Administration 2295 Victoria Avenue, Room 340A Fort Myers, Florida 33901 (Electronic Mail)</p>

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA,
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

Case No. 2012010631

SOUTHWEST FLORIDA WOMEN'S CLINIC, INC.,

Respondents.
_____ /

ELECTION OF RIGHTS

This Election of Rights form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be an **Administrative Complaint, Notice of Intent to Impose a Late Fee, or Notice of Intent to Impose a Late Fine.**

Your Election of Rights must be returned by mail or by fax within twenty-one (21) days of the date you receive the attached Administrative Complaint, Notice of Intent to Impose a Late Fee, or Notice of Intent to Impose a Late Fine.

If your Election of Rights with your elected Option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a **Final Order will be issued.**

Please use this form unless you, your attorney or your representative prefer to reply in accordance with Chapter 120, Florida Statutes (2012) and Rule 28, Florida Administrative Code.

PLEASE RETURN YOUR ELECTION OF RIGHTS TO THIS ADDRESS:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
Phone: 850-412-3630 Fax: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) ____ **I admit the allegations of fact and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint and I waive my right to object and to have a hearing.** I understand that by giving up my right to a hearing, a Final Order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) ____ I admit the allegations of fact and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) ____ I dispute the allegations of fact and law contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Subsection 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing OPTION THREE (3) by itself is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. Your name, address, telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes may be available in this matter if the Agency agrees.

License Type: _____ (Assisted Living Facility, Nursing Home, Medical Equipment, Other)

Licensee Name: _____ License Number: _____

Contact Person: _____
Name Title

Address: _____
Street and Number City State Zip Code

Telephone No. _____ Fax No. _____ E-Mail (optional) _____

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the above licensee.

Signature: _____

Date: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA,
AGENCY FOR HEALTH
CARE ADMINISTRATION,

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Case No: 2012010631

SOUTHWEST FLORIDA WOMEN'S CLINIC, INC.

Respondent.
_____ /

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent, SOUTHWEST FLORIDA WOMEN'S CLINIC, INC. (hereinafter "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, Respondent is an Abortion Clinic licensed pursuant to Chapter 408, Part II and 390, Florida Statutes (2011); Chapter 59A-9, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapter 408, Part II, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on or about October 26, 2012 notifying the Respondent of its intent to impose administrative fines in the amount of \$500.00 ; and

WHEREAS, Respondent requested formal administrative proceeding by selecting Option 3 on the Election of Rights form; and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.
2. Both parties agree that the “whereas” clauses incorporated herein are binding findings of the parties.
3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.
4. Upon full execution of this Agreement, the Agency agrees to voluntarily dismiss the administrative complaint.
5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.
6. By executing this Agreement, Respondent neither admits nor denies, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced

herein. No agreement made herein shall preclude the Agency from imposing a penalty against Respondent for any deficiency/violation of statute or rule identified in a future survey of Respondent, which constitutes a “repeat” or “uncorrected” deficiency from surveys identified in the administrative complaint. The parties agree that in such a “repeat” or “uncorrected” case, the deficiencies from the surveys identified in the administrative complaint shall be deemed found without further proof.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, licensure for limited mental health, limited nursing services, extended congregate care, or a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the administrative complaint. This agreement does not prohibit the Agency from taking action regarding Respondent’s Medicaid provider status, conditions, requirements or contract.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case.

9. Each party shall bear its own costs and attorney’s fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State

of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within thirty-one (31) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. Respondent has the capacity to execute this Agreement. Respondent understands that it has the right to consult with counsel and has knowingly and freely entered into this Agreement without exercising its right to consult with counsel. Respondent affirms that Respondent understands counsel for the Agency represents solely the

Agency and Agency counsel has not provided legal advice to or influenced Respondent in its decision to enter into this Agreement.

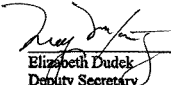
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

17. This Agreement supersedes any prior oral or written agreements between the parties.

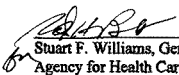
18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

19. All parties agree that a facsimile signature suffices for an original signature.


The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.


Elizabeth Dudek
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive, Bldg #1
Tallahassee, Florida 32308

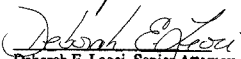
DATED: 11/17/13


Stuart F. Williams, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 12/2/12


Ali A. Azima, Facility Administrator
and Registered Agent
Southwest Florida Women's Clinic, Inc.
710 Pondella Road, Unit 12
North Fort Myers, Florida 33903

DATED: 11/28/2012


Deborah E. Leoci, Senior Attorney
Agency for Health Care Administration
2295 Victoria Avenue, Room 340A
Fort Myers, Florida 33901

DATED: 11/29/12