

BY EMAIL

July 15, 2022

Adrienne Meiring

Executive Director

Indiana Supreme Court Disciplinary Commission

251 N. Illinois St.

Suite 1650

Indianapolis, IN 46204

Dear Ms. Meiring,

On July 15, 2022, I filed a request for investigation of Attorney General Todd Rokita through the public portal. I write to supplement that request.

As widely reported, Dr. Caitlin Bernard, a physician at IU Health, provided legal abortion services on referral to a 10-year-old child who was over 6 weeks pregnant and thus barred from receiving an abortion in Ohio. By definition, the child was a rape victim. The existence of this patient became public knowledge through a [report](#) in the Indianapolis Star on July 1. On July 8, 2022, President Biden [noted](#) the case in a press conference. Conservative commentators immediately disputed the accuracy of the reports. See, e.g., Wall Street Journal, "[An Abortion Story Too Good To Confirm](#)," [retracted](#) when the Columbus, Ohio, police [reported the arrest](#) of the child's rapist.

Into this charged political context marched Attorney General Rokita. Under Indiana law, physicians have a duty to report sexual assaults on minors that result in the termination of a pregnancy to state authorities. Despite the lack of any stated reason to investigate Dr. Bernard's compliance with these laws, General Rokita launched an investigation of the doctor. According to a [letter](#) dated July 13, 2022, from General Rokita to Governor Holcomb, a member of General Rokita's staff requested on July 11 all such reports for the past 30 days from the relevant Indiana agencies in order to ascertain whether Dr. Bernard had complied with those reporting requirements. The letter represented that a staff member at the Indiana Department of Health replied on July 12, stating that a new filing system would require that the agency have a bit more time to comply. The letter requested that the Governor direct the agencies under the Governor's supervision to produce the report.

On July 13, 2022, before completing his investigation, and on the same day he sent his letter to the Governor, General Rokita [appeared](#) on Fox News on Jesse Waters Primetime. The subject of the appearance was Dr. Bernard. During the interview, General Rokita claimed that Dr. Bernard had a "history of failing to report," and that he was "gathering the evidence" that she had failed to report this abortion including "looking at her licensure" and suggesting that he would bring criminal charges against Dr. Bernard, to whom he referred multiple times as an "abortion activist." During the entire interview, a chyron appeared under General Rokita and a picture of Dr. Bernard stating, "Doc Failed to Report Abortion of Abuse Victim." On July 14, General Rokita [issued a statement](#) that he was continuing an investigation into Dr. Bernard, identifying her by name, "to prove if the abortion and/or 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 HIPAA violation did occur, that may affect next steps as well.¹ I will not relent in the pursuit of the truth.”

On July 14, through public records requests, multiple media outlets reported that Dr. Bernard had in fact made a timely report as required by law after providing abortion services for the child. See [NPR](#); [New York Times](#). On July 15, multiple media outlets also reported that Dr. Bernard’s employer, IU Health, had done an investigation and found no violation of privacy or reporting laws. See, e.g., [WFYI](#), July 15, 2022; [Indianapolis Star](#), July 15

General Rokita has suggested no evidence that prompted his investigation into Dr. Bernard other than his political disagreement with her provision of legal abortion services to the child, as evidenced by his repeated references to her on national television as an “abortion activist acting as a doctor.” He has produced no evidence to substantiate his claim that Dr. Bernard had a “history of not reporting,” and as his letter to the Governor demonstrates, he clearly knew that his staff did not have information to support that claim when he made it, or to support his suggestion that Dr. Bernard had not reported the politically-sensitive abortion care to the appropriate authorities. He nevertheless recklessly made these claims on national television, with the entirely foreseeable result that Dr. Bernard [fears for her safety](#) and has been required to obtain counsel.

Attorneys in this state are required to perform due diligence and are prohibited from making false or baseless statements about the law or facts. General Rokita failed in this responsibility. The information he sought was readily available through legitimate channels, and his letter to the Governor makes clear that he was using the full weight of his office to get that information. Nevertheless, he could not wait the single day it took to confirm that Dr. Bernard had complied with the reporting laws. Attorneys with public responsibilities, such as General Rokita, have a heightened ethical responsibility to avoid making statements that enflame the public against private citizens, and to refrain from using the law to harass or intimidate others. General Rokita made inflammatory statements on national television, without due diligence concerning their truthfulness, designed to harass and intimidate Dr. Bernard in particular and other doctors who provide medical services currently legal under Indiana law more generally. He knew or should have known that by doing so, he would imperil Dr. Bernard’s safety.

What General Rokita did, in essence, was identify a private citizen whose political views he disagrees with and suggest repeatedly, on national television, and on the Attorney General’s official website, that she had broken the law, with no evidence to support those claims. If he can throw the entire weight of his office without consequence to attack Dr. Bernard, he can do so to target any private citizen with whom he disagrees. This is the opposite of the rule of law.

I respectfully request that General Rokita’s conduct in these matters be investigated by the Indiana Supreme Court Disciplinary Commission. As a longstanding member of the bar of this state, I do not do so lightly. Indeed, I deeply regret feeling compelled to take this action. However, General Rokita is not a mere politician; he is a lawyer and the highest-ranking lawyer in Indiana. He has a special responsibility to take care that the rule of law and the standards of the profession are protected, and a

¹ The reference to HIPAA is particularly odd, since the enforcement of that federal statute rests with the federal Office of Civil Rights with the Department of Health and Human Services, not the state Attorney General.

special responsibility to protect our citizens, not to launch dangerous, politicized, and factually baseless assaults against them.

Yours,

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