

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES, LLC d/b/a HOPE MEDICAL  
GROUP FOR WOMEN, on behalf of its patients,  
physicians, and staff,

Plaintiff,

v.

STEPHEN R. RUSSO, in his official capacity as Interim  
Secretary of the Louisiana Department of Health;  
JIMMY GUIDRY, M.D., in his official capacity as State  
Health Officer; and JEFF LANDRY, in his official  
capacity as Attorney General for the State of  
Louisiana,

Defendants.

No. 3:20-cv-229-JWD-EWD

**DECLARATION OF JENNY MA, ESQ. REGARDING SUPPLEMENTAL MATERIALS  
REQUESTED BY THE COURT AT THE APRIL 17, 2020 CONFERENCE**

I, Jenny Ma, Esq. declare as follows:

1: I am an attorney at the Center for Reproductive Rights and am counsel of record for Plaintiff June Medical Services LLC, d/b/a Hope Medical Group for Women (“Hope”) in this action. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would competently testify thereto. I make this declaration in response to the Court’s request for additional documents at the April 17, 2020 telephonic conference.

2: Exhibit H is a true and correct copy of Emergency Order – Continuation of LDH Notices and Orders Due to COVID-19 Outbreak, dated April 7, 2020.

3: Exhibit I is a true and correct copy of the letter from Defendant Jimmy Guidry, State Health Officer, Louisiana Department of Health (“LDH”), to Kathaleen Pittman, Administrator at Hope, on April 15, 2020.

4: Exhibit J is a true and correct copy of Hope's response to LDH's April 15 Letter, dated April 17, 2020.

5: Per Local Rule 65, electronic copies of these papers been furnished to Defendants,

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of April, 2020 at New York, NY.

/s/ Jenny Ma

Jenny Ma

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2020, a true and correct copy of the foregoing was served on counsel for Defendants via the Middle District of Louisiana's Electronic Filing System.

/s/ Ellie T. Schilling  
Ellie T. Schilling

# **Exhibit H**

John Bel Edwards  
GOVERNOR



Stephen R. Russo, JD  
INTERIM SECRETARY

# State of Louisiana

Louisiana Department of Health

## **EMERGENCY ORDER** **CONTINUATION OF LDH NOTICES AND ORDERS** **DUE TO COVID-19 OUTBREAK**

### **FOR IMMEDIATE RELEASE**

TO: ADH/ADHC PACE;  
All Dental Providers;  
All Licensed Health Care Facilities;  
All Commercial Body Art and Tanning Facilities; and  
Healthcare Professionals licensed, certified, authorized, or  
permitted by any board, authority, or commission under LDH

FROM: LDH Office of Public Health  
Jimmy Guidry, M.D.  
State Health Officer

*Jimmy Guidry, M.D.*

RE: Emergency Order

DATE: April 7, 2020  
.....

**EFFECTIVE DATES:** This Emergency Order shall continue all below previously issued LDH Notices and Orders and shall remain in effect until 11:59 p.m. on April 30, 2020, but may be further extended by subsequent order of the State Health Officer.

### **RATIONALE AND LEGAL AUTHORITY:**

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the COVID-19 outbreak a “public health emergency of international concern” (PHEIC). On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency (PHE) for the United States, effective January 27, 2020. Pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760, *et seq.*, a state of public health emergency resulting from the outbreak of “coronavirus disease 2019” (“COVID-19”) was declared to exist in the entire State of Louisiana by Proclamation Number 25 JBE 2020.

LDH – Emergency Order – Continuation

April 7, 2020

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In the days since the referenced declaration of a state of the public health emergency in the state, the COVID-19 outbreak in Louisiana is continuing to expand significantly. The number of reported cases and deaths is expected to rise in the state in the coming weeks. Additional measures are necessary to protect the health and safety of the public. The measures ordered herein are in line with the best guidance and direction from the U.S. Centers for Disease Control and Prevention. The measures ordered herein are necessary because of the ability of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its propensity to attach to surfaces for prolonged periods of time.

The State Health Officer expressly finds that the measures ordered herein are necessary to help control and prevent further spread of COVID-19, a communicable, contagious, and infectious disease that represent a serious and imminent threat to the public health.

**NOW THEREFORE**, pursuant to the powers vested in me by L.R.S. 40:1 *et seq.*, particularly La. R.S. 40:4(A)(13) and La. R.S. 40:5(A)(2), I, Jimmy Guidry, M.D., State Health Officer, do hereby issue the following emergency order:

**The following previously issued Notices and Orders are hereby extended until 11:59 p.m. on April 30, 2020:**

- 1. #2020-COVID-ADC/ADHC/PACE-001- issued on March 13, 2020- this notice is further expanded to include closure of all ADC/ADHC/PACE state-wide. PACE centers may continue to operate as clinics following all applicable federal and state mandates relative to the COVID 10 public health emergency.**
- 2. #2020-COVID19-ALL-002- issued March 13, 2020**
- 3. #2020-COVID19-NURSING FACILITIES-005- issued March 16, 2020**
- 4. #2020-COVID19-DENTAL PROVIDER-004- issued March 17, 2020**
- 5. Emergency Order of Temporary Closure of Commercial Body Art and Tanning Facilities – issued on March 21, 2020**
- 6. #2020-COVID-ALL-007 – issued March 21, 2020**

End of Order.

# **Exhibit I**

John Bel Edwards  
GOVERNOR



Dr. Courtney N. Phillips  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

April 15, 2020

Ms. Kathaleen Pittman  
Hope Medical Clinic  
210 Kings Highway  
Shreveport, LA 71104

Re: Healthcare Facility Notice Order #2020-Covid19-ALL-006  
Healthcare Facility Notice Order #2020-Covid19-ALL-007

Dear Ms. Pittman:

As you are aware, the Louisiana Department of Health (LDH), Office of Public Health (OPH), through Dr. Jimmy Guidry, State Health Officer, issued the above orders on March 18 and March 21, 2020, respectively. The orders applied to your facility and were intended to address issues related to the spread of Covid-19. Specifically, the initial order directed that any and all medical and surgical procedures that can be safely postponed for a period of thirty (30) days shall be so postponed. The second order was issued to aggressively address the COVID-19 emergency, with directions to preserve Personal Protective Equipment (PPE), and to utilize hospital staffing, equipment, and bed capacity for the Covid-19 emergency. In doing so, the Department directed that all medical and surgical procedures shall be postponed until further notice, subject to specific exceptions. The first exception allowed those procedures that were for the treatment of an emergency medical condition. The second exception was to allow procedures that would prevent further harms from underlying conditions or diseases. The second section of the order also directed that healthcare providers transition to telehealth when medically appropriate and called for a postponement of all in-person healthcare services that can safely be postponed for 30 days. In making this determination, providers were directed to use their best medical judgment and were directed to consider the entire clinical picture.

On April 9, 2020, the Louisiana Attorney General's Office Covid-19 Task Force, in conjunction with complaints received by LDH, conducted an administrative review and site survey of your facility. The purpose of this visit was to gather facts / evidence for LDH's determination of your facility's compliance with the above referenced orders. Additionally, the visit was meant to gather information regarding adhering to Covid-19 precautions in regards to receiving patients, social distancing, PPE usage and PPE inventory. Finally, the visit was meant to gather facts regarding complaints to LDH



April 15, 2020

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concerning certain non-essential providers who are allegedly providing elective medical procedures in contravention of the any emergency declaration / orders.

As a result of the facts and evidence gathered by the Task Force, LDH finds it necessary to direct your facility to provide a specific corrective action plan (CAP) related to several key areas of concern. The Department directs that the CAP be provided on or before April 17, 2020. Failure to provide the requested CAP may lead to adverse action against your facility by the Department. The CAP shall address the issues in the below mentioned paragraphs.

1. In response to a task force question regarding compliance with the above referenced orders, your facility, through Kathleen Pittman, provided agents with a "Policy in Response to Notice" that purported to address #2020-COVID19-ALL-007. It is apparent that this policy attempted to address the order with a blanket statement that Hope's physicians have determined that abortion is time-sensitive and an essential component of comprehensive healthcare alleging that delays "may" increase the risks to patients or make abortion completely inaccessible. The policy also attempted to show compliance with another blanket statement that Hope's physicians have made a determination that the pregnancy related and abortion related healthcare services Hope provides cannot be safely postponed for 30 days.

The Department is of the opinion this blanket statement does not comport with the intent and language of the order and is not evidence of compliance therewith. The relevant order clearly states that the only exceptions are for emergency medical conditions and those procedures allowed to avoid further harms from underlying conditions or disease. Thus, the Department directs your facility to provide an immediate CAP addressing how it will comply with the order and only complete medical and surgical procedures in accordance with these exceptions. Further, the CAP should address the fact that each alleged exception be clearly documented in the individual patient's file and certified to exist by the attending physician.

2. Ms. Pittman stated that Hope Medical has received a large influx of patients from other States and has turned away some patients by sending them to Arkansas and Oklahoma. Ms. Pittman also stated that Hope Medical was booked through the first week of May. Finally, it appears that Hope has not been providing a significantly less number of procedures as compared to pre-order levels.

The Department is of the opinion that accepting out of state patients and scheduling patients weeks in advance is evidence that these procedures are de facto not emergency medical conditions. Further, this process is evidence that such procedures were not to avoid further harms from an underlying condition or disease. Thus, the Department directs your facility to provide a CAP that purports to correct this area of alleged non-compliance.

April 15, 2020

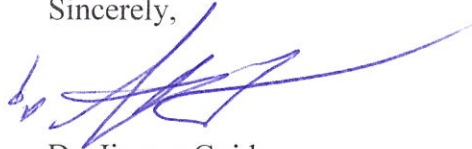
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3. As part of the investigation, it appears that Hope Medical is of the opinion that recipients are fearful that Louisiana clinics may be closing and that has caused an increase in procedures. Hope also alleges that patients were scheduled when they called and inquired about performing procedures themselves. As a result, it appears the timing of the procedure and how much space Hope has available is the main deciding factor in performing the procedures. Further, there were no written guidelines for the staff to follow in deciding whether or not a procedure is emergent or not. It appears this decision is left up to the physician after consults and counseling; however, in examining some of the reasons documented in the patient files, it does not appear that such reasons meet the definition of emergency medical condition or to avoid further harms from underlying condition or disease.

The Department directs your facility to provide a CAP whereby Hope Medical insures that any and all medical and surgical procedures clearly meet the exceptions laid out in the applicable order. The reasons should be clearly documented in the patient's medical record.

The Department appreciates your immediate attention to this matter and looks forward to your submission of the CAP by the required date. With kindest regards, I remain,

Sincerely,



Dr. Jimmy Guidry  
State Health Officer

# Exhibit J

# CENTER *for* REPRODUCTIVE RIGHTS

April 17, 2020

Dr. Jimmy Guidry  
State Health Officer  
Louisiana Department of Health  
P.O. Box 629  
Baton Rouge, LA 70821-0629  
Email: [jguidry@la.gov](mailto:jguidry@la.gov)

Re: April 15, 2020 Letter

Dear Dr. Guidry:

We write on behalf of our client, Hope Medical Group for Women (“Hope”), in response to your April 15, 2020 letter.

Your letter concerns Hope’s compliance with Healthcare Facility Notice Orders #2020-Covid-19-ALL-006 and 007 (the “Notices”), following a site visit to Hope on April 9 by two individuals from the Louisiana Department of Justice’s Medicaid Fraud Control Unit, Criminal Division. Hope is pleased that the Louisiana Department of Health (“LDH”) found no deficiencies in Hope’s compliance with “Covid-19 precautions in regards to receiving patients, social distancing, PPE usage and PPE inventory.” *See* April 15 Letter at 1.

Nevertheless, your letter requests a specific corrective action plan (“CAP”) from Hope on three “discrete areas of concern,” related to Section I of Notice 007. *Id.* at 2. Hope respectfully disagrees that it has been deficient in any way in complying with the Notices, and contends that the Medicaid Fraud officers’ factual findings contain errors. As LDH is aware, Hope is following recommendations and guidelines published by the Centers for Disease Control and Prevention, the National Abortion Federation, the American College of Obstetricians and Gynecologists, and the American Medical Association. Hope has also diligently followed all aspects of these Notices since they were issued nearly one month ago. Nevertheless, Hope addresses below the three “areas of concern” identified in your April 15 letter.

Hope proposes the following CAP regarding the “areas of concern,” using the numbering provided in your letter:

1. Hope confirms that it will “only complete medical and surgical procedures” that are necessary to treat an “emergency medical condition” or “to avoid further harms from underlying conditions or disease,” as specified in Section I of Notice 007. Letter at 2. Hope will revise its internal “Policy In Response to Notice” regarding treatment during COVID-19 to so reflect. Further, Hope will ensure that each patient file includes clear

documentation, certified by the attending physician, of which exception necessitated the medical or surgical procedure.

2. Hope confirms that it will only schedule procedures that are necessary to treat an “emergency medical condition” or “to avoid further harms from underlying conditions or disease” and will revise its internal “Policy In Response to Notice” to so reflect. Letter at 2.
3. Hope confirms that it will revise its current “Policy In Response to Notice” to further clarify when a procedure qualifies as necessary to treat an “emergency medical condition” or to “avoid further harms from underlying condition or disease.” Additionally, Hope will ensure that each physician clearly documents in each patient file the full reasons for his or her conclusion, in his or her medical judgment, that a given procedure “clearly meets the exceptions laid out” in Section I of Notice 007. Letter at 3.

Please contact me should you have any questions.

Sincerely,

/s/ Jenny Ma

Jenny Ma

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