



TIM GRIFFIN

ATTORNEY GENERAL OF ARKANSAS

February 7, 2023

Danielle Gray, Executive Vice President
Walgreens Boots Alliance, Inc.
108 Wilmot Road
Deerfield, IL 60015

Dear Ms. Gray,

Your company recently announced that it intends to sell abortion pills using the mail. As Arkansas's chief law-enforcement officer, I write to notify you that such an action would likely violate multiple state and federal laws and to advise you of the consequences of violating the law.

First, federal law makes it unlawful to use the mail or a common carrier to send or receive any drug that will "be used or applied for producing abortion." 18 U.S.C. § 1461; *see id.* § 1462. Anyone who "knowingly takes any such thing from the mails for the purpose of circulating . . . thereof" commits a federal criminal offense. *Id.* § 1461. These prohibitions include abortion-inducing drugs delivered by the United States Postal Service as well as delivery services, like United Parcel Service or FedEx. I can enforce these prohibitions through civil litigation under 18 U.S.C. § 1864; *see id.* § 1961(1). And, as previously explained in a February 1, 2023, letter that I—and 19 other state attorneys general—sent to your company, Walgreens cannot ignore the letter of the law, whatever contrary guidance the Biden administration may have announced. That's because it is statutory text—not the Biden administration's politicized opinion concerning it—that governs.

Second, Arkansas law strictly prohibits elective abortion. Selling any medicine, drug, or other substance to terminate a pregnancy squarely fits the definition of providing an unlawful abortion. *See* Ark. Code Ann. §§ 5-61-303(a)(1)(A), 5-61-304, 5-61-403(a)(1)(A), 5-61-404. Indeed, the only exception to Arkansas's prohibition is an abortion performed "to save the life of a pregnant woman in a medical emergency." *Id.* § 5-61-304(a); *accord id.* § 5-61-404(a). A violation of that provision is a felony, and each violation can result in up to ten years' imprisonment and a \$100,000 fine. *Id.* §§ 5-61-304(b), 5-61-404(b).

Third, to the extent Arkansas law still permits the administration of abortion-inducing drugs to save the life of the mother, you should be aware of additional restrictions. Arkansas law recognizes that abortion pills are uniquely dangerous, especially when administered without proper supervision. *See id.* § 20-16-1502(a) (finding that abortion pills pose “significant medical risks” and that women who take them “risk significantly more complications” even than other forms of abortion). Arkansas law thus provides that “[i]t is unlawful for any manufacturer, supplier, physician, or any other person to provide any abortion-inducing drug via courier, delivery, or mail service,” *id.* § 20-16-1504(b), and such “drugs shall only be prescribed, administered, dispensed, or otherwise provided by a physician.” *Id.* § 20-16-1504(a) (emphasis added); *see id.* § 20-16-606(a) (only a board-certified or -eligible licensed physician may perform an abortion). Indeed, because abortion-inducing drugs present unique dangers, as part of providing that medication, the physician must “[e]xamine the pregnant woman in person” and provide other health protections. *Id.* § 20-16-1504(a). “[T]he initial administration of the drug or chemical” must also “occur in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.” *Id.* § 20-16-603. Intentional, knowing, or even reckless violations of these laws can result in further criminal penalties. *Id.* § 20-16-1506(a).

The Biden administration’s plan to reverse the Food and Drug Administration’s longstanding rules on the remote administration of abortion-inducing drugs does not change the analysis. To the contrary, as the United States Supreme Court made clear last year in *Dobbs v. Jackson Women’s Health Organization*, “the authority to regulate abortion” belongs to “the people and their elective representatives” in each individual state. 142 S. Ct. 2228, 2279 (2022). And unelected federal bureaucrats “cannot substitute their social and economic beliefs for the judgment of legislative bodies,” *id.* at 2284 (quotation omitted), by purporting to exempt providers from state law. Anyone selling abortion-inducing drugs in Arkansas is subject to Arkansas law—whatever the Biden administration may say. And I will see that Arkansas law is strictly enforced.

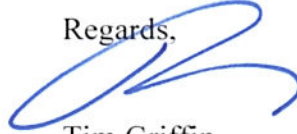
Fourth, the unlawful sale or provision of abortion-inducing drugs would also constitute an unfair, unconscionable, and deceptive trade practice in violation of Arkansas law. *See Ark. Code Ann.* § 4-88-102(4), (5), (7) (persons, goods, and services subject to act), *id.* § 4-88-107(a)(8), (a)(10), (b) (prohibition of deceptive trade practices). I will not hesitate to investigate any violation of those provisions and seek both civil and criminal remedies for any violations. *See id.* § 4-88-107(a)(8), (a)(10), (b) (prohibition of deceptive trade practices), *id.* §§ 4-88-103, -104 (civil liabilities and criminal penalties), *id.* § 4-88-111 (permitting Attorney General investigations).

As Arkansas’s chief law-enforcement officer, it is my duty to uphold the law and protect the health, safety, and welfare of Arkansans. Part of that responsibility includes ensuring that companies like yours are fully informed of the law so that harm does not come to Arkansans—both born and unborn. So while the Biden administration may have abdicated its duty to enforce the law, I will not. And I intend to see both Arkansas’s abortion laws and the

federal prohibition on using the mail or a common carrier to traffic abortion-inducing drugs are strictly enforced.

I would be happy to hear from you if you have any questions or would like to make any assurances about your compliance with federal and state law.

Regards,

A handwritten signature in blue ink, appearing to read 'Tim Griffin', with a large, stylized flourish at the end.

Tim Griffin
Attorney General of Arkansas



Walgreens Boots Alliance

February 21, 2023

Tim Griffin, Attorney General
Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201

Dear General Griffin:

Thank you for your February 1, 2023 letter regarding the dispensing of Mifepristone in your state. Your letter acknowledges the complexity of this issue. While Walgreens has publicly expressed its intent to become a certified pharmacy under the Food and Drug Administration's ("FDA") program, the company has made clear that it would do so consistent with all applicable laws and as a result would not be able to dispense Mifepristone in all locations. Additionally, Walgreens has not made any representations about using the mail to dispense this drug.

Walgreens is not currently dispensing Mifepristone in any of its locations. As you know, to become certified by the FDA, participating pharmacies must satisfy a range of safety and risk mitigation requirements to dispense this drug. At this time, we are working through the certification process, which includes the evaluation of our pharmacy network to determine where we will dispense Mifepristone and training protocols and updates for our pharmacists. Walgreens does not intend to dispense Mifepristone within your state and does not intend to ship Mifepristone into your state from any of our pharmacies. If this approach changes, we will be sure to notify you.

We appreciate you communicating your concerns and trust that this response provides additional clarity.

Sincerely,

Danielle C. Gray
Executive Vice President, Global Chief Legal Officer
Walgreens Boots Alliance