Exhibit 8

ACLJ
American Center for Law & Justice

January 10, 2018

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Re: Complaint for Discrimination by State of Hawaii in Violation of Federal Conscience-Protecting Statutes

Contact attorney for complainants:

[redacted]
American Center for Law and Justice
6375 New Hope Rd.
P.O. Box 60
New Hope, KY 40052
(502) 549-7020
[redacted]@aclj.org

Complaints filed on behalf of:

Aloha Pregnancy Care and Counseling Center, Inc.
45-1151 G Kamehameha Hwy.
Kaneohe, HI 96744
(808) 234-7233

Person/Agency/Organization committing discrimination:

State of Hawaii
c/o Attorney General Douglas Chin
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
(808) 586-1500

Date and nature of discriminatory acts:

On July 12, 2017, the Hawaii legislature enacted Hawaii Senate Bill 501 (hereafter, "the Act"), a bill which compels limited service pregnancy centers, such as the Complainant, to disseminate a message crafted by the State which is, in effect, an advertisement for free or low-cost contraceptive services and abortions. A copy of the law is attached.

Among other things, the Act requires that certain facilities, such as those operated by Complainant, post in their waiting rooms, or distribute to their clients in written or digital form, a

message from the State of Hawaii that the State "has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women." One of the "comprehensive family planning services" that Hawaii pays for is elective abortions.

Those who fail or refuse to comply with the Act are subject to a civil penalty of $500 for a first offense and $1000 for each subsequent offense.

Complainant is a non-profit, faith-based pregnancy resource center that offers pregnancy related care and counseling to its clients free of charge and consistent with Complainant's religious beliefs. Those beliefs compel Aloha not to perform, counsel for, or provide referrals for, or education about contraceptives or abortion. Because of these beliefs, Complainant objects to posting or distributing the State's dictated message, because they view it as requiring them to approve of and refer for contraceptives and abortions. At a minimum, the Act unlawfully requires Complainant's counselors to tailor their discussion of contraception and abortion in a manner and at a time dictated by the State instead of by the Complainant itself.

Inasmuch as the Act compels the Complainant to participate in, and refer for contraception and abortions, it violates Complainant's rights under at least two federal conscience-protecting statutes:

- The Public Health Service Act, 42 USC § 238n, prohibiting the federal government and any state or local government receiving federal financial assistance from discriminating against any health care entity on the basis that the entity: 1) *refuses* to undergo training in the performance of induced abortions, to require or provide such training, *to perform such abortions, or to provide referrals for such training or such abortions*; 2) refuses to make arrangements for such activities; or 3) attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training (emphasis added);

- The Weldon Amendment, originally passed as part of the HHS appropriation and readopted (or incorporated by reference) in each subsequent HHS appropriations act since 2005. It provides that "[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, *or to a state or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions*" (emphasis added). It also defines "health care entity" to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan."

The Complainant herein faces ongoing discrimination by the State of Hawaii which is currently defending the discriminatory aspects of the law in U.S. District Court.[1] The Complainant hereby requests OCR to investigate this matter and take appropriate action to remedy this ongoing discrimination in violation of federal law.

Date: January 10, 2018

AMERICAN CENTER FOR LAW AND JUSTICE

By: [redacted]

[1] The Complainant and the State are currently litigating the constitutionality of the Act in the matter of *Aloha Pregnancy Care and Counseling v. Chin*, Case No. 1:17-cv-00343 (D. Haw.).

THE SENATE
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

S.B. NO. 501 S.D. 1 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that all women in Hawaii, regardless of income, should have meaningful access to effective reproductive health services. Public programs providing insurance coverage and direct services for reproductive health care and counseling to eligible, low-income women are currently available through the department of health and department of human services.

Thousands of women in Hawaii are in need of publicly-funded family planning services, contraception services and education, pregnancy-related services, prenatal care, and birth-related services. In 2010, sixteen thousand women in Hawaii experienced an unintended pregnancy, which can carry enormous social and economic costs to both individual families and to the State. Many women in Hawaii, however, remain unaware of the public programs available to provide them with contraception, health education and counseling, family planning, prenatal care, pregnancy-related, and birth-related services.

Because family planning decisions are time sensitive and care early in pregnancy is important, Hawaii must make every possible effort to advise women of all available reproductive health programs. In Hawaii, low-income women can receive immediate access to free or low-cost comprehensive family planning services and pregnancy-related care through Med-QUEST and the department of health's family planning program. Providers who contract with these programs are able to immediately enroll patients in these programs at the time of a health center visit.

Requiring facilities that provide pregnancy- or family planning-related services to provide accurate health information and to inform clients of the availability of and enrollment procedures for reproductive health programs will help ensure that all women in the State can quickly obtain the information and services that they need to make and implement informed, timely, and personally appropriate reproductive health decisions.

The purpose of this Act is to ensure that women in Hawaii are able to make personal reproductive health decisions with

full and accurate information regarding their rights to access the full range of health care services that are available.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§321-A Limited service pregnancy centers; notice of reproductive health services.** (a) For purposes of this section, "limited service pregnancy center" or "center":

(1) Means a facility that:

(A) Advertises or solicits clients or patients with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling;

(B) Collects health information from clients or patients; and

(C) Provides family planning or pregnancy-related services, including but not limited to obstetric ultrasound, obstetric sonogram, pregnancy testing, pregnancy diagnosis, reproductive health counseling, or prenatal care; and

(2) Shall not include a health care facility. For the purposes of this paragraph, a "health care facility"

means any facility designed to provide comprehensive health care, including but not limited to hospitals licensed pursuant to chapter 321, intermediate care facilities, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, federally qualified health centers, and other facilities providing similarly organized comprehensive health care services.

(b) Every limited service pregnancy center in the State shall disseminate on-site to clients or patients the following written notice in English or another language requested by a client or patient:

"Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.

To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.

Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate."

The notice shall contain the internet address for online medical assistance applications and the statewide phone number for medical assistance applications.

(c) The information required by subsection (b) shall be disclosed in at least one of the following ways:

(1) A public notice on a sign sized at least eight and one-half inches by eleven inches, written in no less than twenty-two point type, and posted in a clear and conspicuous place within the center's waiting area so that it may be easily read by individuals seeking services from the center; or

(2) A printed or digital notice written or rendered in no less than fourteen point type that is distributed individually to each patient or client at the time of check-in for services; provided that a printed notice shall be available to all individuals who cannot or do not wish to receive the notice in a digital format.

(d) No limited service pregnancy center that collects health information from any individual seeking or receiving its services shall disclose any individually identifiable health information to any other person, entity, or organization without express written authorization from the subject individual. Any disclosure made under this section shall be limited by the express terms of the written authorization and all applicable state and federal laws and regulations, including the federal Health Insurance Portability and Accountability Act of 1996 and title 45 Code of Federal Regulations part 164.

(e) A limited service pregnancy center that provides or assists in the provision of pregnancy testing shall provide the individual tested with a free written statement of the results of the pregnancy test in English or another language requested by a client or patient immediately after the test is completed.

(f) Upon receipt of a written request from an individual to examine or copy all or part of the individual's recorded health information or other information retained by a limited service pregnancy center, the center shall, promptly as required under the circumstances but in no case later than fifteen working days after receiving the request:

(1) Make the information available for examination by the individual during regular business hours;

(2) Provide a free copy to the individual, if requested;

(3) Inform the individual if the information does not exist or cannot be found; and

(4) If the center does not maintain the record or information, inform the individual of that fact and provide the name and address of the entity that maintains the record or information.

§321-B Limited service pregnancy centers; enforcement; private right of action. (a) A limited service pregnancy center that violates section 321-A shall be liable for a civil penalty of $500 for a first offense and $1,000 for each subsequent offense. If the center is provided with reasonable notice of noncompliance, which informs the center that it is subject to a civil penalty if it does not correct the violation within thirty days from the date the notice is sent to the center, and the violation is not corrected as of the expiration of the thirty-day notice period, the attorney general may bring an action in the district court of the district in which the center is located to enforce this section.

A civil penalty imposed pursuant to this subsection shall be deposited to the credit of the general fund.

(b) Any person who is aggrieved by a limited service pregnancy center's violation of section 321-A may bring a civil action against the limited service pregnancy center in the district court of the district in which the center is located to enjoin further violations and to recover actual damages sustained together with the costs of the suit including reasonable attorneys' fees. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained. If damages are awarded pursuant to this subsection, the court may, in its discretion, impose on a liable center a civil fine of not more than $1,000 to be paid to the plaintiff.

A party seeking civil damages under this subsection may recover upon proof of a violation by a preponderance of the evidence.

For the purposes of this subsection, "person" includes a natural or legal person.

(c) The enforcement procedure and remedies provided by this section shall be in addition to any other procedure or

remedy that may be available to the State or a person aggrieved by a violation of this chapter.

(d) This section and section 321-A are not intended to require regulation or oversight of limited service pregnancy centers by the department of health."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

S.B. NO. 501 S.D. 1 H.D. 2 C.D. 1

Report Title:
Limited Service Pregnancy Centers; Disclosures; Privacy; Remedy

Description:
Requires all limited service pregnancy centers to disclose the availability of and enrollment information for reproductive health services. Defines limited service pregnancy center. Establishes privacy and disclosure requirements for individual records and information. Authorizes civil penalties and civil actions for enforcement and remedy. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

2017-2606 SB501 CD1 SMA-3.doc

Exhibit 9

Form Approved: OMB No. 0990-0269.
See OMB Statement on Reverse.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS (OCR)

CIVIL RIGHTS DISCRIMINATION COMPLAINT

YOUR FIRST NAME [redacted]

YOUR LAST NAME [redacted]

H [redacted] CELL PHONE (Please include area code)

W [redacted] PHONE (Please include area code)

STREET ADDRESS [redacted]

CITY [redacted]

ST [redacted]

E-MAIL ADDRESS (If availa [redacted]

Are you filing this complaint for someone else? [X] Yes [ ] No

If Yes, whose civil rights do you believe were violated?

FIRST NAME

The Little Sisters of the Poor

LAST NAME

I believe that I have been (or someone else has been) discriminated against on the basis of:

[ ] Race / Color / National Origin [ ] Age [X] Religion [ ] Sex

[ ] Disability [ ] Other (specify): _____

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

Commonwealth of Pennsylvania, Attorney General Josh Shapiro

STREET ADDRESS

Office of Attorney General , Strawberry Square, 16th Floor

CITY

Harrisburg

STATE

Pennsylvania

ZIP

17120

PHONE (Please include area code)

(717) 787-3391

When do you believe that the civil right discrimination occurred?

LIST DATE(S)

10/11/2017, 01/11/2018

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

Pennsylvania is trying to force religious objectors to provide insurance coverage for abortion-inducing drugs and devices, along with contraceptives and sterilization. Pennsylvania itself does not require health insurance plans governed by state law to cover contraceptives, https://www.governor.pa.gov/governor-wolf-calls-legislature-make-birth-control-coverage-mandate/, but that has not stopped it from challenging the federal government's religious exemption of the Little Sisters of the Poor (LSP) from a federal contraception mandate. Pennsylvania has filed a federal

This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [redacted]

DATE *(mm/dd/yyyy)*

01/11/2018

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: **www.hhs.gov/ocr/civilrights/complaints/index.html**. To mail a complaint see reverse page for OCR Regional addresses.

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

☐ Braille ☐ Large Print ☐ Cassette tape ☐ Computer diskette ☐ Electronic mail ☐ TDD

☐ Sign language interpreter (specify language): _____

☐ Foreign language interpreter (specify language): _____ ☐ Other: _____

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME	LAST NAME
HOME / CELL PHONE (Please include area code)	WORK PHONE (Please include area code)

STREET ADDRESS	CITY

STATE	ZIP	E-MAIL ADDRESS (If available)

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (If known)

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)

☐ Hispanic or Latino ☐ Not Hispanic or Latino

RACE (select one or more)

☐ American Indian or Alaska Native ☐ Asian ☐ Native Hawaiian or Other Pacific Islander ☐ Black or African American ☐ White ☐ Other (specify): _____

PRIMARY LANGUAGE SPOKEN (if other then English) _____

How did you learn about the Office for Civil Rights?

☒ HHS Website/Internet Search ☐ Family/Friend/Associate ☐ Religious/Community Org ☐ Lawyer/Legal Org ☐ Phone Directory ☐ Employer ☐ Fed/State/Local Gov ☐ Healthcare Provider/Health Plan ☐ Conference/OCR Brochure ☐ Other (specify): _____

To mail a complaint, please type or print, and return completed complaint to the OCR Regional Address based on the region where the alleged violation took place. If you need assistance completing this form, contact the appropriate region listed below.

Region I - CT, ME, MA, NH, RI, VT
Office for Civil Rights, DHHS
JFK Federal Building - Room 1875
Boston, MA 02203
(617) 565-1340; (617) 565-1343 (TDD)
(617) 565-3809 FAX

Region II - NJ, NY, PR, VI
Office for Civil Rights, DHHS
26 Federal Plaza - Suite 3312
New York, NY 10278
(212) 264-3313; (212) 264-2355 (TDD)
(212) 264-3039 FAX

Region III - DE, DC, MD, PA, VA, WV
Office for Civil Rights, DHHS
150 S. Independence Mall West - Suite 372
Philadelphia, PA 19106-3499
(215) 861-4441; (215) 861-4440 (TDD)
(215) 861-4431 FAX

Region IV - AL, FL, GA, KY, MS, NC, SC, TN
Office for Civil Rights, DHHS
61 Forsyth Street, SW. - Suite 16T70
Atlanta, GA 30303-8909
(404) 562-7886; (404) 562-7884 (TDD)
(404) 562-7881 FAX

Region V - IL, IN, MI, MN, OH, WI
Office for Civil Rights, DHHS
233 N. Michigan Ave. - Suite 240
Chicago, IL 60601
(312) 886-2359; (312) 353-5693 (TDD)
(312) 886-1807 FAX

Region VI - AR, LA, NM, OK, TX
Office for Civil Rights, DHHS
1301 Young Street - Suite 1169
Dallas, TX 75202
(214) 767-4056; (214) 767-8940 (TDD)
(214) 767-0432 FAX

Region VII - IA, KS, MO, NE
Office for Civil Rights, DHHS
601 East 12th Street - Room 248
Kansas City, MO 64106
(816) 426-7277; (816) 426-7065 (TDD)
(816) 426-3686 FAX

Region VIII - CO, MT, ND, SD, UT, WY
Office for Civil Rights, DHHS
999 18th Street, Suite 417
Denver, CO 80202
(303) 844-2024; (303) 844-3439 (TDD)
(303) 844-2025 FAX

Region IX - AZ, CA, HI, NV, AS, GU, The U.S. Affiliated Pacific Island Jurisdictions
Office for Civil Rights, DHHS
90 7th Street, Suite 4-100
San Francisco, CA 94103
(415) 437-8310; (415) 437-8311 (TDD)
(415) 437-8329 FAX

Region X - AK, ID, OR, WA
Office for Civil Rights, DHHS
701 Fifth Avenue, Suite 1600, MS - 11
Seattle, WA 98104
(206) 615-2290; (206) 615-2296 (TDD)
(206) 615-2297 FAX

Burden Statement

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including he time for reviewing instruc ions, gathering the data needed and entering and reviewing the information on he completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**

HHS-699 (7/09) (BACK)

COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.

- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.

- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

After reading the above information, please check ONLY ONE of the following boxes:

[X] **CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

[ ] **CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: [redacted] Date: 01/11/2018

**Please sign and date need to sign if submitting this form by email because submission by email represents your signature.*

Name (Please print): [redacted]

Address: [redacted]

Telephone Number: [redacted]

NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

Privacy Act

The Privacy Act of 1974 (5 U.S.C. §552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:
(i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), and Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§295m and 296g);
(ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§291 et seq. and 300s et seq.) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill-Burton facilities);
(iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
(iv) Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS "designated agency" authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
(v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.

OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

(i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
(ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
(iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
(iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. §552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. §5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

Freedom of Information Act
A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. §552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

Fraud and False Statements
Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".

PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

HOW DOES OCR PROTECT MY PERSONAL INFORMATION?

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

CAN I SEE MY OCR FILE?

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

CAN OCR GIVE MY FILE TO ANY ONE ELSE?

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.

CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort,

as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed $100.00.

If you have any questions about this complaint and consent package,
Please contact OCR at http://www.hhs.gov/ocr/office/about/contactus/index.html

OR

Contact your OCR Regional Office
(see Regional Office contact information on page 2 of the Complaint Form)

Exhibit 10

RICHARD C. BAKER
WHITMAN H. BRISKY
JOHN W. MAUCK
NOEL W. STERETT

SORIN A. LEAHU

MAUCK & BAKER, LLC

ONE NORTH LASALLE STREET, SUITE 600
CHICAGO, ILLINOIS 60602

WWW.MAUCKBAKER.COM
TEL: 312.726.1243 FAX: 866.619.8661

[redacted]
OF COUNSEL

January 16, 2018

Via E-Mail and U.S. Mail: OCRComplaint@hhs.gov

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, DC 20201

Re: Complaint of Discrimination in Violation of Federal Statutes

Dear Sir or Madam:

Mauck & Baker, LLC, represents [redacted] (also known as [redacted]), a licensed practical nurse ("LPN") who was subjected to unlawful discrimination by the Winnebago County Health Department, a state agency subject to the Church Amendments (42 U.S.C. § 300a-7), the Public Health Service (PHS) Act (§ 245 (42 U.S.C. § 238n)), and/or the Weldon Amendment (Continuing Appropriations Resolution, Pub. L. No. 113-164, Sec. 101(a) (Sept. 19, 2015)) by virtue of its status as a recipient of federal funding.

[redacted]s a pediatric nurse with forty years of experience. She serves as a nurse in furtherance of and in conformance with her religious convictions to care for children. Her religious convictions also prohibit her from performing, assisting in, referring for, or participating in any way with abortion or abortion-causing drugs. Her right to serve as a pediatric nurse without violating her conscience or compromising her religious convictions relating to abortion or abortion-causing drugs are protected by the First Amendment to the United States Constitution, the Constitution of the State of Illinois, the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15, and the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq*, in addition to the federal conscience clauses named above.

For nearly eighteen years [redacted] served as a pediatric nurse at the Winnebago County Health Department and until 2015 was never forced to participate in abortion related services. However, in the summer of 2015, the county's new Public Health Administrator, [redacted] informed [redacted] that she could no longer work in the health department clinics if she was unwilling to participate in the provision of abortion related

services. Her termination had nothing to do with her performance as [redacted] had recently received the "Employee of the Week" and "Employee of the Quarter" awards.

The attached First Amended Complaint, [redacted] *et al.*, Case No. 2016 L 160, (attached as Exhibit 1), contains the factual and legal descriptions of specific violations of our clients' rights. The letter from [redacted] to [redacted] dated June 30, 2015 (Ex. B to the First Amend. Compl.) shows that [redacted] informed [redacted] that she was basing her decision to terminate [redacted] from the clinic environment on account of [redacted] religious convictions and conscientious objections and also on account of the terms of the federal grants the health department receives. The Defendants' "Third Affirmative Defense" (attached as Exhibit 2) shows how the Health Department has tried to justify its unlawful discrimination against Sandra by referring to the terms of Title X and the federal funds it receives. But as the aforementioned federal conscience clauses make plain, Title X and the terms of the federal grants actually *prohibited* [redacted] termination on account of her religious and conscientious objections.

[redacted] state court case is pending before the Circuit Court of Winnebago County in Rockford, Illinois. On February 15, 2018, the court will hold a status hearing at which the judge may rule on the parties' cross-motions for summary judgment.

Please promptly inform us of the actions your office plans to take regarding this violation. Thank you for your attention to this matter.

Sincerely yours,

[redacted]

cc: Client
[redacted] Assistant Deputy States Attorney for Winnebago County

Exhibit 11

ACLJ
American Center for Law & Justice

May 9, 2018

RECEIVED
MAY 11 2018
HHS/OCR HQ

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Attn: Conscience and Religious Freedom Division

Re: Complaint for Discrimination in Violation of 42 U.S.C. § 300a-7(c)(1) ("Church Amendment")

Contact attorney for complainant:

Francis J. Manion, Esq.
Geoffrey R. Surtees, Esq.
American Center for Law and Justice
6375 New Hope Rd.
P.O. Box 60
New Hope, KY 40052
502-549-7020
fmanion@aclj.org

Complaint filed on behalf of:

[redacted]

Person/Agency/Organization committing discrimination:

The University of Vermont Medical Center
111 Colchester Avenue
Burlington, Vermont 05401
802-847-0000

Date and nature of discriminatory acts:

In 2017, the complainant, [redacted] RN, was coerced by her employer, University of Vermont Medical Center, Inc. ("UVMMC") into participating in an abortion. Ms [redacted] a Catholic, had previously informed her employer that she

could not participate in such procedures as a matter of religious belief. Her employer deliberately misled [redacted] about the nature of the procedure, and then, after [redacted] confirmed that she was, in fact, being assigned to an abortion, refused her request that other equally qualified and available personnel take her place. Fearing a charge of patient abandonment which could bring with it loss of employment and revocation of her nursing license, [redacted] participated in the procedure under duress. She suffered immediate emotional distress, attempted to suppress the event psychologically, and has been haunted by nightmares ever since. In addition, her employer has created a hostile environment targeting [redacted] and other employees who conscientiously object to participating in abortion procedures.

The coerced-participation event described above appears to have been related to a change in UVMMC policy regarding the hospital's performance of abortions. Under the leadership, since 2013, of a hospital board President with decades-long experience in senior leadership of Planned Parenthood facilities in Vermont, Portland, Oregon, and New York City, UVMMC reversed a longstanding policy which limited abortions in its facilities to those considered "medically necessary." While the policy appears to have been changed *sub silentio* at some point even before 2017, hospital staff, including [redacted] and other nurses, were only formally informed of the change in October of 2017. Thus, it is highly possible that other staff and, perhaps, [redacted] herself, have been deceived into participating in other abortion procedures which were misleadingly labeled as "miscarriages" or "medically necessary" but which were, in fact, purely elective abortions.

In addition, following public controversy which arose after the formal disclosure to staff of the hospital's new policy in the Fall of 2017, UVMMC, in February 2018, adopted a revised "Conflict of Care" policy. (Copy attached hereto). This policy is sharply inconsistent with existing federal conscience laws and inappropriately continues to leave the conscience rights of hospital employees to the virtually unbridled discretion of supervisors who, as [redacted] and others will attest, have a history of demeaning, belittling, and failing to respect the views of conscientious objectors.

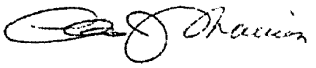
The Church Amendment protects the conscience rights of individuals and entities that object to performing or assisting in the performance of abortion or sterilization procedures if doing so would be contrary to the provider's religious beliefs or moral convictions, and prohibits discrimination in employment of "any physician or other health care personnel . . . because of his religious beliefs or moral convictions respecting sterilization procedures or abortions." 42 U.S.C. §300a-7 *et seq.*

It is clear that [redacted] (and perhaps others employed at UVMMC) has suffered and continues to suffer discrimination and violations of her conscience rights under federal law. We urge your office to immediately initiate an

investigation of these charges and order appropriate remedial and corrective actions as soon as possible.

Our investigation has disclosed identities and contact information of individuals in addition to our client who have information pertinent to this matter. That information, to the extent said individuals have already spoken publicly about it or authorize us to disclose it, will be provided upon request.

Respectfully submitted,



Francis J. Manion
Senior Counsel
American Center for Law & Justice

Date: May 9, 2018

Documents Status: **Approved**

IDENT	HR-F-09
Type of Document	Policy
Applicability Type	Corporate
Title of Owner	Dir Human Resources
Title of Approving Official	VP Human Resources
Date Effective	2/5/2018
Date of Next Review	2/5/2021

THE University of Vermont MEDICAL CENTER

TITLE: Conflict of Care: Staff Conscientious Objection

PURPOSE: UVM Medical Center respects workforce diversity and the cultural values, ethics and religious beliefs of our staff. In situations where a conflict may exist between the employee's cultural values, ethics, and religious beliefs and their participation in any aspect of patient care, UVMMC supports a process by which an employee may request to be excused from performing specific duties.

Patients and their families' perspectives and choices are valued and honored in all phases of care. Accordingly, all patients are entitled to comprehensive, quality care, without regard to their diagnosis, race, color, sex, sexual orientation, gender identity or expression, ancestry, place of birth, HIV status, national origin, religion, marital status, age, language, socioeconomic status, physical or mental disability, protected veteran status.

UVMMC encourages open dialogue between the employee and their leader.

POLICY STATEMENT: Employees may request to be excused from participating in a type of care/treatment in situations where that care/treatment conflicts with the employee's cultural values, ethics, or religious beliefs. Procedures/treatments which may present conflict may include but are ***not limited*** to the following:

- Blood and blood component administration
- Elective termination of pregnancy
- Initiation and cessation of life support
- DNR/Life support issues for critically ill/terminally ill populations
- Assisting with the harvesting of human organs
- Sterilization procedures
- Reproductive technologies

Alternative staffing arrangements will be considered, and if appropriate, arranged. At no time will staff be allowed to act in a manner that negatively impacts the patient's care or treatment.

PROCEDURE:

I. When the need to provide care or treatment of a patient is in conflict with an employee's cultural values, ethics or religious beliefs, the employee may request to be reassigned to other duties and not participate in the specific type of care or treatment. In the event a conflict of care arises, care of the patient will be maintained until alternate staffing arrangements can be provided.

II. UVMMC supports open dialogue between the employee and their leader when a conflict exists for the employee. We recognize that not all conflicts can be predicted. When possible we encourage employees to proactively raise concerns about potential conflicts in order to minimize impact to patient care.

III. During the hiring process, the hiring manager shall discuss the typical scope of practice and service within the department in which the candidate has applied to work. Employees are expected to perform all the duties of their positions as set forth in their job descriptions, given to them at the time of hire or whenever revised.

IV. All new employees are informed about this Conflict of Care policy during new employee orientation.

Printed on: 4/12/2018 11:00 AM By: [redacted]
DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.

Documents Status: **Approved**

V. The direct Supervisor/designee shall be responsible for administering and monitoring a process to accommodate an employee's cultural values, ethics, and religious beliefs regarding treatment of patients.

a) An employee who desires to be reassigned from a specific type of care or treatment shall submit the request in writing to the Supervisor/designee. Written request may be received on the form provided in this policy OR via an email addressed to the Supervisor/designee containing the details as requested/outlined on the form.

b) The written request will be acknowledged by the Supervisor/designee and maintained in the appropriate unit resource binder for scheduling purposes within the unit. The Supervisor/designee will assign staff as necessary for appropriate patient coverage. The written request will be placed in the employee's electronic personnel file by the Supervisor/designee.

c) Any conflict which may occur in an emergent situation for which staff may not have previously submitted a written request, may be brought to the Supervisor/designee. Alternative coverage may be sought at the discretion of the Supervisor/designee. The written request shall be submitted by the employee directly following the event and the request will be placed in the employee's electronic personnel file by the Supervisor/designee.

d) Any employee who is excused from an aspect of care will be re-assigned to other responsibilities.

e) In any scenario where circumstances prevent arrangements for alternate coverage, the staff member will be expected to provide the assigned care to ensure patient care is not negatively impacted.

f) Refusal to perform assigned job functions will be addressed in accordance with established corrective action procedures by the supervisor, in consultation with leadership and/or Human Resources.

VI. All employees have access to the Ethics Consultation through UVMMC's Director of Clinical Ethics and can request input on ethical issues by contacting Provider Access Services (847-2700), ask who the ethics consultant on call is and should then contact that consultant by phone or in person.

VII. An employee experiencing ongoing conflict of care issues should seek a transfer to a department or position where conflict of care issues are less likely to occur.

MONITORING PLAN: N/A

DEFINITIONS: N/A

RELATED POLICIES: Code of Conduct B1N; Clinical Ethics Consultations ETH15; Compliance & Privacy Plan B31

REFERENCES: 2017, Hospital Accreditation Standards, The Joint Commission LD.04.02

REVIEWERS: [redacted]

OWNER: [redacted], Dir Human Resources

APPROVING OFFICIAL: [redacted] Human Resources

Printed on: 4/12/2018 11:00 AM By: [redacted]
DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.

Documents Status: **Approved**

Conflict of Care Disclosure Form

To be completed by the employee making the request: *Make a copy of this form for your records and then give this form to your leader.*

Your Name: _____ (Please Print)

Your Signature: _____ Date: _____

Please identify the clinical circumstances where you experience personal conflict. Please provide specific details regarding which procedure/treatment you are requesting to be excused from.

Please briefly provide your reasons for requesting removal from the patient's care team.

Received by:_____ (Please Print)

Leader Signature _____ Date Received _____

Printed on: 4/12/2018 11:00 AM By: [redacted]
DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.

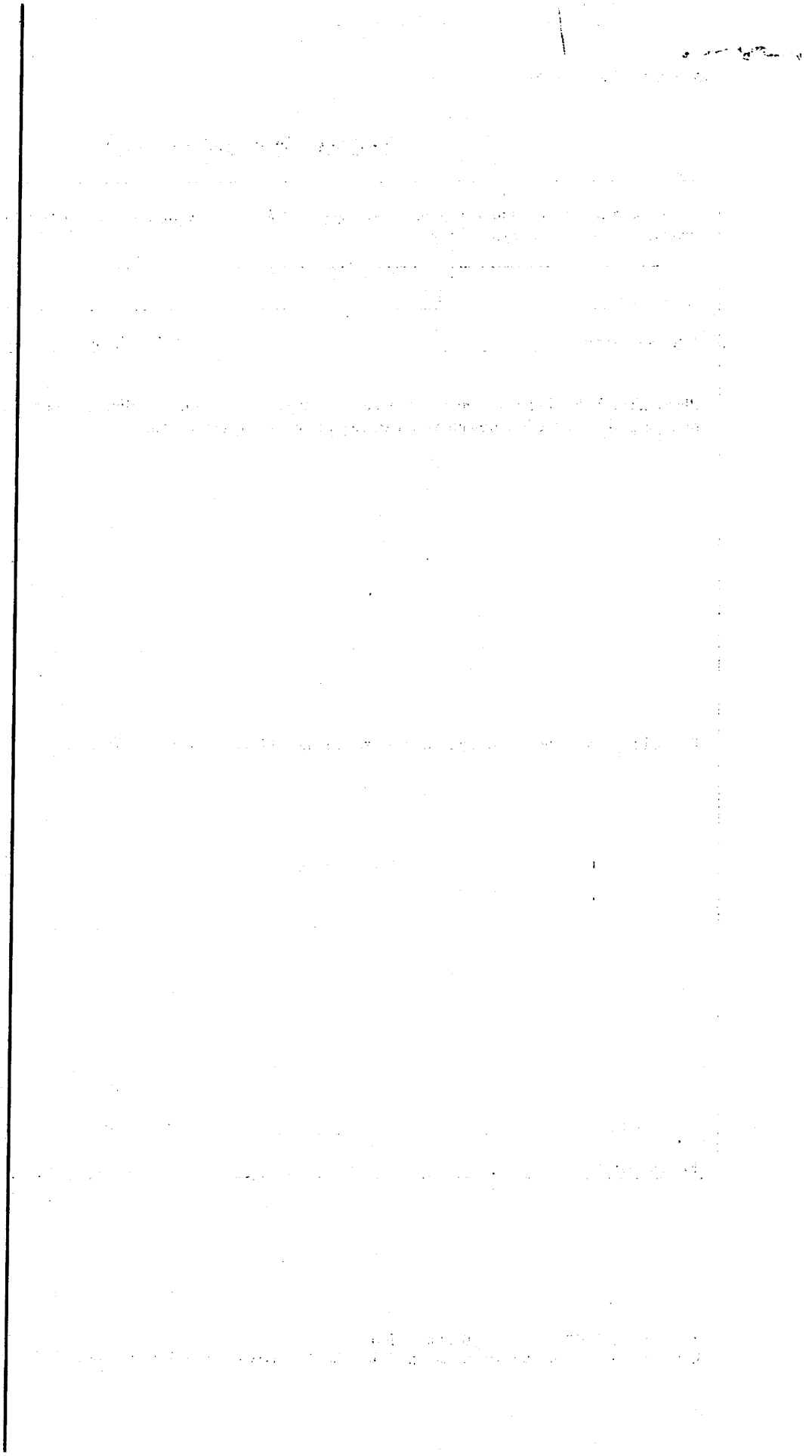


Exhibit 12

ACLJ
American Center for Law & Justice

August 4, 2017

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Re: Complaint for Discrimination in Violation of 42 U.S.C. 300a-7(c)(1) ("Church Amendment")

Contact attorney for complainant:

[redacted]
American Center for Law and Justice
6375 New Hope Rd.
P.O. Box 60
New Hope, KY 40052
[redacted]

Complaint filed on behalf of:

[redacted]

Person/Agency/Organization committing discrimination:

Indiana University South Bend
School of Nursing
1700 Mishawaka Ave.
South Bend, IN 46615
(574) 520-4872

Date and nature of discriminatory acts:

In January 2017, complainant [redacted] applied for a full-time faculty position with Indiana University South Bend ("IUSB") to teach a course on Maternal Child Nursing which she had already been teaching at IUSB as an adjunct. Shortly after she began working at IUSB on August 1, 2016, complainant published an internet article entitled "How a Formerly Pro-Choice Nursing Instructor Discusses Abortion with her Students." *Available at:* http://thetorchblog.net/ ?p=996 (August 12, 2016).

Complainant interviewed for the full-time position on January 31, 2017 before a committee of four faculty members of the IUSB Nursing School. During the interview, [redacted] Assistant Dean of Nursing, asked questions of [redacted] which indicated that [redacted] was familiar with [redacted] article.

One of the other members of the search/interview committee believed that [redacted] was asking [redacted] about her views on abortion and interrupted her by saying something to the effect of that, on a mother-baby unit, abortion is not an issue. [redacted] did not correct or clarify that she was *not* asking about abortion.

On or about February 20, 2017, [redacted] learned that she was not hired for the position, purportedly due to a "lack of teaching experience." [redacted] has 19 years of relevant teaching experience (along with her Doctorate of Nursing Practice). The individual who was hired in her stead has less than 3 years teaching experience.

Further, [redacted] has learned that the decision not to hire her was made by IUSB on the recommendation of [redacted] *alone*, *i.e.*, without a vote of the search committee, contrary to normal procedure. In addition to her duties at IUSB, [redacted] is employed as an advance practice nurse by Planned Parenthood. See Attached.

The evidence indicates that complainant was denied the position for which she applied due to [redacted] and/or IUSB's perceptions regarding her moral convictions and/or religious beliefs concerning abortion as set forth in her widely circulated internet article.

The Church Amendment prohibits discrimination in employment of "any physician or other health care personnel . . . because of his religious beliefs or moral convictions respecting sterilization procedures or abortions." 42 U.S.C. § 300a-7(c)(1). On information and belief, IUSB is an entity covered by the Church Amendment, and the circumstances surrounding IUSB's decision not to hire Isabell point to a violation of that statute.

Date: August 4, 2017

AMERICAN CENTER FOR LAW AND JUSTICE

[redacted]

Indiana
Online Licensing

New Search
Licensee Documents
Digital Certification
Nursing Board

[redacted]

CSR Practice Address Information

Planned Parenthood of Indiana
3005 Grape Road, Suite B
Mishawaka IN 46545

License Information

License No: [redacted]
Profession: Nursing Board
License Type: CSR-Prescriptive Authority
Obtained By Method: Application
Issue Date: [redacted]
Expiration Date:
License Status:

Practice Acknowledgement CSR Drug Schedules

No Data Available

Drug Schedule 1:	Drug Schedule 2: Y	Drug Schedule 2N: Y	Drug Schedule 3: Y
Drug Schedule 3N: Y	Drug Schedule 4: Y	Drug Schedule 5: Y	

Disciplines

No Data Available

Related Licenses

License #: [redacted] Name: [redacted]
License Type: APN Prescriptive Authority
Status: Active
Relationship: Same Licensee

Exhibit 13

Form Approved: OMB No. 0945-0002
Expiration Date: 04/30/2019.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS (OCR)

CIVIL RIGHTS DISCRIMINATION COMPLAINT

YOUR FIRST NAME	YOUR LAST NAME
Thomas More Society	N/A
HOME PHONE (Please include area code)	WORK PHONE (Please include area code)
( )	[redacted]

STREET ADDRESS	CITY
19 South LaSalle Street, Suite 603	Chicago

STATE	ZIP	E-MAIL ADDRESS (If available)
IL	60603	[redacted]

Are you filing this complaint for someone else? ☒ Yes ☐ No

If Yes, whose civil rights do you believe were violated?

FIRST NAME	LAST NAME
[redacted]; Hope Life Center; and others similarly situated	

I believe that I have been (or someone else has been) discriminated against on the basis of:

☐ Race / Color / National Origin ☐ Age ☒ Religion ☐ Sex
☐ Disability ☒ Other (specify): Abortion and First Amendment

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

State of Illinois

STREET ADDRESS	CITY
Gov. Bruce Rauner, Office of the Governor, 207 State House	Springfield

STATE	ZIP	PHONE (Please include area code)
IL	62,076	(1)(217) 782-0244

When do you believe that the civil rights discrimination occurred?

LIST DATE(S)

Starting January 1, 2017

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

Please see explanatory letter accompanying this complaint form.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE	DATE *(mm/dd/yyyy)*
	1-04-2018

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Section 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at:
www.hhs.gov/ocr/civilrights/complaints/index.html. To mail a complaint, please see page 2 of this form for the mailing address.

HHS-700/11/15) (FRONT)

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

☐ Braille ☐ Large Print ☐ Cassette tape ☐ Computer diskette ☐ Electronic mail ☐ TDD

☐ Sign language interpreter (specify language): _____

☐ Foreign language interpreter (specify language): _____ ☐ Other: _____

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME	LAST NAME
[redacted] Attorney at Thomas More Society	
HOME PHONE (Please include area code)	WORK PHONE (Please include area code)
( )	[redacted]

STREET ADDRESS	CITY
19 South LaSalle Street	Chicago

STATE	ZIP	E-MAIL ADDRESS (If available)
IL	60,603	tolp@thomasmoresociety.org

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

Hope Life Center is a plaintiff in Abigail Women's Center, et. al, v. Rauner, et al., in the Circuit Court of the 7th Judicial District, Sangamon County, Chancery Division

DATE(S) FILED	CASE NUMBER(S) (If known)
February 9, 2017	CASE NO. 2017CH000066 (consolidated withCASE NO. 2017CH000052)

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)

☐ Hispanic or Latino ☐ Not Hispanic or Latino

RACE (select one or more)

☐ American Indian or Alaska Native ☐ Asian ☐ Native Hawaiian or Other Pacific Islander ☐ Black or African American ☐ White ☐ Other (specify): _____

PRIMARY LANGUAGE SPOKEN (if other then English) _____

How did you learn about the Office for Civil Rights?

☒ HHS Website/Internet Search ☐ Family/Friend/Associate ☐ Religious/Community Org ☐ Lawyer/Legal Org ☐ Phone Directory ☐ Employer ☐ Fed/State/Local Gov ☐ Healthcare Provider/Health Plan ☐ Conference/OCR Brochure ☐ Other (specify): _____

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human Services

Office for Civil Rights
Centralized Case Management Operations
200 Independence Ave., S.W.
Suite 515F, HHH Building
Washington, D.C. 20201
Customer Response Center: (800) 368-1019
Fax: (202) 619-3818
TDD: (800) 537-7697
Email: ocrmail@hhs.gov

Burden Statement

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**

HHS-700 11/15) (BACK)

COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.

- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.

- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

After reading the above information, please check ONLY ONE of the following boxes:

☒ **CONSENT**: I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

☐ **CONSENT DENIED**: I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: _____ Date: 1-4-2018

**Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.*

Name (Please print): [redacted] Attorney, Thomas More Society

Address: 19 South LaSalle Street, Suite 603, Chicago, IL 60603

Telephone Number: [redacted]

NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

Privacy Act

The Privacy Act of 1974 (5 U.S.C. §552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:
(i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), and Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§295m and 296g);
(ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§291 et seq. and 300s et seq.) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill-Burton facilities);
(iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
(iv) Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS "designated agency" authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
(v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.

OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

(i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
(ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
(iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
(iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. §552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. §5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

Freedom of Information Act
A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. §552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

Fraud and False Statements
Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".

PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

HOW DOES OCR PROTECT MY PERSONAL INFORMATION?

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

CAN I SEE MY OCR FILE?

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

CAN OCR GIVE MY FILE TO ANY ONE ELSE?

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.

CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort,

as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed $100.00.

If you have any questions about this complaint and consent package,
Please contact OCR at http://www.hhs.gov/ocr/office/about/contactus/index.html

OR

Contact the Customer Response Center at (800) 368-1019
(see contact information on page 2 of the Complaint Form)

THOMAS MORE SOCIETY
A National Public Interest Law Firm

January 4, 2018

Via US Mail & email: ocrmail@hhs.gov

U.S. Department of Health and Human Services
Office of Civil Rights
Centralized Case Management Operations
200 Independence Ave., S.W.
Suite 515F, HHH Building
Washington, D.C. 20201

Re: Violations of Federal Law arising from Illinois Public Act 99-690.

Dear members of the Office of Civil Rights for the Department:

We write on behalf of our clients, [redacted] and Hope Life Center, to request that the Office of Civil Rights investigate what we believe to be ongoing, serious violations of federal law by the State of Illinois. The basis for our request is Illinois' enactment and enforcement of Illinois Public Act 99-690, which became effective January 1, 2017, and which amends the 1977 Illinois Health Care Right of Conscience Act, 745 ILCS 70/1, *et seq.*, in ways that gut its protection of state and federal conscience rights. (P.A. 99-690 is attached as **Exhibit 1**.) As explained below, we believe that P.A. 99-690 violates existing federal laws that have been enacted to protect the conscience rights of healthcare providers. We respectfully request your office to investigate this claim and to take appropriate action to prevent the State's application of P.A. 99-690 to our clients, and similarly situated health care providers in Illinois, who cannot comply with the amendment because of their sincerely held religious beliefs.

The complainant, [redacted], is a physician licensed to practice in Illinois. He serves, pro bono, as a medical director of Hope Life Center, a pregnancy resource center providing limited medical services (pregnancy testing, ultrasounds, and STD tests) to women facing unplanned pregnancies. Although abortion, sterilization, and abortifacient contraception are "legal treatment options" for these women under P.A. 99-690, [redacted] cannot, in conscience, perform or promote these procedures, or refer women to, or provide identifying information about, providers of these procedures. Yet, P.A. 99-690 now requires him, and the officers, employees, and volunteers who work at Hope Life Center, to perform these very actions.

[redacted] and Hope Life Center thus face an unacceptable dilemma under the new Illinois law. P.A. 99-690 requires them to discuss so-called "benefits" of the very abortion and sterilization procedures they, as a matter of conscience, vigorously oppose. See P.A. 99-690 at Sec. 6 and Sec. 6.1(1). And it requires them, if asked, to refer for, or provide information about, providers of the very abortion services they abhor. See P.A. 99-690 at Sec.

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"Injustice anywhere is a threat to justice everywhere." – Rev. Dr. Martin Luther King

6.1(3)(ii)&(iii). Failure to comply with the amendment subjects them to loss of conscience protection under the Health Care Right of Conscience Act, the possibility of professional discipline, liability for penalties and damages (including attorneys fees), and discrimination in funding and licensing under Illinois law. See 745 ILCS §70/6.1 (stripping protection of IHRCA from those who do not comply with its conditions); see also, 745 ILCS §70/4 & §§70/9—70/11.4 (forms of protection stripped away by Section 6.1); see also, 745 ILCS §70/10 (private cause of action for violations of statute, including statutory minimum damage award and liability for attorney's fees and costs).

We believe that Illinois is using this amendment (P.A. 99-690) to target and discriminate against healthcare providers in violation of federal law. First, the Hyde-Weldon Amendment, 114 P.L. 116, Title V, §507(d), as incorporated in 114 P.L. 223, Title III, Division C, Section 101(a)(8), prohibits any state or local government receiving federal HHS funds from discriminating against any health care entity based on its refusal to "provide, pay for, provide coverage of, or refer for" abortions. Second, Coates-Snow, 42 U.S.C. §238n, prohibits a state or local government that receives federal financial assistance from discriminating against a healthcare entity because it refuses to "perform" induced abortions, "provide referrals for" abortions, or "make arrangements for" abortions. Third, the Church Amendment, 42 U.S.C. §300a-7 prohibits an entity receiving federal funds under a wide range of federal legislation from discriminating against physicians or healthcare personnel because they refuse "to perform or assist in the performance of any sterilization procedure or abortion. . . contrary to [the person's] religious beliefs or moral convictions." The State of Illinois and its political subdivisions are subject to these federal laws by virtue of federal funding of many social welfare programs including Medicare, Medicaid, Child's Health Insurance Program, Head Start, Supplemental Nutrition Assistance Program, and Temporary Assistance for Needy Families. Yet P.A. 99-690 purports to nullify the protection Illinois physicians and health care providers enjoy under these federal laws.

P.A. 99-690 violates federal law in its purpose, practical operation, and effects. Section 6.1(1) compels physicians and other healthcare providers to inform patients about supposed "benefits" of abortions, abortifacient drugs, or sterilization, as legal treatment options. Provision of medical advice within the professional competence of a medical provider is an integral part of medical practice. Yet P.A. 99-690's discussion requirement coerces physicians and other healthcare providers, against their consciences, to assist in the promotion and provision of abortion or sterilization. This result, we believe, is directly contrary to the federal laws cited. In addition, Section 6.1(3)(ii)&(iii) of P.A. 99-690 requires medical professionals, upon request, to refer for abortion or sterilization, or in the alternative, to supply patients with a list of abortion and/or sterilization providers. In this way, P.A. 99-690 coerces physicians and other healthcare providers to promote and participate in abortion and sterilization, contrary to the cited federal laws.

A review of the publicly available committee proceedings and floor debates of the Illinois General Assembly shows that the clear intent of this law was to force medical professionals and their medical facilities to cooperate with abortion in ways that violate the deeply held religious

and moral beliefs of those professionals and facilities. The Illinois General Assembly knew well the risks of enacting P.A. 99-690, as even the fiscal note entered on the bill by the Illinois Department of Healthcare & Family Services recognized that:

> It is unclear if the passage of SB 1564 would jeopardize federal funding for the Illinois Medical Assistance Program. The Church Amendment codified at 42 U.S.C. § 300a-7, stipulates that for healthcare services funded in whole or in part by a program administered by the U.S. Department of Health and Human Services (HHS), no person may be required to 'perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions.' *The requirement in SB 1564 that the provider refer individuals to other providers who perform the procedure, especially if abortion or sterilization, violates the Church amendment*; such referral could be interpreted as assistance with a morally objectionable procedure.

(emphasis added). See Bill Status of P.A. 99-690, at http://www.ilga.gov/legislation/billstatus.asp?DocNum=1564&GAID=13&GA=99&DocTypeID=SB&LegID=88256&SessionID=88&SpecSess= (accessed on December 19, 2017).

P.A. 99-690 also violates our clients' First Amendment rights to free speech and the free exercise of religion. The law is content-based, compelling speech, and viewpoint discriminatory, targeting only conscientious objectors. It is not religiously neutral because on its face it blatantly discriminates against the religious beliefs and practices of pro life physicians and health providers. The unconstitutionality of P.A. 99-690 was recognized earlier this year when its application against conscientious objectors was preliminarily enjoined on First Amendment grounds. See *NIFLA, et al., v. Rauner, et al.*, 16 C 51030, (N.D. Ill., July 19, 2017, Hon. Frederick J. Kapala, attached as **Exhibit 2**. The decision did not, however, find that the Plaintiffs had a private right of action under the Coates-Snowe Amendment, observing that "enforcement of § 238n is left up to the Department of Health and Human Services which may terminate funding in the event of non-compliance. See 45 C.F.R. § 88.2." *Id.* at p.4.

We are therefore requesting the Office of Civil Rights of the Department of Health and Human Services to investigate this complaint that alleges that P.A. 99-690 violates the federal laws cited, and to act to prohibit enforcement of P.A. 99-690 by the State of Illinois against our clients and all similarly situated health care providers in the State through all means at its disposal. We urge the Office to take prompt and effective action to prevent the State of Illinois from ever using P.A. 99-690 to punish physicians and healthcare providers who refrain, because of conscience, to counsel patients about so-called benefits of abortion or who refrain from assisting women desiring an abortion by referring them to (or providing information about) abortion providers.

We also respectfully request, for the benefit of physicians and healthcare providers throughout the nation, that your office issue interpretive guidelines making it clear that the cited federal

laws reach, and prohibit, any state law which, like P.A. 99-690, targets and punishes religious and conscience-based opposition to the practice of abortion. The cited federal laws were enacted precisely to protect conscience-based refusals to participate in abortion, and should be interpreted so as to be effective in prohibiting state laws like P.A. 99-690, which seek to force conscience objectors to participate in and promote abortion against their will. Without this office's interpretive guidance some states will continue to interpret these laws in ways contrary to their manifest purpose, and will continue to enact laws punishing conscience-based refusals to participate in abortion, as did Illinois through enactment of P.A. 99-690. Such state actions flouting the federal laws cited should not be countenanced. This office's regulatory guidance would facilitate that desired outcome.

Thank you for considering this complaint. Contact the undersigned in the event additional information is needed to bring your investigation to conclusion.

Respectfully,

Counsel, Thomas More Society
19 South LaSalle Street, Suite 603
Chicago, IL 60603
tolp@thomasmoresociety.org

Enclosures:
Exhibit 1 - Text of P.A.99-690
Exhibit 2 - Hon. Frederick J. Kapala's decision in *NIFLA, et al., v. Rauner*

EXHIBIT ONE

AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Health Care Right of Conscience Act is amended by changing Sections 2, 3, 6, and 9 and by adding Sections 6.1 and 6.2 as follows:

(745 ILCS 70/2) (from Ch. 111 1/2, par. 5302)

Sec. 2. Findings and policy. The General Assembly finds and declares that people and organizations hold different beliefs about whether certain health care services are morally acceptable. It is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive or accept, or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in <u>providing, paying for, or</u> refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of health care services and medical care. <u>It is also the public policy of the State of</u>

Illinois to ensure that patients receive timely access to information and medically appropriate care.

(Source: P.A. 90-246, eff. 1-1-98.)

(745 ILCS 70/3) (from Ch. 111 1/2, par. 5303)

Sec. 3. Definitions. As used in this Act, unless the context clearly otherwise requires:

(a) "Health care" means any phase of patient care, including but not limited to, testing; diagnosis; prognosis; ancillary research; instructions; family planning, counselling, referrals, or any other advice in connection with the use or procurement of contraceptives and sterilization or abortion procedures; medication; or surgery or other care or treatment rendered by a physician or physicians, nurses, paraprofessionals or health care facility, intended for the physical, emotional, and mental well-being of persons;

(b) "Physician" means any person who is licensed by the State of Illinois under the Medical Practice Act of 1987;

(c) "Health care personnel" means any nurse, nurses' aide, medical school student, professional, paraprofessional or any other person who furnishes, or assists in the furnishing of, health care services;

(d) "Health care facility" means any public or private hospital, clinic, center, medical school, medical training institution, laboratory or diagnostic facility, physician's office, infirmary, dispensary, ambulatory surgical treatment

center or other institution or location wherein health care services are provided to any person, including physician organizations and associations, networks, joint ventures, and all other combinations of those organizations;

(e) "Conscience" means a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths; ~~and~~

(f) "Health care payer" means a health maintenance organization, insurance company, management services organization, or any other entity that pays for or arranges for the payment of any health care or medical care service, procedure, or product; and ~~.~~

(g) "Undue delay" means unreasonable delay that causes impairment of the patient's health.

The above definitions include not only the traditional combinations and forms of these persons and organizations but also all new and emerging forms and combinations of these persons and organizations.

(Source: P.A. 90-246, eff. 1-1-98.)

(745 ILCS 70/6) (from Ch. 111 1/2, par. 5306)

Sec. 6. Duty of physicians and other health care personnel. Nothing in this Act shall relieve a physician from any duty, which may exist under any laws concerning current standards~~,~~ of

~~normal~~ medical practice or care ~~practices and procedures~~, to inform his or her patient of the patient's condition, prognosis, legal treatment options, and risks and benefits of treatment options, provided, however, that such physician shall be under no duty to perform, assist, counsel, suggest, recommend, refer or participate in any way in any form of medical practice or health care service that is contrary to his or her conscience.

Nothing in this Act shall be construed so as to relieve a physician or other health care personnel from obligations under the law of providing emergency medical care.

(Source: P.A. 90-246, eff. 1-1-98.)

(745 ILCS 70/6.1 new)

Sec. 6.1. Access to care and information protocols. All health care facilities shall adopt written access to care and information protocols that are designed to ensure that conscience-based objections do not cause impairment of patients' health and that explain how conscience-based objections will be addressed in a timely manner to facilitate patient health care services. The protections of Sections 4, 5, 7, 8, 9, 10, and 11 of this Act only apply if conscience-based refusals occur in accordance with these protocols. These protocols must, at a minimum, address the following:

(1) The health care facility, physician, or health care personnel shall inform a patient of the patient's

condition, prognosis, legal treatment options, and risks and benefits of the treatment options in a timely manner, consistent with current standards of medical practice or care.

(2) When a health care facility, physician, or health care personnel is unable to permit, perform, or participate in a health care service that is a diagnostic or treatment option requested by a patient because the health care service is contrary to the conscience of the health care facility, physician, or health care personnel, then the patient shall either be provided the requested health care service by others in the facility or be notified that the health care will not be provided and be referred, transferred, or given information in accordance with paragraph (3).

(3) If requested by the patient or the legal representative of the patient, the health care facility, physician, or health care personnel shall: (i) refer the patient to, or (ii) transfer the patient to, or (iii) provide in writing information to the patient about other health care providers who they reasonably believe may offer the health care service the health care facility, physician, or health personnel refuses to permit, perform, or participate in because of a conscience-based objection.

(4) If requested by the patient or the legal representative of the patient, the health care facility,

physician, or health care personnel shall provide copies of medical records to the patient or to another health care professional or health care facility designated by the patient in accordance with Illinois law, without undue delay.

(745 ILCS 70/6.2 new)

Sec. 6.2. Permissible acts related to access to care and information protocols. Nothing in this Act shall be construed to prevent a health care facility from requiring that physicians or health care personnel working in the facility comply with access to care and information protocols that comply with the provisions of this Act.

(745 ILCS 70/9) (from Ch. 111 1/2, par. 5309)

Sec. 9. Liability. No person, association, or corporation, which owns, operates, supervises, or manages a health care facility shall be civilly or criminally liable to any person, estate, or public or private entity by reason of refusal of the health care facility to permit or provide any particular form of health care service which violates the facility's conscience as documented in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

Nothing in this Act ~~act~~ shall be construed so as to relieve a physician, ~~or other~~ health care personnel, or a health care

facility from obligations under the law of providing emergency medical care.

(Source: P.A. 90-246, eff. 1-1-98.)

EXHIBIT TWO

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

National Institute of Family and Life Advocates, et al.,	)	
Plaintiffs,	)	
v.	)	Case No: 16 C 50310
Governor Bruce Rauner, et al.,	)	
Defendants.	)	Judge Frederick J. Kapala

ORDER

Defendants' motion to dismiss plaintiffs' complaint [15] is granted in part and denied in part. Counts II, IV, and V are dismissed in their entirety and those portions of Counts I, III, and V that are based upon the Illinois Constitution are dismissed. All claims against Governor Rauner are dismissed and he is terminated as a defendant in this case. The motion to dismiss is denied in all other respects. Plaintiffs' motion for preliminary injunction [35] is granted.

STATEMENT

Plaintiffs, the National Institute of Family and Life Advocates, four non-profit pro-life pregnancy centers, and Dr. Tina Gingrich, M.D., have filed a Verified Complaint for Injunctive and Declaratory Relief against Illinois Governor Bruce Rauner and Secretary of the Illinois Department of Financial & Professional Regulation Bryan A. Schneider challenging the constitutionality of an amendment to the Illinois Healthcare Right of Conscience Act ("HCRCA"), 745 ILCS 70/1 et seq. This court has jurisdiction under 28 U.S.C. § 1331. Before the court are defendants' motion to dismiss plaintiffs' complaint and plaintiffs' motion for a preliminary injunction. For the reasons that follow, the motion to dismiss is granted in part and denied in part and the motion for a preliminary injunction is granted.

I. BACKGROUND

In the wake of Roe v. Wade, 410 U.S. 113 (1973), Illinois and other states enacted laws protecting physicians, hospitals, and others from civil liability arising from the refusal to recommend, perform, or assist in the performance of an abortion. See 745 ILCS 30/1. The HCRCA was enacted in 1977 "to respect and protect the right of conscience of all persons who refuse to . . . act contrary to their conscience or conscientious convictions in providing . . . health care services and medical care." 745 ILCS 70/2. Consistent with this goal, the HCRCA provides that "[n]o physician or health care personnel shall be civilly or criminally liable . . . by reason of his or her refusal to perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care service which is contrary to the conscience of such physician or health

care personnel." Id. § 70/4. The HCRCA also makes it unlawful for public officials to discriminate against any person, in any manner, in licensing "because of such person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience." Id. § 70/5. "Conscience" is defined as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths." Id. § 70/3(e).

Forty years later, the Illinois General Assembly passed Public Act 99-690, signed into law on July 29, 2016 and effective January 1, 2017, also known as SB 1564 ("the amended act"), which now requires physicians and other health care personnel seeking protection under the HCRCA to adopt and follow certain protocols:

> § 6.1. Access to care and information protocols. All health care facilities shall adopt written access to care and information protocols that are designed to ensure that conscience-based objections do not cause impairment of patients' health and that explain how conscience-based objections will be addressed in a timely manner to facilitate patient health care services. The protections of Sections 4, 5, 7, 8, 9, 10, and 11 of this Act only apply if conscience-based refusals occur in accordance with these protocols. These protocols must, at a minimum, address the following:
>
> (1) The health care facility, physician, or health care personnel shall inform a patient of the patient's condition, prognosis, legal treatment options, and risks and benefits of the treatment options in a timely manner, consistent with current standards of medical practice or care.
>
> (2) When a health care facility, physician, or health care personnel is unable to permit, perform, or participate in a health care service that is a diagnostic or treatment option requested by a patient because the health care service is contrary to the conscience of the health care facility, physician, or health care personnel, then the patient shall either be provided the requested health care service by others in the facility or be notified that the health care will not be provided and be referred, transferred, or given information in accordance with paragraph (3).
>
> (3) If requested by the patient or the legal representative of the patient, the health care facility, physician, or health care personnel shall: (i) refer the patient to, or (ii) transfer the patient to, or (iii) provide in writing information to the patient about other health care providers who they reasonably believe may offer the health care service the health care facility, physician, or health personnel refuses to permit, perform, or participate in because of a conscience-based objection.
>
> (4) If requested by the patient or the legal representative of the patient, the health care facility, physician, or health care personnel shall provide copies of medical records to the patient or to another health care professional or health care facility designated by the patient in accordance with Illinois law, without undue delay.

Id. § 70/6.1. The amended act also includes an affirmative duty that physicians and other health care personnel inform his or her patient of the patient's "legal treatment options, and risks and benefits of treatment options." Id. § 70/6.

Plaintiffs are health care facilities and health professionals who offer medical services to support women in giving birth and discourage them from seeking abortion. Plaintiffs explain that they treat every unborn child as a human being with inalienable dignity and as a patient along with the child's mother. Consequently, their religious and pro-life beliefs prohibit them from providing women with the names of other health care providers who may perform abortions because that would implicate them in destroying a human life and violate one of the leading principles of the Hippocratic Oath, that doctors do no harm to those under their care. Based on these ethical and religious beliefs, plaintiffs do not consider abortion to have medical "benefits," and do not consider abortion a "treatment option." Plaintiffs maintain that the amended act compels them to tell pregnant women the names of other doctors they believe offer abortions, and compels them to tell pregnant women that abortion has "benefits" and is a "treatment option" for pregnancy. Plaintiffs have religious and moral objections to speaking about abortion in these ways.

In their verified complaint for declaratory and injunctive relief, plaintiffs challenge the amended act in five counts. In particular, plaintiffs allege that it violates the Free Speech Clause of the First Amendment to the U.S. Constitution and Article I, § 4 of the Illinois Constitution (Count I); the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 et seq. (Count II); the free exercise of religion clause of the First Amendment to the U.S. Constitution and Article I, § 3 of the Illinois Constitution (Count III); the Coats-Snowe Amendment, 42 U.S.C. § 238n (Count IV); and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 2 of the Illinois Constitution (Count V).

II. MOTION TO DISMISS

Initially, defendants contend that plaintiffs' state-law claims are barred under the sovereign immunity afforded by the Eleventh Amendment. In response, plaintiffs have agreed to withdraw their state-law claims. Accordingly, Count II, advancing a claim under the Illinois Religious Freedom Restoration Act, as well as those portions of Counts I, III, and V based upon the Illinois Constitution are dismissed.

Next, defendants argue that plaintiffs' First Amendment free speech and free exercise claims in Counts I and III fail to state a claim upon which relief can be granted. Although defendants have cited the applicable Twombly/Iqbal plausibility standard in their memorandum of law filed in support of their motion to dismiss plaintiffs' complaint, they have not incorporated that standard into their arguments seeking dismissal of the First Amendment claims in Counts I and III. Instead, defendants contend, for example, that intermediate scrutiny should be applied, not strict scrutiny, but that the amended act survives either; and that the amended act imposes no substantial burden on plaintiffs' exercise of religion. These are substantive arguments more appropriately made in opposing plaintiffs' request for a preliminary injunction or for a permanent injunction, not arguments that plaintiffs' complaint is somehow insufficiently pleaded. Thus, defendants have advanced an insufficient basis to dismiss Counts I and III. In any event, in light of this court's finding below that plaintiffs have made a substantial showing of a likelihood of success on the merits of their claim

under the Free Speech Clause of the First Amendment, defendants' motion to dismiss Counts I and III is denied.

Next, defendants argue that plaintiffs' Coates-Snowe Amendment claim in Count IV fails because: (1) § 238n prohibits discrimination against any "health care entity" which "includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions," 42 U.S.C. § 238n(c)(2), and therefore the only plaintiff afforded protection is Dr. Gingrich; (2) there is no private right of action under § 238n; and (3) even if there were such an action, plaintiffs have failed to state a claim under § 238n. The relevant part of the Coates-Snowe Amendment prohibits health care entities that receive federal financial assistance from discriminating on the basis that the entity refuses to perform or provide training in the performance of abortion or to refer for abortion or such training. Id. § 238n(a). However, because the court agrees that the Coates-Snowe Amendment does not confer a private right of action for such discrimination, it need not reach defendants' other arguments. Section 238n does not contain an express private right of action and a strong presumption exists against creation of an implied right of action. See Endsley v. City of Chi., 230 F.3d 276, 281 (7th Cir. 2000). Instead, enforcement of § 238n is left up to the Department of Health and Human Services which may terminate funding in the event of non-compliance. See 45 C.F.R. § 88.2. Plaintiffs do not cite any legislative history to suggest a private right of action was intended nor do they cite any decision where such an action has been recognized. Therefore, this court, "will not imply a private right of action where none appears in the statute," Endsley, 230 F.3d at 281, and Count IV is dismissed.

Next, defendants argue that plaintiffs' equal protection claim under the Fourteenth Amendment fails because they have not pleaded dissimilar treatment of similarly situated classes. Defendants also argue that Count V should be dismissed because plaintiffs' equal protection claim adds nothing to their First Amendment free exercise claim. Irrespective of whether plaintiff's have identified similarly situated groups that are treated dissimilarly under the amended act, they have pleaded that such differential treatment impairs their fundamental right of freedom of religion. Plaintiffs do maintain that they have stated an Equal Protection claim by pleading dissimilar treatment of similarly situated classes, but they do not dispute the contention that their equal protection claim adds nothing to their First Amendment claims. Consequently, the court agrees that plaintiffs' Fourteenth Amendment Equal Protection claim in Count V is unnecessary and redundant in light of the more specific First Amendment free exercise claim in Count III. See Goodman v. Carter, No. 2000 C 948, 2001 WL 755137, at *7 (N.D. Ill. July 2, 2001) (finding a separate equal protection analysis unnecessary because "the protection afforded religious practice by the Equal Protection Clause is no greater than that granted by the First Amendment"). Accordingly, Count V is dismissed.

Finally, defendants argue that plaintiffs' claims against Governor Rauner should be dismissed because he is not a proper defendant in a case challenging the constitutionality of a state statute. In support of this argument, defendants cite Johnson v. Rauner, No. 15 C 131, 2016 WL 3917372, at *3 (N.D. Ill. July 20, 2016) (dismissing Governor Rauner as defendant in an action challenging the Sex Offender Registration Act on constitutional grounds); Illinois League of Advocates for the Developmentally Disabled v. Quinn, No. 13 C 1300, 2013 WL 5548929, at *4 (N.D. Ill. Oct. 8, 2013) (citing Ex Parte Young, 209 U.S. 123, 157 (1908), in concluding that Governor Quinn was

not a proper defendant because the proper defendant has some connection with the enforcement of the challenged law and the governor's general obligations to enforce the law are insufficient); Weinstein v. Edgar, 826 F. Supp. 1165, 1166 (N.D. Ill. 1993) ("Implicit in the right to sue state officials for prospective injunctive relief, however, is the requirement that the state official bear some connection with the enforcement of the challenged statute."). In response, plaintiffs do not take issue with these authorities or maintain that they are somehow inapplicable or distinguishable. Instead, plaintiffs simply argue that the injunction issued in Morr-Fitz, Inc. v. Quinn, 2012 IL App (4th) 110398, ¶ 84, enjoined "all defendants" which included Governor Pat Quinn. The problem with plaintiffs' argument is that there is no indication that Governor Quinn ever moved to dismiss the claims brought against him in Morr-Fritz. Accordingly, the claims against Governor Rauner are dismissed and he is terminated as a defendant in this case.

III. MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs move, based on their claim under the Free Speech Clause of the First Amendment, for a preliminary injunction enjoining defendants from enforcing the amended act to the extent that enforcement would penalize health facilities or professionals who object to furnishing information about other health care providers who offer abortion or who object to describing abortion as a beneficial treatment option.[1] Defendants' oppose the motion. When bringing a motion for a preliminary injunction, plaintiffs must demonstrate: (1) that they are likely to succeed on the merits of their claim; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). "The purpose of [a preliminary injunction] is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." Trump v. Int'l Refugee Assistance Project, 582 U.S. ____, No. 16-1436, 2017 WL 2722580, at *5 (U.S. June 26, 2017). The Seventh Circuit has recently explained that in First Amendment cases such as this the likelihood of success on the merits is the lynchpin factor:

> [I]n First Amendment cases, the likelihood of success on the merits will often be the determinative factor. That is because even short deprivations of First Amendment rights constitute irreparable harm, and the balance of harms normally favors granting preliminary injunctive relief because the public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional. So the analysis begins and ends with the likelihood of success on the merits of the [First Amendment] claim.

Higher Soc'y of Ind. v. Tippecanoe Cty., Ind., 858 F.3d 1113, 1116 (7th Cir. 2017) (citations omitted). "[T]he threshold for demonstrating a likelihood of success on the merits is low." D.U. v. Rhoades, 825 F.3d 331, 338 (7th Cir. 2016). "[P]laintiff's chances of prevailing need only be better

[1]Plaintiffs also move for a preliminary injunction based on their claim under the First Amendment Free Exercise Clause. However, because the court grants plaintiffs a preliminary injunction based on their First Amendment Free Speech claim and has enjoined enforcement of the amended act against them, the court need not address plaintiffs' free exercise claim. The parties will have a full and fair opportunity to litigate that claim as this case moves forward.

than negligible." Id. The court will therefore address the likelihood of plaintiffs' success on the merits of their First Amendment Free Speech claim.

The First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment, prohibits states from enacting laws "abridging the freedom of speech." U.S. Const. amend. I. The Free Speech Clause of the First Amendment provides protection from both government suppressed speech and government compelled speech. Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., ___ U.S. ___, 133 S. Ct. 2321, 2327 (2013) ("It is . . . a basic First Amendment principle that freedom of speech prohibits the government from telling people what they must say."); Knox v. Serv. Employees Int'l Union, Local 1000, 567 U.S. 298, 309 (2012) ("The government may not prohibit the dissemination of ideas that it disfavors, nor compel the endorsement of ideas that it approves."). Thus, the First Amendment prohibits not only direct burdens on speech, but also indirect burdens that are created when the government conditions receipt of a benefit on compelling or foregoing constitutionally-protected speech. See Perry v. Sindermann, 408 U.S. 593, 597 (1972). This principle, known as the unconstitutional conditions doctrine, acknowledges that the government, having no obligation to furnish a benefit, nevertheless cannot force a citizen to choose between a benefit and free speech. Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47, 59-60 (2006); Perry, 408 U.S. at 597.

The parties dispute the proper level of scrutiny that should be applied to the amended act. Defendants contend that intermediate scrutiny applies to legislation like the amended act which regulates professional speech. Plaintiffs, on the other hand, contend that the amended act is subject to strict scrutiny because it is a content- and viewpoint-based regulation.

In support of their position, defendants argue that federal courts have generally applied intermediate scrutiny to regulations aimed at medical professionals. For example, defendants cite National Institute of Family and Life Advocates v. Harris, wherein the Ninth Circuit applied intermediate scrutiny to a California law requiring all pregnancy-related clinics to disseminate a notice stating the existence of publicly-funded family-planning services, including contraception and abortion. 839 F.3d 823, 828 (9th Cir. 2016). The Ninth Circuit only did so, however, after concluding that the law, while content-based because it required speech on a particular matter, did not discriminate based on viewpoint because it "applies to all licensed and unlicensed facilities, regardless of what, if any, objections they may have to certain family-planning services." Id. at 835. Thus, neither Harris nor the other cases cited by defendants stand for the proposition that content-based laws that discriminate based on viewpoint are subject to intermediate scrutiny.

In any event, in this court's view, any dispute about the applicable level of scrutiny to be applied to the amended act is resolved by the Supreme Court's recent decision in Matal v. Tam, 582 U.S. ____, No. 15-1293, 2017 WL 2621315 (U.S. June 19, 2017). In Tam, the question of whether trademarks are commercial speech to which the relaxed scrutiny, i.e. intermediate scrutiny, applied was left unanswered in the opinion of the Court because the Court concluded that the regulation under review did not withstand even relaxed scrutiny. Id. at *18-19. Nevertheless, in concurring opinions, five justices agreed that even commercial speech that is viewpoint discriminatory is subject to heightened or strict scrutiny. Id. at *23 ("Commercial speech is no exception, the Court has explained, to the principle that the First Amendment requires heightened scrutiny whenever the government creates a regulation of speech because of disagreement with the message it conveys.

Unlike content based discrimination, discrimination based on viewpoint, including a regulation that targets speech for its offensiveness, remains of serious concern in the commercial context." (citations omitted) (Kennedy, J. with Ginsburg, Sotomayor, and Kagan J.J.); id. at *25 ("I also write separately because I continue to believe that when the government seeks to restrict truthful speech in order to suppress the ideas it conveys, strict scrutiny is appropriate, whether or not the speech in question may be characterized as commercial.") (Thomas, J., concurring in part and concurring in judgment)). Thus, it is clear that the prevailing view of a majority of the Supreme Court is that content-based laws that discriminate based on point of view, even if for the purpose of regulating commercial or professional speech, are still subject to strict scrutiny.

In this case, there is a substantial likelihood that plaintiffs will be successful in demonstrating that the amended act is content-based because it "[m]andat[es] speech that a speaker would not otherwise make" which "necessarily alters the content of the speech." Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 795 (1988). Defendants do not advance a discernible argument that the amended act is not content-based. The parties do dispute, however, whether the amended act is viewpoint discriminatory. A law discriminates based on viewpoint when it regulates speech "based on the specific motivating ideology or the opinion or perspective of the speaker [and] is a more blatant and egregious form of content discrimination." Reed v. Town of Gilbert, Ariz., 576 U.S. ___, 135 S. Ct. 2218, 2230 (2015).

Defendants maintain that the pre-existing ethical standards of informed consent governing the medical profession, which are incorporated into Illinois law, unambiguously require health care providers to disclose all relevant treatment options to their patients. Defendants argue that the HCRCA was amended to ensure that health care providers with conscience-based objections to certain treatments nevertheless provide their patients with certain information to make an informed decision regarding their health, and thus the amended act is not a viewpoint-based law.

However, the HCRCA was enacted to excuse health care providers from performing legal treatment options like abortion because they had conscience-based objections and the HCRCA provided them with protection from any resulting civil liability or professional discipline. 745 ILCS 70/4. The HCRCA also excused such health care providers from referring their patients to other providers who would perform the abortion and excused them from in any way assisting, counseling, suggesting, recommending, or participating in abortion as a legal treatment option. Id. The amended act fundamentally changes the HCRCA by conditioning its protection on a protocol requiring health care providers with conscience-based objections to abortion to now do some of the things the HCRCA formerly excused them from doing. In particular, the amended act now requires plaintiffs to inform their patients about abortion and counsel them on the risks and benefits of abortion. Id. § 70/6.1(1). In addition, if requested by the patient or her legal representative, those with conscience-based objections must now either refer their patient to a provider who will perform the abortion, transfer her to a provider who will perform the abortion, or provide her with the information about other providers who will perform the abortion. Id. § 70/6.1(3). It is clear that the amended act targets the free speech rights of people who have a specific viewpoint. Thus, plaintiffs have demonstrated a better than negligible chance of succeeding in showing that the amended act discriminates based on their viewpoint by compelling them to tell their patients that abortion is a legal treatment option, which has benefits, and, at a minimum and upon request, to give their patients

the identifying information of providers who will perform an abortion. Moreover, in conditioning the protections of the HCRCA on compelled speech, the amended act has potentially violated the unconstitutional conditions doctrine. See Rumsfeld, 547 U.S. at 59-60 (explaining that while the government has no obligation to furnish a benefit it cannot force a citizen to choose between a benefit and free speech); see also United States v. American Library Ass'n, Inc., 539 U.S. 194, 210 (2003).("[T]he government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.").

A comparison to the regulation under review in Harris demonstrates the viewpoint discrimination present in the amended act. The law being challenged in Harris required that all licensed and unlicensed pregnancy-related clinics disseminate a notice stating the existence of publically-funded family-planning services, including contraception and abortion. Harris, 839 F.3d at 828-29. In concluding that the law did not discriminate based on the point of view or ideology of the compelled speaker, the court in Harris relied on the circumstance that the law applied to all pregnancy-related clinics "regardless of what, if any, objections they may have to certain family-planning services." Id. at 835. In contrast, the amended act under review in this case applies only to health care providers with conscience-based objections to certain legal treatment options such as abortion. Therefore, the court finds that plaintiffs have demonstrated a likelihood of showing that the amended act discriminates against health care providers that are of the point of view that abortion is wrong by compelling only them to speak a message that, from their viewpoint, is abhorrent.

Having found that plaintiffs have demonstrated a likelihood of success in showing that the amended act is content-based and viewpoint discriminatory, the amended act will be subject to strict scrutiny, that is, it must be the least restrictive means of achieving a compelling state interest. See McCullen v. Coakley, 573 U.S. ___, 134 S. Ct. 2518, 2530 (2014). Defendants contend that even if strict scrutiny applies, the amended act survives because it is the least restrictive means of protecting Illinois' compelling interest in protecting the health and autonomy of its citizens by ensuring that they receive information that they need to make informed medical decisions. Plaintiffs argue that defendants have not demonstrated a need for the compelled speech, let alone a compelling state interest in having those with conscience-based objections to make these statements to their patients. Defendants also argue that the requirements of the amended act, particularly the compelled discussion of abortion as a legal treatment option and providing the patient with information about other health care providers who they reasonably believe may offer abortion, are clearly not the least restrictive means to achieve this interest when this information is or could be provided through other means such as telephone directories and internet websites. At this stage of the litigation and on this record, suffice it to say that defendants have yet to satisfy their burden of proving that the compelled speech requirements of the amended act are the least restrictive means of achieving its interest. See St. John's United Church of Christ v. City of Chi., 502 F.3d 616, 646 (7th Cir. 2007) (noting that under strict scrutiny review, the government bears the burden of proving both elements). In contrast, plaintiffs have demonstrated a better than negligible chance of showing that Illinois has multiple options less restrictive than compelling those with conscience-based objections to abortion to communicate to a patient that abortion is a legal treatment option as well as the information she will need to obtain an abortion. Moreover, the special concern of overburdening speech is implicated when, as here, the compelled speech is on a matter of public debate:

> Regardless of whether less restrictive means exist, the Services Disclosure overly burdens Plaintiffs' speech. When evaluating compelled speech, we consider the context in which the speech is made. Here, the context is a public debate over the morality and efficacy of contraception and abortion, for which many of the facilities regulated by Local Law 17 provide alternatives. [E]xpression on public issues has always rested on the highest rung on the hierarchy of First Amendment values. Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech. A requirement that pregnancy services centers address abortion, emergency contraception, or prenatal care at the beginning of their contact with potential clients alters the centers' political speech by mandating the manner in which the discussion of these issues begins.

Evergreen Ass'n, Inc. v. City of N.Y., 740 F.3d 233, 249 (2d Cir. 2014) (citations omitted).

The court finds further that even if the intermediate scrutiny applicable to laws regulating professional or commercial speech were applied in this case, see Central Hudson Gas & Elec. Corp. v. Public Serv. Comm. of New York, 447 U.S. 557, 561-62 (1980), plaintiffs have demonstrated a better than negligible chance of showing that the amended act would still likely fail. Once again, at this stage of the litigation and on this record, defendants have not proven that the amended act is narrowly tailored to achieve a substantial government interest. See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 71 n.20 (1983) ("The party seeking to uphold a restriction on commercial speech carries the burden of justifying it."). Plaintiffs have, on the other hand, demonstrated a better than negligible chance of showing that a law compelling the health care provider with conscience-based objections to abortion to serve as the source of information about the legal treatment option of abortion and to serve as a directory of health care providers performing abortions is not narrowly tailored to achieve a substantial government interest. For these reasons, plaintiffs have demonstrated a likelihood of success on their First Amendment Free Speech claim and a preliminary injunction will issue.[2]

IV. CONCLUSION

For these reasons, defendants' motion to dismiss is granted in part and denied in part. Plaintiff's motion for a preliminary injunction is granted. The Secretary of the Illinois Department of Financial & Professional Regulation is hereby enjoined pursuant to Federal Rule of Civil Procedure 65(a) from enforcing the amended act to the extent that enforcement would penalize health care facilities, health care personnel, or physicians who object to providing information about health care providers who may offer abortion or who object to describing abortion as a beneficial

[2]Even if the court were to consider the remaining factors, the court would find that they weigh in favor of granting the preliminary injunction. The second factor is satisfied because irreparable harm is presumed. See Christian Legal Soc'y v. Walker, 453 F.3d 853, 867 (7th Cir. 2006) ("Violations of First Amendment rights are presumed to constitute irreparable injuries."). With respect to factors three and four, the court concludes that in balancing the equities in consideration of the public interest, Illinois is not harmed by preliminarily enjoining the enforcement of a law that probably violates the First Amendment. See Higher Soc'y of Ind. 858 F.3d at 1116. Moreover, the legal right to an abortion is widely known and a person desiring such a procedure, except in the most extraordinary circumstances, would have little difficulty in finding a provider.

treatment option. This preliminary injunction is effective until the conclusion of this action or further order of the court.

Date: 7/19/2017

ENTER:

FREDERICK J. KAPALA
District Judge

Exhibit 14

Form Approved: OMB No. 0990-0269.
See OMB Statement on Reverse.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE FOR CIVIL RIGHTS (OCR)

CIVIL RIGHTS DISCRIMINATION COMPLAINT

YOUR FIRST NAME	YOUR LAST NAME
[redacted]	[redacted]
H[redacted] / CELL PHONE (Please include area code)	W[redacted] ONE (Please include area code)
S[redacted] x_____	
S[redacted]	CITY [redacted]
ST [redacted]	ZIP [redacted]
E-MAIL ADDRESS (If availa[redacted]	

Are you filing this complaint for someone else? ☐ Yes ☒ No

If Yes, whose civil rights do you believe were violated?

FIRST NAME	LAST NAME

I believe that I have been (or someone else has been) discriminated against on the basis of:

☐ Race / Color / National Origin ☐ Age ☒ Religion / Conscience ☐ Sex

☐ Disability ☐ Other (specify): _____

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

State of Wisconsin Department of Safety and Professional Services

STREET ADDRESS	CITY
4822 Madison Yards Way	Madison
STATE: Wisconsin	ZIP: 53705
PHONE (Please include area code): [redacted]	

When do you believe that the discrimination occurred?

LIST DATE(S)

04/13/2005

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.
(Attach additional pages as needed)

In Wisconsin in 2002 as a pharmacist I did not feel comfortable with a prescription refill. I determined that the refill was being used for contraception. Therefore, I made a conscientious objection out of a sincerely held religious belief not to dispense or to participate in the transfer of the refill order.

The State Board of Pharmacy determined that my objection was "unprofessional." I was formally

This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE	DATE *(mm/dd/yyyy)*
[redacted]	09/17/2018

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: **www.hhs.gov/ocr/civilrights/complaints/index.html**. To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

☐ Braille ☐ Large Print ☐ Cassette tape ☐ Computer diskette ☐ Electronic mail ☐ TDD

☐ Sign language interpreter (specify language): _____

☐ Foreign language interpreter (specify language): _____ ☐ Other: _____

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME	LAST NAME
HOME PHONE (Please include area code)	WORK PHONE (Please include area code)

STREET ADDRESS	CITY

STATE	ZIP	E-MAIL ADDRESS (If available)

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (If known)

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)

☐ Hispanic or Latino

☐ Not Hispanic or Latino

RACE (select one or more)

☐ American Indian or Alaska Native ☐ Asian ☐ Native Hawaiian or Other Pacific Islander

☐ Black or African American ☐ White ☐ Other (specify): _____

PRIMARY LANGUAGE SPOKEN (if other then English) _____

How did you learn about the Office for Civil Rights?

☐ HHS Website/Internet Search ☐ Family/Friend/Associate ☐ Religious/Community Org ☐ Lawyer/Legal Org ☐ Phone Directory ☐ Employer

☐ Fed/State/Local Gov ☐ Healthcare Provider/Health Plan ☐ Conference/OCR Brochure ☐ Other (specify): _____

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human Services
Office for Civil Rights
Centralized Case Management Operations
200 Independence Ave., S.W.
Suite 515F, HHH Building
Washington, D.C. 20201
Customer Response Center: (800) 368-1019
Fax: (202) 619-3818
TDD: (800) 537-7697
Email: ocrmail@hhs.gov

Burden Statement

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**

HHS-699 (7/09) (BACK)

COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.

- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.

- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

After reading the above information, please check ONLY ONE of the following boxes:

[X] **CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

[ ] **CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: [redacted] Date: 09/17/2018

**Please sign and date* [redacted] *ed to sign if submitting this form by email because submission by email represents your signature.*

Name (Please print): [redacted]

Address: [redacted]

Telephone Number: [redacted] x (H)

NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:
(i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
(ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
(iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
(iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 et seq.) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS "designated agency" authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
(v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.

OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

(i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
(ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
(iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
(iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

Freedom of Information Act
A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

Fraud and False Statements
Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".

PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

HOW DOES OCR PROTECT MY PERSONAL INFORMATION?

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

CAN I SEE MY OCR FILE?

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

CAN OCR GIVE MY FILE TO ANY ONE ELSE?

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.

CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed $100.00.

If you have any questions about this complaint and consent package, Please contact OCR at http://www.hhs.gov/ocr/office/about/contactus/index.html

OR

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

Exhibit 15

Conscientious refusals to refer: findings from a national physician survey

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ABSTRACT

Background Regarding controversial medical services, many have argued that if physicians cannot in good conscience provide a legal medical intervention for which a patient is a candidate, they should refer the requesting patient to an accommodating provider. This study examines what US physicians think a doctor is obligated to do when the doctor thinks it would be immoral to provide a referral.

Method The authors conducted a cross-sectional survey of a random sample of 2000 US physicians from all specialties. The primary criterion variable was agreement that physicians have a professional obligation to refer patients for all legal medical services for which the patients are candidates, even if the physician believes that such a referral is immoral.

Results Of 1895 eligible physicians, 1032 (55%) responded. 57% of physicians agreed that doctors must refer patients regardless of whether or not the doctor believes the referral itself is immoral. Holding this opinion was independently associated with being more theologically pluralistic, describing oneself as sociopolitically liberal, and indicating that respect for patient autonomy is the most important bioethical principle in one's practice (multivariable ORs, 1.6–2.4).

Conclusions Physicians are divided about a professional obligation to refer when the physician believes that referral itself is immoral. These data suggest there is no uncontroversial way to resolve conflicts posed when patients request interventions that their physicians cannot in good conscience provide.

INTRODUCTION

Few issues in medicine pique professional and public interest more than debates over physician conscientious refusals.[1–6] These debates take place within and are informed by broader disagreements over how to balance and prioritise different ethical principles and concerns in the practice of medicine. Physicians' freedom to refuse medical interventions for reasons of conscience has been defended on the grounds that medicine as a moral practice depends on physicians doing that which they in good faith believe is in the patient's interest, and also that physicians have a right to protect their integrity by acting according their values.[7–10] Yet, critics argue that such refusals violate patient autonomy[11–13] and unjustly make patients' access to healthcare services dependent on the personal values of individual physicians.[6 14]

A commonly proposed solution seeks to balance competing concerns by permitting refusals so long as the physician refers the patient to a provider who will accommodate the request.[8 15–17] Dan Brock argues that this 'conventional compromise' respects individual physicians' integrity while fulfilling the medical profession's obligation to make the full range of legal medical interventions available to patients.[15] Previous studies suggest that most physicians agree both that doctors are not obligated to do something they think is immoral and that they should provide a referral for services they are unwilling to provide themselves.[18 19] But what about those situations in which a physician believes that making a referral is itself immoral? Brock and others have argued that physicians must refer in these cases or face professional sanction,[15 20] but to date no empirical studies have examined the views of practicing physicians.

We examined data from a national survey to describe physicians' beliefs about whether or not they have a professional obligation to refer patients even when they believe the referral itself is immoral. In addition, we sought to clarify how theoretical ethics informs physicians' judgement in this area by asking physicians to indicate which bioethical principle—among beneficence, respect for autonomy, and justice[21]—is most important to their practice. Despite the prominence of these principles in medical ethics discourse, no empirical studies have assessed how physicians rank their priority with respect to clinical practice. Building on prior studies, we examined the relationships between believing that doctors are always obligated to refer, identifying autonomy as the most important principle in one's practice, and physicians' demographic, religious and sociopolitical characteristics.

METHODS

The methods of this study have been described elsewhere.[22] In 2009 we mailed a confidential, self-administered questionnaire up to three times to a random sample of 2000 practicing US physicians, aged 65 years or younger and from all specialties, selected from the American Medical Association Masterfile. The initial mailing included a gift, and an additional US$25 was promised to those who responded. The Mayo Clinic Institutional Review Board approved this study.

Questionnaire

Our primary criterion variable was agreement with the statement: 'Physicians have a professional obligation to refer patients for all legal medical services for which the patients are candidates, even if the physician believes that such a referral is immoral'. We also asked: 'Which of the following ethical principles is the most important in your practice as a physician? (1) Respect for autonomy—honouring the rights of patients to make decisions

for themselves; (2) Justice—seeking fair treatment of patients based on medical need and fair distribution of healthcare resources; and (3) Beneficience/non-maleficence—promoting the wellbeing of patients and preventing illness, while minimising harm.'

Primary predictor variables were physicians' religious characteristics and sociopolitical views. Religious affiliation was categorised as: no religion, Jewish, Roman Catholic or Eastern Orthodox, non-evangelical Protestants (includes non-evangelical other Christians), evangelical Protestants (includes evangelical other Christians) and other religions. Religious salience[23 24] was assessed with the question: 'How important would you say your religion is in your life?' Responses were: 'the most important part of my life', 'very important', 'fairly important', 'not very important' and 'not applicable—I have no religion'; the last two categories were collapsed into one. Spirituality was measured by asking: 'To what extent do you consider yourself a spiritual person?' Responses were: 'very spiritual', 'moderately spiritual', 'fairly spiritual' and 'not very spiritual'.

Additionally, we scored physicians on a scale of theological pluralism—the extent to which physicians believe that no religion is uniquely and comprehensively true. An earlier study found that physicians with high theological pluralism were more likely to endorse nondirective counsel in areas of moral controversy.[25] We asked physicians to rate their level of agreement with three statements: (1) There is truth in one religion; (2) Different religions have different versions of the truth and each may be equally right in its own way; and (3) There is no one, true, right religion. Responses were scored on a four point scale from 'agree strongly' to 'disagree strongly'. After reverse-scoring the first statement, responses were summed (Cronbach α=0.75) and scores trichotomised into low, moderate and high theological pluralism.

Sociopolitical views were measured by responses to the question, 'How would you characterise yourself on social issues?' Responses were: 'conservative', 'moderate', 'liberal' and 'other'. Secondary predictors included age, sex, race, region of the country and medical specialty.

Statistical analyses

After generating population estimates from physicians' responses to each item, we used the χ^2 test to examine associations between the two primary criterion variables, and between each criterion and each predictor. We then used multiple logistic regression to test whether bivariate associations remained after adjustment for relevant covariates. All analyses were conducted with Stata SE statistical software V.11.0. Respondents who left items blank were omitted from analysis of those items.

RESULTS

Of the 2000 physicians surveyed, 5% (n=105) could not be contacted. Of 1895 eligible physicians, 1032 completed the survey, giving a cooperation rate of 55%.[26] Table 1 displays the demographic, religious and sociopolitical characteristics of respondents.

As seen in table 2, the majority (57%) of respondents agreed that physicians have a professional duty to refer patients for all legal medical services for which the patients are candidates, even if the physician believes that such a referral is immoral. Almost two thirds (64%) indicated that beneficence was the most important ethical principle to their medical practice, one in four (26%) indicated respect for autonomy and one in 10 (10%) indicated justice.

Table 1 Demographic, religious, and sociopolitical characteristics of survey respondents (n=1032*)

Characteristics	n (%)
Male	728 (72)
Female	283 (28)
Race (n=1011)	
White	786 (78)
Asian	146 (14)
Other	54 (5)
Black	25 (2)
Region (n=1015)	
South	331 (33)
Midwest	251 (25)
Northeast	227 (22)
West	206 (20)
Medical specialty (n=1032)	
General medicine	183 (18)
Medicine subspecialty	197 (19)
Family practice	119 (12)
Surgery	158 (15)
OB/gyn	47 (5)
Psychiatry	66 (6)
Pediatrics & peds. subspecialties	131 (13)
Diagnostic (pathology & radiology)	54 (5)
Anaesthesiology	66 (6)
Non-clinical/other	11 (1)
Religious affiliation (n=994)	
No religion	146 (15)
Jewish	136 (14)
Roman Catholic/Eastern orthodox	238 (24)
Non-evangelical protestant†	249 (25)
Evangelical protestant†	87 (9)
Other religion	138 (14)
Religious Salience (n=1003)	
Not important	300 (30)
Fairly important	285 (28)
Very important	313 (31)
Most important thing in my life	105 (10)
Spirituality (n=1000)	
Not spiritual	115 (12)
Moderately spiritual	231 (23)
Slightly spiritual	397 (40)
Very spiritual	257 (26)
Theological pluralism (n=977)	
Low	274 (28)
Moderate	265 (27)
High	438 (45)
Sociopolitical views (n=1018)	
Conservative	291 (29)
Moderate	426 (42)
Liberal	281 (28)
Other	20 (2)

The mean age (SD) of respondents was 49.8 (8.7) years.
*Not all values sum to 1032 due to partial non-response.
†Protestant includes those who identified as 'Other Christian'.

Table 3 presents the incidence and odds of agreeing that physicians must refer even if they believe that referral is itself immoral, stratified by physicians' religious characteristics, sociopolitical views, and the ethical principle most important to their practice. After adjusting for potential covariates, physicians remained more likely to agree that they were obligated to refer if they had moderate or high theological pluralism (compared to low theological pluralism, OR 1.6, 95% CI 1.1 to 2.5 and OR 1.9, 95% CI 1.3 to 2.8, respectively), they self-identified as liberal

Table 2 US physicians' responses regarding whether physicians are professionally obligated to refer even if the physician believes the referral is immoral, and which bioethical principle is most important to their practice

Response	n (%)
Survey item: Physicians have a professional obligation to refer patients for all legal medical services for which the patients are candidates, even if the physician believes that such a referral is immoral. (n=997)	
Strongly agree	268 (27)
Moderately agree	298 (30)
Moderately disagree	245 (25)
Strongly disagree	186 (19)
Survey item: Which of the following ethical principles is the most important to your practice as a physician? (n=1000)	
Beneficence/non-maleficence	641 (64)
Respect for autonomy	255 (26)
Justice	104 (10)

(OR 2.4, 95% CI 1.5 to 3.8, compared to conservative) or they rated respect for autonomy as the most important ethical principle (OR 1.6, 95% CI 1.1 to 2.3, compared to beneficence/nonmaleficence).

After adjusting for relevant covariates, physicians' beliefs about referral were not associated with age, gender or region.

Table 3 Association of physicians' religious, spiritual, theological and sociopolitical characteristics with agreement that physicians are professional obligated to refer patients even if they believe the referral is immoral

Characteristic	n (%)	p Value ($\chi 2$)	OR (95% CI)
Religious affiliation (n)			
No religion (144)	102 (71)		1.0 referent
Jewish (135)	83 (61)	<0.001	0.8 (0.3 to 1.7)
Roman Catholic/Eastern Orthodox (236)	112 (47)		0.7 (0.3 to 1.5)
Non-evangelical Protestant (235)	127 (54)		1 (0.5 to 2.1)
Evangelical Protestant (100)	45 (45)		0.8 (0.3 to 2.1)
Other religion (136)	91 (67)		1.9 (0.8 to 4.5)
Religious salience† (n)			
Not important	199 (67)		1.0 referent
Fairly important	179 (63)	<0.001	1.0 (0.7 to 1.6)
Very important	148 (48)		0.7 (0.4 to 1.1)
Most important thing in my life	39 (38)		0.5 (0.3 to 1.02)
Spiritualilty† (n)			
Not spiritual	71 (62)		1.0 referent
Moderately spiritual	140 (61)	0.005	1.2 (0.7 to 2.1)
Slightly spiritual	233 (59)		1.5 (0.8 to 2.6)
Very spiritual	121 (47)		1.2 (0.6 to 2.2)
Theological pluralism† (n)			
Low	111 (41)		1.0 referent
Moderate	156 (60)	<0.001	1.6* (1.1 to 2.5)
High	286 (66)		1.9* (1.3 to 2.8)
Sociopolitical views (n)			
Conservative	114 (41)		1.0 referent
Moderate	234 (57)	<0.001	1.3 (0.9 to 1.8)
Liberal	205 (75)		2.4* (1.5 to 3.8)
Other	8 (42)		0.6 (0.2 to 1.9)
Most important ethical principle (n)			
Beneficence/non-maleficence	334 (54)		1.0 referent
Respect for autonomy	159 (64)	0.02	1.6* (1.1 to 2.3)
Justice	61 (62)		1.3 (0.8 to 2.2)

*p value <0.05.
†Regression model includes sex, age, region, specialty, religious affiliation, sociopolitical views and most important ethical principle as covariates.

Asian physicians were less likely than white physicians (OR 0.6, 95% CI 0.4 to 0.95), and obstetrician/gynecologists were more likely than general medicine physicians (OR 2.6, 95% CI 1.1 to 5.9), to agree that they are always obligated to refer (data not shown in tables).

In multivariate analyses, pediatricians were much less likely than general medicine physicians (OR 0.1, 95% CI 0.04 to 0.3) to indicate that autonomy is the most important ethical principle in their practice, but choosing autonomy was not associated with any religious, sociopolitical or demographic characteristics.

DISCUSSION

In a large, contemporary survey of practicing US physicians from all specialties, we found that a small majority agrees that physicians have a professional obligation to refer patients for all legal medical services for which the patients are candidates, even if the physician believes that such a referral is immoral. This opinion is associated with being theologically pluralistic, sociopolitically liberal and/or believing that respect for patient autonomy is the most important bioethical principle in one's practice.

These data expand on previous findings about physicians' obligations when a patient requests a legal medical intervention to which their physician objects on moral grounds. Two prior studies found that most physicians (71%[18] and 82%[19]) agree that when a patient requests a legal medical procedure to which the physician objects, the physician is obligated to provide a referral to a willing physician. This study asked explicitly about physicians' obligations when they object even to referral and finds that only slightly more than half of doctors believe that physicians are obligated to refer in those instances.

Previous research into conscience and medicine suggested that many physicians are ambivalent about their obligations in areas of moral controversy. In a prior study, 42% of physicians agreed that 'a physician should never do what he or she believes is morally wrong, no matter what experts say', 22% agreed that 'sometimes physicians have a professional ethical obligation to provide medical services even if they personally believe it would be morally wrong to do so,' and 36% agreed with both of these seemingly contradictory statements.[19] The percentage of physicians in that study who believed that physicians are never obligated to violate their consciences corresponds very closely to the percentage of physicians in this present study (43%) who did not agree that physicians are obligated to make referrals that they believe are immoral.

Physician's conflicting opinions regarding referrals mirror disagreements among bioethicists, with leading figures both rejecting and defending physicians' right to refuse to refer if they believe a referral is immoral.[15 27] Further complicating this issue is the reality that every clinical situation is unique; ethical rules do not always apply equally to different scenarios.[28] Moreover, patients and physicians often come from different moral communities and disparate worldviews.[29] As such, physicians and patients must at times negotiate complex clinical decisions without recourse to a shared ethical standard.

Our data highlight how this deliberative process depends to a real extent on the characteristics of the individual physician. Physicians who are more theologically pluralistic are more likely to believe they are always obligated to refer. Physicians who believe that neither their own nor any other religion is uniquely and comprehensively true, or that different religions or moral traditions may each be right in their own way, might sensibly accommodate requests that reflect the patient's moral valuations even if such valuations contradict those of the physician.

Likewise, physicians who describe their social views as liberal are also more likely to believe physicians should always refer. The term 'liberal' has many uses, so we are cautious to avoid overinterpreting this finding. However, this finding is consistent with what philosopher Charles Taylor calls 'the liberalism of neutrality', in which individuals make choices according to their own authentic convictions regarding what constitutes a good life.[30] In such a framework, the state, and perhaps public professions like medicine, should remain neutral regarding patients' choices.

Nor is it surprising that physicians who prioritise respect for autonomy would be more accommodating of patient requests. The principle of patient autonomy receives great emphasis in the bioethics literature,[31–33] and in our study one in four physicians rated autonomy as the most important bioethical principle in their clinical practice. However, we did not ask physicians to rank how they prioritise the ethical principles in morally complex scenarios and we cannot, therefore, infer which principle they believe is most important in such cases. Previous studies[25 34] suggest that this proportion would probably have been higher if we had specified a morally complex scenario rather than physicians' general clinical practice. Further study is needed to draw these sorts of distinctions.

Together with earlier findings, these data make clear that consensus is narrow regarding how physicians should respond when patients request interventions to which their physicians have moral objections. Few would deny that physicians should be candid and forthcoming, taking care to not deceive or mislead the patient about the reason for the refusal or the options available. Likewise, it is widely recognised that patients have a legal right to seek all legal medical interventions, and that physician refusals for these services are made problematic and consequential for patients because professional licensing makes physicians the gatekeepers to most such interventions. Yet beyond this area of agreement, there are no uncontroversial solutions to the dilemmas posed by conscientious refusals to refer.

One proposed resolution would have physicians either leave the profession or choose specialties where they will not be asked to violate their consciences.[3 14 20] Given the rapid evolution of medical practice, not to mention its segmentation and subspecialisation, those entering medical practice cannot fully anticipate whether a certain specialty will or will not coincide with their values in the future. Furthermore, this proposed resolution does not adequately address what is to be done with individuals who have a passionate interest in and aptitude for a particular clinical specialty, but who have misgivings about a small segment of that specialty's practice.

Another solution would have physicians inform patients, at the beginning of the physician-patient relationship or another reasonable time, what medical services they are and are not willing to provide.[15 16] This would ostensibly enhance patient autonomy by allowing patients to seek out physicians who will at least accommodate their values. Many patients, however, have limited choices regarding their physicians, either because they live in rural or otherwise remote areas or because of their insurance status. In addition, it is unreasonable to expect patients to anticipate all circumstances that might transpire or the medical interventions they might one day request.[27 35] Therefore, even if physicians make sincere efforts to proactively disclose their relevant objections to patients, conflicts will arise.

Future efforts to resolve problems posed by conscientious refusals should be informed by our findings. The conventional compromise, which permits conscientious refusals so long as physicians make timely referrals to accommodating providers, has been advanced as a way of protecting both physician integrity and patient autonomy. However, the compromise is unproblematic only when physicians can in good conscience make the referral. When they cannot, our data suggest that almost half (43%) of US physicians do not believe the conventional compromise applies. Policies that mandate referrals are therefore likely to be resisted by large portions of the profession. Less contentious, perhaps, would be policies that focus on meeting patients' interest in having increased access to controversial interventions without asking or requiring individual physicians to do what they believe is immoral.[36]

Our study suggests a possible role for healthcare institutions in mediating disputes over controversial medical services. Healthcare institutions have obligations not only to individual patients, but also to their broader communities.[37] Moreover, healthcare institutions have the capacity to anticipate the sorts of conflicts that may emerge between physicians and patients, and to set up systems that minimise both the inconvenience to the patient and the complicity of the medical personnel.[38] Some institutions are committed to providing all legal medical interventions. Others, such as Catholic hospitals, exclude those interventions that are inconsistent with their mission and identity. Either way, healthcare institutions can ask clinicians' to disclose clinically relevant objections, and should have policies and procedures to facilitate referrals, transfers of care, or other accommodations when patients' request interventions to which their physicians object.

There are additional limitations to this study. Although our response rate is consistent with other surveys of this type,[39] there is a possibility that non-respondents differed in ways that biased our findings. Theological pluralism has internal consistency and has been found previously to account for difference in physicians' ethical judgements, but it remains a novel variable and should be considered provisional until further research affirms its validity. In addition, the structure of the questionnaire allowed respondents to imagine clinical scenarios specific to their practice. Future studies would benefit from vignettes that to some extent normalise how respondents think about conscientious refusals. Finally, the cross-sectional design of this study does not permit any causal inferences from statistical associations, nor can we say how physicians in fact behave in any specific instance.

Despite these limitations, this study indicates that physicians are divided about a professional obligation to refer if the physician believes that referral itself is immoral. Given the absence of consensus concerning a requirement to refer, at this time there remains no uncontroversial way to resolve conflicts posed when patients request interventions that their physicians cannot in good conscience provide.

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