



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BRAD LANDER

July 15, 2024

W. Rodney McMullen  
Chairman & CEO  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202

Dear Mr. McMullen:

As Comptroller of the City of New York, I am the investment adviser to, and the custodian and a trustee of, the New York City Retirement Systems (NYCRS). NYCRS holds approximately 2,223,606 shares in Kroger, valued at \$116.5 million (as of 5/31/24).

I am writing to urge Kroger to immediately take the necessary steps to receive certification to dispense the medication mifepristone in states where it is legal. Following pharmacy industry leaders, and competitors, CVS and Walgreens, Kroger has the opportunity to provide access to abortion medication through its pharmacies. Making mifepristone available benefits customers and employees and increases sales, while also generating long-term shareholder value.

The Kroger Board of Directors' and management's failure to publicly commit to Kroger becoming a certified mifepristone dispenser therefore raises significant investor concerns. These concerns include the company's responsiveness to a growing market opportunity, its mitigation of potential reputational risks, and its commitment to maximizing sales and long-term shareholder value.

Medication abortion now accounts for 63% of all abortions in the health care system, as noted in a July 2, 2024, letter from a group of 54 U.S. House members that similarly called on Kroger to take action to begin dispensing mifepristone as soon as possible.<sup>i</sup> According to Global Markets Insight Inc., the market for abortion drugs was valued at over \$24.4 billion in 2023 and is estimated to grow at 8.2% annually through 2032.<sup>ii</sup>

Mifepristone's safety is well established. The U.S. Food and Drug Administration thoroughly reviewed the scientific evidence and approved Mifeprex (mifepristone) over 20 years ago, determining its safety and effectiveness.<sup>iii</sup>

According to an amici curiae brief submitted to the U.S. Supreme Court by 16 of the nation's leading medical organizations representing hundreds of thousands of clinicians nationwide (including the American College of Obstetricians and Gynecologists (ACOG) and the American Medical Association (AMA)), "few drugs have been so extensively studied after their approval

by FDA and can boast such a clear and compelling record of safe use.”<sup>iv</sup> The amici curiae further notes, “Mifepristone has a safety profile comparable to that of ibuprofen, which more than 30 million Americans take in any given day.”<sup>v</sup>

Following the recent Supreme Court decision allowing for continued access to mifepristone, the ACOG stated: “[a]ccess to the full spectrum of medical care, including abortion, is essential for people's health, safety, and well-being.”<sup>vi</sup>

It is incumbent on the Board and management to promptly act to ensure that Kroger quickly becomes certified and starts dispensing mifepristone without delay. This action aligns with both long-term shareholder interests and women’s health care needs.

I thank you in advance for your timely response.

Sincerely,



Brad Lander  
New York City Comptroller

Cc: Rondald L. Sargent, Lead Director  
Christine S. Wheatley, Secretary

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<sup>i</sup> [https://goldman.house.gov/sites/evo-subsites/goldman.house.gov/files/evo-media-document/7.2\\_MifeLetter\\_FINAL.pdf](https://goldman.house.gov/sites/evo-subsites/goldman.house.gov/files/evo-media-document/7.2_MifeLetter_FINAL.pdf)

<sup>ii</sup> <https://www.gminsights.com/industry-analysis/abortion-drugs-market/market-size>

<sup>iii</sup> <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation#:~:text=The%20FDA%20approved%20Mifeprex%20more,to%2070%20days%20of%20gestation.>

<sup>iv</sup> <https://www.acog.org/-/media/project/acog/acogorg/files/advocacy/amicus-briefs/2024/20240130-danco-laboratories-llc-v-alliance-for-hippocratic-medicine-et-al.pdf>

<sup>v</sup> <https://www.acog.org/-/media/project/acog/acogorg/files/advocacy/amicus-briefs/2024/20240130-danco-laboratories-llc-v-alliance-for-hippocratic-medicine-et-al.pdf>

<sup>vi</sup> <https://www.acog.org/advocacy/abortion-is-essential#:~:text=Access%20to%20the%20full%20spectrum,to%20people%20without%20outside%20interference.>