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State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
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February 26, 2019

Jon Bel Edwards
Governor
State of Louisiana
P. O. Box 94004
Baton Rouge, LA 70804
Via e-mail: mark.cooper@la.gov

Re: LSMBE & LDH Health Care Licensing

Dear Governor Edwards:

As you know, Louisiana has a long history of abortion clinics employing doctors who have been found incompetent or subject to serious professional discipline. My office has confirmed information regarding two doctors who are currently working at abortion clinics in Baton Rouge and New Orleans, Dr. Kevin G. Work and Dr. Nsikan M. St. Martin that raises serious questions about threats to women's health and safety, as well as inadequate oversight of the clinics and of the Louisiana State Board of Medical Examiners ("LSBME" or "Board") in carrying out its duties to protect the public and discipline physicians. *See, e.g.*, La. R.S. 37:1270(A)(1), (A)(3), (B)(6); 37:1272(3), (5); 37:1279(B); 37:1285(A). I am writing to urge you to take action on both.

Dr. Kevin Work, who based upon public records is employed as an abortion provider at the Delta Clinic of Baton Rouge,¹ has been the subject of multiple disciplinary orders by the LSBME for, among other things, "prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification," "knowingly performing any act which . . . assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to an illegal practitioner," and violating the terms of a consent order. Interim Consent Order, No. 15-A-009 (LSBME Feb. 15, 2016); Consent Order, No. 13-I-014 (LSBME Oct. 20, 2014); Consent Order, No. 08-I-774 (LSBME Mar. 16, 2009). Records also show Dr. Work was disciplined for multiple

¹ Although his medical license was previously revoked and he was terminated as a Medicaid provider, Dr. Work apparently was issued a current Controlled Dangerous Substance License issued by the Board of Pharmacy.

instances of failing to meet basic standards of patient care. Most recently, the LSBME obtained information that – while on probation for other violations –

Dr. Work . . . allowed his unlicensed clinic personnel to evaluate his patients and provide prenatal care. Furthermore . . . [Dr. Work] allowed the use of his signature for visit notes and prescriptions, and represented in the medical record and in his claims to Medicaid that he had seen the patients himself during visits when he had not.

Interim Consent Order, No. 15-A-009 (LSBME Feb. 15, 2016).² The LSBME revoked Dr. Work's medical license, entirely prohibited him from practicing medicine for at least one year, required him to take additional Continuing Medical Education credits, and required him to "take and pass the written examination required to achieve, in part, Board Certification in Basic Obstetrics and Gynecology," and "[i]f complete board certification is not obtained within three (3) years . . . surrender his medical license." *Id.*³

In 2017, Dr. Work petitioned the LSBME for reinstatement of his medical license, but he was only approved to engage in a limited scope of practice. "Dr. Work was unable to satisfy [the requirement that he pass the Board Certification Examination in Obstetrics and Gynecology] and advised the [LSBME] that he would like to be reinstated to work in the area of wound care." Order for Reinstatement of Medical License on Probation, No. 15-A-009 (LSBME June 20, 2017). Though the records do not show what steps he took to otherwise demonstrate his competency, the LSBME reinstated Dr. Work's medical license for a probationary period of two years, but ordered that "Dr. Work shall only engage in the practice of medicine in a setting approved by the Board or its designee in writing. Such practice setting shall not be

² Consistent with LSBME's disciplinary order, allegations contained in a publicly-available malpractice action against Dr. Work stated:

On March 5, 2010, [Patient A] and the alleged father of her unborn child, . . . visited Dr. Kevin Work's medical office on Canal Street for a routine visit and an ultrasound. Ms. Heyzel Retana, a nurse working in Dr. Work's office, instructed [Patient A] to ingest three white pills. When [Patient A] asked about the reason for the pills, Ms. Retana allegedly stated that the pills were "to allow the uterus to contract and just go ahead and take them." [Patient A] suffered abdominal cramps and contractions after ingesting the pills administered. While in the exam room, [Patient A] informed Ms. Retana that she was there for an ultrasound. Then Ms. Retana allegedly instructed [Patient A] to regurgitate the pills. Following a pelvic exam, Dr. Work prescribed medication for an infection. Later that evening, [Patient A's spouse] took [Patient A] to the emergency room at Ochsner Medical Center — West Bank, in Gretna, Louisiana. [Patient A's] unborn baby, determined to be sixteen weeks and six days along, died.

Caceras v. Work, 110 So. 3d 275, 276-77 (La. App. 4th Cir. 2013). (Patient name redacted).

³ Records indicate at least some of the conduct for which he was disciplined occurred at Midtown Medical, which was an abortion clinic in New Orleans that has since closed.

one in which Dr. Work is a solo-practitioner.” *Id.* These public disciplinary records show his status is probationary and his scope of approved practice limited, but the Board website does not flag these restrictions. To the contrary, *until today*, it showed only that his status is “active.”⁴ Abortion procedures are obstetric in nature and have a variety of known complications, including perforation of the uterus, hemorrhaging, and sepsis, among others. Medication abortions are known to have even higher complication and failure rates, requiring special approval for their use. But nothing shows Dr. Work demonstrated competency to handle these procedures or their complications, which is the basic standard of care, and his professional disciplinary history indicates the opposite.⁵

In reviewing publicly available records related to Dr. Work, my office learned that Dr. Nsikan St. Martin practices with Dr. Work at Delta Clinic and also practices at Women’s Health Care Center in New Orleans.⁶ Public records show Dr. St. Martin was arrested in late-2015 on charges of possession of schedule I marijuana, possession of drug paraphernalia, possession of schedule IV (alprazolam), possession of schedule II (mepheylphenidate) (*sic*), possession of a firearm in the presence of CDS, and violation of the Uniform Controlled Dangerous Substance Law.⁷ Nevertheless, there appear to be no publicly available record showing that Dr. St. Martin was disciplined by the LSBME, that adequate (or any) oversight is in place, or that this clearly relevant information was supplied to the Board of Pharmacy when it renewed her Controlled Dangerous Substance License.

I am perplexed as to why your administration has not already investigated these individuals and/or taken steps to remedy this situation. Therefore, I am

⁴ The LSMBE, after public attention to related to Dr. Work’s status, apparently updated the website and now shows his status as active but probationary.

⁵ In *Pitre v. Opelousas Gen. Hosp.*, the Louisiana Supreme Court explained:

A physician has special legal obligations in connection with his profession. As any person, he “is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill.” [La. Civ. Code Ann. art. 2316](#). Additionally, a general practitioner is obliged to possess the degree of knowledge or skill possessed, and to exercise the degree of care ordinarily exercised, by physicians actually practicing in a similar community under similar circumstances; a physician practicing in a specialty is required to exercise the degree of care ordinarily practiced by doctors in that specialty. [La. Rev. Stat. 9:2794\(A\)\(1\)](#). The violation of these obligations constitutes a fault which must be evaluated, taking into account the professional practices and customs by comparing the conduct of the author of the damage with the normal and regular activity of a person exercising the same profession.” *Id.* quoting 2 M. Planiol, *Treatise on the Civil Law*, part 1 § 865A (1959).

530, So. 2d 1151, 1157 (La. 1988).

⁶ Dr. St. Martin has CDS licenses for both facilities. These licenses can be confirmed at: <https://secure.pharmacy.la.gov/Lookup/LicenseLookup.aspx>

⁷ www.morgancitypolice.org/index.php/services-2/police-blotter/468-mcpd-arrest-report-11-02-2015.html

requesting, first, that you order the LSMBE and LDH to investigate whether these individuals are qualified to provide abortions. The publicly available documents raise more questions than they answer, and you are within your authority to make this request. The Board is composed of gubernatorial appointees and falls under the supervisory oversight of the LDH, the Secretary of which is your appointee.⁸ Its rules and regulations must be approved by your office. And I note and emphasize that Board members' qualified immunity as state actors is premised upon LDH exercising adequate supervision of these actions.

Unlike virtually all other providers, abortion clinics and providers offer little public information regarding who the providers are or their qualifications. Consequently, women have little ability to research an abortion provider's disciplinary, malpractice, and criminal history. That lack of information heightens public reliance on the LSBME and LDH. The LSMBE's practice, as evidenced here, of revoking a doctor's license, re-admitting him to only a limited scope of practice, then *non-publicly altering* that limitation and permitting him to return to practice (here to perform abortions) is concerning and threatens the health and safety of women.⁹

Second, I request that you investigate and report to the public whether LDH for licensing purposes has meaningful access to information from the LSBME. The purpose of the abortion clinic licensing regime is to protect women's health. The Health Standards Section of LDH ("HSS") appears to have legal authority to ensure the medical staff is practicing within an approved scope of care and does not expose women to unnecessary risks. Based upon the information available on the LSMBE website, HSS reported that Dr. Work's status was "active," and the LSBME indicated this meant "unrestricted" although generally accepted standards for care and publicly available documents show otherwise.¹⁰ But merely having an active medical license does not ensure competency to provide a particular scope of care. No one, for example, would assume that anyone with M.D. behind his or her name could competently or ethically perform brain surgery. I urge that you investigate whether and how the LSBME reports to HSS and HSS staff ensures the qualifications and competency of the medical staff is appropriate.

⁸ Except for the offices of the governor and Lieutenant Governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments." La. Const. Art. IV, § 1(B).

⁹ Final actions of the Board are public record, so there is no legal justification for the Board to not have made public any decision that altered the original consent order's terms and conditions.

¹⁰ Pursuant to La. Rev. Stat. 37:1279, the Board is mandated to notify "all agencies, boards, and organizations having reasonable need for such notice of any suspension, revocation, or restriction imposed upon a license...." It is unclear whether the Board complied with this mandate.

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I request and urge you to act immediately and ensure these doctors are being properly screened based upon their prior history. As I continue to defend reasonable safety-related regulations, like requirements that doctors who perform abortions have admitting privileges and are board certified, I hope you will ensure that our licensing laws are being fully enforced and that the LSBME is performing its duties.

I also urge you to ensure the public is informed of the results of this investigation and to protect women's health by ensuring *all* disciplinary actions taken by the Board are public.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeff Landry", with a long horizontal flourish extending to the right.

JEFF LANDRY
ATTORNEY GENERAL