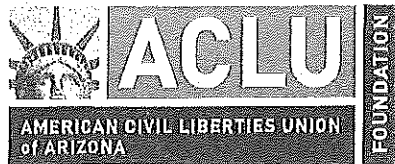


ALESSANDRA SOLER  
EXECUTIVE DIRECTOR

ZENAIDO QUINTANA  
PRESIDENT

DANIEL J. POCHODA  
dpochoda@acluaz.org



VIA ELECTRONIC MAIL AND U.S. CERTIFIED MAIL

October 22, 2014

Connie Belden, R.N.  
Bureau Chief  
Bureau of Medical Facilities Licensing  
150 North 18th Avenue, Suite 450  
Phoenix, Arizona 85007-3242

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
OF ARIZONA  
P.O. BOX 17148  
PHOENIX, AZ 05011  
P/602.650.1854  
F/602.650.1376  
WWW.ACLUAZ.ORG

Dear Ms. Belden:

On October 15, 2014, our client, Kat Sabine, received a letter from your office stating that your agency had received a complaint alleging that Ms. Sabine is providing services that would indicate her home needs to be licensed as a healthcare facility under Title 36, Chapter 4 of the Arizona Revised Statutes.<sup>1</sup> Your letter does not specify the factual basis for the allegation that Ms. Sabine's home is a healthcare facility or the medical services that Ms. Sabine supposedly provides from her home.

Ms. Sabine's home is not a healthcare facility and is not subject to Arizona's healthcare licensing statutes.

Although your letter does not state the basis on which you believe that Ms. Sabine's home is a healthcare facility, the only basis we can imagine is that Ms. Sabine is the executive director of NARAL Pro-Choice Arizona ("NARAL"), a well-known group that advocates for reproductive choice. There is, however, no imaginable reading of Arizona law that requires NARAL's offices, much less Ms. Sabine's home, to be licensed as a health care facility.

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<sup>1</sup> Your letter states that "[a]n attestation is enclosed which must be completed and returned within ten calendar days after you receive this letter." Although your letter was dated September 29, 2014, Ms. Sabine did not receive it until October 15, 2014, when she returned from vacation to find the certified mail slip in the P.O. Box to which it was sent. The certified mail records will confirm that Ms. Sabine did not sign for and receive your letter until October 15, 2014. Accordingly, through this letter and the enclosed attestation, Ms. Sabine has timely replied to your letter.

NARAL's activities consist of "public education, citizen lobbying, and pro-choice voter mobilization."<sup>2</sup> NARAL does not provide medical services.<sup>3</sup> NARAL is therefore not a "health care institution" within the meaning of Title 36, Chapter 4 of the Arizona Revised Statutes.<sup>4</sup> Because NARAL is not a "health care institution," the licensing requirements applicable to health care institutions do not apply to NARAL.

Even if NARAL were, somehow, a "health care institution" within the meaning of A.R.S. § 36-401(A)(21), it would be exempt from the licensing requirements of Title 36, Chapter 4. That is because A.R.S. § 36-402(A) provides that "[t]his chapter and the rules adopted by the director pursuant to this chapter do not authorize the licensure, supervision, regulation or control of" certain institutions, including "[c]ommunity education, advocacy or recovery support groups that are not owned or operated by or contracted to provide services with a health care institution."<sup>5</sup> As noted, NARAL's activities are "public education, citizen lobbying, and pro-choice voter mobilization," and it is therefore a "community education" and "advocacy" group that is "not owned or operated by or contracted to provide services with a health care institution."

And even if, somehow, NARAL was a health care institution, and, somehow, was not exempted from state licensing requirements by A.R.S. § 36-402(A)(12), your allegations would still be in error, because they indicate an intent to target Ms. Sabine's home, not NARAL's place of business. NARAL has an office, which is not Ms. Sabine's home and which is listed in NARAL's filing with the Corporation Commission.

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<sup>2</sup> See NARAL Pro-Choice Arizona, Frequently Asked Questions ("What does NARAL Pro-Choice Arizona do? NARAL Pro-Choice Arizona is a grassroots movement focused on guaranteeing every woman the right to make personal decisions regarding the full range of reproductive choices, including preventing unintended pregnancy, bearing healthy children, and choosing legal abortion. We accomplish this through public education, citizen lobbying, and pro-choice voter mobilization. Our focus is both national and statewide.") *available at* <http://www.prochoicearizona.org/about-us/faqs.shtml>.

<sup>3</sup> *Id.*

<sup>4</sup> See A.R.S. § 36-401(A)(21) ("'Health care institution' means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in section 36-1.").

<sup>5</sup> See A.R.S. § 36-402(A)(12).

In sum, Ms. Sabine's home does not constitute a "health care institution" for which a license is required. We therefore expect that you will promptly close this matter.

Your letter states that "Licensing Surveyors from this Office may come to your facility to validate your response." Because you have not articulated *any* reasons to believe that Ms. Sabine's home is a "health care institution," any search of Ms. Sabine's home by surveyors would constitute an unreasonable search in violation of Ms. Sabine's rights under the Fourth Amendment of the United States Constitution and Article 2, Section 8 of the Arizona Constitution. You, and any personnel involved in that search, could be held liable for violating Ms. Sabine's constitutional rights.

Finally, we are also concerned that your letter to Ms. Sabine was not intended to actually enforce the licensing laws of Title 36, Chapter 4, but to harass her. Ms. Sabine is a prominent local advocate for reproductive choice and an opponent of the recent bill to allow warrantless inspections of abortion facilities, H.B. 2284.<sup>6</sup> As noted, your letter gave no basis for your apparent conclusion that her home might constitute a health care institution. Instead, you threatened, without explanation, to search her home and potentially to subject her to criminal prosecution or civil penalties.<sup>7</sup> Moreover, the attestation that you directed Ms. Sabine to complete was faulty in a manner that could have deceived Ms. Sabine as to her legal options. First, the attestation included a checkbox for Ms. Sabine to affirm that she does "meet the definition of a health care institution," but it provided no checkbox for her to state that she does *not* meet the definition of a health care institution. Second, the attestation purported to list each of the exemptions to the licensing requirement provided in A.R.S. § 36-402(A), but in fact, the attestation fails to include the last exemption, which as described above is the exemption applicable to NARAL.<sup>8</sup> While it may be that these errors were all innocent, the circumstantial evidence is discomfiting, and you should be aware that further harassment of Ms. Sabine could subject you to liability for abuse of process or malicious prosecution.

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<sup>6</sup> See, e.g., Voices for the Voiceless, *Proxy War: Planned Parenthood Rallies to Oppose HB 2284 and the Center for Arizona Policy* (quoting from Ms. Sabine's remarks at a rally against H.B. 2854), available at <http://vftvblog.tumblr.com/post/82861008226/proxy-war-planned-parenthood-rallies-to-oppose-hb-2284>.

<sup>7</sup> The letter states that "if the surveyors determine from their survey that you are not within the law the matter will be referred to our enforcement team for appropriate action." As you know, A.R.S. §§ 36-431 & 431.01 provide for criminal and civil penalties for violations of the licensing provisions of Title 36, Chapter 4.

<sup>8</sup> See A.R.S. § 36-402(A)(12).

Ms. Sabine's attestation and a copy of your letter to her are enclosed. We expect that her attestation and this letter suffice to dispel any concerns you have that her home is not licensed as a healthcare facility. We hope to promptly receive a letter from you stating that this matter is closed and that you will expunge her home address from your records. Please be sure to address any correspondence on this matter to me, as Ms. Sabine's legal counsel.

Thank you very much for your prompt attention. Please contact me by phone at (602) 773-6003 or by email at [dpochoda@acluaz.org](mailto:dpochoda@acluaz.org) if you have any questions.

Sincerely,



Daniel J. Pochoda

AMERICAN CIVIL  
LIBERTIES UNION OF  
ARIZONA

Enclosures as indicated

Cc: Kat Sabine with enclosures



**Public Health Licensing Services**  
Bureau of Medical Facilities Licensing

150 North 18th Avenue, Suite 450  
Phoenix, Arizona 85007-3242  
(602) 364-3030  
(602) 792-0466 Fax

JANICE K. BREWER, GOVERNOR  
WILL HUMBLE, DIRECTOR

September 29, 2014

Ms. Kat Sabine, Executive Director  
Naral Pro-Choice Arizona  
P.O. Box 16675  
Phoenix, AZ 85011

*Received K Sabine  
October 15, 2014  
@ 3:pm*

RE: Complaint Intake # AZ00116454  
Naral Pro Choice Arizona  
[Redacted]  
Phoenix, AZ [Redacted]

Dear Kat Sabine:

The Office of Medical Facilities Licensing has received a complaint alleging that you are providing services that would indicate you need to be licensed as a healthcare facility.

Arizona Revised Statutes 36-407.A. Prohibited Acts reveals: "...A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license...." If you are providing health care services a health care license is required unless you are exempt from license as a health care institution as provided by law, Arizona Revised Statute 36.402, A.B. and C.

An attestation is enclosed which must be completed and returned within ten calendar days after you receive this letter. Licensing Surveyors from this Office may come to your facility to validate your response.

If you do not respond within the stated time limit or if the surveyors determine from their survey that you are not within the law the matter will be referred to our enforcement team for appropriate action.

Sincerely,

*Connie Belden*  
Connie Belden, R.N.  
Bureau Chief  
Bureau of Medical Facilities Licensing

CB:mco

Enclosure: Attestation

Complaint Intake # AZ00116454  
Naral Pro Choice Arizona  
MED5342

ATTESTATION

I DO NOT MEET THE DEFINITION OF A HEALTH CARE INSTITUTION

- I do meet the definition of a health care institution.  
A.R.S. 36-401.20 – "Health Care Institution" means every place, institution, building or Agency, whether organized for profit or not, that provides facilities with medical services, nursing services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and that includes home health agencies as defined in section 36-151 and hospice service agencies.
- I meet the exemption for licensing as provided in A.R.S. 36-402.
- Please identify how you meet the exemption of licensing by checking the appropriate category of exemption:
1. The facility provides remedial care or treatment of residents or patients in a home or institution conducted only for those who rely solely on treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination.
2. The facility is an establishment, such as motel, hotel and boarding house, that provides domiciliary and ancillary commercial services, but does not provide adaptive, medical, hospital, nursing, health related or supervisory care services.
3. The facility is a private offices and clinic of health care providers licensed under title 32 that is not a freestanding urgent care center, and:
- a. Patients are not kept overnight as bed patients or are not treated otherwise under general anesthesia except when treatment by general anesthesia is regulated by title 32, chapter 11; or
- b. The office or clinic is not an abortion clinic. For the purposes of this subdivision, "abortion clinic" has the same meaning prescribed in section 36-149.01.
4. The facility is a dispensary and first aid station located within business or industrial establishment maintained solely for the use of employees and the facility does not contain inpatient beds and is under the supervision of a physician.
5. The facility is for the purpose of the collection, processing or distribution of whole human blood, blood components, plasma, blood fractions or derivatives procured, processed or distributed by federally licensed and regulated blood banks.
6. The facility is where four or fewer adults not related to the administrator or owner receive adult day health services for compensation on a regular basis.
7. The facility is a place at which persons receive health related services only from relatives or from legal guardians or places that do not purport to be establishments that regularly provide health related services and at which one or two persons receive health related services on a twenty-four hour basis.
8. The facility is the Arizona pioneers' home. However, the department of health services shall evaluate the health and sanitation conditions at the Arizona pioneers' home annually using the standards applicable to licensed nursing care institutions.

Complaint Intake # AZ00116454  
NARAL Pro Choice Arizona  
MED5342

9. The facility is the personal residence of a terminally ill person, or the personal residence of that person's relative or guardian, where that person receives hospice services from a hospice service agency.

10. The facility is medical and health related facilities and services that are provided to inmates who are confined in a state prison.

11. The facility provides medical and health services to inmates who are confined in a county jail.

12. The facility is a community education, advocacy, or recovery support group that is not owned or operated by or contracted to provide services with a healthcare institution.

Signed: *Kat Sabine*

Title of Person Signing: *Kat Sabine, Executive Director*  
*NARAL Pro-Choice Arizona*

Date: *October 22 2014*