

COUNTY COUNCIL OF THE COUNTY OF ST. JOSEPH

ORDINANCE DATED _____, 2014

ORDINANCE # _____

AN ORDINANCE CONCERNING PATIENT SAFETY

WHEREAS, the provision of services by Abortion Providers as defined in this Ordinance should give due regard to the protection of the health, safety, and general welfare of the people; and

WHEREAS, the County Council of the County of St. Joseph finds that for the protection of the public health, safety, and welfare of the citizens of St. Joseph County, to provide safe and effective continuing care for Patients of Abortion Providers in conjunction with local operating hospitals, emergency departments, and urgent care providers and in conformity with accepted standards of practice, it is reasonable and necessary to enact the requirements provided in this Ordinance; and

WHEREAS, the requirement of Admitting Privileges for Abortion Providers shall serve to protect the public health, safety, and welfare of the citizens of St. Joseph County; and

WHEREAS, Abortion is an invasive, surgical procedure that can lead to numerous and serious medical complications, including, among others, bleeding, hemorrhage, infection, uterine perforation, uterine scarring, blood clots, cervical tears, incomplete abortion (retained tissue), failure to actually terminate a pregnancy, free fluid in the abdomen, acute abdomen, organ damage, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to anesthesia, fertility problems, emotional problems, and death; and

WHEREAS, the provision of tracking, peer review, and follow up shall serve to protect the public health, safety, and welfare of the citizens of St. Joseph County; and

WHEREAS, St. Joseph County has a legitimate concern for the public's health and safety, *see Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985); and

WHEREAS, St. Joseph County "has legitimate interests from the outset of pregnancy in protecting the health of women," *see Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992); and

WHEREAS, more specifically, St. Joseph County "has a legitimate concern with the health of women who undergo abortions," *see Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 428-29 (1983); and

WHEREAS, St. Joseph County has “a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient,” *see Roe v. Wade*, 410 U.S. 113, 150 (1973); and

WHEREAS, the Supreme Court has specifically held that this interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise,” *Roe v. Wade*, 410 U.S. 113, 150 (1973); and

WHEREAS, since the Supreme Court’s decision in *Roe v. Wade*, courts have recognized that, for the purposes of regulation, abortion services are rationally distinct from other routine medical services, because of the “particular gravitas of the moral, psychological, and familial aspects of the abortion decision,” *see Greenville Women’s Clinic v. Bryant*, 222 F.3d 157, 173 (4th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001);

THEREFORE, to regulate Abortion Providers (including Abortion Clinics) consistent with and to the extent permitted by the decisions of the Supreme Court of the United States and other courts and to provide for the protection of public health, the County Council of the County of St. Joseph hereby enacts the following Ordinance in the interest of protecting the health of the public in St. Joseph County:

SECTION 1. ADDITION OF A NEW CHAPTER TO THE CODE OF ORDINANCES OF ST. JOSEPH COUNTY

The Code of Ordinances of St. Joseph County, Indiana, is amended by adding a new Chapter 118 to Title XI of the St. Joseph County Code of Ordinances, which new Chapter shall read as follows:

CHAPTER 118

Abortion Providers

Section

118.1 – Definitions.

118.2 – Provider Responsibilities.

118.3 – Operator Responsibilities.

118.4 – Operator Policies.

118.5 – Review.

118.6 – Procedures When Violations are Noted.

118.7 – Other Permits Revocation, Suspension, and Immediate Closure Orders.

118.8 – Hearings.

118.9 – Appeal.

118.10 – Enforcement.

118.11 – Penalty.

118.12 – Injunction.

118.13 – Expense.

118.14 – Cumulative.

118.15 – Severability.

118.16 – Privacy.

§ 118.1 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

“Abortion” has the same meaning as defined at Indiana Code § 16-18-2-1.

“Abortion Clinic” has the same meaning as defined at Indiana Code § 16-18-2-1.5.

“Admitting Privileges” are defined as delegated to the hospitals and directed and regulated in the Indiana Code (including Indiana Code § 16-21-2-5 and Indiana Code § 16-22-3-9).

“Department” means the St. Joseph County Department of Health.

“Health Officer” means the duly appointed Health Officer of the St. Joseph County Department of Health or his or her designee.

“Operator” means any person who controls, operates, manages, or owns any Abortion Clinic.

“Patient” means anyone who receives an Abortion or who comes under the care of a Provider for the purpose of receiving an Abortion.

“Provider” or **“Abortion Provider”** means a person who provides or performs Abortions.

§ 118.2 PROVIDER RESPONSIBILITIES.

All Providers who offer any type of Abortion to a person in St. Joseph County, Indiana, shall be regulated by this Ordinance. Any and all Providers must have Admitting Privileges in St. Joseph County or a contiguous county before providing or performing any Abortion in St. Joseph County. Providers shall provide to the Department and to any and all Patients information regarding the hospital at which the Provider has Admitting Privileges. Such information shall include the name, telephone number, and address of the hospital providing Admitting Privileges to the Provider as well as a phone number at which the hospital providing Admitting Privileges may be reached on a twenty-four (24) hour a day, seven (7) day a week basis. Providers shall comply with the following responsibilities:

1. File verification of Admitting Privileges with the Department prior to providing Abortions in St. Joseph County, Indiana. A filing fee not to exceed Two Hundred Fifty Dollars and 00/100 \$250.00 must be paid by the Provider or Operator at the time of filing for the purpose of defraying the costs of enforcing this Ordinance.
2. Notify each and every Patient orally and in writing of the name, telephone number, and address of the hospital providing Admitting Privileges to the Provider as well as a phone number at which the hospital providing Admitting Privileges may be reached on a twenty-four (24) hour a day, seven (7) day a week basis. Notify each and every Patient orally and in writing of the name, telephone number, and address of any designated covering physician for the Provider who also has Admitting Privileges at the same hospital as the Provider as well as a phone number at which the designated covering physician may be reached on a twenty-four (24) hour a day, seven (7) day a week basis if, and only if, having a covering physician is a requirement of the Provider's Admitting Privileges.
3. Keep on file as a permanent record a certification that the Provider notified the Patient orally and in writing of the name, telephone number, and address of the hospital providing Admitting Privileges to the Provider as well as a phone number at which the hospital providing Admitting Privileges may be reached on a twenty-four (24) hour a day, seven (7) day a week basis. Keep on file as a permanent record a certification that the Provider notified the Patient orally and in writing of the name, telephone number, and address of any designated covering physician who has Admitting Privileges at the same hospital as the Provider as well as a phone number at which the designated covering physician may be reached on a twenty-four (24) hour a day, seven (7) day a week basis if, and only if, having a covering physician is a requirement of the Provider's Admitting Privileges.

4. Notify the Department within seven (7) days of any change in the Provider's Admitting Privileges. Failure to notify the Department of any change in the Provider's Admitting Privileges shall be a violation of this Ordinance.

§ 118.3 OPERATOR RESPONSIBILITIES.

- A. The Operator shall ensure that Providers otherwise comply with the provisions of this Ordinance.
- B. The Operator shall display a certificate of compliance with the requirements of this Ordinance, in a form supplied by the Department, in view of Patients at the main entrance of the Abortion Clinic.
- C. The Operator shall display written materials prepared or approved by the Department explaining a Patient's rights under this Ordinance. These materials shall include information on how to report violations and shall include information regarding the Department's duties to investigate.
- D. The Operator shall display, in view of Patients at the main entrance of the Abortion Clinic, the name, telephone number, and address of the hospital providing Admitting Privileges to the Provider as well as a phone number at which the hospital providing Admitting Privileges may be reached on a twenty-four (24) hour a day, seven (7) day a week basis.

§ 118.4 OPERATOR POLICIES.

- A. The Operator shall develop a written policy maintained at the Abortion Clinic in compliance with this Ordinance and shall ensure that said policy is disseminated to all officers, employees, and contractors of the Operator or its Providers.
- B. Any local operating hospital, emergency departments, medical practitioner, or urgent care provider who provides follow up coverage to a Patient of a Provider shall transmit a summary of such treatment to the Operator and the Provider if such Abortion Clinic is licensed and inspected by the State of Indiana. If such Operator is not licensed and inspected by the State of Indiana, then the report shall be transmitted to the physician/operator as well as the Indiana State Medical Licensing Board and Department. The Operator and Provider shall both maintain a file containing each and every such summary for the previous five (5) years subject to and available for inspection by the Department, Indiana State Medical Licensing Board, the Indiana State Department of Health, or any designee appointed by the foregoing for purposes of inspecting such file.

§ 118.5 REVIEW AND VERIFICATION.

- A. The Department shall keep record of all verification of Admitting Privileges of each and every Provider, collect the applicable filing fee from all Providers, and annually inspect written documentation to insure compliance. Violations noted by the Department shall be corrected immediately. Except as otherwise provided by law, all information regarding Admitting Privileges filed with the Department under this Ordinance shall be kept on file with the Department in a manner which is accessible to the public.

- B. Upon written inquiry by any member of the public as to the authenticity of the verification of Admitting Privileges filed with the Department pursuant to this Ordinance or upon the reasonable suspicion of any person entitled to enforce this Ordinance, the Department shall verify Admitting Privileges by telephone or in-person. Verification for Providers shall be performed by the Department contacting, by telephone or in-person, the hospital providing Admitting Privileges to the Provider in order to verify his or her Admitting Privileges. The verification performed under this provision shall remain in effect for a period of three (3) months after the last verification conversation under this provision occurs so that subsequent written inquiries can be answered in the affirmative until the expiration of three (3) months. Failure by the Department to obtain verification under this provision within thirty (30) days of the Department receiving a written inquiry shall constitute a violation of this Ordinance permitting any party entitled to enforce this Ordinance to seek an Immediate Closure Order pursuant to the process outlined in this Ordinance.

§ 118.6 PROCEDURES WHEN VIOLATIONS ARE NOTED.

- A. Violations shall include but not be limited to;
 - 1. Failure of a Provider to notify Patient of the information required by this Ordinance;
 - 2. Verification by Patient, local operating hospitals, emergency departments, and urgent care providers that a Provider's failure to provide the information required by this Ordinance did not result in appropriate follow up and/or obstructed appropriate medical care.

- B. Upon referral from a Patient, local operating hospital, emergency department, or urgent care provider of a complaint that the Operator or Provider is in violation of any provision of this Ordinance, the Health Officer shall conduct a review of the records of said Abortion Clinic, Operator, or Provider, including without limitation the records of patients who have undergone similar care that may be relevant to the review as determined in the sole discretion of the Officer. In furtherance of such review, the Officer shall have authority to seek and obtain a subpoena from the Circuit or Superior

Court of St. Joseph County, Indiana, to obtain records and/or written or oral testimony from an Abortion Clinic, Operator, or Provider, or the officers, contractors, employees, or agents thereof.

- C. If, during the review of the records of any Abortion Clinic, Operator, or Provider, the Health Officer confirms the violation of any provision of this Ordinance, he or she shall issue a written report listing such violation(s) and the remedial action(s) to be taken in accordance with this Ordinance. A copy of said report shall be delivered to the Abortion Clinic, Operator, and Provider by hand delivering the report on-site or by mailing the notice by certified mail to the address listed by the Abortion Clinic, Operator, or Provider at the mailing address on the permit application.
- D. A copy of the written order shall be filed in the records of the Department after appropriate review by the supervisory personnel and mailed to the Indiana State Medical Licensing Board. Except as otherwise prohibited by law, said order shall be open to the public.

§ 118.7 IMMEDIATE CLOSURE ORDERS.

- A. Whenever the Health Officer, the St. Joseph County Sheriff, the St. Joseph County Prosecutor, or their respective authorized representative finds a Provider operating in St. Joseph County, Indiana, in violation of this Ordinance and further finds that said violation poses a significant risk to public health, he or she shall issue and serve a written order upon the Provider and Operator citing the existence of a violation of this Ordinance and requiring the closure of its operations.
- B. Such order shall not be effective for at least seventy-two (72) hours.
- C. If an order is issued under section 118.7(A), the Operator or Provider may request a hearing. If the Operator or Provider requests a hearing before the issued order becomes effective, the notice of closure shall not become effective until a ruling is made following the hearing. If the Operator or Provider requests a hearing after the order issued under section 118.7(A) becomes effective, the order shall remain in effect until a hearing is held. A hearing requested under this section shall commence within seventy-two (72) hours of the request for hearing.
- D. The Health Officer shall conduct a review upon the request of the Operator or Provider.

§ 118.8 HEARINGS.

- A. Except as provided in Section 118.7(C), all hearings required under this Ordinance shall be held only upon at least ten (10) days written notice to the Operator or Provider of time,

place, and nature thereof. The notice of hearing shall be served upon the Operator or Provider by hand delivery on-site or by mailing, by certified mail, the notice to the address listed on the permit application as the Operator or Provider's mailing address or such other address as the Operator or Provider shall designate in writing to the St. Joseph County Health Officer.

- B. At any hearing required under this Ordinance, the hearing officer shall be the Health Officer or his or her designee. Every person who is a party to such proceeding shall have the right to submit evidence, to cross-examine witnesses, and to be represented by legal counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial, or unduly repetitive evidence may be excluded.
- C. Upon the conclusion of such hearing, the hearing officer shall enter a final order, subject to the right of appeal.

§ 118.9 APPEAL.

- A. Any Operator or Provider aggrieved by any final order of the Health Officer shall be entitled to a review of the final order before the St. Joseph County Board of Health ("Board") by filing a written request therefore with the Secretary of the Board within fifteen (15) days after such final order is issued.
- B. Upon the Health Officer's receipt of such request, the Board shall hear the matter in an open hearing after at least ten (10) days' written notice of the time, place, and nature thereof. (The Health Officer and Operator or Provider may agree to a shorter period of time, if requested by either party.) The notice shall be issued by the Secretary of the Board to the Operator or Provider filing the request.
- C. The notice of hearing shall be served upon the Operator or Provider by hand delivery on-site or by mailing, by certified mail, the notice to the address listed as the Operator or Provider mailing address or such other address as the Operator or Provider shall designate in writing to the Secretary of the Board.
- D. At such hearing, the same rules of procedure shall apply as set forth above, provided that upon written request by the Operator or Provider of the Health Officer, the Board shall cause the proceedings before it to be recorded by a reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall, at the request of either party, be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.

- E. The expense of such proceedings shall be charged to the Operator or Provider who applied for the review, except that copies of transcripts shall be at the expense of the party requesting the same. At the time the transcript is requested, the Board may require the Operator or Provider to pay a deposit in an amount determined by the Board to be necessary to secure such expense(s).
- F. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.
- G. Judicial review of any final order shall be obtained in accordance with the provisions of Indiana Code § 4-21.5-5-1, *et. seq.*

§ 118.10 ENFORCEMENT.

It shall be the duty of the Health Officer to enforce the provisions of this Ordinance. A violation of an order issued by Health Officer or Board shall be considered to be a violation of this Ordinance. The St. Joseph County Sheriff, the St. Joseph County Prosecutor, or their respective authorized representative may also enforce the provisions of this Ordinance subject to the appeal and hearing provisions of this Ordinance. The Health Officer, the St. Joseph County Sheriff, the St. Joseph County Prosecutor, or their respective authorized representative may seek judicial review of any final order entered under section 118.09 of this Ordinance pursuant to the provisions of Indiana Code § 4-21.5-5-1, *et. seq.*

§ 118.11 PENALTY.

Any person who violates any of the provisions of this Ordinance shall be subject to a fine of not more than One Thousand Dollars and 00/100 (\$1,000.00) for each violation. Each day of the existence of any violation shall be reported to the Indiana State Medical Licensing Board.

§ 118.12 INJUNCTION.

The Health Officer, the St. Joseph County Sheriff, the St. Joseph County Prosecutor, or their respective authorized representative may bring an action for an injunction in the Circuit or Superior Court of St. Joseph County, Indiana, to restrain any person from violating the provisions of this Ordinance or to cause such violation(s) to be prevented, abated, or removed.

§ 118.13 EXPENSE.

Any person violating any of the provisions of this Ordinance shall be liable to the Department, the St. Joseph County Sheriff, or the St. Joseph County Prosecutor for the expense, loss, or damage occasioned by reason of such violation or for enforcement of this Ordinance, including reasonable attorney's fees and costs.

§ 118.14 CUMULATIVE.

The remedies provided in this Chapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

§ 118.15 SEVERABILITY.

Any provision of this Ordinance held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

§ 118.16 PRIVACY.

A. Any document in the custody of the Department or its employees, or the Health Officer or his or her designee, the Board of Health, or anyone entitled to enforce this Ordinance containing information about Patients shall not be disclosed to the public if otherwise prohibited by law. In addition, whenever requested to provide copies of documents produced pursuant to this Ordinance, any Provider may first redact the following Patient information, provided that the Provider must maintain unredacted copies of all such documents pursuant to § 118.4(B):

1. A Patient's name or the names of family members of a Patient;
2. A Patient's date of birth or age, except that ages may be aggregated into the categories of "age 18 or older" and of "age 17 and under";
3. A Patient's address, other than State;
4. A Patient's telephone number, fax number, or electronic mail address;
5. A Patient's web Universal Resource Locator (URL) or Internet Protocol (IP) address;
6. A Patient's social security number, medical record number, health plan beneficiary number, or account number;
7. A Patient's certificate/license number, vehicle identifier and serial number, including license plate number;
8. A Patient's device identifier or serial number;
9. A Patient's biometric identifier, including finger and voice print, and full face photographic image or any comparable image; and
10. Any other number, characteristic, or code uniquely identifying a Patient or the family members of a Patient.

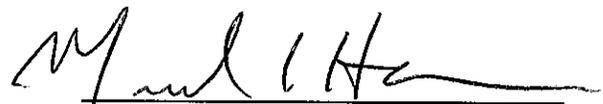
B. Any document in the custody of the Department or its employees, or the Health Officer or his or her designee, the Board of Health, or anyone entitled to enforce this Ordinance containing information about Providers shall not be disclosed to the public as otherwise prohibited by law. In addition, whenever requested to provide documents produced pursuant to this Ordinance, any Provider may first redact the following information about Providers, except that the Provider must retain unredacted copies of all such documents pursuant to § 118.4(B):

1. The Provider's birth date or age;
2. The Provider's home address;
3. The Provider's telephone number, fax number, or electronic mail address;
4. The Provider's web Universal Resource Locator (URL) or Internet Protocol (IP) address;
5. The Provider's social security number;
6. The Provider's vehicle identifier and serial number, including license plate number; and
7. The Provider's biometric identifier, including finger and voice print, and full face photographic image or any comparable image.

SECTION 2. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its passage by the County Council of the County of St. Joseph on May 1, 2015.

Passed by the County Council of the County of St. Joseph this ___ day of _____, 2014.



Michael J. Hamann
Member, St. Joseph County Council



Daniel G. Herbster
Member, St. Joseph County Council

