

THE NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES

Legal Pitfalls & Best Practices

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General legal
education,
not
legal
advice

External Attacks Against Pregnancy Centers

Anti-pregnancy center legislation:

Deceptive advertising – IL*, VT*, CA, NJ, MA

APR – CO* and VT*

Defunding – PA and MN

State Investigations – NY*

State sponsored PR Campaigns – MA, CA

Diluting Conscience Protections – IL*

* Legal challenges pending

Attorney General Ellison issues consumer alert about crisis pregnancy centers

CPCs may provide misleading information about abortion and contraception, and often do not provide services they claim to offer; consumers encouraged to contact AG's

CONSUMER ALERT

Crisis Pregnancy Centers

consumer alert

WARNING: Crisis Pregnancy Centers (CPCs) do NOT provide abortion care. CPCs are organizations that seek to prevent people from accessing comprehensive reproductive health care, including abortion care and contraception. Here's what you need to know about CPCs.

Your right to an abortion is protected in New Jersey. You have the right to truthful, unbiased, and medically accurate health information about abortion care and where to access such care. If you are pregnant, consult with a licensed health care provider to understand your options for abortion care and other reproductive health care services. Need help finding a provider? See the resources identified under "How Can I Find an Abortion Provider."

WHAT IS A CRISIS PREGNANCY CENTER?

Crisis Pregnancy Centers try to convince pregnant people not to have abortions. CPCs may appear to be reproductive health care clinics, but they do not provide abortion care or provide referrals for abortion care, contraception, or other reproductive health care.

Many CPCs do not provide any health care at all, despite suggesting to the public that they do. In addition, many CPCs are not licensed medical facilities and do not employ licensed medical professionals, which means that CPC staff likely are not required to keep your health information private or follow medical ethics rules and standards of care. CPCs may also provide false or misleading information about abortion—including the physical and mental health effects of abortion—to deter people from choosing abortion.

Some CPCs offer non-diagnostic ultrasounds, which may be performed by an unlicensed person who may not be qualified to provide that service. This non-diagnostic ultrasound may provide inaccurate or misleading results, including about how far along you are in your pregnancy. Only a licensed health care professional can accurately tell you how many weeks pregnant you are.

HOW CAN I SPOT A CRISIS PREGNANCY CENTER?

A Crisis Pregnancy Center may:

- Be a website, a call center, an app, or a physical location that looks like or is located near a clinic or doctor's office.
- Have a name that is similar to that of a health care provider, including words like "care," "health," "pregnancy," "resource," and "choice." (Note that many CPCs do not call themselves "crisis pregnancy centers"; nor do they use that term in advertising.)
- Offer free services (including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes) to individuals seeking abortion or reproductive health care services.
- Offer limited "counseling" services without providing complete or accurate information regarding all options for reproductive health care, including abortion.
- Postpone or reschedule appointments to delay individuals' access to abortion care.
- Pressure individuals to delay an abortion or continue a pregnancy, including by providing false or misleading information about the safety and legality of abortion care.

A facility may be a Crisis Pregnancy Center even if it:

- Has staff and volunteers who wear medical attire and collect personal and health information.
- Contains examination rooms with medical equipment (like an ultrasound machine) and supplies.

Continued



Consumer Alerts – NJ*, MA, MN, CA, NV



Search Mass.gov

Office of the Attorney General

OFFERED BY Office of the Attorney General

Crisis Pregnancy Centers (CPCs)

If you are pregnant and looking to understand your abortion options, you should consult with a licensed reproductive healthcare provider.

WARNING: CPCs do NOT provide comprehensive reproductive healthcare. CPCs are organizations that seek to prevent people from accessing abortion care.

- CPCs may appear to be reproductive health care clinics, but do NOT provide abortion care or abortion referrals, contraception, or other reproductive health care, despite what they may advertise.



ROB BONTA

Attorney General

HOME ABOUT MEDIA CAREERS REGULATIONS RESOURCES PROGRAMS APPOINTMENTS CONTACT

Attorney General Bonta Issues Consumer Alert Warning Californians That Crisis Pregnancy Centers Do Not Offer Abortion or Comprehensive Reproductive Care

Press Release / Attorney General Bonta Issues Consumer Alert Warning Califor...



Wednesday, June 1, 2022

Contact: (916) 210-6000, agpresso@doj.ca.gov

SAN DIEGO – In the face of unprecedented threats to reproductive freedom, California Attorney General Rob Bonta today issued a [consumer alert](#) warning Californians seeking reproductive health services about the limited and potentially misleading nature of the services provided

Professional Publications & Media: ACOG, AMA, etc...



Issue Brief: Crisis Pregnancy Centers

OVERVIEW

People seeking reproductive health care must have access to comprehensive, evidence-based, nonjudgmental health care and information from qualified professionals, regardless of whether they decide to continue a pregnancy or seek abortion care. It's important that people understand their options and know their resources—including how to recognize and avoid facilities, such as crisis pregnancy centers (CPCs), run by people who operate unethically and with the intention to dissuade, deter, or prevent them from seeking certain reproductive health care options.

WHAT ARE CPCs?

CPC is a term used to refer to certain facilities that represent themselves as legitimate reproductive health care clinics providing care for pregnant people but actually aim to dissuade people from accessing certain types of reproductive health care, including abortion care and even contraceptive options. Staff members at these unregulated and often nonmedical

Major Claims Filed Against Pregnancy Centers

Medical malpractice

- missed ectopic

Employment disputes

- wrongful termination

Best Practices to withstand the legal challenges

I. Strong Medical Policies & Procedures

II. Sufficient Medical Malpractice coverage

III. Strong Ectopic Practices

IV. Excellent medical professional training

V. HIPAA policies

VI. Releasing Patient Information

VII. Additional Medical Services

VIII. Quality of Patient Services

IX. Employment Practices

X. Advertising Concerns



I. Strong
Medical
Policies &
Procedures

**Important Policies
(SEE HANDOUT)**

**Review Annually
NIFLA 2023 Edition**



NIFLA
P&P

- Patient Flow and Intake
- Who performs pregnancy testing?
- Who collects the medical information?
- Who provides the medical education?
- How early to scan and when to rescan?
- Chaperones
- Competencies of medical staff and trainings
- OSHA – NM is Safety Officer
- HIPAA - NM is Privacy & Security Officer
- Standing Orders

II. Sufficient Medical Malpractice coverage

Center needs its own medical malpractice to cover its medical personnel performing the medical services.

- - Make sure your policy is an actual “med mal” policy that covers the medical services you are providing.
- - The Center does not ride on the coattails of the doctor’s coverage.

Does the Medical Director’s own medical malpractice cover his/her volunteer work?

- -If not, must endorse him/her on the center’s policy



III. Strong Ectopic Practices

1-TRAINING

2-Trans-abdominal AND trans-vaginal

3-Adnexa

4-Provide precautions sheet and
Discharge Summary



Training

1. Must provide excellent ultrasound training

–

DO NOT CUT CORNERS

a. Didactic per AWHONN

b. Clinical – 50-75 full scans (not drills), mainly 1st trimester, on both transducers

c. Directly supervised by an RDMS credentialed in OB or an MD - not an RN

d. Complete Assessment for Competency

Standard of Care

2. Must do both TAS and TVS scans in first trimester.
3. Adnexa – always provide photos of sagittal and transverse planes for MD to review, even with a confirmed intrauterine pregnancy.
4. Give Ectopic and Miscarriage Precautions and DISCHARGE the patient even if scheduling for a return scan.
5. Considerations: Are you providing early scanning before 5w5d? Are you scheduling follow-up scans?

NIFLA's recommended rescanning choices:

1. Early scan before 5w5d, nothing observed intrauterine as expected, most likely too early but could be failed pregnancy or a PUL, give precautions, rescan in 5-7 days if MD approves.
2. Scan at or after 5w5d, nothing observed intrauterine, PUL- patient is presumed to have an ectopic pregnancy until proven otherwise.
 - MD's choice: A. Refer out to MD
 - B. If sonographer *highly* skilled, rescan in a few days

NIFLA's
recommended
rescanning
choices
continued:

3. Scan at or after 5w5d, empty gestational sac observed intrauterine, doesn't confirm an IUP, still a slight chance of ectopic.

MD's choice: A. Refer out to MD

B. If sonographer *highly* skilled, rescan in a 2-3 days

4. Scan at or after 5w5d, gestational and yolk sac observed (IUP), okay to rescan in 5-7 days to confirm viability.

5. NO RESCAN PERMITTED: If an IUP was not observed after the initial scan, an additional scan **shall not be scheduled** if the patient has a history of ectopic or tubal ligation, has an IUD, or has active bleeding or cramping.

What's wrong with this scenario?

Patient comes in reporting 8w LMP, only TAS scan performed because RN not competent to perform TVS yet, IUP not confirmed, adnexa not scanned, rescheduled for following week.



What's wrong with this scenario?

Patient comes in reporting 11w LMP, TAS and TVS scans did not reveal IUP, adnexa not scanned, rescheduled 2 weeks later.



What's wrong with this scenario?

Patient comes in reporting 6w LMP, empty gestational sac observed after TAS and TVS scans, adnexa appeared clear, rescheduled 7 days later.



What's wrong with this scenario?

Patient's TAS and TVS confirmed 6w IUP. Adnexa not scanned. Patient still chose to take the abortion pill and aborted IUP. Shortly thereafter she had an ectopic burst. Heterotopic!



IV. Excellent Medical Professional Training

*Tools to assist you in providing excellent
ultrasound services:*

Ultrasound Pre-Training Qualifications

Qualifications for Scanning Supervisor

Form: Scanning Supervisor Checklist

Form: Approval to Perform Limited OB
Ultrasound

Continuing Training for Ultrasound

Training for Interpreting Physicians/Advanced
Clinical Providers

V. HIPAA: NM is Privacy & Security Officer

Reasons why you must comply with HIPAA:

1. standard in the medical industry
2. your state probably requires you
3. best practices to comply - but don't give yourself a

“HIPAA-Compliant seal of approval”

Sample key policies:

- Passwords
- Notice of Privacy Practices (NPP)
- Training
- Business Associate Agreement (BAA)
- Text Messaging
- Security Risk Assessment



Remember to use Safe Harbor language before texting patients.

Please choose the best ways for us to communicate with you.

Phone (OK to leave a detailed message? Yes No) Text Email

We are committed to protecting your health information. Please be aware that communicating via unencrypted technology such as regular text/email has some level of risk of being read by a 3rd party. By checking the above, you indicate that you still prefer to communicate this way.

VI. Releasing Patient Information

1. Release only with a *signed* Authorization by the patient
 - Patient may pre-sign one
2. HIPAA exception for “treatment” purposes
3. Subpoenas – seek legal counsel before responding
4. Law Enforcement requests – some exceptions
 - get request in writing citing HIPAA exception
5. Patient has a legal right to her medical records
6. Sample policy:

VII. Additional Medical Services

Telehealth - state law applies, HIPAA compliant platform, push consent, increases “show” rates.

STI Testing/Treatment - if you test, you need to treat

Post-Abortion Assessment - no ultrasound searching for POC

- consider serial HCG services

Abortion Pill Reversal – providing vs. consulting center

VIII. Quality of Patient Care Services

Continuous Quality Improvement

- Exit Surveys and Patient Complaint Forms

Interpreters

Minor's Ability to Consent – state law

Child Abuse Reporting – state law

Responding to On-line Reviews – no PHI, respond for future readers

IX. Employment Practices

1. Good vetting – check licensing boards, references, etc...
2. Statement of Faith and Code of Christian Conduct
3. Good Faith Agreement
4. Employment Manual
5. Job Descriptions
6. OSHA – NM is “Safety Officer”

OSHA – NM is “Safety Officer”

OSHA is federal law; states can add to it.

TB testing

HepB vaccination

Infection Control: Bloodborne Pathogen Standard Exposure Control Plan

Preparing & Cleaning the Ultrasound Transducer, Safe Handling, and Coupling Gels

OSHA Training

X. Advertising Concerns

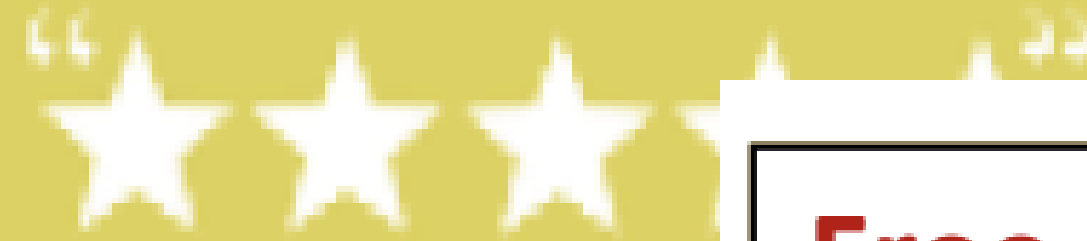
Websites must have NPP and “Terms of Use/Privacy Policy.”

Disclaimers about not performing or referring for abortion, APR success rate, medical information is educational only.

Careful in advertising so as not to be accused

of being misleading

CONFIDENTIAL ABORTION CONSULTATION – NO COST TO YOU



Name *

How may we contact you? *

Call

Text

Email

Free Pre-Termination Assessment

www.abortioncity.com

The Clinic offers a confidential place for you to discuss your situation and your options. The procedure is not offered here, our doctors recommend you make an appointment for your pre-pregnancy termination assessment and will refer to physicians they are familiar with. We're here to provide factual information about pregnancy and abortion, so you can make a plan for your next steps.

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