

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: CIVIL DIVISION, ROOM _____
MARION COUNTY) CAUSE NO. _____

CAITLIN BERNARD, M.D.; and)
CAROLINE ROUSE, M.D.,)
)
Plaintiffs,)
v.)
)
INDIANA STATE HEALTH)
COMMISSIONER, in the officer's official)
capacity; and VOICES FOR LIFE, INC.,)
)
Defendants.)

**PLAINTIFFS' MOTION FOR IMMEDIATE TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Pursuant to Indiana Trial Rule 65, Plaintiffs respectfully move the Court to enter a temporary restraining order and preliminary injunction: (1) prohibiting the Indiana State Health Commissioner, in her official capacity as director of the Indiana Department of Health, and her employees, agents, and successors in office, prior to entry of final judgment in this lawsuit, from disclosing or otherwise providing access to terminated pregnancy reports ("TPRs") in response to any request made under Indiana's Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1 to 5-14-3-10, and (2) directing Voices for Life, Inc. ("VFL"), to immediately return, delete, or destroy all paper and electronic copies within its possession, custody or control of any TPR it obtained pursuant to the mutual release and settlement agreement it entered this month with the Indiana Department of Health and the Indiana State Health Commissioner. Plaintiffs further ask that this relief be granted without requiring Plaintiffs to provide security because the requested relief will not cause Defendants any pecuniary harm.

In support of this motion, Plaintiffs submit a memorandum of law; the declaration of Caitlin Bernard, M.D.; the declaration of Caroline Rouse, M.D.; the declaration of Kathrine D. Jack, Esq; a proposed temporary restraining order; and a proposed preliminary injunction.

As further explained in the accompanying memorandum of law, the Court should grant Plaintiffs' motion because Plaintiffs are likely to succeed on the merits of their declaratory judgment claim seeking to establish that TPRs, which contain detailed information about abortion patients' demographics, medical history, and medical care, are exempt from disclosure under APRA; Plaintiffs and their patients will suffer irreparable harm if the Indiana Department of Health discloses TPRs to VFL or any other member of the public; and the balance of equities and public interest both favor entry of preliminary injunctive relief.

In addition, the Court should enter a temporary restraining order without notice to Defendants to prevent immediate and irreparable injury to Plaintiffs and their patients from an imminent disclosure of TPRs to VFL by the Indiana Department of Health.

WHEREFORE, Plaintiffs ask the Court to grant the requested injunctive relief without requiring Plaintiffs to provide security, and grant such other and further relief as the Court deems just, proper, and equitable.

Date: February 6, 2025

Respectfully submitted:

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*Petition for temporary admission forthcoming

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A
 TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs respectfully submit this memorandum of law in support of their motion for a temporary restraining order and preliminary injunction.

Plaintiffs are Indiana physicians who filed this declaratory judgment action to establish that terminated pregnancy reports ("TPRs"), which contain detailed information about their patients' demographics, medical history, and medical care, are exempt from the general disclosure requirement in Indiana's Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1 to 5-14-3-10. Earlier this week, the Indiana Department of Health ("IDOH") and Indiana State Health Commissioner ("Health Commissioner") reached a settlement with Voices for Life, Inc. ("VFL"), in a related case, agreeing to no longer designate TPRs as confidential medical records that are exempt from public records requests. *See infra* at 6. Plaintiffs are seeking a temporary restraining order and preliminary injunction to prevent the imminent release of confidential medical records about abortion patients in the form of the TPRs by IDOH, and to require VFL to return, delete, or destroy all copies of any TPR already provided to it pursuant to the settlement agreement.

A judge of this Court has already concluded that TPRs are exempt from APRA's disclosure requirement. Jack Decl. Ex. C at 2 (*Voices for Life, Inc. v. Ind. Dep't of Health*, No. 49D02-2405-MI-019876, slip op. at 2 (Ind. Super. Ct. Sept. 9, 2024)). So has Indiana's Public Access Counselor. *See infra* at 7. Moreover, the Medical Licensing Board of Indiana ("Medical Board") has concluded that at least some of the information contained in TPRs is protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 110 Stat. 1936 (1996). Nevertheless, absent immediate relief from this Court, IDOH will release troves of TPRs containing abortion patients' confidential medical records to VFL, which will be free to publicize them further, including by posting them on the internet.

STATEMENT OF FACTS

I. Plaintiffs' Obligation to Submit Terminated Pregnancy Reports to the Indiana Department of Health

Plaintiff Caitlin Bernard, M.D., is a board-certified obstetrician-gynecologist who is fellowship trained in complex family planning and licensed to practice medicine in Indiana. Bernard Decl. ¶¶ 2-3. Plaintiff Caroline Rouse, M.D., is a board-certified obstetrician-gynecologist who is fellowship trained in maternal-fetal medicine and licensed to practice medicine in Indiana. Rouse Decl. ¶¶ 2-3. Plaintiffs both serve on the faculty of the Indiana University School of Medicine, and they both provide clinical care, including abortion care, in the Indiana University Health system. Bernard Decl. ¶ 4; Rouse Decl. ¶ 4.

Indiana law requires physicians, including Plaintiffs, to submit a TPR to IDOH in connection with every abortion they provide. Ind. Code § 16-34-2-5; *see* Bernard Decl. ¶ 5; Rouse Decl. ¶ 5. The TPR must include the following thirty-one data points about each abortion patient:

1. The age of the patient.

2. Whether a waiver of consent under section 4 of this chapter was obtained.
3. Whether a waiver of notification under section 4 of this chapter was obtained.
4. The date and location, including the facility name and city or town, where the:
(A) pregnant woman (i) provided consent; and (ii) received all information required under section 1.1 of this chapter; and (B) abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.
5. The health care provider's full name and address, including the name of the physicians performing the abortion or providing, prescribing, administering, or dispensing the abortion inducing drug.
6. The city and county where the pregnancy termination occurred.
7. The age of the father, or the approximate age of the father if the father's age is unknown.
8. The patient's county and state of residence.
9. The marital status of the patient.
10. The educational level of the patient.
11. The race of the patient.
12. The ethnicity of the patient.
13. The number of the patient's previous live births.
14. The number of the patient's deceased children.
15. The number of the patient's spontaneous pregnancy terminations.
16. The number of the patient's previous induced terminations.
17. The date of the patient's last menses.
18. The physician's determination of the gestation of the fetus in weeks.
19. The reason for the abortion.
20. Whether the patient indicated that the patient was seeking an abortion as a result of being: (A) abused; (B) coerced; (C) harassed; or (D) trafficked.
21. The following information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug: (A) The postfertilization age of the fetus (in weeks); (B) The manner in which the

- postfertilization age was determined; (C) The gender of the fetus, if detectable; (D) Whether the fetus has been diagnosed with or has a potential diagnosis of having Down syndrome or any other disability; (E) If after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion.
22. For a surgical abortion, the medical procedure used for the abortion and, if the fetus had a postfertilization age of at least twenty (20) weeks: (A) whether the procedure, in the reasonable judgment of the health care provider, gave the fetus the best opportunity to survive; (B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman; and (C) the name of the second doctor present, as required under IC 16-34-2-3(a)(3).
 23. For a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed, and the means of delivery of the drugs to the patient.
 24. For a nonsurgical abortion, that the manufacturer's instructions were provided to the patient and that the patient signed the patient agreement.
 25. For an abortion performed before twenty (20) weeks of postfertilization age of the fetus, the medical indication by diagnosis code for the fetus and the mother.
 26. The mother's obstetrical history, including dates of other abortions, if any.
 27. Any preexisting medical conditions of the patient that may complicate the abortion.
 28. The results of pathological examinations if performed.
 29. For a surgical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived.
 30. Records of all maternal deaths occurring at the location where the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.
 31. The date the form was transmitted to the state department and, if applicable, separately to the department of child services.

Ind. Code § 16-34-2-5(a). IDOH must compile a public report on a quarterly basis summarizing aggregate data contained in the TPRs without including any patient identifying information. *Id.* § 16-34-2-5(e)-(f).

“Each failure to complete or timely transmit a form . . . for each abortion performed or abortion inducing drug that was provided, prescribed, administered, or dispensed, is a Class B misdemeanor.” *Id.* § 16-34-2-5(d). In addition, the Medical Board “may revoke the license of a physician if, after appropriate notice and an opportunity for a hearing, the attorney general proves by a preponderance of the evidence that the physician failed to transmit the form to the Indiana department of health as described in [Ind. Code § 16-34-2-5(b)].” Ind. Code § 25-22.5-8-6(b)(1).

II. VFL’s Requests for Public Disclosure of Terminated Pregnancy Reports

APRA generally requires public agencies to provide members of the public with access to public records in their possession. *See* Ind. Code § 5-14-3-3. The statute exempts certain public records from its disclosure requirement, however. Ind. Code § 5-14-3-4. These include records “required to be kept confidential by federal law” and “[p]atient medical records and charts created by a provider, unless the patient gives written consent” in accordance with Indiana law. Ind. Code § 5-14-3-4(a)(3), (9).

On October 16, 2023, VFL submitted a request to IDOH under APRA for all TPRs submitted in August 2023. Compl. for Disclosure of Recs. Under the Ind. Access to Pub. Recs. Act Ex. 1, *Voices for Life, Inc. v. Ind. Dep’t of Health*, No. 49D02-2405-MI-019876 (Ind. Super. Ct. May 1, 2024) (“VFL Compl.”). That request encompasses TPRs submitted by the Plaintiffs. Bernard Decl. ¶ 6; Rouse Decl. ¶ 6. Citing an advisory opinion by the Public Access Counselor discussed below, IDOH denied VFL’s public records request on January 12, 2024. VFL Compl.

Ex. 5. Subsequently, on April 12, 2024, VFL requested that IDOH provide it with all TPRs from August 2023 through November 2023. *Id.* Ex. 17. A week later, it requested all TPRs from December 2023 through March 2024. *Id.* Ex. 19. Both of these requests encompass TPRs submitted by the Plaintiffs. Bernard Decl. ¶ 6; Rouse Decl. ¶ 6. IDOH denied each request on April 22, 2024. VFL Compl. Ex. 20.

VFL filed a lawsuit in this Court on May 1, 2024. VFL Compl. It asked the Court, among other things, to “[d]eclare that IDOH is required to satisfy public requests for TPRs under APRA”; and “[o]rder the IDOH to provide full and complete access to Plaintiff’s requests for TPRs.” *Id.* at 7.

On June 12, 2024, the Court granted a motion for intervention by Drs. Bernard and Rouse, who intervened as defendants. Jack Decl. Ex. B (*Voices for Life, Inc. v. Ind. Dep’t of Health*, No. 49D02-2405-MI-019876, slip op. at 2 (Ind. Super. Ct. June 12, 2024)). On September 9, 2024, the Court dismissed the lawsuit pursuant to Indiana Rule of Trial Procedure 12(B)(6). Jack Decl. Ex. C. On October 4, 2024, VFL filed a notice of appeal. Notice of Appeal, *Voices for Life, Inc. v. Ind. Dep’t of Health*, No. 24A-MI-02396 (Ind. Ct. App. Oct. 4, 2024). On February 4, 2025, VFL filed a motion to dismiss the appeal, Voluntary Mot. to Dismiss, *Voices for Life, Inc. v. Ind. Dep’t of Health*, No. 24A-MI-02396 (Ind. Ct. App. Feb. 4, 2025), and its lawyers issued a press release that linked to a settlement agreement between VFL, IDOH, and the Health Commissioner, Jack Decl. Ex. D. The agreement states that IDOH agrees to “[i]mmediately release terminated pregnancy reports as public records upon lawful request and not designate the reports as confidential medical records.” Jack Decl. Ex. E at 1. On February 6, 2025, the Court of Appeals dismissed the appeal.

III. The Public Access Counselor's Opinion Against Disclosure of Terminated Pregnancy Reports

Indiana has a Public Access Counselor tasked with providing advice and assistance concerning the state's public access laws to members of the public and government officials. *See* Ind. Code §§ 5-14-4-1 to 5-14-4-14; *Indiana Public Access Counselor*, IN.gov, <https://www.in.gov/pac/about-us/what-we-do/> (last visited February 4, 2025). While VFL's public records request was pending, IDOH sought an informal advisory opinion from the Public Access Counselor on whether it is required to produce TPRs in response to requests made under APRA. The Public Access Counselor summarized IDOH's inquiry as follows:

Your inquiry concerns the release of [the TPR] form in its entirety. Given that the report is populated with information that could be reverse engineered to identify patients—especially in smaller communities—you argue that the required quarterly reports should suffice in terms of satisfying any disclosure and transparency considerations.

Jack Ex. A at 2.

The Public Access Counselor concluded that IDOH is not required to produce TPRs under APRA for two reasons. First, TPRs constitute patient medical records, and APRA exempts patient medical records from disclosure. *Id.* at 2 (citing Ind. Code § 5-14-3-4(a)(9)). Second, insofar as the statute governing TPRs requires IDOH to produce a *public* report on a quarterly basis containing aggregate data, it implies that the individual TPRs are not intended to be made public. *Id.* The Public Access Counselor further explained that redaction is not a viable option for TPRs: “Courts will mandate separation when disclosable materials are not inextricably linked to confidential materials. Here, however, the entirety of the form is a medical record.” *Id.* (citing *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 914 (Ind. Ct. App. 2005)).

IV. The Attorney General’s Subsequent Opinion

Four months after the Public Access Counselor issued his opinion on TPRs, the Attorney General issued an opinion reaching the opposite conclusion. Attorney General, Opinion Letter 2024-2 on Nondisclosure of Terminated Pregnancy Reports, 1 (Apr. 11, 2024), <https://www.in.gov/attorneygeneral/about-the-office/advisory/opinions/>. The Attorney General maintained that TPRs do not constitute medical records within the meaning of APRA. *Id.* The Attorney General also maintained that denying public disclosure would frustrate the purpose of the TPR statute. *Id.* In his view, the legislature intended to rely on members of the public to act as private investigators and police potential violations of abortion law. *Id.* at 7-8.

V. The Medical Board’s Disciplinary Proceedings Against Dr. Bernard

In 2023, the Medical Board concluded that Dr. Bernard should be disciplined for disclosing certain information about an abortion patient to another physician and a reporter. Bernard Decl. Ex. A (Findings of Fact, Ultimate Findings of Fact, Conclusions of Law & Final Order, *In re Bernard*, No. 2022 MLB 0024 (Ind. Med. Licensing Bd. July 27, 2023). According to the Medical Board, Dr. Bernard disclosed: “(1) Patient had been referred to her on or about June 27, 2022; (2) Patient was ten years old; (3) Patient was from Ohio; (4) she would be providing abortion care to Patient; and (5) Patient was six weeks and three days pregnant.” *Id.* at 3. All of this information is included in the TPR concerning the patient at issue. *See* Ind. Code § 16-34-2-5(a); Bernard Decl. ¶ 10.

The Medical Board found that Dr. Bernard’s “disclosures to [the physician and reporter], when taken in their entirety, contained unique identifying characteristics regarding Patient,” and concluded that they violated Dr. Bernard’s obligations under HIPAA, 110 Stat. 1936 (1996), as amended, as well as related provisions of Indiana law. Bernard Decl. Ex. A at 6-8.

Consequently, the Medical Board issued a letter of reprimand to Dr. Bernard and directed her to pay a \$3,000 fine. *Id.* at 8-9. The letter of reprimand states, in part: “[Y]ou are expected to maintain the confidentiality of all knowledge and information regarding a patient and comply with all applicable elements of HIPAA and Indiana patient privacy protections afforded pursuant to 844 I.A.C. 5-2-2.” *Id.* at 11.

ARGUMENT

I. Standard for Granting Preliminary Injunctive Relief

Indiana Trial Rule 65 authorizes courts to enter preliminary injunctions and temporary restraining orders. Ind. R. Trial P. 65(A)-(B). To obtain a preliminary injunction, the movant must show by a preponderance of the evidence that: (1) the movant has a reasonable likelihood of success on the merits; (2) the remedies at law are inadequate and irreparable harm will occur while the case is pending; (3) the threatened injury to the movant from a denial of the injunction outweighs the potential harm to the nonmovant from granting the injunction; and (4) the public interest would not be disserved by granting the injunction. *Individual Members of Med. Licensing Bd. of Indiana v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 448 (Ind. Ct. App.), *transfer denied*, 246 N.E.3d 271 (Ind. 2024).

The showing required for a temporary restraining order is the same, but unlike a preliminary injunction, a temporary restraining order may be granted without notice to the adverse parties if: “(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition;” and “(2) the applicant’s attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.”

II. Plaintiffs Satisfy the Requirements for Entry of a Preliminary Injunction

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claim for a Declaratory Judgment

“Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Ind. Code § 34-14-1-1. “The declaration may be either affirmative or negative in form and effect.” *Id.* Here, Plaintiffs seek the following declarations: that TPRs submitted to IDOH pursuant to Ind. Code § 16-34-2-5 are exempt from disclosure under APRA, Ind. Code §§ 5-14-3-1 to 5-14-3-10; and that APRA, Ind. Code §§ 5-14-3-1 to 5-14-3-10, does not authorize IDOH to grant members of the public access to TPRs it received pursuant to Ind. Code § 16-34-2-5. Compl. at 10. Plaintiffs are likely to succeed in securing these declarations because TPRs qualify for statutory exemptions from APRA’s disclosure requirement.

APRA expressly exempts certain public records from its disclosure requirement. Ind. Code § 5-14-3-4. These include records “required to be kept confidential by federal law” and “[p]atient medical records and charts created by a provider, unless the patient gives written consent” in accordance with Indiana law. Ind. Code § 5-14-3-4(a)(3), (9). The Medical Board previously determined that at least some of the information contained in TPRs is protected from disclosure by HIPAA, which is a federal law.¹ *See supra* at 8.

¹ HIPAA defines “individually identifiable health information” as:

any information, including demographic information collected from an individual, that—(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—(i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify

Further, the Public Access Counselor previously determined that TPRs constitute patient medical records, and his reasoning is persuasive. *See supra* at 7; Jack Decl. Ex. A. A TPR is created by a medical provider as the consequence of a medical service, and it contains highly sensitive information about a patient’s demographics, medical history, and medical care that was obtained by the provider in the course of treating the patient. *See* Ind. Code § 16-34-2-5(a). As the Public Access Counselor noted: “Without the provider-patient relationship, the form would not exist.” Jack Decl. Ex. A at 2. The language of the TPR statute also suggests that the legislature views TPRs as private medical records rather than public records subject to disclosure under APRA. *See id.* § 16-34-2-5(e)-(f). The statute directs IDOH to compile a “public report” based on data contained in the TPRs on a quarterly basis, suggesting that the TPRs themselves are not meant to be public. *Id.* § 16-34-2-5(e). And it further directs IDOH to ensure that “no identifying information of a pregnant woman is contained in the [public] report,” demonstrating a belief that the TPRs contain such identifying information in the first place. *Id.* § 16-34-2-5(f).

In addition, a judge of this Court has already concluded, based on the plain language of APRA, that TPRs are exempt from its disclosure requirement. Jack Decl. Ex. C at 2.

The Attorney General’s contention that the legislature intended to rely on private citizens to police abortion providers and investigate potential violations of abortion law, *see supra* at 7-8, is wholly unsupported by the TPR statute’s text. The statute says only that “a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.” Ind. Code § 16-34-2-5(a). There is no

the individual.

42 U.S.C. § 1320d(6). It is indisputable that the information contained in a TPR satisfies this definition.

mention of outsourcing enforcement of abortion laws to vigilantes, and such a method of law enforcement would be so unusual that it should not be inferred absent a clear manifestation of legislative intent. Given that the legislature directed physicians to submit TPRs to IDOH, *id.* § 16-34-2-5(b), a far more plausible interpretation of the statute is that the legislature intended IDOH to monitor abortion care as part of its general oversight of public health in Indiana, *see* Ind. Code § 16-19-3-1 (“The state department shall supervise the health and life of the citizens of Indiana and shall possess all powers necessary to fulfill the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules.”).

Accordingly, Plaintiffs are likely to succeed on the merits of their declaratory judgment claim.

B. Plaintiffs Will Suffer Irreparable Harm Absent Preliminary Injunctive Relief

Absent preliminary relief, IDOH will be free to disclose TPRs submitted by Plaintiffs to VFL and other members of the public during the pendency of this action, and VFL and others will, in turn, be free to publicize the TPRs further, including by posting them on the internet. That publicity puts both Plaintiffs and their abortion patients at risk of harassment by abortion opponents, and the deprivation of their privacy and threats to their safety cannot be adequately remedied through money damages. Bernard Decl. ¶¶ 12, 14, 16; Rouse Decl. ¶¶ 12, 15.

In addition, absent preliminary relief, Plaintiffs will be faced with an irreconcilable conflict of legal duties. Bernard Decl. ¶ 11; Rouse Decl. ¶ 11. The Medical Board has ruled that publicly disclosing even a fraction of the information contained in TPR forms is grounds for professional discipline. *See supra* at 8. At the same time, the TPR statute makes failure to submit a complete TPR form for every abortion a crime. Ind. Code § 16-34-2-5(d). If IDOH is able to disclose TPRs to members of the public on request, Plaintiffs will have to choose

between serving as a conduit of private patient health information to the public, contrary to the letter and spirit of the Medical Board's directive, or facing criminal penalties for failing to submit TPRs to IDOH. This Catch-22 also causes irreparable harm to Plaintiffs.

C. The Balance of Equities and Public Interest Favor Entry of a Preliminary Injunction

IDOH would face little harm, during the pendency of this lawsuit, from treating TPRs as confidential medical records, which the agency has done voluntarily for more than a year. *See supra* at 5-6. Likewise, VFL would face little harm because it would still have access to the public reports that IDOH produces on a quarterly basis summarizing TPR data. *See* Ind. Code § 16-34-2-5(e)-(f). Given the irreparable harm that Plaintiffs and their patients would face from public disclosure of TPRs, the balance of equities plainly weighs in favor of a preliminary injunction. Further, because Plaintiffs have demonstrated a likelihood of success on the merits—*i.e.*, a likelihood of establishing that IDOH is not authorized by APRA to disclose TPRs—the public interest would be served by enjoining IDOH from making such disclosures and requiring VFL to return, delete, or destroy all copies of any TPR so far provided to it pursuant to the settlement agreement. The purpose of the temporary restraining order is to preserve the status quo. In this case, to prevent the public release of the TPRs containing confidential medical records.

III. Plaintiffs Satisfy the Additional Requirements for Entry of a Temporary Restraining Order

The Court should enter a temporary restraining order without requiring notice to Defendants because time is of the essence. APRA does not require IDOH to notify Plaintiffs when someone makes a public records request for TPRs. *See* Ind. Code §§ 5-14-3-1 to 5-14-3-10. Notification is required only if the request is denied and litigation ensues. *See* Ind. Code §

5-14-3-9(e). Thus, VFL could request access to TPRs at any time—and may have already done so—and the terms of the settlement agreement between IDOH, the Health Commissioner, and VFL would require IDOH to “immediately release” them. As a result, Plaintiffs are likely to suffer “immediate and irreparable injury . . . before the adverse party or his attorney can be heard in opposition.” Ind. R. Trial P. 65(B)(1); *see* Bernard Decl. ¶¶ 11-16; Rouse Decl. ¶¶ 11-15.

IV. The Court Should Not Require Plaintiffs to Post Security

Indiana Trial Rule 65 generally requires parties seeking a temporary restraining order or preliminary injunction to post security “in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Ind. R. Trial P. 65(c). A trial court may waive the security requirement, however, if it finds that an adverse party is not likely to suffer any pecuniary harm from the issuance of a temporary restraining order or preliminary injunction. *Kennedy v. Kennedy*, 616 N.E.2d 39, 44 (Ind. Ct. App. 1993) (“[T]he trial court did not abuse its discretion by refusing to require Kathleen to post security.”). Here, neither Defendant will suffer monetary costs or damages from an order preventing IDOH from disclosing TPRs to members of the public during the pendency of this action. Accordingly, the Court should not require Plaintiffs to post a bond or other security.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs’ motion for a preliminary injunction and enter a temporary restraining order to prevent IDOH from disclosing TPRs to VFL or any other member of the public while the preliminary injunction motion is being litigated.

Date: February 6, 2025

Respectfully submitted:

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*Petition for temporary admission forthcoming

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DECLARATION OF CAITLIN BERNARD, M.D.

CAITLIN BERNARD, M.D., declares under penalty of perjury that the following statements are true and correct:

1. I am a Plaintiff in this lawsuit, and I submit this declaration in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.
2. I am a board-certified obstetrician-gynecologist with fellowship training in Complex Family Planning.
3. I am licensed to practice medicine in Indiana.
4. I serve on the faculty of the Indiana University School of Medicine, and I provide clinical care, including abortion care, in the Indiana University Health system.
5. When I provide an abortion to a patient in Indiana, I submit a terminated pregnancy report ("TPR") to the Indiana Department of Health ("IDOH") as required by Indiana Code § 16-34-2-4.7. Those TPRs contain detailed information about my patients' demographics, medical history, and medical care.

6. I submitted TPRs to IDOH in each of the following months: August 2023, September 2023, October 2023, November 2023, December 2023, January 2024, February 2024, and March 2024.

7. I filed this lawsuit to establish that TPRs are exempt from the general disclosure requirement in Indiana's Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1 to 5-14-3-10.

8. On July 27, 2023, the Medical Licensing Board of Indiana ("Medical Board") issued a final order and letter of reprimand in a disciplinary proceeding against me. A copy of the final order and letter of reprimand is annexed hereto as Exhibit A.

9. Among other things, the Medical Board found that disclosing the following data points about an abortion patient puts the patient's privacy at risk and is grounds for professional discipline: "(1) Patient had been referred to her on or about June 27, 2022; (2) Patient was ten years old; (3) Patient was from Ohio; (4) she would be providing abortion care to Patient; and (5) Patient was six weeks and three days pregnant." Findings of Fact, Ultimate Findings of Fact, Conclusions of Law & Final Order, *In re Bernard*, No. 2022 MLB 0024 (Ind. Med. Licensing Bd. July 27, 2023).

10. All of these patient data points are contained in TPRs, along with many others.

11. If IDOH is able to disclose TPRs to members of the public, my statutory obligation to submit TPRs to IDOH will create a conflict with the Medical Board's guidance to me.

12. It will also jeopardize my abortion patients' privacy. Currently, abortion is only permitted in Indiana for certain medical indications and certain instances of sexual assault. Many of the abortion patients that I treat have rare conditions. Because so few abortions are

taking place in Indiana, I worry that the information contained in the TPRs may be used to identify my patients receiving abortion care. I am especially worried about patients with rare conditions.

13. As a physician, I have both legal and ethical obligations to safeguard the privacy of all of my patients.

14. Information about abortion patients is especially sensitive because those patients are sometimes targeted for harassment, intimidation, or retaliation by abortion opponents. I know from experience as well as from my education and training that publicly identifying an abortion patient exposes that patient to a risk of violence or other harm not only from strangers, but also from family members and intimate partners who feel anger or shame about the patient's abortion.

15. Moreover, I am deeply concerned that, when my patients who are seeking abortions learn that I am required to report detailed information about them to the State, which will then publicly disclose it, it will undermine their trust in me and discourage some from seeking medical care altogether.

16. In addition, in the past, IDOH has disclosed TPRs I submitted to anti-abortion activists, who have publicly discussed their contents online and in the media. Some of these discussions described the reports in misleading ways, creating an impression that I had violated the law. This led me to experience harassment and fear for my safety and the safety of my family.

Dated: February 6, 2025


Caitlin Bernard, M.D.

Exhibit A

BEFORE THE MEDICAL LICENSING
BOARD OF INDIANA
CAUSE NUMBER: 2022 MLB 0024

IN THE MATTER OF THE LICENSE OF:)
CAITLIN BERNARD, M.D.)
LICENSE NUMBER: 01078719A)

FILED
JULY 27 2023
Indiana Professional
Licensing Agency

**FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER**

The Medical Licensing Board of Indiana (“Board”) held an administrative hearing on May 25, 2023, at the Indiana Government Center South, Conference Center Room C, 302 West Washington Street, Indianapolis, Indiana 46204, concerning the Administrative Complaint filed against the Indiana physician license of Caitlin Bernard, M.D. (“Respondent”) on November 30, 2022.

The State of Indiana (“Petitioner”) was represented by Deputy Attorneys General Cory Voight and Carah Rochester and outside counsel, Christopher Bartolomucci. Respondent appeared in person and by counsel, Alice Morical, John Hoover, and Clara Gutwein.

The Board, after considering the evidence presented and official notice of its file in this matter, issues the following Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent is a licensed physician in the State of Indiana having obtained license number 01078719A, on June 7, 2017.
2. Respondent holds two active Controlled Substances Registrations (CSR), having been issued license numbers 01078719B and 01078719C.

3. Respondent's address on file with the Indiana Professional Licensing Agency is 550 North University Boulevard, Indianapolis, Indiana 46202.

4. For all times relevant, Respondent is employed by Indiana University Health ("IUH") Physicians as an OB/GYN and by the Indiana University School of Medicine as an Assistant Clinical Professor of Obstetrics & Gynecology.

5. Respondent is a "practitioner" as that term is defined by Ind. Code § 25-1-9-2.

6. On or about June 27, 2022, Respondent received a referral from an Ohio physician for a patient ("Patient").

7. Patient was a minor female, aged ten years, seeking abortion care.

8. Respondent believed Patient had become pregnant as the result of sexual abuse.

9. On June 27, 2022, Respondent informed IUH Social Worker Stephanie Shook ("Shook") about Patient.

10. On June 28, 2022, Shook contacted Ohio's Franklin County Children Services ("FCCS") to report the suspected abuse of Patient.

11. On June 29, 2022, Shook spoke with FCCS Caseworker A who informed Shook that her report was screened out due to the existence of a report filed for the same reason, and that Ohio law enforcement had already been notified.

12. On June 29, 2022, Respondent attended a public rally related to the recent Supreme Court decision in Dobbs v. Jackson Women's Health Organization, 124 S. Ct. 2228 (2022) and abortion laws being considered in Indiana. The rally was held outdoors and attended by a few hundred individuals – including media.

13. At the rally, Respondent discussed Patient with another physician, Grant Callen, M.D. (“Callen”). During this conversation, Respondent disclosed that Patient was: (1) from Ohio; (2) ten years old, and (3) pregnant.

14. *Indianapolis Star* reporter Shari Rudavsky (“Rudavsky”) was covering the rally and overheard Respondent’s disclosure to Callen.

15. Rudavsky introduced herself to Respondent as a reporter and indicated she was writing a news story about people coming from Ohio to Indiana to have abortions due to Ohio’s trigger law. At Rudavsky’s prompting, Respondent disclosed: (1) Patient had been referred to her on or about June 27, 2022; (2) Patient was ten years old; (3) Patient was from Ohio; (4) she would be providing abortion care to Patient; and (5) Patient was six weeks and three days pregnant.

16. On June 29, 2022, Patient presented to IUH accompanied by her mother.

17. On or about June 30, 2022, Respondent provided abortion care to Patient, and collected the products of conception for purposes of DNA testing.

18. On or about June 30, 2022, Patient’s mother signed an Authorization to Release and Disclose Patient Information for the limited purpose of facilitating communications with FCCS.

19. On June 30, 2022, Caseworker A told Shook that Patient was cleared to return home.

20. On July 1, 2022, the patient was discharged from the hospital and returned home to Ohio.

21. On July 1, 2022, the *Indianapolis Star* published an article titled, Patients head to Indiana for abortion services as other states restrict care (“Article”). The Article contained the information Respondent disclosed.

22. In the weeks following the Article, various media outlets and politicians commented on Patient's information. Many commenters expressed doubt as to Patient's existence, and some media outlets searched for Patient's identity.

23. On July 2, 2022, Respondent submitted a Terminated Pregnancy Report ("TPR") to the Indiana Department of Health ("IDOH").

24. On July 2, 2022, Respondent emailed the TPR to the Indiana Department of Child Services ("DCS").

25. Indiana law enforcement was not notified.

26. On July 2, 2022, Ohio law enforcement travelled to Indianapolis, Indiana to retrieve the products of conception as evidence in the criminal investigation of Patient's sexual abuse.

27. On July 5, 2022, Lauren Cislak, IUH Vice President of Corporate Communications, Public Relations and Social Media, discovered the Article and referred it to the IUH Privacy Office as a possible violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

28. On or about July 5, 2022, Melissa Cockrum, IUH Privacy Office Project Manager, investigated the matter.

29. IUH conducted a "Risk Assessment" to determine whether it was required to issue notice of a data breach pursuant to the requirements of 42 C.F.R. §164.408. The IUH Risk Assessment stated, "at the time of the interview with the *Indianapolis Star*, the patient was not identifiable."

30. On July 6, 2022, Respondent sat for an interview with MSNBC.

31. On July 6, 2022, Ohio law enforcement went to Patient's home to speak with Patient and Gerson Fuentes ("Fuentes"), Patient's mother's boyfriend.

32. Patient acknowledged to Ohio law enforcement that Fuentes was the individual who sexually assaulted her, and Fuentes admitted to having vaginal intercourse with Patient.

33. According to Ohio authorities, DNA testing of the product of conception demonstrated that there was a 99.99% probability Fuentes's paternity.

34. Between July 8 and 12, 2022, the Office of the Indiana Attorney General ("OAG") received six (6) consumer complaints against Respondent.

35. On July 12, 2022, Fuentes was arrested and charged with two (2) counts of rape in Ohio cause number 22-CR-3226.

36. Through Fuentes's criminal proceedings, at least one media outlet was able to identify Patient.

37. On July 13, 2022, *The Columbus Dispatch* ran an article titled, Arrest made in rape of Ohio girl that led to Indiana abortion drawing international attention, in which it identified Fuentes as Patient alleged abuser.

38. On July 27, 2022, Respondent sat for an interview with CBS Evening News in which she discussed the fallout from her original disclosure to Rudavsky.

39. On September 28, 2022, Respondent was featured in *The New York Times* and named on its 2022 Time100 Next list.

40. On October 12, 2022, Respondent was featured in an issue of *Vanity Fair*.

41. HIPAA applies to "covered entities." Covered entities include health care providers, health plans, and health care clearing houses. 45 C.F.R. § 160.103. Respondent is a covered entity.

42. HIPAA states that covered entities "may not use or disclose protected health information[.]" 45 C.F.R. § 164.502(a). "Protected health information" means individually

identifiable health information stored or transmitted through any form or medium. 45 C.F.R. § 160.103. “Individually identifiable health information” means health information relating to “the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual” which either “identifies the individual” or “there is a reasonable basis to believe the information can be used to identify the individual.” *Id.* “Health information” means any information “. . . created or received by a health care provider . . . [relating] to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.” *Id.* Respondent’s disclosures to Callen and Rudavsky, when taken in its entirety, contained health information which Respondent had a reasonable basis to believe could be used to identify Patient. Consequently, these disclosures contained protected health information.

43. HIPAA permits disclosure of protected health information in certain limited circumstances – including pursuant to patient authorization. 45 C.F.R. § 164.502(a). Respondent has not provided any information to demonstrate her disclosure to Callen and Rudavsky fell within one of those limited circumstances.

44. HIPAA provides a safe harbor for disclosures containing only “[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” 42 C.F.R. §164.514(a). HIPAA further specifies that “health information is not individually identifiable health information only if” a list of eighteen identifiers are removed. *Id.* At (b). These identifiers include any “unique identifying number, characteristic, or code[.]” *Id.* Respondent’s disclosures to Callen and Rudavsky, when taken in their entirety, contained unique

identifying characteristics regarding Patient, and therefore fell outside HIPAA's safe harbor provision.

45. Under Indiana law, physicians must "maintain the confidentiality of all knowledge and information regarding a patient[.]" 844 IAC 5-2-2. This provision mirrors HIPAA's confidentiality standards. Because Respondent's disclosures to Callen and Rudavsky violated HIPAA, she failed to maintain confidentiality of information regarding Patient.

46. "A person who has a duty under this chapter to report that a child may be a victim of child abuse or neglect shall immediately make an oral or written report to either" the Department of Child Services or "the local law enforcement agency." Ind. Code § 31-33-5-4. Respondent reported the suspected abuse of Patient to the local law enforcement agency in Ohio through Shook and FCCS.

CONCLUSIONS OF LAW

47. By a vote of 5-1-0, the Board finds Respondent did commit the violations as charged by Petitioner in Counts I-III:

Count I: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 45 C.F.R. § 164.502(a) by disclosing Patient's protected health information.

Count II: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 45 C.F.R. § 164.514 by not properly de-identifying the information of Patient.

Count III: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 844 I.A.C. 5-2-2 by failing to maintain the confidentiality of all knowledge and information regarding Patient.

48. By a vote of 6-0-0, the Board finds Respondent did not commit the violations as charged by Petitioner in Counts IV and V:

Count IV: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(14). Specifically, Respondent violated Ind. Code § 31-33.5-5-1 by failing to immediately report suspected child abuse to local law enforcement in Indiana or DCS despite having reason to believe that a child is a victim of child abuse or neglect.

Count V: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that Respondent has continued to practice although the practitioner has become unfit to practice due to failure to keep abreast of current professional theory or practice. Specifically, Respondent failed to follow mandatory reporting laws and patient privacy laws that impact her practice as a physician in Indiana and the United States.

ORDER

Based upon the above Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law, the Board issues the following Order:

1. Respondent shall have a **LETTER OF REPRIMAND**, attached hereto as Exhibit A, issued against her Indiana physician license.

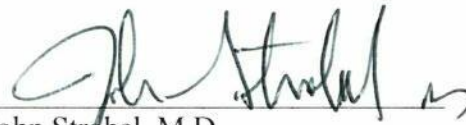
2. Respondent shall pay a **FINE** of one thousand dollars (\$1,000.00) for each violation for the total amount of three thousand dollars (\$3,000.00). This fine shall be paid by check or money order and submitted to the following address within **ninety (90) days** of this Order:

Indiana Professional Licensing Agency
Attn. Medical Licensing Board of Indiana
402 West Washington Street Room W072
Indianapolis, Indiana 46204

3. A violation of the Final Order, or any non-compliance with the statutes or regulations regarding the practice of medicine, may result in Petitioner requesting a summary suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

SO ORDERED, this 27th day of July 2023.

MEDICAL LICENSING BOARD OF INDIANA

By: 
John Strobel, M.D.
Board President

CERTIFICATE OF SERVICE

I certify that a copy of the "Findings of Fact, Conclusions of Law and Order" has been duly served upon:

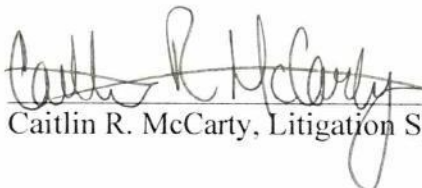
Caitlin Bernard, M.D.
550 North University Blvd.
Indianapolis, Indiana 46202
Service by US Mail

John David Hoover (7945-49)
Alice M. Morical (18418-49)
Clara P. Gutwein (36838-49)
HOOVER HULL TURNER LLP
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Service by Email

7/27/2023
Date


Caitlin R. McCarty, Litigation Specialist

Medical Licensing Board of Indiana
Indiana Government Center South
402 West Washington St., Room W072
Indianapolis, IN 46204
Phone: (317) 234-2060
Fax: (317) 233-4236
Email: pla3@pla.in.gov

Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

LETTER OF REPRIMAND

Caitlin Bernard, M.D.
550 North University Blvd.
Indianapolis, Indiana 46202

**Re: In the Matter of the License of Caitlin Bernard, M.D.
Before the Medical Licensing Board of Indiana**

Dr. Bernard:

This Letter of Reprimand is issued in accordance with the Findings of Fact, Conclusions of Law and Final Order issued by the Medical Licensing Board of Indiana resolving the Administrative Complaint against your Indiana physician license filed by the Office of the Indiana Attorney General on November 30, 2022

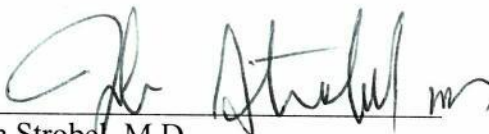
The purpose of this reprimand is to stress the important responsibility you have by reason of possession of a license to practice medicine in the State of Indiana. It is your responsibility to conduct your practice of medicine in accordance with the standards of the profession. Further, there is an expectation that you refrain from violating any rule or statute regulating the practice of medicine in Indiana. Specifically, you are expected to maintain the confidentiality of all knowledge and information regarding a patient and comply with all applicable elements of HIPAA and Indiana patient privacy protections afforded pursuant to 844 I.A.C. 5-2-2.

The Findings of Fact, Conclusions of Law, and Final Order are attached and incorporated herein as part of this reprimand.

Sincerely,

MEDICAL LICENSING BOARD OF INDIANA

By:


John Strobel, M.D.
Board President

FILED

JULY 27 2023

Indiana Professional
Licensing Agency

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: CIVIL DIVISION, ROOM _____
MARION COUNTY) CAUSE NO. _____

CAITLIN BERNARD, M.D.; and)
CAROLINE ROUSE, M.D.,)
)
Plaintiffs,)
v.)
)
INDIANA STATE HEALTH)
COMMISSIONER, in the officer's official)
capacity; and VOICES FOR LIFE, INC.,)
)
Defendants.)

DECLARATION OF CAROLINE ROUSE, M.D.

CAROLINE ROUSE, M.D., declares under penalty of perjury that the following statements are true and correct:

1. I am a Plaintiff in this lawsuit, and I submit this declaration in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.
2. I am a board-certified obstetrician-gynecologist with fellowship training in Maternal-Fetal Medicine.
3. I am licensed to practice medicine in Indiana.
4. I serve on the faculty of the Indiana University School of Medicine, and I provide clinical care, including abortion care, in the Indiana University Health system.
5. When I provide an abortion to a patient in Indiana, I submit a terminated pregnancy report ("TPR") to the Indiana Department of Health ("IDOH") as required by Indiana Code § 16-34-2-4.7. Those TPRs contain detailed information about my patients' demographics, medical history, and abortion care.

6. I submitted at least four TPRs to the Health Department during the period from August 2023 to March 2024.

7. I filed this lawsuit to establish that TPRs are exempt from the general disclosure requirement in Indiana's Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1 to 5-14-3-10.

8. I am aware that, on July 27, 2023, the Medical Licensing Board of Indiana ("Medical Board") issued a final order and letter of reprimand in a disciplinary proceeding against my colleague, Dr. Caitlin Bernard.

9. Among other things, the Medical Board found that Dr. Bernard's disclosure of the following data points about an abortion patient puts the patient's privacy at risk and is grounds for professional discipline: "(1) Patient had been referred to her on or about June 27, 2022; (2) Patient was ten years old; (3) Patient was from Ohio; (4) she would be providing abortion care to Patient; and (5) Patient was six weeks and three days pregnant." Findings of Fact, Ultimate Findings of Fact, Conclusions of Law & Final Order, *In re Bernard*, No. 2022 MLB 0024 (Ind. Med. Licensing Bd. July 27, 2023).

10. All of these patient data points are contained in TPRs, along with many others.

11. If IDOH is able to disclose TPRs to members of the public, my statutory obligation to submit TPRs to IDOH will create a conflict with the Medical Board's guidance in Dr. Bernard's case.

12. It will also jeopardize my abortion patients' privacy. Currently, abortion is only permitted in Indiana for certain medical indications and certain instances of sexual assault. Many of the abortion patients that I treat have rare conditions. Because so few abortions are taking place in Indiana, I worry that the information contained in the TPRs may be used to

identify my patients receiving abortion care. I am especially worried about patients with rare conditions.

13. As a physician, I have both legal and ethical obligations to safeguard the privacy of all of my patients.

14. Moreover, I am deeply concerned that, when my patients who are seeking abortions learn that I am required to report detailed information about them to the State, which will then disclose it to anti-abortion organizations and other members of the public, it will undermine their trust in me and discourage some from seeking medical care altogether.

15. In addition, I am worried that public disclosure of TPRs will inflame anti-abortion extremists, exposing me and my patients to increased harassment and threatening our safety.

Dated: February 5, 2025

A handwritten signature in black ink, appearing to read 'Caroline Rouse', written over a horizontal line.

Caroline Rouse, M.D.

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: CIVIL DIVISION, ROOM _____
 MARION COUNTY) CAUSE NO. _____

CAITLIN BERNARD, M.D.; and)
 CAROLINE ROUSE, M.D.,)
)
 Plaintiffs,)
 v.)
)
 INDIANA STATE HEALTH)
 COMMISSIONER, in the officer's official)
 capacity; and VOICES FOR LIFE, INC.,)
)
 Defendants.)

DECLARATION OF KATHRINE D. JACK

KATHRINE D. JACK, declares under penalty of perjury that the following statements are true and correct:

1. I am an attorney licensed to practice in Indiana, and I represent Plaintiffs in this lawsuit.

2. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.

3. Exhibit A hereto is a true and correct copy of the Indiana Public Access Counselor's December 19, 2023, informal opinion regarding terminated pregnancy reports. It is also available at <https://www.in.gov/pac/files/informal/23-INF-15.pdf>.

4. Exhibit B hereto is a true and correct copy of Judge Oakes' Order Granting Motion for Intervention in Voices for Life v. Indiana Department of Health, No. 49D02-2405-MI-019876 (Ind. Super. Ct. June 12, 2024).

5. Exhibit C hereto is a true and correct copy of Judge Oakes' Order on Motion to Dismiss in Voices for Life v. Indiana Department of Health, No. 49D02-2405-MI-019876 (Ind.

Super. Ct. Sept. 9, 2024).

6. Exhibit D hereto is a true and correct copy of the press release titled “Indiana Health Department Concedes Lawsuit, Agrees to Release Previously Withheld Abortion Records, issued by the Thomas More Society on February 4, 2025. It is also available at <https://www.thomasmoresociety.org/news/indiana-health-department-concedes-lawsuit-agrees-to-release-previously-withheld-abortion-records>.

7. Exhibit E hereto is a true and correct copy of the mutual release and settlement agreement between Voices for Life, Inc., the Indiana Department of Health, and the Indiana State Health Commissioner referenced in Exhibit D. It is also available at https://cdn.prod.website-files.com/63d954d4e4ad424df7819d46/67a14382ac8d958bbb28660e_Signed%20Agreement_Voices%20for%20Life.pdf.

8. The Plaintiffs and their patients will suffer an immediate and irreparable injury if the Court does not grant an immediate temporary restraining order. Release of the TPRs will result in confidential medical records being released into the public domain. The Indiana Department of Health may imminently release TPR reports to Voices for Life, Inc. Voices for Life, Inc. is likely to publicly disseminate the TPRs to the public at large via their website or to their staff and volunteers. The Plaintiffs verily believe that the Defendants, if provided advance notice of the Plaintiffs’ application for a Temporary Restraining Order, may publicly release the confidential medical records immediately and before this Court could rule on the Temporary Restraining Order.

Dated: February 6, 2025



Kathrine D. Jack

Exhibit A



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room
W470

Indianapolis, Indiana 46204-2745

Telephone: (317)234-0906

Fax: (317)233-3091

1-800-228-6013

www.IN.gov/pac

December 19, 2023

Kelly MacKinnon
Chief Legal Counsel
Indiana Department of Health
2 North Meridian Street
Indianapolis, IN 46204

VIA EMAIL: KMacKinnon@health.in.gov

RE: 23-INF-15; Terminated pregnancy reports

Dear Ms. MacKinnon,

This informal opinion addresses the issue of access to terminated pregnancy reports. Based on a statutory change in 2022, terminated pregnancy reports require more robust information than in prior iterations of the law. Toward that end, the Indiana Department of Health (IDOH) has concerns about confidentiality and whether the report should be withheld in their entirety under the Access to Public Records Act.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Indiana Department of Health is a public agency for purposes of APRA; and therefore, subject to the law's requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy IDOH's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a), to -(b). This inquiry involves the intersection of APRA and statutes regarding medical records.

2. Terminated pregnancy reports

A special legislative session in 2022 outlawed abortion in Indiana except for in a few emergency circumstances.¹ For legal procedures, Indiana law requires a physician who provides an authorized abortion to file a form with IDOH.² This form calls for over 30 categories of information to be reported, including but not limited to, demographic data and patient medical history.

Your inquiry concerns the release of this form in its entirety. Given that the report is populated with information that could be reverse engineered to identify patients—especially in smaller communities—you argue that the required quarterly reports³ should suffice in terms of satisfying any disclosure and transparency considerations.

This office agrees.

APRA declares patient medical records created by a provider confidential. Ind. Code §5-14-3-4(a)(9). While the form is created by a provider pursuant to a statutory reporting requirement, there is no question that the information contained therein is part of a patient medical record. Stated differently, the creation of the form is an immediate consequence of a medical service. Without the provider-patient relationship, the form would not exist.

It follows that IDOH should treat the form with the same confidentiality considerations as any other patient medical record. Even if the report could be qualified as something other than a medical record (e.g., an administrative reporting document), the statute itself seems to imply that the form is non-public. Subsection (e) mandates IDOH “compile a *public* report” providing aggregate statistics on a quarterly basis. Implicitly, this suggests the individual forms are non-public.

Insofar as pinpoint redactions are concerned, it is true that APRA requires separation and release of disclosable versus non-disclosable material.⁴ This requires an agency to separate and withhold confidential information but disclose the remainder. This provision hinges on the practicality of the exercise. Courts will mandate separation when disclosable materials are not inextricably linked to confidential materials.⁵ Here, however, the entirety of the form is a medical record. Separation and redaction would defeat the statutory purpose of the confidentiality requirement declaring “patient medical records”

¹ Public Law 179-2022(ss)

² Ind. Code § 16-34-2-5.

³ Ind. Code § 16-34-2-5(d).

⁴ Ind. Code § 5-14-3-6.

⁵ *Unincorporated Operating Div. of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893, 914 (Ind.Ct.App.2005).

non-disclosable. Medical records as monolithic documents can be withheld in their entirety.

This position is also consistent with the Indiana Medical Licensing Board's recent finding that disclosure of even partial and seemingly non-identifiable information by medical providers can lead to legal consequences.⁶

CONCLUSION

Based on the foregoing, it is the opinion of this office that terminated pregnancy forms submitted in accordance with Indiana Code section 16-34-2-5 should be withheld from disclosure in their entirety.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

⁶ In the matter of the license of Caitlin Bernard, M.D., 2022 MLB 0024.

Exhibit B

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) CIVIL DIVISION, ROOM 2
COUNTY OF MARION) CAUSE NO. 49D02-2405-MI-019876

VOICES FOR LIFE,)
)
) Plaintiff,)
)
v.)
)
INDIANA DEPARTMENT OF HEALTH,)
et al.,)
)
) Defendants.)

FILED
June 13, 2024
CLERK OF THE COURT
MARION COUNTY
PP

GRANTED
June 12, 2024

ORDER GRANTING MOTION FOR INTERVENTION

The Court, having reviewed the Motion to Intervene as Defendants by Dr. Caitlin Bernard and Dr. Caroline Rouse, and it appearing that good cause exists for the granting of such Motion,

It is, therefore, ORDERED that the Motion to Intervene is hereby granted.

ORDERED, this **12TH** day of **JUNE**, 2024.



Judge

Exhibit C

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR COURT

VOICES FOR LIFE, INC.)	SS:
)	
Plaintiff,)	49D02-2405-MI-019876
vs.)	
)	
INDIANA DEPARTMENT OF)		
HEALTH, and Dr Lindsay)	
Weaver, M.D.,)	
in her official capacity as)	
Health Commissioner of)	
of Indiana Department of)	
Health)	
Defendants.)	

FILED
September 10, 2024
CLERK OF THE COURT
MARION COUNTY
CS

ORDER ON MOTION TO DISMISS

Defendant, Indiana Department of Health (“IDOH”), having filed its Motion to Dismiss on June 24, 2024, Plaintiff, Voices for Life (“VFL”), having filed its response on July 24, 2024, with IDOH filing its reply on August 23, 2024, and oral argument heard on September 6, 2024, the Court, being duly advised in the premises, now GRANTS IDOH’s Motion to Dismiss.

At the outset, the Court recognizes and notes its appreciation for the well written briefs and well-presented oral arguments on both sides. Usually,

these make a Court's job easier. However, as with most cases of statutory interpretation, legislative intent, word choice, placement, and other interpretive analyses and arguments, make this decision a little less clear. Here, we have a clear Congressional and legislative intent to protect medical information. Similarly, we have a long history of demanding that our governmental actions be transparent.

In the end, the Courts are obligated to follow the law as written, regardless of personal beliefs, electoral pressures, or potential non-judicial consequences or outcomes. Thus, this Court is not persuaded that the law, as written, makes the Termination of Pregnancy Reports ("TPRs") public records. Plaintiff may very well find relief in an appellate Court's analysis or, more likely, at the Indiana legislature. This Court simply makes its decision on the statutory language before it after its own analysis of the legislative history, the statutes as written, the legal briefs of both sides, and oral argument.

It is THEREFORE ORDERED, ADJUDGED, and DECREED that Defendants' Motion to Dismiss pursuant to Indiana Trial Rule 12(B)(6) is GRANTED.

Date: September 9, 2024

A handwritten signature in black ink, reading "Tim Oakes". The signature is written in a cursive, flowing style. The first name "Tim" is written with a large, stylized 'T' and 'i'. The last name "Oakes" is written with a large, stylized 'O' and 'a'. The signature is written over a horizontal line.

Judge, Marion Superior Court 2

Exhibit D

Indiana Health Department Concedes Lawsuit, Agrees to Release Previously Withheld Abortion Records

Thomas More Society and Voices for Life Secure Release of Indiana Abortion Records

Contact: Tom Ciesielka, 312.422.1333, tc@tcpr.net

(February 4, 2025 – South Bend, Indiana) On February 3, 2025, the Indiana Attorney General, representing the Indiana Department of Health (IDOH), agreed to settle a lawsuit brought against the state health department by Thomas More Society attorneys on behalf of Voices for Life—ensuring the immediate release of public abortion records. In May 2024, Thomas More Society attorneys [filed a lawsuit](#) against the IDOH and State Health Commissioner Dr. Lindsay Weaver for violating Indiana’s Access to Public Records Act, after the state health department reversed course and refused to publicly release the abortion records.

Since 2022, Voice for Life, an Indiana-based pro-life organization, has requested and reviewed Termination of Pregnancy Reports (TPRs) to ensure that licensed healthcare professionals comply with Indiana laws protecting the unborn. The state health department routinely complied with Voices for Life’s requests until the fall of 2023, after which the department responded that it would no longer release individual TPRs, citing confidentiality of patient medical records. Indiana abortion providers are required by law to submit individual reports, without patient names or other identifying factors, to improve maternal health and to ensure Indiana’s abortion industry follows state law.

Indiana Attorney General Todd Rokita previously issued an advisory opinion critical of the health department’s refusal to release individual reports and noted that concealing the data impedes his office from investigating complaints against abortion providers and effectively enforcing Indiana’s abortion laws. In reviewing past reports, Voices for Life has discovered about 700 instances of apparent illegal activity among abortion providers and filed complaints with the state health department and the attorney general’s office.

According to the terms of the settlement, IDOH will now release TPRs upon lawful request and not designate the reports as confidential medical records. The settlement agreement secures this release of individual TPRs with minimal redactions designed to ensure that the TPRs cannot be misused to identify an individual. The settlement follows [Executive Order 25-20](#), signed on January 21, 2025, by Indiana Governor Mike Braun, directing “all state agencies to ensure that the State of Indiana’s abortion laws are fully and faithfully executed, including, but not limited to, the submission of TPRs.”

Thomas Olp, Thomas More Society Executive Vice President, stated: “We are grateful to the Indiana Attorney General’s Office for recognizing that individual Termination of Pregnancy Reports are public records that must be released. TPRs are essential to ensuring Indiana’s abortion laws are properly enforced. By reviewing the state’s abortion records, Voices for Life tirelessly protects the safety and well-being of Indiana women and children. This settlement agreement will allow Voices for Life to continue effectively performing its important public service as a watchdog over the state’s abortion industry.”

Melanie Garcia Lyon, Executive Director of Voices for Life, added: “The public release of

these reports is a victory for vulnerable women and children in Indiana. Access to these reports will help ensure abortionists are held accountable for violating health and safety regulations. We would like to thank the Thomas More Society for their fearless defense of the unborn in this litigation, the Braun Administration for mandating transparency within the IDOH, and the Attorney General's Office for their continued support in enforcing Indiana's pro-life legislation."

Read the Settlement Agreement in *Voices for Life, Inc. v. Indiana Department of Health, et al.*, agreed to on February 3, 2025, [here](#).

About Thomas More Society

Thomas More Society is a national non-for-profit law firm dedicated to restoring respect in law for life, family, and freedom. Headquartered in Chicago and with offices across the country, the Thomas More Society fosters support for these causes by providing high quality pro bono legal services from local trial courts all the way up to the United States Supreme Court. For more information, visit thomasmoresociety.org.

Exhibit E

**MUTUAL RELEASE
AND SETTLEMENT AGREEMENT**

The parties to this Mutual Release and Settlement Agreement are Voices For Life, Inc. (“Voices”) and the Indiana Department of Health and its Commissioner, sued in her official capacity (“IDOH”), collectively “the Parties.”

WHEREAS, the Parties are presently involved in litigation captioned as *Voices For Life, Inc. v. Indiana Department of Health, et al.* (Cause No. 24A-MI-2396) and *Voices for Life, Inc. v. Indiana Department of Health, et al.*, (Cause No. 49D02-2405-MI-19876).

WHEREAS, the litigation stems from a complaint filed by Voices alleging that IDOH was required by the Access to Public Records Act to produce for public review Termination of Pregnancy Reports.

WHEREAS, the Parties desire to amicably and equitably settle all matters pertaining to Voice’s Access to Public Records suit against IDOH.

WHEREAS, this Mutual Release and Settlement Agreement is subject to and received the approval of the Governor and the Attorney General, pursuant to Ind. Code §§ 4-6-2-11, 34-13-3-14.

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. The recitals hereinabove stated are a part of this Mutual Release and Settlement Agreement.
2. To resolve Voices’ claims, IDOH agrees to:
 - a. Immediately release terminated pregnancy reports as public records upon lawful request and not designate the reports as confidential medical records; and
 - b. Make redactions to the terminated pregnancy reports that adequately protect personal health identifiers and that do not inhibit examination of the terminated pregnancy reports to determine whether a physician performed an abortion in accordance with Indiana law. IDOH will not redact:
 1. The date the patient presented for treatment for the abortion complication.
 2. The age of the patient.
 3. The state of the patient’s residence.
 4. The facility at which the abortion is performed.
 5. The type of abortion obtained by the patient.

6. The date of the abortion obtained by the patient.
7. The abortion health care provider's full name and address, including the name of the physicians performing the abortion or providing, prescribing, administering, or dispensing the abortion inducing drug.
8. Whether parental consent was obtained or whether a waiver of consent was obtained.
9. The physician's determination of the gestation of the fetus in weeks.
10. The reason for the abortion including information specifying any of the following:
 - i. The abortion was necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life, including the pregnant woman's diagnosed medical condition.
 - ii. The fetus was diagnosed with a lethal fetal anomaly, including the fetus's diagnosed condition.
 - iii. The pregnancy was a result of rape or incest.
11. The following information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug:
 - i. The postfertilization age of the fetus (in weeks).
 - ii. The manner in which the postfertilization age was determined.
 - iii. The gender of the fetus, if detectable.
 - iv. Whether the fetus has been diagnosed with or has a potential diagnosis of having Down syndrome or any other disability.
 - v. If after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion.
 - vi. For a surgical abortion, the specific medical procedure used for the abortion, including the postfertilization age of the fetus and: if the fetus had a postfertilization age of at least twenty (20) weeks:
 1. Whether the procedure, in the reasonable judgment of the health care provider, gave the fetus the best opportunity to survive.

- vii. The basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman and the name of the second doctor present. For a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed, and the means of delivery of the drugs to the patient.
- viii. For a nonsurgical abortion, that the manufacturer's instructions were provided to the patient and that the patient signed the patient agreement.
- ix. For a nonsurgical abortion, that the abortion inducing drug was dispensed and consumed in the presence of the physician.
- x. For an abortion performed before twenty (20) weeks of postfertilization age of the fetus, the medical indication by diagnosis code for the fetus and the mother.
- xi. The results of pathological examinations if performed.
- xii. For a surgical and chemical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived, and that the physician complied with the requirements in IC 16-21-2-17.
- xiii. Records of all maternal deaths occurring at the location where the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed, including the specific cause of death.
- xiv. The date the form was transmitted to IDOH and, if applicable, separately to the Department of Child Services.
- xv. Access to "Additional Procedures," "Additional Instructions," and "Patient Signature" fields on TPR, in cases where additional procedure may include a second method of abortion
- xvi. The age of the father

3. In exchange, Voices agrees to dismiss its appeal, *Voices For Life, Inc. v. Indiana Department of Health, et al.* (Cause No. 24A-MI-2396), without briefing within one day of the execution of this agreement.

4. The agreement is made in full satisfaction of any and all claims by Voices against IDOH that Voices brought or could have brought related to the claims alleged in Cause No. 49D02-2405-MI-19876.

5. The parties agree to a dismissal, with prejudice, of the cases styled as *Voices For Life, Inc. v. Indiana Department of Health, et al.* (Cause No. 24A-MI-2396) and *Voices for Life, Inc. v. Indiana Department of Health, et al.*, (Cause No. 49D02-2405-MI-19876), and agree to withdraw or dismiss any actions, complaints, charges and grievances it may have pending against IDOH with any court, agency or tribunal related to any and all of Voices' claims that were brought, or could have been brought, related to the allegations in Cause No. 49D02-2405-MI-19876, and it will take any other action necessary to carry out the purpose and intent of this Release and Settlement Agreement. Voices agrees that this Agreement, when fully executed, shall constitute its request and motion for withdrawal of any such charge, complaints, grievance or action to any such tribunal or agency.

6. The Parties warrant that no promise or inducement has been offered or exists as of the date of this release except as herein set forth; that this release is executed without reliance upon any statement or representation of the parties or persons released or their representatives concerning the nature and extent of any injuries, damages and/or legal liability thereof; and that acceptance of the consideration set forth herein is in full accord and satisfaction of a disputed claim for which liability is expressly denied.

7. The Parties agree and understand that in reaching this Mutual Release and Settlement Agreement, IDOH has denied and continues to deny any fault, wrongdoing or liability on its part or on the part of any of their officers, employees or agents, with respect to all of the claims made against them and as part of the above-referenced charge.

8. Each party shall bear its own litigation costs, including attorney fees and any other costs incurred.

9. The Parties agree that this Release and Settlement Agreement is deemed made and entered into in the State of Indiana and in all respects shall be interpreted, enforced and governed under the laws of the State of Indiana, unless otherwise preempted by federal law.

10. The parties hereto acknowledge, covenant and agree that each of them has read this Mutual Release and Settlement Agreement and understand its terms, including the legal consequences thereof, and that in offering to make, and in making, executing and delivering this Mutual Release and Settlement Agreement, none of them was acting under any duress, undue influence, misapprehension or misrepresentation by any party hereto or any agent, attorney or representative of any party and that this Mutual Release and Settlement Agreement was made, executed and delivered as the free and voluntary act of each party and was given in good faith on the part of each party with full knowledge of all relevant facts and circumstances.

11. Except as otherwise provided, this Mutual Release and Settlement Agreement contains the entire agreement between the parties hereto and no representations or promises, other than those contained or referred to herein, have been made by any party to another party to secure the execution of this Mutual Release and Settlement Agreement, either before or after the dispute arose.

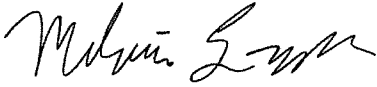
12. Because each of the parties to this Mutual Release and Settlement Agreement has contributed to the preparation and drafting hereof, has read it, and has reviewed it with his, her, their, or its counsel and understands its terms and contents, the terms and provisions of this Mutual Release and Settlement Agreement shall be interpreted and construed without any presumption or inference based upon the party or parties causing this Mutual Release and Settlement Agreement to be drafted in fact.

13. This Mutual Release and Settlement Agreement may be executed in multiple counterparts, all of which when combined constitute one original document.

IN WITNESS WHEREOF, the undersigned have duly executed this Mutual Release and Settlement Agreement on the dates set forth below.

[Remainder of this page left blank]

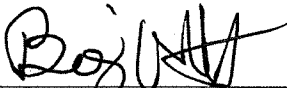
**ENTERED INTO BY THE PARTIES, AS EVIDENCED BY THEIR SIGNATURES ON
THE DATES NOTED:**



2/1/25

Voices for Life, Inc.
Appellant-Petitioner/Releasee

Date



Attorney
Attorney for Voices for Life, Inc.

Feb. 3, 2025
Date

For Indiana Department of Health

Date

For Dr. Lindsay Weaver, M.D. in her official capacity

Date

Deputy Attorney General
Attorney for Indiana Department of Health and
Dr. Lindsay Weaver, M.D. in her official capacity

Date

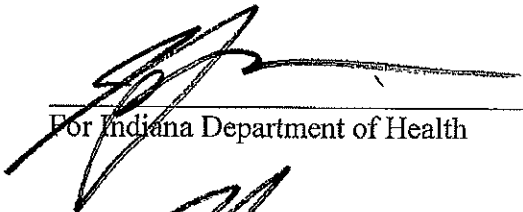
**ENTERED INTO BY THE PARTIES, AS EVIDENCED BY THEIR SIGNATURES ON
THE DATES NOTED:**

Voices for Life, Inc.
Appellant-Petitioner/Releasee

Date

Attorney
Attorney for Voices for Life, Inc.

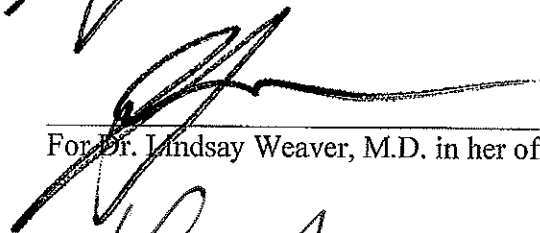
Date




For Indiana Department of Health



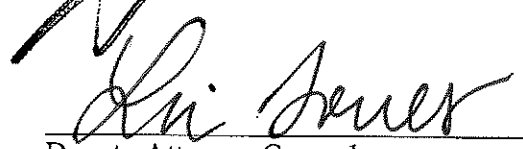
Date




For Dr. Lindsay Weaver, M.D. in her official capacity



Date



Deputy Attorney General
Attorney for Indiana Department of Health and
Dr. Lindsay Weaver, M.D. in her official capacity



Date