

**Virginia State Health Commissioner**

**Response to May 8, 2013 Request From The Congress of the United States, House of Representatives, Committee on Energy and Commerce**

**June 24, 2013**

**1. Does your state license abortion clinics or those facilities and providers who perform abortions?**

Virginia licenses provider sites that perform five or more first trimester abortions per month as “abortion facilities” in accordance with the Code of Virginia §32.1- 127.B.1, (Attachment 1). Second and third trimester abortions can only be performed in licensed acute care hospitals per Code of Virginia §18.2-73 and §18.2-74 (Attachment 2). Licensed acute care hospitals that perform abortions at any gestational age do not require further licensure as an abortion facility. The Virginia Board of Medicine, Virginia Department of Health Professions, licenses doctors of medicine and surgery (M.D.) and doctors of osteopathic medicine and surgery (D.O.).

**If so, please identify what information must be provided or requirements must be met for a facility or provider to be licensed.**

A copy of the forms “Abortion Facility Licensure Application Checklist” and “Application for Abortion Facility Licensure” are attached, (Attachments 3 and 4), detailing all information that must be provided to the Virginia Department of Health for a provider to be licensed as an abortion facility. Additionally, Code of Virginia §18.2-76 and Virginia Department of Health Guidance Document “Informed Written Consent for Abortions Performed in Licensed Facilities” are attached (Attachments 5 and 6). A copy of the application and instructions for licensure as an American medical doctor (Attachment 7), a non-American medical doctor (Attachment 8) and a doctor of osteopathic medicine (Attachment 9) delineate the information necessary and the requirements that must be met for licensure as an M.D. or D.O.

**In addition please identify the number of abortion clinics licensed in your state for each year from 2008-2013.**

Prior to 2012 Virginia did not require licensure of abortion facilities.

<b>Year</b>	<b>Licensed Abortion Facilities</b>
2008	0
2009	0
2010	0
2011	0
2012	20
2013	19

**2. For the years 2008-2013, please identify each abortion clinic for which your state has suspended or revoked its license and the reason for this action.**

Prior to 2012 Virginia did not require licensure of abortion facilities. In neither 2012 nor 2013 did Virginia revoke or suspend any abortion facility license.

**3. Does your state conduct inspections of abortion clinics or facilities that perform abortions?**

Yes, abortion facilities are inspected at least every two years in accordance with the Regulations for Licensure of Abortion Facilities, 12VAC5-412-110.A., (Attachment 10).

**If so, please identify the number of clinics that your state has inspected for each year from 2008-2013.**

Prior to 2012 Virginia did not require licensure of abortion facilities.

<b>License Year</b>	<b>Abortion Facilities Inspected</b>
2008	0
2009	0
2010	0
2011	0
2012	20
2013*	0

\* year to date

**In addition, please identify how an inspection is conducted and what information is examined in the course of an inspection.**

All licensure inspections are conducted by one to three Virginia Department of Health Medical Facilities Inspectors. Initial inspections are announced and scheduled in advance. Complaint and biannual inspections are unannounced. A copy of the form “Abortion Facility Inspection Workbook” (Attachment 11), “Abortion Regulation Facility Requirements Survey Workbook” (Attachment 12), “For Surveying FTAFs” (Attachment 13), “Entrance Conference FTAF” (Attachment 14), “Abortion Facility Entrance Conference” (Attachment 15), “Consent to Observe a Procedure” (Attachment 16), “Consent to Observe a Procedure - Spanish” (Attachment 17), and “FTAF Medical Record Review” (Attachment 18) are attached detailing the process and all information that Medical Facility Inspectors examine in the course of an inspection.

**4. Does your state monitor complaints or adverse health events relating to abortions?**

Yes. As authorized by the Code of Virginia §32.1- 25 (Attachment 19) the Virginia Department of Health receives and investigates complaints related to violations and

alleged violations of the provision of the Code of Virginia and the Virginia Administrative Code administered by the Virginia Department of Health.

The Virginia Department of Health Professions (DHP) Enforcement Division is authorized by the Code of Virginia §54.1-2506.01 (Attachment 20) to receive, assess and investigate complaints against healthcare practitioners for the 13 Health Regulatory Boards in the Department. The majority of complaints received by the Enforcement Division have been from health care consumers and they vary as to category. The majority of complaints received for the Board of Medicine are related to standard of care issues and are not categorized by disease or specific types of surgeries. The elements of categorization for standard of care cases include complaints related to all of the following:

- Surgeries—Includes, but not limited to, improper patient management
- Diagnosis and Treatment—Includes, but not limited to, improper or delayed treatment and diagnosis
- Medication and Prescriptions—Includes, but not limited to, dispensing and administration errors
- Medical Malpractice Reports—Includes, but not limited to, judgments or settlements
- Exceeding the Scope of Practice—Includes practicing outside of the permitted functions of license granted.

**If so, how are these complaints filed or processed?**

Complaints about facilities can be made to the Virginia Department of Health by calling a “Complaint Hotline” (1-800-955-1819) or by mailing/emailing/faxing a “Consumer Complaint Report” (Attachment 21) to 9960 Mayland Drive, Suite 401, Henrico, Virginia 23233 / OLC-Complaints@vdh.virginia.gov / 804-527-4503. Abortion facility self reports of adverse health events can be submitted in narrative form to the same address / email address / fax number.

Once received, complaints and reports are evaluated and followed up on in accordance with internal office policy and procedures, “Abortion Facility Complaint Process” (Attachment 22) and “Responding to Complaints against Potential Unlicensed Abortion Facilities” (Attachment 23).

The DHP Enforcement Division does not collect data based on the types of procedures conducted. Data is collected on the seriousness of a complaint, which is then classified as priority level A thru D, with priority A being the most serious allegation of misconduct.

**How many complaints relating to abortions or abortion clinics have been filed for each year from 2008-2013?**

<b>Year</b>	<b>Complaints Related to Abortion Facilities (VDH)</b>	<b>Complaints Opened and Fully Investigated, All Types/Categories (DHP)</b>
2008	0	4,492
2009	0	5,075
2010	0	5,430
2011	0	5,819
2012	20	5,110
2013*	0	1,329

\* Year to date

**a. Please explain how your state investigates the complaints it receives relating to abortions.**

The Virginia Department of Health internal office policy and procedures, “Abortion Facility Complaint Process” (Attachment 22) and “Responding to Complaints against Potential Unlicensed Abortion Facilities” (Attachment 23) referenced in the primary response to “Question 4” provide the details of the Virginia Department of Health complaint investigation process.

Complaints are thoroughly investigated by the DHP Enforcement Division in accordance with the following investigative process:

- The complaint information is received by case intake staff of the Enforcement Division and an assessment is made as to possible violation and/or jurisdiction of the complaint.
- If the information does not support the allegation, the complaint will be sent to the appropriate Health Regulatory Board for review.
- A priority and case category is established for the complaint if it is determined there is a possible violation of regulation or law and DHP has jurisdiction.
- The complaint (Case) is assigned to the investigative staff.
- Subpoenas are requested if needed.
- Unannounced visits can be made to the respondent/licensee’s practice location.
- Interviews are conducted with any needed witnesses, to include obtaining additional information from the source of the complaint.
- All information relevant to the case is collected to include, but not limited to, prescription data, medical records, police reports, and reports from other local, state or federal agencies.
- More interviews may be conducted with other treating practitioners if necessary.
- An interview is conducted with the respondent/licensee in the complaint/case.

- Consultations may take place with board staff, the Office of the Attorney General, local, state and federal law enforcement entities.
- Undercover operations and surveillance may occur, according to state law.
- All evidence is collected and an investigative report is written.
- An investigative report consisting of all evidence and records of interviews is generated and sent to the Regulatory Board for review and a probable cause decision.
- The Regulatory Board makes a decision based on whether there is probable cause that a violation has occurred. The Board may return the case to the Enforcement Division for additional information at any time.
- Investigative staff may testify at Regulatory Board hearings or in criminal or civil court.
- The Regulatory Board makes the final decision as to the disposition of the complaint/case.

**In addition, please explain how many investigations, including those that included inspections of abortion clinics, have resulted from complaints filed for each year from 2008-2013.**

<b>Year</b>	<b>Investigations Resulting from Complaints Related to Abortion Facilities</b>
2008	0
2009	0
2010	0
2011	0
2012	20
2013*	0

\*year to date

**5. Please explain whether your state, including state professional licensure boards, has initiated any disciplinary actions against facilities or health care providers relating to abortions?**

The Virginia Department of Health has not initiated any disciplinary action against any facility or health care provider related to abortions.

The Virginia Board of Medicine, Virginia Department of Health Professions, took disciplinary action against six of its licensees for abortion-related matters in the years 2008-2013.

Please identify the number of disciplinary actions taken in each year from 2008-2013 and the underlying violation or reason for the action.

Year	Virginia Department of Health Disciplinary Actions Related to Abortions	Virginia Department of Health Professions Disciplinary Actions Related to Abortions
2008	0	2
2009	0	2
2010	0	1
2011	0	0
2012	0	2
2013*	0	0

\*year to date

The attached board orders provide information on underlying violations or reasons for the actions. (Attachments: 24, Reffat Abofreka (2008) (2 actions); 25, Craig Cropp (2008); 26, Raymond Robinson (2009); 27, Maurice Young (2010); 28, Eleni Solos-Kountouris (2012); 29, Abdul Durrani (2012))

**6. Please provide copies of the rules and regulations that govern facilities and licensed health care providers in your state that perform abortions, including the rules and regulations that specifically govern how abortions are conducted in your state.**

- Code of Virginia §18.2-73 and §18.2-74 (Attachment 2)
- Code of Virginia §18.2-76 (Attachment 5)
- Code of Virginia §32.1- 127.B.1, (Attachment 1)
- Regulations for Licensure of Abortion Facilities, 12VAC5-412, (Attachment 10)
- Code of Virginia §54.1-2900 et. seq. Medicine, (Attachment 30)
- Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic, 18VAC85—20-10 et seq., (Attachment 31)
- Code of Virginia §54.1-2400, General powers and duties of health regulatory boards. (Attachment 32)

**a. Which of these laws is your agency tasked with enforcing and how do you enforce them?**

The Virginia Department of Health is responsible for enforcing the Code of Virginia §32.1- 127.B.1, (Attachment 1) and the Regulations for Licensure of Abortion Facilities, 12VAC5-412, (Attachment 10). Virginia Department of Health Medical Facility Inspectors conduct periodic on-site inspections of abortion facilities. Abortion facilities are given the opportunity to develop and submit a plan of

correction addressing all identified deficiencies. Failure to submit an acceptable plan of correction can result in suspension, revocation or non-renewal of the abortion facility license.

- 7. On April 19, 2005, the Assistant Secretary for Children and Families issued a Program Instruction to state agencies administering the Child Abuse Prevention and Treatment Act (CAPTA) program. The instruction requires states to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), and applies those protections equally to born-alive infants.**
- a. What actions has your state taken since 2005 to ensure that at every licensed health care facility that provides abortions, there is a designated individual to report suspected medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions) of born-alive infants to the state child protective services agency? Has the state received any such notifications and what were the outcomes?**

Virginia has procedures in place to respond to reports of medical neglect, including the withholding of medically indicated treatment from disabled infants with life threatening conditions. Virginia's definitions are identical to those set forth in 45 C.F.R. §1340.15. The policies and procedures for responding are the same for any valid report of suspected child abuse/neglect; however, they also include specific procedures for handling investigations of medical neglect of withholding medically indicated treatment of disabled infants to include coordination of the investigation with the designated person in the health care facility.

The definition for medical neglect is consistent with the CAPTA definition and the definitions used for "withholding of medically indicated treatment" are identical to CAPTA. This is in the Virginia Administrative Code at 22 VAC 40-705-10, Attachment 33). "Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment will be most likely to be effective in ameliorating or correcting all such conditions.

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable. This is also addressed in 22 VAC 40-705-30 C2 (Attachment 34). For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

- a. The infant is chronically and irreversibly comatose;
- b. The infant has a terminal condition and the provision of such treatment would:

- 1) Merely prolong dying;
- 2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 3) Otherwise be futile in terms of the survival of the infant; or
- 4) The infant has a terminal condition and the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

Although there is not a designated person at health care facilities that provide abortions to report suspected medical neglect, Virginia regulations that govern abortion clinics, at 12 VAC 5-412-320 F, (Attachment 10) require all employees to comply with §63.2-1509 of the Code of Virginia (Attachment 35), the mandatory reporting statute.

CPS is routinely notified by medical facilities about reports of suspected child abuse and neglect which include reports of suspected medical neglect. Since 2005, medical personnel have accounted for an average of 5,000 reports of suspected child abuse and neglect annually. This number is not exclusive for medical neglect.

From July 1, 2005 through June 30, 2012, there were 12,771 reported victims of medical neglect which would include the withholding of medically indicated treatment from disabled infants with life threatening conditions. Of those, 9,386 received a Family Assessment and no disposition was made; 1,344 were determined to be founded or substantiated, and 1,931 were unfounded; 110 were "Other", not identified dispositions. Please note that this number includes children who were reported as victims of medical neglect and is not restricted to reports from any type of facility.

- b. Does your state child protective services agency annually contact each health care facility to obtain purpose of coordination, consultation, and notification pursuant to 45 C.F.R. §1340.15? Does this contact include health care facilities that provide abortions? Please provide a list of such designations.**

The notifications to health care facilities has been a responsibility of local departments of social services as they frequently interact with these facilities in the routine reporting and screening of suspicions of child abuse and neglect. This direction is included in the Child Protective Services policy/guidance manual, Section 4.5.14 Investigation of medical neglect of disabled infants with life-threatening conditions (Attachment 36). In addition, local agencies routinely provide training to mandated reporters, including those working in health care facilities, when requested.

In July 2012 when new legislation was enacted regarding mandated reporting laws, VDSS provided notification to mandated reporters across the state informing them of the changes to the mandated reporter law, 63.2-1509 of the Code of Virginia (Attachment 34). This notification included notice to the Virginia Department of



Health, Virginia Department of Behavioral Health and Developmental Services and also the Virginia Hospital and Healthcare Association. The Virginia Hospital and Healthcare Association has 38 member health systems and hospitals, representing 110 community, psychiatric, rehabilitation and specialty hospitals throughout Virginia.

Notification to mandated reporters included information regarding the updated on-line course for the identification and reporting of suspected child abuse and neglect training available through the VDSS website (<http://www.dss.virginia.gov/family/cps/index2.cgi>). Contacts with healthcare facilities that provide abortions would likely have been included in the mass distribution of updates for the mandated reporting laws.

Virginia's CPS programs and policies have included requiring a designated individual at health care facilities for purposes of coordination, consultation and notification, however, this policy has not been enforced in recent years and VDSS is in the process of addressing this issue.

## **Attachments**

### **Virginia State Health Commissioner Response**

#### **May 8, 2013 Request From The Congress of the United States, House of Representatives, Committee on Energy and Commerce**

Attachment 1	Code of Virginia §32.1- 127, (Hospital) Regulations
Attachment 2	Code of Virginia §18.2-73 and §18.2-74, When abortion is lawful
Attachment 3	Abortion Facility Licensure Application Checklist
Attachment 4	Application for Abortion Facility Licensure
Attachment 5	Code of Virginia §18.2-76, Informed written consent
Attachment 6	Virginia Department of Health Guidance Document “Informed Written Consent for Abortions Performed in Licensed Facilities”
Attachment 7	The application and instructions for licensure as an American medical doctor
Attachment 8	the application and instructions for licensure as a non-American medical doctor
Attachment 9	the application and instructions for licensure as a doctor of osteopathic medicine
Attachment 10	12VAC5-412 Regulations for Licensure of Abortion Facilities
Attachment 11	Facility Inspection Workbook
Attachment 12	Abortion Regulation Facility Requirements Survey Workbook
Attachment 13	For Surveying FTAFs
Attachment 14	Entrance Conference FTAF
Attachment 15	Abortion Facility Entrance Conference
Attachment 16	Consent to Observe a Procedure
Attachment 17	Consent to Observe a Procedure – Spanish
Attachment 18	FTAF Medical Record Review
Attachment 19	Code of Virginia §32.1- 25, Right of entry to inspect
Attachment 20	Code of Virginia §54.1-2506.01, Investigation of reported violations
Attachment 21	Consumer Complaint Report
Attachment 22	Abortion Facility Complaint Process
Attachment 23	Responding to Complaints against Potential Unlicensed Abortion Facilities
Attachment 24	Violations or reasons for the actions, Reffat Abofreka (2008)
Attachment 25	Violations or reasons for the actions, Craig Cropp (2008)
Attachment 26	Violations or reasons for the actions, Raymond Robinson (2009)
Attachment 27	Violations or reasons for the actions, Maurice Young (2010)
Attachment 28	Violations or reasons for the actions, Eleni Solos-Kountouris (2012)
Attachment 29	Violations or reasons for the actions, Abdul Durrani (2012)

Attachment 30	Code of Virginia §54.1-2900 et seq. Medicine
Attachment 31	18VAC85—20-10 et seq., Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic,
Attachment 32	Code of Virginia §54.1-2400, General powers and duties of health regulatory boards
Attachment 33	22 VAC 40-705-10. Definitions
Attachment 34	22 VAC 40-705-30 C2. Types of Abuse and Neglect
Attachment 35	Code of Virginia §63.2-1509, the mandatory reporting statute
Attachment 36	Child Protective Services policy/guidance manual, Section 4.5.14 Investigation of medical neglect of disabled infants with life-threatening conditions