

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CHRISTINA M. SCIFRES, MD,

Plaintiff,

v.

COMMISSIONER, INDIANA DEPARTMENT OF
HEALTH, in her official capacity, and
INDIVIDUAL MEMBERS OF THE MEDICAL
LICENSING BOARD OF INDIANA, in their
official capacities,

Defendants.

Case No. 1:24-cv-2262

STATEWIDE RELIEF SOUGHT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Christina M. Scifres, MD, for her Complaint for Declaratory and Injunctive Relief, alleges and states as follows:

PRELIMINARY STATEMENT

1. Dr. Scifres seeks declaratory and preliminary and permanent injunctive relief to help her navigate the conflicting demands of an Indiana state law that mandates the submission of terminated pregnancy reports (“TPRs”) and the newly enacted requirements of a federal health privacy law that expressly prohibit the disclosure of this information as of December 23, 2024. While Dr. Scifres’s Complaint contemplates statewide relief, this case presents a narrow legal issue of preemption arising from the incompatible state and federal laws.

2. Pursuant to Indiana Code section 16-34-2-5 (the “TPR Statute”), every physician who performs an abortion in Indiana must submit a TPR to the Indiana Department of Health (“IDOH”). The TPR Statute, on its face, explains that TPRs are used for investigative or law enforcement purposes, namely, to aid in the enforcement of Indiana’s laws governing the

circumstances in which a physician can legally provide an abortion within the state. On April 26, 2024, however, the Department of Health and Human Services (“HHS”) promulgated the HIPAA Privacy Rule to Support Reproductive Health Care Privacy (“Reproductive Health Care Privacy Rule”), which amends the federal regulations under the Health Insurance Portability and Accountability Act (“HIPAA”) and places limits on when a physician may disclose an individual’s protected health information (“PHI”) related to reproductive health care. The new Reproductive Health Care Privacy Rule prohibits the disclosure of any PHI where that information could be used to investigate, impose liability on, or identify “any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.” 45 C.F.R. § 164.502(a)(5)(iii)(A). Physicians must comply with the Reproductive Health Care Privacy Rule by December 23, 2024. HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32976-01 (Apr. 26, 2024) (codified at 45 C.F.R. pts. 160, 164). Dr. Scifres brings this lawsuit because state and federal authorities have been unable to provide guidance as to how to resolve this legal conflict by the December 23, 2024 compliance date for the Reproductive Health Care Privacy Rule.

3. By their express terms, the TPR Statute and the Reproductive Health Care Privacy Rule are incompatible. It would be impossible for Dr. Scifres and other physicians who provide lawful abortions in Indiana to abide by the terms of both laws concurrently. Because the TPR Statute and the Reproductive Health Care Privacy Rule require Dr. Scifres and other Indiana physicians who provide lawful abortions to engage in diametrically opposed acts, the laws necessarily conflict. Where there is an express conflict and incompatibility between state law and federal law, federal law preempts state law. Therefore, and regardless of what one might think about the prudence or advisability of either law, Indiana’s TPR Statute must yield to HIPAA and the Reproductive Health Care Privacy Rule. Indeed, HHS has instructed that if a state law required

the disclosure of “PHI to law enforcement in furtherance of an investigation, . . . *the provisions of the Privacy Rule would preempt the application of contrary provisions of state law, and the regulated [provider] could not disclose the PHI.*” 89 Fed. Reg. at 33012 (emphasis added).

4. Because the TPR Statute conflicts with and is preempted by HIPAA and the Reproductive Health Care Privacy Rule, Dr. Scifres initiates this action for declaratory and preliminary and permanent injunctive relief against the Commissioner of IDOH and the individual members of the Medical Licensing Board of Indiana (“Medical Licensing Board”), in their respective official capacities.

PARTIES

5. Dr. Scifres is an individual licensed to practice medicine in the State of Indiana. Dr. Scifres is board-certified in obstetrics, gynecology, and maternal fetal medicine. She is a maternal fetal medicine specialist with expertise in caring for both expectant mothers and their fetuses.

6. Dr. Scifres is employed by Indiana University Healthcare Associates, Inc. d/b/a IU Health Physicians, a non-party to this action. IU Health Physicians is affiliated with Indiana University Health, Inc. (“IUH”), also a non-party to this action.

7. Dr. Scifres practices with the Riley Maternal Fetal Medicine group at IUH. She also has admitting privileges at several hospitals and hospital systems in Indiana, including IUH facilities in central Indiana and Eskenazi Health in Indianapolis, Indiana.

8. As part of Dr. Scifres’s practice, she provides reproductive health care and treatment to patients in Indiana, including lawful abortions provided in accordance with the circumstances in which a physician can legally provide abortions in the State of Indiana. She has provided lawful abortions to patients at IUH facilities and Eskenazi Health.

9. IDOH is the state agency responsible for licensing health care facilities in Indiana and to whom TPRs are submitted pursuant to the TPR Statute. Ind. Code § 16-34-2-5; Ind. Code

§ 16-34-2-5.1. IDOH drafted the TPR form that must be completed and submitted under the TPR Statute. The Commissioner of IDOH is sued in her official capacity and designated by her official title pursuant to Rule 17(d) of the Federal Rules of Civil Procedure.

10. The Medical Licensing Board is the state body that licenses and disciplines physicians in Indiana. The Medical Licensing Board is charged with implementing a program to investigate and assess penalties on physicians who fail to timely file TPRs, and has the authority to revoke a physician's medical license if the physician fails to transmit a TPR pursuant to the TPR Statute. Ind. Code § 25-22.5-2-8; Ind. Code § 25-22.5-8-6. The individual members of the Medical Licensing Board are sued in their official capacities and designated by their official title pursuant to Rule 17(d) of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

11. This case centers on the determination of whether HIPAA and the Reproductive Health Care Privacy Rule preempt Indiana state law requiring physicians who perform legal abortions to complete and submit TPRs. Therefore, this Court has jurisdiction pursuant to 28 U.S.C. § 1331. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (preemption issues raise a federal question under 28 U.S.C. § 1331).

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Dr. Scifres practices medicine in this district and would be forced to comply with the TPR Statute in this district and, thus, her claims against Defendants arise in this district.

13. Declaratory relief is authorized under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

14. The Commissioner of IDOH and the individual members of the Medical Licensing Board are subject to the personal jurisdiction of this Court because they are Indiana state officials, and this suit seeks prospective, equitable relief to enjoin ongoing violations of federal law. *See*

MCI Telecomm. Corp. v. Ill. Bell Tel. Co., 222 F.3d 323, 336 (7th Cir. 2000) (applying *Ex parte Young* doctrine).

PROVIDER OBLIGATIONS UNDER HIPAA

15. In 1996, Congress passed HIPAA, in part, to “improve . . . the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of [uniform] standards and requirements for the electronic transmission of certain health information” 89 Fed. Reg. at 32980 (quoting 42 U.S.C. § 1320d note (Statutory Notes and Related Subsidiaries: Purpose)).

16. Among other things, HIPAA prohibits the unauthorized disclosure of an individual’s individually identifiable health information, or PHI.

17. As a general rule, any provision or requirement under HIPAA supersedes any contrary provision of state law. 42 U.S.C. § 1320d-7(a)(1); *see also* 45 C.F.R. § 160.202.

18. HIPAA’s prohibitions against the disclosure of PHI apply to “covered entities” that “transmit information electronically in connection with a transaction for which HHS has adopted a standard.” 89 Fed. Reg. at 32980.

19. IU Health Physicians, Dr. Scifres’s employer, is a “covered entity” subject to the prohibitions against the disclosure of PHI under HIPAA. *See* 45 C.F.R. § 160.103. IUH, IU Health Physicians’ affiliate, is likewise a “covered entity” subject to the prohibitions against the disclosure of PHI under HIPAA. *See id.* IU Health Physicians and IUH are “affiliated covered entities” for purposes of HIPAA. *See* 45 C.F.R. § 164.105(b).

20. As an employee of IU Health Physicians, Dr. Scifres is a member of IU Health Physicians’ “workforce” and thus subject to the prohibitions against disclosure of PHI under HIPAA. *See* 45 C.F.R. § 160.103; 45 C.F.R. § 164.105(a)(2)(ii)(C).

21. As a workforce member subject to HIPAA, Dr. Scifres would be subject to personal liability if she were to violate HIPAA. She would be subject to civil liability and civil monetary penalties, or she could face criminal liability in the form of fines or imprisonment. *See* 42 U.S.C. § 1320d-5; 42 U.S.C. § 1320d-6(b).

22. In addition to her personal exposure under HIPAA, Dr. Scifres would be subject to disciplinary action by her employer, IU Health Physicians, for violating HIPAA. IU Health Physicians and IUH have policies and procedures in place that require Dr. Scifres to comply with HIPAA. *See* 45 C.F.R. § 164.530(c)(1). HIPAA regulations require every covered entity to “have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity” or HIPAA’s privacy requirements. *See* 45 C.F.R. § 164.530(e)(1). Therefore, Dr. Scifres has an obligation to IU Health Physicians and IUH to comply with HIPAA.

23. Furthermore, IU Health Physicians and IUH can be held liable if Dr. Scifres violates HIPAA by virtue of her relationship with these entities. IU Health Physicians can be held liable for any civil monetary penalties assessed because of an act or omission by Dr. Scifres acting within the scope of her agency as a workforce member that resulted in a HIPAA violation. *See* 45 C.F.R. § 160.402(c)(1). As affiliated covered entities, IU Health Physicians and IUH can be held jointly and severally liable for any civil monetary penalties assessed because of a HIPAA violation resulting from an act or omission by Dr. Scifres acting within the scope of her agency. *See* 45 C.F.R. § 160.402(b)(1).

THE REPRODUCTIVE HEALTH CARE PRIVACY RULE

24. The Secretary of HHS has the authority to enact federal regulations to further the aims of HIPAA. 45 C.F.R. § 164.102.

25. The HIPAA Privacy Rule was enacted, and ultimately amended, pursuant to this authority. *See* 45 C.F.R. Part 164, Subpart E (governing the privacy of individually identifiable health information and commonly referred to as the HIPAA Privacy Rule).

26. The HIPAA Privacy Rule prohibits covered entities and their workforce members from disclosing PHI, except as permitted or required by the HIPAA Privacy Rule or the previously promulgated HIPAA Security Rule, found at 45 C.F.R. Part 164, Subpart C.

27. The Reproductive Health Care Privacy Rule amended the federal regulations under HIPAA, including the HIPAA Privacy Rule, effective June 25, 2024, though entities and persons subject to HIPAA are not required to comply with the new Reproductive Health Care Privacy Rule until December 23, 2024. *See generally* 89 Fed. Reg. 32976.

28. The Reproductive Health Care Privacy Rule amends the HIPAA Privacy Rule to include new standards under which providers may or may not disclose PHI specifically related to reproductive health care, *i.e.*, “health care . . . that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes.” 45 C.F.R. § 160.103; *see also* 89 Fed. Reg. at 33006 (providing a non-exhaustive list of what types of care fit within the definition of reproductive health care). Reproductive health care includes, but is not limited to, care to manage the woman’s pregnancy and pregnancy-related conditions, miscarriage management, molar or ectopic pregnancy, and pregnancy termination. 89 Fed. Reg. at 33006.

29. The Reproductive Health Care Privacy Rule prohibits providers from disclosing PHI for the activities of (1) conducting a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care; (2) imposing criminal, civil, or administrative liability on any person for the mere act of

seeking, obtaining, providing, or facilitating lawful reproductive health care; or (3) identifying any person for the purposes described by (1) and (2). 45 C.F.R. § 164.502(a)(5)(iii)(A).

30. These prohibitions against the disclosure of PHI apply when the provider has reasonably determined that either (1) the reproductive health care is lawful under the law of the state in which the care was provided under the circumstances it was provided; (2) the reproductive health care is protected, required, or authorized by federal law under the circumstances in which it was provided, regardless of the state in which it was provided; or (3) the reproductive health care is presumed lawful. 45 C.F.R. § 164.502(a)(5)(iii)(B).

31. If it appears that PHI potentially related to reproductive health care will be used for health oversight activities, judicial and administrative proceedings, law enforcement purposes, or for use by coroners and medical examiners, the provider must obtain an attestation that the PHI will not be used or disclosed for a prohibited purpose under section 164.502(a)(5)(iii). 45 C.F.R. § 164.509. However, if the provider has actual knowledge that material information in the attestation is false or cannot reasonably believe in the truth of the attestation that the use or disclosure is not for an improper purpose, the attestation is defective. 45 C.F.R. § 164.509(b)(2)(iv)-(v).

32. The Reproductive Health Care Privacy Rule expressly preempts any contrary state law. *See* 45 C.F.R. § 160.203. HHS acknowledged this preemption when it amended the HIPAA Privacy Rule, stating:

We . . . acknowledge . . . that in some circumstances, the Privacy Rule imposes greater restrictions on uses and disclosures of PHI than state privacy laws, and the prohibition may delay or hamper enforcement of certain other state laws (e.g., laws governing access to reproductive health care). Such circumstances were contemplated by Congress when it enacted HIPAA. For example, *a state law might require a covered entity to disclose PHI to law enforcement in furtherance of an investigation, while the final rule may prohibit*

such a disclosure. In such cases, the provisions of the Privacy Rule would preempt the application of contrary provisions of state law, and the regulated entity could not disclose the PHI.

89 Fed. Reg. at 33012 (emphasis added).

33. HIPAA and the Reproductive Health Care Privacy Rule prohibit Dr. Scifres from disclosing PHI related to the lawful abortions she provides if the PHI will be used to investigate, penalize, or identify a person for the mere act of seeking, obtaining, providing, or facilitating abortions that are lawful in the State of Indiana. *See* 45 C.F.R. § 164.502(a)(5)(iii)(A). This prohibition under federal law conflicts with Indiana's TPR reporting requirements to IDOH and gives rise to the legal dilemma necessitating this lawsuit.

INDIANA'S TERMINATED PREGNANCY REPORTING REQUIREMENTS

34. In 2022, Indiana enacted legislation that limits the circumstances in which a physician can legally provide an abortion within the state.

35. Subject to certain exceptions, abortion is currently a criminal act in Indiana. Ind. Code § 16-34-2-1.

36. Abortions are permitted for various reasons depending on the postfertilization age of the fetus. These reasons include when it is necessary to protect the pregnant woman from serious health risks or to save her life, when the fetus is diagnosed with a lethal anomaly, or when the pregnancy is the result of rape or incest. *Id.*

37. In addition to these limitations based on the circumstances surrounding the pregnancy, Indiana provides other conditions and prerequisites physicians must comply with before and after performing an abortion. *See* Ind. Code §§ 16-34-2-1.1 – 16-34-2-4.

38. Even before Indiana enacted the 2022 laws limiting abortions, Indiana has required physicians to prepare and submit TPRs to the state.

39. In particular, the TPR Statute requires physicians who perform abortions to “report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by [IDOH]” Ind. Code § 16-34-2-5(a).

40. The TPR form as drafted by IDOH includes, at a minimum, 31 distinct categories of information about the patient or procedure. *Id.* The information requested includes the patient’s age, county and state of residence, marital status, education level, race, ethnicity, the location where the abortion was performed, the provider’s full name and address, and details on how the abortion was performed or administered and why. *Id.* The TPR form requires the disclosure of a significant amount of personal and unique information about the patient who received the abortion that the TPR can be used to individually identify the patient.

41. One of the explicit purposes and functions of these TPRs under the statute “shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.” *Id.*

42. IDOH has publicly acknowledged that “TPRs provide IDOH with information needed to perform its statutory enforcement duties. . . . IDOH can and does enforce health laws, satisfying the second stated purpose of the TPR Statute.” *See* IDOH’s Reply in Support of Motion to Dismiss, *Voices for Life, Inc. v. Ind. Dep’t of Health*, Cause No. 49D02-2405-MI-019876 at 5 (Ind. Super. Ct. Aug. 22, 2024).¹

43. A TPR must be submitted to IDOH within three days of the abortion if the pregnant woman is under the age of 16 or within thirty days of the abortion if the pregnant woman is 16 or older. Ind. Code § 16-34-2-5(b).

¹ This public court filing is available through the Indiana state court’s e-filing system at <https://public.courts.in.gov/mycase/#/vw/Search>

44. If a physician does not submit the TPR to IDOH in time, the physician can be charged with committing a Class B misdemeanor for each such failure. Ind. Code § 16-34-2-5(d).

45. Furthermore, when a physician fails to submit a TPR to IDOH, the Medical Licensing Board may revoke the physician's license to practice medicine in Indiana. Ind. Code § 25-22.5-8-6(b). The Medical Licensing Board may also assess a \$1,000 civil penalty against the physician. Ind. Code § 25-22.5-2-8(a)(7).

46. The TPR Statute thus requires physicians in Indiana to proactively disclose to the State of Indiana numerous pieces of information in the medical record or designated record set of the patient that can be used to identify the patient, *i.e.*, PHI, for the express purpose and function of evaluating the legality of abortions performed in Indiana. *See* Ind. Code § 16-34-2-5; 45 C.F.R. § 160.103 (defining "protected health information").

**THE CONFLICT BETWEEN INDIANA'S TPR STATUTE AND
THE HIPAA REPRODUCTIVE HEALTH CARE PRIVACY RULE**

47. Dr. Scifres provides lawful reproductive health care as defined by the Reproductive Health Care Privacy Rule, including abortions that are lawful in Indiana. *See* Ind. Code § 16-34-2-1.

48. If Dr. Scifres or another Indiana physician provides a legal abortion to a pregnant woman under the age of 16 on December 23, 2024, Indiana law requires submission of a TPR to IDOH by January 26, 2024. If Dr. Scifres or another Indiana physician provides a legal abortion to a pregnant woman 16 or older on December 23, 2024, Indiana law requires submission of a TPR to IDOH by January 22, 2025.

49. The TPR contains information entirely related to the provision of reproductive health care and is therefore subject to the limitations of the Reproductive Health Care Privacy

Rule. And the TPR contains enough information about the patient and her procedure that the form can be used to individually identify that patient.

50. To date, Dr. Scifres has complied with the TPR Statute and timely submitted a TPR to IDOH for each abortion she has surgically performed or enabled through the prescription and provision of medication.

51. However, as of the December 23, 2024 compliance date for the Reproductive Health Care Privacy Rule, Dr. Scifres and other Indiana physicians who provide legal abortions will no longer be able to comply with the state's mandatory TPR reporting requirements to IDOH without violating the Reproductive Health Care Privacy Rule.

52. If Dr. Scifres were to submit a TPR in compliance with the state's mandatory TPR reporting requirements as of the December 23, 2024 compliance date for the Reproductive Health Care Privacy Rule, she would be subject to civil liability and civil monetary penalties, or she could face criminal liability in the form of fines or imprisonment, for this HIPAA violation. She would also expose IU Health Physicians and IUH to civil liability for this HIPAA violation. In addition to her personal exposure under HIPAA, Dr. Scifres would be subject to disciplinary action by her employer, IU Health Physicians, for violating HIPAA.

53. But if Dr. Scifres does not submit a TPR, she risks being charged with a misdemeanor, losing her medical license, and facing civil monetary penalties. She further exposes IUH to administrative burdens and operational risks associated with the licenses necessary to operate its facilities in central Indiana. IDOH is the state agency responsible for licensing health care facilities in Indiana. As part of its survey process to issue and renew licenses to operate, IDOH routinely requests copies of TPRs for abortions performed by physicians at the facilities it surveys, including IUH.

54. As of the December 23, 2024 Reproductive Health Care Privacy Rule compliance date, physicians who perform lawful abortions in Indiana will be forced in the untenable position of deciding whether they must violate state law or federal law when it comes to reporting on the lawful abortions they provide. It is this strictly legal dilemma, arising from a conflict between state and federal laws regarding the disclosure of PHI related to lawful reproductive health care services, which has precipitated Dr. Scifres's lawsuit and request for declaratory and injunctive relief.

55. Because the TPR has an express, statutorily stated purpose of assuring compliance with Indiana's abortion laws, any TPRs Dr. Scifres submits to IDOH would necessarily be used or disclosed for a prohibited purpose under the Reproductive Health Care Privacy Rule.

56. While the Reproductive Health Care Privacy Rule provides an attestation process under which a requester of PHI – in this instance, through the vehicle of a mandatory TPR submitted to IDOH – could provide an attestation that the PHI will not be used or disclosed for a prohibited purpose, this process provides no relief to Dr. Scifres. Indeed, the attestation process is simply not feasible given the plain text of the TPR Statute.

57. The Reproductive Health Care Privacy Law prohibits reliance on an attestation that is false or cannot be reasonably relied upon by the provider. 45 C.F.R. § 164.509(b)(2)(iv)-(v). Here, it would be impossible for Dr. Scifres to reasonably rely on any attestation that a TPR would not be used for the prohibited purpose of investigating or imposing liability for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care, because the clear and unambiguous language in the TPR Statute itself declares that TPRs are used for that very prohibited purpose, namely, to enforce Indiana's abortion laws. IDOH has publicly confirmed that it uses TPRs to enforce Indiana health laws in accordance with the stated purpose of the TPR Statute. *See* IDOH's Reply in Support of Motion to Dismiss, *Voices for Life, Inc. v. Ind. Dep't of*

Health, Cause No. 49D02-2405-MI-019876 at 5 (Ind. Super. Ct. Aug. 22, 2024); *cf.* 2024 Ind. Atty. Gen. Op. No. 2024-2 at 7 (Apr. 11, 2024) (stating that one of the statutory purposes of TPRs is to “ensure compliance with Indiana’s pro-life laws” and that the “[i]nformation contained directly in the TPR itself can provide . . . insight [into whether there has been compliance with Indiana’s abortion laws]”); *id.* at 5 (“TPRs are created and submitted so that others can evaluate the *provider’s* compliance with Indiana laws governing abortion.”); *see also* Press Release, Office of the Indiana Attorney General, Attorney General Todd Rokita and State Senator Andy Zay announce advisory opinion clarifying Terminated Pregnancy Reports are public records (April 12, 2024), <https://events.in.gov/event/attorney-general-todd-rokita-and-state-senator-andy-zay-announce-advisory-opinion-clarifying-terminated-pregnancy-reports-are-public-records> (stating that without TPRs, “it is impossible to ensure that providers are complying with the law” or “investigate medical provider complaints;” further quoting Indiana Senator Andy Zay as saying that, “As someone who has participated in legislative deliberations” about TPRs, “I can confirm that it was never the Indiana General Assembly’s intent to make them secret and render them useless.”).

58. Because TPRs come within the purview of the Reproductive Health Care Privacy Rule, Dr. Scifres cannot legally submit these reports to IDOH.

59. As such, Dr. Scifres imminently faces criminal liability, the loss of her medical license, and civil monetary fines. She further exposes IUH to administrative burdens and operational risks associated with the licenses necessary to operate its facilities in central Indiana.

**COUNT I
DECLARATORY JUDGMENT**

60. Dr. Scifres incorporates by reference the foregoing paragraphs, as if restated herein in their entirety.

61. Pursuant to the Declaratory Judgment Act, this Court is empowered to “declare the rights and other legal relations of any interested party seeking such declaration” 28 U.S.C. § 2201(a).

62. The Supremacy Clause of the United States Constitution gives Congress the power to override, negate, or block enforcement of state law in a given area. U.S. Const. art. VI, cl. 2; *see also Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) (“We begin with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause.”).

63. “Federal regulations have no less pre-emptive effect than federal statutes.” *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

64. HIPAA expressly supersedes contrary state law. 42 U.S.C. § 1320d-7(a)(1).

65. The Reproductive Health Care Privacy Rule expressly preempts any contrary state law. 45 C.F.R. § 160.203; *see also* 89 Fed. Reg. at 32993.

66. HIPAA and the Reproductive Health Care Privacy Rule thus expressly preempt the TPR Statute.

67. Even if HIPAA and the Reproductive Health Care Privacy Rule did not include these express preemption provisions, HIPAA and the Reproductive Health Care Privacy Rule would still preempt the TPR Statute because it is impossible to comply with both state and federal law.

68. Because HIPAA and the Reproductive Health Care Privacy Rule preempt the TPR Statute, the TPR Statute is unenforceable as of the December 23, 2024 compliance date for the Reproductive Health Care Privacy Rule, and Dr. Scifres and other Indiana physicians who provide lawful abortions need not comply with the TPR Statute as of that date.

WHEREFORE, Dr. Scifres respectfully seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring that the TPR Statute is preempted by HIPAA and the Reproductive Health Care Privacy Rule and is therefore unenforceable, and for all other just and proper relief.

**COUNT II
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

69. Dr. Scifres incorporates by reference the foregoing paragraphs, as if restated herein in their entirety.

70. When a court enters a declaratory judgment, it may also order additional relief as necessary. 28 U.S.C. § 2202. Injunctive relief is permitted under 28 U.S.C. § 2202. *See Powell v. McCormack*, 395 U.S. 486, 499 (1969).

71. Attendant to the declaratory relief requested in Count I, Dr. Scifres requires further relief to avoid the impossibility of complying with both the TPR Statute and HIPAA and the Reproductive Health Care Privacy Rule.

72. If Dr. Scifres complies with the TPR Statute and submits a TPR report to IDOH that can be used to investigate, impose liability on, or identify a person for the mere act of seeking, obtaining, or providing an abortion, Dr. Scifres will violate HIPAA and the Reproductive Health Care Privacy Rule. For this violation, Dr. Scifres faces the prospect of civil liability and civil monetary penalties, or criminal liability in the form of fines or imprisonment. Dr. Scifres would be subject to disciplinary action by her employer, IU Health Physicians, for violating HIPAA and the Reproductive Health Care Privacy Rule. She also risks exposing IU Health Physicians and IUH to violations of HIPAA and the Reproductive Health Care Privacy Rule and liability for any civil monetary penalties based on her conduct.

73. On the other hand, if Dr. Scifres complies with HIPAA and the Reproductive Health Care Privacy Rule by not submitting a TPR to IDOH that can be used to investigate, impose

liability on, or identify a person for the mere act of seeking, obtaining, or providing an abortion, Dr. Scifres will violate the TPR Statute. For this violation, Dr. Scifres faces the prospect of criminal liability, the loss of her medical license, and civil monetary penalties. She further exposes IUH to administrative burdens and operational risks associated with the licenses necessary to operate its facilities in central Indiana.

74. Because Dr. Scifres cannot comply with both state and federal law in this regard, HIPAA and the Reproductive Health Care Privacy Rule preempt the TPR Statute and bar its enforcement. *See Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963) (addressing preemption where “compliance with both federal and state regulations is a physical impossibility”).

75. Dr. Scifres requires relief beyond a declaratory judgment to prevent the application and enforcement of the TPR Statute and its mandatory reporting requirements, in accordance with HIPAA and the Reproductive Health Care Privacy Rule.

76. Dr. Scifres is likely to prevail in her legal challenge to the TPR Statute given the express preemptory language in both HIPAA and the Reproductive Health Care Privacy Rule, and the irreconcilable conflict between these laws. *See* 42 U.S.C. § 1320d-7(a)(1); 45 C.F.R. § 160.203.

77. Absent a preliminary injunction, Dr. Scifres will suffer irreparable injury for which there is no adequate remedy at law.

78. The harm caused to Dr. Scifres outweighs any harm that a preliminary injunction would cause Defendants.

79. The public interest would be served by the grant of a preliminary injunction.

80. The preliminary injunction should issue without bond as Defendants will face no monetary liability if a preliminary injunction is entered.

81. The preliminary injunction should be made permanent upon a determination on the merits of Dr. Scifres's declaratory judgment action in Count I that the TPR Statute is preempted by HIPAA and the HIPAA Reproductive Health Care Privacy Rule and is therefore unenforceable.

WHEREFORE, Dr. Scifres respectfully requests that this Court grant preliminary and permanent injunctive relief enjoining the statewide application and enforcement of the TPR Statute, and for all other just and proper relief.

Dated: December 23, 2024

Respectfully submitted,

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