

C A M P A I G N F O R

ACCOUNTABILITY

October 26, 2017

By Fax: (804) 775-0501

Virginia State Bar
Intake Office
1111 East Main Street Suite 700
Richmond, Virginia 23219-3565

Re: Edward Scott Lloyd

To Whom It May Concern:

Campaign for Accountability (“CfA”) respectfully requests that you open an investigation into whether Edward Scott Lloyd, a member of the Virginia State Bar, violated the Virginia State Bar Rules of Professional Conduct.

Background

Edward Scott Lloyd is a resident of Virginia and a member of the Virginia State Bar.¹ In March of this year, Mr. Lloyd was appointed by President Donald J. Trump to be the Director of the Office of Refugee Resettlement (“ORR”).² In that capacity, Mr. Lloyd funds and administers the programs of the ORR,³ which provides benefits and services to refugees, asylees, Cuban and Haitian entrants, Special Immigrant Visa holders, Amerasians, victims of human trafficking, and unaccompanied immigrant minors.⁴ Most pertinently, Mr. Lloyd oversees ORR’s grants to and contracts with public and private nonprofit agencies that provide initial resettlement and placement services to unaccompanied immigrant minors.⁵

Prior to March of this year, an ORR grantee that provided shelter and services to unaccompanied immigrant minors would assist a pregnant minor in identifying the services she needed, including assistance in obtaining parental consent or judicial authorization, funding, and transportation for an abortion. ORR was not directly involved in an unaccompanied immigrant

¹ <https://www.acf.hhs.gov/about/leadership/scott-lloyd>.

² Betsy Woodruff, *Trump’s Pick for Refugee Czar Never Resettled Refugees*, *Daily Beast*, Apr. 10, 2017, available at <https://www.thedailybeast.com/trumps-pick-for-refugee-czar-never-resettled-refugees>.

³ 8 U.S.C. § 1521(b).

⁴ <https://www.acf.hhs.gov/orr/about/what-we-do>.

⁵ 8 U.S.C. § 1522(b)(1)(A)(ii).

minor's decision to have an abortion unless the minor sought federal funding for the procedure.⁶ Pursuant to federal law, funding would be granted in cases of rape, incest, or when the woman's life was in danger.⁷ However, pregnant minors "were entitled to family planning services and left [on their own] to make those decisions" and, in responding to requests for funding, ORR "wasn't approving their right to have the procedure," only their right to public funding for it.⁸

Shortly after his appointment, Mr. Lloyd began forcefully pursuing a new policy to make it difficult, if not impossible, for unaccompanied, pregnant immigrant minors to obtain abortions. Specifically, the policy stated that "the Director of ORR is empowered by Congress to make all medical decisions for the unaccompanied alien child (UAC) in place of the child's parents."⁹ As such, a signed authorization from the Director of ORR would be required before any ORR grantee could take "any next steps (i.e., scheduling appointments, pursuing a judicial bypass, or any other facilitative step)" to facilitate an abortion for an unaccompanied immigrant minor.¹⁰ Mr. Lloyd's position was that ORR grantees "should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling."¹¹

Mr. Lloyd began personally contacting unaccompanied, pregnant immigrant minors in grantee shelters and attempting to coerce them into continuing their pregnancies. On numerous occasions, Mr. Lloyd visited grantee shelters and spoke directly with unaccompanied, pregnant immigrant minors.¹² Following his visits, Mr. Lloyd instructed grantees to send the pregnant minors to "crisis pregnancy centers," which offer biased, misleading, and inaccurate information about abortion, and which often proselytize to women and girls in an attempt to dissuade them from having abortions.¹³ Mr. Lloyd requested that grantees "keep a close eye" on pregnant minors and keep him personally updated on their status.¹⁴

Mr. Lloyd frequently directed ORR and grantee staff to notify the parents and immigration sponsors of unaccompanied immigrant minors' pregnancies,¹⁵ despite the minors' requests to keep the information confidential.¹⁶ He did so when a minor had not yet made a

⁶ Renuka Rayasam, *Trump official halts abortions among undocumented, pregnant teens*, *Politico*, Oct. 16, 2017, available at <http://www.politico.com/story/2017/10/16/undocumented-pregnant-girl-trump-abortion-texas-243844>.

⁷ *Id.*

⁸ *Id.*

⁹ Plaintiff's Memorandum in Support of Her Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, Ex. A at 2, *Garza v. Hargan*, No. 17-02122 (D.D.C. Oct. 14, 2017).

¹⁰ *Id.*, Ex. B at 3, 5.

¹¹ *Id.*, Ex. C at 1.

¹² *Id.*, Ex. D at 3; Ex. E at 2; Ex. G at 3. See also Rayasam, *Politico*, Oct. 16, 2017.

¹³ *Id.* Minority Staff of the H. Comm. On Gov't Reform, False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers, 109th Cong. 1 (2006), available at <https://www.chsourcebook.com/articles/waxman2.pdf>; National Abortion Federation, *Crisis Pregnancy Centers: An Affront to Choice*, 2006, available at https://www.prochoice.org/pubs_research/publications/downloads/public_policy/cpc_report.pdf.

¹⁴ Plaintiffs' Memorandum, *supra* note 9, Ex. D at 3.

¹⁵ *Id.*, Ex. G at 3; Ex. H at 3; Ex. I at 2.

¹⁶ *Id.* at 8; Ex. I at 2.

decision about her pregnancy,¹⁷ when a minor had decided to have an abortion,¹⁸ and when a minor had already obtained an abortion with judicial authorization.¹⁹ In one case, he even appears to have done so with advance knowledge that it might jeopardize an unaccompanied immigrant minor's placement with her adult brother living in the United States.²⁰

In addition to becoming personally involved in the decision-making of unaccompanied, pregnant immigrant minors, and divulging confidential information to their parents and sponsors against their will, Mr. Lloyd interjected in other questionable ways. In at least one case, Mr. Lloyd explicitly instructed a shelter to deny an unaccompanied immigrant minor access to legal counsel.²¹ In another, Mr. Lloyd suggested that he knew "a few good families with a heart for these situations who would take [a pregnant, unaccompanied immigrant minor] in a heartbeat and see her through her pregnancy and beyond."²² The minor in question apparently was going to live with an aunt in the United States, but Mr. Lloyd suggested alternative sponsorship if "things can't work out with her aunt soon."²³ Finally, in the case of J.D., a 17-year-old unaccompanied, pregnant immigrant minor in Texas, Mr. Lloyd sought to categorically deny her access to an abortion after she had procured funding, travel, and a judicial bypass for the procedure.²⁴ In response to a lawsuit filed by the American Civil Liberties Union on the young woman's behalf, a Washington, D.C. federal court ordered ORR to allow her to obtain an abortion.²⁵

Violations of Virginia State Bar Rules of Professional Conduct

Mr. Lloyd appears to have violated both the spirit and the letter of the Virginia State Bar Rules of Professional Conduct. The preamble to the Rules describes a lawyer's responsibilities as follows:

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.²⁶

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 8; Ex. G at 3.

¹⁹ *Id.*, Ex. H at 3; Ex. I at 2.

²⁰ *Id.*, Ex. I at 2.

²¹ *Id.*, Ex. G at 3.

²² *Id.*, Ex. D at 3.

²³ *Id.*

²⁴ *Id.* at 1-2.

²⁵ Zoe Tillman, [A Federal Appeals Court Just Ruled That An Undocumented Teen Can Get An Abortion](https://www.buzzfeed.com/zoetillman/a-federal-appeals-court-just-ruled-that-an-undocumented), *BuzzFeed News*, Oct. 24, 2017, available at <https://www.buzzfeed.com/zoetillman/a-federal-appeals-court-just-ruled-that-an-undocumented>.

²⁶ Va. State Bar Rules of Prof'l Conduct, Preamble.

Lawyers are directed to follow, respect and use the law only for legitimate purposes. A lawyer's failure to act in accordance with these principles may constitute professional misconduct.

Criminal or Deliberately Wrongful Acts

Pursuant to Rule of Professional Conduct 8.4(b), it is professional misconduct for a lawyer to "commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law." While the comments to the rule advise that a lawyer is held "professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice,"²⁷ offenses involving "serious interference with the administration of justice are in that category."²⁸

Mr. Lloyd appears to have willfully violated the law and interfered with the administration of justice in a number of ways. In seeking to impose an absolute bar against J.D., a 17-year-old unaccompanied, pregnant immigrant minor in Texas, who was seeking an abortion, Mr. Lloyd violated her constitutional right to an abortion, a right which ORR concedes.²⁹ When Mr. Lloyd directed ORR and grantee shelter staff to notify the parents and sponsors of unaccompanied immigrant minors that minors were pregnant or had obtained an abortion, he violated their constitutional rights as well.³⁰

Moreover, in directing ORR and grantee shelter staff to notify the parents of an unaccompanied immigrant minor who had been appointed a guardian ad litem and sought and obtained judicial authorization to have an abortion without notifying her parents, Mr. Lloyd willfully acted to contravene the authority of the court. In doing so, Mr. Lloyd interfered with the administration of justice and appears to have committed contempt pursuant to Tex. Gov. Code § 21.001(a).

Mr. Lloyd appears to have repeatedly violated the 1997 settlement agreement in *Flores v. Reno*, from which many of the rights afforded to unaccompanied immigrant minors flow.³¹ The *Flores* agreement specifically guarantees unaccompanied immigrant minors access to emergency health care, family planning services, "legal services," a "reasonable right to privacy," and release "without delay," prioritizing placement with family members.

Nevertheless, Mr. Lloyd withheld family planning services from J.D., who was blocked from obtaining an abortion for weeks as Mr. Lloyd directed the grantee shelter to refuse to let her

²⁷ Va. State Bar Rules of Professional Conduct Rule 8.4(b), note 2.

²⁸ *Id.*

²⁹ Order at 2, *Garza v. Hargan*, No. 17-5236 (D.C. Cir. Oct. 20, 2017), available at <http://apps.washingtonpost.com/g/documents/national/garza-v-hargan-appeals-court-ruling/2603/>.

³⁰ The legal violations outlined here are addressed in more detail in a letter from CfA to the Inspector General of the U.S. Department of Health and Human Services. Though the allegations are summarized here for ease of reference, the full letter is available at <https://campaignforaccountability.org/wp-content/uploads/2017/10/CfA-Complaint-Scott-Lloyd-HHS-IG-10-20-17-2.pdf>.

³¹ Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan 17, 1997), available at <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement>.

leave for her scheduled appointments. In addition, Mr. Lloyd has blocked at least one unaccompanied immigrant minor from seeking and receiving legal assistance; he has suggested circumventing the placement priorities of the *Flores* agreement in an apparent attempt to prioritize ideological opposition to abortion over the goal of placing unaccompanied immigrant minors with their family members; and he has potentially deprived unaccompanied immigrant minors of their reasonable right to privacy by notifying their parents or sponsors of their pregnancies and forcing them to undergo “counseling” at crisis pregnancy centers. By blatantly disregarding his agency’s obligations under the *Flores* agreement, which has protected the rights of unaccompanied immigrant minors for two decades, Mr. Lloyd appears to have interfered with the administration of justice.

Abuse of Public Office

Mr. Lloyd’s violations of the Virginia State Bar Rules of Professional Conduct are amplified by the fact that Mr. Lloyd held a public office while taking such actions. The comments to the Virginia State Bar Rules of Professional Conduct Rule 8.4 advise that “[l]awyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of attorney.”

By personally visiting unaccompanied immigrant minors, pressuring them regarding personal healthcare decisions, and providing individualized, detailed, and at times illegal direction to grantee shelters regarding their care, Mr. Lloyd appears to have acted outside of his statutory duties, and misused his position and government funds in violation of 5 C.F.R. § 2635.704(a).

Mr. Lloyd also may have violated 31 U.S.C. § 1341(a)(1)(A-B), the Anti-deficiency Act, which prohibits making an expenditure of government funds for which no appropriation was authorized. By misusing his position and government funds to interfere with the rights of unaccompanied immigrant minors in his agency’s care, Mr. Lloyd appears to have abused his position in violation of Virginia State Bar Rules of Professional Conduct.

Conclusion

Mr. Lloyd has abused his position as the Director of ORR to personally contact and pressure unaccompanied immigrant minors to continue their pregnancies, to notify the parents and sponsors of those minors against the minors’ will, to deprive the minors of access to legal counsel and other services, and to seek to categorically deny at least one minor of her constitutional right to an abortion. In doing so, Mr. Lloyd appears to have misused his position and violated the law.

Virginia State Bar, Intake Office

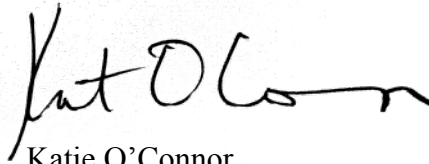
October 26, 2017

Page 6

The Virginia State Bar Rules of Professional Conduct exist to ensure that representatives of the legal profession uphold and improve the legal process and the quality of justice. As a result, it is incumbent upon every member of the bar to conform to the law and to respect the legal system and those who serve it. Mr. Lloyd, however, has done neither. Accordingly, CfA respectfully requests that you investigate Mr. Lloyd's conduct and take appropriate remedial action.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katie O'Connor
Legal Counsel
Campaign for Accountability