



NICOLE MALLIOTAKIS
Member of Assembly 64th District

THE NEW YORK STATE LEGISLATURE



MARTIN J. GOLDEN
Member of Senate 22nd District

July 9, 2015

Hon. Howard A. Zucker, MD, JD
Commissioner
NYS Department of Health
Empire State Plaza, Corning Tower
Albany, NY 12237

Dear Commissioner Zucker:

As you may recall, prior to your assumption of duties as Commissioner of the New York State Department of Health, it was reported that a number of abortion clinics overseen by the agency were not being properly inspected. Of the 25 abortion clinics under Department of Health jurisdiction, only 17 were inspected and only 45 routine inspections were conducted from 2000 to 2012, while eight of these facilities went through the entire period without a single visit.¹

In response to this alarming report, we are crafting legislation that would to establish a requirement that the Health Commissioner inspect health facilities and clinics that perform medical procedures and surgeries once every two years, and submit a written report of the results of each inspection to the Assembly, Senate, and Governor.²

To aid the ongoing discussion on the bill, we submitted a Freedom of Information Law (FOIL) request on March 25, 2015 (a copy of which is enclosed with this letter), for details on the quantity of medical and surgical facilities in New York and their respective inspection histories. Subsequent to this request, we received correspondence from the Department of Health Records Access Office on April 23, June 9, and July 7, each indicating a delay in the process.

According to the Public Officers Law, "Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied..."³ While we appreciate the magnitude of FOIL requests received by the Department of Health and the stress under which Records Access Office personnel must operate, we find it unreasonable that this information was not readily available or, at the very least, accessible in the three months since our request was submitted. This leaves us with the impression that either the Department of Health is unwilling to share this information

¹ Carl Campanile, *NYC's tanning salons inspected more regularly than abortion clinics*, N.Y. POST, Apr. 7, 2014.

² A.3048-A, S.2128-A, 2015 Leg. Sess. (N.Y. 2015).

³ N.Y. PUB. OFF. LAW § 89(3)(a).

with us and the public or, even more concerning, the Department of Health does not have this information and is not properly inspecting and maintaining records of these clinics.

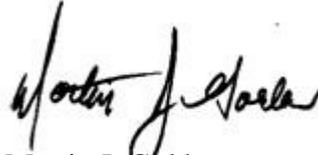
The information at issue carries significant importance in debating the frequency and nature of inspections to be prescribed by our pending legislation. In light of the aforementioned report on uninspected abortion clinics, along with the recent tragic death of comedienne Joan Rivers following a procedure at a New York surgical clinic,⁴ an undeniable public interest lies in reforming the laws by which the Department of Health must operate in regulating our state's diagnostic and treatment centers.

We respectfully urge you to expedite our request, and provide the information forthwith, so that this legislation may receive its due treatment by all stakeholders.

Sincerely,



Nicole Malliotakis
Member of Assembly



Martin J. Golden
State Senator

Encl.

⁴ Anemona Hartocollis, *Joan Rivers's Treatment Had Numerous Violations, U.S. Inquiry Finds*, N.Y. TIMES, Nov. 10, 2014.



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Banks
Corporations, Authorities & Commissions
Transportation
Ways and Means

March 25, 2015

Records Access Office
New York State Department of Health
Corning Tower Room 2364
Albany, New York 12237-0044

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (Public Officers Law §§ 84–90), I respectfully request that your agency provide information on the following items at your earliest convenience:

1. The number of diagnostic and treatment centers licensed by the New York State Department of Health.
2. The number of facilities that are not defined as diagnostic and treatment centers, but can still legally perform medical procedures and surgeries in the state of New York.
3. The date of the most recent inspection performed by the New York State Department of Health of each diagnostic and treatment center that is not accredited by the Joint Commission (JC).
4. The date of the most recent inspection performed by the New York State Department of Health of each clinic or facility that is not defined as a diagnostic and treatment center and is not accredited by the Joint Commission (JC).

I thank you in advance for your timely consideration of this matter.

Very truly yours,

Nicole Malliotakis