

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

HUMAN RIGHTS CAMPAIGN,
NATIONAL CENTER FOR LESBIAN RIGHTS,
AND THE SOUTHERN POVERTY LAW CENTER
Petitioners,

PEOPLE CAN CHANGE, INC.
Proposed Respondent.

**COMPLAINT FOR ACTION TO STOP
FALSE, DECEPTIVE ADVERTISING AND OTHER B**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
A. Overview of People Can Change and Its Unfair, Deceptive, and Fraudulent Practices.....	1
B. Given the Substantial Scientific Evidence Discrediting Conversion Therapy, the Federal Executive Branch, Members of Congress, and State Governments Support Efforts to Halt the Unfair, Deceptive, and Fraudulent Practice of Conversion Therapy	2
II. THE PARTIES.....	6
A. Human Rights Campaign.....	6
B. National Center for Lesbian Rights	6
C. Southern Poverty Law Center.....	7
D. People Can Change, Inc.....	7
III. PCC’S ADVERTISING, MARKETING, AND OTHER BUSINESS PRACTICES VIOLATE SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT	9
A. Applicable Law	9
B. PCC’s Marketing and Advertising Practices are False and Misleading, and Contain Material Omissions	10
1. PCC Implicitly and Explicitly Claims Being LGBT or Having Same-Sex Attractions is Abnormal or a Disorder in Marketing Conversion Therapy.....	10
2. “People Can Change” Expressly Claims its Services can “Absolutely” Change a Consumer’s Sexual Orientation	11
a) False, Misleading, and Deceptive Claims on PCC’s Website	13
b) False, Misleading, and Deceptive Claims in PCC’s Written Promotional Materials.....	15
c) False, Misleading, and Deceptive Claims in PCC’s Video Advertisements	16
d) False, Misleading, and Deceptive Claims in PCC’s Testimonials.....	16
3. PCC Success Rate Claims Are Misleading and Deceptive.....	18
a) PCC Deceptively Advertises High Levels of Change for JiM Participants	18

TABLE OF CONTENTS
(continued)

	Page
b) PCC’s Self- Promoting Survey Cannot Substantiate its Claims of High Success Rates	21
4. PCC Claims its Services are Based in Scientifically Effective Methods.....	22
a) PCC Creators’ Titles and Scientific/Medical Training Imply Practices are Based in Science	23
b) PCC’s Website Explicitly States that Being LGBT and Having Same-Sex Attraction Can be Overcome	24
c) PCC Lists Supposedly Scientific Studies on Its Website as Proof that “Heterosexual Orientation Shift” is Possible	25
(1) New Directions Change Project.....	25
(2) Other Studies Cited by PCC	30
5. PCC Fails to Disclose Well-Documented Health and Safety Risks Associated with Conversion Therapy	31
C. PCC’s Claims are Reasonably Relied Upon by Consumers	33
D. PCC’s Claims are Material	34
IV. CONCLUSION.....	36

I. INTRODUCTION

The Human Rights Campaign, the National Center for Lesbian Rights, and the Southern Poverty Law Center respectfully request that the Federal Trade Commission (“FTC” or “the Commission”) investigate and put an end to the unfair, deceptive, and fraudulent business practices of the corporate entity People Can Change, Inc. (“PCC”), pursuant to the FTC’s mission to protect consumers from such egregious practices, in violation of Section 5 of the Federal Trade Commission Act. We request that the Commission take enforcement action to stop PCC’s deceptive advertising, marketing, and other business practices in all forms, including through its website, brochures, videos, social media, emails, or other advertisements or promotional materials.

A. Overview of People Can Change and Its Unfair, Deceptive, and Fraudulent Practices

PCC offers, markets, sells, and performs services that purport to change a person’s sexual orientation or gender identity, commonly referred to as “conversion therapy.”¹ The practice is based on the false premise that being lesbian, gay, bisexual, or transgender (“LGBT”) is a mental illness or disorder caused by a developmental deficiency, trauma, and/or unmet emotional needs. Proponents of conversion therapy, including PCC, assert that addressing those underlying issues will heal the disorder and cause the person to no longer be LGBT. However, there is no competent and reliable scientific evidence supporting claims that PCC’s methods can change an individual’s sexual orientation; in contrast, there is substantial competent and reliable scientific evidence that conversion therapy, including the methods employed by PCC, is ineffective and can and often does result in significant health and safety risks to consumers of those services, as

1

well as economic losses – exactly the types of injuries that are at the heart of the FTC’s mission to protect consumers from harm.

PCC’s mission is to assist individuals “transition away from unwanted homosexuality.”² The services PCC offers include group coaching, webinars, and “experiential healing weekend” programs. The fees charged range from \$75 per month for four weekly 80-minute sessions of telephonic group coaching, to \$875 for a “Journey Beyond” 4-day, 4-night program. Additionally, PCC refers customers to both licensed therapists and counselors and unlicensed counselors and life coaches, including founder Richard Wyler’s personal counseling organization, Higher Path Life Coaching Services, where Wyler, an unlicensed life coach, charges customers \$75 per hour. Additional details regarding the advertisement, sale, and performance of these services are provided herein.

B. Given the Substantial Scientific Evidence Discrediting Conversion Therapy, the Federal Executive Branch, Members of Congress, and State Governments Support Efforts to Halt the Unfair, Deceptive, and Fraudulent Practice of Conversion Therapy

Despite the abundance of evidence from mainstream medical and mental health professional organizations, including the American Psychiatric Association, American Psychological Association, American Psychoanalytic Association, American Medical Association, American Academy of Pediatrics, and Pan American Health Organization,³ that

² Mission & Vision, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/mission.php> (last visited Feb. 18, 2016).

³ See Am. Psychiatric Ass’n, Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies) (2000), available at http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2000_ReparativeTherapy.pdf; Am. Psychological Ass’n, Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts, available at <http://www.apa.org/about/policy/sexual-orientation.pdf>; Am. Psychoanalytic Ass’n, Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression, available at <http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender>; Am. Medical Ass’n, H-160.991 Health Care Needs of the Homosexual Population, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?>; Am. Academy of Pediatrics, Homosexuality and Adolescence, Pediatrics 631 (1993), available at <http://pediatrics.aappublications.org/content/92/4/631.full.pdf>; Pan Am. Health Org.: Regional Office of

conversion therapy is not effective in changing sexual orientation or gender identity and potentially harmful, providers of conversion therapy—like PCC and the network of individuals to which it refers clients—continue to mislead and pose serious health and safety risks to consumers, including in some cases the risk of death by suicide. Even the United Nations Committee Against Torture and Human Rights Council have urged an end to these practices.⁴

Federal authorities at the highest levels of government, including the White House and Surgeon General, support the end of conversion therapy, citing substantial credible scientific evidence for their positions. The White House recently issued a statement recognizing the complete lack of scientific support for conversion therapy and the substantial evidence showing that it poses risks of serious harms, indicating that “As part of our dedication to protecting America’s youth, this Administration supports efforts to ban the use of conversion therapy for minors.”⁵ Similarly, the Department of Health and Human Services (“HHS”) has voiced support for the end of conversion therapy. In an October 2015 report called “Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth,” the Substance Abuse and Mental Health Services Administration (“SAMHSA”), a branch of HHS, called for federal regulatory action as one of the potential future efforts for ending conversion therapy for minors.⁶ Among its key findings and expert consensus statements, the report states that “Interventions aimed at a fixed

the World Health Org., “Cures” for an Illness That Does Not Exist: Purported Therapies Aimed at Changing Sexual Orientation Lack Medical Justification and are Ethically Unacceptable (2012), available at http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703.

⁴ United Nations, Human Rights Council, Discrimination and violence against individuals based on their sexual orientation and gender identity (May 4, 2015), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjrwPL-54zLAhUP-GMKHekgDGsQFgggMAA&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_23_en.doc&usq=AFQjCNHLuRX5P3DD4cs6e9aZ4g6y8418vQ&sig2=-LS5J19jUuNW7OdmJPmBsA.

⁵ Valerie Jarrett, Official White House Response to Your Petition on Conversion Therapy (Apr. 2015), attached hereto as Exhibit A, also available at <https://petitions.whitehouse.gov/response/response-your-petition-conversion-therapy>.

⁶ US Dep’t of Health and Human Services, Substance Abuse and Mental Health Services Adm’n, Ending Conversion Therapy: Support and Affirming LGBTQ Youth (Oct. 2015) (hereinafter “SAMHSA Report”), attached hereto as Exhibit B, also available at <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>.

outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatment.”⁷

Additionally, on February 10, 2016, Senators Patty Murray of Washington and Cory Booker of New Jersey, along with Representatives Jackie Speier and Ted Lieu of California, sent a letter to the Federal Trade Commission expressing their concern over the continued practice of conversion therapy and asking that the FTC “take all actions possible to stop the unfair, deceptive, and fraudulent practice of conversion therapy under the authority provided your agency in the Federal Trade Commission Act.”⁸ The congressional representatives noted that the

introduced in more than twenty other states.¹¹ Additionally, Governor Andrew Cuomo has proposed regulations in New York to curtail conversion therapy through executive action.¹² Courts are also enforcing “little FTC Act” state consumer protection laws against the deceptive and fraudulent conduct of providers that offer services similar to those offered by PCC. In fact, Richard Wyler, the founder of PCC, was called as a defense witness in one such lawsuit. In June 2015, in the matter of *Ferguson v. JONAH*,¹³ five plaintiffs won a consumer fraud lawsuit against Jews Offering New Alternatives for Healing (“JONAH”) and affiliated parties offering conversion therapy services. Richard Wyler was a witness because three of the plaintiffs were referred to PCC by JONAH representatives. Ho

pervasive use of material misrepresentations and omissions in PCC's advertising, marketing, and promotion of its services.¹⁵ This complaint asks this agency to investigate PCC for engaging in the same conduct found to be fraudulent in the JONAHtrial, as well as additional conduct identified by the evidence provided herein, under Section 5 of the FTC Act.

PCC represents that its services are effective in changing a person's sexual orientation and its marketing claims are designed to take advantage of clients, especially young adults, who may be depressed or in conflict with their families due to societal or familial bias against LGBT

organization is headquartered in San Francisco, California. In June 2014, NCLR launched the BornPerfect Campaign to protect LGBT children and young people from conversion therapy through legislation, litigation, administrative advocacy, and public education.¹⁶

C. Southern Poverty Law Center

Petitioner Southern Poverty Law Center (“SPLC”) is a non-profit organization founded in 1971, and headquartered in Montgomery, Alabama. SPLC works to make this nation’s constitutional ideals a reality for everyone. SPLC’s LGBT Rights Project is dedicated to fighting discrimination against the LGBT community in all its forms, and defending the rights of LGBT people and their families. SPLC recently represented plaintiffs in *Ferguson v. JONAH*, a successful consumer fraud action filed in New Jersey state court against conversion therapy practitioners.¹⁷

D. People Can Change, Inc.

Proposed Respondent People Can Change, Inc. was founded by Richard Wyler in 2000 and incorporated as a Virginia non-profit corporation in 2002. The PCC website states that Wyler is a certified life coach,¹⁸ and that he “personally experienced enormous transformation from unwanted homosexual attractions.”¹⁹ PCC markets and sells conversion therapy services including weekend programs and telephonic group therapy sessions. The weekend programs include Journey Into Manhood (JiM),²⁰ co-founded by Wyler and David Matheson, a Clinical

¹⁶ See Our Work - #BornPerfect NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/our-work/bornperfect/>.

¹⁷ See

Mental Health Counselor;²¹ Journey Continues,²² a follow-up to Journey Into Manhood; and Journey Beyond,²³ co-created by David Matheson and Alan Downing, a certified life coach.²⁴

PCC also offers a weekend retreat called A Wife's Healing Journey, that is "designed especially for wives of men who struggle with sex addiction (SA) and/or same-sex attraction (SSA)."²⁵

III. PCC'S ADVERTISING, MARKETING, AND OTHER BUSINESS PRACTICES VIOLATE SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

A. Applicable Law

Section 5 of the Federal Trade Commission Act ("FTC Act") prohibits unfair and deceptive acts and practices.²⁷ To determine whether business practices are deceptive, the FTC considers three elements.²⁸ First, it considers whether there has been a representation, omission, or practice that is likely to mislead the consumer. Second, it examines the practice from the perspective of a consumer acting reasonably in the circumstances. Third, it asks whether the representation, omission, or practice is a "material" one. Neither an intent to deceive nor actual consumer harm is required to find an act deceptive under the FTC Act.²⁹ The analysis focuses on the risk of consumer harm.

Both express misrepresentations and implied misrepresentations are violations of the FTC Act. If a claim is likely to be misleading without qualifying information, the qualifying information must be disclosed in a "clear and conspicuous" manner. Clear and conspicuous disclosure is required because the FTC focuses on the overall net impression of an advertisement, and if a disclosure is not seen or comprehended, it will not change the net impression consumers take from the advertisement. A disclosure can qualify or limit a claim to avoid a misleading impression; it cannot, however, cure a false claim.³⁰

²⁷ 15 U.S.C. § 45.

²⁸ FTC Policy Statement on Deception (1983), appended to *Cliffdale Associates*, 103 F.T.C. 110, 174 (1984), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

²⁹ See *FTC v. Verity International*, 443 F.3d 48, 63 (2d Cir. 2006).

³⁰ See FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> ("[A disclosure] cannot cure a false claim. If a disclosure provides information that contradicts a material claim, the disclosure will not be sufficient to prevent the ad from being deceptive."). To the extent that advertisements for conversion therapy could be said to make "health-related efficacy claims" a more precise level of substantiation is required. Health-related efficacy claims are divided into two categories: establishment claims, those that specifically represented the level of support the advertiser has for the product ("doctors recommend" or "studies show"), and non-establishment claims, those generally make claims about a product's attributes, performance, or efficacy. For establishment claims, the advertiser must have the amount

The FTC has also issued rules for specific areas relating to deceptive acts or practices, such as the use of testimonials in advertising.³¹

B. PCC’s Marketing and Advertising Practices are False and Misleading, and Contain Material Omissions

1. PCC Implicitly and Explicitly Claims Being LGBT or Having Same-Sex Attractions is Abnormal or a Disorder in Marketing Conversion Therapy

The nation’s leading health and mental health authorities recognize being LGBT and having same-sex attractions as normal variants of human sexuality and gender. Based on the scientific evidence, the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical Manual of Mental Disorders in 1973 where it had previously been listed as a “sociopathic personality disturbance.” The American Psychological Association showed its full support of this move in 1975 stating “homosexuality per se implies no impairment in judgment, reliability or general social and vocational capabilities... (and mental health professionals should) take the lead in removing the stigma of mental illness long associated with homosexual orientation.”³² Based on these studied opinions as well as those of many other respected medical associations, the court in *Ferguson v. JONAH* barred several of the defendants’ experts from providing expert testimony that same-sex attraction is a “disorder or

abnormal” because that conclusion goes against the “overwhelming weight of scientific authority.”³³

Despite all scientific evidence to the contrary, providers of conversion therapy, including PCC, continue to mislead consumers into believing that being LGBT is a disorder, developmental deficiency, or the result of emotional trauma that can be cured or healed. PCC’s website states, “homosexuality is not a single problem or conflict, but a group of problems that together produce homosexual attractions.”³⁴ On its webpage “Root Causes, Homosexual Consequences,” PCC identifies several “causes” of homosexuality, such as relationship problems

Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (the “APA Task Force”) conducted a systematic review³⁷ evaluating all relevant “peer-reviewed empirical research on treatment outcomes” regarding sexual orientation change efforts (“SOCE”). The APA Task Force issued a report concluding that “claims that recent SOCE is effective are not supported” and that “it is unlikely that individuals will be able to reduce same sex attractions or increase other-sex sexual attractions through SOCE.”³⁸ Instead, the APA Task Force found that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including “loss of sexual feeling, depression, suicidality and anxiety.”³⁹

The October 2015 SAMHSA report indicated that “conversion therapy—efforts to change an individual’s sexual orientation, gender identity, or gender expression—is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations.”⁴⁰ The SAMHSA report noted that, “Given the lack of evidence of efficacy and the potential risk of serious harm, every major medical, psychiatric, psychological, and professional mental health organization, including the American Psychological Association, the American Psychiatric Association, the National Association for Social Work, the Pan American Health Organization, and the American Academy of Child and Adolescent Psychiatry, has taken measures to end conversion therapy efforts to change sexual orientation.”⁴¹

Despite this fact, PCC conveys—not only through its name, “People Can Change”—but also through its website content, downloadable materials, videos, and other promotional materials—that its services can change a person’s sexual orientation. PCC’s motto “Men who

³⁷ APA Task Force Report, *supra*note 9, at 26, fn. 24 (“A systematic review starts with a clear question to be answered, strives to locate all relevant research, has clear inclusion and exclusion criteria, and carefully assesses study quality and synthesizes study results.”).

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ SAMHSA Report, *supra*note 6, at 1.

⁴¹ *Id.* at 24.

least, really a deep, unmet need from childhood and youth....”⁴⁷ In boxed text the company states:⁴⁸

PCC then indicates: “Make no mistake - this is difficult, sometimes painful work. But ultimately it brought us great joy, much more so than we had ever been able to find in a gay life, identity or gay relationships. In fact, we found it led us to the goal we were really seeking all along.”⁴⁹

PCC’s misleading advertisements are likewise found on its webpages addressing its Journey Into Manhood (“JiM”) weekend retreat, “a 48-hour immersion in intensive emotional-healing work, designed specifically for men who are self-motivated and serious about resolving unwanted homosexual attractions.”⁵⁰ On the “Journey Into Manhood – Does it Work” web page, PCC states that JiM has “had a powerful, life-changing effect on hundreds and hundreds of men since 2002,” and that as shown in “follow-up surveys of men who took the JiM weekend between 6 months and 6 years earlier, about 75% report a decrease in homosexual feelings and behaviors.”⁵¹

⁴⁷ We Found Another Way **Q**UIEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/wayout.php> (last visited Feb. 18, 2016).

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ What it IS

Moreover, PCC does not provide any disclosure of the potentially serious negative health and safety consequences associated with the therapy on its website or in other promotional materials, which is a significant and material omission, discussed in more detail herein.

b) False, Misleading, and Deceptive Claims in PCC's Written Promotional Materials

PCC's written advertisement and promotional materials, some of which are downloadable from the website, contain the same false, misleading, and deceptive information regarding the ability of conversion therapy and PCC's services to change an individual's sexual orientation. A JiM brochure, for example, indicates participants

c) **False, Misleading, and Deceptive Claims in PCC's Video Advertisements**

Video advertisements contain similar false, misleading, and deceptive statements. In a video posted on YouTube by Richard Wyler in June 2013, for example, David Matheson, co-founder of the Journey Into Manhood weekends, indicates that the weekend retreat “[h]elps men grow. And when men grow, many men as they mature, as they deepen their masculinity, they find that their feelings of sexual attraction to other men diminish a great deal. And yes, absolutely it does work. Does it work for every man? Nothing works for every man.”⁵⁴ In a

likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.⁵⁷

Despite the medical and scientific consensus that conversion therapy is not effective in changing a person's sexual orientation, PCC's testimonials suggest otherwise. In the PCC Home Page Presentation, one former JiM participant indicates "My original goal was: I don't want to be same-sex attracted any more. I want to be opposite-sex attracted. And I did achieve that goal."⁵⁸ Another former JiM participant indicates that "I have experienced a great deal of increase in my opposite-sex attraction and a great deal of decrease in my same-sex attraction."⁵⁹

Similar to PCC's survey of past participants addressed below, these self-reported accounts of change must be viewed skeptically. As explained in Dr. Beckstead's Expert Report, "SOCE providers, with their investment in a heterosexual outcome, create a situation where their clients are set up to lie to them if they do not experience this change. Then, SOCE providers use such reports of change to promote their interventions. Those who do not report change are dismissed, for example, by the claim that they did not work hard enough."⁶⁰

Testimonials provided by Wyler and Matheson, who hold themselves out as a certified life coach and a Clinical Mental Health Counselor respectively, qualify as expert endorsements and are subject to Section 255.3 of the FTC Enforcement Guides. This section provides that, for an expert:

⁵⁷ Id. at 255.2(b).

⁵⁸ PCC Presentation, *supra*note 54, at 7:10.

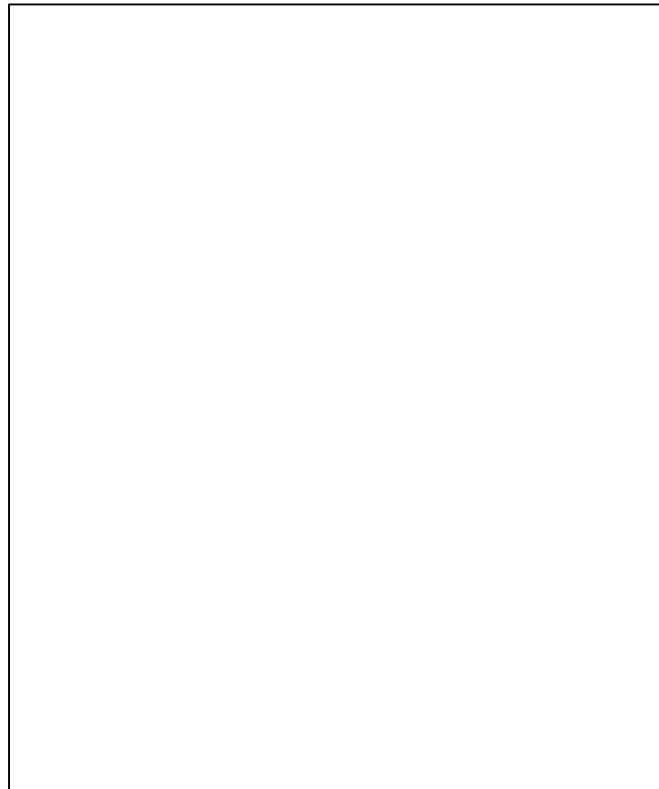
⁵⁹ Id. at 7:35.

⁶⁰ Beckstead Expert Report, *supra*note 35, at 14.

the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he or she is expert and which are relevant to an ordinary consumer's use of or experience with the product and are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement.

However, both Wyler and Matheson ignore the consensus within the scientific, medical, and mental health communities that contradict their own personal view. As noted above, on the

example, on the “Does it Work” link on the Journey Into Manhood webpage,⁶¹ PCC claims its follow-up survey shows that about 75% of past JiM participants “report a decrease in homosexual feelings and behaviors” and “more than half report an increase in heterosexual attractions.”



Until at least July 31, 2015, the JiM Landing Page indicated that “4 out of 5 participants report reduction in [same-sex attraction],”⁶² and recent PCC brochures make similar claims.⁶³

⁶¹ Does it Work?PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/doesitwork.php> (last visited on Feb. 18, 2016).

⁶² People Can Change, Inc., People Can Change, Journey Into Manhood [Brochure] (retrieved from INTERNET ARCHIVE WAYBACK MACHINE (Oct. 2, 2015), <https://web.archive.org/web/20151002043121/http://www.peoplecanchange.com/jim/brochure.pdf>. PCC brochures are attached hereto as Exhibit J.

⁶³ People Can Change, Inc., People Can Change, Journey Into Manhood [Brochure] (retrieved from PEOPLE CAN CHANGE website on Feb. 18, 2016). PCC brochures are attached hereto as Exhibit J.

b) *PCC's Self-Promoting Survey Cannot Substantiate its Claims of High Success Rates*

The 2007 survey conducted by PCC has no scientific validity and cannot substantiate its success rate claims, as evidenced by the fact that the JONAH court excluded the survey data from evidence at trial. By Mr. Wyler's own admission, the surveys had no scientific basis and employed no specific methodology.⁶⁹ The court found that the survey results **"lack[] any support for showing success rates," and that "the categories are misleading and confusing"**⁷⁰ and refused to allow the survey results to be shown to the jury.⁷¹ Indeed, the statistics suffer from a number of fatal flaws that make them false, deceptive and misleading for purposes of the FTC's enforcement of Section 5 against PCC.

First, the survey suffers from self-selection bias and is not representative of all past

a) *PCC Creators' Titles and Scientific/Medical Training Imply Practices are Based in Science*

PCC's website and promotional materials highlight that Richard Wyler, PCC's founder, is a "certified life coach" and that the PCC program, and in particular its JiM weekend, was co-created by David Matheson. David Matheson is described on the website as a "licensed professional therapist,"⁷⁵ a "Licensed Professional Counselor in private practice,"⁷⁶ a "Clinical Mental Health Counselor in private practice,"⁷⁷ a "clinical director at the Center for Gender Wholeness,"⁷⁸ and a "therapist specializing in 'gender affirming therapy.'"⁷⁹

A more detailed biography for Matheson can be found at the Center for Gender Wholeness website, which is linked to from the PCC website. There Matheson describes himself as an "author and psychotherapist" with a "Masters of Science degree in Counseling and Guidance from Brigham Young University in 1996" who "for many years, [] has written, lectured, taught workshops, and given commentary on radio and television advocating for the wellbeing of those with distress over their sexual orientation."⁸⁰

These professional and medical titles combined with the PCC website's proclamation that "[b]oth men had personally experienced significant change from unwanted homosexuality earlier

⁷⁵ Richard Wyler, *An Accidental Founder, Step by Step*, PEOPLE CAN CHANGE BLOG (Apr. 13, 2009), <http://people-can-change.blogspot.com/2009/04/accidental-founder-building-step-by.html>.

⁷⁶ People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from PEOPLE CAN CHANGE website on Feb. 18, 2016). PCC brochures are attached hereto as Exhibit J.

⁷⁷ *Our Stories of Change: David Matheson – Breaking Free*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/stories/david.php> (last visited on Feb. 18, 2016).

⁷⁸ *About the Co-Creators*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/thepeople.php> (last visited on Feb. 18, 2016).

⁷⁹ *Founding & Growth*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/founding.php> (last visited on Feb. 18, 2016).

⁸⁰ *About the Author*, CENTER FOR GENDER WHOLENESS, <http://genderwholeness.com/becomingwhole/about-us/> (last visited on Feb. 18, 2016).

in their lives”⁸¹ represent to the average consumer that the techniques used by PCC are based on the creators’ previous scientific and mental health training, especially that of Matheson.

The PCC program’s basis in scientific and mental health principles is also implied in the website’s description of JiM’s creation:

Therapist David Matheson immediately saw the vision of what Journey Into Manhood could become, and passionately began working with me to further develop the **psychological theory and processes** of the weekend so that it would have an even greater impact on future participants and to enable us to replicate it over and over. Without David’s **expertise** and passion, and his joining me as co-creator and co-developer of Journey Into Manhood, I probably would have burned out quickly, and “JiM” would likely not have as powerful an impact nor be as safe a place for men to do deep emotional healing work.⁸²

PCC also emphasizes on its website and in its promotional materials that therapists refer clients to PCC and the JiM weekend. For example, PCC has advertised a “Virtual Open House” through its Twitter account that features “[a] therapist who has referred clients.”⁸³ These statements imply to a reasonable consumer that mental health professionals recommend PCC’s

have to follow all of the pertinent principles. If we fail to do so, gravity wins.
The laws that seem to govern growth out

expectancy, and effort justification.⁹⁸ The APA Task Force emphasized this point at the beginning of their chapter on outcomes and then multiple times throughout the report:

...nonexperimental studies often find positive effects that do not hold up under the rigor of experimentation. The literatu

(2) *Other Studies Cited by PCC*

On the same page, PCC also identifies 13 additional studies from the book “Homosexuality: The Use of Scientific Research in the Church’s Moral Debate.” These surveys have many of the same problems as New Direction’s Change Project: only two of the 13 had sufficient scientific rigor to be included in the APA Task Force’s systematic review and some of the studies involved aversion techniques not employed by PCC.¹⁰⁶

PCC also quotes an article by Dr. Warren Throckmorton: “My literature review contradicts the policies of major mental health organizations because it suggests that sexual orientation, once thought to be an unchanging sexual trait, is actually quite flexible for many people, changing as a result of therapy for some, ministry for others and spontaneously for still others.”¹⁰⁷ Dr. Throckmorton’s article summarized 11 studies regarding sexual orientation changes. However, Dr. Throckmorton later learned that in one of the studies he had relied upon, the Pattison & Pattison study (the “Pattison Study”), two of the participants that claimed to have changed from homosexual to heterosexual had not actually changed at all. One participant later stated, “We professed that we had been healed—past tense—because it was part of the theology to claim your healing in order to bring it about.”¹⁰⁸ After receiving this information, Dr. Throckmorton disclaimed the original study and his own article and criticized NARTH and other

¹⁰⁶ See, e.g., MacCulloch & Feldman, Aversion therapy in management of 43 homosexuals, *BRITISH MED. JOURNAL* 594-7 (1967) (use of shock therapy).

¹⁰⁷ Is Change Really Possible? PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016), citing Warren Throckmorton, Initial empirical and clinical findings concerning the change process for ex-gays, *PROFESSIONAL PSYCHOLOGY: RESEARCH AND PRACTICE* 242-248 (2002).

¹⁰⁸ Warren Throckmorton, Participant Discredits the Original Ex-Gay Study, *RELIGION DISPATCHES* (No. 10, 2011), <http://religiondispatches.org/participant-discredits-the-original-ex-gay-study/>.

sexual orientation change groups for continuing to rely on them.¹⁰⁹ The Pattison Study is also one of the 31 studies used by the Change Project to show evidence of change.¹¹⁰

PCC's citation to a 2001 study by Dr. Robert Spitzer is also misleading, as PCC makes no mention of Dr. Spitzer's 2012 retraction of this study.¹¹¹ As the basis for his study, Dr. Spitzer had detailed conversations with 200 individuals who had attempted to change their sexual orientation in some manner.¹¹² Dr. Spitzer's study did not go through the peer-review process before its original publication and critiques of the study blasted its nonscientific approach.¹¹³ In his 2012 retraction, Dr. Spitzer admitted that the study had bothered him for many years and that the "critiques are largely correct."¹¹⁴ He followed this retraction with an apology letter in April 2012 stating that the study could not be used to prove anything because there was no way to verify if people were telling the truth: "the simple fact is that there was no way to determine if the subject's accounts of change were valid."¹¹⁵

5. PCC Fails to Disclose Well-Documented Health and Safety Risks Associated with Conversion Therapy

While no credible evidence exists demonstrating that conversion therapy can change a person's sexual orientation or gender identity, there are well-documented reports of the harm that can result from conversion therapy. The American Psychiatric Association has warned that the "potential risks of reparative therapy are great, including depression, anxiety and self-destructive

¹⁰⁹ Warren Throckmorton, First study to refer to ex-gays discredited, *PATHEOS* (Nov. 11, 2011), <http://www.patheos.com/blogs/warrenthrockmorton/2011/11/11/first-study-to-refer-to-ex-gays-discredited/>.

¹¹⁰ Is Change Really Possible? PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

¹¹¹ *Id.*

¹¹² Benedict Cary, Psychiatry Giant Sorry for Backing Gay 'Cure', *THE NEW YORK TIMES* (May 18, 2012), http://www.nytimes.com/2012/05/19/health/dr-robert-l-spitzer-noted-psychiatrist-apologizes-for-study-on-gay-cure.html?_r=0_.

¹¹³ *Id.*

¹¹⁴ Gabriel Arana, My So-Called Ex-Gay Life, *THE AMERICAN PROSPECT* (Apr. 11, 2012), <http://prospect.org/article/my-so-called-ex-gay-life>.

¹¹⁵ John Becker, EXCLUSIVE: Dr. Robert Spitzer Apologizes to Gay Community for Infamous 'Ex-Gay' Study, *TRUTH WINS OUT* (Apr. 25, 2012), <http://www.truthwinsout.org/news/2012/04/24542/>.

behavior....”¹¹⁶ Expert testimony in the JONAH trial details a litany of negative effects that can result from conversion therapy. As indicated by A. Lee Beckstead, a licensed psychologist who was a member of the APA Task Force:

Many SOCE consumers, like the Plaintiffs, eventually report feeling worse and more dysfunctional than when they entered treatment. These reports depict how the hopes they had early in treatment turned “sour.” These SOCE consumers defined what they experience as harmful as (a) being misinformed about realistic outcomes; (b) being misled with unsubstantiated theories and treatments, including mischaracterizations of same-sex attractions, gender, and identity; (c) blaming parents for their homosexuality; (d) being blamed for not changing and not trying hard enough, and thus internalizing treatment failure; (e) being reinforced that living as an LGB person is destructive and must be avoided, and therefore not having any other choices; (f) being restricted from accurate information, active coping skills, and exploration of options; and (g) feeling pressured to be “one way or another” and reject and suppress core aspects of self.¹¹⁷

The APA Task Force Report listed over 20 harms associated with conversion therapy, including depression, shame, social withdrawal, substance abuse, decreased self-esteem and authenticity to others, increased self-hatred, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, and suicidality.¹¹⁸ The Family Acceptance Project additionally reports that family rejection, which it studied conversion therapy as a part of, makes youth “8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse.”¹¹⁹

¹¹⁶ Am. Psychiatric Ass’n, *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies): COPP Position Statement* (May 2000), http://media.mlive.com/news/detroit_impact/other/APA_position_conversion%20therapy.pdf.

¹¹⁷ Beckstead Expert Report, *supra* note 35, at 16.

¹¹⁸ APA Task Force Report, *supra* note 9, at 41-43.

¹¹⁹ Family Acceptance Project, *Family Rejection of Lesbian, Gay and Bisexual Adolescents & Negative Health Outcomes* (January 1, 2009), available at <http://familyproject.sfsu.edu/news-announce/family-rejection-lesbian-gay-and-bisexual-adolescents-negative-health-outcomes>

Further, it was the suicide of Leelah Alcorn, a 17-year-old transgender youth subjected to conversion therapy, that sparked the White House’s petition to ban conversion therapy.¹²⁰ And in the JONAH case, two of the plaintiffs subjected to conversion therapy testified about the psychological damage they suffered. One plaintiff indicated that conversion therapy resulted in “deepening depression and anxiety leading to suicidal ideation and feelings of hopelessness;”¹²¹ another described conversion therapy as “psychological abuse,” and that by the time he terminated his sessions, “he was deeply depressed and []commenced taking antidepressant medications.”¹²²

Despite substantial documentation of the health and safety risk posed by conversion therapy, PCC makes absolutely no reference to these risks on its website and other marketing materials. The failure to provide such a disclosure is a material omission by PCC.

C. PCC’s Claims are Reasonably Relied Upon by Consumers

Under the Policy Statement on Deception, the FTC examines the practice from the perspective of a consumer acting reasonably under the circumstances. If the representation is directed to a particular group, the FTC examines reasonableness from the perspective of that group. To determine whether the consumer’s conclusions were reasonable, the Commission will examine the “entire advertisement, transaction, or course of dealing” to find the net impression that the advertisement gives. Additionally, the Commission will presume that the consumer’s interpretation was reasonable if the consumer draws the conclusion that the advertiser intends to convey.

¹²⁰ Jonathan Capehart, *Obama comes out against ‘conversion therapy’ to support ‘Leelah’s Law’*, Washington Post (Apr. 10, 2015), available at

The consumers that PCC advertisements are intended to attract are more vulnerable than the average consumer. PCC advertisements are targeted to vulnerable young adults and their families, like the plaintiffs in the JONAH trial. Potential clients may be depressed or in conflict with their families due to societal or familial bias against LGBT people. The misrepresentations in the advertisements take advantage of the vulnerability of this class of consumers.

Additionally, the advertisements are designed to keep these consumers continuously engaged in conversion therapy programs through counseling and webinars, as well as through references to specific therapists (including the founder of PCC), some of which may provide conversion therapy services for one of the most vulnerable populations—children. The false and misleading marketing and promotion of conversion therapy on PCC’s website has far-reaching implications for those who are researching the potential benefits and risks associated with the therapy, including the provision of such services for children.

D. PCC’s Claims are Material

Under the FTC Policy Statement on Deception, a material misrepresentation is one that is likely to affect a consumer’s choice or conduct regarding a product. The FTC presumes certain categories of claims and omission to be material: (1) express claims; (2) omitted information the customer needs to evaluate the product or service or related claim; (3) where there is evidence that the seller intended to make an implied claim; and (4) where significant health and safety risk are involved.¹²³ PCC’s misrepresentations are material under all of these tests and are likely to cause injury to consumers.

As shown above, PCC’s marketing materials expressly and implicitly claim that PCC will help change an individual’s sexual orientation or gender identity, and that its services are

¹²³ Id.

effective and supported by scientific evidence. Consumers would likely not seek PCC's services if they did not believe these claims. Claims such as these are presumed material.

PCC's marketing claims are also material because they omit important health and safety information that consumers need to evaluate PCC's services. As noted above, there is no credible evidence to suggest that conversion therapy can change an individual's sexual orientation or gender identity. On the other hand, there is substantial evidence that it can adversely affect individuals, including by causing an increased risk of depression and suicide.¹²⁴

Both the SAMHSA report and the APA Task Force Report provide guidance on the appropriate therapeutic response for individuals experiencing unwanted same-sex attractions or gender nonconformity, and in both cases the reports emphasize that conversion therapy is not effective and should not be used.¹²⁵ As noted by Dr. Bernstein as part of the JONAH trial, "The consequences of ineffective, invalid, and inappropriate treatment for patients of mental health service providers are just as serious as they would be for patients suffering from any other medical condition. Potential harm to the patient can include, but is not limited to, depression, anxiety, and self-destructive behavior, even suicide."¹²⁶

Further, similar to the FTC's Daniel Chapter One (finding false and deceptive health claims related to advertiser's herbal formulations and shark cartilage) and Travel King cases (finding false and deceptive health claims related to advertiser's "psychic" treatment for cancer and other disorders), PCC's marketing materials induce customers to purchase ineffective conversion therapy services that have the potential to cause harm at the expense of likely

¹²⁴ See Section III.B.5.

¹²⁵ See SAMHSA Report, *supra* note 6, at 3; APA Task Force Report, *supra* note 9, at 54; see also Beckstead Expert Report, *supra* note 35, at 19.

¹²⁶ Bernstein Expert Report, *supra* note 70, at 5.

forgoing alternative, legitimate therapeutic services.¹²⁷ Because there is no competent and reliable evidence to indicate that conversion therapy has any beneficial medical effects—and because the evidence in fact shows that conversion therapy is ineffective and potentially harmful—additional substantiation is needed for advertising claims because it is inducing consumers to forego an effective treatment in favor of an ineffective treatment, which can be “injurious to a patient's health.”¹²⁸

IV. CONCLUSION

Despite the fact that being LGBT is widely recognized in the scientific, medical, and mental health communities as a normal variant of human sexuality and that “efforts to change an individual’s sexual orientation, gender identity, or gender expression... [are] not supported by credible evidence,”¹²⁹ PCC’s website, other advertisements, and business practices in accepting money for conversion therapy services are based on false, misleading and deceptive claims that LGBT sexuality and gender identity are deficiencies or disorders that PCC can cure through proven, scientifically-based psychological processes and methods. Applying each of the FTC’s three factors, it is clear that PCC, through its advertisements, has made material representations and omissions that are likely to mislead consumers acting reasonably in the circumstances to their detriment. Therefore, we request that the Commission take enforcement action to stop PCC’s deceptive advertising, marketing and other business practices in all its forms, and take steps to investigate all practitioners making similar claims.

¹²⁷ See *re Travel King, Inc. et al.*, 86 F.T.C. 715, 764 (1975) (the defendant’s promotional materials “had the tendency and capacity to inflict great injury and suffering on persons afflicted with serious, incurable or terminal illnesses and diseases, to prey upon” consumers).
¹²⁸ See *re Travel King, Inc. et al.*, 86 F.T.C. 715, 764 (1975) (the defendant’s promotional materials “had the tendency and capacity to inflict great injury and suffering on persons afflicted with serious, incurable or terminal illnesses and diseases, to prey upon” consumers).
¹²⁹ See *re Travel King, Inc. et al.*, 86 F.T.C. 715, 764 (1975) (the defendant’s promotional materials “had the tendency and capacity to inflict great injury and suffering on persons afflicted with serious, incurable or terminal illnesses and diseases, to prey upon” consumers).