

STATE OF INDIANA )  
 )  
COUNTY OF ALLEN )

IN THE ALLEN COUNTY COURT SYSTEM  
ROOM NO.  
CAUSE NO. 02D01- 10 05 - PL - 182

FORT WAYNE WOMEN'S HEALTH, on )  
its own behalf and on behalf of its patients, )  
DR. ULRICH G. KLOPPER, on his )  
own behalf and on behalf of his patients, )

Plaintiffs, )

v. )

HEALTH COMMISSIONER, FORT )  
WAYNE-ALLEN COUNTY )  
DEPARTMENT OF HEALTH; )  
FORT WAYNE-ALLEN COUNTY )  
DEPARTMENT OF HEALTH, )

Defendants. )

FILED BY  
THIRD-PARTY COMMERCIAL CARRIER  
T.R.5(F)

MAY 27 2010

### Complaint for Declaratory and Injunctive Relief

#### Introduction

1. Allen County, Indiana has an Ordinance located in the Allen County Code Title 10, Article 8, entitled "An Ordinance Concerning Public Safety" ("the Ordinance") (Attached) that is scheduled to go into effect on June 1, 2010. It provides for the Fort Wayne-Allen County Department of Health to regulate the practice of "Itinerate Medical Providers" in Allen County, containing provisions that, among other things: require specific actions regarding patient care and notice, require that providers identify a "physician designee" and pay a \$250 fee, and authorize unlimited review of patient medical records by officials of the defendants. Failure of the provider to comply with the ordinance may lead to both fines and an injunction action against the provider. The ordinance exceeds the powers of defendants under Indiana law and is therefore invalid. It also violates the Indiana and United States Constitutions. To the extent it imposes

Exhibit "A"

requirements with which plaintiffs are unable to comply, it represents an undue burden on the rights of plaintiffs' patients to obtain an abortion in violation of the Fourteenth Amendment to the United States Constitution. It subjects plaintiffs to unreasonable searches and seizures in violation of the Fourth Amendment to the United States Constitution and Art. 1, § 11 of the Indiana Constitution. It violates the right to informational privacy that plaintiffs' patients have in their medical records, protected by the Fourteenth Amendment and the Indiana Constitution, Art. 1 §§ 1, 11. It is unconstitutionally vague in violation of the Fourteenth Amendment to the United States Constitution. It also invidiously and irrationally discriminates against persons falling into the class of "Itinerate Medical Providers" in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. Appropriate declaratory and injunctive relief should therefore issue.

2. This action is brought pursuant to Indiana law and 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

#### Parties

3. Fort Wayne Women's Health is a health clinic located in Ft. Wayne, Indiana.

4. Dr. Ulrich Klopfer is an Osteopathic Physician licensed by the State of Indiana.

5. The Fort Wayne-Allen County Department of Health is a governmental entity established by statute. IND. CODE § 16-1-7-16 (repealed).

6. The Health Commissioner, Fort Wayne-Allen County Department of Health is the duly appointed director of the agency.

#### Factual Allegations

7. The Ordinance was passed in April of 2010 by the Allen County Commissioners and is scheduled to become effective on June 1, 2010.

8. It applies to Itinerate Medical Providers who are defined as physicians who live outside of Allen County or a contiguous county and who do not have admitting privileges in hospitals in Allen County or contiguous counties. Sec. 10-8-1.

9. Its requirements are imposed on Itinerate Medical Providers who provide "medical care." This latter term is defined as "any surgical or other invasive procedures, as defined in Indiana Code 25-22.5-1-1.1." Sec. 10-8-1.

10. The Ordinance applies to all Itinerate Medical Providers offering any medical care in Allen County. Sec. 10-8-2(A).

11. It also applies to "Operators," defined as "any person who controls, operates, manages, or owns any facility as defined in this chapter." Sec. 10-8-1.

12. All such persons must provide certain information to the duly appointed Health Officer of the Fort Wayne-Allen County Department of Health or his or her designee, as well as to all Allen County operating hospitals, emergency departments and urgent care providers. Sec. 10-8-2.

13. Specifically, the Itinerate Medical Provider must "[f]ile verification of emergency contact information and alternate physician designee with all Allen County operating hospitals, emergency departments and urgent care providers." Sec 10-8-2(A)(2).

14. The term "urgent care provider" is not defined in the Ordinance and plaintiffs are uncertain as to what the term refers to and what, in Allen County, would be classified as an "urgent care provider."

15. There is no explanation as to how the Itinerate Medical Provider is to "file" information with hospitals, emergency departments and urgent care providers.

16. The required information includes emergency contact information for the Itinerate Medical Provider, including a phone number where the Provider or a physician designee may be reached 24 hours a day, 7 days a week. Sec. 10-8-2(A), Sec. 10-8-6(A)(a).
17. The concept of "physician designee" is not defined in the Ordinance.
18. The Ordinance further regulates the physician-patient relationship by providing that "follow-up care must be available on an appropriate and timely basis when clinically necessary by the Itinerate Medical Provider or their physician designee. Notification of this arrangement must be provided to the patient and the Allen County Department of Health as well as all Allen County operating hospitals, emergency departments and urgent care providers by the Itinerate Medical Provider." *Id.*
19. No explanation is given in the Ordinance as to how this information can be given to the above entities while safeguarding patient confidentiality.
20. The Ordinance requires that information concerning the emergency contact information be given to the patient and that this notification must be signed by the patient and kept as part of her permanent record. *Id.*
21. The Ordinance requires that the Itinerate Medical Provider pay a \$250 filing fee to the Fort Wayne-Allen County Department of Health, although there is no explanation in the Ordinance what this fee is for. *Id.*
22. The operator of the location where the medical care is provided by the Itinerate Medical Provider must display a certificate demonstrating compliance with the Ordinance and provide materials provided or approved by the Department explaining the rights of patients under the Ordinance. Section 10-8-3.
23. It is unclear where or how these materials are to be obtained or approved.

24. The Ordinance provides that a representative of defendants shall “annually inspect written documentation to insure compliance.” Section 10-8-5. The representative “shall conduct follow-up reviews to determine compliance.” *Id.* Presumably, this includes reviewing medical records to determine if patients have been provided and signed the written notification required by Section 10-8-2.

25. If the Health Officer of defendant Department, or his designee, receives a complaint that the Ordinance is being violated the “Health Officer shall conduct a review of the records of said Facility, Operator or Itinerate Medical Provider, including without limitation the records of patient who have undergone similar care that may be relevant to the review as determined in the sole discretion of the Officer.” Section 10-8-6(B).

26. At no place in the Ordinance, or in any other location, are there any standards or criteria which defines the term “relevant to the review” as stated in Section 10-8-6(B).

27. The Ordinance further gives the Health Officer the right to seek a subpoena from the Allen Circuit or Superior court “to obtain records and/or written or oral testimony from a Facility, Operator or Provider, or the officers, contractors, employees or agents thereof.” *Id.*

28. Again, the Ordinance contains no standards to be applied in determining whether or not to grant the subpoena.

29. The Ordinance further allows the Health Officer to issue an order requiring the Itinerate Medical Provider and the facility in which he or she operates to close if a violation of the Ordinance is found and a determination is made by the Health Officer that “said violation poses a significant risk to public health.” Section 10-8-7.

30. The Ordinance provides for a hearing to challenge this order and for an appeal of the hearing officer’s decision. Sections 10-8-7, 10-8-8, 10-8-9. However, at no point in the

Ordinance are there any standards set out establishing the burdens or standards to be met in any appeal.

31. The Ordinance imposes on the Itinerate Medical Provider or the operator of the facility where the Itinerate Medical Provider provides medical care the costs of any administrative appeals. Section 10-8-9.

32. Any failure of the Itinerate Medical Provider or operator of the facility to comply with an order of the health Officer is considered to be a violation of the Ordinance. Section 10-8-10.

33. A violation of the Ordinance is subject to a fine of \$1,000 a day and is to be reported to the Indiana Medical Licensing Board. Section 10-8-11.

34. In addition to being subject to the above fine, a Health Officer may bring an action for an injunction to restrain anyone from violating the Ordinance. Section 10-8-12.

35. Any person violating the Ordinance is liable to the defendant Department for any "loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs." Section 10-8-13.

36. Dr. Ulrich Klopfer, D.O., has been granted an unlimited license to practice medicine by the Indiana State Medical Licensing Board (Indiana License No. 02000628).

37. Dr. Klopfer owns and operates Fort Wayne's Women's Health in Ft. Wayne. It was formerly named Fort Wayne Women's Health Organization.

38. Abortion is considered to be one of the safest surgical procedures.

39. Dr. Klopfer has, for many years, performed abortions at Fort Wayne Women's Health.

40. Dr. Klopfer resides outside of Allen County and its contiguous counties and does not have admitting privileges in any hospital in Allen County or its contiguous counties. He therefore is an Itinerate Medical Provider as set out in the Ordinance.

41. The Indiana State Department of Health has issued a license for abortions to be performed to Dr. Klopfer, doing business as Fort Wayne Women's Health Organization.

42. The name of the organization will be changed to Fort Wayne Women's Health at the time of the next annual registration.

43. Fort Wayne Women's Health is an abortion clinic, as that term is defined by Indiana Code § 16-18-2-1.5.

44. Dr. Klopfer and Fort Wayne Women's Health are regulated by various requirements imposed by Indiana law which requires, among other things, that the Indiana Department of Health :

adopt rules under IC 4-22-2 to do the following concerning birthing centers and abortion clinics:

(1) Establish minimum license qualifications.

(2) Establish the following requirements:

(A) Sanitation standards.

(B) Staff qualifications.

(C) Necessary emergency equipment.

(D) Procedures to provide emergency care.

(E) Quality assurance standards.

(F) Infection control.

(3) Prescribe the operating policies, supervision, and maintenance of medical records.

(4) Establish procedures for the issuance, renewal, denial, and revocation of licenses under this chapter. The rules adopted under this subsection must address the following:

(A) The form and content of the license.

(B) The collection of an annual license fee.

(5) Prescribe the procedures and standards for inspections.

IND. CODE § 16-21-2-1.

45. Pursuant to this statutory mandate, the Indiana Department of Health has promulgated specific standards regulating abortion clinics at 410 IAC 26-1-1, *et seq.*

46. Among other things, the regulations provide:

- a. that the clinic must have written procedures for emergencies. 410 IAC 26-5-2(a)(2)(A)
- b. that the clinic must have written procedures concerning contact physicians concerning emergencies. 410 IAC 26-4-1(c)(8)A)
- c. that the clinic must ensure confidentiality of records and they can be released "only to authorized individuals in accordance with federal and state laws." 410 IAC 26-7-1(b)(7)(A)
- d. what is to be contained in the medial record of someone receiving a surgical abortion. 410 IAC 26-7-2
- e. explicit requirements as to what information is to be given to the patient or the patient's legal representative concerning follow-up care including clinic emergency phone numbers. 410 IAC 26-10-1.
- f. that the clinic must have a written protocol for managing medical emergencies which must "ensure physician coverage and provide for a timely response for emergencies." 410 IAC 26-12-1.

47. As a licensed medical provider, Dr. Klopfer is also required to abide by all rules established by the Medical Licensing Board pursuant to Indiana Code § 25-22.5-2-7.

48. This includes the rules of professional conduct established by 844 IAC 5-2-1, *et seq.*

49. Plaintiffs abide by all requirements imposed by Indiana law and regulations.

50. The medical records maintained by plaintiffs contain highly personal and private information relating to the health, and in particular the reproductive health, of patients.



51. For patients seeking reproductive health care, confidence that this information will remain confidential is crucial to their decision to seek these medical services.

52. There is nothing in the Ordinance that authorizes or requires patient-identifying information to be redacted from patient medical records before the Health Officer of the Fort Wayne-Allen County Department can review such records. Nor is there anything in the Ordinance that requires that the Health Officer, or any other entity which obtains confidential information to keep it confidential.

53. The threat that the Health Officer of the Fort Wayne-Allen County Department of Health, or his or her designee, can and will seek to review medical records is extremely disruptive to the on-going work of plaintiffs in Fort Wayne. It compromises the ability of plaintiffs to maintain the privacy of their patients and therefore compromises the ability of plaintiffs to serve their patients and impinges upon the privacy interests of their patients and harms the many patients who depend on plaintiffs for reproductive health care.

54. Additionally, there is absolutely nothing in the Ordinance which secures the privacy of any medical records that the Health Officer of the Fort Wayne-Allen County Department of Health, or his or her designee, reviews. This is an additional threat to the privacy rights of plaintiffs' patients and also impinges on plaintiffs' regulatory obligations to maintain the confidentiality of records.

55. Physicians who perform abortions are often subjected to violence and harassment.

56. Consequently, plaintiff Klopfer does not publicize his address and how he may be contacted. However, the Ordinance does not require that his contact information or the identify or contact information of his physician designee be kept confidential.

57. Plaintiff Klopfer has been unable to find a physician to serve as his "physician designee" as required by the Ordinance. He believes that physicians are unwilling to serve in this capacity because of the risk that their name and/or contact information will be publicized.

58. Plaintiffs are the only provider of surgical abortions services in Allen County, Indiana, home to Fort Wayne, Indiana's second largest city.

59. If plaintiffs are not available to provide abortion services, women who want them will have to travel great distances to obtain them.

60. To the extent that the Ordinance affects plaintiffs, who perform abortions, it is not rational inasmuch as:

- abortions are extremely safe

- all persons receiving abortions are provided State-sanctioned emergency information that fully protects the health and safety of women receiving procedures

- all hospital emergency departments must treat emergency patients

61. At all times defendants have acted under color of state law.

62. The actions of defendants are causing plaintiffs irreparable harm for which there is no adequate remedy at law.

#### Legal claims

63. The Ordinance exceeds defendants' powers under Indiana law, Indiana Code § 36-1-3-8.

Specifically, the Ordinance:

- a. Imposes a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

- b. Regulates conduct that is regulated by state agencies, without statutory authorization for such regulation by ordinance.

64. To the extent that the Ordinance imposes obligations on plaintiffs, including, but not limited to, the naming of a "physician designee," which plaintiffs cannot perform, thereby

permitting defendants to issue immediate closure orders, the Ordinance represents an undue burden on the right of women to obtain an abortion in violation of the Fourteenth Amendment to the United States Constitution and Art. 1, § 1 of the Indiana Constitution.

64. The Ordinance authorizes searches and seizures of plaintiffs' office and records without lawful cause in violation of the Fourth Amendment to the United States Constitution and Art. 1, 11 of the Indiana Constitution.

65. The Ordinance allows unrestricted access to patients' confidential medical records in violation of the right to informational privacy protected by the due process clause of the Fourteenth Amendment to the United States Constitution as well as by Art. 1, §§1, 11 of the Indiana Constitution.

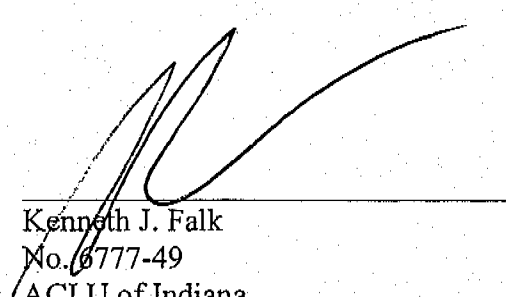
66. The Ordinance imposes requirements on plaintiffs that are vague and unclear in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

67. The ordinance imposes irrational classifications on physicians who reside outside of Allen County and its contiguous counties and who do not have staffing privileges in the hospitals in Allen County and its contiguous counties in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

#### **Request for relief**

WHEREFORE, plaintiffs request that this Court:

1. Declare that the Ordinance is unlawful and unconstitutional for the reasons noted above.
2. Enter a preliminary injunction, later to be made permanent, enjoining the enforcement of the Ordinance.
3. Award plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
4. Award all other proper relief.



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**BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN**  
**ORDINANCE DATED \_\_\_\_\_, 2010**  
**ORDINANCE # \_\_\_\_\_**

**AN ORDINANCE CONCERNING**  
**PATIENT SAFETY**

WHEREAS, the provision of services by Itinerate Medical Providers as defined in this Ordinance should give due regard to the protection of the health, safety and general welfare of the people; and

WHEREAS, the Board Commissioners of the County of Allen find that for the protection of the public health, safety and welfare of the citizens of Allen County, to provide safe and effective continuing care for patients of Itinerate Medical Providers in conjunction with local operating hospitals, emergency departments and urgent care providers and in conformity with accepted standards of practice, it is reasonable and necessary to enact the requirements provided in this Ordinance; and

WHEREAS, the provision of Tracking, Peer Review and Follow Up shall serve to protect the public health, safety and welfare of the citizens of Allen County;

THEREFORE, the Board of Commissioners of the County of Allen and hereby enacts the following Ordinance in the interest of protecting the health of the public in Allen County:

**SECTION 1. ADDITION OF A NEW CHAPTER TO THE CODE OF**  
**ORDINANCES OF ALLEN COUNTY**

Code of Ordinances of Allen County, Indiana, is amended by adding a new Article 8 to Title 10 of the Allen County Code of Ordinances, which new Article shall read as follows:

**ARTICLE 8**

**Patient Safety Requirements.**

Section 10-8-1	Definitions.
Section 10-8-2	Provider Responsibilities.
Section 10-8-3	Operator Responsibilities.
Section 10-8-4	Operator Policies
Section 10-8-5	Review.
Section 10-8-6	Procedures When Violations are Noted.
Section 10-8-7	Other Permit Revocation, Suspension and Immediate Closure Orders.
Section 10-8-8	Hearings.
Section 10-8-9	Appeal.
Section 10-8-10	Enforcement.
Section 10-8-11	Penalty.
Section 10-8-12	Injunction.
Section 10-8-13	Expense.

**Section 10-8-14 Cumulative**  
**Section 10-8-15 Severability.**

A. Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

**"Admitting Privileges"** are defined as delegated to the hospitals and directed and regulated in Indiana Code (IC-16-22-3-9).

**"Business Hours"** refers to the hours of Monday through Friday, 8:00 am – 4:30 pm.

**"Department"** means the Fort Wayne-Allen County Department of Health.

**"Facility"** means any location, whether mobile or stationary where medical care is provided.

**"Health Officer"** means the duly appointed Health Officer of the Fort Wayne-Allen County Department of Health or his or her designee. The Health Officer or designee shall be the official in charge of enforcing this ordinance. The Health Officer may designate a representative in the Department to perform those duties and responsibilities of the Health Officer.

**"Itinerate Medical Provider"** means;

- (1) A Physician who lives outside Allen County or a contiguous county; and
- (2) does not have admitting privileges in Allen County or a county contiguous county.

**"Medical Care"** means any surgical or other invasive procedure, as defined in Indiana Code 25-22.5-1-1.1.

**"Operator"** means any person who controls, operates, manages, or owns any facility as defined in this chapter.

**"Patient"** means anyone who receives Medical Care or who comes under the care of a Provider for the purpose of receiving Medical Care.

**Section 10-8-2 Provider Responsibilities.**

A. All Itinerate Medical Providers who offer any type of Medical Care to a person in Allen County, Indiana, shall be regulated by this ordinance. Itinerate Medical Providers shall provide to the Department, as well as all Allen County operating hospitals, emergency departments and urgent care providers, emergency contact information for the Itinerate Medical Provider to facilitate sharing of clinical knowledge and arranging of disposition in emergency situations. Emergency contact information shall include the Itinerate Medical Provider's name, medical license number and a phone number where they or their physician designee may be reached on a twenty four (24) hour a day, seven (7) day a week basis. Additionally, follow up care must be available on an appropriate and timely basis when clinically necessary by the

Itinerate Medical Provider or their physician designee. Notification of this arrangement must be provided to the patient and the Allen County Department of Health as well as all Allen County operating hospitals, emergency departments and urgent care providers by the Itinerate Medical Provider. Itinerate Medical Provider shall comply with the following responsibilities:

1. File verification of emergency contact information with the Department prior to providing Medical Care in Allen County, Indiana. A \$250.00 filing fee will be paid at the time of filing.
2. File verification of emergency contact information and alternate physician designee with all Allen County operating hospitals, emergency departments and urgent care providers
3. Notify the Patient orally and in writing of the emergency contact information if complications arise. Keep on file as a permanent record a copy of such written notification signed by the Patient to whom it was provided.

#### **Section 10-8-3 Operator Responsibilities.**

A. The Operator shall ensure that Itinerate Medical Providers otherwise comply with the provisions of this Ordinance.

B. The Operator shall display a certificate of compliance with the requirements of this ordinance, in a form supplied by the Department, in view of Patients at the main entrance of the Facility.

C. The Operator shall display written materials prepared or approved by the Department explaining a Patient's rights under this ordinance. These materials shall include information on how to report violations and shall include information regarding the Department's duties to investigate.

#### **Section 10-8-4 Operator Policies.**

A. The Operator shall develop a written policy maintained at the facility in compliance with this ordinance and shall ensure that said policy is disseminated to all officers, employees and contractors of the Operator or its Providers.

B. The local operating hospital, emergency department or urgent care provider who provides follow up coverage to a patient of an Itinerate Medical Provider shall transmit a summary of such treatment to the Operator and the Itinerate Medical Provider if such facility is licensed and inspected by the State of Indiana. If such Operator is not licensed and inspected by the State of Indiana, then the report of complications shall be transmitted to the physician/operator as well as the Indiana State Medical Licensing Board and the Department.

#### **Section 10-8-5 Review.**

A. The Department shall keep record of emergency contact information of each Itinerate Medical Provider located in Allen County, collect a \$250.00 filing fee and annually

inspect written documentation to insure compliance. Violations noted by the Department shall be corrected immediately. The Department shall conduct follow-up reviews to determine compliance with this ordinance whenever questions arise as to the adequacy of compliance.

#### **Section 10-8-6 Procedures When Violations Are Noted**

**A. Violations shall include but not be limited to;**

- a. Failure of an Itinerate Medical Provider to notify patient,** local operating hospitals, emergency departments and urgent care providers of emergency contact information and alternate Physician designee;
- b. Verification by patient,** local operating hospitals, emergency departments and urgent care providers that an Itinerate Medical Provider's failure to provide emergency contact information did not result in appropriate follow up and/or obstructed appropriate medical care.
- c. Failure of local operating hospitals,** emergency departments and urgent care providers to report Itinerate Medical Provider patient visits that have occurred as a result of a prior outpatient procedure or change in drug therapy (not including pain control).

**B.** Upon referral from a patient, local operating hospital, emergency department or urgent care provider of a complaint that a facility providing medical care, that the Operator or Itinerate Medical Provider is in violation of any provision of this ordinance, the Health Officer shall conduct a review of the records of said Facility, Operator or Itinerate Medical Provider, including without limitation the records of patients who have undergone similar care that may be relevant to the review as determined in the sole discretion of the Officer. In furtherance of such a review, the Officer shall have authority to seek and obtain a subpoena from the Circuit or Superior Court of Allen County, Indiana, to obtain records and/or written or oral testimony from a Facility, Operator or Provider, or the officers, contractors, employees or agents thereof.

**C.** If, during the review of the records of any Facility, Operator or Provider, the Health Officer confirms the violation of any provision of this ordinance, he/she shall issue a written report listing such violation(s) and the remedial action(s) to be taken in accordance with this ordinance. A copy of said report shall be delivered to the Facility, Operator, Itinerate and Medical Provider by hand delivering the report on-site, or mailing the notice by certified mail to the address listed by the Facility, Operator or Itinerate Medical Provider as the mailing address on the permit application.

**D.** A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel, mailed to the Indiana State Medical Licensing Board. Except as otherwise prohibited by law, said order shall be open to the public

#### **Section 10-8-7 Immediate Closure Orders.**

**A.** Whenever the Health Officer or his/her authorized representative finds an Itinerate Medical Provider operating in Allen County, Indiana, in violation of this ordinance and further finds that said violation poses a significant risk to public health, he/she shall issue and serve a written order upon the Itinerate Medical Provider and Operator citing the existence of a



violation of this ordinance and requiring the closure of its operations.

B. Such order shall not be effective for at least 24 business hours

C. If an order is issued under section 10-8-7(A), the Operator/Itinerate Medical Provider may request a hearing. If the Operator/Itinerate Medical Provider requests a hearing before the issued order becomes effective, the notice of closure shall not become effective until a ruling is made following the hearing. If the Operator/Itinerate Medical Provider requests a hearing after the issued order under section 10-8-7(A) becomes effective, the order shall remain in effect until a hearing is held. A hearing requested under this section shall commence within 48 business hours of the request for hearing.

D. The Health Officer shall conduct a review upon the request of the Operator or Itinerate Medical Provider.

#### **Section 10-8-8 Hearings.**

A. Except as provided in Section 10-8-7 C, all hearings required under this ordinance shall be held only upon at least ten (10) days written notice to the Operator/Provider of time, place and nature thereof. The notice of hearing shall be served upon the Operator/Provider by leaving, or mailing by certified mail, the notice to the address listed on the permit application as the Operator/Provider's mailing address or such other address as the Operator/Provider shall designate in writing to the Allen County Health Officer.

B. At any hearing required under this ordinance, the hearing officer shall be the Health Officer or his/her designee. Every person who is a party to such proceeding shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.

C. Upon the conclusion of such hearing, the hearing officer shall enter a final order, subject to the right of appeal.

#### **Section 10-8-9 Appeal.**

A. Any Operator/Provider aggrieved by any final order of the Health Officer shall be entitled to a review of the final order before the Fort Wayne-Allen County Board of Health ("Board") by filing a written request therefore with the Secretary of the Board within fifteen (15) days after such final order is issued.

B. Upon the Health Officer's receipt of such request, the Board shall hear the matter in an open hearing after at least ten (10) days' written notice of the time, place and nature thereof. (The Health Officer and Operator/Provider may agree to a shorter period of time, if requested by either party.) The notice shall be issued by the Secretary of the Board to the Operator/Provider filing the request.

C. The notice of hearing shall be served upon the Operator/Provider by leaving or mailing by certified mail, the notice to the address listed as the Operator/Provider mailing

address or such other address as the Operator/Provider shall designate in writing to the Secretary of the Board.

D. At such hearing, the same rules of procedure shall apply as set forth above, provided that upon written request by the Operator/Provider or the Health Officer, the Board shall cause the proceedings before it to be recorded by a reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall, at the request of either party, be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.

E. The expense of such proceedings shall be charged to the Operator/Provider who applied for the review, except that copies of transcripts shall be at the expense of the party requesting the same. At the time the transcript is requested, the Board may require the Operator/Provider to pay a deposit in an amount determined by the Board to be necessary to secure such expense(s).

F. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.

G. Judicial review of any final order shall be obtained in accordance with the provisions of Indiana Code §4-21.5-5.

#### **Section 10-8-10 Enforcement.**

A. It shall be the duty of the Health Officer to enforce the provisions of this ordinance. A violation of an order issued by the Health Officer or Board shall be considered to be a violation of this ordinance.

#### **Section 10-8-11 Penalty.**

A. Any person who willfully violates any of the provisions of this ordinance shall be subject to a fine of not more than one thousand dollars (\$1,000.00) for each violation. Each day of the existence of any violation shall be reported to the Indiana State Medical Licensing Board.

#### **Section 10-8-12 Injunction.**

A. The Health Officer may bring an action for an injunction in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this ordinance, to cause such violation(s) to be prevented, abated or removed.

#### **Section 10-8-13 Expense.**

A. Any person violating any of the provisions of this ordinance shall be liable to the Department for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.

**Section 10-8-14 Cumulative.**

A. The remedies provided in this Chapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

**Section 10-8-15 Severability.**

A. Invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance.

**SECTION 2. EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage by the Board of Commissioners of the County of Allen on June 1, 2010.

Passed by the Board of Commissioners of the County of Allen this \_\_\_\_ day of \_\_\_\_\_, 2010.

BOARD OF COMMISSIONERS OF  
THE COUNTY OF ALLEN

\_\_\_\_\_  
Linda K. Bloom, Commissioner

\_\_\_\_\_  
Wm. E. Brown, Commissioner

\_\_\_\_\_  
Nelson Peters, Commissioner

ATTEST:

\_\_\_\_\_  
Lisbeth A. Blosser, Auditor