



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

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February 21, 2023

Tom Moriarty, General Counsel  
CVS Health  
One CVS Drive  
Woonsocket, RI 02895

Dear Mr. Moriarty:

I have become aware of your company's recently announced plan to provide abortifacients through its mail-order pharmacy business. As the chief law enforcement officer in Kansas, I am writing to advise you that this plan is illegal, and Kansas will not hesitate to enforce the law.

I recognize that an ends-justify-the-means administration in the White House and the U.S. Department of Justice has gone to great lengths to obscure the issue. But the law is straightforward: under 18 U.S.C. § 1461 (2018), it is illegal to knowingly mail any "article or thing designed, adapted, or intended for producing abortion"; it is also illegal to mail any "article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion."

This is a federal criminal statute, of course. And, ordinarily, the national government's steadfast determination not to enforce the law would be the end of things. But § 1461 is not a normal criminal statute because it can be enforced by an ordinary private-party lawsuit under the Racketeer Influenced and Corrupt Organizations Act. *See* 18 U.S.C. § 1964(c) (2018); *see also id.* § 1961(1) (defining "racketeering activity" to include violations of § 1461).

I note too that, insofar as you are dispensing mifepristone, Kansas law requires that drug to only be "administered by or in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug to the patient." Kan. Stat. Ann. § 65-4a10(b)(1). Similarly, other abortifacient drugs must be "given to the patient by or in the same room and in the physical presence of the physician who

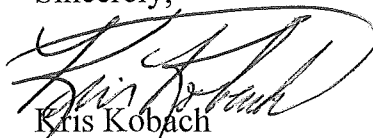
prescribed, dispensed, or otherwise provided the drug.” *Id.* Mail-order prescriptions are inconsistent with this requirement.

The federal government’s attempts to make abortifacients available through the mail despite the clear wording of federal law are plainly exercises in motivated reasoning. First, the FDA used the COVID-19 pandemic as an excuse to ignore the law and authorize by-mail dispensation of these pills.<sup>1</sup> Now, the Department of Justice has issued an opinion that ties itself in knots trying to explain away § 1461’s prohibitions.<sup>2</sup>

No self-respecting lawyer would read the law in such a way that is clearly inconsistent with its plain meaning. President Biden is beholden to the country’s most extreme pro-abortion voices, who constantly advocate for expanding the abortion regime without any consideration of legality or even women’s safety. But nothing requires you to join him. The law says what it says. I encourage you to follow it.

Finally, as you may be aware, Walgreens has recently reviewed the laws at issue and has stated that it does not intend to dispense Mifepristone within the State of Kansas and does not intend to ship Mifepristone into Kansas from any of its pharmacies. Their decision was conveyed to me in a letter dated February 17, 2023. I would greatly appreciate it if you would let me know if CVS will do the same.

Sincerely,



Kris Kobach  
Attorney General

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<sup>1</sup> Letter from Janet Woodcock, Acting Commissioner, USFDA to Maureen G. Phipps, CEO, Am. Coll. of Obstetricians & Gynecologists & William Grobman, President, Society for Maternal-Fetal Medicine (Apr. 12, 2021), *available at* <https://twitter.com/ACOGAction/status/1381781110980501512/photo/1>.

<sup>2</sup> Office of Legal Counsel, Application of the Comstock Act to the Mailing of Prescription Drugs that Can Be Used for Abortions (Dec. 23, 2022), *available at* [https://www.justice.gov/d9/opinions/attachments/2023/01/03/2022-12-23\\_-\\_comstock\\_act\\_1.pdf](https://www.justice.gov/d9/opinions/attachments/2023/01/03/2022-12-23_-_comstock_act_1.pdf).