

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
CIVIL ACTION NO. 3:17-CV-189-GNS  
*Electronically Filed*

EMW WOMEN'S SURGICAL CENTER, P.S.C. PLAINTIFF,

and

PLANNED PARENTHOOD OF INDIANA  
AND KENTUCKY, INC. INTERVENING PLAINTIFF,

v.

ADAM MEIER, et al., DEFENDANTS.

**NOTICE OF DENIAL OF PLANNED PARENTHOOD'S APPLICATION FOR  
LICENSE TO OPERATE AN ABORTION FACILITY**

The Kentucky Cabinet for Health and Family Services hereby provides notice that it has denied Planned Parenthood's second application for a license to operate an abortion facility, which was filed with the Cabinet on July 3, 2019.<sup>1</sup> Planned Parenthood filed its application on July 3, 2019, and the Cabinet received additional necessary information for processing the application on August 6, 2019. The Cabinet has denied Planned Parenthood's second application for the reasons stated in the letter attached to this Notice as Exhibit A. [See Ex. A, Aug. 16, 2019 Ltr. to Jessica Carpenter]. The basis for the denial is unrelated to the statute and regulation at

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<sup>1</sup> Planned Parenthood's first application was denied via an administrative order issued by the Cabinet in 2017, and Planned Parenthood did not exercise its right to appeal that decision to the Kentucky state courts. Thus, the denial became final.

issue in this action and therefore outside the scope of the permanent injunction issued in the Court's final Judgment. [*See id.*].

The Cabinet files this Notice in response to the Court's Order of June 25, 2019. [Doc. 195]. If Planned Parenthood objects to the Cabinet's decision or seeks judicial involvement in the licensing process, its remedy is to pursue the administrative and judicial appellate process provided to it by Kentucky law. *See* Ky. Rev. Stat. § 216B.105 (administrative hearing process); Ky. Rev. Stat. § 13B.140 (appeal to state trial court); Ky. Rev. Stat. § 13B.160 (appeal to state Court of Appeals). Specifically, it has the right under state law to request a hearing with the Cabinet, and—if it remains unsatisfied—to appeal the ultimate result of the hearing to the appropriate state court. *See* Ky. Rev. Stat. § 216B.105; Ky. Rev. Stat. § 13B.140; Ky. Rev. Stat. § 13B.160. Respectfully, this Court has no jurisdiction over the state licensing process. *See, e.g., Berry v. Allen*, 411 F.2d 1142, 1145 (6th Cir. 1969).

Respectfully submitted,

/s/ M. Stephen Pitt

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**Certificate of Service**

I certify that on August 16, 2019, a copy of the foregoing was served electronically on all parties of record via the CM/ECF electronic filing system.

/s/ M. Stephen Pitt



**CABINET FOR HEALTH AND FAMILY SERVICES  
OFFICE OF THE SECRETARY**

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**Adam M. Meier**  
Secretary

August 16, 2019

Ms. Jessica Carpenter  
Planned Parenthood of Indiana and Kentucky  
842 South 7<sup>th</sup> Street  
Louisville, KY 40203

**DENIAL OF APPLICATION FOR LICENSE TO OPERATE AN ABORTION FACILITY**

RE: July 3, 2019 Application for License to Operate an Abortion Facility  
Planned Parenthood of Indiana and Kentucky  
842 South 7th Street  
Louisville, KY 40203

**CERTIFIED MAIL**

Dear Ms. Carpenter:

You are hereby notified that the Cabinet for Health and Family Services has made the decision to deny your Application for License to Operate an Abortion Facility dated July 3, 2019. The decision to deny the license is based on your substantial failure to comply with the provisions of KRS Chapter 216B. Specifically, and as set forth in correspondence from the Cabinet's Office of Inspector General dated January 28, 2016 to LaToya Rose, Director of Planned Parenthood of Indiana and Kentucky's facility at 842 South 7th Street in Louisville, Ms. Rose was advised that in accordance with KRS 216B.105, no person shall operate any health facility in the Commonwealth of Kentucky without first obtaining a license specifying the kind or kinds of health services the facility is authorized to provide. Planned Parenthood of Indiana and Kentucky's facility at 842 South 7th Street in Louisville has never been licensed to perform abortions. However, Planned Parenthood of Indiana and Kentucky, Inc. has admitted that abortions were performed in its Louisville facility in December, 2015. (See Answer of Planned Parenthood of Indiana and Kentucky, Inc. in *Com., Cabinet for Health and Family Services v. Planned Parenthood of Indiana and Kentucky, Inc.*, Jefferson Circuit Court, No. 16-CI-000802.) The Cabinet's Office of Vital Statistics indicates that 23 abortions were performed at Planned Parenthood's Louisville facility during the period December 3, 2015 to January 28, 2016, all during a time when the facility was not licensed to perform abortions. KRS 216B.105(1) prohibits operation of any health facility without first obtaining a license issued by the Cabinet.



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KRS 216B.105(2) states that the Cabinet may deny a license in any case in which it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B. Further, KRS 216B.990(6) requires any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility to comply with the provisions of KRS Chapter 216B regarding abortion facilities. The performance of unlicensed abortions as set forth above constitutes a substantial failure to comply with the provisions of KRS Chapter 216B, and the Application for License to Operate an Abortion Facility is denied pursuant to KRS 216B.105(2) and KRS 216B.990(6).

The Cabinet reserves the right to amend and supplement this denial based on the pending decision of the United States Court of Appeals for the Sixth Circuit in *EMW Women's Surgical Center, P.S.C., et al. v. Meier, et al.*, Case No. 18-6161, regarding the constitutionality of the requirement of written agreements between abortion facilities and acute-care hospitals and ambulance services pursuant to KRS 216B.0435, the enforcement of which has been enjoined.

If you disagree with this decision, you may appeal it pursuant to KRS 216B.105 and request an evidentiary hearing. The request must be filed with the Secretary, Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days of the mailing date of this letter. If you do not request a hearing within thirty (30) days of the mailing date of this letter, the denial of your Application for License to Operate an Abortion Facility shall become FINAL.

Sincerely,

A handwritten signature in black ink that reads "Adam Meier". The signature is written in a cursive, flowing style.

Adam Meier, Secretary  
Cabinet for Health and Family Services

CC: Steve Davis, Office of the Inspector General