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June 9, 2016

Danielle McGrath
Governor's Office
200 W. Washington St., Room 206
Indianapolis, IN 46204

Re: Letter from Mary Beth Bonaventura
06/03/2016

Dear Ms. McGrath:

As we have explained to you and others, our client believes that there is a real need for Safe Haven Baby Boxes. Since the Safe Haven Law was passed in 2001, 34 babies have been illegally abandoned in this state and almost all have died. Safe Haven Baby Boxes fill the needs of these desperate women by allowing them to relinquish a baby anonymously and safely and, thereby, to save that baby's life. **This year alone, Safe Haven Baby Boxes has saved 4 babies through its hotline who would have otherwise died if this life-saving option was not available.** We believe that this option is completely legal and my client intends to continue this program and save these babies.

On June 3rd, we received a letter from Mary Beth Bonaventura, the Director of Department of Child Services (DCS), as a response to our meeting with you on May 20th and our letter sent to you on May 24th. Their letter completely disregarded the compromise we offered. Safe Haven Baby Boxes is willing to cooperate and to help develop state standards and protocols for Baby Boxes, if Indiana State Department of Health (ISDH) is willing to do what the state legislature asked of them and develop "standards and protocols" for the Baby Boxes.

The problem is that instead of studying Baby Boxes and recommending "standards and protocols" as required by IC 16-35-9, the Indiana State Department of Health has abdicated their responsibility and, instead, just told the legislature that they believed that Baby Boxes should not be implemented. As a result, Safe Haven Baby Boxes has had no choice but to move forward with its plan to open Baby Boxes and to implement their own rigorous safety procedures and protocols without any state guidance, which they would welcome.

Our letter of May 24th offered to defer opening any additional Baby Boxes beyond the 4 currently planned and to help the State Department of Health to study them and to develop state standards and protocols. The DCS letter ignored this compromise and, by its silence on this subject, made it clear that the State Department of Health has no intention of complying with the legislature's mandate.

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Our client believes that the Safe Haven Baby Boxes are extremely safe. The manufacturer studied the box for 15 months and changed the design 8 times to develop a safe product. Safe Haven's electrical engineer changed the electronics 23 times to ensure safe and durable operation. Initially, the Baby Box used a weight sensor to lock the door, but this was replaced by a motion detector because it proved more reliable. The electronics have undergone rigorous testing and have suffered no failures since the installation of the system. The Baby Warmer is built exclusively for the Baby Box and never fluctuates outside the temperature of 95-101 degrees. The Baby Warmer is itself registered as a medical device. Finally, the Baby Box is wired to alert 911 when a baby is placed in the box. The alarm company visits the Baby Box locations to test the alarms and certify their working condition and sends test signals to the Baby Boxes everyday. If the building loses power, the backup battery takes over the alarm system. The alarm company receives an alert that a Baby Box is running on battery backup. Each Baby Box location performs daily tests with the alarm system to maintain its accuracy. The Baby Boxes have passed all daily tests. At the latest test, emergency medical services arrived at the Baby Box location in 2 minutes and 15 seconds.

While we believe Safe Haven Baby Boxes are safe, Safe Haven Baby Boxes still supports legislation to help ensure the boxes are as safe as they can be.

We now turn to points raised in Ms. Bonaventura's June 3rd letter:

(1) There is *no* legal basis to require Safe Haven Baby Boxes to close the Baby Boxes.

The DSC letter provides no legal basis for the position that the Baby Boxes are currently unlawful. No law requires that the Baby Boxes must comply with the standards that the Indiana State Department of Health has failed to provide and the letter cites no other state or federal law or regulation that would necessitate removing and/or suspending placement of the Boxes. Their request that we close the Baby Boxes is just an arbitrary demand of a government agency without any legal authority.

(2) The Safe Haven Law does *not* require closing the Baby Boxes.

The Safe Haven Law has nothing to do with the legality of the Baby Box itself. It says nothing about any specific standards that the Boxes must meet. The Safe Haven law has to do with whether a parent escapes liability when abandoning their child. Even if a parent was liable for placing a baby in a Baby Box, at least the baby has an opportunity to be saved instead of being thrown into a dumpster or into the woods to be attacked by animals.

However, we believe that the Safe Have Law is compatible with the use of the Baby Boxes. The Safe Haven Law does not require a person abandoning an infant to surrender the infant to an actual person. Instead, the statute states that the emergency medical services provider shall "take custody of the child." Here, the infant is left in the Baby Box for the provider, the provider takes custody of the child, and the provider continues with the proper protocols for abandoned children. This is in line with the law.

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(3) Federal law is *not* pertinent.

Here, federal law is of no concern to the state. DCS does not enforce federal laws. The Food & Drug Administration (FDA) and the Consumer Products Safety Commission (CPSC) have no responsibility, interest or legal authority for reviewing the standards and protocols affecting the Safe Haven Baby Boxes. The fact that Ms. Bonaventura cites these federal laws perplexes us, as they are really none of her business.

Again, we appreciate the desire of the Governor's office to protect children and to insure the safety of the Baby Boxes. My client shares these concerns and is prepared to cooperate to make these Boxes as safe as possible. However, the Baby Boxes have demonstrated themselves to be safe and reliable and are in full compliance with the law. And we believe that the Safe Haven Law protects those women who use them.

My client still stands ready to assist the State Department of Health if it decides to carry out its responsibility to recommend state standards and protocols for Baby Boxes, as required by the state legislature.

Sincerely,

THE BOPP LAW FIRM, PC

/s/ Corrine L. Purvis

James Bopp, Jr.
Corrine L. Purvis

CC: Douglas J. Leonard, FACHE, Indiana Hospital Association
David Powell, Indiana Prosecuting Attorneys Council
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Casey Cox, State Representative
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