

IN THE INDIANA COURT OF APPEALS

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CAUSE No. 25A-PL-00782

APR 18 2025

MARION COUNTY CLERK

CATILIN BERNARD, M.D., and)
)
 CAROLINE ROUSE, M.D.,)
Appellees-Plaintiffs,)
)
 v.)
)
)
 INDIANA STATE HEALTH)
)
 COMMISSIONER, in the officer’s official)
)
 capacity; and VOICES FOR LIFE, INC.)
Appellants-Defendants.)

MARION SUPERIOR COURT,

No. 49D13-2502-PL-006359

The Honorable James A. Joven,

Marion Superior Court Judge.

NOTICE OF APPEAL

Party Information

Name: Voices For Life, Inc.

Address: 2307 Edison Road – Floor #3, South Bend, IN 46615

Attorneys representing party filing Notice of Appeal

Name: Benjamin D. Horvath

Attorney: #37299-71

Address: Horvath Legal Services, LLC; Special Counsel to Thomas More Society
2307 Edison Road – Floor #3

South Bend, IN 46615

Telephone: 574-315-2920

E-Mail: bdhorvath@comcast.net

IMPORTANT: Each attorney specified above:

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date this Notice of Appeal is filed;
- (b) acknowledges that all orders, opinions, and notices in this matter will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney; and
- (c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information accurate, see Ind. Admis. Disc. R. 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Indiana Courts Portal

Information for Judgment/Order Being Appealed

Date of Judgment/Order being appealed: March 24, 2025

Title of Judgment/Order being appealed: Order Granting Plaintiffs' Motion for Preliminary Injunction

Date Motion to Correct Error denied _____ or deemed denied _____, if applicable: N/A

Was the Judgment/Order issued by:

- _____ A magistrate as a final order under Ind. Code 33-23-5-5_
- _____ A magistrate and approved by trial judge on _____
- X_____ A trial court judge

Basis for Appellate Jurisdiction:

Appeal from a Final Judgment, as defined by Appellate Rule 2(H) and 9(I)

Appeal from an interlocutory order, taken as of right pursuant to Appellate Rule 14(A) or 14(D)

Appeal from an interlocutory order, accepted by discretion pursuant to Appellate Rule 14(B)(3) or 14(C)(5)

Expedited Appeal, taken pursuant to Appellate Rule 14.1

This appeal will be taken to:

Court of Appeals of Indiana, pursuant to Appellate Rule 5

Indiana Supreme Court, pursuant to Appellate Rule 4

This is an appeal in which a sentence of death or life imprisonment without parole is imposed under Ind. Code § 35-50-2-9 or a post conviction relief case in which the sentence was death

This is an interlocutory appeal authorized under Rule 14 involving the death penalty or a life without parole case raising a question of interpretation of Ind. Code § 35-50-2-9

This is an appeal from an order declaring a statute unconstitutional

This is an appeal involving a waiver of parental consent to abortion under Rule 62

This is an appeal involving mandate of funds

Trial Court Clerk/Administrative Agency/Court Reporter Instructions

Pursuant to Appellate Rule 10 or 14.1(C), the clerk the Marion Superior Court is requested to assemble the Clerk's Record, as defined in Appellate Rule 2(E).

Pursuant to Appellate Rule 11 or 14.1(C), the Court Reporter of the Marion County Superior Court is requested to transcribe, certify, and file with the clerk of the

Marion Superior Court the following hearings of record, including exhibits: the Hearing on Motion for Temporary Restraining Order held on 2/11/2025 and the Hearing on Motion for Preliminary Injunction held on 3/12/2025.

Public Access

Was the entire trial court or agency record sealed or excluded from public access?

_____ Yes X _____ No

Was a portion of the trial court or agency record sealed or excluded from public access?

_____ Yes X _____ No

If yes, which provision in the Rules on Access to Court Records provides the basis for this exclusion: N/A

If Rule 6 of the Rules on Access to Court Records provides the basis for this exclusion, was the trial court or agency order issued in accordance with the requirements of this rule? N/A

Appellate Alternative Dispute Resolution

If civil case, is Appellant willing to participate in Appellate Dispute Resolution?

_____ Yes X _____ No

If yes, provide a brief statement of the facts of the case. (Attach additional pages as needed.)

Attachments

The following SHALL be attached to this Notice of Appeal (in all appeals): \

Copy of judgment or order being appealed

The following SHALL be attached to this Notice of Appeal if applicable (check if applicable):

Copy of the trial court or Administrative Agency's findings and conclusions (in civil cases)

Copy of the sentencing order (in criminal cases)

Order denying Motion to Correct Error or, if deemed denied, copy of Motion to Correct Error

Copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access

If proceeding pursuant to Appellate Rule 14(B)(3), copy of Order from Court of Appeals accepting jurisdiction over interlocutory appeal

The documents required by Rule 40(C), if proceeding *in forma pauperis*

Certification

By signing below, I certify that:

(1) This case does does not involve an interlocutory appeal; issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights; or an appeal entitled to priority by rule or statute.

(2) I have reviewed and complied, and will continue to comply, with the requirements of Appellate Rule 9(J), 23(F), and the Rules on Access to Court Records on appeal; and,

(3) I will make satisfactory payment arrangements for any Transcripts ordered in this Notice of Appeal, as required by Appellate Rule 9(H).

Respectfully submitted, this 17th day of April,
2025.

s/Benjamin D. Horvath

Benjamin D. Horvath, No. 37299-71
Horvath Legal Services, LLC
Special Counsel, The Thomas More Society
2307 Edison Road – Floor #3
South Bend, IN 46615
Tel. (574) 315-2920
Email: bdhorvath@comcast.net

Attorney for Voices for Life, Inc.

CERTIFICATE OF SERVICE

I certify that on April 17th 2025, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on that same date the foregoing document was served upon the following person(s) via IEFS:

Katherine Diane Jack: kjack@jacklawoffice.com

Tanya Pellegrini: tpellegrini@lawyeringproject.org

Juanluis “Pepis” Rodriguez: prodriguez@lawyeringproject.org

Stephanie Toti: stoti@lawyeringproject.org

Anita Yandle: ayandle@lawyeringproject.org

James A. Barta: James.Barta@atg.in.gov

s/Benjamin D. Horvath

Benjamin D. Horvath, #37299-71
Horvath Legal Services, LLC
Special Counsel, The Thomas More Society
2307 Edison Road – Floor#3
South Bend, IN 46615
Tel. (574) 315-2920
E-Mail: bdhorvath@comcast.net

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
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CAITLIN BERNARD, M.D., and)
CAROLINE ROUSE, M.D.,)
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Plaintiffs,)
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v.)
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INDIANA STATE HEALTH)
COMMISSIONER, in the officer’s official)
capacity, and VOICES FOR LIFE, INC.,)
)
Defendants.)

**SPECIAL FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ISSUING PRELIMINARY INJUNCTION**

On February 6, 2025, Plaintiffs, Caitlin Bernard, M.D., and Caroline Rouse, M.D., filed a Complaint seeking a declaratory judgment against the Defendants, the Indiana State Health Commissioner, in the officer’s official capacity (the “Commissioner”), and Voices For Life, Inc. (“VFL”). The Plaintiffs ask this Court to declare that a Terminated Pregnancy Report (“TPR”) – a document that a physician is required to submit to the Indiana Department of Health (the “Department”) – is exempt from disclosure under the Indiana Access to Public Records Act (“APRA”). To halt any TPR disclosures during the pendency of this action, the Plaintiffs sought injunctive relief. On February 19, 2025, the Court entered a Temporary Restraining Order that prohibited the Department from publicly disclosing any TPRs pursuant to APRA. That TRO is currently set to expire on March 24, 2025, at 12:00 PM.¹ The Plaintiffs also seek a preliminary

¹ A temporary restraining order expires within 10 days of entry, unless the Court extends the duration of the TRO “for good cause shown.” IND. RULES OF TRIAL PROCEDURE 65(B). Here, the Court extended the duration of the TRO twice – on February 25, 2025, to the date of the preliminary injunction hearing, then on March 12, 2025 (the date of the preliminary injunction hearing).

injunction to continue the TPR disclosure prohibition. For the reasons set forth below, the Court issues this Preliminary Injunction.

I. BACKGROUND

This case had its genesis in another lawsuit. On May 1, 2024, VFL filed a complaint to force the Department to disclose TPRs pursuant to several VFL APRA requests. The Department had refused disclosure, asserting that TPRs were exempt from APRA disclosure requirements because a TPR is a medical record. On June 12, 2024, Drs. Bernard and Rouse (the Plaintiffs here) moved to intervene, which the court allowed on June 13, 2024. As Intervenors, the Plaintiffs supported the same position they argue here – that TPRs are medical records exempt from APRA disclosure requirements. On June 24, 2024, the Department and the Commissioner moved to dismiss VFL’s complaint, arguing that a TPR is a medical record that is shielded from APRA disclosure. On September 10, 2024, the Court granted the Department’s motion to dismiss. On October 7, 2024, VFL appealed the Court’s dismissal of that case. *See Voices For Life, Inc., v. Indiana Department of Health & Weaver, in her official capacity as Health Commissioner of Indiana Department of Health*, Cause No. 49D02-2405-MI-019876.²

During the pendency of the appeal, VFL and the Department and the Commissioner worked to resolve the issue. In early February 2025,³ VFL entered into a Mutual Release and Settlement Agreement with the Department and the Commissioner to resolve the litigation pertaining to VFL’s Access to Public Records lawsuit against the Department. *See Plaintiffs’ Ex. 2.* The Department agreed to “release [TPRs] as public records upon lawful request and not designate the reports as confidential medical records” *Id.* at ¶ 2(a). On February 6, 2025, the

² At the preliminary injunction hearing, this Court took judicial notice of this proceeding pursuant to Indiana Evidence Rule 201(B)(5).

³ VFL executed the settlement agreement on February 1, 2025; the Department and the Commissioner signed the settlement on February 3, 2025.

Indiana Court of Appeals dismissed VFL's appeal pursuant to VFL's voluntary motion to dismiss. The Plaintiffs immediately filed this action.

This Court took judicial notice of the earlier proceeding and finds that the earlier lawsuit transpired as described. *See* footnote 2, above. The importance of this background will become apparent below.

II. STANDING

At the outset, both the Commissioner and VFL challenge the Plaintiffs' standing to bring this declaratory judgment action. The Indiana Uniform Declaratory Judgment provides:

Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.

IND. CODE § 34-14-1-2. Thus, the Declaratory Judgment Act requires a showing that a plaintiff is (1) a person; (2) whose rights, status, or other legal relations are affected by a statute; and (3) the plaintiff is questioning the construction of the statute. *See, e.g., Holcomb v. Bray*, 187 N.E.2d 1268, 1284 (Ind. 2022). There is no dispute that the Plaintiffs are persons, and both seek a declaration of the construction of APRA. The "affected by a statute" prong of the Declaratory Judgment Act requires a finding that a plaintiff has standing – whether a litigant is entitled to have a court decide the substantive issues of the claims presented. *Id.*

"Standing requires litigants to demonstrate a sufficient injury before a court can decide the substantive issues of their claims." *Id.* at 1286. Generally, "[a]n injury must be personal, direct, and one the plaintiff has suffered or is in imminent danger of suffering." *Id.* When bringing a declaratory judgment action, however, "plaintiffs can satisfy the injury requirement by showing their rights are implicated in such a way that they **could** suffer an injury." *Id.* (emphasis added).

The Court makes the following findings of fact pertaining to the issue of standing. At the preliminary injunction hearing, Dr. Bernard testified that she is required to tell patients that she is required by law to submit private health information to the Department, information which may become publicly available through public records requests. The result, in Dr. Bernard's word, is "that means that patients don't trust us, and they don't trust our ability to protect their private health information." Moreover, Dr. Bernard testified that one of her patients sought abortion care from an out-of-state provider rather than from Dr. Bernard because that patient did not want her private health information released to the public. Dr. Rouse testified that she treats patients who sometimes have rare medical conditions for whom an abortion would be an appropriate treatment recommendation. Dr. Rouse expressed concern that the release of a TPR containing information of the rare condition would make the patient more identifiable. Both Plaintiffs worried that the release of TPRs ultimately resulted in violating the confidence of their patients because TPRs contain private health information.

The Plaintiffs have demonstrated sufficient injury to meet the requirements of standing. At least one of Dr. Bernard's patients left Dr. Bernard's care for an out-of-state abortion provider to avoid the public release of the patient's information via a TPR APRA request. Dr. Bernard has set forth an actual injury she suffered – the loss of a patient. Dr. Bernard's showing is also sufficient to demonstrate Dr. Rouse's standing to bring this declaratory judgment action as it follows that Dr. Rouse **could** suffer such an injury. Moreover, disclosure of a TPR, if it included any patient health information, could have a chilling effect on the patient/physician relationship. A patient could be less likely to disclose certain medical information to the physician knowing that the physician must report such information and that the Department may publicly release that information.

Another point at least bolsters (if not independently establishes) the Plaintiffs' standing to bring this action: their intervention in the earlier, related lawsuit between VFL and the Department and the Commissioner. In that earlier lawsuit, the litigants presented the same subject matter to that Court – a determination of the status of TPRs (whether they are exempt from APRA disclosure as medical records). The parties here and in that earlier suit are virtually the same – VFL was the plaintiff, the Department and the Commissioner were the defendants, and the Plaintiffs were the Intervenors.⁴ In that earlier suit, the substantive positions of the Plaintiffs, the Department, and the Commissioner were aligned – that TPRs are medical records exempt from disclosure under APRA. Significantly, the court in the earlier action dismissed VFL's claims, exempting TPRs from public accessibility.⁵ This Court determines that the present action is substantively and legally a successive proceeding from the earlier case. The same parties there and here seek a ruling on the same substantive issue. The Plaintiffs here are, effectively, seeking enforcement of the earlier court's substantive ruling. Defendants might have argued that the Plaintiffs' present case belongs before the judge from the earlier proceeding. The Defendants, however, did not raise this issue, thus waiving it.

At both the TRO and preliminary injunction hearings, the Commissioner and VFL maintained that the Plaintiffs cannot act on behalf of their patients, asserting the patients' interests in maintaining the privacy of their medical records as a means for Plaintiffs to bootstrap their standing. To the contrary, the Plaintiffs are not asserting third party standing. Instead, the Plaintiffs have proven that they have or could suffer injuries sufficient to have standing to bring a

⁴ In the earlier lawsuit, Plaintiffs raised two grounds supporting intervention – a statutory right under APRA, and intervention right under Indiana Rule of Trial Procedure 24(A). The court in the earlier action granted intervention without specifying the grounds for granting the motion to intervene.

⁵ Specifically, the Court held that it was “not persuaded that the law, as written, makes the [TPRs] public records.” That ruling, as enunciated, may or may not be legally correct. Regardless, the effect of that holding meant that the Department was not required to disclose TPRs pursuant to APRA.

declaratory judgment action. Nevertheless, the Plaintiffs may also have third party standing independent of their own standing. The Court notes that APRA provides the right to intervene to the supplier of any part of record subject to an APRA request where that record was not disclosed and the person who was denied the right to inspect that record brings an action challenging the refusal to release the requested records. IND. CODE § 5-14-3-9(e). Plaintiffs, as suppliers of TPRs to the Department, were thus permitted to intervene in the earlier action. As Intervenors in that action, they were (arguably) present to assert their patients' interests in maintaining the confidentiality of the TPRs as medical records. At any rate, and for the foregoing reasons, this Court HOLDS that the Plaintiffs have standing to pursue their declaratory judgment action, independent of any rights the Plaintiffs' patients may have.

The Commissioner also attacks the Plaintiffs' standing to bring this action by asserting some violation of the separation of powers, citing *Citizens Action Coalition of Indiana v. Koch*, 51 N.E.3d 236 (Ind. 2016). That case, however, is readily distinguishable.

In *Koch*, the plaintiff, the Citizens Action Coalition of Indiana, sought APRA disclosure of a legislator's correspondence with various business organizations in relation to specific legislation. The legislator denied disclosure, arguing that APRA does not apply to the Indiana General Assembly and that it is "House tradition to treat all correspondence as confidential." *Koch*, 51 N.E.3d at 239. The Public Access Counselor opined that APRA does apply to the Indiana General Assembly, but the requested information fell within APRA's legislative work product exception. *Id.* The Indiana Supreme Court held that the Court had subject matter jurisdiction to decide the case, and that the Indiana General Assembly was subject to APRA. *Id.* at 240. The Court also held, however, that the Coalition's claim was not justiciable – "whether it is prudent for the Court to exercise its jurisdiction." *Id.* at 241. The core issue for the Court to

determine was whether the requested documents were subject to exemption from disclosure as “work product” of the Indiana General Assembly. The term “work product” was neither defined within APRA nor by rule. The Court declined to “define legislative ‘work product’ and order the legislature to disclose records in accordance with this court-created definition.” *Id.* at 242.

Here, the Plaintiffs ask this Court to determine whether TPRs fall within the exemption from APRA disclosure for “patient medical records.” While APRA does not define what a “patient medical record” is, the Indiana Code sets forth the definition of “medical record” in the definitions of general applicability section. These Plaintiffs do not ask this Court to invent a definition, which the Indiana Supreme Court declined to do in *Koch*. Rather, Plaintiffs here ask the Court to determine the meaning and applicability of an existing statute (the APRA exemption to disclosure for patient medical records), looking to a definition enacted by the Indiana legislature. The Court’s presents its analysis of this issue in section III(A), below. The Indiana Declaratory Judgment Act outlines this Court’s authority to make such a determination. Any party dissatisfied with this Order has the ability to appeal this decision to an Indiana appellate court.

III. PRELIMINARY INJUNCTION ANALYSIS

To obtain a preliminary injunction, a party must show (1) a reasonable likelihood of success at trial; (2) that remedies at law are inadequate, meaning the party will suffer irreparable harm without an injunction; (3) the potential injury without an injunction outweighs the potential harm from an injunction; and (4) issuing the injunction will not disserve the public interest. *See, e.g., Willow Haven on 106th St., LLC v. Nagireddy*, No. 24S-PL-287, 2025 Ind. LEXIS 110, *7 (Ind., February 19, 2025). When issuing a preliminary injunction, a court must make special findings of fact. INDIANA RULE OF TRIAL PROCEDURE 52(A); *see, e.g., Great Lakes Anesthesia*,

P.C. v. O'Bryan, 99 N.E.3d 260, 268 (Ind. Ct. App. 2018). The Court has weighed the evidence presented and states the facts supporting this Order.

A. Reasonable Likelihood of Success

The Plaintiffs must show, by a preponderance of the evidence, that they can succeed at trial. For purposes of this declaratory judgment action, the Plaintiffs must establish they can prove that a TPR is a medical record that falls within the exception to disclosure under APRA. Plaintiffs only need show that success on the merits is probable. *Bowling v. Nicholson*, 51 N.E.2d 439, 444 (Ind. Ct. App. 2016).

1. TPRs:

Indiana law requires an abortion provider to provide information to the Department as follows:

Every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion shall report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the [Department]

IND. CODE § 16-34-2-5(a). The Department's form is what is commonly referred to as a TPR. The form has over 31 categories and subcategories of information the provider must report. *Id.* Of particular importance here are the following categories: the number of the patient's previous live births; the number of the patient's spontaneous pregnancy terminations; the number of the patient's previous induced terminations; the date of the patient's last menses; the physician's determination of the gestation of the fetus in weeks; the reason for the abortion; information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug, including the postfertilization of the fetus (in weeks), the manner in which the postfertilization age was determined, whether the fetus has been diagnosed with or has

a potential diagnosis of having Down syndrome or any other disability, and the medical reason for the performance of the abortion for a fetus at least 20 weeks; for a surgical abortion, the medical procedure used for the abortion; for a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed; for an abortion performed before 20 weeks of postfertilization age of the fetus, the medical indication by diagnosis code for the fetus and the mother; the mother's obstetrical history; any preexisting medical conditions of the patient that may complicate the abortion; the results of pathological examinations if performed; and for surgical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived. *Id.* Generally, the abortion provider must complete the form and transmit it to the Department within 30 days after the date of performing the abortion.⁶ IND. CODE § 16-34-2-5(b).

2. APRA Requests for TPRs:

VFL wants disclosure of TPRs as public records – that is, any writing or report that is received and maintained with a public agency like the Department. *See* IND. CODE § 5-14-3-2(r) (definition of “public record”). Typically, any person may inspect the public records of any public agency. IND. CODE § 5-14-3-3(a). The public agency may not deny the exercise of the right to inspection. IND. CODE § 5-14-3-3(b). Certain public records, however, are excepted from this right to inspect and “may not be disclosed by a public agency” unless required by statute or by court order. IND. CODE § 5-14-3-4(a). Exceptions exist for public records declared confidential by state statute (IND. CODE § 5-14-3-4(a)(1)); those required to be kept confidential by federal law (IND. CODE § 5-14-3-4(a)(3)); and “[p]atient medical records and charts created by a provider . . . ” (IND. CODE § 5-14-3-4(a)(9)). APRA does not define “patient medical record,” but the Indiana Code defines “medical record” as “written or printed information

⁶ If the abortion is for a female less than 16 years of age, the provider must transmit the form within three days to the Department and separately to the Indiana Department of Child Services. IND. CODE § 16-34-2-5(b).

possessed by a provider [] concerning any **diagnosis, treatment, or prognosis of the patient**, unless otherwise defined.” IND. CODE § 1-1-4-5(a)(6) (citation omitted) (emphasis added).

3. Evidence Supporting TPRs as Medical Records:

The Plaintiffs presented evidence to prove that TPRs fall within the APRA patient medical records exception to disclosure. Dr. Bernard testified that she is required “to communicate diagnosis and indications or reason for the abortion.” Such reasons for abortion include a condition in the patient that affects the patient’s life or health and requires an abortion to save the patient’s life, and whether the fetus has a lethal anomaly. Dr. Bernard would also need to report how those diagnoses were made. Dr. Bernard further testified that on the TPR form, she indicates the sex of the fetus, the gestational age, information about the mother’s previous pregnancies and the outcomes from those pregnancies (such as live birth or other terminations), the procedure that terminated the pregnancy (whether an abortion via medication or via surgery), information about the fetus, and any pre-existing medical conditions of the patient. Dr. Rouse testified that she includes diagnosis information of patients with rare conditions for whom an abortion would be an appropriate treatment recommendation. Both Plaintiffs noted that the TPR form, while not listing the patient’s name, does include an identifier code specific to an individual patient.

Justin Stover is the Department’s Assistant Commissioner for Consumer Services and Healthcare Regulation. Part of Stover’s responsibilities are to help the Department respond to APRA requests. During cross-examination during the Defendants’ case-in-chief, Stover acknowledged that TPRs require abortion providers to indicate specific patient diagnoses as well as diagnoses using international classification of disease codes (ICDs).

4. TPRs Appear to Be Medical Records:

Applying the adduced evidence to the law cited above, the Court holds that the Plaintiffs have a reasonable likelihood of success at trial. The Department's TPR form, on its face and as specifically set forth above, calls for abortion providers to provide information concerning a patient's diagnosis, treatment, or prognosis. Moreover, Drs. Bernard and Rouse each testified about various forms of a patient's information that they have provided to the Department when filing a TPR. Stover, the Department's Deputy Commissioner who assists with APRA requests, acknowledged that TPRs require abortion providers to indicate specific patient diagnoses. Indeed, while arguing at the preliminary injunction hearing, the counsel for the Commissioner conceded that the TPR form obliges a physician to chronicle information related to the **diagnosis, treatment, or prognosis** of a **patient**. The Court finds such information, as listed above, to be diagnosis or treatment information of the particular patient upon whom the abortion procedure was performed and for whom the TPR is submitted. The Court holds that, for purposes of this preliminary injunction proceeding, the Plaintiffs established probable success on their claim that a TPR is subject to exemption from disclosure as a medical record.

The Commissioner urges the Court to note the difference between the undefined exemption for "patient medical records" in APRA and the defined term "medical record" as set out in the definitions of general statutory construction. The definition of "medical record" is related to "any diagnosis, treatment, or prognosis **of the patient . . .**" IND. CODE §1-1-4-5(6). The patient medical record exempt from disclosure under APRA is, legally, a record concerning any diagnosis, treatment, or prognosis of the patient. The Court believes the Commissioner seeks to make a distinction without a difference, which the Court declines to do.

Another noteworthy detail at least reinforces the Court’s finding that Plaintiffs have a reasonable likelihood of success: the Commissioner and the Department already successfully argued substantially the same issue to another court, and that court issued a dismissal order that (at least apparently) adopted the position that TPRs are exempt from APRA disclosure as patient medical records. Conspicuously, the Commissioner (and the Department) supported this same position in the earlier lawsuit while opposing it here. The Commissioner will have the opportunity to explain its reversal of positions in this litigation.

B. Inadequate Remedies at Law/Irreparable Harm

The Plaintiffs also presented evidence that their remedy at law is inadequate such that they will suffer irreparable harm. “A party suffering mere economic injury is not entitled to injunctive relief because damages are sufficient to make the party whole.” *Ind. Family & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 162 (Ind. 2002). “Irreparable harm is that harm which cannot be compensated for through damages upon resolution of the underlying action.” *Abercrombie & Fitch Stores, Inc. v. Simon Prop. Grp., L.P.*, 160 N.E.3d 1103, 1110 (Ind. Ct. App. 2020). “The test is whether later money damages would be ‘as full and adequate as the equitable remedy.’” *Id.* (citation omitted).

1. Evidence of Irreparable Harm to Plaintiffs:

The Plaintiffs are not seeking monetary damages – they seek a judicial declaration of the construction and meaning of an Indiana statute (whether a TPR is a medical record that falls within an APRA disclosure exemption). The harms the Plaintiffs seek to avoid via the issuance of an injunction are the same harms that substantiate the Plaintiffs’ standing to bring this declaratory judgment action. As detailed above, the disclosure of TPRs has resulted in at least one patient leaving the Plaintiffs’ care to seek abortion care from a provider not subject to similar

requirements to disclose personal health information. The release of TPRs containing patient health information also stifles open communication between a physician and his/her patient – a patient will be unwilling to describe her symptoms and medical conditions with a doctor who is required to report such discussions to the Department, with the possibility that members of the public can access that information.

2. Remedies at Law Inadequate:

The Commissioner might argue that the Department would mitigate any harm from disclosure of a TPR by redacting sensitive information before release. During the TRO and preliminary injunction hearings, the Commissioner presented evidence and argument that the Department would ensure that information specifically identifying a patient would be removed from a TPR before disclosure. The Court observes that the definition of “medical record” does not make patient identification information determinative of what constitutes a medical record. Moreover, in the Mutual Release and Settlement Agreement, the Department agreed **NOT** to redact information that, to the Court, appears to be patient medical information that would be exempt from APRA disclosure, including the type of abortion performed (Plaintiff’s Ex. 2, ¶ 2(b)(5)); the physician’s determination of the gestation of the fetus in weeks (*Id.* at ¶ 2(b)(9)); the reason for the abortion ¶ 2(b)(10)); and information concerning the abortion procedure performed ¶ 2(b)(11)(i-xvi)). Stover, the Department’s Assistant Commissioner for Consumer Services and Healthcare Regulation, stated that part of his responsibilities was to help the Department respond to APRA requests. Stover could not identify the specific information the Department would redact so that the TPR would no longer contain information that would make a TPR a medical record and represented that redaction would take place on a case-by-case basis.

The Court, therefore, determines that, at this time, the Department's redaction of a TPR would prove inadequate to avoid the harms the Plaintiffs seek to avoid.

C. Injury Without Injunction Outweighs Harm From Issuance of Injunction

Another question the Plaintiffs must address is whether the potential injury without an injunction outweighs the potential harm from an injunction. This “balance of the harms requirement” inquires “whether the threatened injury to the moving party outweighs the potential harm to the nonmoving party.” *Zimmer, Inc. v. Davis*, 922 N.E.2d 68, 71-72 (Ind. Ct. App. 2010). The Court must weigh the harms the Plaintiffs will suffer with the release of TPRs against any harms the Commissioner and VFL might encounter should the Court further prevent release of the TPRs.

1. Injuries to the Plaintiffs Without an Injunction:

To establish standing and to show irreparable harm, the Plaintiffs presented the evidence discussed above. The disclosure of TPRs has resulted in at least one patient leaving Dr. Bernard's care to seek abortion care from a provider not subject to similar requirements to disclose personal health information, with the possibility of more to follow. The release of TPRs containing patient health information also stifles open communication between a physician and his/her patient – a patient will be unwilling to describe her symptoms and medical conditions with a doctor who is required to report such discussions to the Department, with the possibility that members of the public can access that information.

2. Potential Harms to the Commissioner and VFL If Injunction Issued:

The Commissioner presented evidence to support the claim of potential harms the Commissioner could suffer if the Court issued an injunction. Amy Osborne formerly was the Section Chief of Licensing Enforcement at the Office of the Attorney General. Her Section was

tasked with ensuring doctors comply with Indiana law, bringing enforcement actions against physicians before the Medical Licensing Board. To trigger an investigation, a complaint would be filed by “anyone” – a consumer, a patient, a family member of a patient, an association, another government agency, or an organization. Osborne added that generally, the Attorney General has received complaints of abortion law violations from the public; that the complainant learned of the purported violation from information from a TPR; and that it was more likely that the Attorney General’s Office would receive a complaint from the public than from the Department. In closing, VFL argued that part of its mission is to assist the Department with monitoring all abortions performed in Indiana via review of TPRs. Counsel for VFL asserted that VFL has an “interest in ensuring that the state abortion laws are being followed.”

But the Department has not released TPRs for over one year. Stover, the Department’s Assistant Commissioner who assists with APRA requests, acknowledged that sometime in 2024, the Department had stopped releasing TPRs that were sought via APRA requests because the Indiana Public Access Counselor issued an opinion, which led to the Department ceasing disclosure of TPRs.⁷ The Plaintiffs highlight the fact that though VFL could not obtain TPRs this past year, VFL could obtain the Department’s quarterly public reports, which are based upon submitted TPR information. *See* IND. CODE § 16-34-2-5(e)(1) (Quarterly, the Department “shall compile a public report . . . from information submitted under this section”). And, at the hearing, neither the Commissioner nor the VFL presented any evidence that the lack of TPRs hampered

⁷ That opinion was an informal opinion issued on December 19, 2023, specifically addressing the Department’s concern that TPRs may need to be withheld from APRA disclosure due to statutory changes. *See* “Informal Opinion of Public Access Counselor,” 23-INF-15: Terminated Pregnancy Reports, issued December 19, 2023, and found at <https://www.in.gov/pac/files/informal/23-INF-15.pdf> (also attached as a supporting document for Plaintiffs’ Motion for Immediate Temporary Restraining Order and Preliminary Injunction, filed February 6, 2025). On January 12, 2024, the Department took the position that TPRs were “no longer releasable through public records request” and “withheld pursuant to I.C. § 5-14-3-4(a)(9), which declares medical records confidential.” *See* ¶ 18, “Complaint for Disclosure of Records Under the Indiana Access to Public Records Act,” filed in *Voices For Life, Inc., v. Indiana Department of Health & Weaver, in her official capacity as Health Commissioner of Indiana Department of Health*, Cause No. 49D02-2405-MI-019876 (filed May 1, 2024).

any abortion law enforcement whatsoever. A reasonable inference from this point suggests that the Defendants' claimed potential harm is no harm at all. Besides, it is the responsibility of the Commissioner and the Department, in conjunction with the Attorney General's Office, to uphold abortion laws – they are the state entities specifically charged with investigating and initiating enforcement actions against any doctors who fail to follow such laws. Nothing prevents the Department from reviewing the TPRs to detect possible violations, which is why the legislature requires abortion providers to submit TPRs to the Department in the first place.

To boost the Defendants' position in support of the public release of TPRs, both the Commissioner and VFL argued that the Department had previously released TPRs pursuant to APRA. At the TRO hearing, the Commissioner represented that TPRs were subject to APRA disclosure “for decades” while VFL noted that it was “common practice” for the Department to release TPRs. The Defendants presented similar arguments during the preliminary injunction hearing. These contentions, while true, do not sway this Court because the type of information an abortion provider is required to submit via a TPR changed to include information about a patient diagnosis and any reasons why the physician performed the abortion. Dr. Bernard testified that this change took place after the State of Indiana banned abortions, a change of law that ultimately took effect in August 2023. The Court surmises that Indiana's abortion ban triggered the request to the Indiana Public Access Counselor for an opinion regarding the nature of TPRs as medical records exempt from APRA disclosure. *See* footnote 7, above. The Court determines that the inclusion of diagnostic and treatment information on TPRs following Indiana's abortion ban nullifies any argument that the Department's prior practice of releasing TPRs should carry persuasive weight.

3. The Plaintiffs' Injuries Outweigh the Defendants' Potential Harms:

In balancing the parties' competing harms, the Court rules that the Plaintiffs' injury from the lack of an injunction to prevent TPR disclosure outweighs the potential harm to the Commissioner and VFL. The Court holds that the Plaintiffs' injuries (the actual and potential future loss of patients, as well as the stifling of open communication between physicians their patients) outweigh the Defendants' potential harms (the Commissioner's inability to enforce the TPR law and VFL's incapacity to assist the Department with TPR enforcement). The potential harm the Defendants presented to the Court was VFL's alleged inability to help ensure that the state abortion laws are being followed should this Court enjoin the release of TPRs. Yet the Commissioner (and, therefore, the Department) have unfettered access to the TPRs and may continue to enforce the TPR law. And VFL may continue to review the quarterly reports and provide any assistance to the Department to enforce the TPR law. The Court is not convinced that the Defendants have suffered or will suffer **any** harms from the issuance of an injunction. Thus, the injuries to the Plaintiffs outweigh any potential harms to the Defendants.

D. Injunction Will Not Disserve the Public Interest

Finally, the Plaintiffs must establish that issuing the injunction will not disserve the public interest. The Court concludes that the Plaintiffs have presented ample evidence to meet this standard.

1. Evidence of Public Interests:

One interest the Plaintiffs consistently stated was confidentiality of patient health information. Both Plaintiffs worried that the release of TPRs ultimately resulted in violating the confidence of their patients because TPRs contain private health information. Dr. Bernard expressed that one reason for intervention in the earlier case was "the significant amount of

protected health information that is included in [a TPR] . . . and her “concern[] about the privacy of [her] patients” Similarly, Dr. Rouse remarked that her patients “may not feel comfortable disclosing other parts of their medical history or procedures that they may have.” Stover, the Department’s Assistant Commissioner who assists with APRA requests, conceded that TPRs contain potentially sensitive information that could be subject to redaction. A second interest the Plaintiffs put forward was that TPR disclosure could have a chilling effect on the patient/physician relationship. A patient could be less likely to disclose certain medical information to the physician knowing that the physician must report such information and that the Department may publicly release that information.

The Defendants countered that abortion law enforcement was hindered if the public release of TPRs was enjoined. Osborne, formerly of the Attorney General’s Office, remarked that the Attorney General was more likely to receive complaints of alleged TPR violations from the public than from the Department. VFL declared that the withholding of TPRs from public release would “render the AG’s . . . ability to regulate licensed professionals . . . meaningless.” VFL argued that the Attorney General “need[s] a third-party complaint to bring any action to the Medical Licensing Board” and that VFL has “an interest in ensuring that the state abortion laws are being followed.”

2. Serving the Public Interest:

Issuance of an injunction would serve a significant public interest – keeping a patient’s information of diagnosis, treatment, and prognosis confidential, safeguarded from public disclosure. Indiana law supports this interest in APRA, making patient medical records exempt from public disclosure. Moreover, a federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d *et al.* and 45 C.F.R. Parts 160 and 164,

also prevents the public disclosure of a patient's protected health information. Significantly, an injunction prohibiting the release of TPRs would give comfort to patients of abortion providers that the patient's records of medical diagnosis, treatment, or prognosis will **NOT** be released for public review. Patients of abortion providers would no longer have incentive **NOT** to share sensitive information with a physician for fear that information would be revealed.

Further, as the Court determined in section III(C)(2) of this Order, above, enjoining the public release of TPRs is not harm to the Defendants – the Commissioner, via the Department, may continue to review TPRs to monitor for violations of the TPR law, and VFL may continue to assist by reviewing quarterly reports.

The Court holds that issuance of an injunction will not disserve the public interest. To the contrary, an injunction will certainly serve a vital public interest – the confidentiality of a patient's medical records.

IV. JUDGMENT AND ORDER

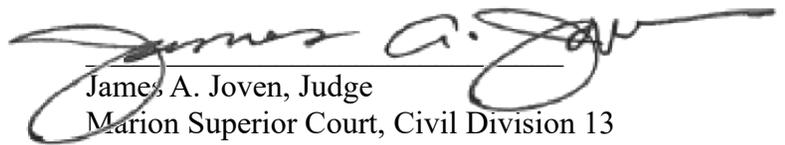
For the reasons set forth in this Order, the Court ENTERS these FINDINGS OF FACT and CONCLUSIONS OF LAW:

- A. The Plaintiffs, Caitlin Bernard, M.D., and Caroline Rouse, M.D., have proper standing to seek a declaratory judgment against the Defendants, the Indiana State Health Commissioner, in the officer's official capacity, and Voices For Life, Inc.;
- B. the Plaintiffs have demonstrated a reasonable likelihood of success at trial;
- C. the Plaintiffs' remedies at law are inadequate, meaning the party will suffer irreparable harm without an injunction;
- D. the Plaintiffs' injuries without an injunction outweighs the Defendants' potential harm from an injunction; and

E. issuing the injunction will not disserve the public interest.

The Court, therefore, ISSUES this PRELIMINARY INJUNCTION, prohibiting the Indiana State Health Commissioner, in the officer's official capacity as director of the Indiana Department of Health, and her employees, agents, successors in office from disclosing or otherwise providing access to Terminated Pregnancy Reports created in accordance with Indiana Code section 16-34-2-5, and in response to any request made under the Indiana Access to Public Records Act, Indiana Code section 5-14-3-1 *et seq.* The Court FURTHER ORDERS that Plaintiffs are not required to post bond or provide other security.

ENTERED at Indianapolis, Indiana, on March 24, 2025, at 12:00 PM.



James A. Joven, Judge
Marion Superior Court, Civil Division 13

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