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ATTORNEY GENERAL OF TEXAS

December 4, 2019

John K. Hubbard, Ph.D., PT  
Chairman  
Anatomical Board of the State of Texas  
Post Office Box 195895  
Dallas, Texas 75219

Opinion No. KP-0279  
Re: Authority of a commercial entity to operate  
a willed-body program in Texas (RQ-0292-KP)

Dear Dr. Hubbard:

You ask whether a commercial entity, such as Science Care Corporation (“Science Care”), may operate a willed-body program in Texas.<sup>1</sup> Science Care “wishes to establish a facility in Texas to receive whole body donations and redistribute the tissue for medical research and education.”<sup>2</sup> You question whether state law authorizes Science Care to do so. Request Letter at 1, 3–4.

Two chapters in the Health and Safety Code, chapters 691 and 692A, govern the donation of a body for science, education, and research, and we consider each in turn. *See* TEX. HEALTH & SAFETY CODE §§ 691.001–.035, 692A.001–.023. Chapter 691, which establishes the Anatomical Board of Texas (“Board”), directs the Board to “distribute bodies and anatomical specimens to institutions and other persons authorized to receive them.” *Id.* § 691.022(a); *see Perna v. Hogan*, 162 S.W.3d 648, 651 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (describing the Board as “the agency responsible for overseeing the Willed Body Program in Texas”). Chapter 691 identifies those institutions and persons authorized to receive donated bodies as “the [B]oard, a medical or dental school, or another donee authorized by the [B]oard.” TEX. HEALTH & SAFETY CODE § 691.028(a); *see also id.* §§ 691.033(a) (providing that a “school, college, or person designated by the board” may use a donated body or anatomical specimen distributed under chapter 691), 691.034(a) (authorizing Board to inspect and approve institutions and other persons for the receipt and use of bodies); 25 TEX. ADMIN. CODE § 479.1(a) (Anatomical Bd. of Tex., Institutions Authorized to Receive and Hold Bodies). As Science Care is not a medical school, dental school, or a Board-authorized donee, the plain language of section 691.028 does not authorize it to receive a donation of a whole body under chapter 691. *See Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015) (“Our objective in construing a statute is to give effect to the Legislature’s intent, which requires us to first look to the statute’s plain language.”).

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<sup>1</sup>*See* Letter from John K. Hubbard, Ph.D., PT, Chairman, Tex. Anatomical Bd., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 24, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

<sup>2</sup>Brief from Denise Webb Glass, Norton Rose Fulbright at 1, 4 (July 24, 2019), (hereinafter “Science Care Brief”) (on file with the Op. Comm.).

Chapter 692A, the Revised Uniform Anatomical Gift Act, governs the donation of anatomical gifts.<sup>3</sup> TEX. HEALTH & SAFETY CODE §§ 692A.001, .003. Section 692A.011 lists the entities and persons who may receive an anatomical gift. *Id.* § 692A.011(a)(1)–(7). Relevant here, subsection 692A.011(a)(4) identifies as an authorized donee “an eye bank or tissue bank, except that use of a gift of a whole body must be coordinated through the Anatomical Board.” *Id.* § 692A.011(a)(4). Chapter 692A defines a “tissue bank” as a “person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.” *Id.* § 692A.002(35); *see also id.* § 692A.002(34) (defining “tissue” to mean “a portion of the human body other than an organ or an eye”). We thus consider whether Science Care is a tissue bank.

You tell us that Science Care does not “solicit parts of bodies or specific organs for donations” but obtains “human tissue from whole body donations.” Request Letter at 2 (stating that “Science Care is a whole-body donation organization and not a tissue bank”). Science Care asserts that it satisfies the definition of “tissue bank” in two ways: (1) through its accreditation by the American Association of Tissue Banks (“AATB”); and (2) because it is licensed and regulated under laws of other states. Science Care Brief at 5–6 (pointing out that Illinois and Florida define “tissue bank” as an entity accredited by the AATB and stating that “Science Care is licensed by the State of New York Department of Health as a tissue bank, [and] is therefore both accredited and licensed under state law as a tissue bank”).

Science Care submits with its brief copies of its “Provisional License for Tissue Bank Operation” issued by the New York State Department of Health. *Id.* at Exhibit E. The copies of the licenses submitted indicate that New York approved Science Care as a nontransplant anatomic bank. *See id.* Under the relevant New York regulations, a “nontransplant anatomic bank” is a “person or facility that solicits, retrieves, . . . preserves, transports, allocates, distributes, acquires, processes, stores or arranges for the storage of nontransplant anatomic parts, including whole bodies, body segments, organs or tissues from living or deceased donors, for education and/or research purposes specifically authorized by” specified provisions of New York law. N. Y. COMP. CODES R. & REGS. tit.10, § 52-1.1(r). In defining a “tissue bank” in chapter 692A to include licensure, accreditation, or regulation under state law, the Texas Legislature did not intend for state law to mean only Texas state law. Instead, the Legislature specifically defined “state” for purposes of chapter 692A to mean “a state of the United States.” TEX. HEALTH & SAFETY CODE § 692A.002(31); *see also id.* § 692A.022 (“In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.”). An entity engaged in the “recovery, screening, testing, processing, storage, or distribution of tissue” that is “licensed, accredited, or regulated” under the law of any state to so act is a tissue bank in Texas. *Id.* § 692A.002(31), (35). Accordingly, to the extent that it is licensed by New York for the “recovery,

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<sup>3</sup>Chapter 692A defines “anatomical gift” as “a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research, or education.” TEX. HEALTH & SAFETY CODE § 692A.002(3).

screening, testing, processing, storage, and distribution of tissue,” a question we do not decide,<sup>4</sup> Science Care is a tissue bank under chapter 692A. *Id.*

Yet, the Legislature limits a tissue bank’s use of a gift of a whole body. *Id.* § 692A.011(a)(4). Subsection 692A.011(a)(4) provides that the use of a gift of a whole body to a tissue bank must “be coordinated through” the Board. *Id.* § 692A.011(a)(4). Under its rulemaking authority, the Board provides that a tissue bank receiving a whole-body donation “may only transfer those donations to institutions in approved categories.” 25 TEX. ADMIN. CODE § 479.1(a) (Anatomical Bd. of Tex., Institutions Authorized to Receive and Hold Bodies). Chapter 692A does not define the term “coordinated,” but its common meaning is to “bring the different elements of (a complex activity or organization) into a relationship that will ensure efficiency or harmony.” NEW OXFORD ENGLISH DICTIONARY 383 (3rd ed. 2010); *City of Richardson v. Oncor Elec. Delivery Co.*, 539 S.W.3d 252, 262 (Tex. 2018) (“To determine a statutory term’s common, ordinary meaning, we typically look first to [its] dictionary definitions . . . .” (quotation marks omitted)). Here, the complex activity to be coordinated by the Board includes ensuring the various medical and forensic science institutions in Texas have an adequate supply of bodies for education and research.<sup>5</sup> *Cf.* TEX. HEALTH & SAFETY CODE § 692A.015 (requiring hospitals in the State to “enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts [to ensure] its maintenance of an effective donation system in order to maximize organ, tissue, and eye donation”). In this task, the Legislature gives the Board exclusive authority to distribute bodies and anatomical specimens to authorized recipients and requires it to do so in a respectful manner. *Id.* §§ 691.022(a) (“The board shall distribute . . . .”), 691.022(b) (“The board shall adopt rules to ensure that each body . . . is treated with respect.”). Further, the Board has express authority to take a body donated to one of the particular institutions listed in chapter 691 and redistribute it to another institution. *Id.* § 691.030(a), (d). Moreover, the Legislature expressed its intent that, but for a few specific

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<sup>4</sup>The licenses proffered by Science Care are identified as provisional licenses. *See* Science Care Brief at Exhibit E. Under the New York regulations, the New York Department of Health “may issue a provisional license which shall be valid for a period determined by the department to be sufficient to enable the department to assess the compliance of the . . . nontransplant anatomic bank” with the regulations. N.Y. COMP. CODES R. & REGS. tit. 10, § 52-2.2(a). They also provide that a nontransplant anatomic bank “initially applying for a license may be issued a provisional license” merely upon the submission of a complete application. *Id.* § 52-2.2(c), *cf. id.* § 52-2.2(b) (requiring a tissue bank initially applying for a license to be issued a provisional license only if it meets certain conditions).

<sup>5</sup>In briefing submitted to this office, involved institutions inform us that allowing for-profit commercial entities to operate a whole-body donation program in Texas “has the potential to cause a shortage of anatomical training and research resources, negatively impacting the advancement of the medical profession and sciences in Texas.” Brief from Daniel H. Sharphorn, Vice Chancellor & Gen. Counsel, The Univ. of Tex. Sys. at 1 (Aug. 1, 2019) (on file with the Op. Comm.). While this may be a legitimate concern for the Legislature to consider, this office, like a court, cannot disregard the plain language of the statute or insert words into the statute to foreclose that possibility. *See R.R. Comm’n of Tex. v. Miller*, 434 S.W.2d 670, 672 (Tex. 1968) (stating that because courts “are not the law-making body,” they “are not responsible for omissions in legislation” but only for interpreting the statute as written (quotation marks omitted)); *see also McIntyre v. Ramirez*, 109 S.W.3d 741, 748 (Tex. 2003) (stating that a court’s role “is not to second-guess” the Legislature’s policy choices informing a statute “or to weigh the effectiveness of their results”). Here, the plain language of the relevant statutory text commits to the Board the task of “coordinating” the gift of whole-body donations, which coordination may mitigate potential negative impacts on educational and research institutions.

exceptions, the Board is the “donee of gifts of bodies . . . made for the purpose of education or research.” *Id.* § 692A.011(b). The Board is the authority that approves whole-body recipients other than those identified in chapter 691 and 692A. *See id.* §§ 691.030(a), .028(a). Lastly, the Board is charged with inspecting and approving facilities of an authorized recipient as well as suspending or revoking an entity’s authorization to receive bodies if the Board determines improper use of a body. *Id.* § 691.034(a), (c). These provisions embody the Legislature’s intent to have the Board coordinate whole-body donations in Texas.

For these reasons, to the extent Science Care is a tissue bank under Health and Safety Code chapter 692A, it may operate in Texas as allowed by that chapter. Yet, to the extent it receives whole-body donations, it is subject to oversight by the Board, and any use of whole-body donations, including their transfer, must be coordinated through the Board.

S U M M A R Y

Chapter 692A of the Health and Safety Code defines a “tissue bank” to include an entity licensed under state law to engage in specified activities with respect to donated bodies or anatomical specimens. For purposes of chapter 692A, the Texas Legislature defined “state” broadly to include any state. Thus, to the extent Science Care is licensed as a tissue bank by another state, it is a tissue bank under chapter 692A, and it may operate in Texas as allowed by that chapter. Pursuant to chapter 692A, to the extent Science Care receives whole-body donations, it is subject to oversight by the Anatomical Board of Texas, and its use of a whole-body donation, including a transfer, must be coordinated through the Board.

Very truly yours,



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