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June 4, 2015

Karen A. Gorham, Clerk
Strafford County Superior Court
259 County Farm Road
Dover, NH 03820

Re: New Hampshire Right to Life and Jackie Pelletier v. New Hampshire
Director of Charitable Trusts Office, New Hampshire Attorney General's
Office, New Hampshire State Board of Pharmacy and New Hampshire
Department of Health & Human Services

Dear Clerk Gorham:

Enclosed please find NHRTL & Pelletier's Motion for Clarification of Court's Order of
May 15, 2015 Regarding Production of Pharmaceutical Protocols in the above matter.

Very truly yours,


Michael J. Tierney

MJT
Enclosure
cc: Lynn Cusack, Esq.
Megan Yapple, Esq.

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THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

Docket No. 219-2014-CV-00386

New Hampshire Right to Life
&
Jackie Pelletier

v.

New Hampshire Director of Charitable Trusts Office
&
New Hampshire Attorney Generals' Office
&
New Hampshire State Board of Pharmacy
&
New Hampshire Department of Health & Human Services

**MOTION FOR CLARIFICATION OF COURT'S ORDER
OF MAY 15, 2015 REGARDING PRODUCTION OF PHARMACEUTICAL
PROTOCOLS**

NOW COMES New Hampshire Right to Life and Jackie Pelletier and move as follows:

1. This is a Right to Know action concerning requests for protocols approved by HHS pursuant to RSA 318:42(VII). NHRTL's requests included the protocols approved by HHS on September 7, 2012 for the Lovering Health Center (P65, P19 & P24), September 14, 2012 for Weeks Medical Center (P10-11), September 14, 2012 for PPNNE (Exhibit G to Complaint and Exhibit I to State's Trial Brief), June 2013 for the Weeks Medical Center (P13-14), June 24, 2013 for PPNNE (P3-7) and August 2013 for the Concord Feminist Health Center (P28-29).
2. In its Order of May 15, 2015, this Court held that the public interest in disclosure the protocols outweighed any confidentiality interest under RSA 91-A and ordered the protocols disclosed. See Order, p. 25-26.
3. On June 3, 2015, the State provided unredacted copies of five of the six protocols.

4. In emails between counsel on June 3-4, 2015, the State explained that it did not produce the September 14, 2012 protocols attached Exhibit G to Complaint and Exhibit I to State's Trial Brief and discussed in the complaint, answer, and both parties trial briefs¹ because the State never provided an unredacted copy of this set of protocols to the Court for in camera review and therefore the Complaint Exhibit G protocols was not on the list of page numbers that were to be disclosed.

5. The State did not provide the September 14, 2012 Protocols to the Court for in camera review even though the Court, in its March 1, 2015 Order, clearly ordered "The State shall provide the Court with complete and unredacted versions of the materials that have been previously furnished to the Court. . ." See Order, p. 3.

6. The State now argues that the September 14, 2012 protocols were never part of the case. Although the June 24, 2013² protocols were not originally part of this case, the September 14, 2012 protocols were an exhibit both to the Complaint (Exhibit G) and to the State's Trial Brief (Exhibit I) and discussed by the parties in their briefs.

7. In the State's April 17, 2015 Response, the State indicated that it was providing to the Court of "all documents submitted to the Petitioners by the BOP, DHHS and the AGO." See ¶ 2. (emphasis in the original). In fact, the table of contents' first entry is PPNNE's "Medication Dispensing Policy" albeit there is date on any of the documents in the table of contents.

8. The Court's May 15, 2015 Order does not distinguish between the September 14, 2012 PPNNE protocols and the other five protocols but simply states "Copies of the clinics'

¹ See NHRTL's January 9, 2015 Trial Brief p. 12 and State's January 30, 2015 Trial Brief, p. 18

² In an email between counsel, counsel agreed that the 2013 protocols could be added to the case without need for an amendment. See attached as Exhibit A.

pharmaceutical protocols approved by BOP in accord with RSA 318:42, VII must be produced unredacted.” See Order p. 35.

9. NHRTL’s respectfully requests that the Court clarify its May 15, 2015 Order to apply to all six protocols, including the September 14, 2012 protocols that were an exhibit both to the Complaint (Exhibit G) and to the State’s Trial Brief (Exhibit I).

10. WHEREFORE, New Hampshire Right to Life and Jackie Pelletier respectfully that this Honorable Court clarify its Order of May 15, 2015:

A. Clarify its Order of May 15, 2015 ordering production of copies of all pharmaceutical protocols approved by BOP in accord with RSA 318:42, VII, including the September 14, 2012 protocols attached both as Exhibit G to Complaint and as Exhibit I to State’s Trial Brief;

B. Such other and further relief as may be just and equitable.

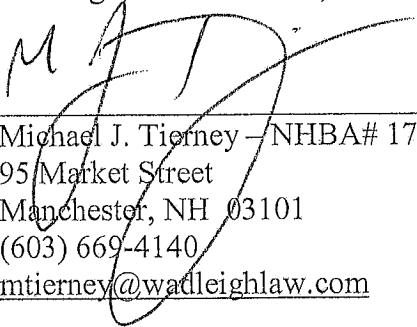
Respectfully submitted,

**New Hampshire Right to Life &
Jackie Pelletier**

By their Attorneys,
Wadleigh, Starr & Peters, P.L.L.C.

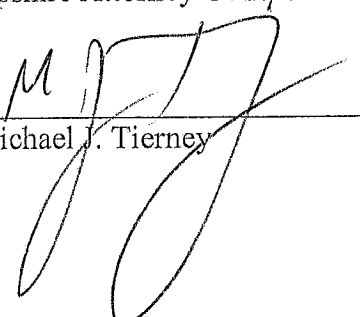
Date: June 4, 2015

By:


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Certificate of Service

I hereby certify that a copy of the within Motion has this day been mailed, postage prepaid, to Megan Yapple and Lynn Cusack, New Hampshire Attorney General's Office, 33 Capitol Street, Concord, NH 03301.



Michael J. Tierney

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Michael Tierney

From: Dempsey, MaryAnn <MaryAnn.Dempsey@doj.nh.gov>
Sent: Wednesday, December 10, 2014 4:26 PM
To: Michael Tierney
Cc: Pauline Desfosses; Yapple, Megan A
Subject: RE: Pelletier & NHRTL Right to Know Case

Michael,

It is fine to provide them at the hearing without a motion.

Mary Ann

From: Michael Tierney [<mailto:mtierney@wadleighlaw.com>]
Sent: Wednesday, December 10, 2014 4:24 PM
To: Dempsey, MaryAnn
Cc: Pauline Desfosses
Subject: Pelletier & NHRTL Right to Know Case

Mary Ann:

In your Answer you correctly point out that I attached the old pharmaceutical protocols as Exhibit G.

The more recent pharmaceutical protocols which you sent to us in October of this year should have been attached.

Would you be agreeable to me providing the Court with the more recent redacted protocols at the hearing on January 15th or would you prefer that a Motion to Amend be filed?

Where we both know the redacted protocols that you sent in October are the ones I intended to attach, I do not think a motion to amend and then an amended answer is necessary but I will if you think it is necessary.

Please advise.

Thanks,

Michael

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