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April 17, 2012

New Hampshire Board of Pharmacy  
57 Regional Drive  
Concord, NH 03301-8518  
Fax (602) 271-2856

Re: Planned Parenthood's Distribution of Pharmaceutical in Violation of RSA 318:42

To Whom It May Concern:

I am writing on behalf of my client, New Hampshire Right to Life, regarding the dispensation of pharmaceuticals at Planned Parenthood of Northern New England's six New Hampshire clinics. These clinics are all licensed as "Limited Retail Drug Distributors" with the following addresses and license numbers:

24 Pennacook Street, Manchester, NH 03104	7058
108 High Street, Exeter, NH 03833	7052
89 S. Main Street, W. Lebanon, NH 03784	7047
4 Birch Street, Derry, NH 03038	7053
136 Pleasant Street, Claremont, NH 03743	7048
8 Middle Street, Keene, NH 03431	7060

Upon information and belief, Planned Parenthood does not have a pharmacist on site at any of its six clinics, but distributes birth control, the morning after pill, RU-486 and other pharmaceuticals relating to its family planning and abortion business.

Pursuant to RSA 318:42, it is "unlawful for any person who is not a licensed pharmacist in a pharmacy registered in accordance with the provision of this chapter to manufacture, compound, dispense, sell, offer for sale or have in possession any prescription drug as defined in RSA 318:1(XVII)." Nevertheless, there are certain exceptions that allow the dispensation of pharmaceuticals by a non pharmacist. For example, pursuant to RSA 318:42(VII), it is lawful for the "dispensing of non controlled prescription drugs by registered nurses in clinics operated by or under contract with the Department of Health & Human Services, or by such nurses in

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clinics of non profit family planning agencies under a contract with the Department of Health & Human Services provided that ....” Until July 1, 2011, Planned Parenthood was a grantee of the New Hampshire Department of Health & Human Services for the provision of family planning services under the Title X program. It appears that prior to July 1, 2011, Planned Parenthood was dispensing pharmaceuticals pursuant to the family planning clinic exception of RSA 318:42(VII). Nevertheless, when Planned Parenthood’s contract with New Hampshire Department of Health & Human Services terminated, so did their right to dispense pharmaceuticals in accordance with this exception. A few days after the expiration of the contract, on July 5, 2011, Meegan Gallagher, the Senior VP of Planned Parenthood of Northern New England, called Michelle Ricco, the Family Planning Program Manager for the New Hampshire Department of Health & Human Services, and stated:

“PPNNE is currently seeing patients, but with no contract, they have lost their dispensing privileges, so they are not handing out contraceptives but rather Rx and directing their clients to cost effective pharmacies.”

I have attached a copy of the e-mail that NHRTL recently received detailing Planned Parenthood’s understanding that they could not lawfully dispense pharmaceuticals without a pharmacist or a contract with the New Hampshire Department of Health and Human Services as Exhibit A.

Throughout the summer of 2011, it appears that Planned Parenthood gave its clients prescriptions which they then had to get filled at licensed pharmacies. Some clients presumably went to the nearest pharmacy (see attached Exhibit B showing the Rite Aid pharmacy that is immediately adjacent to Planned Parenthood’s Manchester clinic), while other clients presumably went to pharmacies that cost less than Planned Parenthood. DHHS suggested that Walmart sells the pill cheaper than Planned Parenthood. See attached Exhibit C.

Planned Parenthood does not currently have a contract with the New Hampshire Department of Health & Human Services and has not had one since July 1, 2011. Nevertheless, it appears that Planned Parenthood has been dispensing pharmaceuticals since September 14, 2011<sup>1</sup> and intends in June of 2012 to apply for renewal of its Limited Retail Drug Distributor’s license to continue dispensing pharmaceuticals without a pharmacist in its six New Hampshire abortion clinics.

Planned Parenthood is dispensing a substantial amount of pharmaceuticals. It dispenses over \$4,000 of pharmaceuticals a day. See attached as exhibit D. Therefore, on behalf of my client, I respectfully request that the Board of Pharmacy take all appropriate action to prevent Planned Parenthood from violating RSA 318:42 as they are no longer a grantee of the

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<sup>1</sup> Planned Parenthood has had a contract with the federal department of Health and Human Services for family planning services since September 13, 2011. Nevertheless, RSA 318:42 (VII)’s exemption is for clinics under contract with the N.H. Department of Health & Human Services. See He-C 201.02 clearly defining Department as “the New Hampshire department of Health and Human Services.”

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Department of Health & Human Services and, therefore, no longer fit within the exception of RSA 318:42(VII).

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Tierney", with a long horizontal flourish extending to the right.

Michael J. Tierney

MJT/pad

Enclosures

cc: Kurt Wuelper, President, NH Right to Life

Elyse Alkalay, Attorney for Board of Pharmacy

# EXHIBIT A

Subject: NH Status (7/6/11 at 12:31pm)

Hi Kathy

I put the date and time - as you know this stuff can change in the minute : )

I received a message from Meegan Gallager (SR. VP) of PPNNE. She said that PPNNE is currently seeing patients, but with no contract they have lost their dispensing privileges, so they are not handing out contraceptives but rather Rx and directing their clients to cost effective pharmacies. She noted that the clients responses have been "allot of tears".

That is what I know right now - will keep you updated even atleast daily even if there is not an update.

Michelle

Michelle R. Ricco, BS, CPM  
Family Planning Program Manager  
Maternal & Child Health Section  
NH DHHS DPHS  
29 Hazen Drive  
Concord, NH 03301

Tel: 603-271-4527  
[mrricco@dhhs.state.nh.us](mailto:mrricco@dhhs.state.nh.us)

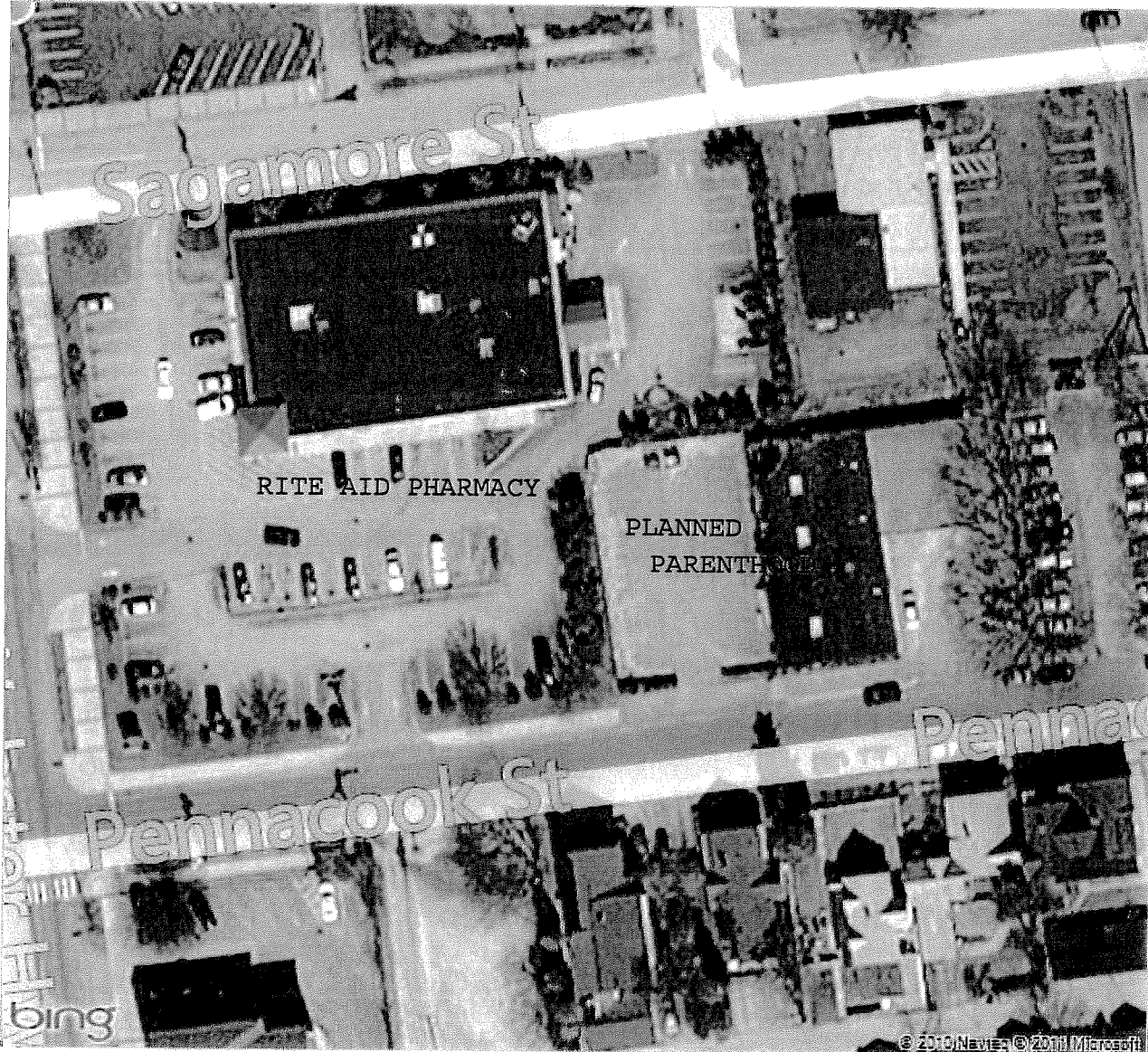
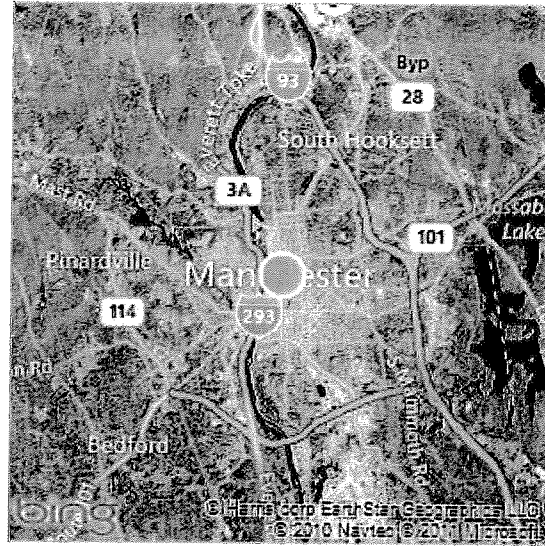
## EXHIBIT B

bing Maps

Manchester, NH

Planned Parenthood and Rite Aid

On the go? Use [m.bing.com](http://m.bing.com) to find maps, directions, businesses, and more



# EXHIBIT C



**Desilets, Kathleen (HHS/OPHS)**

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**From:** Desilets, Kathleen (HHS/OPHS)  
**Sent:** Tuesday, July 05, 2011 1:11 PM  
**To:** 'Michelle.R.Ricco@dhhs.state.nh.us'  
**Subject:** RE: NH Status (7/6/11 at 12:31pm)

I guess that PP might find that Walmart is cheaper than they are for a lot of clients. I hadn't fully thought through how they could help clients - but I was wondering if they could as a pharmacy or another clinic to dispense for them. Clearly this would take some work... and might not even be practical. K

-----Original Message-----

**From:** [Michelle.R.Ricco@dhhs.state.nh.us](mailto:Michelle.R.Ricco@dhhs.state.nh.us) [<mailto:Michelle.R.Ricco@dhhs.state.nh.us>]  
**Sent:** Tuesday, July 05, 2011 1:09 PM  
**To:** Desilets, Kathleen (HHS/OPHS)  
**Subject:** RE: NH Status (7/6/11 at 12:31pm)

Hi Kathy

I'm not sure of any collaborative agreements....I know that Walmart sells "pill" pretty inexpensively.

M

"Desilets, Kathleen  
(HHS/OPHS)"  
<Kathleen.Desilets@hhs.gov>

07/05/2011 12:46 PM

To "[Michelle.R.Ricco@dhhs.state.nh.us](mailto:Michelle.R.Ricco@dhhs.state.nh.us)" <[Michelle.R.Ricco@dhhs.state.nh.us](mailto:Michelle.R.Ricco@dhhs.state.nh.us)>

cc

Subject RE: NH Status (7/6/11 at 12:31pm)

Thanks, Michelle - this makes sense. I am wondering if there are any collaborative agreements, either with pharmacies or with other providers that might help clients get their medications at lower prices? k

-----Original Message-----

**From:** [Michelle.R.Ricco@dhhs.state.nh.us](mailto:Michelle.R.Ricco@dhhs.state.nh.us)  
[<mailto:Michelle.R.Ricco@dhhs.state.nh.us>]  
**Sent:** Tuesday, July 05, 2011 12:35 PM  
**To:** Desilets, Kathleen (HHS/OPHS)

# EXHIBIT D

**Desilets, Kathleen (HHS/OPHS)**

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**From:** Desilets, Kathleen (HHS/OPHS)  
**Sent:** Friday, July 15, 2011 5:33 AM  
**To:** Rosenfeld, Betsy F (HHS/OASH); Milner, Michael R (HHS/OASH)  
**Cc:** 'Michelle.R.Ricco@dhhs.state.nh.us'  
**Subject:** RE: NH Update

Hi Betsy - Michelle says that NH hopes to bring the PPNNE Contract up (if support appears to be available to pass it) on the 8/24 EC meeting. In the meantime, Sununu and the Commissioner are working to feel out the counselors. I think they are trying to get an answer as quickly as possible, but thus far, this process has been characterized by additional requests for information. K Michelle???

Mike and Betsy - I would like to talk as early as is feasible so that we/I can talk with Sue on this as well. K

---

**From:** Rosenfeld, Betsy F (HHS/OASH)  
**Sent:** Thursday, July 14, 2011 6:31 PM  
**To:** Desilets, Kathleen (HHS/OPHS); Milner, Michael R (HHS/OASH)  
**Cc:** 'Michelle.R.Ricco@dhhs.state.nh.us'  
**Subject:** Re: NH Update

Hi Kath and Michelle - glad to have this update, and let's plan to talk tomorrow with Mike about the small contract to PPNNE re notice to patients.

I am pretty sure we can all gather by phone and/or in person to review that.

One question re the longer-term options outlined below: When might NH find out if option #1 is a true possibility, or is a non-starter? I know the next EC meeting is not for a while, but I'm guessing a read on #1 might be available sooner?

Thx again to both of you, and we'll talk as soon as we can tomorrow re PPNNE contract. - Betsy

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**From:** Desilets, Kathleen (HHS/OPHS)  
**Sent:** Thursday, July 14, 2011 06:23 PM  
**To:** Rosenfeld, Betsy F (HHS/OASH); Milner, Michael R (HHS/OASH)  
**Cc:** (Michelle.R.Ricco@dhhs.state.nh.us) <Michelle.R.Ricco@dhhs.state.nh.us>  
**Subject:** NH Update

Hello - Just got the following on the high level NH meeting held today on the PPNNE/FP funding situation.

The meeting involved Michelle, Gov. Lyntch, reps from the AG's office, Commissioner Toumpas, and EC member Sununu and the purpose was to look at options and strategies to fill the gap in family planning services created by the rejection of the PPNNE Contract.

The governor's office has been in touch with PPNNE and they say they have kept their clinics open thus far, although they are not providing medications, and the board will decide today what to do next. Currently, under NH law and regulations PPNNE have no ability to dispense contraception and as a result they estimate that they are losing \$4,000/day.

The state is trying to come to a best case way to fill the gap in services. Here are the options/

1. They have some hope that they may be able to move the counselors to adopt a new contract with PPNNE - the new contract would have revised dates and numbers and also would include language to spell out the restriction on using these funds for abortion and require audited reports that support it. NH officials will test whether this option might allow any movement in the counsel.

If this doesn't work ---

2. NH could execute sole source extensions to current contracts (even those that are not for FP) to enable those providers to offer family planning services. These providers would either provide services directly - or subcontract - in some cases they could link to subcontract with PPNNE. This would be at least a short term solution - until rebidding could occur...or it could be a longer term solution and depending on how subcontracting went would fill part of the gap..

3. NH could rebid the area now served by PPNNE - this would mean that it would be unlikely that services could be restored in this way before late fall at the best.

4. They could tell us that they cannot deliver services and we would need to rebid.

In the meantime NH is interested in issuing a minor contract to PPNNE to enable them to meet the requirement we are putting on them to notify patients of the options. We would have approval of this letter which would outline options for clients including letting them know what other services are available, where to get low cost RX drugs, etc. They feel that this would help them avoid litigation, keep PP sites open, although not in full Title X status NH would ask that PP keep reporting their service numbers. I think I support this action which is a placeholder because it is providing funds for PP to do the notification of clients that we are telling NH to do. BH really can't do it because they don't have access to client information.

So - Hopefully, we can discuss this early tomorrow to see what we think. Then we need to push it on to Sue.

Thanks for all your support through this... and I have to say that we should send a letter or something to Michelle or to Jose about Michelle saying how much we appreciate her work on this, and her extra efforts to keep us fully informed.

Hopefully we can talk tomorrow. I will be in the office by 8 AM. K

Michelle - I have cced you so that you can be sure my notes and report on this are accurate. K

# NEW HAMPSHIRE BOARD OF PHARMACY

57 Regional Drive  
Concord, New Hampshire 03301  
(603) 271-2350  
(603)-271-2856 (Fax)  
TDD Access: Relay NH 1-800-735-2964  
[www.state.nh.us/pharmacy/](http://www.state.nh.us/pharmacy/)

## COMPLAINT COVER SHEET

Enclosed is a complaint form, a brief outline of the administrative complaint procedures, and if applicable, a release of information.

In the event that you need to be contacted regarding your complaint, please provide the following information and return this page with your complaint form.

### PLEASE NOTE

This complaint cannot go forward unless the enclosed medical release form is signed, dated, witnessed and returned with the complaint.

### COMPLAINANT INFORMATION:

Please PRINT

Your Name: New Hampshire Right to Life

Your Complete Mailing Address:

Atty. Michael J. Tierney  
Wadleigh, Starr & Peters, PLLC  
95 Market Street  
Manchester, NH 03101

Daytime Telephone Number:

(603) 669-4140

Evening Telephone Number:

( )

*"Stamp date Rec'd below"*

### FOR OFFICE USE ONLY:

File Number: \_\_\_\_\_

Date Assigned: \_\_\_\_\_

Investigator: \_\_\_\_\_ Acknowledgment Sent: \_\_\_\_\_

Date Investigation Complete: \_\_\_\_\_

Resolution:


**NEW HAMPSHIRE BOARD OF PHARMACY**

57 Regional Drive  
Concord, New Hampshire 03301  
(603) 271-2350  
(603)-271-2856 (Fax)  
TDD Access: Relay NH 1-800-735-2964  
[www.state.nh.us/pharmacy/](http://www.state.nh.us/pharmacy/)

**PHARMACY/PHARMACIST COMPLAINT FORM**

**PLEASE PRINT:**

Today's Date: 4-13-12 Your Name (Complainant): New Hampshire Right to Life

Your SIGNATURE: , Kurt Wuelper, President, NHRTL

Pharmacy Name: Planned Parenthood of Northern New England

Pharmacy Address: 6 clinics in Manchester, Derry, West Lebanon, Exeter, Claremont and Keene. License #s 7058, 7052, 7047, 7053, 7048 and 7060.

Name of Pharmacist:<sup>1</sup> \_\_\_\_\_

Date of the incident: September 14, 2011 to present

Prescription number(s) of prescription(s) involved in this complaint:  
Family planning medicines, including, but not limited to, RU-486.

Patient's Name: Various

Relationship to complainant: \_\_\_\_\_ (Self, Husband, Wife, etc)

Was this a NEW [ ] or REFILL [ ] prescription order?

Was the "Offer to counsel" given? YES [ ] NO [ ]

Was counseling GIVEN [ ] or REFUSED [ ]

Did this involve any other pharmacy personnel other than the pharmacist on duty?  
YES [ ] NO [ ]

If "yes", individual's name AND title (clerk, technician, store manager, etc):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> If "unknown" please look at the prescription bottle and record the initials of the dispensing pharmacist, which are printed on the label

