

June 5, 2018

The Honorable Mike DeWine  
Attorney General of Ohio  
30 E. Broad Street, 14<sup>th</sup> Floor  
Columbus, OH, 43215

**Re: Request for Investigation into Marketing Practices of Crisis Pregnancy Centers**

Dear Attorney General DeWine:

Campaign for Accountability (“CfA”) respectfully requests that you investigate two Ohio crisis pregnancy centers (“CPCs”),<sup>1</sup> Elizabeth’s New Life Center (“ENLC”), in the Dayton area, and Heartbeat of Toledo (“HT”). Both CPCs appear to be engaging in deceptive business practices in violation of Ohio Revised Code § 1345.02(A), part of Ohio’s Consumer Sales Protection Act (the “CSPA”).<sup>2</sup>

**Background**

In 2013, the Ohio Legislature created the Ohio Parenting and Pregnancy Program (“OPPP”)<sup>3</sup> to distribute funds from the Temporary Assistance for Needy Families (TANF) program to nonprofit organizations that promote childbirth.<sup>4</sup> In September 2017, CfA filed an open records request with the Ohio Department of Job and Family Services (“ODJFS”) seeking all grant applications submitted for the program. ODJFS provided CfA with the grant applications for several organizations, including those of ENLC and HT (the “ENLC Application” and “HT Application,” respectively).<sup>5</sup> Based on their applications, websites, and marketing materials, it appears both organizations may be violating the CSPA.

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<sup>1</sup> The phrase “crisis pregnancy center” refers to any office or clinic operated by an entity that does *not* provide abortion services and instead seeks to counsel pregnant or possibly pregnant women against seeking an abortion.

<sup>2</sup> Ohio Rev. Code § 1345.01 *et seq.*

<sup>3</sup> Ohio Rev. Code § 5101.804.

<sup>4</sup> Rita Price, Abortion: Pregnancy Centers Aim to Serve as Alternative, *The Columbus Dispatch*, July 15, 2013; Ally Boguhn, This Fake Clinic Network Receives State and Federal Funding to Teach Kids ‘Shaming’ Sex-Ed Curriculum, *Rewire*, February 8, 2018, available at <https://rewire.news/article/2018/02/08/fake-clinic-network-receives-state-federal-funding-teach-kids-shaming-sex-ed-curriculum/>.

<sup>5</sup> Elizabeth’s New Life Center, Technical Application, Ohio Parenting and Pregnancy Program Grant, July 21, 2014, available at <https://www.documentcloud.org/documents/4493437-CfA-Ohio-Letter-June-2018-ENLC-Application.html>; Heartbeat of Toledo, Technical Application, Ohio Parenting and Pregnancy Program Grant, November 12, 2015, available at <https://www.documentcloud.org/documents/4493429-CfA-Ohio-Letter-June-2018-HT-Application.html>.

*Elizabeth's New Life Center*

Founded in 1989, ENLC is a network of CPCs operating in and around Dayton.<sup>6</sup> ENLC maintains nine centers, but designates seven as “Women’s Centers,” meaning CPCs.<sup>7</sup> ENLC is also the corporate owner of Holy Family Prenatal Care, LLC (“ENLC-Prenatal”) and Marriage Works Ohio, LLC (“ENLC-Marriage”).<sup>8</sup> ENLC-Prenatal is housed within an ENLC CPC, but operates separately, with its own website and programs.<sup>9</sup> ENLC-Marriage is housed separately and appears to operate independently.<sup>10</sup>

ENLC is an affiliate of Heartbeat International (“Heartbeat”), a self-described “non-profit, interdenominational Christian association of faith-based pregnancy resource centers, medical clinics, maternity homes, and nonprofit adoption agencies endorsed by Christian leaders nationwide.”<sup>11</sup> Heartbeat is explicitly anti-abortion and functions as the central communication point for a network of CPCs. It operates a 24-hour call center that connects women who may be seeking abortions to relevant affiliates. Heartbeat also publishes information on its website about how to deceptively target online ads at women seeking abortions, explaining that its “Extend Web Services program develops and manages engaging websites for pregnancy help organizations . . . allow[ing] centers to compete online with abortion providers.”<sup>12</sup>

According to anti-choice organization Ohio Right to Life, ENLC began receiving funding through OPPP in 2013.<sup>13</sup> The ENLC Application materials for the program show ENLC requested \$100,000 per year for its CPCs in 2016 and 2017.<sup>14</sup> While it is unclear how much government funding ENLC received to operate its CPCs, ENLC’s annual 990 IRS tax forms indicate that ENLC’s CPCs spent approximately \$900,000 in 2013, \$830,000 in 2014, \$940,000 in 2015 and \$1,260,000 in 2016.<sup>15</sup>

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<sup>6</sup> <http://elizabethnewlife.org/about-us/>.

<sup>7</sup> <http://elizabethnewlife.org/about-us/locations/>.

<sup>8</sup> Elizabeth’s New Life Center, IRS form 990, Initial Return 2016, available at [http://990s.foundationcenter.org/990\\_pdf\\_archive/311/311381901/311381901\\_201612\\_990.pdf](http://990s.foundationcenter.org/990_pdf_archive/311/311381901/311381901_201612_990.pdf).

<sup>9</sup> See <http://hollyfamilyprenatalcare.org/>. ENLC-Prenatal provides medical care to women who are currently pregnant and have decided to carry their baby to term. A visitor to one of ENLC’s CPCs could choose to utilize the services of ENLC-Prenatal.

<sup>10</sup> See <http://www.trustmarriage.com/>. ENLC-Marriage provides “...a variety of premium classes ranging on topics from marriage, marriage prep, single life, and even in school relationship classes for teens.”

<sup>11</sup> <https://www.heartbeat.services.org/about-us/faqs#hbi>.

<sup>12</sup> <https://www.heartbeatinternational.org/item/141-option-line-serves-phcs>.

<sup>13</sup> [http://www.ohiolife.org/parenting\\_and\\_pregnancy\\_support\\_program](http://www.ohiolife.org/parenting_and_pregnancy_support_program).

<sup>14</sup> ENLC Application at 68-69.

<sup>15</sup> Elizabeth’s New Life Center, IRS form 990, Initial Return 2016; Elizabeth’s New Life Center, IRS form 990, Initial Return 2015, filed June 30, 2016; Elizabeth’s New Life Center, IRS form 990, Initial Return 2014, filed June 9, 2015; Elizabeth’s New Life Center, IRS form 990, Initial Return 2013, filed September 23, 2014, available at <https://projects.propublica.org/nonprofits/organizations/311381901>.

One of ENLC's CPCs is the Women's Center –Kettering, which operates under the umbrella brand name Women's Centers of Ohio.<sup>16</sup> It is not a coincidence that the Women's Center is located at 1377 East Stroop Road, in Dayton, directly across the street from the Dayton area's only actual abortion clinic, the similarly named Women's Med Center of Dayton.<sup>17</sup>

The landing page of Women's Centers of Ohio is designed to suggest that the centers provide abortion services. The website states: "Looking for an abortion? Want to know which option is best for you? We are here to serve you!"<sup>18</sup> It continues: "Women's Centers of Ohio specialize in helping you find the solution that is right for you. We will support you without judgment and provide the encouragement and services you need to take your first steps."<sup>19</sup> The main page includes links for: "Abortion Costs → Info," "Abortion Clinic Alternatives," "Abortion Pill → Info," and "Pregnancy Verification."<sup>20</sup>

All of these pages, in turn, include similarly confusing and deceptive information. The "Alternatives" page, for example, states "unlike Planned Parenthood abortion clinics, we will provide you with personalized care."<sup>21</sup> Nowhere on the page, is it made clear that the Women's Center – in marked contrast to Planned Parenthood (or the Women's Med Center across the street) – has no doctors on staff.

Only on the "About Us" page, buried in the middle of a list of fourteen "commitments" to those who might make an appointment will visitors find: "We do not offer, recommend or refer for abortions or abortifacients, but we are committed to offering accurate information about abortion procedures and risks."<sup>22</sup> The website also includes a disclaimer in very small text on the bottom of its pages which, following a long paragraph about the organization's other offerings, states, "We do not perform or refer for abortion services."<sup>23</sup>

The website for the Women's Centers of Ohio is separate from ENLC's main website. ENLC's homepage states that its mission is to "empower individuals to make Godly life choices is accomplished only with the help of our community."<sup>24</sup> The page contains a link to its Women's Centers of Ohio website through a banner that reads, "Pregnant? Not ready? We can help."<sup>25</sup> The services section of the ENLC's main website lists several programs that ENLC offers including

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<sup>16</sup> <http://womenscenterohio.com/make-an-appointment/womens-center-kettering/>.

<sup>17</sup> <http://www.womensmed.com/locations/dayton-oh/>.

<sup>18</sup> <http://womenscenterohio.com/>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> <http://womenscenterohio.com/your-health/abortion-clinic-alternatives/>.

<sup>22</sup> <http://womenscenterohio.com/about-us/>.

<sup>23</sup> <http://womenscenterohio.com/>.

<sup>24</sup> <http://elizabethnewlife.org/>.

<sup>25</sup> *Id.*

“intervention in crisis pregnancies” and “after-abortion support,” but does not disclose in any section that ENLC does not provide abortions.<sup>26</sup>

ENLC’s Application makes clear that it deliberately engages in deceptive tactics. The application states that ENLC “strategically locates” its CPCs “near abortion clinics so that [they] are able to make pregnancy and child birth a more visible option to be explored by abortion-seeking clients.”<sup>27</sup> In addition, ENLC admits its “website and Google ads are designed to attract women considering abortion to seek our services,”<sup>28</sup> and intends to use OPPP grant funds to develop a “marketing strategy for increasing local search results for each of our locations.”<sup>29</sup> ENLC also admits it “intentionally tr[ies] to attract clients at-risk for abortion.”<sup>30</sup> ENLC explains it aims to increase the number of hours it can provide ultrasounds because “a key tool to help an abortion-vulnerable woman choose life is showing her an ultrasound of her baby so that she will have a safe place and time to understand and absorb the full ramifications of her decision.”<sup>31</sup> ENLC also states it “has focused on the abortion-minded/vulnerable (at-risk) woman as the client we want to reach in order to encourage pregnancy and childbirth.”<sup>32</sup>

### *Heartbeat of Toledo*

HT, considerably smaller than ENLC, runs two CPCs in Toledo.<sup>33</sup> Like ENLC, HT is an affiliate of Heartbeat International, and, in fact, claims to have been the very first Heartbeat-affiliated CPC, opened in 1971.<sup>34</sup>

According to Ohio Right to Life, HT began receiving funding through OPP in 2015.<sup>35</sup> HT’s application materials indicate the organization requested approximately \$43,000 for 2016 and \$74,000 for 2017 in OPPP grants.<sup>36</sup> HT’s 990s do not report any government funding, but the 990s indicate that HT’s CPCs spent approximately \$470,000 in the 2014 tax year, and \$530,000 in the 2015 tax year, the most recent form available.<sup>37</sup>

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<sup>26</sup> <http://elizabethnewlife.org/our-services/>.

<sup>27</sup> ENLC Application at 3-4.

<sup>28</sup> ENLC Application at 4.

<sup>29</sup> *Id.*

<sup>30</sup> ENLC Application at 8.

<sup>31</sup> ENLC Application at 12.

<sup>32</sup> ENLC Application at 3.

<sup>33</sup> <http://www.heartbeatoftoledo.org/index.html>.

<sup>34</sup> <http://heartbeatoftoledo.org/about.html>.

<sup>35</sup> [http://www.ohiolife.org/parenting\\_and\\_pregnancy\\_support\\_program](http://www.ohiolife.org/parenting_and_pregnancy_support_program).

<sup>36</sup> HT Application at 33-34.

<sup>37</sup> HT’s 2014 tax year is from June 1, 2014, to May 31, 2015, and the 2015 tax year is from June 1, 2015, to May 31, 2016. Heartbeat of Toledo Inc, IRS form 990, Initial Return 2015, filed January 10, 2017; Heartbeat of Toledo Inc, IRS form 990, Initial Return 2014, filed January 11, 2016, available at <https://projects.propublica.org/nonprofits/organizations/237404777>.

HT's website is structured in much the same manner as ENLC's. In large font, the front page reads: "Heartbeat of Toledo is a life affirming organization whose mission is to be the best source of information and support to women facing pregnancies and to help moms, dads and babies in need."<sup>38</sup> Clicking the link for "Services," brings up a page that includes "Unplanned Pregnancy – Your First Look Women's Center,"<sup>39</sup> and states "Your First Look can help answer all your questions. Click here to go to: YourFirstLook.org."<sup>40</sup> Clicking this link brings visitors to an entirely separate website for the Your First Look Women's Center.<sup>41</sup> The "About Us" link states

Your First Look Women's Center specializes in helping you make decisions regarding your pregnancy. We are not here to judge or tell you what the solution should be. Instead, we will use ultrasound technology to determine if you have a viable pregnancy and then go over all your options.<sup>42</sup>

Further down this page, on which appointments can be scheduled, visitors will see:

The right provider will put you first, respecting you and giving you the medical resources and unbiased information you need to help you make the decision that's right for you. You're fully capable of making your own choices.<sup>43</sup>

The main page of Your First Look Women's Center also includes an "Options" pull down menu that includes a link for "Abortion." The Abortion page informs a woman "thinking about an abortion" that "there are some steps you'll want to take before scheduling your abortion appointment." These include "Confirm Your Pregnancy with an Ultrasound," "Determine How Far Along You Are (Gestational Age)," and "Be Tested and Treated for STDs." Women are – incorrectly – informed "Having an STI present when you have an abortion could impact having future fertility."<sup>44</sup> Only at the very bottom of the page, in dramatically smaller print, will a vigilant reader notice the warning:

Your First Look Women's Center provides free pregnancy tests, ultrasounds to confirm viability, and information on all your options—abortion, adoption, and parenting. We do not provide or refer for abortion services. All services are free and confidential.<sup>45</sup>

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<sup>38</sup> <http://www.heartbeatoftoledo.org/>.

<sup>39</sup> <http://www.heartbeatoftoledo.org/services.html>.

<sup>40</sup> *Id.*

<sup>41</sup> <http://www.yourfirstlook.org/>.

<sup>42</sup> <http://www.yourfirstlook.org/about-us/>.

<sup>43</sup> *Id.*

<sup>44</sup> <http://www.yourfirstlook.org/abortion-toledo/>.

<sup>45</sup> *Id.*

Like the ENLC Application, the HT Application contains a number of statements demonstrating HT's intent to prevent women from obtaining abortions such as, "it is important for women to have knowledge about risks and procedures to empower them to resist pressures toward abortion."<sup>46</sup>

The HT Application states that "Many women initially find out about [HT] by using Google or another search engine. [HT] specifically markets to abortion-minded women."<sup>47</sup> When women search the internet for "Abortion Toledo," "[HT's] 'Your First Look' Women's Center will appear in the Google Places section."<sup>48</sup> The application also states that even if a pregnant woman informs an HT staff member that she is still considering an abortion, HT will offer her "STD testing and [invite her] to come back for a repeat appointment."<sup>49</sup>

### Potential Legal Violations

Ohio's CSPA was "enacted to protect consumers against unfair, deception, or unconscionable acts."<sup>50</sup> The statute provides that "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction."<sup>51</sup> The act protects a consumer through all phases of the transaction, beginning with the initial contact.<sup>52</sup>

"Consumer transaction" is defined as "a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things."<sup>53</sup> A "supplier" is "a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer."<sup>54</sup> Courts have held the statute is to be broadly construed.<sup>55</sup>

If the attorney general has reasonable cause to believe a supplier has engaged or is engaging in practices that violate the act, he or she may file an action to obtain a declaratory judgment that the

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<sup>46</sup> HT Application at 20.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Firelands Regional Medical Center v. Jeavons*, 2008-Ohio-5031, 2008 Ohio App. LEXIS 4234 at \*15 (Ohio Ct. App. 2008), citing *Whitaker v. M.T. Automotive, Inc.*, 111 Ohio St.3d 177, 2006-Ohio-5481, 855 N.E.2d 825 (2006).

<sup>51</sup> Ohio Rev. Code § 1345.02(A); *Celebrezze v. United Research Inc.*, 19 Ohio App.3d 49, 51, 482 N.E.2d 1260, 1262 (Ohio App. 1984).

<sup>52</sup> *Id.*

<sup>53</sup> Ohio Rev. Code § 1345.01(A).

<sup>54</sup> Ohio Rev. Code § 1345.01(C).

<sup>55</sup> *Firelands*, 2008 Ohio App. LEXIS 4234 at \*15.

act or practice violates the act,<sup>56</sup> and may seek a temporary or permanent injunction to prevent the act or practice.<sup>57</sup> Civil penalties are also available.<sup>58</sup>

Taken together, the OPPP applications, websites, and marketing materials of ENLC and HT strongly suggest both organizations are deceiving consumers in violation of the CSPA.

ENLC and HT meet the definition of “suppliers,”<sup>59</sup> soliciting “consumer transactions” for “primarily personal” purposeful reasons. They solicit pregnant women through advertisements and in-person meetings, allegedly offering them services, including ultrasounds and counseling. Given that the CSPA clearly applies to ENLC and HT, the only remaining question is whether they engage in unfair or deceptive acts or practices.

Based on all of the evidence – their misleading marketing materials, websites, grant applications that admit to attempting to reach “abortion-minded women,” and in the case of the ENLC’s Women’s Center, locating it directly across the street from an actual abortion clinic with a remarkably similar name – it is apparent that ENLC and HT are engaging in deceptive practices in violation of the CSPA.

It is especially troubling that although the OPPP is designed to fund organizations that promote alternatives to abortion, specifically disqualifying any entity “involved in or associated with any abortion activities, including providing abortion counseling or referrals to abortion clinics...”<sup>60</sup> the state-funded ENLC and HT lure in unsuspecting women who believe they are visiting abortion clinics. While the state of Ohio has the right to use government funds to further its interest in promoting alternatives to abortion, it is deplorable for the state to knowingly use taxpayer funds to support organizations that – as part of their business model – actively work to dupe Ohio women.

Notably, Ohio courts have held a violation of the CSPA does not require intent or knowledge of the perpetrator. A violation is established if the act at issue “has the likelihood of inducing in the mind of the consumer a belief which is not in accord with the facts.”<sup>61</sup> The “basic test is one of fairness as the act need not rise to the level of fraud, negligence, or breach of contract.”<sup>62</sup> Therefore, even if ENLC and HT can argue they are not engaged in outright fraud, their actions

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<sup>56</sup> Ohio Rev. Code § 1345.07(A)(1).

<sup>57</sup> Ohio Rev. Code § 1345.07(A)(2)(a).

<sup>58</sup> Ohio Rev. Code § 1345.07.

<sup>59</sup> The CSPA’s prohibitions do not apply to “...transactions between attorneys, physicians, or dentists and their clients or patients...” Ohio Rev. Code § 1345.01(A0). They do apply, however, to transactions between a service provider, such as a hospital, and a patient. *Firelands* at \*14-15, citing *Summa Health System v. Viningre*, 140 Ohio App.3d 780, 749 N.E.2d 344 (2000). Because CPCs are service providers, the CSPA applies.

<sup>60</sup> Ohio Rev. Code § 5101.804(B)(5).

<sup>61</sup> *Rice v. State Lottery Comm’n*, 96 Ohio Misc.2d 25, 708 N.E.2d 796, 799 (Ohio Ct. of Claims 1999), *Funk v. Montgomery AMC*, 66 Ohio App.3d 815, 586 N.E.2d 1113, 1119 (Ohio App. 1990).

<sup>62</sup> *Funk*, 586 N.E.2d at 1119.

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have “the likelihood of inducing in the mind of the consumer a believe which is not in accord with the facts,” namely that consumers are visiting abortion clinics when they decidedly are not.

*Conclusion*

The Ohio CSPA requires entities engaged in consumer transactions to deal fairly, without deception. Women seeking an abortion or information about abortions deserve the same honest treatment a person engaging in a transaction with any other supplier would expect. It simply cannot be the law of Ohio that a person contemplating the purchase of a used car has far greater protections than does a woman seeking healthcare. Therefore, CfA respectfully requests that your office immediately investigate the business practices of ENLC and HT and take action to enjoin them from violating the CSPA.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director