

STATE OF INDIANA )  
) SS:  
COUNTY OF MARION )

IN THE MARION CIRCUIT COURT  
CAUSE NO. 49C01-2211-MI-038101

CAITLIN BERNARD, M.D., on her own behalf )  
and on behalf of her patients; AMY CALDWELL, )  
M.D., on her own behalf and on behalf of her )  
patients, )

Plaintiffs, )

v. )

TODD ROKITA, in his official capacity as )  
Attorney General of the State of Indiana; )  
SCOTT BARNHART, in his official capacity as )  
Chief Counsel and Director of the Consumer )  
Protection Division of the Office of the Attorney )  
General of the State of Indiana, )

Defendants. )

April 25, 2023

GRANTED.



Amber Collins-Gebrehwet, Judge  
Marion Circuit Court

**FILED**  
April 26, 2023  
CLERK OF THE COURT  
MARION COUNTY  
RM

**NOTICE OF WITHDRAWAL OF MOTION**

Please take notice that Defendant, Indiana Attorney General Todd Rokita, hereby withdraws his pending Motion to Strike Plaintiffs’ Notice of Voluntary Dismissal and to Reconsider and Correct Error in the Court’s Order of December 2, 2022 (“Motion”). Based on representations made by counsel for Plaintiffs at the April 11, 2023 hearing, Defendant has concluded that a ruling on his Motion is not necessary.

At the hearing, counsel for Plaintiffs Caitlin Bernard and Amy Caldwell told this Court that the findings in the December 2, 2022 Order are dicta. *See* Hr’g Tr. 9:13–16, Apr. 11, 2023 (“So it’s difficult to see how there can be prejudice over a statement of finding that the Attorney General acknowledges is at best dicta, in a case that’s been dismissed so it no longer has effect.”) (transcript attached as Exhibit 1); *id.* at 15:16–17 (“[T]he Attorney General [concedes] its dicta, so it’s difficult to see how a finding in [the December 2, 2022 Order] that is recognized as dicta is

going to prejudice the Attorney General.”); *id.* at 8:19 (“[T]hose findings are not connected with relief to any of the parties.”).

Plaintiffs’ counsel also advised this Court that, because of Plaintiffs’ Notice of Voluntary Dismissal, Plaintiffs’ lawsuit must be treated as if it were “never filed” and “never existed.” *Id.* at 9:12–13 (“In any event, there is Indiana case law that says after a voluntary dismissal, status is returned as if the case was never filed”); *id.* at 12:11–13 (“In any event, the courts in Indiana quote have adopted a stance that once the case has been voluntarily dismissed, it is treated as if it never existed. I’m quoting Kohl[man v.] Finkelstein, [509 N.E.2d 228 (Ind. Ct. App. 1987)].”). In addition, Plaintiffs’ counsel stated that the December 2 Order has no preclusive effect, i.e., it has no collateral estoppel effect. *See id.* at 12:8–10 (“There’s no evidence that there’s a residue to collateral [e]stop[pe]l [e]ffect by this Court's order on a preliminary injunction hearing, which is simply a preliminary order.”).

Finally, Plaintiffs’ counsel represented that the December 2, 2022 Order does not bind the Attorney General’s office in the proceeding against Dr. Bernard pending before the Medical Licensing Board and would not be binding in any future tort action brought by Dr. Bernard against the Attorney General. *See id.* at 12:18–19 (“[The Attorney General] can address [these issues] before the medical licensing board. He’s not bound by this court’s preliminary order.”); *id.* at 15:18–19 (“And in any event, he’s going to be able to contest that it has meaning in that proceeding.”); *id.* at 9:10–12 (“He can dispute it in front of the Medical Licensing Board. And if there were to be a tort case, he can challenge it there, but there has not been a case filed.”).

Given the foregoing representations to the Court by Plaintiffs’ counsel, Defendant has concluded that a ruling on his Motion is not necessary, and he therefore withdraws the Motion.

Dated: April 21, 2023

Respectfully submitted,

THEODORE E. ROKITA  
Indiana Attorney General  
Attorney No. 18857-49

By: /s/ Patricia Orloff Erdmann  
Patricia Orloff Erdmann  
Deputy Attorney General  
Attorney No. 17664-49

OFFICE OF INDIANA ATTORNEY GENERAL  
Indiana Government Center South, 5th Floor  
302 West Washington Street  
Indianapolis, IN 46204-2770  
Telephone: (317) 232-6318  
Facsimile: (317) 232-7979  
Patricia.Erdmann@atg.in.gov

Gene C. Schaerr\*  
H. Christopher Bartolomucci\*  
SCHAERR | JAFFE LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
Telephone: (202) 787-1060  
Facsimile: (202) 776-0136  
gschaerr@schaerr-jaffe.com  
cbartolomucci@schaerr-jaffe.com

\*Admitted *pro hac vice*

*Counsel for Defendant*  
*Attorney General Todd Rokita*

## CERTIFICATE OF SERVICE

I certify that on April 21, 2023, I electronically filed the foregoing document using the Indiana E-filing system (“IEFS”). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

Kathleen A. DeLaney (Bar No. 1860449)  
Matthew R. Gutwein (Bar No. 1641449)  
Delaney & Delaney LLC  
3646 North Washington Blvd.  
Indianapolis, IN 46205  
(317) 920-0400  
kathleen@delaneylaw.net  
mgutwein@delaneylaw.net

Paul W. Rodney  
(*pro hac*, Bar No. 861895TA)  
Arnold & Porter Kaye Scholer LLP  
1144 Fifteenth Street, Suite 3100  
Denver, CO 80202  
(303) 863-1000  
paul.rodney@arnoldporter.com

Elissa J. Preheim  
(*pro hac*, Bar No. 861995TA)  
David J. Weiner  
(*pro hac*, Bar No. 862395TA)  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue, NW  
Washington, DC 20001  
(202) 942-5000  
elissa.preheim@arnoldporter.com  
david.weiner@arnoldporter.com

Kaitlin Robinson  
(*pro hac*, Bar No. 861795TA)  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
(415) 471-3100  
kaitlin.robinson@arnoldporter.com

/s/ Patricia Orloff Erdmann  
Patricia Orloff Erdmann