



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

March 27, 2023

BY HAND DELIVERY

The Honorable Brent Crane
Idaho House of Representatives
Idaho State Capitol
700 W. Jefferson Street, Rm. EW46
Boise, Idaho 83702

Re: Request for AG Analysis

Dear Representative Crane:

This letter is in response to your recent inquiry regarding Idaho's criminal prohibitions on abortion. Specifically, you asked whether Idaho's abortion prohibitions preclude 1) the provision of abortion pills, 2) the promotion of abortion pills, and 3) referring women across state lines to obtain abortion services or prescribing abortion pills that will be picked up across state lines. Idaho law prohibits each of these activities.

1) Idaho's criminal prohibition on performing an abortion includes providing abortion pills. Idaho's criminal law defines abortion to mean "the use of *any means* to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child." Idaho Code § 18-604(1) (emphasis added). The criminal abortion statute, to which the statutory definition of "abortion" applies, does not distinguish between an abortion carried out as a medical procedure and an abortion carried out by pills or chemicals; the use of *any means* to carry out an abortion is prohibited. See Idaho Code § 18-622.

2) Two Idaho criminal statutes prohibit promoting abortion pills to the public. Idaho Code section 18-603 prohibits the promotion of abortion pills, unless the promoter is a licensed physician: "Every person, except licensed physicians . . . , who willfully publishes any notice or advertisement of any medicine or means for

producing or facilitating a miscarriage or abortion . . . is guilty of a felony.” Idaho Code § 18-603. Similarly, under Idaho Code section 18-607, “[a] person who . . . offers to sell, . . . advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor for that purpose, commits a misdemeanor.” The statute has several exceptions, but none of them apply to the promotion of abortion pills to the public.

3) Idaho law prohibits an Idaho medical provider from either referring a woman across state lines to access abortion services or prescribing abortion pills for the woman to pick up across state lines. Idaho law requires the suspension of a health care professional’s license when he or she “*assists* in performing or attempting to perform an abortion.” Idaho Code § 18-622(2) (emphasis added). The plain meaning of assist is to give support or aid. An Idaho health care professional who refers a woman across state lines to an abortion provider or who prescribes abortion pills for the woman across state lines has given support or aid to the woman in performing or attempting to perform an abortion and has thus violated the statute.

Please let me know if you have any additional questions.

Sincerely,



RAÚL R. LABRADOR
Attorney General

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