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THE *FERGUSON V. JONAH* VERDICT AND A PATH TOWARDS NATIONAL CESSATION OF GAY-TO-STRAIGHT "CONVERSION THERAPY"

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INTRODUCTION[1]

Benjy Unger was nineteen. He was a deeply devout Orthodox Jew.

Benjy was also gay.

After years of struggling with his sexual orientation and the conflict it generated with his religious community, first in secret and then with his rabbis and teachers in Brooklyn, Benjy confided in his parents. His father gave him the phone number for a "Rabbi Arthur Goldberg" and told Benjy he'd heard Goldberg could help.

Rabbi Goldberg told Benjy that he'd called the right man. Goldberg had helped literally hundreds of young men just like Benjy—men from Orthodox Jewish and conservative religious communities across the country dealing with what he called "unwanted same-sex attraction." And his program, his *proven, scientific* program, could turn Benjy straight in two to four years.

As Rabbi Goldberg explained, Benjy wasn't actually *gay*. In fact, he assured Benjy, homosexuality didn't exist at all. Through some combination of a distant father, overbearing mother, and sensitive personality, Benjy had experienced "childhood wounds" that knocked him off the heterosexual path and generated same-sex attraction (SSA). With time, and with the therapy Goldberg could provide, Benjy would overcome these wounds, his SSA would diminish, and he would begin to experience the opposite-sex attraction (OSA) he craved.

This conversation with Rabbi Goldberg left Benjy "ecstatic"; it was

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** Editor's Note: Copies of court filings, opinions, orders, transcripts, and exhibits from Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law. Div. 2015), referenced in this Essay are on file with *Northwestern University Law Review Online*.

[1] The details included in this Introduction are drawn from Benjy Unger's testimony on June 3–4, 2015 in *Ferguson v. JONAH* unless otherwise noted. *See* Transcript of Trial, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 3–4, 2015).

everything he wanted to hear. He wrote his first check and started treatment shortly thereafter.

"Rabbi Goldberg," however, was not a Rabbi at all, but rather a disbarred lawyer previously convicted of conspiring to defraud the United States.[2] His organization, "Jews Offering New Alternatives to Homosexuality," later renamed "Jews Offering New Alternatives for Healing" (JONAH), did not refer Benjy to a doctor, but rather sent him to an unlicensed "life coach" whose only academic qualification was an undergraduate degree in music and theater.[3] The vaunted "JONAH Program" relied on an obsolete set of therapeutic practices rejected by every mainstream medical association since the mid-1970s—practices now understood to be not only ineffective, but actively harmful.

Benjy was indeed harmed. Under the guise of treatment, Benjy's "therapist" Alan Downing—himself "ex-gay"—convinced the young man to undress in one-on-one counseling sessions, while Downing stood so close that Benjy could feel the older man's breath on the back of his neck. In group sessions with other "journeyers," the term given to other clinic patients, Benjy was instructed to slam a tennis racket into a pillow representing his mother until his hands bled, while screaming at her for causing him to be gay. He received what JONAH called "healthy touch," when he would be cradled by other "ex-gay" men decades his senior for up to half an hour at a time. This "treatment" cost $100 per one-hour session, with occasional $650 "weekend retreats." By the time he left JONAH, Benjy's relationship with his parents was all but destroyed. Depression rendered him nonfunctional for months. And yes, he was still gay.

Benjy Unger, like thousands of other vulnerable men and women, was a victim of "conversion therapy,"[4] a pseudoscientific treatment advertised as capable of changing an individual's sexual orientation. The Southern Poverty Law Center (SPLC), alongside Cleary Gottlieb Steen & Hamilton in New York and Lite DePalma Greenberg in New Jersey, helped Benjy and three other victims sue Goldberg and Downing for consumer fraud[5]—the first consumer fraud claim filed against conversion therapists in the nation.[6] All four victims shared the same story: Goldberg reeled them in

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[2] Transcript of Trial at 82, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 8, 2015).

[3] Transcript of Trial at 134, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 11, 2015).

[4] The term "conversion therapy" is considered derogatory by proponents of the practice, who prefer terms such as "gender affirming practices," "reparative therapy," or "sexual orientation change efforts." I use the term "conversion therapy" because it is the term generally used to describe the practice of treating unwanted homosexuality through therapy, not as a derogation of those practices.

[5] Complaint and Jury Demand at 1–2, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Nov. 27, 2012).

[6] Susan K. Livio, *Group Claiming to Turn Gay Men Straight Committed Consumer Fraud, N.J. Jury Says*, NJ.COM (June 25, 2015, 8:08 PM) http://www.nj.com/politics/index.ssf/2015/06/gay_conversion_therapy_fraud_trial_verdict.html [http://perma.cc/7U33-JHQB].

with assurances of scientifically based treatment and guarantees of a specific cure rate; Downing then "treated" them through quack science and talk therapy that blamed the victims' parents for causing their homosexuality.

On June 25, 2015, after a three-week trial, the jury needed only three hours to deliberate before returning a unanimous verdict in favor of the plaintiffs.[7] One juror said that the decision was "cut and dried": the JONAH program was not therapy.[8] It was unconscionable consumer fraud. In addition to this first-in-the-nation verdict, a pretrial ruling by the Court declared—for the first time in American history[9]—that homosexuality was not a mental disease, disorder, or equivalent thereof *as a matter of law*.[10]

These twin developments, an evidentiary ruling acknowledging the near universal consensus of the medical community that homosexuality is a normal variant of human sexuality and a jury verdict declaring attempts to change sexual orientation through pseudoscientific "therapies" to be unconscionable consumer fraud, have the capacity to deal a *coup de grace* to the remaining providers of conversion therapy in the United States.

Of course, one state trial court decision in New Jersey creates neither binding precedent nor guaranteed success in future suits against conversion therapists. The case, however, was envisioned as—and is—a powerful model to consider in building future lawsuits. Conversion therapy enjoys few remaining supporters in the United States, and those supporters populate a closed universe of clinics, private practices, referral organizations, and resource groups that all draw on the same bad science and the same shoddy justifications for their work. The practice depends on certain misrepresentations very similar to the misrepresentations made by JONAH, its co-directors, and its chief therapist. These similarities and close relationships between and among providers make *JONAH* a model for holding conversion therapists accountable under state consumer fraud laws—a blueprint for a state-level litigation campaign aimed at revealing conversion therapy's pervasive falsehoods.[11]

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[7] Erik Eckholm, *In a First, New Jersey Jury Says Group Selling Gay Cure Committed Fraud*, N.Y. TIMES (June 25, 2015), http://www.nytimes.com/2015/06/26/nyregion/new-jersey-jury-says-group-selling-gay-cure-committed-fraud.html [http://perma.cc/4RL5-8JAF]; Sam Wolfe, *Op-Ed: Gay-Conversion Therapy Should Be Exposed for What It Is, Consumer Fraud*, SALT LAKE TRIB. (Aug. 29, 2015, 3:00 PM) http://www.sltrib.com/opinion/2883953-155/op-ed-gay-conversion-therapy-should-be-exposed [http://perma.cc/JA8F-NBZC].

[8] Equality Case Files (@EQCF), TWITTER (June 25, 2015, 1:44 PM), https://twitter.com/EQCF/status/614172219481137152 [https://perma.cc/SB9Q-JPW6].

[9] *New Jersey Judge Rules Conversion Therapy Group Can't Claim Homosexuality Is a Disorder*, S. POVERTY L. CENTER (Feb. 10, 2015), https://www.splcenter.org/news/2015/02/10/new-jersey-judge-rules-conversion-therapy-group-can%E2%80%99t-claim-homosexuality-disorder [https://perma.cc/A39K-K328].

[10] Order Granting Plaintiffs' Motion for Partial Summary Judgment at 1, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 10, 2015).

[11] *Cf.* Wolfe, *supra* note 7 (calling on remaining conversion therapy providers to "come clean" as to the nature of their services as consumer fraud).

Part I of this Essay draws on the trial transcripts and pretrial briefing in *JONAH* to argue that it is extraordinarily difficult—especially in a post-*JONAH* world—to sell conversion therapy without simultaneously committing consumer fraud. Part II analyzes consumer protection laws in all fifty states to demonstrate the opportunities for and obstacles to deploying the *JONAH* model across the country. Part III discusses the merits of using litigation as a tool for curbing conversion therapy in the United States.

I. UNIVERSALIZING *JONAH*'S FACTS: THE PREDICATE LIES OF CONVERSION THERAPY

In inducing potential clients to purchase its therapy programs, JONAH violated New Jersey's Consumer Fraud Act (CFA), which prohibits the "act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, [or] *misrepresentation* . . . in connection with the sale or advertisement of any merchandise . . . ."[12]

The plaintiffs identified six individual misrepresentations made by JONAH in selling its services:

1. Homosexuality is a mental disease, disorder, or equivalent thereof;
2. Homosexuality can be cured;
3. The JONAH Program specifically could cure that illness;
4. The JONAH Program had a specific rate of success;
5. The JONAH Program worked in a specified time frame;
6. The JONAH Program was based on science.[13]

While certain of these misrepresentations were case-specific, the six distill down to two core misrepresentations that *must* be made, in some form or another, in any sale or provision of conversion therapy. These core misrepresentations are:

1. Homosexuality is not a normal variant of human sexuality, but is instead a disease, disorder, or equivalent thereof; and
2. Homosexuality can be changed through treatment.

These core misrepresentations work together to justify the peddling of conversion therapy. JONAH told both of these lies to the plaintiffs

[12] N.J. STAT. ANN. § 56:8-2 (West, Westlaw through L.2015, c. 115) (emphasis added) [http://perma.cc/N8EC-6R9M]. "Merchandise" includes services as well as goods, and embraces "anything offered, directly or indirectly to the public for sale." *Id.* § 56:8-1(c) (West, Westlaw through L.2015, c. 115) [http://perma.cc/6CVT-A462].

[13] Plaintiffs' Trial Memorandum at 11–18, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Apr. 27, 2015).

explicitly and repeatedly through email communications, which made for powerful evidence.[14] But a suit does not need a smoking gun communication to demonstrate the core misrepresentations; both misrepresentations are made simply by selling the service.

First, it is extremely difficult, if not impossible, to separate a medical–corrective connotation from the concept of therapy. Therapy is "treatment especially of [a] bodily, mental, or behavioral disorder."[15] By holding themselves out as therapists that can administer treatment capable of ridding patients of something unwanted, even without using the precise word "disorder," therapists claim they can cure patients. Furthermore, the treatments offered by conversion therapists seek to eliminate a patient's homosexuality by addressing its purported underlying causes, such as "shame about the body"[16] and unresolved "childhood and adolescent wounds."[17] This pseudomedical terminology suggests that homosexuality is a symptom, a rash that will dissipate upon application of an appropriate ointment. It follows that therapists are selling a cure for an ailment; homosexuality is that ailment; and homosexuality is abnormal.

The second core misrepresentation is the backbone of all conversion therapy, and even more essential to its sale than the first. Conversion therapists must, as a predicate to selling their services, assert that their treatment program is capable of changing one's sexual orientation. That is, after all, the point of the entire enterprise. And unlike "pray away the gay" organizations that explicitly rely on the power of faith to "heal" homosexuality, or support groups designed to help gay men live celibate lives in conformity with their religious values,[18] conversion therapy is billed as a scientific, therapeutic process by which a person's sexual orientation can change from gay to straight. There simply is no conversion therapy without the possibility for conversion.

Even in a hypothetical where a conversion therapist told his client, "I have absolutely no idea whether homosexuality is normal or abnormal; all I know is that my program can change your sexual orientation," both core

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[14] *See, e.g.*, Plaintiffs' Exhibit 2, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("[S]ame-sex attraction (SSA) is just a SYMPTOM of underlying pain from unresolved childhood wounds."); Plaintiffs' Exhibit 14, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("The simple answer is, 'yes, it's possible to actually be fully rid of SSA.'").

[15] *Therapy*, MERRIAM-WEBSTER ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/therapy (last visited Nov. 2, 2015) [http://perma.cc/22FP-FFTH]; *see also, e.g.*, Teva Pharm. USA, Inc. v. Amgen, Inc., No. 09-5675, 2010 WL 3620203, at *11 (E.D. Pa. Sept. 10, 2010) ("Medical dictionaries define 'therapy' as the 'treatment of disease.'") [http://perma.cc/BY5K-NTBH].

[16] Transcript of Trial at 241–42, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 11, 2015).

[17] *Id.* at 38.

[18] *See, e.g.*, JOEL 2:25 INT'L, http://www.joel225.org/ (last visited Nov. 2, 2015) ("As a Christian community, we proactively engage and affirm men and women throughout the world who experience same-sex attraction, providing ongoing prayerful support that encourages relational healing, sexual sobriety, and spiritual growth.") [http://perma.cc/WJ4G-HCAJ].

misrepresentations are present. The second certainly has been made: the therapist has promised his program can work. The first has been made as well: conversion therapy views homosexuality as symptomatic, caused by certain underlying psychological issues to be addressed through a therapeutic program. The sale of this program is also the sale of this model—the moment a conversion therapist actually begins therapy and asks about a client's relationship with his mother, or about his relationship with his peer group, or whether he was sexually abused as a child, he has pathologized homosexuality as an aberration caused by those "wounds." An assumption of abnormality proceeds from the course of treatment, even if the therapist is exactingly careful never to describe homosexuality itself as disordered.[19]

Not all therapy aimed at assisting the religious conservative LGBT population, of course, qualifies as conversion therapy. A therapist might offer services not intended to "change" one's homosexuality, but instead intended to reduce the intensity of an individual's perceived attractions, or to teach coping mechanisms designed to enable a patient to live a chaste lifestyle in alignment with his religious beliefs. While one may wish (and work) for a world where no individual felt compelled to reject his or her innate sexuality in order to comply with religious dogma, these services can be and are provided in a respectful, healthy manner,[20] and are not aimed at "converting" individuals from gay to straight. However, while individuals should be free to prioritize their religious beliefs and seek to live in accordance with those beliefs, this does not permit others to lie to them while selling services designed to assist in that prioritization. Consumer fraud laws reject such a stark notion of *caveat emptor*—sometimes explicitly.[21] If therapy is intended to reduce or eliminate an individual's SSA and/or increase his OSA, if it is designed or marketed to "convert" that individual from gay to straight, both core misrepresentations I describe below must have been made to the patient as a matter of logic.

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[19] Should a therapist tell a potential client that homosexuality is entirely normal, but still offer services purporting to change one's sexual orientation, the second core misrepresentation is certainly present—that therapist is promising a result he cannot deliver. Proving the first core misrepresentation would be more difficult, but still possible; a plaintiff would need to demonstrate that statements made to him during the course of treatment pathologized homosexuality by keying it to any of the major "causes" of homosexuality posited by conversion therapists (such as a masculinity deficit, or childhood sexual trauma, or the "triadic family" described *infra* note 26 and accompanying text). Even if the first core misrepresentation has not been made, however, the second certainly has—and it takes only one misrepresentation to violate consumer fraud laws.

[20] Consider for example a therapist who, while confirming to his clients that homosexuality is a perfectly normal variant of human sexuality, works to reduce feelings of shame and stigma attached to a patient's orientation and, if the patient wishes, helps him create healthy coping mechanisms so he can conform his sexual behavior to his religious beliefs. Critically, the ill sought to be corrected by this form of therapy is the *discomfort* the patient experiences due to the conflict between his sexual orientation and his religion, not the *orientation itself*.

[21] *See, e.g.*, NEW JERSEY MODEL CIVIL JURY CHARGE 4.43: CONSUMER FRAUD ACT at 2 (2011), *available at* https://www.judiciary.state.nj.us/civil/charges/4.43.pdf ("Many of us have heard the Latin phrase *caveat emptor*: 'let the buyer beware.' That statement allows little relief to a customer. That statement does not reflect current law in New Jersey. Here, we have a more ethical approach in business dealings with one another.") [https://perma.cc/AUG2-9N65].

Over the course of the *JONAH* trial, both of these essential, core misrepresentations were proven to be fraudulent misrepresentations of fact.

A. Homosexuality Is Abnormal

Arthur Goldberg gave the same pitch to each of the plaintiffs in the *JONAH* case, a pitch he'd given hundreds of times.[22] There was no such thing as homosexuality, he said; the mainstream media and radical gay activists created the term. Homosexuality is just a symptom of childhood wounds inflicted by the parents, he explained, that resolves itself if addressed in therapy. "JONAH's Psycho-Educational Model for Healing Homosexuality," posted on the JONAH website, went so far as to invent a term for homosexuality: "Same-Sex Attraction Disorder."[23]

JONAH's position is consistent with the discredited model for homosexuality articulated by Dr. Joseph Nicolosi, one of the fathers of modern conversion therapy[24] and one of its most vocal proponents.[25] The "triadic family" model of an overbearing mother, distant father, and sensitive child[26] is not the only "cause" of homosexuality subscribed to by conversion therapists, but it is one of the most popular.[27] It is also remarkably flexible: Michael Ferguson, the named plaintiff in the *JONAH* case, testified that his therapy with Alan Downing focused on identifying examples of his father's failings and his mother's overprotectiveness, especially in the beginning.[28] Many of these issues, like a father being away

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[22] Transcript of Trial at 86, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 8, 2015).

[23] Elaine Silodor Berk & Arthur A. Goldberg, *JONAH's Psycho-Educational Model for Healing Homosexuality*, JONAH INT'L, http://jonahweb.org/library_article/view/jonah-39-s-psycho-educational-model-for-healing-homosexuality.html (last visited Nov. 2, 2015) ("There is no 'magic bullet' for healing even though it is frequently wished for by those suffering from a same-sex attraction disorder (SSAD).") [http://perma.cc/3W6A-R5VT].

[24] *See Finding a Counselor or Life Coach: David H. Pickup, MA, LMFT*, PEOPLE CAN CHANGE, http://www.peoplecanchange.com/support/counselor.php (last visited Nov. 2, 2015) ("David underwent an extensive internship and training with the creator of Reparative Therapy, Dr. Joseph Nicolosi at Thomas Aquinas Psychological Clinic.") [http://perma.cc/4RB2-UDLX].

[25] *See, e.g.*, Joseph Nicolosi, *What Is Reparative Therapy? Examining the Controversy*, JOSEPH NICOLOSI PH.D., http://www.josephnicolosi.com/what-is-reparative-therapy-exa/ (last visited Nov. 2, 2015) (detailing Nicolosi's theory of homosexuality and program for treatment) [http://perma.cc/8FFX-K7XN].

[26] *See* Joseph Nicolosi, *Attachment Loss and Grief Work in Reparative Therapy*, JOSEPH NICOLOSI PH.D., http://www.josephnicolosi.com/attachment-loss-and-grief-work/ (last visited Nov. 2, 2015) (detailing the "triadic narcissistic family" model and claiming it contributes to the development of homosexuality in males) [http://perma.cc/L3YB-2N9A].

[27] It is also completely unscientific. "There are no empirical studies or peer-reviewed research that support theories attributing same-sex sexual orientation to family dysfunction or trauma." AM. PSYCHOLOGICAL ASS'N, REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION TASK FORCE ON APPROPRIATE THERAPEUTIC RESPONSES TO SEXUAL ORIENTATION 54 (2009), *available at* https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf [https://perma.cc/YXY8-Q2HE].

[28] Transcript of Trial at 220–23, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 16, 2015). Downing's treatment notes for Mr. Ferguson include entire sessions examining "What didn't I get from Dad" and hypothetical questions from Michael to his mother along these same lines. Plaintiffs' Exhibit 433 at 6, 10, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015).

for work or a mother enrolling him in extracurricular activities, seem like perfectly natural components of life in a typical middle-class American nuclear family. But in the hands of Downing, these childhood memories were twisted into a narrative of Ferguson's parents "causing" his homosexuality.

In *JONAH*, the battle over this misrepresentation was largely fought and won in expert discovery. JONAH proffered six experts: four conversion therapists (including Dr. Nicolosi), one medical doctor, and one rabbi. All four therapists submitted reports claiming, among other things, that homosexuality is a learned response to childhood "wounds" and is addressable through therapy aimed at resolving those wounds. They argued that this school of thought, while unpopular, presented a coherent argument for homosexuality as a learned or acquired disorder, or at least not as a normal variant of human sexuality. Each of these individuals failed to qualify as experts under New Jersey law, and each was excluded.[29]

New Jersey is a *Frye* state.[30] As such, the reliability of proffered expert testimony can be proven by showing its "general acceptance in the particular field in which it belongs."[31] The Court, in its ruling excluding JONAH's experts, declared that "[t]he overwhelming weight of scientific authority concludes that homosexuality *is not* a disorder or abnormal. The universal acceptance of that scientific conclusion—save for outliers such as JONAH—requires that any expert opinions to the contrary must be barred."[32]

This statement is not controversial. In 1973, the American Psychiatric Association removed homosexuality per se from the Diagnostic and Statistical Manual of Mental Disorders,[33] the standard desk reference for psychiatrists in the United States.[34] Since then, the pattern has been

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[29] Ferguson v. JONAH, No. L-5473-12, at 31 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

[30] I note that proffered conversion therapy experts excluded under *Frye* are likely to be excluded under the *Daubert* standard as well. *Daubert* requires judges to determine whether a proffered expert's opinion is based on a valid, scientific methodology. Under this standard, the factors that may be considered in determining whether an expert's methodology is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community. *See* Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 593–94 (1993) [http://perma.cc/C6B2-CJKY]. A casual glance at the universally refuted, fringe nature of conversion therapy suggests it fails at least on factors (1), (2), and (5).

[31] Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923) [http://perma.cc/77R8-L8QQ].

[32] Ferguson v. JONAH, No. L-5473-12, at 19 (N.J. Super. Ct. Law Div. Feb. 5, 2015) (emphasis added).

[33] Position Statement (Retired), Am. Psychiatric Ass'n, Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM-II, 6th Printing, page 44, APA Document Reference No. 730008 (Dec. 1973), *available at* http://www.torahdec.org/downloads/dsm-ii_homosexuality_revision.pdf [http://perma.cc/YB85-5JS9].

[34] *Frequently Asked Questions*, AM. PSYCHIATRIC ASS'N: DSM-5 DEVELOPMENT, http://www.dsm5.org/about/Pages/faq.aspx (last visited Nov. 8, 2015) ("The *Diagnostic and Statistical Manual of Mental Disorders* (*DSM*) is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders.") [http://perma.cc/KU4A-KHUD].

unbroken: each and every major medical and mental health association in the United States has concluded that homosexuality is a normal variant of human sexuality.[35] In an amicus brief in *United States v. Windsor*, the American Psychological Association stated:

> For decades . . . the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality and pose no inherent obstacle to leading a happy, healthy, and productive life, and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.[36]

JONAH pointed to the existence of certain niche groups advocating for a pathological understanding of homosexuality, most notably the National Association for the Research and Therapy of Homosexuality (NARTH),[37] as proof that general acceptance of homosexuality as a normal variant of human sexuality did not exist.[38] The *Frye* standard, however, does not require unanimity.[39] As the Court stated, "a group of a few closely associated experts cannot incestuously validate one another as a means of establishing the reliability of their shared theories."[40]

In other words, the mere existence of a fringe viewpoint did not defeat the consensus of the wider medical and scientific community. After all, a discredited scientific theory is by definition unreliable, and "the theory that homosexuality is a disorder is not novel but—like the notion that the earth

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[35] *See, e.g.*, Barbara L. Frankowski et al., *Sexual Orientation and Adolescents*, 113 PEDIATRICS 1827, 1827–28 (2004) [http://perma.cc/6A9Q-LCE5]; *AMA Policies on LGBT Issues: Patient-Centered Policies: H-160.991 Health Care Needs of the Homosexual Population*, AM. MED. ASS'N, http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbt-advisory-committee/ama-policy-regarding-sexual-orientation.page? (last visited Nov. 8, 2015) ("Our AMA . . . opposes, the use of 'reparative' or 'conversion' therapy that is based upon the assumption that homosexuality per se is a mental disorder. . . .") [http://perma.cc/N8SY-EGHB]; Appropriate Counseling Responses to Sexual Orientation, Am. Counseling Ass'n, ACA Governing Council Meeting Minutes, (March 26–27, 1998), *available at* http://www.counseling.org/Sub/Minutes/Governing_Council/1998_0326.pdf (affirming that "homosexuality is not a mental disorder") [http://perma.cc/32UZ-TMZS]; Position Statement, Royal Coll. of Psychiatrists, *Royal College of Psychiatrists' Statement on Sexual Orientation* (Apr. 2014), *available at* https://www.rcpsych.ac.uk/pdf/PS02_2014.pdf ("The College wishes to clarify that homosexuality is not a psychiatric disorder.") [https://perma.cc/YHN9-GPC4].

[36] *See* Brief of the American Psychological Association et al. as Amici Curiae on the Merits in Support of Affirmance at 8–9, United States v. Windsor, 133 S. Ct. 2675 (No. 12-307) (2013) [http://perma.cc/J8SL-ZS7V]. The brief was filed on behalf of the American Psychological Association, the American Academy of Pediatrics, the American Medical Association, the American Psychiatric Association, the American Psychoanalytic Association, the California Medical Association, the National Association of Social Workers, and the New York State Psychological Association.

[37] NARTH was recently rebranded as the "clinical division" of the "Alliance for Therapeutic Choice and Scientific Integrity." *See* NARTH INST., http://www.therapeuticchoice.com/#!narth-institute/c1hul (last visited Nov. 8, 2015) [http://perma.cc/S2GS-QS9G].

[38] Defendants' Opposition to Plaintiffs' Motion to Exclude Defendants' Experts at 10–11, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

[39] *See* State v. Tate, 505 A.2d 941, 950 (N.J. 1986) (holding general acceptance "does not depend on unanimous belief or universal agreement within the scientific community") [http://perma.cc/LM9D-5A7A].

[40] Ferguson v. JONAH, No. L-5473-12, at 26 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

is flat and the sun revolves around it—instead is outdated and refuted."[41] JONAH's experts were therefore excluded from testifying at trial.[42]

In disposing of cross motions for summary judgment, and based on this previous evidentiary ruling, the court ruled that it was a misrepresentation in violation of the New Jersey CFA to state that homosexuality was not a normal variation of human sexuality, but was instead a mental illness, disorder, or equivalent thereof.[43] The court held that homosexuality is not a sickness—as a matter of law.

It is essential to understand the importance of this finding to the *JONAH* case, and to future cases built on the *JONAH* model. The plaintiffs' main source of evidence in *JONAH*, beyond the testimony of the parties themselves, came from the JONAH email listserv, which functioned as a propaganda machine for the JONAH clinic.[44] Other evidence available to prove the disease–disorder misrepresentation included marketing materials for group and individual therapy sessions, emails to potential clients off-listserv, and communications between Goldberg, Berk, and other conversion therapy providers (among much else). Because the standard conversion therapy business model is based on the lie that homosexuality is abnormal, this lie—a lie as a *matter of law*—appeared *everywhere* in JONAH's communications and operations. The same is likely true with other providers of the same service.[45]

B. Homosexuality Can Be Changed Through Treatment

The "JONAH Program" had three major components: (1) individual therapy with Alan Downing or another JONAH counselor; (2) group therapy sessions led by Downing or Goldberg at the JONAH offices in Jersey City; and (3) referrals for "Journey Into Manhood" weekend retreats run by another conversion therapy organization, People Can Change.[46] The

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[41] *Id.* at 25.

[42] *Id.* at 26, 31.

[43] Order Granting Plaintiffs' Motion for Partial Summary Judgment at 1, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 10, 2015).

[44] JONAH co-directors used the listserv to reinforce the message that their clients had a problem that needed to be solved. *See, e.g.*, Plaintiffs' Exhibit 164 at 1, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("All men are born straight. They become SSA because of emotional wounds typically in childhood."); Plaintiffs' Exhibit 183, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. June 25, 2015) ("JONAH is in big trouble with gay activists just because we say no one is born gay and people can change. These myths are what has convinced the public that homosexuality is normal and inborn . . . ."); Plaintiffs' Exhibit 159 at 1, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("I've known . . . alcoholics who must have 3 drinks every night – but function OK in their lives. However, it doesn't make their alcoholism or obesity good or normal. It's the same with SSA.").

[45] For example, The "International Healing Foundation," a referral service linking potential clients with conversion therapists, prominently features "causes" of homosexuality including "Hetero-Emotional Wounds," "Body Image Wounds," and "Sexual Abuse" on its website. *Potential Causes of SSA*, INT'L HEALING FOUND.: COMING OUT . . . LOVED, http://www.comingoutloved.com/causes-of-ssa (last visited Nov. 8, 2015) [http://perma.cc/AS3U-X42T].

[46] *See* Transcript of Trial at 138–39, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 8, 2015).

JONAH Program, Goldberg assured his clients, had a two-in-three chance of success of changing their sexuality.[47]

But JONAH kept no client records. There were no exit surveys, no follow-up questionnaires—no systematic communication of any kind with clients who had left the program.[48] The statistics quoted by Goldberg were either entirely fictional or based on Goldberg's own memories of past clients and selective recall of studies on the subject.[49]

Studies that purport to show that homosexuality can be changed through conversion therapy and similar programs certainly exist.[50] The American Psychological Association addressed those studies exhaustively in its 2009 publication, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*.[51] This report engaged in a systematic review of research on the efficacy of sexual orientation change efforts (SOCE), revealing "substantial deficiencies" in the studies claiming to demonstrate its efficacy.[52] These deficiencies included lack of internal validity due to sample attrition and variability in outcome measures, small or skewed sample populations in recent studies containing only self-reports by religiously conservative adult males,[53] and inappropriate selection and performance of statistical tests.[54] The Task Force concluded that, given the dearth of scientifically sound research, "claims that recent SOCE is effective are not supported."[55] Dr. Lee Beckstead, one of the authors of the Task Force Report, testified that none of the treatments JONAH employed were, or could be, effective at changing an individual's sexual orientation.[56]

In the course of its review, the Task Force also identified evidence that SOCE was, in fact, harmful.[57] But whether or not current conversion

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[47] *Id.* at 155. Or a "substantial" chance. *Id.* at 156. Or a 70 to 75% chance. *See* Plaintiff's Exhibit 116 at 1, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015). It depended on the day.

[48] Transcript of Trial at 158–59, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 8, 2015).

[49] *See id.* at 164–55 (describing books, studies, and a two-thirds success rate).

[50] *See generally* JAMES E. PHELAN, SUCCESSFUL OUTCOMES OF SEXUAL ORIENTATION CHANGE EFFORTS: AN ANNOTATED BIBLIOGRAPHY (2014) (collecting studies claiming to show positive outcomes from conversion therapy). I note that the author of this booklet, Dr. James Phelan, admitted in the course of the *JONAH* case that he did not test the validity of any of the studies cited in the text. *See* Plaintiff's Memorandum in Support of Motion to Exclude Defendants' Experts at 32, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 5, 2015). He was subsequently barred from testifying as an expert. Order Granting Plaintiffs' Motion to Exclude Defendants' Expert Witnesses at 2, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

[51] AM. PSYCHOLOGICAL ASS'N, *supra* note 27 (2009).

[52] *Id.* at 34, 39–40.

[53] *Id.* at 52.

[54] *Id.* at 34.

[55] *Id.* at 2.

[56] Transcript of Trial at 39–40, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 16, 2015).

[57] Early SOCE included aversive techniques such as electroshock therapy; studies of these aversive

therapy techniques actively harm patients, the techniques themselves are considered unethical in the mental health field. At trial, Dr. Carol Bernstein, a past president of the American Psychiatric Association and director of the psychiatric residency program at New York University's medical school, testified that major treatment methods in JONAH's conversion therapy program—nudity in individual therapy, extended holding between therapist and client, re-creation of sexual abuse and other traumatic experiences, and anger transference exercises, among other things—were so far outside the ethical bounds of the psychiatric profession that, should one of Dr. Bernstein's residents practice them, it would warrant disciplinary action up to and including expulsion.[58]

Faced with expert testimony demonstrating that their science was flawed and that their methods were unethical, the defendants in *JONAH* turned to anecdotal evidence. They cited testimonials from clients—including contemporaneous statements from the plaintiffs themselves—saying they felt their SSA decreasing through treatment, and that they felt themselves becoming more attracted to women. Some of these clients declared that they thought various portions of the defendants' program, including weekend retreats featuring extended "healthy touch" sessions and "guts work" like Benjy's mother-beating session, were incredibly positive experiences.[59]

Dr. Janja Lalich, a sociologist specializing in the study of coercive influence, testified as an expert for the plaintiffs. She explained that these sorts of affirmations, often made immediately after emotionally charged experiences, were expected.[60] JONAH, and organizations like it, combined a closed philosophy with regular message reinforcement and targeted recruiting to coerce individuals into complying with its belief structure, even when the effects were harmful.[61]

This pattern of coercive influence was clear at JONAH. The plaintiffs in *JONAH* were told the program worked—and that if it didn't work, it was because they hadn't worked hard enough to change.[62] They were reminded, constantly, that being gay meant leading a lonely life ending in disease and early death.[63] They came from religiously conservative environments in

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treatments showed high dropout rates and iatrogenic effects on patients. AM. PSYCHOLOGICAL ASS'N, *supra* note 27, at 43 (2009). The Task Force found that recent research on nonaversive SOCE also included patient reports of perceived harm, though mixed with patient reports of perceived benefit. *Id.*

[58] Transcript of Trial at 175–78, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 10, 2015).

[59] *See, e.g.*, Defendants' Exhibit 29, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("I definitely felt like the energy at [Journey Into Manhood] was deeply healing for me . . . ."); Defendants' Exhibit 78, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015) ("I miss the friendship [sic] the acceptance, the love, and I just miss all of you.").

[60] Transcript of Trial at 167–68, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 15, 2015).

[61] *Id.* at 113–16.

[62] Transcript of Trial at 54–55, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 11, 2015).

[63] *Id.* at 64–66. Indeed, the co-director of JONAH claimed that no gay couple had maintained, or

which homosexuality was not accepted. They were told they needed to "commit" to the work. In such a situation, Dr. Lalich explained, anyone would be expected to claim they felt the treatment was working—as failure was the individual's fault, not the organization's, and questioning that assumption could lead to removal from the group.[64] But as Dr. Bernstein testified, just because a client says, or even *thinks*, a treatment is beneficial doesn't mean it actually *is* beneficial.[65] It can, in fact, be quite harmful—the "high" experienced by individuals caught in a system of coercive influence is generally followed by an emotional "crash."[66]

In a last-ditch effort to demonstrate that their treatments *could* work, the defense called seven "success story witnesses": men who claimed to have successfully completed a course of conversion therapy. The first success story witness testified that though he was married and considered himself a success, he was still predominately attracted to men.[67] Another testified that while he no longer considered himself to be gay, he did not experience sexual fantasies about women.[68] The remaining "success stories" were similar; not one witness testified that he now experienced regular opposite-sex attraction.

The risk of a future conversion therapist defendant finding better success stories is low. These witnesses were selected from a pool of approximately twenty of the best candidates from an initial pool of approximately one hundred volunteers, all past participants in People Can Change's weekend conversion therapy retreats.[69] These were, in other words, the best "success" stories available.

In order to demonstrate the misrepresentation that homosexuality is curable through treatment, a future plaintiff would only need to show that his therapist asserted that the program was effective. From there, a lack of scientific and anecdotal proof demonstrates the statement is at best misleading and at worst false. Even if the therapist in question maintains client records purporting to show that certain of his clients have self-reported as "successful," further investigation of these "success stories" may well reveal that the clients self-reporting success are using an unusual

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could maintain, a monogamous relationship for more than five years. *Id.* at 64.

[64] Transcript of Trial at 260–61, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 15, 2015).

[65] Transcript of Trial at 174–75, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 10, 2015).

[66] Transcript of Trial at 167, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 15, 2015).

[67] Transcript of Trial at 210, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. June 17, 2015). This man was also the sitting Chairman of the Board of Directors of North Star International, a major conversion therapy resource organization, at the time of trial. *Id.* at 203.

[68] Transcript of Trial at 21–23, 38, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 18, 2015). The witness explained that his goal was not to sexually fanaticize about women, as it was not consistent with his religious values. *Id.* at 38.

[69] *See* Transcript of Trial at 101, 194, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 24, 2015).

definition of the term, similar to the "success story witnesses" in *JONAH*. Such stories reveal that the only impact of conversion therapy is a shallow ability to reclaim the title of "straight" while experiencing no authentic change in sexual attraction.

Conversion therapy does not work because conversion therapy *cannot* work, in the sense that it cannot "cure" homosexuality. This core misrepresentation is made every time a conversion therapist accepts payment for "treatment" and every time a therapist provides so-called "therapy."

II. PROJECTING *JONAH* NATIONWIDE: A SURVEY OF STATE CONSUMER PROTECTION LAWS

Having demonstrated the fallacies of the two core misrepresentations in *JONAH* that are commonly present in the sale and provision of conversion therapy, I turn to analyze the state-level consumer protection laws that makes those misrepresentations illegal. Every state has passed a consumer protection law and granted private citizens the right to enforce the law through a civil cause of action.[70] While New Jersey's CFA is particularly plaintiff-friendly, a nationwide survey of other states' consumer protection laws reveals there are many other jurisdictions where a *JONAH*-modeled case could easily be brought.

A. The New Jersey Model

The New Jersey CFA offered a potent mix of incentives for bringing an experimental suit against a conversion therapist. Four features of the New Jersey CFA are particularly salient here: (1) lack of an intent or knowledge requirement on the part of defendants, (2) lack of a reliance requirement on the part of plaintiffs, (3) availability of equitable relief, and (4) availability of attorney's fees to prevailing plaintiffs. Additionally, a prima facie case under the CFA consists of only three elements: (1) unlawful conduct, (2) ascertainable loss by the defendant, and (3) a causal relationship between the unlawful conduct and the ascertainable loss.[71] "An intent to deceive is not a prerequisite to the imposition of liability."[72] The New Jersey CFA "is designed to protect the public even when a merchant acts in good faith."[73] Perhaps most importantly, a potential plaintiff need not prove she relied on the unlawful conduct, merely that the conduct occurred and caused harm. "A practice can be unlawful even if no person

[70] *See* SEARLE CIVIL JUSTICE INSTITUTE, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, STATE CONSUMER PROTECTION ACTS: AN EMPIRICAL INVESTIGATION OF PRIVATE LITIGATION PRELIMINARY REPORT 53–55 (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708175.

[71] *See* Bosland v. Warnock Dodge, Inc., 964 A.2d 741, 749 (N.J. 2009) [http://perma.cc/W7NN-PCC5].

[72] Gennari v. Weichert Co. Realtors, 691 A.2d 350, 365 (N.J. 1997) [http://perma.cc/K4TF-6Z4P].

[73] Cox v. Sears Roebuck & Co., 647 A.2d 454, 461 (N.J. 1994) [http://perma.cc/DM6U-5C97].

was in fact misled or deceived thereby."[74] This broad cause of action, combined with the availability of trebled compensatory damages,[75] attorney's fees,[76] and toothy equitable relief[77] makes New Jersey's CFA one of the broadest, and most protective, in the country. Each of the four features that make the New Jersey CFA so attractive will be discussed in turn below.

First, consumer fraud laws that do not require demonstrating that the defendant either knew or intended his actions to be fraudulent are especially important in the conversion therapy context, where religious beliefs and pseudoscientific "evidence" are never far from the "treatment" room. Such laws eliminate the "true believer" problem, which arises when conversion therapists can say they disagree with prevailing science and believe their practices work in an attempt to shield themselves from consumer fraud liability.

Second, the absence of a reliance requirement opens the world of evidence available to a plaintiff to prove his claim to all salient misrepresentations made by the defendant, rather than limiting available evidence to examples of misrepresentations made directly to the plaintiff. As described above, conversion therapists typically build their businesses on twin lies that permeate their communications and treatment programs. While therapists typically make these two lies to individual plaintiffs in the course of selling their services, a plaintiff bringing a claim in a non-reliance jurisdiction will also be able to offer other examples of defendants making these lies—a wide array of evidence which, in *JONAH*, proved overwhelming.

Third, every state's consumer fraud regime provides for the application of equitable relief to enjoin the continuance of a fraud on the public.[78] This power is vested in the attorney general of the state, and often extended to a citizen bringing a private right of action. In New Jersey, for example, a private citizen is able to seek injunctive relief in addition to compensatory damages and attorney's fees, which is valuable because it allows the reach of a private lawsuit to go far beyond simple monetary damages: a victim can enjoin a conversion therapist from continuing to perpetrate fraud on the public in the same courtroom, without having to seek redress through the state attorney general. In *JONAH*, that meant a permanent injunction requiring the clinic to close its doors forever, and prohibiting the therapists employed by JONAH from ever practicing

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[74] *Id.* at 462.

[75] N.J. STAT. ANN. § 56:8-19 (West, Westlaw through L.2015, c. 115) [http://perma.cc/D76P-7TAP].

[76] *Id.*

[77] *Id.* § 56:8-8 (granting individuals, in addition to the attorney general, the power to seek equitable relief in a private cause of action for consumer fraud, in addition to the attorney general) [http://perma.cc/6HPZ-3ZTC].

[78] *See* Appendix.

conversion therapy again.[79]

Fourth, the availability of attorney's fees makes private actions possible where they might not otherwise be. *JONAH*, as an anecdotal example, required over thirty fact depositions, seven expert depositions, several rounds of motions to dismiss and summary judgment briefing, and a three-week trial. This is enormously expensive. The jury's awards for compensatory damages, on the other hand, were relatively small, ranging from several hundred dollars to just over $17,000.[80] Providing for attorney's fees makes this protracted litigation feasible for plaintiffs and their lawyers—and provides a further monetary penalty against defendant therapists when the plaintiffs prevail.

While New Jersey's CFA made the state a favorable incubator for a consumer fraud case against conversion therapists, it is not the only nest in the tree. Many jurisdictions offer similar core protections to the New Jersey CFA, such that victims of conversion therapists would be able to structure a claim similar to the one in *JONAH*. Other states' statutory regimes may differ from New Jersey's by requiring either reliance or a showing of intent. Though these heightened burdens are inconvenient in proving the fraud of conversion therapy, they are not insurmountable. And while a limited number of states have restrictive consumer protection laws that would make a *JONAH*-model suit difficult, these outliers are vastly outnumbered by jurisdictions where conversion therapy is more vulnerable to attack than ever before.

What follows is a fifty-state survey of state consumer protection laws. All states make available a private cause of action. The survey focuses on how closely the laws conform to New Jersey on the four above-stated features of nonreliance, nonintent, equitable relief, and attorney's fees. Details on each state, including specific statutory references and citations to relevant case law, are available in the Appendix to this Essay.

B. Copycat Jurisdictions

Several state CFAs match the New Jersey CFA on all four critical metrics: lack of an intent requirement, lack of a reliance requirement, availability of equitable relief, and availability of attorney's fees. These states are Alaska, California, Connecticut, Illinois, Kansas,[81] Massachusetts, Michigan, Missouri, New York, Ohio, Oregon, Tennessee,

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[79] *See* Press Release, Southern Poverty Law Center, Groundbreaking SPLC Lawsuit Forces New Jersey Group to Cease Bogus 'Conversion Therapy' Program, Pay Damages (Dec. 18, 2015), *available at* https://www.splcenter.org/sites/default/files/121815_jonah_settlement_press_release_final.pdf [perma.cc/2RBN-BDK4].

[80] Jury Verdict Sheet at 2, 4, 6, 7, 9, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 25, 2015).

[81] The general prohibition of deceptive acts and practices at Kan. Stat. § 50-626(a) does not require intent; however, many of the specific prohibitions at § 50-626(b) do. *See* KAN. STAT. ANN. § 50-626 (West, Westlaw through 2015 Reg. Sess.) [http://perma.cc/285J-SFP6]. Conversion therapy services fall under the general prohibition against deceptive acts and practices; I therefore include Kansas as a copycat jurisdiction for this specific purpose. The same holds true for Illinois, Michigan, and Oregon.

Vermont, and Washington.

C. Requiring Reliance: An Evidentiary Problem and Solution

Arizona, Georgia, Indiana, North Carolina, Oregon, Pennsylvania, South Dakota, Texas, Virginia, West Virginia, and Wyoming have imposed a reliance requirement on consumer fraud plaintiffs, either in the statute itself or in subsequent state court decisions.[82] It is, however, impossible to state with certainty that these are the only states that would require a civil plaintiff to show that she relied on the statements made by the defendant to prove a consumer fraud claim because many state CFA statutes are silent as to reliance and the courts in those states have yet to address the question directly.[83]

While a complete review of the reliance requirements in each state is beyond the scope of this Essay, an example analysis applying *JONAH*'s facts in a state with a reliance requirement demonstrates how the additional hurdle of proving reliance might be overcome.

Georgia's courts have read a reliance requirement into the state's consumer fraud law.[84] This requirement mandates that "a claimant who alleges [Georgia's consumer protection law] was violated as the result of a misrepresentation must demonstrate that he was injured as the result of the reliance upon the alleged misrepresentation."[85]

In *JONAH*, where there was no reliance requirement, the plaintiffs needed only to show JONAH made misrepresentations and that the plaintiffs suffered ascertainable loss. This opened the door to evidence of communications between the defendants and non-party clients. The plaintiffs were not privy to such communications in purchasing JONAH's services, and thus the communications could not have served as the basis of their decision to purchase the defendants' services.

This sort of evidence would be irrelevant in a *JONAH*-modeled case in Georgia, as the specific misrepresentations must be tied to the plaintiff's decision to purchase the service. But the requirement does not defeat the claim. It merely restricts the acceptable evidence available for proving it. While the plaintiffs in *JONAH* had access to a veritable bounty of emails and advertisements from the defendants to a variety of third parties which could be used to prove the defendants misrepresented their services, they also had sufficient evidence of the misrepresentations as delivered to the plaintiffs personally: email messages between plaintiff and defendant, intake questionnaires for their therapist, applications to weekend retreats,

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[82] *See* Appendix.

[83] *See* Appendix.

[84] *See* Tiismann v. Linda Martin Holmes Corp., 637 S.E.2d 14, 16–17 (Ga. 2006) (citing Zeeman v. Black, 273 S.E.2d 910, 916 (Ga. Ct. App. 1980) [http://perma.cc/9PKG-E2UZ]) [http://perma.cc/U8HP-ZRZT].

[85] *Zeeman*, 273 S.E.2d at 916.

and their own direct testimony. In a situation where potential plaintiffs have retained neither paperwork nor email records from their entire courses of therapy, their own oral testimony to the fact that the misrepresentations were made to them and the fact that they purchased services will still be available in making out their claims.

Certain potential plaintiffs may face specific factual difficulties in proving reliance. One *JONAH* plaintiff, for example, was in medical school during his course of therapy, and had significant experience with conversion therapists before he came to JONAH.[86] Had the plaintiffs been forced to show that he relied on the defendants' misrepresentations in electing to purchase treatment from JONAH, the defendants would have had colorable arguments that a future medical doctor who had been exposed to the defendants' theories many times before could not reasonably rely on the defendants' pseudoscientific assertions as to their program's efficacy. Should similar situations arise in future cases, testimony from experts such as Dr. Lalich on the psychology of coercive influence may help a jury determine what is "reasonable reliance" in the context of a sheltered, conservative religious community—but there are admittedly no guarantees. Requiring plaintiffs to show they relied on the bald-faced lies of a conversion therapist complicates their claims, but does not necessarily make such claims impossible.

D. Requiring Intent: Dealing With True Believers

Certain state CFAs, such as Kansas's, require that the defendant either knew or *should have known* their statements were deceptive.[87] *JONAH*, however, provides a clear route for meeting the knowledge requirement in Kansas and similar states. As the court pointed out in excluding JONAH's experts, the evidence is "overwhelming" that homosexuality is a normal variant of human sexuality.[88] The plaintiffs also demonstrated through experts and evidence that there is no science supporting the notion that therapies designed to change an individual's sexual orientation are effective. Conversion therapists operating today, therefore, *should* know, at least, that when they make either of the core misrepresentations, their statements are considered false by the vast majority of the scientific community.

A small number of states—Colorado, Idaho, Indiana, Iowa, Minnesota, Nevada, North Dakota, South Dakota, and Wyoming—impose either intent or knowledge requirements in their general prohibitions of prohibited acts under their consumer fraud laws.[89] In this most restrictive

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[86] Transcript of Trial at 209–10, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 16, 2015).

[87] *See* Appendix.

[88] Ferguson v. JONAH, No. L-5473-12, at 19 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

[89] *See* Appendix. Several other states require a showing of intent in cases of omission or concealment of a material fact, or require intent under specific prohibitions irrelevant to the sale of

scenario, theoretical plaintiffs could argue that defendants made a statement knowing that there is a general consensus in the medical community that their statements are false. Furthermore, plaintiffs could show that therapist defendants intended potential clients to rely on their statements, rather than the generally accepted opinion of the medical community. Whether this misdirection can cross the line into knowingly making a prohibited misrepresentation will be a question of law for the courts of these few restrictive states.

I do not minimize the difficulty an intent requirement presents in those few states where it does exist. Demonstrating that conversion therapists know they are lying will not be easy. But the overwhelming weight of scientific evidence, as synthesized in *JONAH*, creates a platform to argue that therapists in these states knew that they could not support their representations that homosexuality is abnormal and treatable with credible evidence. The last logical step from there to intentional misrepresentation belongs to future judges and juries.

E. Problem Jurisdictions

Certain outlier states' consumer protection regimes raise questions about their ability to sustain a *JONAH*-model suit against conversion therapists not because of some specific protection for the services in question, but because of specific provisions that may present obstacles to rigorously protecting victims of conversion therapy within the jurisdiction. Luckily, these problem jurisdictions are few in number.

Public Impact Requirements: Seven states—Colorado, Georgia, Minnesota, Nebraska, New York, South Carolina, and Washington—require a plaintiff in a consumer fraud action to prove not only that they were defrauded, but also that the enterprise in question impacts the marketplace or the public at large.[90] The precise contours of this burden vary from state to state and are outside the scope of this Essay; the nature of conversion therapy, however, makes this additional burden less onerous than in other cases where a business sells a legitimate product to a single plaintiff in a fraudulent manner. Conversion therapists, as described in Section II, use two core misrepresentations to defraud their clients. While state-by-state requirements for showing a public impact may differ slightly, the fraud inherent in conversion therapy affects the entire class of individuals who purchase the service, regardless of the source of the

conversion therapy. *See id.*

[90] *See* Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc., 62 P.3d 142, 149 (Colo. 2003) [http://perma.cc/VGH8-34VB]; Pryor v. CCEC, Inc., 571 S.E.2d 454, 455 (Ga. Ct. App. 2002) [http://perma.cc/9JC9-4Y9U]; Ly v. Nystrom, 615 N.W.2d 302, 313 (Minn. 2000) [http://perma.cc/LD88-N5NU]; Nelson v. Lusterstone Surfacing Co., 605 N.W.2d 136, 141–42 (Neb. 2000) [http://perma.cc/Q44T-REGX]; Daisy Outdoor Adver. Co. v. Abbott, 473 S.E.2d 47, 49 (S.C. 1996) [http://perma.cc/8AJ4-48XN]; Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 647 N.E.2d 741, 744 (N.Y. 1995) [https://perma.cc/M2SS-XZZ6]; Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 719 P.2d 531, 537 (Wash. 1986) [http://perma.cc/L7LH-LMAR].

therapy or the method of its delivery. Therefore, while it may complicate a future *JONAH*-model suit, a public impact requirement does not necessitate failure.

Attorney's Fees: Arizona, Delaware, Mississippi, South Dakota, and Wyoming do not allow plaintiffs to collect attorney's fees in consumer fraud actions.[91] North Dakota and Ohio only allow plaintiffs to collect attorney's fees if they prove the defendants knowingly violated the law.[92] This is a serious bar to plaintiff recovery. The defendants' attorneys' fees in *JONAH* ran into the several millions of dollars—and, because defendants do not bear the burden of proof in consumer fraud actions, this figure will likely be higher for plaintiffs than for therapist defendants as a systematic matter.[93]

Furthermore, a number of states employ statutory schema that force consumers in failed actions to pay some or all of the defendants' attorney's fees—typically in cases the court determines to be frivolous or cases filed to create a competitive business advantage.[94] Without an incentive to represent clients who may have relatively small claims for compensatory damages,[95] plaintiffs may be hard-pressed to find lawyers willing to take on their cases in the first place.[96] And with the threat of paying defendants' attorney's fees in case of defeat, plaintiffs may be scared away from the enterprise altogether. A judgment for millions of dollars in fees is also a powerful hammer, capable of driving a conversion therapist out of the market altogether. Depriving plaintiffs of this weapon seriously diminishes the impact of any individual suit against any individual therapist.

While these heightened burdens and monetary barriers complicate efforts to bring future *JONAH*-model cases, they exist in a minority of states. In most others, the path is open for future plaintiffs and their lawyers to bring suits against conversion therapists—and win.

III. TOWARDS A NATIONAL CESSATION OF CONVERSION THERAPY

Having addressed the "could," I wish to spend a few moments on the somewhat trickier "should." The remaining conversion therapists in the

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[91] *See* Appendix.

[92] N.D. CENT. CODE ANN. § 51-15-09 (West, Westlaw through 2015 Reg. Sess.) [http://perma.cc/S52G-SVXH].

[93] *See* Christopher Doyle, *Judicial Liberal Bias Forces Jury to Convict JONAH in Trial with Deep Ramifications*, THE CHRISTIAN POST (July 6, 2015, 2:05 PM), http://www.christianpost.com/news/judicial-liberal-bias-forces-jury-to-convict-jonah-in-trial-with-deep-ramifications-141221 [http://perma.cc/6RTV-RS4X].

[94] *See* Appendix.

[95] For example, the *JONAH* judgment totaled just over $70,000 after statutory trebling.

[96] This is not to say that there are not incredible nonprofit organizations, such as the Southern Poverty Law Center (SPLC) and Lambda Legal, which operate in the LGBT rights space and might take on a conversion therapy case notwithstanding the lack of attorney's fees. The *JONAH* legal team was composed of the SPLC and two law firms working pro bono, and the team incurred millions of dollars of fees between the three firms. That level of financial commitment is to be commended, but the availability of attorney's fees makes it possible to bring these sorts of cases without requiring the unlimited *pro bono* commitment of two major law firms.

United States are vulnerable to state-level consumer fraud claims nationwide. With the proper resources, and the proper plaintiffs, litigation could drive them out of business altogether. But should it? What is the best way to go about encouraging a final end to this practice—through further litigation, or through legislative action? Is some remnant practice acceptable? Or should the goal be to eradicate the practice entirely?

The Southern Poverty Law Center's LGBT Rights Project recently listed some seventy conversion therapy providers, referrers, and organizations still operating within the United States.[97] This is a small number, all things considered—a testament to the nation's rapidly evolving views of sexual orientation.

The core misrepresentations described in this Essay—that homosexuality is both abnormal and changeable—are tactical positions of extreme importance in the anti-LGBT movement. If the thought leaders of this dying movement were to retreat from either of these two redoubts, they would surrender one of the last principled positions from which they can argue against extending equal rights to non-heterosexual individuals: the position that non-heterosexuality is demonstrably inferior to heterosexuality. To admit that homosexuality is neither a disease nor a mental disorder, and that it is not a condition subject to treatment and change, is to implicitly admit that the only basis for continued invectives against the LGBT community is not in science, but in bigotry—be it rooted in religious intolerance or irrational prejudice.

This reality has had a galvanizing effect on the remaining purveyors of and hierophants for conversion therapy. In the *JONAH* case alone, the defense brought leaders from three other major conversion therapy associations (People Can Change, Northstar, and Joel 2:25) to testify on behalf of JONAH. These organizations are part of an ecosystem designed to maintain their perceived legitimacy—in their own eyes, arguably, as much as in others'—for as long as possible. Supporters manufacture "scientific studies" on sexual orientation through organizations like NARTH, publish these studies in the "peer reviewed" *Journal of Human Sexuality* (NARTH's in-house publication, run by and for NARTH members),[98] and use these results to justify the activities of their outward-facing advocacy groups such as Voice of the Voiceless[99] and Parents and

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[97] *See Conversion Therapy*, SOUTHERN POVERTY LAW CENTER (July 3, 2015), http://splcenter.org/conversion-therapy [https://web.archive.org/web/20150703163624/http://www.splcenter.org/conversion-therapy].

[98] *See Research Division Report*, NARTH INST., http://www.narth.com/#!cv/cdy2 (last visited Nov. 8, 2015) (inviting NARTH members to subscribe to and publish in the *Journal of Human Sexuality*) [http://perma.cc/5TJW-WX86].

[99] *See About Us*, VOICE OF THE VOICELESS, http://www.voiceofthevoiceless.info/about-us/ (last visited Nov. 8, 2015) ("We are forming an international coalition of former homosexuals, persons who experience unwanted SSA, and their families to fight against defamation and advance a positive image of the ex-gay community, their families, and the therapists and ministries who support them.") [http://perma.cc/4DVC-DYZA].

Friends of Ex-Gays and Gays.[100] The leaders of these organizations use this junk science to argue against conversion therapy bans in state legislatures and defend the right to sell "therapy" services to vulnerable consumers.[101] These efforts occasionally find success. While certain states have banned the provision of conversion therapy to minors,[102] many other proposed bans have failed to become law.[103] Divided legislatures at the state and national level cannot be expected to put an end to this fraud.

Accordingly, litigation continues to be the best route towards national cessation of conversion therapy. The science disproving its claimed efficacy is already solid. Litigation connects this evidence with real humans—real victims—and demonstrates the real harm these so-called "therapists" do to the patients who entrust themselves to their care. Making one's case in a court of law and revealing this fraud to the communities that still support conversion therapy, especially conservative religious communities, serve an educative and reformative purpose.

Just as critically, if and as the practice of conversion therapy comes to be seen less and less as a legal-if-distasteful choice for religious conservatives and more and more as an opportunistic fraud on sincerely religious individuals, politicians seeking to curb or ban the practice through legislative action gain political cover—and the calculus changes for politicians who would gladly defend a religious minority, but not a scam to defraud the same. In time, the need for litigation will likely lessen as legislative efforts gain momentum.

The litigation strategy contemplated by this Essay does leave a safe harbor open to conversion therapists: free counseling provided by a nonprofit or a religious provider. Take for instance the organization Joel 2:25. Jeremy Schwab, the founder of Joel 2:25 and a "success story witness" in the *JONAH* case, testified that he envisioned Joel 2:25 to be a "Christian version of JONAH."[104] In many ways this is indeed the case. Joel 2:25 runs online support groups for men and women whose religious beliefs conflict with their homosexuality, and these support groups engage in certain of the practices used by JONAH therapists.[105] Critically, however,

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[100] *See Same Sex Attraction*, PARENTS & FRIENDS OF EX-GAYS & GAYS, http://www.pfox.org/resources/same-sex-attraction/ (last visited Nov. 8, 2015) (asserting that "we know . . . there is no 'gay gene'" and change is possible.") [http://perma.cc/DN4T-XDS2].

[101] *See* Christopher Doyle, *As Many as Nine State Legislatures Have Now Rejected SOCE Therapy Bans*, VOICE OF THE VOICELESS (May 8, 2014), http://www.voiceofthevoiceless.info/as-many-as-nine-state-legislatures-have-now-rejected-soce-therapy-bans/ (describing Voice of the Voiceless's efforts to defeat state bans on the provision of conversion therapy to minors) [http://perma.cc/2VAT-FBLL].

[102] Most recently Illinois, on August 20, 2015. Aditya Agrawal, *Illinois Bans Gay Conversion Therapy for Minors*, TIME (Aug. 21, 2015), http://time.com/4006675/illinois-bans-gay-conversion-therapy-on-minors/ [http://perma.cc/VWP3-9Y3W].

[103] *See* Cheryl Wetzstein, *Gay 'Conversion' Therapy Bans Stall Across the Nation*, THE WASHINGTON TIMES (May 4, 2014), http://www.washingtontimes.com/news/2014/may/4/gay-conversion-therapy-bans-stall-across-the-natio [http://perma.cc/N9Q9-98K9].

[104] Transcript of Trial at 38–39, Ferguson v. JONAH, No. L-5473-12 (N.J. Super. Ct. Law Div. June 18, 2015).

[105] *See* JOEL 2:25 INT'L, http://www.joel225.org (last visited Nov. 8, 2015).

Joel 2:25 does not charge for its services. The support groups are free. There is no sale. And if there is no sale, there is no consumer fraud.

I consider this acceptable, if not unavoidable. Like all regulated evils, conversion therapy will always exist in some form. No amount of legal precedent and legislative action will serve to entirely eradicate certain individuals' belief that homosexuality is an illness subject to cure, and no amount of societal change and public outreach will serve to convince all LGBT men and women that their sexual orientation is not a defect to be controlled, or corrected if possible. If this subset—this small and shrinking subset—of the population wishes to pursue these ends inside the churchyard and outside of the marketplace, then so be it. The law cannot prevent every self-destructive act, and while these victims may still suffer harm from undergoing this free conversion therapy, other potential victims will be saved by starving the practice out of commercial existence. State bans on the provision of conversion therapy to minors will continue to be passed. Selling the service to adults will be considered fraud, punished by million-dollar penalties and injunctive relief. The boundaries in which conversion therapists will be able to lie without fear of reprisal will shrink, either forcing them out of business or forcing them to alter their sales pitch so drastically (disclaiming any chance of success at changing their patients' orientations) as to be selling an entirely different service. In time—with work—the practice will go extinct.

Conversion therapists ruin lives. They convince men and women they are sick when they are healthy, and that they can be cured when there is nothing to cure. They employ unethical and dangerous treatment methods such as nudity and "healthy touch" which are unscientific at best and barely disguised opportunities for erotic contact between therapist and patient at worst. They fail to deliver their promised outcome—because they cannot do so. This is fraud. There is no room for conversion therapists, their services, or their misrepresentations in the American marketplace. For now, at least one jury in New Jersey agrees. In time, with *JONAH* serving as a model, many more will surely reach a similar verdict.

APPENDIX: STATE CONSUMER FRAUD PROTECTION DETAILS[106]

Alabama (ALA. CODE §§ 8-19-1 -- 8-19-15 (Westlaw through Act 2015-559))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	The general prohibition against deceptive acts at ALA. CODE § 8-19-5 does not require intent or knowledge. Certain specific prohibitions unrelated to conversion therapy, however, do.
Attorney's Fees	ALA. CODE § 8-19-10(a)(3). Note that this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the attorney general. ALA. CODE § 8-19-8(a).

Alaska (ALASKA STAT. ANN. §§ 45.50.471 -- 45.50.561 (West, Westlaw through 2015 1st Reg. Sess. and 2nd Spec. Sess.))	
Reliance	Reliance not required. *See Odom v. Fairbanks Mem'l Hosp.*, 999 P.2d 123, 132 (Alaska 2000) ("Actual injury as a result of the deception is not required.")
Intent	No intent requirement in statute.
Attorney Fees	ALASKA STAT. ANN. § 45.50.537. Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	ALASKA STAT. ANN. §§ 45.50.501(a), 45.50.535

[106] This Appendix benefits from earlier work focusing on consumer protection laws by the National Consumer Law Center and the American Bar Association. These earlier surveys can be found at CAROLYN L. CARTER, NAT'L CONSUMER LAW CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE REPORT ON UNFAIR AND DECEPTIVE ACTS AND PRACTICES STATUTES (2009) [https://perma.cc/K5AX-LP9D & https://perma.cc/K496-BKLT] and AM. BAR ASS'N, CONSUMER PROTECTION LAW DEVELOPMENTS (2013). This Appendix focuses on those laws most applicable to conversion therapy cases, and includes updated statutes through 2015.

Arizona (ARIZ. REV. STAT. ANN. §§ 44-1521 -- 44-1534 (Westlaw through 1st Reg. Sess. Of 52nd Legis.))	
Reliance	Read into statute by state courts. *See, e.g.*, *Peery v. Hansen*, 585 P.2d 574, 577 (Ariz. Ct. App. 1978) ("A prerequisite to . . . damages is reliance on the unlawful acts.").
Intent	Required in cases of omission or concealment of a material fact. ARIZ. REV. STAT. ANN. § 44-1522(A).
Attorney Fees	If the prevailing plaintiff is the Attorney General, attorney fees available. ARIZ. REV. STAT. ANN. § 44-1534.
Equitable Relief	ARIZ. REV. STAT. ANN. § 44-1528(A)

Arkansas (ARK. CODE ANN. §§ 4-88-101 -- 4-88-115 (West, Westlaw through 2015 Reg. Sess. and 2015 1st Ex. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Not required by general prohibition in ARK. CODE ANN. § 4-88-107(a).
Attorney Fees	ARK. CODE ANN. § 4-88-113(e)–(f)
Equitable Relief	Available to the attorney general. ARK. CODE ANN. § 4-88-113(a)(1).

California (CAL. CIV. CODE §§ 1750–1785 (West, Westlaw through Ch. 807 of 2015 Reg. Sess. and Ch. 1 of 2015–2016 2nd Ex. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	CAL. CIV. CODE § 1780(e). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	CAL. CIV. CODE § 1780(a)(2), (5)

Colorado (COLO. REV. STAT. ANN. §§ 6-1-101 -- 6-1-115 (West, Westlaw through 1st Reg. Sess. of 70th Gen. Assemb.))	
Reliance	Reliance not required. *See Hall v. Walter*, 969 P.2d 224 (Colo. 1998) (causation may be demonstrated in consumer protection action even if injured party did not rely on statements of defendant).
Intent	Intent required by most prohibitions in statute. *See* COLO. REV. STAT. ANN. § 6-1-105.
Attorney Fees	COLO. REV. STAT. ANN. § 6-1-113(2)(b), (4). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the Attorney General. COLO. REV. STAT. ANN. § 6-1-110(1).

Connecticut (CONN. GEN. STAT. ANN. §§ 42-110a -- 42-110q (West, Westlaw through 2015 Reg. Sess. and June Spec. Sess.))	
Reliance	Consumer need not prove reliance. *See Hinchliffe v. Am. Motors Corp.*, 440 A.2d 810, 815–16 (Conn. 1981).
Intent	No intent requirement in statute.
Attorney Fees	CONN. GEN. STAT. ANN. § 42-110g(d)
Equitable Relief	CONN. GEN. STAT. ANN. §§ 42-110m, 42-110g(a)

Delaware (DEL. CODE ANN. tit. 6, §§ 2511–2527, 2580–2584 (West, Westlaw through 80 Laws 2015, Ch. 194))	
Reliance	Reliance not required. *See Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983).
Intent	Required in cases of omission or concealment of a material fact. DEL. CODE ANN. tit. 6, § 2513(a).
Attorney Fees	No provision for fees in statute.
Equitable Relief	DEL. CODE ANN. tit. 6, § 2523

District of Columbia (D.C. CODE ANN. §§ 28-3901 -- 28-3913 (West, Westlaw through Oct. 21, 2015))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Intent not required. *See Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1073 (D.C. 2008).
Attorney Fees	D.C. CODE ANN. § 28-3905(k)(2)(B)
Equitable Relief	D.C. CODE ANN. §§ 28-3909(a), 28-3905(k)(2)(D), (F)

Florida (FLA. STAT. ANN. §§ 501.201–501.213 (West, Westlaw through 2015 1st Reg. Sess. and Spec. A Sess. of 24th Leg.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	FLA. STAT. ANN. § 501.2105. Note this provision grants fees to prevailing party, plaintiff or defendant.
Equitable Relief	Available to the enforcing authority. FLA. STAT. ANN. § 501.207(1)(b).

Georgia (GA. CODE ANN. §§ 10-1-390 -- 10-1-407 (West, Westlaw through 2015 Legis. Sess.))	
Reliance	Reliance required. *See Tiismann v. Linda Martin Homes Corp.*, 637 S.E.2d 14 (Ga. 2006).
Intent	No intent requirement in statute.
Attorney Fees	GA. CODE ANN. § 10-1-399(d). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the attorney general. GA. CODE ANN. § 10-1-397(b)(2).

Hawaii (HAW. REV. STAT. ANN. §§ 480-1 -- 480-24 (West, Westlaw through Act 243 of the 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	HAW. REV. STAT. ANN. § 480-13(a)(1), (b)(1)
Equitable Relief	HAW. REV. STAT. ANN. §§ 480-13(a)(2), (b)(2), 480-15

Idaho (IDAHO CODE ANN. §§ 48-601 -- 48-619 (West, Westlaw through 2015 1st Reg. and 1st Ex. Sess. of 63rd Leg.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Intent required for deceptive practices, including acts of unconscionability. Idaho Code Ann. §§ 48-603, 48-603C.
Attorney Fees	IDAHO CODE ANN. §§ 48-606(1)(f), 48-607, 48-608(5). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	IDAHO CODE ANN. §§ 48-606(1)(b), 48-608(1)

Illinois (815 ILL. COMP. STAT. ANN. 505/1–505/12 (West, Westlaw through P.A. 99-484 of 2015 Reg. Sess.))	
Reliance	Reliance not required. *See Connick v. Suzuki Motor Co.*, 675 N.E.2d 584 (Ill. 1996).
Intent	Required in cases of omission or concealment of a material fact. 815 ILL. COMP. STAT. ANN. 505/2.
Attorney Fees	815 ILL. COMP. STAT. ANN. 505/10, 10a(c)
Equitable Relief	815 ILL. COMP. STAT. ANN. 505/7(a), 10a(c)

Indiana (IND. CODE ANN. §§ 24-5-0.5-1 -- 24-5-0.5-12 (West, Westlaw through 2015 1st Reg. Sess.))	
Reliance	Reliance required. IND. CODE ANN. § 24-5-0.5-4(a).
Intent	Intent required for major substantive violations. IND. CODE ANN. § 24-5-0.5-3.
Attorney Fees	IND. CODE ANN. § 24-5-0.5-4(a). Note this provision grants fees to prevailing party, plaintiff or defendant.
Equitable Relief	Available to the attorney general. IND. CODE ANN. § 24-5-0.5-4(c)(1).

Iowa (IOWA CODE ANN. §§ 714H.1–714H.8 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Intent required. IOWA CODE ANN. § 714H.3(1).
Attorney Fees	IOWA CODE ANN. § 714H.5(2)
Equitable Relief	IOWA CODE ANN. § 714H.5(1)

Kansas (KAN. STAT. ANN. §§ 50-623 -- 50-640 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance not required. *See* KAN. STAT. ANN. § 50-626(b).
Intent	The general prohibition against deceptive acts at KAN. STAT. ANN. § 50-626(a) does not require intent or knowledge. Certain specific prohibitions unrelated to conversion therapy, however, do.
Attorney Fees	KAN. STAT. ANN. § 50-634(e). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	KAN. STAT. ANN. §§ 50-632(a), 50-634(a), 50-634(c)

Kentucky (KY. REV. STAT. ANN. §§ 367.110 -- 367.993 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	KY. REV. STAT. ANN. § 367.220(3). Note this provision grants fees to prevailing party, plaintiff or defendant.
Equitable Relief	KY. REV. STAT. ANN. §§ 367.190, 367.220(1)

Louisiana (LA. STAT. ANN. §§ 51:1401–51:1430 (Westlaw through 2014 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	LA. STAT. ANN. § 51:1409(A). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the attorney general. LA. STAT. ANN. § 51:1407(A).

Maine (ME. REV. STAT. ANN. tit. 5, §§ 205-A -- 214 (Westlaw through 2015 1st Reg. Sess.))	
Reliance	Reliance may be required. *See State v. Weinschenk*, 868 A.2d 200, 206 ("An act or practice is deceptive if it is a material misrepresentation, omission, act or practice that is *likely* to mislead consumers acting reasonably . . . ." (emphasis added)). *But see id.* at ¶ 17, 714 A.2d at 209 (denying relief to indirect purchasers who did not rely on the manufacturers' statements).
Intent	No intent requirement in statute.
Attorney Fees	ME. REV. STAT. ANN. tit. 5 § 213(2)
Equitable Relief	ME. REV. STAT. ANN. tit. 5 §§ 209, 213(1)

Maryland (MD. CODE ANN., COM. LAW §§ 13-101 -- 13-501 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance not required. *See* MD. CODE ANN., COM. LAW § 13-302.
Intent	The general prohibition against deceptive acts at MD. CODE ANN., COM. LAW § 13-301(1) does not require intent or knowledge. Certain specific prohibitions, however, do. *See id.* § 13-301(10).
Attorney Fees	MD. CODE ANN., COM. LAW § 13-408(b). Note this statute permits prevailing defendants to collect attorney fees in certain cases. *See id.* § 13-408(c).
Equitable Relief	Available to the attorney general. MD. CODE ANN., COM. LAW §§ 13-403(c), 13-406.

Massachusetts (MASS. GEN. LAWS ANN. Ch. 93A, §§ 1–11 (West, Westlaw through Ch. 124 of 2015 1st Ann. Sess.))	
Reliance	Reliance not required. *See Aspinall v. Philip Morris Cos.*, 813 N.E.2d 476, 486 (Mass. 2004).
Intent	No intent requirement in statute.
Attorney Fees	MASS. GEN. LAWS ANN. ch. 93A, §§ 9(4), 11
Equitable Relief	MASS. GEN. LAWS ANN. ch. 93A, §§ 4, 9(1), 11

Michigan (MICH. COMP. LAWS ANN. §§ 445.901–445.922 (West, Westlaw through P.A. 2015, No. 172 of the 2015 Reg. Sess.))	
Reliance	Reliance not required, except as by statute at MICH. COMP. LAWS ANN. § 445.903(1)(bb).
Intent	Certain specific provisions, unrelated to conversion therapy, require intent. *See* MICH. COMP. LAWS ANN. §445.903(1).
Attorney Fees	MICH. COMP. LAWS ANN. § 445.911(2)
Equitable Relief	MICH. COMP. LAWS ANN. §§ 445.905(1), 445.910(2) 445.911(1)(b)

Minnesota (MINN. STAT. ANN. §§ 8.31, 325F.68–325F.70 (West, Westlaw through 2015 1st Spec. Sess.))	
Reliance	No reliance required. *See* MINN. STAT. ANN. § 325F.69(1).
Intent	Requires intent that others rely on the prohibited representations. MINN. STAT. ANN. § 325F.69(1).
Attorney Fees	MINN. STAT. ANN. § 8.31(3a)
Equitable Relief	MINN. STAT. ANN. §§ 8.31(3), 325F.70

Mississippi (MISS. CODE ANN. §§ 75-24-1 -- 75-24-27 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	Not available under statute; MISS. CODE ANN. § 75-24-15(3) provides for fee award to prevailing defendant on showing of bad faith filing.
Equitable Relief	Available to the attorney general. MISS. CODE ANN. § 75-24-9.

Missouri (MO. ANN. STAT. §§ 407.010–407.130 (West, Westlaw through 2015 Veto Sess. of 98th Gen. Assemb.))	
Reliance	Reliance not required. *See Hess v. Chase Manhattan Bank*, 220 S.W.3d 758, 774 (Mo. 2007).
Intent	No intent requirement in statute.
Attorney Fees	MO. ANN. STAT. § 407.025(1). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	MO. ANN. STAT. §§ 407.025(1), 407.100(1)

Montana (MONT. CODE ANN. §§ 30-14-101 -- 30-14-142 (West, Westlaw through 2015 Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	MONT. CODE ANN. §§ 30-14-131(2), 30-14-133(3). Note these provisions grants fees to prevailing party, plaintiff or defendant.
Equitable Relief	MONT. CODE ANN. §§ 30-14-111(1), 30-14-133(1)

Nebraska (NEB. REV. STAT. ANN. §§ 59-1601 -- 59-1623 (West, Westlaw through 1st Reg. Sess. of 104th Leg.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	NEB. REV. STAT. ANN. §§ 59-1608(1), 59-1609
Equitable Relief	NEB. REV. STAT. ANN. §§ 59-1608(2), 59-1609

Nevada (NEV. REV. STAT. ANN. §§ 41.600, 598.0903–598.0999 (West, Westlaw through June 30, 2015))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Intent required in some cases. NEV. REV. STAT. ANN. §§ 598.0915, 598.0923(2). *But see id.* § 598.0925(1)(a) (making an "assertion of scientific, clinical or quantifiable fact" a deceptive trade practice unless the person has factually objective evidence substantiating the statement).
Attorney Fees	NEV. REV. STAT. ANN. § 41.600(3)(c)
Equitable Relief	NEV. REV. STAT. ANN. §§ 41.600(3)(b), 598.0963(3), 598.0979

New Hampshire (N.H. REV. STAT. ANN. §§ 358-A:1–358-A:13 (Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute. *See* N.H. REV. STAT. ANN. § 358-A:11.
Intent	No intent requirement in statute.
Attorney Fees	N.H. REV. STAT. ANN. § 358-A:10(I)
Equitable Relief	N.H. REV. STAT. ANN. §§ 358-A:4(III)(a), 358-A:10(I)

New Jersey (N.J. STAT. ANN. §§ 56:8-1–56:8-91 (West, Westlaw through L.2015, c. 120 and J.R. No. 7))	
Reliance	Reliance not required. *See Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 366 (N.J. 1997).
Intent	No intent requirement. *See Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 366 (N.J. 1997).
Attorney Fees	N.J. STAT. ANN. § 56:8-19
Equitable Relief	N.J. STAT. ANN. §§ 56:8-8, 56:8-19

New Mexico (N.M. STAT. ANN. §§ 57-12-1 -- 57-12-22 (West, Westlaw through 1st Spec. Sess. of 52nd Leg.))	
Reliance	Reliance not required. *See, e.g.*, *Lohman v. Daimler–Chrysler Corp.*, 166 P.3d 1091, 1098 (N.M. Ct. App. 2007).
Intent	Plaintiff must show that defendant knew or should have known of the deceptive nature of his statements under the New Mexico Unfair Practices Act. *Stevenson v. Louis Dreyfus Corp.*, 811 P.2d 1308, 1311 (N.M. 1991).
Attorney Fees	N.M. STAT. ANN. § 57-12-10(C). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	N.M. STAT. ANN. §§ 57-12-8, 57-12-10(A)

New York (N.Y. GEN. BUS. LAW §§ 349–350-f-1 (McKinney, Westlaw through L.2015, ch. 1–411))	
Reliance	Reliance not required. *See Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank*, 647 N.E.2d 741, 745 (N.Y. 1995).
Intent	No intent requirement in statute.
Attorney Fees	N.Y. GEN. BUS. LAW § 349(h)
Equitable Relief	N.Y. GEN. BUS. LAW § 349(b), (h)

North Carolina (N.C. GEN. STAT. ANN. §§ 75-1 -- 75-49 (West, Westlaw through ch. 266, excluding ch. 240–241, 246, 258–264, of 2015 Reg. Sess.))	
Reliance	Reliance required. *See, e.g.*, *Bus. Cabling, Inc. v. Yokeley*, 643 S.E.2d 63, 69 (N.C. Ct. App. 2007)
Intent	No intent requirement in statute.
Attorney Fees	N.C. GEN. STAT. ANN. § 75-16.1. Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the attorney general. N.C. GEN. STAT. ANN. § 75-14.

North Dakota (N.D. CENT. CODE ANN. §§ 51-15-01 -- 51-15-11 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Intent required. N.D. CENT. CODE ANN. § 51-15-02.
Attorney Fees	Collectible only if defendant knowingly committed the conduct. N.D. CENT. CODE ANN. § 51-15-09.
Equitable Relief	Available to the attorney general. N.D. CENT. CODE ANN. § 51-15-07.

Ohio (OHIO REV. CODE ANN. §§ 1345.01–1345.13 (West, Westlaw through 2015 Files 1–29 of 131st Gen. Assemb. and 2015 State Issues 1–2))	
Reliance	No state cases reading reliance into statute. Non-binding precedent states reliance not required. *See Delahunt v. Cytodyne Techs.*, 241 F. Supp. 2d 827, 835 (S.D. Ohio 2003).
Intent	Intent not required; knowledge taken into consideration in determining whether an act is unconscionable. OHIO REV. CODE ANN. § 1345.03(B).
Attorney Fees	OHIO REV. CODE ANN. § 1345.09(F). Note this statute limits recovery of attorney fees to knowing violations, and permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	OHIO REV. CODE ANN. §§ 1345.07(A)(2), 1345.09(D)

Oklahoma (OKLA. STAT. ANN. tit. 15, §§ 751–765 (West, Westlaw through 1st Sess. of 55th Leg.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	Most prohibitions require actual knowledge or reason to know of the false or misleading conduct. *See* OKLA. STAT. ANN. tit. 15, § 753.
Attorney Fees	OKLA. STAT. ANN. tit. 15, § 761.1(A). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	Available to the attorney general. OKLA. STAT. ANN. tit. 15, § 756.1(A)(2).

Oregon (OR. REV. STAT. ANN. §§ 646.605–646.656 (West, Westlaw through 2015 Reg. Sess. effective through Oct. 5, 2015))	
Reliance	Reliance required in cases of express misrepresentations brought by the consumer. *See Feitler v. Animation Celection Inc.*, 13 P.3d 1044, 1047 (Or. Ct. App. 2000). Prosecutors do not need to prove "actual confusion or misunderstanding." OR. REV. STAT. ANN. § 646.608(3).
Intent	No intent requirement for most violations. Knowledge required for unconscionable tactic violations. OR. REV. STAT. ANN. §§ 646.605(9), 646.608(1).
Attorney Fees	OR. REV. STAT. ANN. § 646.638(3). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	OR. REV. STAT. ANN. §§ 646.632, 646.638(1)

Pennsylvania (73 PA. STAT. AND CONS. STAT. ANN. §§ 201-1 -- 201-9.3 (West, Westlaw through 2015 Reg. Sess. Acts 1–51))	
Reliance	Reliance required. *See Toy v. Metro. Life Ins. Co*., 928 A.2d 186, 201 (Pa. 2007).
Intent	No intent requirement in statute.
Attorney Fees	73 PA. STAT. AND CONS. STAT. ANN. § 201-9.2(a)
Equitable Relief	73 PA. STAT. AND CONS. STAT. ANN. §§ 201-4, 201-9.2(a)

Rhode Island (R.I. GEN. LAWS ANN. §§ 6-13.1-1 -- 6-13.1-29 (West, Westlaw through ch. 285 of Jan. 2015 Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	R.I. GEN. LAWS ANN. § 6-13.1-5.2(d)
Equitable Relief	R.I. GEN. LAWS ANN. §§ 6-13.1-5(a), 6-13.1-5.2(a)

South Carolina (S.C. CODE ANN. §§ 39-5-10 -- 39-5-180 (Westlaw through 2015 Reg. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	No intent requirement in statute.
Attorney Fees	S.C. CODE ANN. § 39-5-140(a)
Equitable Relief	S.C. CODE ANN. §§ 39-5-50(a), 39-5-140(a)

South Dakota (S.D. CODIFIED LAWS §§ 37-24-1 -- 37-24-35 (Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance not required for criminal actions. Reliance required for civil actions. *Nygaard v. Sioux Valley Hosps. & Health Sys.*, 2007 SD 34, ¶ 33, 731 N.W.2d 184, 196–97 ("Patients' civil actions are governed by SDCL 37-24-31, which specifically requires a causal connection between the alleged violation and the damages suffered. . . .").
Intent	Intent required. S.D. CODIFIED LAWS § 37-24-6(1).
Attorney Fees	If the prevailing plaintiff is the attorney general, attorney fees available. S.D. CODIFIED LAWS § 37-24-23.
Equitable Relief	Available to the attorney general. S.D. CODIFIED LAWS § 37-24-23.

Tennessee (TENN. CODE ANN. §§ 47-18-101 -- 47-18-129 (West, Westlaw through 2015 1st Reg. Sess.))	
Reliance	Reliance not required. *Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc.*, 131 S.W.3d 457, 469 (Tenn. Ct. App. 2003).
Intent	No intent requirement in statute.
Attorney Fees	TENN. CODE ANN. § 47-18-109(e). Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	TENN. CODE ANN. §§ 47-18-108(a), 47-18-109(b)

Texas (TEX. BUS. & COM. CODE ANN. §§ 17.41–17.63 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance required. TEX. BUS. & COM. CODE ANN. § 17.50(a)(1)(B).
Intent	No intent requirement in statute.
Attorney Fees	TEX. BUS. & COM. CODE ANN. § 17.50(d). Note that § 17.50(c) permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	TEX. BUS. & COM. CODE ANN. §§ 17.47(a), 17.48(a), 17.50(b)(2)

Utah (UTAH CODE ANN. §§ 13-11-1 -- 13-11-23 (West, Westlaw through 2015 1st Spec. Sess.))	
Reliance	No reliance requirement in statute; no state cases reading reliance requirement into statute.
Intent	The general prohibition against deceptive acts at UTAH CODE ANN § 13-11-4(1) does not require intent or knowledge. Specific examples of deceptive acts all require knowledge or intention. *See id.* § 13-11-4(2).
Attorney Fees	UTAH CODE ANN. §§ 13-11-17.5, 13-11-19(5). Note the latter provision grants fees to prevailing party, plaintiff or defendant.
Equitable Relief	UTAH CODE ANN. §§ 13-11-17(1)(b), 13-11-19(1)(b)

Vermont (VT. STAT. ANN. tit. 9, §§ 2451–2466b (West, Westlaw through 1st Sess. Of 2015–2016 Gen. Assemb.))	
Reliance	Reliance not required. VT. STAT. ANN. tit. 9, § 2461(b) (requiring a showing of *either* reliance *or* damages caused by the consumer fraud).
Intent	No intent requirement in statute.
Attorney Fees	VT. STAT. ANN. tit. 9, § 2461(b)
Equitable Relief	VT. STAT. ANN. tit. 9, §§ 2458(a), 2461(b)

Virginia (VA. CODE ANN. §§ 59.1-196 -- 59.1-207 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance required. *See, e.g.*, *Owens v. DRS Auto. Fantomworks, Inc.*, 764 S.E.2d 256, 260 (Va. 2014) ("The VCPA, however, still requires proof, in misrepresentation cases, of the elements of reliance and damages.").
Intent	No intent requirement. *See, e.g.*, *Owens v. DRS Auto. Fantomworks, Inc.*, 764 S.E.2d 256, 260 (Va. 2014).
Attorney Fees	VA. CODE ANN. § 59.1-204(B)
Equitable Relief	Available to the attorney general. VA. CODE ANN. § 59.1-203(A).

Washington (WASH. REV. CODE ANN. §§ 19.86.010–19.86.920 (West, Westlaw through 2015 Reg. Sess. And 1st–3rd Spec. Sess.))	
Reliance	Reliance not required, but proximate causation is required. *See Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 170 P.3d 10, 22 (Wash. 2007) ("A plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury.").
Intent	No intent requirement in statute.
Attorney Fees	WASH. REV. CODE ANN. § 19.86.090
Equitable Relief	WASH. REV. CODE ANN. §§ 19.86.080(1), 19.86.090

West Virginia (W. VA. CODE ANN. §§ 46A-5-101 -- 46A-5-107, 46A-6-101 -- 46A-6-110, 46A-7-101 -- 46A-7-115 (West, Westlaw through 2015 Reg. Sess.))	
Reliance	Reliance required in private actions alleging affirmative misrepresentation. Proximate causation required in cases of omission or concealment of material fact. W. VA. CODE ANN. § 46A-6-106(b).
Intent	Required in cases of omission or concealment of a material fact. W. VA. CODE ANN. § 46A-6-102(7)(M).
Attorney Fees	W. VA. CODE ANN. § 46A-5-104. Note this statute permits prevailing defendants to collect attorney fees in certain cases.
Equitable Relief	W. VA. CODE ANN. §§ 46A-6-106(a), 46A-7-108

Wisconsin (WIS. STAT. ANN. § 100.18 (West, Westlaw through 2015 Act 60))	
Reliance	Reliance not required. *Novell v. Migliaccio*, 2008 WI 44, ¶¶ 27–29, 749 N.W.2d 544, 550.
Intent	No intent requirement in statute.
Attorney Fees	WIS. STAT. ANN. § 100.18(11)(b)(2)
Equitable Relief	Available to government departments. WIS. STAT. ANN. § 100.18(11)(a), (d).

Wyoming (WYO. STAT. ANN. §§ 40-12-101 -- 40-12-114 (West, Westlaw through 2015 Gen. Sess.))	
Reliance	Reliance required. WYO. STAT. ANN. § 40-12-108(a).
Intent	Intent required. WYO. STAT. ANN. § 40-12-105.
Attorney Fees	Not available under statute.
Equitable Relief	Available to the enforcing authority. WYO. STAT. ANN. § 40-12-106.