

July 19, 2022

Via Certified Mail, Return Receipt Requested

Tort Claims
City of Indianapolis
200 E. Washington Street, Suite 1601
Indianapolis, IN 46204

Attorney General Todd Rokita
Office of the Attorney General, State of Indiana
302 W. Washington St. IGCS 5th Floor
Indianapolis, IN 46204-2770
Also by email to todd.rokita@atg.in.gov

Indiana Political Subdivision Risk Management Commission
311 West Washington Street, Suite 103
Indianapolis, IN 46204

TORT CLAIM NOTICE

Re: Tort Claim Notice
Claimant: Caitlin Bernard, M.D.
Date of Loss: Beginning July 13, 2022 (continuing)

Our office represents Caitlin Bernard, M.D. This Tort Claim Notice is being filed on behalf of Dr. Bernard and against Attorney General Todd Rokita and the Office of the Attorney General, pursuant to Indiana Code § 34-13-3. By law, individuals who have suffered harm caused by the State of Indiana or its agencies or officials, must file a Notice of Tort Claim within a specified time from the act or omission giving rise to the claim. The filing of the notice triggers a ninety-day period for the State to investigate or settle the claim. A lawsuit alleging a tort against the State may only be filed after the Notice has been filed and the ninety-day investigative period has expired.

If for any reason you feel that this notice does not constitute full and complete notice of our client's claim pursuant to the Indiana Tort Claims Act, or if you believe that some other agency or department should be notified, please contact our office immediately, and we will provide any additional information that is necessary.

In support of this claim and in accordance with I.C. § 34-13-3-10, Caitlin Bernard, M.D. provides the following information:

CLAIMANT INFORMATION:

Name: Caitlin Bernard, M.D.

Address of Claimant: Indianapolis, IN¹

LOSS INFORMATION:

Date & Time of Loss: Beginning July 13, 2022, at approximately 7:00 p.m. (continuing)

Location of Loss: Indianapolis, IN

Amount of Damages Being Claimed: The dollar amount of the loss is not ascertainable at this time, as the harm is ongoing. Claimant intends to seek damages for security costs, legal fees, reputational harm, and emotional distress. At this time, damages are undetermined.

Governmental Entity/Employee Involved: Indiana Attorney General Todd Rokita and The Office of the Attorney General, State of Indiana

Names & Addresses (if known) of all Persons (other than claimant) Involved:

Attorney General Todd Rokita
Office of the Attorney General, State of Indiana
302 W. Washington St. IGCS 5th Floor
Indianapolis, IN 46204-2770

Factual Circumstances: On July 1, 2022, the Indianapolis Star reported the following:²

“On Monday three days after the Supreme Court issued its groundbreaking decision to overturn Roe v. Wade, Dr. Caitlin Bernard, an Indianapolis obstetrician-gynecologist, took a call from a colleague, a child abuse doctor in Ohio.

Hours after the Supreme Court action, the Buckeye state had outlawed any abortion after six weeks. Now this doctor had a 10-year-old patient in the office who was six weeks and three days pregnant.

Could Bernard help?

Indiana lawmakers are poised to further restrict or ban abortion in mere weeks. The Indiana General Assembly will convene in a special session July 25 when it will discuss restrictions to abortion policy along with inflation relief.

But for now, the procedure still is legal here. And so the girl soon was on her way to Indiana to Bernard’s care.”

¹ Claimant currently is the subject of threats to herself and her family. For that reason, Claimant’s counsel will provide Claimant’s address upon request. Claimant’s counsel may be contacted at:
3646 North Washington Blvd. Indianapolis, IN 46205
Phone: 317-920-0400, Email: kathleen@delaneylaw.net.

² Reported by the Indianapolis Star on July 1, 2022, available at:
<https://www.indystar.com/story/news/health/2022/07/01/indiana-abortion-law-roe-v-wade-overturned-travel/7779936001/>
(last accessed July 17, 2022).

On Monday, July 11, 2022, Ohio Attorney General Dave Yost appeared on Fox News Primetime with host Jessee Watters and stated that there was “not a whisper anywhere” of a 10-year-old being raped in Ohio.³ Two days later, on July 13, 2022, various news sources reported that there was an arrest and a confession in the case.⁴

That evening, on July 13, 2022, Indiana Attorney General Todd Rokita appeared on Fox News Primetime with host Jessee Watters and targeted Dr. Bernard. Mr. Rokita stated, “**And then we have this abortion activist acting as a doctor with a history of failing to report. We’re gathering the evidence as we speak, and we’re going to fight this to the end, including looking at her licensure. If she failed to report it in Indiana, it’s a crime for – to not report, to intentionally not report.**” During the interview, a caption underneath of Attorney General Rokita and a picture of Dr. Bernard read: “**Doc Failed to Report Abortion of Abuse Victim.**”

The Office of the Attorney General has authority to prosecute complaints concerning regulated occupations. I.C. § 25-1-7-2. The attorney general shall maintain the confidentiality of such complaints “until the attorney general files notice with the board of the attorney general’s intent to prosecute the licensee.” I.C. § 25-1-7-10. In addition, Indiana law states that impersonating or acting as a doctor without a license is a crime: “A person who knowingly or intentionally violates this article by unlawfully practicing medicine or osteopathic medicine commits . . . a Level 5 felony.” I.C. § 22-22.5-8-2.

A simple check at <https://mylicense.in.gov/everification/> confirms that, as of July 13, 2022, Dr. Bernard’s license (No. 01078719A) was active with no disciplinary history. Thus, Mr. Rokita’s statements that Dr. Bernard was an “abortion activist acting as a doctor” with a “history of failing to report” were false. Mr. Rokita either knew the statements were false or acted with reckless disregard of the truth or falsity of the statements. Mr. Rokita recklessly and/or negligently failed to ascertain whether the statements about Dr. Bernard’s licensure were true or false before making them.

Statements that Dr. Bernard has a “history of failing to report,” which Mr. Rokita indicated would constitute a crime, made in the absence of reasonable investigation, serve no legitimate law enforcement purpose. Given the current political atmosphere in the United States, Mr. Rokita’s comments were intended to heighten public condemnation of Dr. Bernard, who legally provided legitimate medical care.

On July 14, 2022, various news outlets obtained the Terminated Pregnancy Report through public record requests, confirming that Dr. Bernard complied with reporting requirements under Indiana law.⁵ Mr. Rokita, through the Office of the Indiana Attorney General, nevertheless issued the following statement, which remains posted on the Office of the Attorney General’s government website:⁶

³ Available at: <https://video.foxnews.com/v/6309391986112#sp=show-clips> (last accessed July 18, 2022).

⁴ Reported by The Columbus Dispatch on July 13, 2022, available at: <https://www.dispatch.com/story/news/2022/07/13/columbus-man-charged-rape-10-year-old-led-abortion-in-indiana/10046625002/> (last accessed July 17, 2022).

⁵ Reported by NPR on July 17, 2022, available at: <https://www.npr.org/2022/07/17/1111912927/the-doctor-who-performed-an-abortion-for-a-10-year-old-rape-victim-faces-backlas> (last accessed July 18, 2022).

⁶ Available at: https://events.in.gov/event/attorney_general_todd_rokita_issues_statement_regarding_dr_caitlin_bernard_case?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana (last accessed July 17, 2022).

“Aside from the horror caused here by illegal immigration, we are investigating this situation and are waiting for the relevant documents to prove if the abortion and/or the abuse were reported, as Dr. Caitlin Bernard had requirements to do both under Indiana law. The failure to do so constitutes a crime in Indiana, and her behavior could also affect her licensure. Additionally, if a HIPAA violation did occur, that may affect next steps as well. I will not relent in the pursuit of the truth.”

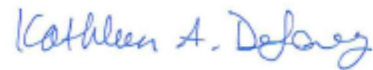
On July 15, 2022, Dr. Bernard’s employer, IU Health, issued the following statement:⁷

“As part of IU Health’s commitment to patient privacy and compliance with privacy laws, IU Health routinely initiates reviews, including the matters in the news concerning Dr. Caitlin Bernard. . . . IU Health conducted an investigation with the full cooperation of Dr. Bernard and other IU Health team members. IU Health’s investigation found Dr. Bernard in compliance with privacy laws.”

Mr. Rokita’s false and misleading statements about alleged misconduct by Dr. Bernard in her profession constitute defamation *per se*. The statements have been and continue to be published by or on behalf of Mr. Rokita and the Office of the Attorney General. To the extent that these statements exceed the general scope of Mr. Rokita’s authority as Indiana’s Attorney General, the statement forms the basis of an actionable defamation claim against Mr. Rokita individually.

Pursuant to I.C. § 34-13-3-11, Claimant requests that you notify her counsel in writing of your approval or denial of this claim within ninety (90) days from the date of this Notice.

Sincerely,



Kathleen A. DeLaney

Cc: Caitlin Bernard, M.D.

⁷ Reported by the Indianapolis Star on July 15, 2022, available at: <https://www.indystar.com/story/news/health/2022/07/15/iu-health-says-indiana-doctor-did-not-violate-hipaa-laws-in-10-year-old-abortion-case/65374295007/> (last accessed July 17, 2022).