

## AFFIDAVIT OF MICHAEL LUCIUS

### STATE OF MISSISSIPPI COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, Michael Lucius, who having been by me first duly sworn, stated upon oath as follows, to-wit:

1. My name is Michael Lucius, and I have personal knowledge of the facts set forth in this Affidavit. I am currently the Deputy State Health Officer for the State of Mississippi and the Chief Administrative Officer for the Mississippi State Department of Health ("the Department"). I have held this position for the past four (4) years.

2. On June 27, 2012, Jackson Women's Health Organization and Willie Parker, M.D., M.P.H, M.Sc., filed suit against Mary Currier, M.D., M.P.H. (in her official capacity) and Robert Shuler Smith (in his official capacity) in the United States District Court, Southern District of Mississippi. I have read this Complaint, and I am familiar with the allegations contained therein.

3. I have been appointed by the State Health Officer, Mary Currier, M.D., M.P.H to respond to the allegations contained in this Complaint by virtue of affidavit or otherwise.

4. Jackson Women's Health Organization ("JWHO") is an abortion facility, as defined in Miss. Code Ann. §41-75-1 (1972, as amended) located in Jackson, Mississippi. This facility is licensed by the State of Mississippi. The Department is the agency responsible for carrying out all licensure surveys and inspections.

5. As a licensed abortion facility, JWHO is required to comply with *Minimum Standards of Operation for Abortion Facilities* along with the *Mississippi Code Annotated* (1972, as amended); specifically, §41-75-1, et al.

6. House Bill 1390, effective July 1, 2012, will amend Miss. Code Ann. §41-75-1(f) to require that, "[a]ll physicians associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians. All physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology, and a staff member trained in CPR shall always be present at the abortion facility when it is open."



7. On July 2, 2012, as the Licensing Agency for Abortion Facilities, the Mississippi State Department of Health will expect compliance with all pertinent laws and regulations relating to abortion facilities, including §41-75-1(f), by JWHO.

8. The Department will enter JWHO on July 2, 2012 to determine compliance with new statutory provisions.

9. In accordance with internal policies regarding the survey process, should the Department find substantial non-compliance with the new statutory provisions on July 2, 2012, Department personnel will inform JWHO during an exit conference of the observed deficiency.

10. Within **ten (10) working days** after exiting the facility, the Department must provide a "Statement of Deficiencies" to JWHO. **Within ten (10) calendar days** from the date the deficiencies are sent to the facility, JWHO must provide the Department with a "Plan of Correction." In this Plan of Correction, JWHO must allege how and when all deficiencies will be corrected. The time frame provided by JWHO for correction must be *reasonable*.

11. On or about the date of the alleged correction, the Department will reenter JWHO to determine compliance and ensure that JWHO has implemented the Plan of Correction for the cited deficiencies.

12. If on the alleged date of correction, JWHO has still not corrected all deficient conduct or implanted the Plan of Correction, as alleged, the Department will begin licensure revocation procedures by mailing to JWHO an official *Notice of Intent to Revoke License*.

13. Thereafter, in accordance with Subchapter 5 of the *Minimum Standards of Operation for Abortion Facilities*, JWHO will have ten (10) days from the date of notification to request an administrative hearing regarding the decision to revoke the license. Thereafter, the Department must set a hearing date ". . . not less than thirty (30) days from the date..." of the hearing request. Upon conclusion of the hearing, an Administrative Hearing Officer will make a final determination on the issue and such determination will become final thirty (30) days after it is mailed or served upon JWHO. *Please see Attachment "A"*.

14. Should JWHO feel aggrieved by the Final Order of the Administrative Hearing Officer, an appeal may be taken to the Hinds County Chancery Court. Such an appeal is authorized by Miss. Code Ann. §41-75-23 (1972, as amended). *Please see Attachment "B"*.

15. Further, Miss. Code Ann. §41-75-23 (1972, as amended) states, “[p]ending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.”

Further, this Affiant sayeth not.

Michael Lucius  
Michael Lucius

SWORN TO AND SUBSCRIBED BEFORE ME, this the 28<sup>th</sup> day of June, 2012.

Guven Wood Black  
Notary Public



Rule 42.4.5 **Issuance of License.** All licenses issued by the Mississippi State Department of Health shall set forth the name of the ambulatory surgical facility, the location, the name of the licensee, and the license number.

*SOURCE: Miss. Code Ann. §41-75-13*

Rule 42.4.6 **Separate License.** A separate license shall be required for ambulatory surgical facilities maintained on separate premises even though under the same management. However, separate licenses are not required for buildings on the same ground which are under the same management.

*SOURCE: Miss. Code Ann. §41-75-13*

Rule 42.4.7 **Expiration of License.** Each license shall expire on June 30, following the date of issuance.

*SOURCE: Miss. Code Ann. §41-75-13*

Rule 42.4.8 **Denial or Revocation of License: Hearings and Review.** The Mississippi State Department of Health after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under the law and these regulations.

*SOURCE: Miss. Code Ann. §41-75-13*

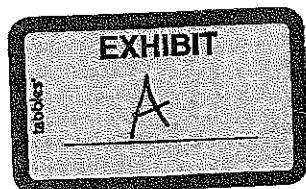
## **Subchapter 5 RIGHT OF APPEAL**

Rule 42.5.1 Provision for hearing and appeal following denial or revocation of license is as follows:

*SOURCE: Miss. Code Ann. §41-75-13*

Rule 42.5.2 **Administrative Decision.** The Mississippi State Department of Health will provide an opportunity for a fair hearing to every applicant or licensee who is dissatisfied with administrative decisions made in the denial or revocation of license.

1. The licensing agency shall notify the applicant or licensee by registered mail or personal service the particular reasons for the proposed denial or revocation of license. Upon written request of applicant or licensee within ten (10) days of the date of such service at which agency shall fix a date not less than thirty (30) days from the date of such service at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing.
2. On the basis of such hearing or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail



to the last known address of applicant or licensee or served personally upon the applicant or licensee.

3. The decision revoking, suspending, or denying the application or license shall become final thirty (30) days after it is so mailed or served unless the applicant or licensee, within such thirty (30) day period, appeals the decision to the Chancery Court in the county in which the facility is located, in the manner prescribed in Section 43-11-23, Mississippi Code of 1972, as amended. An additional period of time may be granted at the discretion of the licensing agency.

*SOURCE: Miss. Code Ann. §41-75-13*

Rule 42.5.3 Penalties. Any person or persons or other entity or entities establishing, managing or operating an ambulatory surgical facility or conducting the business of an ambulatory surgical facility without the required license, or which otherwise violate any of the provisions of this act or the Mississippi State Department of Health, as amended, or the rules, regulations or standards promulgated in furtherance of any law in which the Mississippi State Department of Health has authority therefore shall be subject to the penalties and sanctions of Section 41-7-209, Mississippi Code of 1972.

*SOURCE: Miss. Code Ann. §41-75-13*

#### **Subchapter 6 ADMINISTRATION: GOVERNING AUTHORITY**

- Rule 42.6.1 Each facility shall be under the ultimate responsibility and control of an identifiable governing body, person, or persons. The facility's governing authority shall adopt bylaws, rules and regulations which shall:
1. Specify by name the person to whom responsibility for operation and maintenance of the facility is delegated and methods established by the governing authority for holding such individuals responsible.
  2. Provide for at least annual meetings of the governing authority if the governing authority consists of two or more individuals. Minutes shall be maintained of such meetings.
  3. Require policies and procedures which includes provisions for administration and use of the facility, compliance, personnel, quality assurance, procurement of outside services and consultations, patient care policies and services offered.
  4. Provide for annual reviews and evaluations of the facility's policies, management, and operation.
    - a. When services such as dietary, laundry, or therapy services are purchased from other the governing authority shall be responsible to assure the supplier(s) meets the same local and state standards the facility would have to meet if it were providing those services itself using its own staff.

Westlaw.

Miss. Code Ann. § 41-75-23

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**C**

West's Annotated Mississippi Code Currentness

Title 41. Public Health (Refs &amp; Amos)

Chapter 75. Ambulatory Surgical Facilities

→ → § 41-75-23. Appeal procedure

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing, may within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of appeal to the chancery court of the First Judicial District of Hinds County or in the chancery court of the county in which the institution is located or proposed to be located. Such appeal shall state briefly the nature of the proceedings before the licensing agency and shall specify the order complained of. Any person or entity whose rights may be materially affected by the action of the licensing agency may appear and become a party, or the court may, upon motion, order that any such person or entity be joined as a necessary party. Upon filing of the appeal, the clerk of the chancery court shall serve notice on the licensing agency, whereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the service of such notice, certify with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. No new or additional evidence shall be introduced in court; the case shall be determined upon the record certified to the court. The court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the licensing agency for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order may not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the licensing agency is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the licensing agency or violates any vested constitutional rights of any party involved in the appeal. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder. Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

## CREDIT(S)

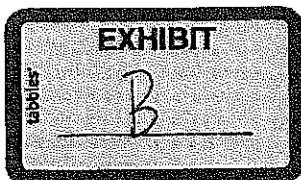
Laws 1983, Ch. 433, § 12; Laws 1986, Ch. 437, § 27, eff. July 1, 1986.

## LIBRARY REFERENCES

Health ☞ 245, 253.

Westlaw Topic No. 198H.

## RESEARCH REFERENCES



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Miss. Code Ann. § 41-75-23

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Encyclopedias

Encyclopedia of Mississippi Law § 1:16, Generally--Appeals of Department's Decision.

Encyclopedia of Mississippi Law § 36:3, Regulation of Health Care Facilities.

Miss. Code Ann. § 41-75-23, MS ST § 41-75-23

Current through End of 2011 Regular Session.

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