

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LITTLE ROCK FAMILY PLANNING SERVICES, *et al.*,

PLAINTIFFS,

v.

Case No. 4:19-cv-00449-KGB

**LESLIE RUTLEDGE, in her official capacity as
Attorney General of the State of Arkansas, *et al.*,**

DEFENDANTS.

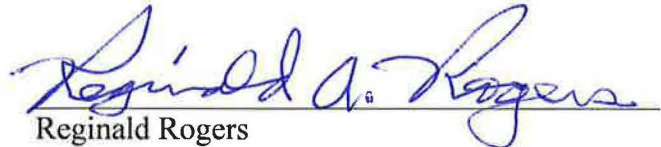
DECLARATION OF REGINALD ROGERS

Pursuant to 28 U.S.C. 1746, I declare:

1. I have personal knowledge of the facts set out in this declaration.
2. I am employed by the Arkansas Department of Health (ADH). As part of my employment, I work with other ADH employees to respond to public-records requests under the Arkansas Freedom of Information Act.
3. In April 2020, ADH received a series of public-records requests from Holly Dickson of the ACLU Arkansas.
4. Attached to this declaration are certain documents that were among those delivered to Ms. Dickson in response to her requests. These documents set out activities of ADH.

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

Executed on April 22, 2020.


Reginald Rogers

Laura Shue

From: Becky Bennett
Sent: Wednesday, April 8, 2020 3:36 PM
To: James Bledsoe, MD; Laura Shue
Cc: David Mitchum; Jane Gaskill
Subject: RE: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED
Attachments: Springhill response .pdf; Centerview response.docx

Dr. Bledsoe – HFS has gathered information on the two facilities who were allegedly conducting non-emergent surgeries:

Springhill Surgery Center

Centerview Surgery Center (AR Urology)

I have attached documents for your review.

I am unsure what action needs to be taken.

Under normal circumstances, HFS would send a letter to the complainant with an explanation that their complaint was investigated.

Next, we send a statement of deficiencies to the facility (the complainant does NOT receive a copy).

I do not have a physician on staff in my agency.

The decision of whether to conduct a surgical procedure would be a physician's determination.

Are you comfortable reviewing these for any guidance needing to be sent to these administrators?

I will be happy to work with you on this.

Kind Regards,

Becky Bennett

Section Chief – Health Facility Services

Arkansas Department of Health

5800 W. 10th Street, Suite 400

Little Rock, Arkansas 72204

PH: 501-661-2201 FAX: 501-661-2165



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From: James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Sent: Wednesday, April 8, 2020 10:23 AM

To: Becky Bennett <Rebecca.Bennett@arkansas.gov>; Laura Shue <Laura.Shue@arkansas.gov>
Subject: RE: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Thanks so much.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Becky Bennett <Rebecca.Bennett@arkansas.gov>
Date: 04/08/2020 10:21 AM (GMT-06:00)
To: "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>, Laura Shue <Laura.Shue@arkansas.gov>
Subject: RE: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Dr. Bledsoe – Health Facilities will contact the Administrator for Springhill Surgery Center and investigate the allegations.

In working with some of the ASCs in our area, it is my understanding that some are performing urgent (debridements) procedures only.

I will report our findings.

Kind Regards,

Becky Bennett

Section Chief – Health Facility Services

Arkansas Department of Health

5800 W. 10th Street, Suite 400

Little Rock, Arkansas 72204

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From: James Bledsoe, MD <James.Bledsoe@arkansas.gov>
Sent: Wednesday, April 8, 2020 10:06 AM
To: Laura Shue <Laura.Shue@arkansas.gov>; Becky Bennett <Rebecca.Bennett@arkansas.gov>
Subject: Fwd: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Laura

This is a complaint that I feel needs investigation.

Jim

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: James Bledsoe <jbledsoemd@yahoo.com>
Date: 04/08/2020 10:03 AM (GMT-06:00)
To: "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>
Subject: Fwd: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Sent from my iPhone

Begin forwarded message:

From: "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>
Date: April 8, 2020 at 9:24:03 AM CDT
To: "jbledsoemd@yahoo.com" <jbledsoemd@yahoo.com>
Subject: Fwd: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>

Date: 04/06/2020 11:14 AM (GMT-06:00)

To: "Naveen Patil, MD" <Naveen.Patil@arkansas.gov>, Seavia Dixon <Seavia.Dixon@arkansas.gov>

Subject: RE: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Yes I will.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Naveen Patil, MD" <Naveen.Patil@arkansas.gov>

Date: 04/06/2020 11:12 AM (GMT-06:00)

To: Seavia Dixon <Seavia.Dixon@arkansas.gov>, "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>

Subject: Re: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Dr Bledsoe

Can you please look into this and talk to them

Thanks

NP

Get [Outlook for iOS](#)

From: Seavia Dixon <Seavia.Dixon@arkansas.gov>

Sent: Monday, April 6, 2020 11:08:12 AM

To: Naveen Patil, MD <Naveen.Patil@arkansas.gov>

Subject: FW: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

See below

From: Ashley Mason <Ashley.Mason@arkansas.gov>

Sent: Monday, April 6, 2020 11:02 AM

To: Seavia Dixon <Seavia.Dixon@arkansas.gov>

Subject: FW: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Good Morning,

We received the message below through the ADH Coronavirus email. If this needs to be forwarded to anyone else, please let me know. Thank you!

Ashley Mason, M.S.

Epidemiologist: Lead-Based Paint Program

Arkansas Department of Health

4815 W. Markham St., Slot 32

Little Rock, AR 72205

Office: 501-671-1549

Fax: 501-682-5429

From: Jeanie Wages <lakemom1958@hotmail.com>

Sent: Monday, April 6, 2020 10:43 AM

To: support@armedicalboard.org

Cc: ADH Coronavirus <ADH.CoronaVirus@arkansas.gov>

Subject: Fwd: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Sent from my iPhone

Begin forwarded

Subject: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Good morning. I am looking for some information as to why an ASC in North Little Rock AR is continuing to perform non-life threatening procedures during this emergency Covid 19 crisis. I have 2 daughters that work at Springhill Surgery Center. One daughter is a medical coder/back-up scheduler and the other is an RN in pre-op. This facility was closed for 1 week due a Dr that was allowed to operate with symptoms and later was confirmed positive for Covid19. My daughter, who is an RN, was directly exposed and had to self quarantine for 14 days. As of last Thursday, April 2, they re-opened and are doing what I would consider to be elective procedures. This facility is privately owned by some of the doctors that operate there. I believe they are pushing the boundaries of the guidelines of the CDC and ADH for the sake of money with no regard for the health and safety of the nursing staff and other employees that must come to work because of them. Not to mention the use of critical PPE that very well may be needed elsewhere. This facility should be closed and its employees be allowed to draw unemployment at this time. Further, the administrator, is threatening to block unemployment benefits of any employees that don't come to work! How can this be allowed? As a mother, and informed Arkansan, I have every right to question the legality of these practices and would appreciate an immediate investigation.

I heard Dr Nate Smith say on TV yesterday that only procedures that might result in loss of life or limbs should be performed. This is not the case. I hope you have someone there can help me try to protect my daughters, and grand children as well as others that work there. They are afraid to make a complaint themselves in fear of their jobs and the threat of not being eligible for unemployment. This is wrong on so

many levels. You can reach me by email or by phone as shown below.

Sincerely,

Jeanie Wages

Phone Number & Email Redacted

This e-mail contains proprietary information and is confidential. You are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited.

Reginald Rogers

From: James Bledsoe, MD
Sent: Friday, April 17, 2020 8:06 PM
To: Reginald Rogers
Subject: FW: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

From: James Bledsoe, MD
Sent: Wednesday, April 8, 2020 10:23 AM
To: Becky Bennett <Rebecca.Bennett@arkansas.gov>; Laura Shue <Laura.Shue@arkansas.gov>
Subject: RE: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Thanks so much.

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From: Becky Bennett <Rebecca.Bennett@arkansas.gov>
Date: 04/08/2020 10:21 AM (GMT-06:00)
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Kind Regards,

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Section Chief – Health Facility Services

Arkansas Department of Health

5800 W. 10th Street, Suite 400

Little Rock, Arkansas 72204

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Laura

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To: "Naveen Patil, MD" <Naveen.Patil@arkansas.gov>, Seavia Dixon <Seavia.Dixon@arkansas.gov>
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----- Original message -----

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Subject: Re: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Dr Bledsoe

Can you please look into this and talk to them

Thanks

NP

Get [Outlook for iOS](#)

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Sent: Monday, April 6, 2020 11:08:12 AM
To: Naveen Patil, MD <Naveen.Patil@arkansas.gov>
Subject: FW: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

See below

From: Ashley Mason <Ashley.Mason@arkansas.gov>
Sent: Monday, April 6, 2020 11:02 AM
To: Seavia Dixon <Seavia.Dixon@arkansas.gov>
Subject: FW: Outpatient Surgery Center continuing "elective procedures" -IMMEDIATE ACTION REQUESTED

Good Morning,

We received the message below through the ADH Coronavirus email. If this needs to be forwarded to anyone else, please let me know. Thank you!

Ashley Mason, M.S.

Epidemiologist: Lead-Based Paint Program

Arkansas Department of Health

4815 W. Markham St., Slot 32

Little Rock, AR 72205

Office: 501-671-1549

Fax: 501-682-5429



Arkansas Department of Health

5800 West Tenth St. Suite 400 • Little Rock, Arkansas 72204 • Telephone (501) 661-2201

Governor Asa Hutchinson

Nathaniel Smith, MD, MPH, Secretary of Health

April 9, 2020

Springhill Surgery Center
3401 Springhill Drive, Suite 155
North Little Rock, AR 72117

Dear Ms. Hooper,

The Secretary of Health, in consultation with the Governor, has sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout Arkansas, as necessary and appropriate to control disease in the state of Arkansas as authorized by Ark. Code Ann. §20-7-109--110.

Recognizing the current Public Health Emergency (PHE), Arkansas facilities have been mandated by the Governor to limit elective surgeries until the PHE has been lifted.

The plan you submitted on April 8, 2020 in response to a recent complaint investigation has been reviewed and approved by the Chief Physician Specialist with the Center for Health Protection, Licensing and Regulation with the Arkansas Department of Health. **Any change in your current plan must be submitted for review to:**

Health Facility Services
Atten: David Mitchum, Program Manager
5800 W. 10th Street, Suite 400
Little Rock, AR 72205
David.mitchum@arkansas.gov

If you have any questions or need further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "David Mitchum". The signature is written in a cursive, flowing style.

David Mitchum, Program Manager
Health Facility Services
Arkansas Department of Health
/LS



Arkansas Department of Health

5800 West Tenth St. Suite 400 • Little Rock, Arkansas 72204 • Telephone (501) 661-2201
Governor Asa Hutchinson
Nathaniel Smith, MD, MPH, Secretary of Health

April 9, 2020

Centerview Surgery Center
1310 Centerview Drive
Little Rock, AR 72211

Dear Ms. Ray,

The Secretary of Health, in consultation with the Governor, has sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout Arkansas, as necessary and appropriate to control disease in the state of Arkansas as authorized by Ark. Code Ann. §20-7-109--110.

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Health Facility Services
Atten: David Mitchum, Program Manager
5800 W. 10th Street, Suite 400
Little Rock, AR 72205
David.mitchum@arkansas.gov

If you have any questions or need further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "David Mitchum".

David Mitchum, Program Manager
Health Facility Services
Arkansas Department of Health
/LS

Matt Gilmore (ADH)

From: Terry Paul
Sent: Friday, April 10, 2020 8:02 AM
To: Matt Gilmore (ADH)
Subject: RE: Richard Pyatt - Baxter County Health Department

I just helped out Dr. Bledsoe. I saw his request for a phone number from his phone and responded. He asked me to email Dr. Marx and I did.

Not me this time!
TP

From: Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>
Sent: Thursday, April 9, 2020 7:40 PM
To: James Bledsoe, MD <James.Bledsoe@arkansas.gov>; Nate Smith, MD <Nathaniel.Smith@arkansas.gov>; Cassie Cochran <Cassie.Cochran@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>
Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>
Subject: RE: Richard Pyatt - Baxter County Health Department

All,

See the below. I think this was handled on many fronts so thanks to all!

Matt

"Matt,

I just spoke with Dr. Marx. He has spoken with Terry Paul (I assume this is someone at the Health Department) who provided Dr. Marx with the Governor's directive regarding elective procedures. Dr. Marx was unaware of this directive and knew that it was previously only a recommendation. He has assured me they are now following all current directives regarding elective procedures and office practices.

Juli Carlson
Regulatory Manager
Arkansas State Medical Board
Arkansas Department of Health
1401 West Capitol, Suite 340, Little Rock, AR 72201
Office: (501) 296-1807 | Fax: (501) 296-1805
Juli.Carlson@armedicalboard.org
www.armedicalboard.org"



From: James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Sent: Thursday, April 9, 2020 12:31 PM

To: Nate Smith, MD <Nathaniel.Smith@arkansas.gov>; Cassie Cochran <Cassie.Cochran@arkansas.gov>; Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>

Subject: RE: Richard Pyatt - Baxter County Health Department

Dr. Smith,

I had a very cordial and informative call with Dr. Marx and he stated that he was unaware of the April 03 Directive on Elective Surgery.

He stated that with the information I supplied him with he would comply with the directive.

We are sending him a copy of the directive.

Thanks,
Jim

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Nate Smith, MD" <Nathaniel.Smith@arkansas.gov>

Date: 04/09/2020 11:35 AM (GMT-06:00)

To: Cassie Cochran <Cassie.Cochran@arkansas.gov>, "Matt Gilmore (ADH)" <Matt.Gilmore@arkansas.gov>, Terry Paul <Terry.Paul@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>, Renee Mallory <Renee.Mallory@arkansas.gov>, Stephanie Williams <Stephanie.Williams@arkansas.gov>, "James Bledsoe, MD" <James.Bledsoe@arkansas.gov>

Subject: RE: Richard Pyatt - Baxter County Health Department

Thanks, Cassie. This is very helpful.

Jim, would you follow up with Dr. Marx?

Nate

Nathaniel Smith, MD, MPH

Secretary of Health

Arkansas Department of Health

4815 West Markham Street, Slot 39

Little Rock, AR 72205-3867

Office: 501-661-2400

Email: Nathaniel.Smith@Arkansas.gov



From: Cassie Cochran <Cassie.Cochran@arkansas.gov>

Sent: Thursday, April 9, 2020 9:34 AM

To: Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>; Nate Smith, MD <Nathaniel.Smith@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Subject: RE: Richard Pyatt - Baxter County Health Department

Good morning,

I have spoken with Richard Pyatt and Dr. Marx this morning and have collected the following information:

Richard Pyatt Call

- Richard Pyatt is an EHS that is helping with phones in Baxter Co.
- Richard said [REDACTED] did call the Baxter Co LHU two times about this.
- He offered her information from our website and the hotline number.
- Richard notified his supervisor and ask if he should have done anything different, supervisor said no.

- I have instructed Richard in the future to please send me an email with contact information if he gets any other calls that he is unsure on the response.

Dr. Marx Call

- Dr. Marx said he was taking extreme precautions, but yes he was still doing some surgeries.
- He usually sees between 30-40 patients per day, he is now only seeing 8-10
- They are using PPE, however, they are utilizing a mask pattern they found online as part of their PPE.
- They are screening each patient before they enter and taking their temp.
- No unnecessary people are allowed in the building for procedures or staffing.
- No one waits in the waiting rooms, they wait in their car.
- He said he was watching the Governor's press conferences and trying to follow what he thought the Governor wanted them to do, which is work if they can and not apply for the loans unless they have too.
- Dr. Marx was very nice on the call and said if he is doing something wrong please let him know.

Please let me know if you need any other information. Thank you, Cassie

From: Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>

Sent: Wednesday, April 8, 2020 7:03 PM

To: Cassie Cochran <Cassie.Cochran@arkansas.gov>; Nate Smith, MD <Nathaniel.Smith@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Subject: RE: Richard Pyatt - Baxter County Health Department

Yes sir. I will send to them now and ask them to investigate.

Thanks,

Matt

From: Cassie Cochran <Cassie.Cochran@arkansas.gov>

Sent: Wednesday, April 8, 2020 6:32 PM

To: Nate Smith, MD <Nathaniel.Smith@arkansas.gov>; Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Subject: RE: Richard Pyatt - Baxter County Health Department

Yes, I will check in on both situations, the eye doctor and Richard Pyatt, and report back. Cassie

From: Nate Smith, MD <Nathaniel.Smith@arkansas.gov>

Sent: Wednesday, April 8, 2020 6:20 PM

To: Matt Gilmore (ADH) <Matt.Gilmore@arkansas.gov>; Terry Paul <Terry.Paul@arkansas.gov>; Cassie Cochran <Cassie.Cochran@arkansas.gov>

Cc: Don Adams <Joel.Adams@arkansas.gov>; Renee Mallory <Renee.Mallory@arkansas.gov>; Stephanie Williams <Stephanie.Williams@arkansas.gov>; James Bledsoe, MD <James.Bledsoe@arkansas.gov>

Subject: FW: Richard Pyatt - Baxter County Health Department

Matt, please follow up with the Medical Board on this.

Cassie and Terry, can you have someone confirm what is happening at this practice in Mountain Home?

Nate

Nathaniel Smith, MD, MPH

Secretary of Health

Arkansas Department of Health

4815 West Markham Street, Slot 39

Little Rock, AR 72205-3867

Office: 501-661-2400

Email: Nathaniel.Smith@Arkansas.gov



From: [REDACTED]
Sent: Wednesday, April 8, 2020 12:56 PM
To: Nate Smith, MD <Nathaniel.Smith@arkansas.gov>
Subject: Richard Pyatt - Baxter County Health Department

Dr. Smith, I am contacting you over a very concerning issue at a local ophthalmologist's office. Dr. Douglas Marx is continuing to do elective surgery on patients as of today. Also doing regular eye exams and excepting many new patients. I know someone that works at both of his clinics. Today they had 6 surgeries. Also they are making masks out of paper towels and rubber bands. The employee that is checking patients at the door was told to wear one of these masks that was made at the clinic. I gave her some masks that we had and also had a friend make her a cover and covers for two other employees. It was my understanding that these procedures were to be postponed during the Covid-19 epidemic. I contacted Richard Pyatt on March 26 and gave him the same information. Richard said he had to contact Little Rock Health Department. I contacted Richard Pyatt again on April 3rd and had to refresh his memory about our first call. Richard said that he had not heard from the Little Rock Health Department and that people were going to do what they wanted and could not be stopped. Richard said he would contact Little Rock again. Richard was very dismissive and I am very underwhelmed by his professionalism. I contacted Little Rock Health Department on April 3rd and talked to Gabby. Gabby put me on hold and came back and told me to contact the Arkansas Medical Board. I did file a complaint with them. I am perplexed as to why the Health Department forwarded me to the Arkansas medical Board. If the Arkansas Health Department is putting out the guidelines on Covid-19, why are you not enforcing them ? I understand that all the other Doctors in our area are following the guidelines, but when one is not, the matter should be taken seriously. Also his Anesthesiologist quit and the nurses quit. So Mrs. Marx told they appointment desk to book appointments 25 minutes apart instead of 15 minutes. Dr. Marx at Sneed Eye Clinic in Mountain Home Arkansas. I know you are extremely busy at this time ! Please tell me you will look in to both matters. Sincerely [REDACTED]