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ATTORNEY GENERAL OF TEXAS

December 13, 2021

The Honorable Donna Campbell, M.D.
Chair, Committee on Veterans Affairs &
Border Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0395

Re: Texas medical school compliance with Coats-Snowe Amendment, which prohibits discrimination against health care entities that refuse to provide or undergo training for induced abortion (RQ-0413-KP)

Dear Senator Campbell:

You ask several questions related to medical schools and accreditation standards of the Accreditation Council for Graduate Medical Education (“ACGME”) in conjunction with the federal Coats-Snowe Amendment.¹ The Coats-Snowe Amendment, enacted in 1996, generally prohibits discrimination against a health care entity for refusing to engage in certain abortion-related training activities. It specifically provides that

[t]he Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

- (1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;
- (2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

¹See Letter and Attachments from Honorable Donna Campbell, M.D., Chair, Senate Comm. on Veterans Affairs & Border Sec., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (June 16, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0413KP.pdf> (“Request Letter” and “Attachments” respectively) (on file with the Op. Comm.).

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

42 U.S.C. § 238n(a). A ““health care entity’ includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.”² *Id.* § 238n(c)(2). Plainly put, a health care entity includes a doctor, a residency program, and a student in a residency program. *See id.* § 238n(c)(3).

Your specific questions concern standards promulgated by the ACGME. The ACGME describes itself as “an independent, not-for-profit, physician-led organization that sets and monitors the professional educational standards essential in preparing physicians to deliver safe, high-quality medical care to all Americans.”² The ACGME imposes requirements on graduate medical education programs to obtain and retain accreditation if the programs substantially comply with the requirements. *See Baylor Univ. Med. Ctr., Inc. v. Daneshfar*, No. 05-17-00181-CV, 2018 WL 833373, at *4 (Tex. App.—Dallas Feb. 12, 2018, pet. denied) (mem. op.). “If a program violates the ACGME’s requirements, [it] may receive a warning or be placed on probation. If the violations are not cured, then the ACGME may withdraw its accreditation of the program.”³ *Id.*

In a document you provide with your request, the ACGME clarifies its requirements regarding induced abortion training in graduate medical education programs.⁴ The ACGME states that “[a]ccess to experience with induced abortion must be part of residency education” and that programs must be structured such that residents may ““opt out’ rather than ‘opt in’ to this curriculum, education, and training.” ACGME Statement at 1. The ACGME also states that a program without a “specific family planning curriculum that includes direct procedural training in abortions . . . unless it is requested by and developed for a resident desiring training” is an opt-in

²See <https://www.acgme.org/About-Us/Overview>. As of July 2020, ACGME is the sole accreditor for graduate medical education. See <https://www.acgme.org/newsroom/2020/7/acgme-aoa-and-aacom-usher-in-new-era-of-single-accreditation-for-graduate-medical-education/>.

³Accreditation implicates federal funding a graduate medical education programs may receive. *See generally Prof'l Massage Training Ctr., Inc. v. Accreditation All. of Career Schs. & Colls.*, 781 F.3d 161, 167 (4th Cir. 2015) (noting that accreditation, among other things, entitles educational institutions to seek Title IV federal student aid funding). There are many sources of federal funds for graduate medical education programs. *See* 42 U.S.C. § 1395ww (providing for graduate medical education payments in support of Medicare program); 38 U.S.C. § 7302 (providing for graduate medical education payments under Veterans Health Administration); 42 U.S.C. § 256e (providing for graduate medical education payments in support of children’s hospitals); 42 U.S.C. 256h (providing graduate medical education payments in support of teaching health centers); *see also* TEX. EDUC. CODE §§ 58A.002 (providing for the permanent fund supporting graduate medical education); 61.0594 (requiring the Higher Education Coordinating Board to administer a program to support graduate medical education programs).

⁴*See Request Letter Attachment - Review Comm. for Obstetrics & Gynecology, Accreditation Council for Graduate Med. Educ., Clarification on Requirements Regarding Family Planning and Contraception (“ACGME Statement”) (on file with the Op. Comm.), also available at https://acgme.org/portals/0/pfassets/programresources/220_obgyn_abortion_training_clarification.pdf.*

curriculum. *Id.* at 2. The ACGME then characterizes an opt-in program as being non-compliant with its accreditation requirements.⁵ *See id.* at 2. With this background and context, we consider your inquiry.

I. Pursuant to the Coats-Snowe Amendment, and contrary to ACGME standards, Texas medical schools may provide training on induced abortions on an opt-in basis.

As discussed above, the Coats-Snowe Amendment prohibits state or local governments receiving federal financial assistance from discriminating against a doctor or student who refuses to undergo induced abortion training, or against a graduate medical education program that refuses to provide or require training in the performance of induced abortions. 42 U.S.C. § 238n(a). Reliance on the ACGME standards, which require induced abortion training, is inconsistent with, and thus conflicts with, federal law. The Coats-Snowe Amendment instructs state and local governments how to respond to such conflicting accreditation standards. It states that

[i]n determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon accreditation standards that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions.

Id. § 238n(b)(1). In other words, the Coats-Snowe Amendment requires the State of Texas to: (1) recognize as accredited any graduate medical education program that does not offer or require induced abortion training if it otherwise meets the licensing or accreditation criteria; and (2) license any doctor or student who completes their training at such a program or who does not otherwise participate in induced abortion training. Thus, while the Coats-Snowe Amendment contains no language directly requiring graduate medical education programs to provide induced abortion training on only an elective, opt-in basis, it effectively disregards ACGME's opt-out accreditation standard and allows those programs to provide abortion training on an opt-in basis without an accreditation consequence.

II. Opt-out induced abortion training may implicate conscience rights of doctors and students.

The language of the Coats-Snowe Amendment does not specify that individual graduate medical education programs must offer opt-in induced abortion training. But a program that forces

⁵We received briefing from several medical programs/universities stating that they have not “been the subject of any inquiry, investigation, or enforcement activity against the ‘opt-in’ training approach.” Brief from Daniel H. Sharphorn, Vice Chancellor & Gen. Counsel, The Univ. of Tex. Sys. at 1 (July 15, 2021); *see* Brief from Robert F. Corrigan, Jr., Senior Vice Pres. & Gen. Counsel, Baylor Coll. of Med. at 1 (July 19, 2021).

a person to affirmatively opt-out of such training potentially implicates other conscience rights of doctors and students. For example, the Texas Religious Freedom Restoration Act (TRFRA) and the federal Religious Freedom Restoration Act (RFRA) protect a person's free exercise of religion. *See TEX. CIV. PRAC. & REM. CODE § 110.003(a); see also id. §§ 110.002* (applying the TRFRA to "any ordinance, rule, order, decision, practice, or other exercise of governmental authority"), 110.008 (waiving sovereign immunity); 42 U.S.C. § 2000bb. Both the TRFRA and the RFRA prohibit the government from substantially burdening a person's free exercise of religion unless it is necessary to further a compelling government interest and is the least restrictive means of furthering that interest. *See TEX. CIV. PRAC. & REM. CODE § 110.003(b); 42 U.S.C. § 2000bb(a)(3)* (prohibiting governments from substantially burdening religious exercise without compelling justification). To the extent no compelling government interest exists for requiring doctors and students with conflicting religious beliefs to undergo such training, the State's or medical school's adherence to opt-out requirements could violate the TRFRA and the RFRA. Similarly, a court could determine the State's or a medical school's adherence to an opt-out abortion training requirement violates the First Amendment to the extent it coerces a person to forgo his or her First Amendment rights. *Cf. Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018) (holding that forced deduction of union dues where it was difficult to challenge the dues unconstitutionally coerced speech). Given these constitutional and statutory concerns, a graduate medical education program should implement opt-in induced abortion training.

S U M M A R Y

The Coats-Snowe Amendment, found in 42 U.S.C. § 238n, prohibits the State of Texas from discriminating against physicians, medical students, or graduate medical education training programs for their refusal to participate in abortion related training. It requires the State of Texas to disregard Accreditation Council for Graduate Medical Education accreditation standards that compel the provision of induced abortion training on an opt-out basis, thereby allowing graduate medical education programs to provide induced abortion training on an elective, opt-in basis.

Furthermore, a graduate medical education training program that forces a person to affirmatively opt-out of such training raises constitutional and religious freedom concerns and implicates conscience rights of doctors and students. Given these constitutional and statutory concerns, a graduate medical education program should implement opt-in induced abortion training.

Very truly yours,



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