

C A M P A I G N F O R ACCOUNTABILITY

April 23, 2024

VIA EMAIL

The Honorable Raúl Labrador
Attorney General for Idaho
700 West Jefferson Street
Boise, Idaho 83720

Dear Attorney General Labrador:

Campaign for Accountability (“CfA”), a nonprofit organization that exposes misconduct and malfeasance in public life, respectfully requests that your office investigate whether Sage Women’s Center (“Sage”) has been obtaining women’s sensitive personal health data in violation of the Idaho Consumer Protection Act and state common law.

BACKGROUND

Sage is a crisis pregnancy center located in Twin Falls, Idaho.¹ Sage is part of a network of thousands of CPCs affiliated with Care Net and Heartbeat International, multi-million-dollar organizations that engage in misleading and deceptive acts within the state of Idaho. Sage and many other CPCs pay annual fees to Care Net and Heartbeat International,² in return for training, digital marketing support including website templates, digital forms used to collect client information, fundraising support, legal best practices, and operations manuals.³

Sage is a self-described “professional women’s center” and advertises “clinic services.”⁴ In many ways, Sage presents as a standard medical clinic. Sage does not, however, appear to be

¹ Sage Women’s Center is a 501(c)(3) nonprofit (EIN 84-1387194) registered in Idaho.

² Care Net, *A Guide to Becoming a Care Net Affiliate*, available at [https://www.care-net.org/hubfs/Affiliate Icons and ads/A%20Guide%20to%20Care%20Net%20Affiliation%20UPDATED%2010.09.18%20.pdf](https://www.care-net.org/hubfs/Affiliate%20Icons%20and%20ads/A%20Guide%20to%20Care%20Net%20Affiliation%20UPDATED%2010.09.18%20.pdf) (last accessed Apr. 15, 2024); *see also* Heartbeat International, *Ready to Affiliate with Heartbeat International?*, available at <https://www.heartbeatinternational.org/about-us/why-affiliate/ready-to-affiliate> (last accessed Apr. 15, 2024).

³ Care Net, *Bookstore Webpage* available at <https://store.care-net.org/>; Care Net, “Understanding Client Care: Volume I,” (hereinafter “Understanding Client Care”), available for purchase at <https://store.care-net.org/understanding-client-care-volume-i-download/>; Heartbeat International, “Heartbeat Academy,” available at <https://www.heartbeatinternational.org/academy>; Heartbeat International, “Medical Essentials for Pregnancy Help Organizations,” (hereinafter “Medical Essentials”) available for purchase at <https://www.heartbeatinternational.org/resources/resources-by-topic/medical/medical-essentials>; “Legal Essentials for Pregnancy Help Organizations,” (hereinafter “Legal Essentials”) available for purchase at <https://www.heartbeatinternational.org/resources/resources-by-topic/board/legal-essentials>, and “Sample Medical Policies and Procedures,” available for purchase at <https://www.heartbeatinternational.org/resources/resources-by-topic/medical/sample-medical-policies-and-procedures> (last accessed Apr. 15, 2024). While Heartbeat International makes its manuals available for purchase online, purchasers must attest they are affiliated with a pregnancy help organization.

⁴ Sage Women’s Center, *Homepage*, available at <https://sagewomenscenter.org> (last accessed Apr. 15, 2024).

registered with the Idaho Department of Health and Welfare as a health facility⁵ and lists no medical staff on its website.

Sage's appointment process mimics that used by most doctors' offices: consumers are directed to a digital form where they are instructed to provide sensitive personal and health information, including first and last name, phone number, email address, and information about the services they seek.⁶ Care Net provides its affiliates, such as Sage, a "New Client/Patient Intake Conversation Guide Form" that instructs staff and volunteers to collect information such as a client's contraceptive use, their prior pregnancies, and last menstrual period date.⁷ Affiliates such as Sage can use these forms when clients appear for appointments.

Although not a medical office, Sage collects sensitive and private medical information in exchange for the services it offers. Sage makes numerous representations suggesting it maintains the confidentiality of sensitive medical information, invoking the federal Health Insurance Portability and Protection Accountability Act ("HIPAA"). On its website, Sage promises prospective clients: "we follow all HIPPA [sic] laws regarding client confidentiality. We will never disclose your visit without your permission, including to your insurance company."⁸ On its page targeting students, it similarly advertises that "[y]our visit and information will always be kept private in accordance with HIPPA [sic] laws and regulations."⁹

Sage likely peppers its website with assurances it follows HIPAA because the acronym has become consumer shorthand for protected or secure personal health information.¹⁰ Despite the, perhaps deliberate, misspelling ("HIPPA" rather than the correct "HIPAA"), a reasonable consumer would understand Sage's pledges of confidentiality to mean the CPC complies with

⁵ Idaho Department of Health and Welfare, Find a Facility, Agency, or Service, *available at* <https://publicdocuments.dhw.idaho.gov/WebLink/Browse.aspx?id=5285&dbid=0&repo=PUBLIC-DOCUMENTS> (last accessed April 15, 2024).

⁶ Sage Women's Center, Contact Us Webpage, *available at* <https://sagewomenscenter.org/contact/> (last accessed Apr. 15, 2024).

⁷ Understanding Client Care at 50.

⁸ Sage Women's Center, FAQ Webpage, *available at* <https://sagewomenscenter.org/faq/> (last accessed Apr. 15, 2024).

⁹ Sage Women's Center, Students Webpage, *available at* <https://sagewomenscenter.org/students> (last accessed Apr. 15, 2024).

¹⁰ Thomas Germain, *Guess What? HIPAA Isn't a Medical Privacy Law*, *Consumer Reports*, (June 13, 2022), *available at* <https://www.consumerreports.org/health/health-privacy/guess-what-hipaa-isnt-a-medical-privacy-law-a2469399940/>; ClearDATA, Press Release, *ClearDATA Survey Reveals Many Americans Don't Realize Personal Data Shared with Digital Health Apps Could be Sold Without Their Consent* (July 11, 2023), *available at* <https://www.cleardata.com/news/cleardata-survey-reveals-many-americans-dont-realize-personal-data-shared-with-digital-health-apps-could-be-sold-without-their-consent/> ("[S]urvey found that 81% of Americans assume that all protected health data collected by digital health apps is protected under HIPAA. And while 68% of Americans say they are very or somewhat familiar with HIPAA, in reality, HIPAA does not safeguard protected health information (PHI) within the context of digital apps or other health companies in the same way it does for "covered health entities" like hospitals and providers. This means, in many cases, it's perfectly legal for app makers to sell their users' health data—and most Americans are utterly unaware of this potential invasion of privacy.")

HIPAA, that their sensitive information is protected by federal law, and recourse for any privacy violation is available through the federal government.

Contrary to the assurances Sage offers, Sage and Care Net are demonstrably aware that Sage is not actually retaining private consumer materials in accordance with HIPAA. Care Net's internal materials state centers like Sage "are not legally required to be HIPAA compliant unless they are billing for services electronically."¹¹ In a blog post, Care Net explains:

Most centers do not meet the legal definition of a covered entity under the HIPAA regulation because they do not furnish, bill, or are paid for health care in the normal course of business and do not transmit health information in electronic form in connection with a transaction for which a HIPAA standard has been adopted by HHS.¹²

Care Net's materials also explain affiliates are not subject to legal restrictions on confidentiality, but instead are bound only by subjective "ethical obligations:"

In most states, the conversations individuals have with their own medical professionals, attorneys, clergy, or licensed professional counselors are legally privileged and may not be disclosed, except in rare circumstances. **While this legal privilege and responsibility does not apply to interactions between clients and unlicensed personnel at non-medical centers**, all team members have an ethical obligation to keep promises of confidentiality made by the center to clients¹³ (emphasis added).

Care Net continues: "[e]xceptions [to this pledge] include when disclosure is required by law, or there exists morally compelling circumstances to break confidentiality, or when necessary to protect the client or others from serious, foreseeable, and imminent bodily harm, or when the center is engaged in a criminal or civil dispute with the client."¹⁴

Sage undercuts the value of its confidentiality pledges in its "Notice of Privacy Practices,"¹⁵ which states it does not engage in "any transactions that invoke coverage of the

¹¹ Understanding Client Care at 7.

¹² Care Net, [A Picture of Academic Bias Against Pregnancy Centers](https://www.care-net.org/abundant-life-blog/a-picture-of-academic-bias-against-pregnancy-centers), *Care Net Blog* (Jan. 17, 2019), available at <https://www.care-net.org/abundant-life-blog/a-picture-of-academic-bias-against-pregnancy-centers>.

¹³ Understanding Client Care at 1.

¹⁴ *Id.* at 5. Publicly available previews of Heartbeat International's "Legal Essentials" guide similarly indicate it enumerates "exceptions to confidentiality" for affiliates, *see* Heartbeat International, "Legal Essentials," Table of Contents: Chapter 9 Confidentiality and Client Records, Section 2: Exceptions to Confidentiality," available at <https://www.heartbeatinternational.org/resources/resources-by-topic/board/legal-essentials>, (last accessed Apr. 15, 2024).

¹⁵ Sage Women's Center, Notice of Privacy Practices Webpage, available at <https://sagewomenscenter.org/wp-content/uploads/2020/02/A07-Notice-of-Privacy-Practices-09-2019.pdf> (last accessed Apr. 15, 2024).

HIPAA Privacy Act” and therefore its privacy practices are “voluntarily undertaken.”¹⁶ Further, if a client asks Sage not to disclose her information, Sage “will consider” the client’s request, but claims it is “not legally bound to agree to the restriction.”¹⁷ Sage also attempts to limit and delay a client’s ability to discover with whom Sage may have disclosed her private information, explaining a client may ask for a list of disclosures, but then exempts from that list disclosures “made in connection with your treatment, our health care operations, or as specifically required by law.”¹⁸ Sage also does not promise to release that information to the client, instead saying only it will “respond to your request within 60 days of receiving it.”¹⁹ In short, women are guaranteed *no actual privacy protection* when they hand over highly sensitive information about their pregnancies or reproductive health.

Moreover, Sage appears to explicitly target those with low incomes such as students, maintaining a dedicated page for high school and college students (including directions from specific school buildings) and noting its “no-cost” services.²⁰ These consumers may reasonably believe they are offering their highly personal information *for the purpose of* obtaining necessary health care. Yet, in fact, no such health care is available. This raises the question of *why* Sage is gathering and retaining this highly sensitive medical and personal information and what the group does with this material.²¹

LEGAL VIOLATIONS

The Idaho Consumer Protection Act

As you know, the Idaho Consumer Protection Act (“ICPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce” when the entity knows, or “in the exercise of due care” should know of the unlawful practice.²² The Act broadly defines “trade” and “commerce” to include “advertising” and “distributing goods or services” from locations within Idaho or to the people of the state.²³ Further, in enacting the ICPA, it was the “intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the Federal Trade Commission and federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).”²⁴

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sage Women’s Center, Students Webpage, available at <https://sagewomenscenter.org/students> (last accessed Apr. 15, 2024).

²¹ Care Net advises that affiliates retain records for 7 years. *See* Understanding Client Care at 6.

²² Idaho Code § 48-603.

²³ *Id.* at § 48-602(2). Because the ICPA is remedial legislation its provisions should be liberally construed to provide relief for Idahoans exposed to proscribed practices.” *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 401, 788 P.2d 214, 216 (1990) (quoting *State ex rel. Kidwell v. Master Distributors, Inc.*, 101 Idaho 447, 453-54, 615 P.2d 116, 122-23 (1980); Idaho Code § 48-601.

²⁴ Idaho Code § 48-604(1).

The legislature also granted the attorney general the authority to make rules and regulations interpreting the ICPA but required these “not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act.”²⁵

The ICPA’s purpose is to “protect both consumers and businesses against unfair methods of competition” and to provide “efficient and economical procedures to secure such protection.”²⁶ The Act is liberally construed to prevent deceptive or unfair trade practices, and to protect consumers.²⁷ “The law is settled that a finding of tendency and capacity to mislead is sufficient and that actual deception need not be shown. Likewise, proof of intention to deceive is not required for finding that an act is unfair or deceptive.”²⁸

Sage is an Idaho nonprofit²⁹ that advertises and distributes goods and services in the state. The Act defines “services” as “work, labor or any other act or practice provided or performed by a seller to or on behalf of a consumer”³⁰ and “goods” as “any property” or “thing of value wherever situate.”³¹ Sage provides pregnancy tests, ultrasounds, counseling, and other sexual health testing, all things of value. Though Sage offers these services without charge to clients, it receives outside donations to provide and pay for them, and consumers provide Sage with their sensitive health information before receiving Sage’s services. The consideration Sage receives for its services means Idaho consumers are protected by the ICPA in any dealings with the CPC.

In prominent places on its website, Sage promises prospective clients their highly sensitive personal health information will be protected by HIPAA. Yet, in a far less conspicuous location, it deceptively denies offering any such protections. Similarly, Sage claims on its website that it offers “private” services even though its true privacy policy strips consumers of the right to control how their personal health information is used and shared. Whether or not Sage intends to deceive consumers – and it certainly appears it does – by publicly claiming compliance with privacy policies with which it does not comply, Sage is representing its services

²⁵ Idaho Code § 48-604(2).

²⁶ See Idaho Code § 48-601; see also *Tricore Invs., LLC v. Est. of Warren through Warren*, 168 Idaho 596, 617, 485 P.3d 92, 113 (2021).

²⁷ *State By & Through Alan G. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 567, 929 P.2d 741, 743 (1996); see also *Tricore Invs.*, 168 Idaho at 617–18, 485 P.3d at 113–14 (“[T]he Act must be liberally construed to effect the legislative intent”).

²⁸ *Duspiva v. Fillmore*, 154 Idaho 27, 33, 293 P.3d 651, 656 (2013), citing *State ex rel. Kidwell*, 101 Idaho at 453, 615 P.2d at 122.

²⁹ The Idaho Attorney General has previously joined multistate litigation against nonprofits, citing its authority under the ICPA and the Idaho Charitable Solicitation Act (Idaho Code §§ 48-1201 *et seq.*). See *FTC et al. v. Cancer Fund of America, Inc.*, documents available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/122-3005-x150042-cancer-fund-america-inc>.

³⁰ While the ICPA does not provide a definition, the attorney general through rule-making power has defined “consumer” as a “person who [...] is solicited to purchase, lease, rent or otherwise give consideration for any goods or services. *State v. Alpharma USPD, Inc.*, No. CV-OC-0701847, 2007 WL 5273981 (Idaho Dist. Aug. 31, 2007)(citing Idaho Admin. Code r. 04.02.01.020.13). Sage’s clients qualify as consumers because they are solicited to exchange personal data in exchange for the goods and services Sage offers *and* are solicited to forgo seeking services from other providers in exchange for the goods and services provided.

³¹ Idaho Code §§ 48-602(6)(7).

as having characteristics and benefits –confidentiality and HIPAA protection – they do not have,³² and is likely engaging in practices “misleading, false, or deceptive to the consumer,”³³ leading consumers to wrongly believe their sensitive health information will be confidential. Sage’s actions also create a likelihood of confusion as to the “approval” or “certification” of its services³⁴ by suggesting to consumers that they are receiving HIPAA covered services in exchange for their sensitive health information. Similarly, Sage’s misleading privacy policy creates a likelihood of “confusion” or “misunderstanding” as to any “affiliation, connection, or association”³⁵ between Sage and HIPAA and consumers’ ability to seek recourse through HHS for any privacy violations. By misleading consumers about the confidentiality of their personal health information, Sage appears to be engaged in “unconscionable” practices.³⁶

Looking, as the statute requires,³⁷ to the FTC’s interpretation of the federal Unfair Trade Practices Act, the FTC has specifically stated that companies touting “HIPAA compliance”, as Sage does, may be deceiving consumers if they are not actually covered by the law.³⁸

The FTC has called health information “among the most sensitive categories of data collected.”³⁹ The FTC has stated the misuse of such data “exposes consumers to significant harm,” and that “[t]he exposure of health information and medical conditions, especially data related to sexual activity or reproductive health, may subject people to discrimination, stigma, mental anguish, or other serious harms.”⁴⁰ In short, the FTC has held consumers deserve to know who is collecting their personal information and what laws and regulations govern how it is used, stored, and protected.

Recently, the FTC settled a lawsuit against Easy Healthcare, developer of the fertility app Premom, alleging it had deceived consumers about its privacy protections in collecting sensitive

³² See Idaho Code §48-603(5).

³³ See Idaho Code § 48-603(17).

³⁴ See Idaho Code § 48-603(2).

³⁵ See Idaho Code § 48-603(3).

³⁶ See Idaho Code § 48-603(18). In determining whether an act is unconscionable, a court can consider whether Sage took advantage of an Idahoan reasonably unable to protect their interest or induced Idahoans to enter overly one-sided transactions. See Idaho Code § 48-603(C)(2)(a)(c).

³⁷ Idaho Code § 48-604(1).

³⁸ *In the Matter of SkyMed International, Inc.*, File No. 1923140, https://www.ftc.gov/system/files/documents/cases/skymed_-_complaint.pdf (alleging that SkyMed deceptively “displayed a seal” that attested to its “purported compliance” with HIPAA); see also Federal Trade Commission, Collecting, Using, or Sharing Consumer Health Information? Look to HIPAA, the FTC Act, and the Health Breach Notification Rule (Sept. 2023), available at <https://www.ftc.gov/business-guidance/resources/collecting-using-or-sharing-consumer-health-information-look-hipaa-ftc-act-health-breach> (instructing that entities should not “make false or misleading claims that [they] are ‘HIPAA Compliant,’ ‘HIPAA Secure,’ ‘HIPAA Certified’ or the like”).

³⁹ Kristin Cohen, Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data, *FTC Blog* (July 11, 2022), available at <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal>.

⁴⁰ *Id.*

information about their menstruation history, pregnancy history, and pregnancy status.⁴¹ Premom’s privacy policies assured users that any information it collected to share was non-identifiable and disclosed only for its own analytics and/or advertising. In fact, however, without users’ consent, Easy Healthcare disclosed their identifiable health data to third parties.⁴² The settlement prohibits Easy Healthcare from making misrepresentations regarding its privacy practices and included a \$100,000 civil penalty.⁴³ Like Sage, the Premom app offers its ovulation and menstruation tracking app to consumers free of charge.⁴⁴ Unfortunately, the FTC does not appear to have jurisdiction over CPCs.⁴⁵

It is unclear what, in fact, Sage does with the data it collects. The FTC has targeted companies for misleading consumers about *why* their information is being collected and how it will be used. In 2022, Twitter was ordered to pay \$150 million after it asked users to give phone numbers and email addresses to protect their accounts and then sold that data to advertisers in violation of a previous FTC order.⁴⁶ In 2021, the FTC targeted the free, fertility-tracking app FLO for sharing sensitive health information with third parties after promising that information would be kept private. This included sharing the health data (including information on pregnancy and menstruation history) consumers provided for the purpose of tracking period flow and ovulation with third party affiliates that provided services to the app.⁴⁷

If Sage is sharing client information it has misrepresented as confidential, this too may violate the ICPA. Your office has taken or supported actions against deceptive privacy practices in other arenas. For example, your office currently is participating in a multistate investigation led by the Colorado and Tennessee attorneys general seeking to determine whether Tik Tok has “engaged in deceptive, unfair, and unconscionable conduct that harmed the mental health of TikTok users, particularly children and teens.”⁴⁸ In 2022, in a settlement with Google regarding its location tracking practices relating to Google account settings, your office issued a press

⁴¹ *U.S. v. Easy Healthcare Corporation*, CA No. 1:23-cv-3107, Stipulated Order for Permanent Injunction, Civil Penalty Judgment, and Other Relief, N.D. Ill. June 22, 2023) available at https://www.ftc.gov/system/files/ftc_gov/pdf/2023.06.22_easy_healthcare_signed_order_2023.pdf.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See FTC Act § 4, 15 U.S.C. § 44. (defining covered “corporations” to include those that are “organized to carry on business for its own profit or that of its members”).

⁴⁶ Federal Trade Commission, FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads, *FTC Blog* (May 25, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads>.

⁴⁷ Federal Trade Commission, Developer of Popular Women’s Fertility-Tracking App Settles FTC Allegations that It Misled Consumers About the Disclosure of Their Health Data, *FTC Blog* (Jan. 12, 2021), available at <https://www.ftc.gov/news-events/news/press-releases/2021/01/developer-popular-womens-fertility-tracking-app-settles-ftc-allegations-it-misled-consumers-about>.

⁴⁸ Office of the Attorney General, State of Idaho, Press Release, Attorney General Labrador Joins 46 State Coalition Asking Court to Order TikTok to Preserve and Produce Company Communications Critical to Multistate Investigation (Mar. 6, 2023), available at <https://www.ag.idaho.gov/newsroom/attorney-general-labrador-joins-46-state-coalition-asking-court-to-order-tiktok-to-preserve-and-produce-company-communications-critical-to-multistate-investigation/>.

release stating, “[c]ompanies must be held accountable when they fail to inform consumers regarding the collection of their private data.”⁴⁹

In yet another matter, in 2019, your office entered into a settlement agreement with Premera Blue Cross, finding the company had misled consumers about its privacy practices in the aftermath of a data breach.⁵⁰ After the breach became public, Premera agents untruthfully “told consumers there was ‘no reason to believe that any of your information was accessed or misused,’ and that ‘there were already significant security measures in place to protect your information,’ despite the previous warnings over the company’s vulnerabilities.”⁵¹ Similarly here, Sage is telling consumers their data is protected by “HIPPA” [*sic*] and is confidential, despite knowing—and failing to inform consumers—that their data may be shared.

Fraud and Intentional Misrepresentation

Sage also appears to violate Idaho’s prohibition against intentional misrepresentation, or fraud.⁵² Consumers have a reasonable expectation of privacy in personal health information and would be unlikely to knowingly provide that information to an organization that does not maintain confidentiality. Sage, knowing it does not engage in the transactions that would bring it under the guise of HIPAA, still advertises HIPAA compliance to persuade clients to seek services. Further, it advertises services as “private” or “confidential” when its actual privacy policy belies such claims. The circumstances of Sage’s misrepresentations are “inconsistent with an honest, reasonable belief in the truth of the statements . . . sufficient to establish the scienter element of fraud.”⁵³

CONCLUSION

Idaho women and girls have undoubtedly been and continue to be misled by the deceptive representations Sage makes on its website, forms, and likely in person regarding the confidentiality of their data and Sage’s compliance with HIPAA. Under Idaho law, you have the authority to bring an action to prevent Sage and similar entities from misleading the public about the confidentiality of their sensitive medical information.⁵⁴ CfA requests your office investigate

⁴⁹ Office of Attorney General, State of Idaho, Press Release, 40 Attorneys General Announce Historic Google Settlement over Location Tracking Practices (Nov. 14, 2022), *available at* <https://www.ag.idaho.gov/newsroom/40-attorneys-general-announce-historic-google-settlement-over-location-tracking-practices>.

⁵⁰ Office of the Idaho Attorney General, State of Idaho, Press Release, Wasden Obtains Settlement from Health Insurer Premera Over Failure to Protect Sensitive Data from Hacker (July 11, 2019), *available at* <https://www.ag.idaho.gov/newsroom/wasden-obtains-settlement-from-health-insurer-premera-over-failure-to-protect-sensitive-data-from-hacker/>.

⁵¹ *Id.*

⁵² *See Roost Project, LLC v. Andersen Constr. Co.*, 437 F. Supp. 3d 808, 824 (D. Idaho 2020)(identifying the elements of an action for fraud or intentional misrepresentation).

⁵³ *Frontier Dev. Grp., LLC v. Caravella*, 157 Idaho 589, 596, 338 P.3d 1193, 1200 (2014) *quoting Parker v. Herron*, 30 Idaho 327, 331, 164 P.1013,1014 (1917).

⁵⁴ Idaho Code § 48-606.

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whether Sage is violating the ICPA by engaging in deceptive or unfair trade practices and whether it has engaged in fraud.

Just as the FTC has taken action against corporations that have misled consumers about the collection of their personal data and with whom it is shared, so too should the state of Idaho. The women and girls of Idaho are relying on you.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, reading "Michelle Kupper-Smith". The signature is written in a cursive, flowing style.

Michelle Kupper-Smith

EXHIBIT 1

1 | UNDERSTANDING CONFIDENTIALITY AND RELEASE OF INFORMATION



“Now it is required that those who have been given a trust must prove faithful.” — I Corinthians 4:2

Centers maintain the highest standards in protecting the confidentiality and privacy of their clients. Each center should inform clients of its promise of confidentiality, both verbally and in writing, prior to providing services. Keeping this promise is essential for building and maintaining client trust and is the responsibility of every center team member.

Training

Centers should establish practices that ensure the confidentiality of client relationships. For example, center staff should not identify themselves as such when leaving telephone messages for clients, except with the clients’ written permission. Center personnel must be trained to carefully protect the center’s promise of confidentiality, in interactions both within the center and with people outside the center. Because the center’s promise of confidentiality applies to all clients, it must be regularly reinforced throughout the organization. It applies to all types of client records and interactions: to clients who receive individual coaching or group classes, for programs as diverse as abortion recovery support and parenting mentoring.

Legal Considerations for External Confidentiality

Confidential client information should never be shared outside the center, except in very limited and specific circumstances. Confidential information includes all personally identifying details about a client or their situation, including confirmation that a specific individual is or is not a client of the center.

Certain personnel in some centers may also have a legal obligation to protect the confidentiality of certain communications with clients. In most states, the conversations individuals have with their own medical professionals, attorneys, clergy, or licensed professional counselors are legally privileged and may not be disclosed, except in rare circumstances. While this legal privilege and responsibility does not apply to interactions between clients and unlicensed personnel at nonmedical centers, all team members have an ethical obligation to keep promises of confidentiality made by the center to clients. If a center team member inappropriately breaches the center’s promise of confidentiality, the center could be held liable in a civil suit.

Some possible exceptions¹ to the promise of confidentiality include:

¹ These are general exceptions and do not apply in every state. Centers should confirm what the law requires in their state.

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- when an adult client has given written permission allowing the center to share her records with a third party or to share her story publicly;
 - when interaction with the client results in suspicion that a minor, disabled person, or dependent elder is abused, neglected, or endangered;
 - when center personnel believe that the client is at risk of harming themselves or others, or poses a national security threat;
 - when the information is compelled by law, such as when the center has obtained a subpoena or court order and an attorney representing the center has advised the center to comply;
 - when a “client” has obtained services under false pretenses, such as using the visit to produce an untruthful report on behalf of a pro-abortion advocacy organization;
 - when a client has committed some crime against the center or is posing a threat to center personnel;
 - when a client has filed a lawsuit against the center—in this case, documents may be provided to the court.

In these limited situations, confidential client information may be revealed outside the center. When this occurs, center personnel should carefully record all steps taken and retain relevant documents in the client’s file.

Internal Confidentiality

In addition to avoiding sharing confidential client information with persons outside the center, personnel should also keep client identifying details limited to those persons who need to know them within the center.

It is always appropriate for team members to share details with their supervisor in order to seek direction. It is also appropriate to discuss a client’s situation and share case notes with other team members providing care to the same client. In some situations, it may be necessary and appropriate for center staff members (not volunteers) to share non-identifying details about a client’s situation with Care Net or an experienced leader in another center, in order to seek advice on case management.

When sharing a portion of a client story for internal training purposes, it is also important to remove identifying details and/or to create training scenarios based on multiple stories in order to protect the confidentiality of individual clients.

Confidential information about clients should never be shared among staff and volunteers (including board members) as a prayer request or simply because it is an interesting, sad, humorous, or unusual anecdote.

Protecting Records

To aid the center in offering services to the community, the center keeps written records of its interaction with individual clients. These records are owned by the center and subject to the center’s document retention policies; original files should not be given to anyone.

Confidentiality of client files should be maintained not only by training personnel, but also by sound center security practices. Hard-copy files should be stored in a lockable filing cabinet in a lockable room, with access to the keys limited to appropriate personnel. Electronic files should be maintained in a password-protected environment with appropriate encryption levels.²

The client may have the legal right to request and receive a copy of all, or any portion, of their record for themselves or for a third party that they designate, depending on the state law governing the center. The client may also have the right to allow the center and center-related entities to use their story and related materials (such as photographs) for promotional purposes.

Anyone requesting the client's information, besides the client, the client's power of attorney, or the client's attorney, should be refused. If a subpoena is issued for the information from anyone other than the client or the client's attorney, the center should:

1. Seek legal counsel to challenge the subpoena, and
2. Inform the client prior to complying with the subpoena and advise them of their right to retain counsel to challenge the subpoena.

Before providing a client or any third party with a copy of the client's records, the center should receive a written request for release of the records, which should be signed by the client, if possible, and should be maintained in the client's file. The center should only release the specific information that the client has requested be released and should take steps to verify the client's identity before releasing the information. Information should be released within the time frame specified by center policy and state law. If the client has requested ongoing information sharing between the center and any third party, such permission should automatically expire on a certain date. The client may also revoke permission to release information at any time.

Some centers refuse to provide clients who may be seeking an abortion with copies of medical records which could be used to facilitate obtaining one. Centers should be aware that state laws protecting rights of conscience may not be interpreted to include refusal to release client medical records, and the client may, in fact, have a right to a copy of these records. Such centers should carefully review state law with their attorneys before denying any client access to a copy of her medical records for any reason. Such centers should also consider the benefit of maintaining the client relationship by releasing the records. Also, the practice of a center's medical director in this situation should be consistent with their practice in other settings, such as with private clients.

Use of Client Testimonials

The center should ensure that any situation in which the client is provided with an opportunity to share their story for the benefit of the center is non-exploitative. Invitations to share a client story or image should only be extended when the client is not in a time of active crisis. Center personnel should make their best efforts to ensure that the client understands how their story may be used and freely consents to such use. Clients should also understand that receiving services in the future is in no way conditioned on allowing the center to use their stories and that they have the right to seek

² *Appropriate encryption levels are equivalent to current standards for medical information, personally identifying information, or financial information. At the time of this writing, 256-bit encryption was appropriate.*

legal counsel before consenting. The center should not share any identifying client details publicly without clients' informed, written consent.

Other Considerations

Each center will have other information which should be handled confidentially, likely including employee and volunteer contact information, identifying information related to specific donors, prospective budgets, and nonpublic financial details.

All personnel should understand the value the center places on protecting confidential information and that sharing such information may lead to sanctions, up to and including termination of employment or volunteer service.

CLIENT CONFIDENTIALITY POLICY TEMPLATE (page 1)

[PLACE LOGO HERE IN HEADER]

CLIENT CONFIDENTIALITY POLICY

GENERAL GUIDELINES

[Center Name] values the protection of confidential information. During the course of service for [Center Name] an employee or volunteer may learn confidential information, such as financial, personal, or medical matters affecting the lives of other employees or volunteers, or those served by [Center Name], or those affecting the business operations of [Center Name]. Unauthorized sharing of such information is prohibited.

CLIENT CONFIDENTIALITY

Every client seen at [Center Name] is promised confidentiality and every center team member has a duty to uphold confidentiality, unless an exception applies. Some exceptions include when disclosure is required by law, or there exists morally compelling circumstances to break confidentiality, or when disclosure is necessary to protect the client or others from serious, foreseeable, and imminent bodily harm, or when the center is engaged in a criminal or civil dispute with the client.

In almost all other situations, client information, including identity, may only be shared with the client's written permission. When in doubt, the center should consult a local attorney knowledgeable in healthcare and/or counseling law.

Every client of [Center Name] signs a [Request for Services] form acknowledging their understanding of the center's promise of confidentiality and its limitations prior to beginning to receive services at the center. This form includes the following disclaimer:

[CHOOSE ONE]:

All information shared by you during your relationship as a client with this center will be kept in strict confidence except as required by law or as required for the protection of you or others.

— OR —

This center holds in strict confidence the information you provide with the following exceptions: due to concern for your safety and/or state law, we are required to report knowledge of a client who is suicidal, homicidal, abusing a minor, a minor being abused, or a victim of statutory rape, or when otherwise required to disclose such information by law.

EXPLANATION OF EXCEPTIONS TO CLIENT CONFIDENTIALITY

Subpoenas—Center personnel shall comply with subpoenas for client information. [See policy on subpoenas.]

Public Health—Center personnel shall release client information related to infectious diseases as required to the appropriate public health agency. [See policy on infectious disease reporting.]

Suicide/Homicide—Center personnel shall report to law enforcement credible threats of suicidal or homicidal intentions. [See policy on suicide/homicide reporting.]

Last updated: [date]. Approved by [CEO or Board of Directors], [Center Name]
Client Confidentiality Policy 02017 Care Net

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*MEDICAL CENTERS ONLY.
Centers offering only support
services may delete this section.*

CLIENT CONFIDENTIALITY POLICY TEMPLATE (page 2)

[PLACE LOGO HERE IN HEADER]

Child Abuse/Neglect or Elder Abuse/Neglect—Center personnel shall act as mandatory reporters under state law, reporting suspicions of child abuse or neglect to law enforcement and/or the appropriate child protection agency. [See policy on child abuse/neglect.]

Fake Clients—When it has been confirmed beyond a reasonable doubt that the “client” has obtained services under false pretenses, such as using the visit to produce an untruthful report on behalf of a pro-abortion advocacy organization, the center may disclose the circumstances of the visit to the extent necessary to defend its practices from falsehoods.

Legal Disputes with the Center—When the client has committed some crime against the center or is posing a threat to center personnel, or when the client has filed a lawsuit against the center, the center may disclose that information which is necessary to defend itself or seek justice.

ACCESS TO CLIENT INFORMATION

Client files and personally identifying information shall be maintained securely. Only personnel having a legitimate need may access this information.

[CHOOSE ONE OR BOTH]:

Hard-copy files shall be stored in a lockable filing cabinet in a lockable room. When the center is closed, all client files shall be locked and the room also locked. When the room or filing cabinet is unlocked, access to the files should be supervised by authorized personnel who can ensure they are only accessed by other authorized individuals. Keys shall only be available to center personnel who are authorized to access the files.

— AND/OR —

Electronic files shall be password protected and accessible only through a password-protected computer. Passwords should be difficult to guess, changed every ninety days, and never stored where they may be accessed by unauthorized persons.

Under no circumstances may hard-copy information leave the center premises nor may electronic information be shared with unauthorized persons.

When anyone other than a client requests information concerning a client, including verification of the identity of a client, that request will be refused unless the client’s written permission has been obtained or a subpoena or court order is issued. Client information is not given over the phone to anyone unless written permission has been obtained (this includes relatives, partners, medical personnel, government agents, etc.).

CLIENT RECORD RETENTION & INTEGRITY

The center shall maintain the original record of each client for seven years, or seven years from the date of the client’s majority, whichever is longer. In no circumstances shall this record be destroyed or altered prior to that time. After that time, the client’s record may be securely destroyed.

CLIENT CONFIDENTIALITY POLICY TEMPLATE (page 3)

[PLACE LOGO HERE IN HEADER]

RELEASE OF CLIENT INFORMATION

A client requesting a copy of their own records or requesting that the record or any portion thereof be released to a third party shall make that request in writing, specifying what portion of the record is to be released, and when the permission to share the record expires, prior to center releasing any copy of the record. The center shall make a/an [healthcare privacy practices] authorization to release information form available to the client for this request and the center shall also accept any equivalent form from another agency, institution, or healthcare provider. Along with the written request, the center shall verify the client's identity by (a) requesting a copy of the client's government-issued photo identification, and/or (b) comparing the signature on the written request with the client's signature on another form in the client's file. A copy of the authorization to release information form shall be maintained in the client's file.

Within the center, confidential client-identifying information is shared only with persons who have a legitimate need to know. Personnel should not gossip about clients or their situations. Prayer requests should be general and should contain no client-identifying information.

[CHOOSE ONE]:

The center only contacts clients in ways that the client has authorized in writing and shares only the types of information authorized by the client in those ways.

— OR —

Center personnel do not identify themselves when leaving phone messages for clients.

CLIENT STORIES

Clients who have benefitted from the services of the center may be invited to share or permit the center to share their stories or related information (including photos or videos of the client and/or minor children). Invitations to share client experiences are unpressured and noncoercive. [Center Name] strives to make the sharing experience empowering rather than exploitive for clients by informing clients of how their story and/or images may be used, that receiving continued services from the center is never conditioned on allowing the center to use their story or images of them or their child, and that they have the right to seek legal counsel prior to allowing use of their story and/or images. A signed form signifying this understanding shall be obtained prior to use of any client's story and/or images and this form shall be maintained in the client's file.

DONOR/SUPPORTER INFORMATION

Nonpublic information about current, former, or prospective donors and supporters of [Center Name], including their identity, is treated as confidential and may not be shared outside of the center or with personnel who do not need access to the information.

TRAINING

All personnel, including volunteers and staff, are trained to comply with these procedures.

*MEDICAL CENTERS ONLY.
To the extent applicable, this should be a
HIPAA-compliant document. (Note:
Pregnancy centers are not legally
required to be HIPAA compliant unless
they are billing for services
electronically.)*

NEW CLIENT/PATIENT INTAKE CONVERSATION GUIDE FORM (WOMEN) (page 1)

Use this as a conversation guide and to document permission-based care—it is not necessary or recommended to ask questions exactly as they appear on the page.

Medical questions are to be completed on separate form by medical personnel, if applicable.

To be completed by advocate/lay counselor/decision coach.

This is appropriate for clients who are likely minors, in order to confirm that response is consistent with age provided on New Client/Patient Information form.

Delete this category if the center does not serve clients on a mobile unit from this location.

In some centers this information is provided by medical personnel.

OTHER MEDICAL ISSUE SCREENING QUESTIONS:
Train coaches to ask about whether the client has an IUD/has had a tubal ligation. If yes and test is positive, the client is at high risk for ectopic pregnancy: **REFER** for prompt medical assistance if nonmedical center; if medical center, **ALERT** nursing staff promptly (if nursing staff unavailable, refer client for prompt medical attention).

Suggested phrasing: Were you and your partner trying to prevent pregnancy? What did you use? What did he use?

[PLACE LOGO HERE IN HEADER]

NEW [CLIENT/PATIENT] INTAKE CONVERSATION GUIDE (WOMEN)

[CLIENT/PATIENT] INFORMATION

Preferred Name/Nickname _____

☐ Walk-in ☐ Appointment

☐ Mobile ultrasound unit

Age _____

INTRODUCTION

☐ Welcome and personal introduction ☐ Overview of center services/no abortion referrals/confidentiality

Present options information or engage in a spiritual conversation at any subsequent point in the consultation according to center policies and with the client's consent.

MENSTRUAL CYCLE

1st day of LMP _____

Normal? ☐ Y ☐ N

Periods Regular? ☐ Y ☐ N

CONTRACEPTIVE USE

Self? ☐ Y ☐ N Partner? ☐ Y ☐ N

Type used: _____

PREGNANCY SYMPTOMS

☐ Nausea/appetite change

☐ Swollen/sore breasts

☐ Fatigue/exhaustion

☐ Bloat/gas

☐ Frequent urination

☐ Weight change

☐ Dizziness

☐ Spotting/implantation bleeding

Are you experiencing any ☐ Bleeding ☐ Cramping ☐ Leaking

Have you ever had an ectopic pregnancy? ☐ Y ☐ N

PRIOR PREGNANCIES

Have you ever been pregnant before? ☐ Y ☐ N

How many times: _____

Births

Name, age & custody of each child _____

Complications or post-partum depression? (describe) _____

Abortions

When & where abortions performed/How far along were you? (weeks) _____

FOR INTERNAL USE ONLY

ID#: _____ Advocate Name: _____

New Client/Patient Intake (women) ©2017 Care Net