

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

Docket No. 219-2015-CV-00285

New Hampshire Right to Life

v.

New Hampshire Department of Health & Human Services

RESPONDENT'S ANSWER TO VERIFIED PETITION FOR INJUNCTIVE RELIEF
PURSUANT TO RSA 91-A

NOW COMES the Respondent, the New Hampshire Department of Health and Human Services ("DHHS"), by and through counsel, the Office of the Attorney General, responding as follows to the Verified Petition:

I. Preliminary Statement

The Petitioner's entire Preliminary Statement is legal argument that requires no response.

II. Parties

1. Admitted.

2. The Respondent is without sufficient information to either admit or deny; therefore, same is denied.

3. The Respondent is without sufficient information to either admit or deny; therefore, same is denied.

4. Admitted.

III. Jurisdiction and Venue

5. Admitted.

6. Admitted.

7. The Respondent is without sufficient information to either admit or deny the location of New Hampshire Right to Life's ("NHRTL") Board Member and past President, Kurt Wuelper's residence. As such, the Respondent denies that venue is proper.

IV. RIGHT TO KNOW REQUEST FOR PHARMACEUTICAL PROTOCOLS

8. Denied. By way of further answer, upon information and belief, the Respondent contends that prior to September 2012, the Board of Pharmacy may have reviewed pharmaceutical protocols as required under RSA 318:42, VII. However, it was not until 2012 that DHHS took on this role. DHHS has maintained in its control the pharmaceutical protocols since 2012.

9. Admitted.

10. Admitted.

11. The Respondent admits that in October 2014, Attorney Michael Tierney, on behalf of NHRTL, requested certain pharmaceutical protocols from DHHS, the New Hampshire Board of Pharmacy ("BOP"), and the New Hampshire Attorney General's Office ("AGO"). Specifically, he requested "a copy of Planned Parenthood's most recently approved written protocol required by RSA 318:42 (VII)(a)." Subsequently, Attorney Tierney added to his request and sought the same documents for Weeks Medical Center, the Concord Feminist Health Center, and the Feminist Health Center of Portsmouth. In response, the Respondent provided redacted versions of these pharmaceutical protocols. Claiming that the Respondent violated the Right to Know law, the Petitioner brought an action for injunctive relief in this Court. See NHRTL, et al. v. New Hampshire Director of Charitable Trusts Office, et al., Docket No. 219-2014-CV-00386, Strafford Cty. Super. Ct. (Mangones, J.). After litigating the issue, on May 15, 2015, the Court issued an Order. Regarding the pharmaceutical protocols specifically at issue in

that case, the Court found that the protocols contained commercial information as defined by RSA 91-A:5, VII. However, balancing the interests at stake, the Court further determined that “the public interest in disclosure outweigh[ed] the private interest in confidentiality of commercial material.” The Court then ordered DHHS to produce unredacted versions of the specific pharmaceutical protocols that had been the subject of the litigation. The Court’s Order speaks for itself. All other facts are denied.

12. Denied. By way of further answer, as stated in the Respondent’s Response to Petitioner’s Motion for Clarification in that case, the Respondent did not believe PPNNE’s 2012 pharmaceutical protocols were the subject of that litigation. Further, since PPNNE’s 2012 protocols are substantially different from those that had been ordered disclosed, and also had not been reviewed by any Court *in camera*, the Respondents reasonably believed that portions of PPNNE’s 2012 protocols (and other subsequently requested protocols) were still exempt from disclosure under RSA 91-A:5, IV. As such, in response to the Petitioner’s June 30, 2015 Right to Know request, certain portions of the requested pharmaceutical protocols were given to the Petitioner in redacted format.

13. Denied. By way of further answer, while the Respondent admits that Attorney Megan Yaple stated in an email to Attorney Michael Tierney that the Court’s Order “has no precedential value,” the Respondent did not ignore that Order.

14. The Respondent admits that it produced all of the requested pharmaceutical protocols. The Respondent admits that it did redact certain information from various protocols, as the information was confidential under RSA 91-A:5, IV. See Petitioner’s Ex. C to Verified Petition. These previously redacted pages consist of: (1) seven pages (out of 12 total) from

PPNNE's 2012 protocols; (2) one page (out of 12 total) from Goodwin Community Health's 2013 protocols; and (3) thirteen pages (out of 17 total) from PPNNE's 2015 protocols.

15. The Respondent admits that it redacted confidential information from the documents disclosed in response to the Right to Know request. The Respondent denies the Petitioner's characterization of the Court's findings in its May 15, 2015 Order in a separate matter, as the Court did not "reject" the Respondent's determination that the information was "commercial." The Court only determined that the public's interest in disclosure outweighed the private interest in confidentiality. The protocols at issue in the instant case are different than the information considered by the Court in the previous case. Understanding the public's interest in the disclosure of information, the Respondent worked diligently with PPNNE and Goodwin Community Health to substantially eliminate as many redactions as possible from the twenty-one pages in dispute and has since provided complete copies of the protocols, with as much information disclosed as possible.

16. Denied.

V. Request for Injunction Requiring Immediate Production of All Documents

17. The Respondent admits that the Petitioner has requested certain governmental records and documents. By way of further answer, the Respondent redacted information exempt from disclosure under RSA 91-A. To the extent any other facts are alleged, they are denied. Additionally, the second part of the sentence is legal argument that requires no response.

18. This is a statement of the law that requires no response

19. This statement is a legal argument and conclusion that requires no response. To the extent any facts are alleged, they are denied.

20. Denied. By way of further answer, the Court applied the Union Leader “balancing test” to other pharmaceutical protocols, not at issue here, in a separate case. See NHRTL, et al. v. NH Director of Charitable Trusts Office, et al., Docket No. 219-2014-CV-00386, Strafford Cty. Super. Ct. (Mangones, J.). The pharmaceutical protocols at issue in the present case have not been reviewed by any court.

21. This is a statement of the law that requires no response.

22. This is request for a certain remedy that requires no response. However, because the Respondent has now produced the twenty-one pages in dispute to the Petitioner in a substantially unredacted format, a mandatory injunction is no longer necessary.

VI. Request for Attorney’s Fees

23. Denied.

24. The Respondent admits that on May 15, 2015, the Court, in a separate case, ordered that certain pharmaceutical protocols reviewed by DHHS were to be produced to the Petitioner in unredacted format. That Order speaks for itself. To the extent any other facts are alleged, they are denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

WHEREFORE, the Respondent respectfully requests that this Honorable Court:

(A) Deny the Verified Petition; and

(B) Grant such further relief as may be deemed just and proper.

Respectfully Submitted,

NEW HAMPSHIRE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

By its attorney,

JOSEPH A. FOSTER
ATTORNEY GENERAL

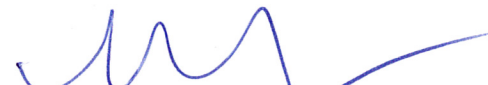
September 21, 2015



Megan A. Yaple, Bar No. 19604
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to
Michael J. Tierney, Esquire, counsel of record.



Megan A. Yaple