

OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA



302 W. WASHINGTON ST. 5TH FLOOR
INDIANAPOLIS, IN 46204-2770
January 29, 2024

Via Hand Delivery

TODD ROKITA
ATTORNEY GENERAL

The Honorable Eric J. Holcomb
Governor of Indiana

The Honorable Rodric Bray
Senate President Pro Tempore
Indiana Senate

The Honorable Todd Huston
Speaker of the House
Indiana House of Representatives

Re: Termination of Pregnancy Reports – IDOH misclassification as medical records

Dear Governor Holcomb, Senate President Pro Tempore Bray, and Speaker Huston,

On December 19, 2023, the Public Access Counselor (“PAC”) issued a publicly available [opinion](#) at the request of the Indiana Department of Health (“IDOH”) that Termination of Pregnancy Reports (“TPRs”) were no longer publicly available documents, but rather confidential medical records. IDOH has since denied my office the right to access those reports. It has also since denied my office and the public access to the Abortion Complications Reports, based upon the same PAC analysis.

The opinion is wrong and based on faulty logic as concluded by my office’s internal legal analysis, which we can formalize in an official opinion at your request. More importantly, the faulty opinion has created an enforcement vacuum when combined with IDOH’s erroneous reliance on it.

Without the public being able to review the reports, no member of the public can file a licensing complaint against an abortion provider with my office. Without such a complaint, a licensing enforcement action against an abortion provider cannot be initiated because state statute currently requires a complaint as an initial prerequisite (among others) to a licensing investigation. Nearly 100 percent of the licensing complaints received on abortion providers are from the public based upon information found in the TPRs.

Furthermore, Indiana’s new pro-life law that the General Assembly passed and the Governor signed into law during the last special session limits abortions to hospitals only. The General Assembly has given IDOH the authority to investigate hospitals for compliance with the pro-

life laws. If such investigations have been done, it is not obvious or public. Both the PAC and IDOH leadership are the sole appointments of the Governor.

Obviously, this situation should be expeditiously resolved so that there is proper oversight over providers— both hospitals and physicians— and Indiana’s law is fully enforced. One of the stated purposes of the TPRs is to require publicly available reports so that providers of abortions are held accountable and follow the law.

...the purpose and function of [the Termination of Pregnancy Reports] shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, **and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.**

Ind. Code § 16-34-2-5

With the legislature currently in session, it can make clear that these reports are not medical records and must be released. Proper redactions can be made under current law to protect patient privacy so there is no need for legislative change on that point. Alternatively, you can remove the requirement that investigations by my office be third party-complaint based (since the public now has no information upon which to base a complaint) and remove the limitation of IDOH as the sole investigator of hospitals by authorizing my office to perform such duties as well— like we do for nearly all other professions and industries.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Rokita".

Todd Rokita
Indiana Attorney General