

**Testimony of Michael Tiger
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**Before the
New York City Council Committee on Consumer Affairs**

**Hearing on
Oversight of Enforcement of Local Law 17, and
the Regulation of Pregnancy Services Centers**

November 15, 2017

Good morning, Chairman Espinal and members of the committee, my name is Michael Tiger and I am the Deputy General Counsel for the New York City Department of Consumer Affairs (DCA). I am joined today by my colleagues from DCA on behalf of Commissioner Lorelei Salas. I would like to thank the committee for the opportunity to offer testimony about DCA's enforcement of Local Law 17 of 2011 (LL 17), which regulates Pregnancy Services Centers (PSCs) in New York City. DCA is deeply committed to doing everything within our power to protect and promote the reproductive health of New Yorkers. For DCA, that means identifying facilities meeting the legal definition of a PSC and ensuring that such facilities adequately disclose that their services are not provided or overseen by licensed medical professionals. To that end, DCA has fielded numerous questions from external stakeholders, addressed 23 individual complaints about nine establishments, conducted 21 inspections, and issued two violations.

BACKGROUND

As passed by the City Council, LL 17 defined PSCs as facilities that have a primary purpose of providing services to women who are or may be pregnant and either (1) offer obstetric ultrasounds, sonograms, or prenatal care, or (2) have the appearance of a licensed medical facility. Whether a facility has the appearance of a licensed medical facility must be determined by consideration of a nonexclusive list of factors, with the presence of any two or more constituting prima facie evidence that the facility has the appearance of a licensed medical facility. If determined to be a PSC, the law required the facility to disclose: (1) whether they have a licensed medical provider on staff; (2) the fact that the New York City Department of Health and Mental Hygiene encourages potentially pregnant women to consult with a licensed provider; and (3) whether they provide referrals for abortion, emergency contraception, or pre-natal care. Facilities licensed to provide medical or therapeutic services or that have licensed medical providers on site to supervise medical services were exempted from the definition of a PSC.

Following passage of LL 17, the constitutionality of the law was challenged and only the first disclosure, regarding the absence of a licensed medical provider, survived First Amendment scrutiny by the Court of Appeals for the Second Circuit. The United States Supreme Court denied the City's petition for review of that decision and the remainder of the case was resolved by

settlement in March 2016. In addition to the surviving disclosure, the law mandates that PSCs abide by certain confidentiality requirements related to consumer health information. Violations of LL17 can carry penalties of up to \$2,500, and multiple violations within a period of two years can result in a temporary sealing of the premises. Notably, the ongoing litigation prevented DCA from enforcing LL 17 until the agency rules required by the settlement became effective in May 2016.

DCA INVESTIGATIONS AND ENFORCEMENT

DCA has worked aggressively to respond to complaints about PSCs and follow up on reports of problematic businesses. To date, DCA has received 23 complaints about nine purported PSC locations failing to post the licensed medical provider disclosure required by law. The majority of these complaints were submitted by reproductive health advocacy organizations. DCA used this information, as well as supplementary research done by our General Counsel and Enforcement divisions, to conduct 21 inspections of possible PSCs, including all of the locations reported by complaint. These inspections included both announced and undercover approaches. Two inspections resulted in the issuance of violations for failing to post the required licensed medical provider disclosure. Documents gathered from several others are currently under review by DCA attorneys to determine whether the facilities meet the legal definition of a PSC.

Our inspections revealed that the majority of the facilities visited do not provide ultrasounds, sonograms, or prenatal care, meaning they must be analyzed for the appearance of a licensed medical facility. After careful consideration of the relevant factors, it was determined most of the facilities did not meet the legal definition and were therefore not required to post the disclosure.

Finally, in addition to conducting inspections of facilities identified by complaint, DCA attempted to identify additional PSCs by checking areas around Planned Parenthood (PP) locations. This initiative was crafted in response to reports from advocates that some PSCs intentionally locate near PP facilities in order to lure and/or misdirect consumers seeking PP services. To date, DCA has conducted five of these operations.

I thank you for your careful attention to this matter, the Council's partnership in protecting and promoting the reproductive health of all New Yorkers, and the opportunity to testify today. DCA appreciates that, by holding this hearing, the Council is giving advocates a chance to describe their experiences and share with the committee new ideas they may have about how the City can better support New Yorkers and protect them from misleading or deceptive services. We look forward to working with the Council and the advocates here today to continue carrying out and improving our important enforcement work in this area. I will now be happy to answer the committee's questions.