

The State of New Hampshire

Appearance/Withdrawal

STRAFFORD, SS

SUPERIOR COURT

COURT
 JURY

Docket Number: 219-2014-CV-386

New Hampshire Right to Life & Jackie Pelletier

v.

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

APPEARANCE

Please enter my appearance as:

counsel for: **New Hampshire Director of Charitable Trusts Office & New Hampshire Attorney General's Office & New Hampshire State Board of Pharmacy & New Hampshire Department of Health & Human Services**

WITHDRAWAL

Please withdraw my appearance as:

counsel for:

Notice of withdrawal sent to my client(s) on:
at the following address:

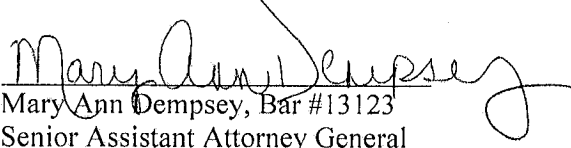
I hereby certify that duplicates of this notice were:

Delivered to
 Mailed to:

M Tierney, Esquire
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, NH 03101

Date: December 5, 2014

Signed:


Mary Ann Dempsey, Bar #13123
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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 General's Office

&

New Hampshire State Board of Pharmacy

&

New Hampshire Department of Health & Human Services

RESPONDENTS' ANSWER TO VERIFIED PETITION

NOW COME the Respondents, New Hampshire Director of Charitable Trusts Office ("DCT"); New Hampshire Attorney General's Office ("AGO"); New Hampshire State Board of Pharmacy ("BOP"); and New Hampshire Department of Health and Human Services ("DHHS"), by and through counsel, the Office of the Attorney General, and responds as follows to the Verified Petition:

A. **RESPONDENTS' INTRODUCTORY STATEMENT REGARDING THE ALLEGATIONS SPECIFIC TO THE NAMED PETITIONERS**

The Petitioners allege that the Respondents, as various State agencies, have failed to comply with New Hampshire's Right to Know law, RSA 91-A, on four separate instances. These four instances are related to: (1) conduct by the DCT regarding its alleged failure to

produce various abortion clinics' financial statements; (2) conduct by the AGO regarding its alleged failure to produce information regarding the use of sidewalks outside abortion clinics; (3) conduct by the BOP regarding its alleged failure to produce information related to abortion clinic licenses; and (4) conduct by DHHS regarding its alleged failure to produce abortion clinic written protocols. The Petitioners, however, have failed to set forth factual allegations in their Petition to show that all four Right to Know requests apply to both Petitioners. In fact, there is no allegation that Petitioner Jackie Pelletier was involved in the requests made to DCT, BOP, or DHHS. Those requests were made by Attorney Michael Tierney, which the Respondents understood to be made on behalf of Petitioner New Hampshire Right to Life ("NHRTL"). Additionally, the requests made to the AGO regarding the use of sidewalks outside abortion clinics was made by Attorney Tierney in relation to a federal court case in which Jackie Pelletier is a party, but NHRTL is not a party. As such, this Answer responds to the allegations as they apply to each Petitioner. The Respondents deny that both Petitioners made four Right to Know requests.

B. RESPONDENTS' ANSWER

I. Preliminary Statement

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

II. Parties

1. Admitted.

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

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

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

III. Jurisdiction and Venue

8. Admitted.
9. Admitted.
10. The Respondents are without sufficient information to either admit or deny the location of Petitioner Jackie Pelletier's residence. As such, the Respondents deny that venue is proper.

IV. Factual Allegations

a. Financial Statements & Community Benefit Plans

11. This is a statement of the law that requires no response.
12. This is a statement of the law that requires no response.
13. This is a statement of the law that requires no response.
14. The Respondents admit that Planned Parenthood of Northern New England ("PPNNE") is registered as a charitable trust. The statement that PPNNE is "subject to the requirements of RSA 7:28" is a statement of the law that requires no response.
15. The Respondents admit that on September 10, 2010, the Charitable Trusts Unit sent a letter to PPNNE. See Petitioners' Exhibit A. The exhibit speaks for itself.
16. This is legal argument that requires no response. To the extent any facts are alleged, they are denied.

17. The Respondents admit that the DCT received 990 tax forms from PPNNE for 2010, 2011, and 2012. See Petitioners' Exhibit B. The exhibit speaks for itself.

18. This statement is legal argument and a conclusion that requires no response. To the extent any facts are alleged, they are denied. By way of further answer, DCT is not required to obtain a financial statement from PPNNE. Rather, RSA 7:28 describes the reports Trustees of Charitable Trusts are required to file with DCT.

19. Admitted.

20. Admitted.

21. Denied. By way of further answer, DCT did not withhold any requested documents in its possession, custody, or control.

22. This is legal argument that requires no response. To the extent any facts are alleged, they are denied.

23. This is legal argument that requires no response. To the extent any facts are alleged, they are denied.

24. This is legal argument that requires no response.

25. The Respondents admit that the DCT received a 990 tax form from Concord Feminist Health Center, also known as New Hampshire Women's Health Services ("CFHC"), for 2012. The exhibit speaks for itself. See Petitioners' Exhibit J.

26. These allegations are legal arguments and conclusions that require no response. To the extent any facts are alleged, they are denied. By way of further answer, DCT is not required to obtain a financial statement from CFHC. Rather, RSA 7:28 describes the reports Trustees of Charitable Trusts are required to file with DCT.

27. Denied. By way of further answer, DCT provided all responsive files and documents in its possession, custody, or control requested by Attorney Tierney for his and Mr. Wuelper's review. No documents were withheld.

28. This is legal argument that requires no response.

29. These allegations are legal arguments and conclusions that require no response. By way of further answer, DCT is not required to obtain Community Benefits Plans and Community Needs Assessments from either CFHC or the Joan Lovering Center, also known as the Feminist Health Center of Portsmouth ("Lovering"). Rather, RSA 7:32-e and RSA 7:32-f describe statutory requirements to be fulfilled by health care charitable trusts. To the extent facts are alleged, they are denied.

30. This is legal argument that requires no response.

31. Denied. DCT did not withhold any requested documents in its possession, custody, or control.

b. Attorney General Office's Abortion Clinic Documents

32. The statement is denied as to Petitioner, NHRTL. The Respondents admit that on July 28, 2014, Attorney Tierney requested documents from the Attorney General's Office. The requested documents related primarily to buffer zones around abortion clinics and were related to a federal court case in which Petitioner Jackie Pelletier is involved. See Petitioners' Exhibit C. The exhibit speaks for itself.

33. The Respondents admit that on September 4, 2014, the Attorney General's Office sent a letter to Attorney Tierney. See Petitioners' Exhibit D. The exhibit speaks for itself. To the extent any other facts are alleged, they are denied.

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

35. Denied. The exhibit speaks for itself. See Petitioners' Exhibit D.

36. This statement is denied as to Petitioner, NHRTL. The Respondents admit that on September 4, 2014, Attorney Tierney sent an email to Attorney Elizabeth Lahey of the Attorney General's Office requesting Attorney Lahey to "identify what categories of documents it was withholding and the basis for the AGO's reasoning."

37. Denied.

38. Denied. By way of further answer, Attorney Lahey responded to Attorney Tierney's email on October 13, 2014 and provided a rationale for the previous response.

39. This is legal argument that requires no response. To the extent any facts are alleged, they are denied.

c. Board of Pharmacy Documents

40. The Respondents admit that on July 14, 2014, Attorney Tierney, on behalf of NHRTL, submitted a Right to Know request to the BOP (and copied the AGO). See Petitioners' Exhibit E. The exhibit speaks for itself.

41. The Respondents admit that Attorney Tierney, on behalf of NHRTL, sent a letter requesting certain information. See Petitioners' Exhibit E. The exhibit speaks for itself.

42. The Respondents admit that on July 31, 2014, Attorney Amanda Godlewski of the AGO responded to Attorney Tierney's letter to the BOP and attached copies of the documents responsive to his request. See Petitioners' Exhibit E. The exhibit speaks for itself. To the extent any other facts are alleged, they are denied.

43. The Respondents admit that in response, on July 31, 2014, Attorney Tierney requested, via email to Attorney Godlewski, that the BOP "identify what documents were being withheld and the basis for the withholding under RSA 91-A:5." The Respondents deny that the

BOP “refused to provide the basis for its withholdings.” By way of further answer, Attorney Godlewski responded to Attorney Tierney’s email on August 1, 2014. See Petitioners’ Exhibit H. The exhibit speaks for itself.

44. Denied.

45. This is legal argument that requires no response.

46. Denied. By way of further answer, the response given by Attorney Godlewski to Attorney Tierney set forth the reasons why certain information was withheld and indicated that the information had been previously redacted in prior challenges and that the BOP maintained that exemption. See Petitioners’ Exhibit H.

47. The Respondents are without sufficient information to either admit or deny this statement; therefore, it is denied.

48. Denied.

d. Pharmaceutical Protocols

49. Denied. By way of further answer, RSA 318:42, VII(a) does not require written protocols to be provided to the BOP in conjunction with a license application.

50. The Respondents admit that on October 11, 2014, Attorney Tierney, on behalf of NHRTL, submitted a Right to Know Request via email to the AGO, the BOP, and DHHS, requesting a copy of PPNNE’s “most recently approved written protocols required by RSA 318:42(VII)(a).”

51. The Respondents deny NHRTL’s characterization of their response. By way of further answer, the documents submitted by the Petitioners as Exhibit G are the protocols approved by DHHS on September 14, 2012, which were sent to Attorney Tierney on November 5, 2012 in response to a prior Right to Know request he made in 2012. On October 29, 2014,

DHHS responded to Attorney Tierney's October 11, 2014 request and attached PPNNE's most recently approved written protocols, which were approved on June 24, 2013. These more recent documents have not been submitted as an Exhibit to the Petitioners' Verified Petition.

52. Denied.

53. This statement is legal argument that requires no response.

54. Denied.

V. Request for Injunction Requiring Immediate Production of All Documents Previously Requested and Invalidation of Action Taken at Non-Public Meetings

55. Denied.

56. This statement is legal argument that requires no response.

57. Denied.

58. Denied.

59. This statement is legal argument that requires no response.

60. This statement is legal argument that requires no response.

VI. Request for Attorney's Fees

61. Denied.

62. Denied.

63. Denied.

BY WAY OF FURTHER ANSWER, the Respondents state:

64. **Request to AGO for Abortion Clinic Documents:** In response to Attorney Tierney's request, the AGO redacted or withheld certain documents because they contain information that is exempt from disclosure under RSA 91-A:5, IV, including, but not limited to, personal contact information and attorney work product.

65. **Request on BOP for PPNNE's Licenses and Other Documents:** The BOP provided certain documents to Attorney Tierney. Additionally, the BOP informed NHRTL, through its response to Attorney Tierney's request, that it redacted certain information and did not disclose certain documents because they are exempt from disclosure under RSA 91-A:5 and RSA 318:30, I.

66. The BOP redacted names and telephone numbers of PPNNE's health professionals and contractors based on RSA 91-A:5, IV. This provision of the statute exempts from disclosure of information that would constitute an invasion of privacy and/or be a safety concern. Here, the individual names of individuals associated with PPNNE meets that exemption.

67. In Lamy v. N.H., PUC, the New Hampshire Supreme Court explained that a three-step analysis must be conducted by the court when considering whether disclosure of public records constitutes an invasion of privacy. See 152 N.H. 106, 109 (2005) (citations omitted). First, it must be determined whether there is a privacy interest at stake that would be invaded by the disclosure. See id. Second, the public's interest in disclosure must be assessed. Third, the public's interest in disclosure must be balanced against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. See id. Applying this analysis, the Court held the disclosure of a person's name and address implicates that person's privacy rights. See id. at 110. The Court explained, "[t]he privacy interest at stake concerns individual's control of information about his or her person. In our society, individuals generally have a large measure of control over disclosure of their own identities and whereabouts. This is evidenced by unlisted telephone numbers, by which subscribers may avoid publication of an address in the public's directory, and postal boxes, which permit the receipt of mail without

disclosing the location of one's residence." See id. (quotations omitted). The Court concluded that the privacy interest outweighed the public interest in the disclosure. See id.

68. Here, as in Lamy, individual health professionals associated with PPNNE have a right to privacy in the disclosure of their names and phone numbers. There is no public interest in the disclosure of such names as it will not tell the public anything directly about the operations of the BOP. See id. at 111 (purpose of the law is to provide the public with information about the activities of the government). In addition, although there has been no indication of safety issues relative to these specific individuals and/or these specific right to know requests, the Planned Parenthood organization, including its employees, has been the subject of safety concerns in the past and, this fact further warrants redactions of individual names and telephone numbers.

69. In an Order dated April 3, 2013, Judge McNamara found these same redactions made by the BOP in response to a prior Right to Know request made by NHRTL to be proper. See New Hampshire Right to Life v. New Hampshire State Board of Pharmacy, Docket No. 2012-CV-00774, Merrimack Cty. Super. Ct., pgs. 6-10 (April 3, 2013) (McNamara, J.).

70. **Request on DHHS for PPNNE's Protocols:** DHHS has informed NHRTL, through its response to Attorney Tierney's request, that it redacted specific information as it constitutes internal personnel practices and confidential commercial information exempt under RSA 91-A:5, IV.

WHEREFORE, the Respondents respectfully request 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 ATTORNEY
GENERAL'S OFFICE

NEW HAMPSHIRE STATE BOARD OF
PHARMACY

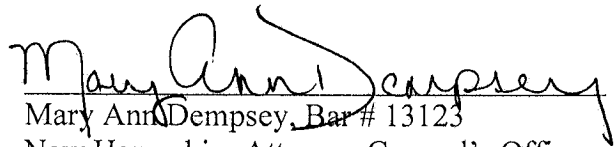
NEW HAMPSHIRE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

NEW HAMPSHIRE DIRECTOR OF
CHARITABLE TRUSTS OFFICE

By their attorney,

JOSEPH A. FOSTER
ATTORNEY GENERAL

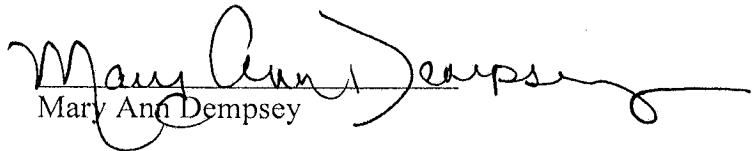
December 8, 2014



Mary Ann Dempsey, Bar # 13123
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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.



Mary Ann Dempsey