

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
 MARION COUNTY) CAUSE No. 49D13-2502-PL-006359

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

TEMPORARY RESTRAINING ORDER

Having considered Plaintiffs’ motion for a temporary restraining order and the materials submitted in support thereof, the Court hereby makes the following findings in accordance with Indiana Trial Rules 52 and 65(D):

1. On February 6, 2025, Plaintiffs, Dr. Caitlyn Bernard, M.D., and Dr. Caroline Rouse, M.D., brought this action to challenge the potential release of records held by the Indiana Department of Health to Voices for Life, Inc., pursuant to a request under Indiana’s Access to Public Records Act (“APRA”).
2. The Court determines that the present action is the continuation of another action filed in Marion Superior Court. In *Voices for Life, Inc. v. Ind. Dep’t of Health*, Marion Superior Court, Cause No. 49D02-2405-MI-019876, this Court already addressed whether the information subject to the same APRA request at issue in the present case is subject to public disclosure under APRA.
3. In that related case, Voices for Life filed an APRA request with the Department to obtain certain terminated pregnancy reports (“TPRs”). Indiana law requires

physicians, including Plaintiffs, to submit a TPR to the Department in connection with every abortion provided. IND. CODE § 16-34-2-5. In the related case, the Department took the position that TPRs are medical records and are thus exempt from disclosure. VFL filed a complaint for disclosure of the TPRs against the Department. Pursuant to Indiana Code section 5-14-3-9(e) (the APRA provision granting a supplier of information subject to an APRA disclosure request), Drs. Bernard and Rouse intervened in that related case to oppose release of the TPRs. The Marion Superior Court concluded that, based on the plain language of APRA, TPRs are exempt from APRA disclosure requirement and granted the Department's motion to dismiss VFL's complaint. "Order on Motion to Dismiss," entered September 9, 2024, in *Voices for Life, Inc. v. Ind. Dep't of Health*, Marion Superior Court, Cause No. 49D02-2405-MI-019876.

4. On October 4, 2024, VFL filed its Notice of Appeal from the dismissal of the related case. In February 2025, during the pendency of the appellate proceedings, the Indiana State Health Commissioner and the Department entered into a settlement agreement with VFL in the related case. Pursuant to the agreement, the Health Commissioner and the Department agreed to "[i]mmediately release terminated pregnancy reports as public records upon lawful request and not designate the reports as confidential medical records." VFL moved to voluntarily dismiss its appeal, which the Indiana Court of Appeals granted on February 6, 2025. This lawsuit immediately followed to prohibit disclosure of the TPRs.
5. The Department asserts that the Plaintiffs' lack standing to seek the relief requested. The Court, however, notes that the Plaintiffs' challenge here is a direct continuation

of the same case the Department brought to protect against disclosure of the TPRs. There, the Plaintiffs intervened as a matter of statutory right. Even though the Department has modified its position (via its settlement with VFL) to allow release of the TPRs, the Plaintiffs may continue to challenge the disclosures, albeit under a different cause number.

6. The analysis set forth in the related case applies equally here. TPRs contain detailed information about patients' demographics, medical history, and medical treatment. *See* IND. CODE § 16-34-2-5(a). While APRA generally requires public agencies like the Department to provide members of the public with access to public records in their possession (*see* IND. CODE § 5-14-3-3), APRA exempts certain public records from its disclosure requirement. IND. CODE § 5-14-3-4. These include records "required to be kept confidential by federal law" and "[p]atient medical records and charts created by a provider, unless the patient gives written consent" in accordance with Indiana law. IND. CODE § 5-14-3-4(a)(3), (9).
7. Indiana law defines medical records as "written or printed information possessed by a provider (as defined in IC 16-18-2-295) concerning any diagnosis, treatment, or prognosis of the patient, unless otherwise defined." IND. CODE § 1-1-4-5(a)(6).
8. A TPR is created by a medical provider as the consequence of a medical service, and it contains highly sensitive information about a patient's demographics, medical history, and medical care that was obtained by the provider while treating the patient. *See* IND. CODE § 16-34-2-5(a).
9. The language of the TPR statute suggests that the legislature views TPRs as private medical records rather than public records subject to disclosure under APRA. *See*

IND. CODE § 16-34-2-5(e)-(f). The statute directs the Department to compile a “public report” based on data contained in the TPRs on a quarterly basis, suggesting that the TPRs themselves are not meant to be public. IND. CODE § 16-34-2-5(e). And it further directs the Department to ensure that “no identifying information of a pregnant woman is contained in the [public] report,” demonstrating a belief that the TPRs contain such identifying information in the first place. IND. CODE § 16-34-2-5(f).

10. This Court concludes that TPRs are, as a matter of law, medical records. The Defendants would argue that TPRs are documents created by medical providers that contain a mix of APRA protected medical records and other information subject to public disclosure. As such, the Defendants reached a settlement agreement to allow release of TPRs following the Department’s redaction of patient identifier information. During oral argument, the Defendants’ respective counsel focused upon the redaction of patient identifier information as the key determining factor to allow for release of the TPRs. The Court, however, does not find that patient identifier information should be the sole area of focus. APRA exempts from disclosure “patient medical records.” IND. CODE § 5-14-3-4(a)(9). “Medical records” are “written or printed information possessed by a provider concerning any diagnosis, treatment, or prognosis of the patient, unless otherwise defined.” IND. CODE § 1-1-4-5(a)(6). Diagnosis, treatment, and prognosis appear to be the vital parts of a medical record. Neither code provision specifically makes any reference to identification.
11. The Court preliminarily determines that, notwithstanding reassurances of counsel for the Department and VFL, the settlement agreement would not sufficiently protect

against the disclosure of confidential medical records. At the hearing for Plaintiffs' request for a temporary restraining order, counsel could not specify the information the Department would redact and protect from release as a confidential medical record. At this time, the Court is not satisfied that the Department's release of a redacted TPR would not result in a violation of APRA.

12. Plaintiffs have demonstrated a likelihood of success on the merits of their declaratory judgment claim seeking to establish that TPRs are exempt from APRA's disclosure requirement.
13. Absent a court order prohibiting disclosure, the Department is likely to provide VFL access to TPRs. If VFL gains access to the TPRs, it will be free to publicize those medical records further, including by posting them on the Internet, depriving patients of their privacy, which cannot be adequately remedied through money damages.
14. In addition, absent preliminary relief, the Plaintiffs will be faced with an irreconcilable conflict of legal duties. The Medical Board has ruled that publicly disclosing patient medical information (like, if not identical to, information contained in a TPR form) is grounds for professional discipline. Findings of Fact, Ultimate Findings of Fact, Conclusions of Law & Final Order, *In re Bernard*, No. 2022 MLB 0024 (Ind. Med. Licensing Bd. July 27, 2023). At the same time, the TPR statute makes failure to submit a complete TPR form for every abortion a crime. IND. CODE § 16-34-2-5(d). If the Department is able to disclose TPRs to members of the public on request, the Plaintiffs will have to choose between serving as a conduit of private patient health information to the public, contrary to the letter and spirit of the Medical

Board's directive, or facing criminal penalties for failing to submit TPRs to the Department. This creates a Catch-22 situation for the Plaintiffs.

15. Moreover, the public disclosure of medical records would interfere with the physician-patient relationship.
16. In light of the foregoing, the Plaintiffs are likely to suffer serious, irreparable harm unless the Court enters relief immediately.
17. The Department would face little harm, during the pendency of this lawsuit, from treating TPRs as confidential medical records, which the agency has done voluntarily for more than a year.
18. VFL would face little harm, during the pendency of this lawsuit, from the requested relief because it would still have access to the public reports that the Department produces on a quarterly basis summarizing TPR data. *See* IND. CODE § 16-34-2-5(e)-(f).
19. Neither Defendant would suffer pecuniary harm from the entry of a temporary restraining order or preliminary injunction.
20. The balance of equities and public interest favor entry of a temporary restraining order to preserve the status quo and prevent the possibility of unauthorized disclosure of patient medical records while this lawsuit proceeds.

Based on the foregoing findings, the Court concludes that good cause exists to enter a temporary restraining order without security.

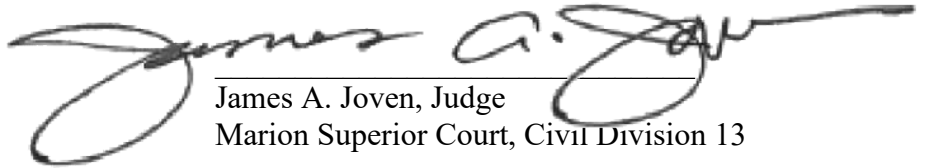
It is therefore ORDERED that, while this temporary restraining order is in effect, the Indiana State Health Commissioner, in her official capacity as director of the Indiana Department of Health, and her employees, agents, and successors in office, are prohibited from disclosing or

otherwise providing access to terminated pregnancy reports created in accordance with Indiana Code section 16-34-2-5 in response to any request made under Indiana's Access to Public Records Act, Indiana Code sections 5-14-3-1 to 5-14-3-10;

And it is further ORDERED that Plaintiffs shall not be required to post a bond or provide other security;

And it is further ORDERED that this temporary restraining order shall remain in effect for ten days, unless extended for good cause.

ORDERED at Indianapolis, Indiana, on February 19, 2025, at 5:00 PM.



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

Distribution to all counsel of record via IEFS