Office of the New York State Attorney General

Letitia James Attorney General

TESTIMONY TO THE CHAIR OF THE AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES REFERENCE COMMITTEE C IN RESPONSE TO REPORT 4 OF THE COUNCIL ON MEDICAL EDUCATION

SUBMITTED BY THE STATES OF NEW YORK, CALIFORNIA, MASSACHUSETTS, COLORADO, CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAIʻI, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON

May 22, 2025

Via electronic submission through the AMA Online Reference Committee portal.

Introduction

The undersigned attorneys general appreciate the opportunity to submit written testimony to the Chair of the American Medical Association House of Delegates Reference Committee C, in response to Council on Medical Education Report 4, "Access to Restricted Health Services When Completing Physician Certification Exams" (the "Report"), and its recommended amendment to AMA Policy D-275.944, which we understand are under consideration for adoption by the House of Delegates at its upcoming meeting in June. The Report, which was proposed pursuant to Resolution 07-A-24, "Access to Reproductive Health Services When Completing Physician Certification Exams," adopted by the House of Delegates last June, addresses the requirements imposed by certain medical specialty boards ("Boards") that examinees (known as "diplomates") sit for certain certifying examinations in person in states where they face potential liability or where their own health or security may be in jeopardy as a result of bans on abortion or gender-affirming medical care or other restrictions related to gender identity.[1]

Across the United States, health care providers are facing an increasingly hostile legal environment and a starkly divided health care delivery landscape. It is essential that providers of abortion and gender-affirming care within our states are able to obtain medical certification, which is essential to advancement in today's competitive medical environment, without risking legal liability or jeopardizing their personal safety and security. And while we understand the Boards' commitment to equity and to maintaining the highest standards in the administration of certifying exams, we are confident those goals can be met without subjecting diplomates to unnecessary risks.

We commend the AMA Council on Medical Education for its thorough examination of these issues, and its recognition and "support [for] the physical and psychological safety of board examination candidates when taking certification examinations." Report at 12. However, that statement of support, while a necessary and important step, does not go far enough. **It is critical that the AMA include a more concrete recommended course of action to help guide the Boards in responding to these new realities in the manner most protective of diplomates seeking to earn or maintain certification in their respective fields.**

We therefore urge the AMA to supplement the policy recommended in the Report to not only adopt a policy that AMA "supports the physical and psychological safety" of diplomates, but also to include specific recommendations as to what steps the Boards should take to deliver on that promise of support. The policy recommendations should specify that **the medical specialty boards requiring in-person testing within a restrictive states should either (A) change their in-person testing location to a non-restrictive state, (B) switch to an all-remote testing modality, or (C) *grant* individual requests for exemption from any in-person testing requirements in restrictive states from diplomates who face heightened legal or physical risks—relating either to the type of care they provide or to their pregnancy status or gender identity. Such exemptions should include either designating alternative sites for in-person testing in non-restrictive states or utilizing remote examination.** These recommendations are in line with other AMA policies relating to testing accommodations and would provide stronger encouragement to the Boards to take immediate steps to safeguard diplomates' physical and psychological safety in this increasingly hazardous landscape.

Background

In 2022, in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned over half a century of precedent recognizing constitutional protection for the right to abortion and returned the regulation of abortion to the states. As the Report accurately reflects, the removal of this national, baseline standard has engendered a patchwork of state laws either restricting or protecting abortion. Sixteen states have complete or near-complete bans on abortion in place (including bans that apply at 6 weeks' gestation, when most people do not know they are pregnant).[2] Many of these laws impose severe criminal penalties as well as civil liability on health care providers. This has created vast reproductive health care deserts, necessitating travel out of state to obtain this form of basic medical care and radically changing patterns of health care delivery nationwide.

The Report also appropriately recognizes that in the years since *Dobbs*, many of the same states that have banned abortion have rushed to impose restrictions on or otherwise penalize providers of gender-affirming care. Over 25 states currently restrict access to gender-affirming care, with 6 imposing felony criminal liability.[3] Many of the same states have also enacted other laws, such as bans on using restrooms consistent with gender identity, stripping transgender individuals of equal rights and dignity.[4] This, too, has had dramatic effects on travel patterns, in health care and beyond. In one survey of transgender individuals, for example, "nearly half (47%) of respondents had thought about moving to another state because their state government considered or passed laws that target transgender people for unequal treatment (such as banning

access to bathrooms, health care, or sports), and 5% of respondents had actually moved out of state because of such state action."[5]

To make matters worse, numerous state attorneys general who oppose abortion have signaled their intention to apply their restrictive laws as broadly and aggressively as possible and even to attempt to reach across state lines.[6] Those efforts have ramped up in recent months, with a particular focus on targeting providers of medication abortion via telemedicine.[7] Other states have enacted laws prohibiting "abortion trafficking"—i.e. helping a minor obtain an abortion outside of a state where it is banned.[8] And states including Texas have prohibited medical providers from providing gender-affirming care, with Texas officials classifying the provision of gender-affirming care as "child abuse"[9] and taking steps to obtain medical records and prosecute providers of that care across state lines.[10] These state officials have made clear their intent to intimidate and punish providers of these forms of health care no matter where the care was provided.

Against this increasingly hostile landscape, other states, including ours, have chosen the opposite course, enacting laws and constitutional amendments to expand protections for abortion and gender-affirming care. These laws and policies reflect the core belief that everyone deserves to live a life of dignity, free from discrimination or coercion, and that includes affording access to basic, medically necessary health care—including abortion and gender-affirming care. Accordingly, many of our state laws contain strong protections against discrimination on the basis of sex, sexual orientation, and gender-identity in housing, employment, health care, and places of public accommodation.[11] Several of our state laws expressly protect gender-affirming care and/or reproductive health care as a fundamental right via statute or constitutional amendment.[12] And in specific response to the increasingly threatening legal landscape, many of our state legislatures have enacted "shield laws," which aim to protect providers of reproductive or gender-affirming health care in our states from efforts originating outside of our states to penalize that care—although such laws cannot prevent another state from imposing penalties within their own borders.[13] Additionally, several of our states have taken steps to ensure that those who provide, seek, or facilitate such care within our states have access to legal counsel to advise them on their rights, as well as potential liability and risk mitigation, including with respect to out-of-state travel.[14]

Correspondence with ABOG

We were pleased to see that the Report acknowledges the advocacy our offices have engaged in around the American Board of Obstetrics and Gynecology (ABOG) policy requiring diplomates sitting for OB/GYN certification exams to travel to Dallas, Texas for in-person testing. We provide further context for that advocacy here.

Our offices were deeply concerned to learn that several diplomates for ABOG certification who practice in some of our states had sought a waiver of the in-person testing requirement—which ABOG had refused. Those candidates feared that their presence in Texas

would place them in legal or physical jeopardy due to their provision of abortion care to patients from outside of our states or due to their pregnancy status.

As it turns out, ABOG's position was not new: Following the enactment of Texas Senate Bill 8 (SB8), which created civil legal liability for any medical provider who provided abortion care after six weeks' gestation to a Texas resident, ABOG had defended its decision to hold the tests at its newly-built headquarters in Texas, arguing that the "geographic location of ABOG's headquarters will not matter."[15]

But it does matter. As the Report recognizes, the comparative legal and health risks in the post-*Dobbs* landscape vary dramatically from state to state. But in reality, few states' regimes are as draconian as that of Texas. Even before *Dobbs*, the enactment of SB8 in 2021 broadly deputized members of the public at large to bring private, vigilante lawsuits against abortion providers for performing or inducing abortion after detection of cardiac activity, or approximately six weeks' gestation, as well as against anyone who aids or abets a violation.[16] The statute establishes civil penalties of "not less than $100,000" for each violation plus attorneys' fees, as well as revocation of medical licensure.[17] Beyond this potentially vast civil liability, the law threatens severe criminal penalties. Under the "trigger" ban which went into effect 30 days after *Dobbs* was decided, performing or attempting to perform an abortion, from the moment of fertilization, is now a first-degree felony punishable by up to life in prison, ABOG has repeatedly sought to deny or minimize the legal risks to diplomates, emphasizing local laws and pledges from local officials not to prosecute. But, as discussed further below, these assurances ring hollow in light of the bounty hunter provisions of SB 8, which incentivize suits from *private* actors, and the overt threats and subsequent actions of the Texas Attorney General and other law enforcement entities to apply state abortion bans to providers outside of their states' borders.[18] And they fail to account for the mounting evidence of physical and psychological risks to pregnant individuals posed by Texas laws.[19]

In light of these considerable risks, our offices reached out to ABOG to highlight the legitimate fears of diplomates in our states seeking certification and offered to collaborate on identifying alternatives to in-person testing.[20] ABOG initially responded that although it "support[s] OB GYNs in their practices and support[s] those who provide comprehensive reproductive health care to the patients and families they serve," they would "continue to hold firm on our current stance on in-person testing and accommodation."[21] Although ABOG's counsel later engaged with members of our staff and indicated a willingness to consider adopting an accommodation policy, those negotiations soon stalled. We later learned that as of January 28, 2025, another group of diplomates for the Complex Family Planning certifying exam had sought from ABOG and been denied exemption from in-person testing for the exam,[22] and an additional doctor was denied an exemption as recently as May 6, 2025.[23] Thus, despite the representation in the Report that adoption of an accommodation policy remains "under consideration" by ABOG, ABOG has continued to deny such accommodation requests.

ABOG's denial of accommodation requests is particularly striking in light of AMA Policy D-275.944, "Access to Reproductive Health Services When Completing Physician Certification Exams," in which the AMA "encourage[s] national specialty boards who hold in-

person centralized mandatory exams for board certification to provide alternate options when those exams take place in states with laws banning or restricting abortion, gender-affirming care, or reproductive healthcare services such that travel to those states would present either a limitation in access to necessary medical care, or threat of civil or criminal penalty against examinees and examiners." In light of the legal and medical risks to examinees that we outline below, ABOG's refusals directly contradict the AMA's policy.

Legal and Medical Risks to Diplomates Traveling to Restrictive Jurisdictions

ABOG's position points to a broader problem and a need for reform across the medical specialties that the AMA is well-positioned to address. It should do so forcefully. The Report correctly underscores that the above punitive measures are designed to chill provision of care, and that they have effectively done so inside and outside of the state of Texas. Yet, in echoing ABOG's reassurances to diplomates, which place undue emphasis on the lack of prosecutions to-date, the lack of documented impact on diplomates, and the safety measures ABOG has put in place, the Report risks trivializing the risks of legal liability as well as physical and psychological harm. And significantly, despite its stated intent to focus on the concerns of diplomates "due to the disproportionate impact," Report at 4, the Report does not indicate that it interviewed examinees themselves, or recount the impacts from their point of view—although it outlines in detail, through direct quotes, the concerns of examiners, board members, and the American Board of Medical Specialties (ABMS), along with restating ABOG's justifications for maintaining its in-person testing requirement.

But diplomates' concerns are real. Although we share the Report's conclusion—along with ABOG's—that there is nothing unlawful in providing abortion or gender-affirming care that is otherwise lawful within our states, regardless of the patient's state of residence, there is no denying that the web of confusing and punitive state-based restrictions creates a legal minefield for medical providers. Despite the lack of prosecutions to-date in connection with the ABOG certification exam, these laws are on the books and cannot simply be ignored. It is impossible to guarantee that members of the public or local prosecutors will not initiate a legal action against a provider in connection with caring for individuals from outside of their states.[24] Indeed, at least one anti-choice group has publicly announced that it is actively recruiting individuals, including disgruntled ex-boyfriends, to bring cases under SB8's bounty hunter provision.[25]

Even if such proceedings are ultimately dismissed or otherwise deemed unenforceable, the Report ignores that any providers who are targeted could be served with process while visiting the jurisdiction, potentially bringing them under the jurisdiction of courts in that state. The considerable burden and expense of defending against such legal actions, even if those actions are found ultimately to be meritless, will divert practitioners' time and attention from providing much-needed medical care within our states.[26] Requiring in-person testing in restrictive jurisdictions will create a toehold for such vexatious litigation now or in the future. Indeed, it is for precisely these reasons that many of our states have taken steps to shore up

protections for providers of abortion and gender-affirming care from the consequences of such legal actions. Requiring providers to expose themselves to these risks could deter clinicians from gaining certification that can be critical to advancement in their field, contributing to a shortage of providers and further impeding access to care.

As to pregnant individuals, the risks to their physical health and safety is no longer merely anecdotal. Mounting evidence shows that abortion bans interfere with doctors' ability to provide evidence-based care and cause avoidable harm to patients.[27] Consequently, the risks of being forced to travel to states where abortion is not permitted even in medical emergencies are grave.[28] As the Report accurately reflects, and the AMA is well aware, a range of medical conditions can trigger an emergency requiring an immediate abortion to save the life or health of the pregnant patient—medical care that would likely be withheld in many such states. In such cases, as the AMA has recognized, "[a] delay of even a few minutes can lead to a devastating outcome."[29] For example, in the wake of SB8, the rate of maternal mortality for individuals presenting with certain pregnancy complications at two Texas hospitals nearly *doubled* (from 33% to 57%).[30] One of these subject hospitals, UT Southwestern, is the hospital that ABOG has partnered with to provide emergency care should issues arise during its certifying exam.[31]

While it is correct that "the Texas Medical Board has recently clarified that 'imminence of death or impairment of a major bodily function is not required' for legal emergency reproductive care under the state's abortion ban,"[32] the Texas Supreme Court also recently held that the medical emergency exception is limited to circumstances "where an abortion is indicated to avert *death or serious physical impairment*." This excludes circumstances where there is a risk to a woman's *health*, including risks to future fertility, as well as cases where there is a fatal fetal anomaly. Texas has moreover taken the position that the Emergency Medical Treatment and Active Labor Act (EMTALA) does not require provision of abortion services in most circumstances that constitute medical emergencies.[33] The Report, like ABOG, therefore severely understates the risk to pregnant diplomates in the case of a medical emergency. And even though, as the Report estimates, the number of individuals impacted is likely relatively small, *no* pregnant diplomate should have to place their health at *any* level of risk as a condition of obtaining certification in their chosen field.

Transgender, nonbinary and gender-queer individuals face a distinct, but related, set of risks. As the Report recognizes, many states also have laws and policies in place preventing transgender individuals from using facilities consistent with their gender identity, with several (19) that expressly ban gender-consistent restroom use in schools, public buildings, colleges, and/or other public spaces, and two states (Utah and Florida) that make this a criminal offense.[34] As the AMA has previously recognized, such restrictions can "lead[] to negative health outcomes and heighten[] stigma and discrimination."[35] Travel to certain states further poses risk that identity documents will be questioned, and may subject transgender and gender non-conforming individuals—and particularly people of color—to heightened risk of harassment or other harms.[36] Thus, barriers to addressing basic bodily functions during the test, as well as psychological risks during the entire trip, would have obvious effects that could negatively impact diplomates' test-taking conditions and lead to worse outcomes.

Any one of these risks alone would be unacceptable. There is simply no valid reason for the Boards to insist on conducting testing under such hostile conditions.

Recommendations

As the Report recognizes, the Boards have several alternatives at their disposal. Regardless of whether, or which, of the below policy recommendations are adopted, our states stand ready to assist in providing alternative testing locations within our borders. We believe the AMA needs to adopt one or more of these concrete proposals in light of accommodation refusals like ABOG's even after Policy D-275.944, through which the AMA already "encourage[s]" boards to "provide alternate options" without specific examples.

The first option is to relocate the testing sites to states that do not currently impose restrictions on abortion or gender-affirming care. While the Report is correct in its observation that the rapidly shifting legal landscape may make such adjustments difficult at a practical level, we note that several states have enacted constitutional amendments protecting gender identity, pregnancy, and/or abortion rights—which provide more enduring legal protections.

The second option is switching to a model in which all diplomates sit for exams remotely. Experience shifting to remote testing during the COVID-19 pandemic shows that this approach is feasible.[37] In fact, a study of ABOG's experience administering the remote exam during the pandemic concluded that conducting its certifying examinations remotely did not significantly affect either the quality of results or the equity of exam administration conditions.[38] Further evidence since the pandemic is confirming that the results are comparable between remote and in-person testing. For example, one recent study across different specialty examinations showed no significant differences in test results or candidate reactions to proctor interactions, different testing modes, or the testing environment.[39] In light of this emerging evidence, the AMA could adopt a policy more explicitly encouraging Boards to consider switching to an all-remote testing option, either at a proctored facility in a state that does not pose the same risks, or in the diplomates' own homes.

However, in light of the variability in the needs and standards of the various specialties identified in the Report, we recognize that some specialty boards may prefer a more individualized approach. The third option is therefore to adopt a policy specifying that the Boards that continue to require in-person testing in restrictive states **should grant individual requests for exemption from the in-person testing requirement and permit diplomates to sit for exams remotely upon request**. The AMA should make clear that in establishing such a policy, each Board should ensure that eligibility criteria for exemption at a minimum must include anyone who has a good-faith fear of traveling to the state where the test is administered due to (a) civil or criminal liability or threats to their physical safety because of procedures the provider performs in the course of their professional duties, (b) their status as a pregnant person, at any stage of gestation, at the time the exam is to be administered, or (c) their gender identity.

This suggested approach is in line with the policy "Accommodating Lactating Individuals Taking Medical Examinations" (H-295.861), included in the Report. *See* Report at 14. The Boards should moreover be well-equipped to field such requests, since as the Report reflects, accommodation requests are already routinely addressed for diplomates with disabilities as is legally required under the Americans with Disabilities Act and various states' analogous laws.

A draft proposal for an individual accommodation policy, the substance of which was previously shared with ABOG, is appended below. That draft policy includes the following key components:

- It includes clear criteria and sets out procedures for evaluating exemption requests.
- It contains safeguards to ensure that applicants for exemption are not required to produce any documentation, such as written declarations that they provide care to people coming into their states from the state where the testing site is located, or proof of their own pregnancy or gender identity, that could jeopardize the confidentiality of their patients or subject themselves to further risk.
- It specifies that the board will not retain records containing any personally identifying information associated with exemption requests.

* * * *

Conclusion

The continued availability of abortion services and gender-affirming care is critical to the residents of our states, and we are committed to ensuring they remain accessible within our borders to all who need them. We also share the firm belief that there is nothing unlawful in providing abortion or gender-affirming care to individuals who travel from states where these services are banned to states where they are lawful. We stand ready to do everything within our power to ensure that our providers and clinics can gain certification in their chosen fields and continue providing care free from disruption, intimidation, or fear.

We understand and share the AMA's commitment to supporting the Boards' mission of maintaining the highest standards for accreditation and improving equity. However, the risks and costs of requiring in-person testing in states that restrict access to or otherwise penalize abortion or gender-affirming care, or that target individuals based on gender-identity, are unacceptable and unnecessary. The AMA must do everything in its power to encourage Boards to lessen rather than add to the pressures facing those who provide or receive such care. We therefore urge the House of Delegates to supplement the policy recommendations presented by the Committee on Continuing Medical Education and adopt the more concrete and actionable set of policy recommendations outlined above. We stand ready to partner with the AMA and with the various Boards in their efforts to effectuate those recommendations as swiftly as possible.

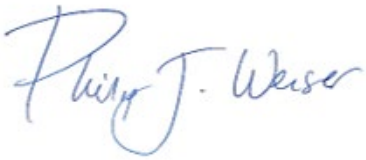
Sincerely,

LETITIA JAMES
New York Attorney General

ANDREA JOY CAMPBELL
Massachusetts Attorney General

ROB BONTA
California Attorney General

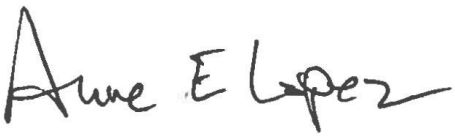
WILLIAM TONG
Connecticut Attorney General



PHILIP J. WEISER
Colorado Attorney General

KATHLEEN JENNINGS
Delaware Attorney General

BRIAN L. SCHWALB
District of Columbia Attorney General



ANNE E. LOPEZ
Hawai‘i Attorney General

KWAME RAOUL
Illinois Attorney General

AARON M. FREY
Maine Attorney General

Signatures continue on next page

ANTHONY G. BROWN
Maryland Attorney General

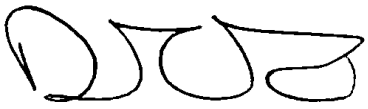
DANA NESSEL
Michigan Attorney General

KEITH ELLISON
Minnesota Attorney General

AARON D. FORD
Nevada Attorney General

MATTHEW J. PLATKIN
New Jersey Attorney General

RAÚL TORREZ
New Mexico Attorney General



DAN RAYFIELD
Oregon Attorney General

PETER F. NERONHA
Rhode Island Attorney General

CHARITY N. CLARK
Vermont Attorney General

NICK BROWN
Washington State Attorney General

ENDNOTES

[1] *Access to Reproductive Health Services When Completing Physician Certification Exams D-275.944*, Am. Med. Ass'n (2024), https://policysearch.ama-assn.org/policyfinder/detail/reproductive?uri=%2FAMADoc%2Fdirectives.xml-D-275.944.xml.

[2] Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. Times (Mar. 6, 2025, 5:48 PM), https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html.

[3] *See Bans on Best Practice Medical Care for Transgender Youth*, Movement Advancement Project, https://www.lgbtmap.org/equality-maps/healthcare_youth_medical_care_bans (last visited Apr. 24, 2025).

[4] *See Snapshot: LGBTQ Equality By State*, Movement Advancement Project, https://www.lgbtmap.org/equality-maps (last visited Apr. 24, 2025); *LGBTQ+ Travel in America: A Snapshot*, Tripadvisor, https://www.tripadvisor.com/business/insights/hotels/resources/lgbtq-travel-in-america-a-snapshot (last visited Apr. 24, 2025) (survey results showing that 33% of travelers within the U.S. had experienced discrimination because of their LGBTQ+ identity, and safety concerns were highest among travelers of color).

[5] *See* Sandy E. James et al., *2022 U.S. Trans Survey: Early Insights*, Nat'l Ctr. for Transgender Equality(Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

[6] *See Fund Texas Choice v. Paxton*, 658 F. Supp. 3d 377 (W.D. Tex. Feb. 24, 2023); *see also Planned Parenthood Great Northwest v. Labrador*, No. 1:23-CV-00142 (D. Idaho July 31, 2023) (challenge to Idaho Attorney General's interpretation of state law as prohibiting assisting individuals in obtaining abortion outside of the state).

[7] *See* Caroline Kitchener, *Antiabortion advocates look for men to report their partners' abortions*, Wash. Post (Jan. 17, 2025), https://www.washingtonpost.com/investigations/2025/01/17/texas-abortion-pills-lawsuit/; Jamie Stengle, *New York doctor is fined in Texas, charged in Louisiana over abortion pills in tests of shield laws*, Associated Press, (Feb. 14, 2025, 5:57 PM), https://apnews.com/article/abortion-doctor-maggie-carpenter-pills-847112cde026e29333c3481310593582#.

[8] *See Yellowhammer Fund v. Marshall*, No. 23-CV-450-MHT, 2025 WL 959948 (M.D. Ala. Mar. 31, 2025).

[9] Press Release, *Office of the Tex. Gov., Gov. Abbott Directs DFPS to Investigate Gender-Transitioning Procedures as Child Abuse* (Feb. 22, 2022), https://gov.texas.gov/news/post/governor-abbott-directs-dfps-to-investigate-gender-transitioning-procedures-as-child-abuse; Tex. Fam. Code Ann. § 261.001 (West 2023); *see also* Tex. Health & Saf. Code Ann. § 161.702 (prohibiting gender-affirming care for minors); *id.* § 161.706 (Attorney General enforcement powers regarding prohibition on gender-affirming care).

[10] Paul J. Weber, *Seattle hospital says Texas attorney general asked for records about transgender care for children*, Associated Press (Dec 22, 2023, 3:15 PM), https://apnews.com/article/texas-transgender-paxton-seattle-a6af41985e566beaf381c855fd6e0379.

[11] *See, e.g.*, Cal. Civ. Code §§ 51(b), 51(e)(6) (West 2025); Cal. Gov't Code § 12940(a) (West 2025); Cal. Gov't Code § 12955 (West 2024); Md. Code Ann. Educ. § 26-704 (2022); Md. Code Ann. State Gov't §§ 20-201, *et seq.* (2024); Md. Code Ann. Health Gen. §§ 2-1001, *et seq.*; Mass. Gen. Laws ch. 151B, § 4 (2024); Mass. Gen. Laws ch. 272, §§ 92A, 98 (2016); Conn. Gen. Stat. § 10-15c (2024); Conn. Gen. Stat. § 46a-58 *et seq*. (2023); Del. Code Ann. tit. 6, § 4500 *et seq.*; Del. Code Ann. tit. 6, §§ 4600 *et seq.*; Del. Code Ann. tit. 19, §§ 701 *et seq.*; D.C. Code §§ 2-1401.01 *et seq*. (2022); Haw. Rev. Stat. § 368-1 (2011); Haw. Rev. Stat. § 378-2 (2021); Haw. Rev. Stat. § 489-3 (2019), Haw. Rev. Stat. § 515-3 (2022); 775 Ill. Comp. Stat. 5/1-102(A), -103(O-1), -103(Q) (2025); Me. Rev. Stat. Ann. tit. 5, §§ 4551 *et seq.* (West 1972); Minn. Stat. § 363A.03, subd. 50 (2024); Minn. Stat. §§ 363A.01 *et seq.* (2024); Nev. Rev. Stat. §

118.100 (2011); Nev. Rev. Stat. § 284.150(3) (2023); Nev. Rev. Stat. § 439.994 (2013); Nev. Rev. Stat. § 449.101(1) (2020); Nev. Rev. Stat. § 613.330 (2018); N.J. Stat. Ann. §§ 10:5-1 *et seq.* (1945); N.J. Stat. Ann. § 17:48-6*oo* (2017); N.J. Stat. Ann. § 18A:36-41 (2017); N.Y. Exec. Law §§ 296, -a, -b (McKinney 2025); N.Y. Civ. Rights Law § 40-c (McKinney 2019); N.Y. Comp. Codes R. & Regs. tit. 9, § 466.13 (2020); Or. Rev. Stat. § 659A.006 (2021); Or. Rev. Stat. § 659A.030 (2022); Or. Rev. Stat. § 659A.403 (2021); Or. Rev. Stat. § 659A.421 (2021); 11 R.I. Gen. Laws § 11-24-2; 23 R.I. Gen. Laws § 23-17-19; 28 R.I. Gen. Laws §§ 28-5-5; 28 R.I. Gen. Laws § 28-5.1-12; 28 R.I. Gen. Laws § 28-6-18; 23 R.I. Gen. Laws § 23-17-19; 34 R.I. Gen. Laws §§ 34-37-2, -4, -4.3, -5.2, -5.3, -5.4; Vt. Stat. Ann. tit. 9, §§ 4502, 4503 (2015); Vt. Stat. Ann. tit. 21, § 495 (2023); Wash. Rev. Code §§ 49.60.030(1), .040(2), .040(29), .215.

[12] N.Y. Const. art. 1, § 11 (2025); S.240/A.21 (2019), codified at N.Y. Pub. Health L. § 2599-bb(1); Ariz. Const. art. 2, § 8.1 (2024); Cal. Const. art. I, § 1.1 (2022); Colo. Const. art. 2, § 32 (2024); Colo. Rev. Stat. § 25-6-403 (2022); Haw. Const. art. 1, § 6 (1978); Haw. Rev. Stat. § 453-16 (2023); 775 Ill. Comp. Stat. 55/1-15; Mass. Gen. Laws, ch. 127 (2022); Md. Const. Decl. of Rts art. 48 (2024); Mich. Comp. Laws § 333.26103 (2024); Nev. Const. art. 1, § 25 (2023); N.J. Stat. Ann. § 10:7-2 (2022); Or. Rev. Stat. § 435.210 (2023); Wash. Rev. Code § 9.02.100 (2022).

[13] *See, e.g.,* Cal. Civ. Code § 56.109 (West 2023); Md. Code Ann. Cts. & Jud. Proc. 9-302, 9-402, 10-408, 11-802; Md. Code Ann. Crim. Proc. § 9-106; Md. Code Ann. Health Occ. § 1-227; (2023 & 2024);Md. Code Ann., State Pers. & Pens. § 2-312 (2023 & 2024); Mass. Gen. Laws ch. 12, § 11i 1/2(b)-(d) (2022); Mass. Gen. Laws ch. 147, § 63 (2022); Mass. Gen. Laws ch. 276, § 13 (West 2022); Colo. Rev. Stat. Ann. § 10-16-121(1)(f) (West 2023); Colo. Rev. Stat. Ann. § 12-30-121 (West 2023); Colo. Rev. Stat. Ann. § 13-21-133 (West 2023) (amended at 2025 Colo. Legis Serv. 25-129 (2025)); Colo. Rev. Stat. Ann. §§ 16-3-102, -301 (West 2023); Conn. Gen. Stat. §19a-17e (2023); Conn. Gen. Stat. § 52-146w, -146x (2022); Conn. Gen. Stat. § 52-571m, -571n (2023); Conn. Gen. Stat. § 54-155b (2022); 735 Ill. Comp. Stat. 40/28-10, -11 (West 2024); Me. Rev. Stat. Ann. tit. 14, §§ 9001 *et seq.* (2024); Me. Rev. Stat. Ann. tit. 22, § 1508 (2023); 2023 Minn. Laws, 29 (2023); N.Y. Exec. Law § 837-x (McKinney 2023); N.Y. Comp. Codes R. & Regs. tit. 10, § 405.7(c)(2) (2019); Or. Rev. Stat. § 15.430 (2023); Or. Rev. Stat. § 24.500 (2023); Or. Rev. Stat. § 414.769 (2023); Or. Rev. Stat. § 435.210 (2023); Or. Rev. Stat. § 435.240 (2024); Vt. Stat. Ann. tit. 12, §§ 7301 *et seq*. (West 2023); Wash. Rev. Code §§ 7.115 *et seq.*(2023); 55 N.J. Reg. 776(a) (May 1, 2023); *see also* Amanda Barrow & Carley Towne, *Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide*, UCLA Sch. of L. Williams Inst. (Aug. 2024), https://williamsinstitute.law.ucla.edu/publications/shield-laws-fact-sheets/.

[14] *Reproductive rights*, Off. of the N.Y. State Att'y Gen., https://ag.ny.gov/resources/individuals/health-care-insurance/reproductive-rights-abortion-legal-new-york#hotline (last visited Apr. 24, 2025); Attorney General Bonta: As Attacks on Reproductive Rights Persist, California Will Continue to Lead Nationwide Defense, https://oag.ca.gov/news/press-releases/attorney-general-bonta-attacks-reproductive-rights-persist-california-will.

[15] *See Statement Regarding ABOG Headquarters and Texas SB4 and SB8*, Am. Bd. of Obstetrics & Gynecology (Oct. 29, 2021), https://www.abog.org/about-abog/news-announcements/2021/10/29/statement-regarding-abog-headquarters-and-texas-sb4-and-sb8.

[16] *See* Tex. Health & Safety Code Ann. § 171.204(a) (West 2021).

[17] *See* Tex. Health & Safety Code Ann. §§ 170A.001 *et seq*. (West 2022); Tex. Penal Code Ann. § 12.32 (West 2009).

[18] *See* Caroline Kitchener, *Antiabortion advocates look for men to report their partners' abortions*, Wash. Post (Jan. 17, 2025), https://www.washingtonpost.com/investigations/2025/01/17/texas-abortion-pills-lawsuit/; Jamie Stengle, *New York doctor is fined in Texas, charged in Louisiana over abortion pills in*

tests of shield laws, Associated Press, (Feb. 14, 2025, 5:57 PM), https://apnews.com/article/abortion-doctor-maggie-carpenter-pills-847112cde026e29333c3481310593582#.

[19] Eleanor Klibanoff, *Doctors report compromising care out of fear of Texas abortion law*, Texas Trib. (June 23, 2022, at 5:00 PM), https://www.texastribune.org/2022/06/23/texas-abortion-law-doctors-delay-care/; *see also* Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans—Texas Senate Bill 8*, 387 New Eng. J. of Med. 388 (2022), https://sites.utexas.edu/txpep/files/2022/07/nejm_PreviewoftheDangerousFutureofAbortionBans.pdf.

[20] *See* Letter to Amy Young, Executive Director, Am. Bd. Of Obstetrics & Gynecology, & John Polzer, Duane Morris LLP from Attorney General Letitia James and 23 State Attorneys General, Nov. 22, 2023 (Attached as Exhibit A).

[21] Letter to Attorney General Letitia James from Amy E. Young, M.D., Executive Director, Am. Bd. Of Obstetrics & Gynecology, Nov. 28, 2024 (Attached as Exhibit B).

[22] Email to [addressee redacted] and Members of ABOG from [names redacted], Jan. 6, 2025 (attached as Exhibit C); Letter to Dr. Young and Members of ABOG from [name redacted] (no date) (Attached as Exhibit D); Letter to [name redacted] from ABOG from Amy E. Young, M.D., Executive Director, ABOG and Sadia Hader, MDD, MPH, CFP Division Chair, ABOG, Jan. 28, 2025 (Attached as Exhibit E).

[23] *See* Letter to Amy Young, MD, from Dr. Joseph Ottolenghi, Apr. 22, 2025 (Attached as Exhibit F); Email to Joseph Ottolenghi from Amy Young, MD, May 5, 2025 (Attached as Exhibit G).

[24] *See, e.g.,* ACLU of Texas, *Abortion in Texas*, https://www.aclutx.org/en/know-your-rights/abortion-texas (Aug. 29, 2022) (*"[W]hile it is not possible to guarantee that people attempting to enforce these criminal laws or SB 8 will not bring a lawsuit against Texans who refer or provide assistance to patients seeking abortion care out of state,* these laws *do not* apply to out-of-state abortions." (emphasis added)).

[25] *See* Caroline Kitchener, *Antiabortion advocates look for men to report their partners' abortions*, Wash. Post, Jan. 17, 2025, https://www.washingtonpost.com/investigations/2025/01/17/texas-abortion-pills-lawsuit/.

[26] *See* Emily Bazelon, *Risking Everything to Offer Abortions Across State Lines*, N.Y. Times, https://www.nytimes.com/2022/10/04/magazine/abortion-interstate-travel-post-roe.html (June 15, 2023).

[27] Daniel Grossman et al., Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision, Advancing New Standards in Reprod. Health (Sept. 2024), https://www.ansirh.org/sites/default/files/2024-09/ANSIRH%20Care%20Post-Roe%20Report%209.04.24_FINAL%20EMBARGOED_0.pdf.

[28] *See* Tex. Health & Safety Code Ann. § 170A.002 (West 2022); Tex. Health & Safety Code Ann. § 171.205(a) (West 2021) (allowing affirmative defense for providing an abortion only for "a life-threatening physical condition . . . that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function.").

[29] Jack Resneck, Jr., *Idaho abortion law undermines core medical ethics*, Am. Med. Ass'n, (Apr. 22, 2024), https://www.ama-assn.org/about/leadership/idaho-abortion-law-undermines-core-medical-ethics.

[30] Anjali Nambiar et al., *Maternal morbidity and fetal outcomes among pregnant women at 22 weeks' gestation or less with complications in 2 Texas hospitals after legislation on abortion*, 227 Am. J. Obstetrics & Gynecology 4 (2022), https://www.ajog.org/article/S0002-9378(22)00536-1/fulltext.

[31] *See In-Person Certifying Exam FAQs*, Am. Bd. of Obstetrics & Gynecology, https://www.abog.org/about-abog/faqs/in-person-certifying-exam ("ABOG has a long history of partnership with UT Southwestern Medical Center, located near the ABOG National Center, to provide high-quality medical care in case of unforeseen emergencies during the exam.").

[32] *See* Report at 7, *quoting* 22 TAC §§165.7 - 165.9.

[33] *See Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *appeal filed* No.23-10246, *and cert. denied*, 145 S. Ct. 139 (2024).

[34] *Bans on Transgender People Using Public Bathrooms and Facilities According to their Gender Identity*, Movement Advancement Project, https://www.mapresearch.org/equality-maps/nondiscrimination/bathroom_bans (last visited Apr. 24, 2025).

[35] Tanya Albert Henry, *Exclusionary bathroom policies harm transgender students*, Am. Med. Ass'n (Apr. 17, 2019), https://www.ama-assn.org/delivering-care/population-care/exclusionary-bathroom-policies-harm-transgender-students; *Access to Basic Human Services for Transgender Individuals* H-65.964, Am. Med. Ass'n (2017), https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-H-65.964.xml.

[36] *See* sources cited *supra* note 4.

[37] Indeed, in response to safety concerns in the immediate aftermath of the *Dobbs* ruling, the Board transitioned to a remote format for the 2022 exam. *See COVID-19 Updates*, Am. Bd. of Obstetrics & Gynecology, https://www.abog.org/covid-19-updates (last visited Apr. 25, 2025).

[38] *See* Pooja Shivraj et al., *The American Board of Obstetrics and Gynecology's remote certifying examination: successes and challenges*, Am. J. of Obstetrics & Gynecology (Nov. 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9720485/pdf/main.pdf (reporting no measurable difference in pass rates, success rates of 100% in administering the exam in a timely manner, no security concerns, and a low rate (1.1%) of reported technical issues in administering the exams remotely during the pandemic). Despite these results of its own experience with remote testing, ABOG has relied on arguments about consistency of testing experience, bias, inequities, and security concerns, to justify its return to in-person testing. *See* ABOG, *In-Person Certifying Exam FAQs*, https://www.abog.org/about-abog/faqs/in-person-certifying-exam.

[39] *See* Gregory M. Hurtz & John A. Weiner, *Comparability and Integrity of Online Remote vs. Onsite Proctored Credentialing Exams*, 23 J. of Applied Testing Tech. 36-45 (2022); *see also* Thai Q. Ong, et al., *A Comparison of Remote vs In-Person Proctored In-Training Examination Administration for Internal Medicine*, 99 Acad. Med. 7 (Jul. 2024) (concluding based on data from over 27,000 residents that "residents taking the 2020 IM-ITE performed similarly across in-person and remote proctoring").

APPENDIX

DRAFT – Proposed Medical Specialty Certification Examination Exemption Policy

A. Remote Certifying Examination Exemption Policy:

[Board] will grant a remote certifying examination exemption ("Testing Exemption") from the requirement of in-person testing in exceptional circumstances where a Diplomate establishes eligibility pursuant to the process set forth in section (B), below.

"Exceptional circumstances" means that the Diplomate demonstrates that it is more likely than not that: (1) the Diplomate is pregnant and suffers from a medical condition that could trigger a medical emergency while in [State where in-person exam is held]; (2) the Diplomate faces credible fear of targeted violence, discrimination, or harassment or a significant security risk that cannot be sufficiently addressed through existing safety precautions; or (3) the Diplomate has demonstrated that they face a credible risk of legal liability in the [State where in-person exam is held] for engaging in conduct that is permitted in their home jurisdictions.

B. Remote Certifying Examination Exemption Procedure:

The process to obtain a Testing Exemption begins when a Diplomate submits a written request to [Board], which [Board] will evaluate for eligibility. A written request for a Testing Exemption will include either: (1) a written summary of the basis for the request or (2) a request for a screening interview to be conducted by phone or videoconference so that the Diplomate can verbally provide the basis for the request.

To determine whether a Diplomate is eligible for a Testing Exemption, [BOARD] may require the Diplomate to provide supporting evidence to confirm eligibility limited to the following:

- With respect to eligibility under (A)(1), [BOARD] may require a Diplomate to provide redacted medical records or a doctor's note.
- With respect to eligibility under (A)(2), [BOARD] may require a Diplomate to provide sworn declarations from the provider and a law enforcement representative attesting to eligibility.
- With respect to eligibility under (A)(3), [BOARD] may require a Diplomate to provide sworn declarations from the provider and either the provider's counsel or a law enforcement representative attesting to eligibility. Declarations will be sufficient if they assert that the provider has provided abortion or gender affirming care to patients who reside in a jurisdiction where such care is banned. The specific jurisdiction in which the patient resides, the type of care provided, and how it was provided need not be disclosed in any declaration.

A Diplomate shall also be afforded the opportunity to identify witnesses to speak to eligibility in lieu of or in addition to the declarations.

[BOARD] will not require any written documentation aside from the categories of documents specifically identified in this policy. [BOARD] will not retain any personally identifying information associated with Testing Exemption requests under this policy.

[BOARD] shall promptly notify the Diplomate of the decision and work with the Diplomate to access an alternative testing location. In cases where [BOARD] determines that a Diplomate is not eligible for a Testing Exemption, the Diplomate will be informed that they may resubmit a request with additional information.

Nothing in this policy alters in any respect a Diplomate's eligibility for an accommodation under [BOARD]'s reasonable accommodation policy. Exemptions from in-person testing requirements may also be necessary reasonable accommodations under federal and state anti-discrimination laws.

EXHIBIT A

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE OFFICE

November 22, 2023

American Board of Obstetrics and Gynecology
Attn. Amy Young, Executive Director
2828 Routh Street, Suite 700
Dallas, TX 75201
ayoung@abog.org

John Polzer
Duane Morris LLP
100 Crescent Court, Suite 1200
Dallas, TX 75201
JSPolzer@duanemorris.com

Via FedEx Priority Overnight and email

Dear Members of the Board, Ms. Young, and Mr. Polzer

It has come to our attention that the American Board of Obstetricians and Gynecologists (ABOG) is requiring candidates for the OB//GYN Boards to travel to Dallas, Texas, to take their examinations, and further, that several examinees who fear that their presence in Texas places them in legal jeopardy due to their provision of abortion care and/or who fear for their personal health and safety have been refused a waiver of the in-person testing requirement. The undersigned Attorneys General write to express our serious concern regarding these actions. As several of our offices explained to Mr. Polzer last week, in light of the increasingly hostile climate faced by abortion providers and pregnant individuals in Texas, and the demonstrated medical risks posed by the Texas abortion bans to pregnant individuals, these fears are legitimate. We are committed to ensuring that providers of abortion within our states are able to obtain necessary certification without jeopardizing their safety and security or risking legal liability. And while we understand the Board's commitment to maintaining the highest standards in the administration of its exams, its interests favoring in-person exams without exceptions are not sufficient to justify subjecting providers to these risks.[1] We therefore request that you

[1] *See* Pooja Shivraj et al., *The American Board of Obstetrics and Gynecology's remote certifying examination: successes and challenges*, Am. J. Obstetrics & Gynecology (Nov. 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9720485/pdf/main.pdf.

expeditiously institute a process for obtaining exemptions from the requirement to sit for the exam in Texas on these grounds, and we stand ready to work with you on that process and to identify alternative solutions.

As a preliminary matter, contrary to the Board's stated position on its decision to maintain its headquarters in Texas in spite of the enactment of SB8,[2] it is simply not the case that the "geographic location of ABOG's headquarters will not matter." In the post-*Dobbs* landscape, the analysis of comparative legal and health risk varies dramatically from state to state (as the Board had previously recognized)[3]—with few states' regimes as draconian as that of Texas.

Even before *Dobbs*, the enactment of SB8 in 2021 broadly deputized members of the public at large to bring private, vigilante lawsuits against abortion providers for performing or inducing abortion after detection of cardiac activity, or approximately six weeks' gestation, as well as against anyone who aids or abets a violation.[4] The penalty is $10,000 per abortion. Under the "trigger" ban which went into effect 30 days after *Dobbs* was decided, performing or attempting to perform an abortion, from the moment of fertilization, is now a first-degree felony punishable by up to life in prison, as well as civil penalties of "not less than $100,000" for each violation plus attorneys' fees, as well as revocation of medical licensure.[5] This web of confusing and punitive restrictions creates a legal minefield for providers.

We have no doubt that your efforts to reassure out-of-state providers that they have nothing to fear in traveling to Texas[6] are well-intentioned. We share the firm belief that there is nothing unlawful in providing abortion care to individuals who travel from Texas for care where it is otherwise legal. And, indeed, we are committed to making abortion care accessible to all who need it no matter where they come from, and to fighting to ensure that our providers and clinics can continue providing care without disruption, intimidation, or fear. To that end, several of our states have taken significant steps to ensure that providers within our states have access to legal counsel to advise them on their rights, as well as potential liability and risk mitigation, including with respect to out-of-state-travel.

However, other state attorneys general, including Texas Attorney General Paxton, have taken a different view, signaling their intention to apply their laws as broadly as possible and

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[2] *See* ABOG, *Statement Regarding ABOG Headquarters and Texas SB4 and SB8*, (Oct. 29, 2021), https://www.abog.org/about-abog/news-announcements/2021/10/29/statement-regarding-abog-headquarters-and-texas-sb4-and-sb8.

[3] *See* ABOG, *Dobbs v. Jackson Women's Health Organization Anniversary Statement* (July 27, 2023) (recognizing that the landscape post *Dobbs* has "led to regional variability in access and practice as well as created disparities in care and outcomes"), https://www.abog.org/about-abog/news-announcements/2023/06/27/dobbs-vs.-jackson-women-s-health-organization-anniversary-statement.

[4] *See* Tex. Health & Safety Code § 170.204(a).

[5] *See* Tex. Health & Safety Code §§ 170A.001 et seq.; Tex. Penal Code § 12.32.

[6] *See* ABOG, *In-Person Certifying Exam FAQs*, https://www.abog.org/about-abog/faqs/in-person-certifying-exam-faqs.

even to attempt to reach across state lines.[7] For example, Attorney General Paxton recently signed a letter from 19 state Attorneys General objecting to a proposed federal rule intended to safeguard the privacy of medical records for individuals seeking care in states where abortion remains lawful, arguing that the rule could impede their efforts to enforce their own state's laws.[8] These state officials have made clear their intent to intimidate and punish abortion providers no matter where the care was provided.

Moreover, it is impossible to guarantee that members of the public or local prosecutors will not initiate a legal action against a provider in connection with caring for individuals from Texas.[9] Even if such proceedings are ultimately dismissed—as they should and must be—any abortion providers who are targeted could be served with process and potentially put to the considerable burden and expense of defending against such meritless legal actions, thereby diverting their time and attention from providing much-needed medical care within our states.[10] Despite the best intentions of the Board, there is thus real danger that requiring providers to travel to Texas will create a toehold for such vexatious litigation now or in the future. Indeed, it is for precisely these reasons that many of our states have taken steps to shore up protections for abortion providers from the consequences of any legal action brought under laws like Texas's.[11]

As far as the risk to pregnant persons in Texas, those are by now well documented. As the Board is well aware, a range of medical conditions can trigger an emergency requiring an abortion necessary to save the life or health of the pregnant patient—medical care that would likely be withheld under the state's overlapping abortion bans.[12] Indeed, Texas has taken the position that the Emergency Medical Treatment and Active Labor Act (EMTALA) does not require provision of abortion services in most circumstances that constitute medical

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[7] *See Fund Texas Choice v. Paxton*, No. 1:22-cv-859, 2023 WL 2558143 (W.D. Tex. Feb. 24, 2023); *see also Planned Parenthood of Greater NW v. Labrador*, No. 1:23-cv-00142 (D. Idaho Jul. 31, 2023) (challenge to Idaho Attorney General's interpretation of state law as prohibiting assisting individuals in obtaining abortion outside of the state).

[8] Letter from Attorney General of Mississippi and 18 states, Notice of Proposed Rulemaking, HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 88 Fed. Reg. 23506, Jun. 16, 2023, https://www.regulations.gov/comment/HHS-OCR-2023-0006-0197.

[9] *See, e.g.,* ACLU of Texas, *Abortion in Texas* (Aug. 29, 2022) (*"[W]hile it is not possible to guarantee that people attempting to enforce these criminal laws or SB 8 will not bring a lawsuit against Texans who refer or provide assistance to patients seeking abortion care out of state,* these laws *do not* apply to out-of-state abortions." (emphasis added)), https://www.aclutx.org/en/know-your-rights/abortion-texas.

[10] *See* Emily Bazelon, *Risking Everything to Offer Abortions Across State Lines*, N.Y. Times, Oct. 4, 2022, https://www.nytimes.com/2022/10/04/magazine/abortion-interstate-travel-post-roe.html

[11] *E.g.*, S.B. 23-188, 2023 Colo. Legis. Serv. Ch. 68 (Co 2023); Sess. Laws, Ch. 127 (Mass. 2022); S. 9077-A, 2022 Sess. Law News of N.Y. Ch. 219 (N.Y. 2022); AB 1242, 2021-2022 Cal. Legis. Serv. (Cal. 2022), SB 345 Ch.260, 2023--2024 Cal. Legis. Serv. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB345; S.H.B. 1469, 2023 Wash. Legis. Serv. Ch. 193 (Wash. 2023); S.B.37, 2023 Vt. Laws No. 15 (Vt. 2023).

[12] *See* Tex. Health & Safety Code §§ 170A.002, 171.205(a) (Allowing affirmative defense for providing an abortion only for "a life-threatening physical condition . . . that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function.")

emergencies.[13] And doctors in Texas have reported postponing care, for fear of criminal liability, "until a patient's health or pregnancy complication has deteriorated to the point that their life was in danger, including multiple cases where patients were sent home, only to return once they were in sepsis."[14] Not surprisingly, in the wake of SB8, the rate of maternal mortality for individuals presenting with certain pregnancy complications at two Texas hospitals nearly *doubled* (from 33% to 57%).[15] One of these subject hospitals, UT Southwestern, is the hospital that ABOG has partnered with to provide emergency care should issues arise during the exam.[16] Pregnant examinees should not be forced to place their lives or their health on the line as a condition of sitting for certification for *any* specialty—much less for a specialty in obstetrics and gynecology and maternal fetal medicine.

Any one of these risks alone would be unacceptable. But even if none of these eventualities should come to pass—as we fervently hope they will not—insisting on conducting testing under these hostile conditions contributes to the mounting legal and practical pressures that are driving clinicians from the field and obstructing delivery of care.

To address these concerns, the Board has several alternatives at its disposal. First, it is our understanding that during the pandemic and until this year, the Board permitted applicants to sit for the exam remotely. Indeed, in response to safety concerns in the aftermath of the *Dobbs* ruling, the Board transitioned to a remote format for the 2022 exam.[17] The Board's experience successfully administering the remote exam and duly evaluating and accrediting candidates has shown that conducting the examination remotely is feasible and does not significantly affect either the quality of results or the equity of exam administration conditions.[18] We therefore urge

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[13] *See Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *appeal filed* No.23-10246.

[14] Eleanor Klibanoff, *Doctors Report Compromising Care out of Fear of Texas Abortion Law*, Texas Trib. (June 23, 2022)), https://www.texastribune.org/2022/06/23/texas-abortion-law-doctors-delay-care/; *see also* Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans—Texas Senate Bill 8*, 387 New England J. of Med. 388 (2022) https://sites.utexas.edu/txpep/files/2022/07/nejm_PreviewoftheDangerousFutureofAbortionBans.pdf; *Zurawski v. Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct. Aug. 4, 2023) (granting preliminary injunction), *appeal docketed.*

[15] Anjali Nambiar et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less with Complications in 2 Texas Hospitals After Legislation on Abortion*, Am. J. Obstetrics & Gynecology (2022), https://www.ajog.org/article/S0002-9378(22)00536-1/fulltext.

[16] *See* ABOG FAQ, supra, https://www.abog.org/about-abog/faqs/in-person-certifying-exam-faqs ("ABOG has a partnership with UT Southwestern to provide medical care in unanticipated, urgent, or emergency situations for examination candidates, examiners, or staff. UTSW is in close proximity to the ABOG offices and offers high standards of obstetrical care in medical emergencies.").

[17] *See* ABOG, *COVID-19 Updates: 2022 Specialty Certifying Exams Transition to a Virtual Format*, https://www.abog.org/covid-19-updates.

[18] *See* Pooja Shivraj et al., *The American Board of Obstetrics and Gynecology's remote certifying examination: successes and challenges*, Am. J. Obstetrics & Gynecology (Nov. 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9720485/pdf/main.pdf (reporting no measurable difference in pass rates, success rates of 100% in administering the exam in a timely manner, no security

you to consider granting individual exemptions from the requirement for in-person testing, and returning to permitting candidates to sit for exams remotely upon request. We recognize that this may be the only feasible option for the immediate term, in light of timing. But in addition—or in the alternative if continuing the option for remote examination is off the table—we urge the Board to make available alternative test sites other than the Dallas headquarters in which to conduct the in-person component of the examination either in their home state or in another location that does not pose the same risks. We would be happy to assist you in finding such alternative test sites in our own states.

Whichever option(s) the Board pursues, in establishing this policy, the Board should ensure that eligibility criteria for exemption at a minimum include anyone who (a) has good-faith fear of civil or criminal liability and/or threats to their physical safety due to procedures the provider performs in the course of their professional duties, and/or (b) is pregnant, at any stage of gestation, at the time the exam is to be administered. Any such exemption policy must include clear criteria for evaluating such requests, and ensure that applicants for exemption are not required to produce any documentation, such as proof that they provide care to people coming into their states from Texas or proof of their own pregnancy, that could jeopardize the confidentiality of their patients or subject themselves to risk. The Board should further communicate to its membership and to registered examinees the availability of alternative(s) to the Dallas in-person testing requirement, along with the eligibility criteria, and should explain and make available on its website a clear application process for obtaining a waiver.[19] And given the fast-approaching examination dates, the Board should set a reasonable deadline for accepting waiver requests on these grounds to ensure applicants are able to avail themselves of this newly created option.

In sum, while we understand the Board's commitment to maintaining the highest standards for accreditation and improving equity, the risks and costs of requiring in-person testing in Texas are unacceptable and unnecessary. ABOG can and must do everything in its power to lessen rather than add to the pressures facing abortion providers in post-*Roe* America. While several of our offices raised these concerns in a call with Mr. Polzer on November 15, 2023, we have yet to receive any information that would meaningfully address these concerns. This situation is of some urgency as there are abortion providers within some of our states who are scheduled to take the examinations next month. We look forward to your response and would welcome the opportunity to discuss potential solutions at your earliest convenience. You may

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concerns, and a low rate (1.1%) of reported technical issues in administering the exams remotely during the pandemic).

[19] It is our understanding that ABOG is currently directing providers who wish to seek accommodations to the ADA accommodations process, which is inapplicable to the situation at hand, and which requires accommodations be sought 180 days prior to the examination date, which has obviously passed. *See* ABOG, *2023 Specialty Certifying Examination Bulletin* 38, app. B; ABOG, *Candidate Disability Accommodations*, https://www.abog.org/about-abog/accommodations/candidate-disability#:~:text=Email%20exams%40abog.org%20with,and%20extent%20of%20the%20disability.

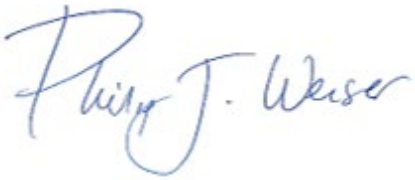
contact Galen Sherwin via phone at 212-416-8059, or via email at Galen.Sherwin@ag.ny.gov, to arrange a time to speak.

Sincerely,

LETITIA JAMES
New York Attorney General

KRIS MAYES
Arizona Attorney General

ROB BONTA
California Attorney General

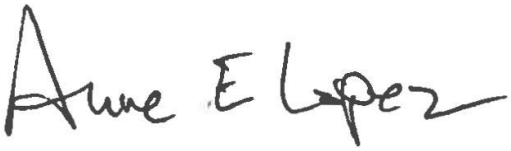


PHILIP J. WEISER
Colorado Attorney General

WILLIAM TONG
Connecticut Attorney General

KATHLEEN JENNINGS
Delaware Attorney General

BRIAN L. SCHWALB
Attorney General for the District of Columbia



ANNE E. LOPEZ
Hawai'i Attorney General

Signatures continue on next page

KWAME RAOUL
Illinois Attorney General

AARON M. FREY
Maine Attorney General

ANTHONY G. BROWN
Maryland Attorney General

ANDREA JOY CAMPBELL
Massachusetts Attorney General

DANA NESSEL
Michigan Attorney General

KEITH ELLISON
Minnesota Attorney General

AARON D. FORD
Nevada Attorney General

MATTHEW J. PLATKIN
New Jersey Attorney General

RAÚL TORREZ
New Mexico Attorney General

JOSH STEIN
North Carolina Attorney General

ELLEN F. ROSENBLUM
Oregon Attorney General

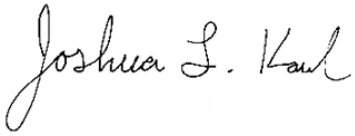
MICHELLE A. HENRY
Pennsylvania Attorney General

Signatures continue on next page

PETER F. NERONHA
Rhode Island Attorney General

CHARITY N. CLARK
Vermont Attorney General

BOB FERGUSON
Washington State Attorney General



JOSHUA L. KAUL
Wisconsin Attorney General

EXHIBIT B

ABOG
American Board of Obstetrics & Gynecology
First in Women's Health®

November 28, 2023

The Honorable Letitia James
Office of the Attorney General
State of New York
The Capitol
Albany, NY 12224-0341

Dear Attorney General James:

We are writing in response to your November 22, 2023, letter to me as the Executive Director of the American Board of Obstetrics and Gynecology (ABOG), our board, and Mr. Polzer, our legal counsel, concerning ABOG's testing procedures for board certification.

ABOG is a non-profit, voluntary organization whose purpose is to administer certification programs to obstetricians and gynecologists (OB GYNs) across the United States who *voluntarily* seek to become board-certified. ABOG supports the important health care role that OB GYNs play in the comprehensive care and treatment of their patients. ABOG's mission is to define the standards, certify OB GYNs, and facilitate continuous learning to advance knowledge, practice, and professionalism in women's health ultimately promoting safer health care for women. Our commitment to these principles is firm and unwavering.

ABOG shares your concerns that patients must have confidence that their obstetricians and gynecologists provide evidence-based counseling and care to their patients without intimidation, retribution, or litigation. A critical aspect of the specialty of OB GYN and patient care includes the medical knowledge, skills, and judgment relative to reproductive health rights, including access to contraception and abortion. We support OB GYNs in their practices and support those who provide comprehensive reproductive health care to the patients and families they serve.

ABOG's decision to return to in-person examinations was made following a careful analysis of multiple factors, including those outlined in your letter.
ABOG is committed to administering fair and safe examinations. In-person examinations provide a standardized exam experience for all candidates and examiners. We found that virtual examinations introduced additional elements of bias, inequities, and examination content security concerns. ABOG's decision not to develop alternative test sites is based on several factors including logistical

2828 Routh Street, Suite 700 | Dallas, Texas 75201 | P: 214.871.1619 | F: 214.871.1943 | E: Info@abog.org | W: ABOG.org

challenges as well as the difficulty of replicating the facilities ABOG has created to ensure a safe, reliable, standardized, and secure testing environment.

ABOG's board of directors and staff have carefully considered the position outlined in your letter. Given the evidence that drove the decision to return to in-person exams and the safety and success of more than 339 subspecialists (Maternal-Fetal Medicine, Urogynecology and Reconstructive Pelvic Surgery, Gynecologic Oncology, and Reproductive Endocrinology and Infertility) and 1083 general certifying exams candidates, we continue to hold firm on our current stance on in-person testing and accommodation.

Thank you for the opportunity to respond to your letter and your valuable interest and support of your constituents' ability to provide care without intimidation, retribution, or litigation. Working together we can best ensure access and expertise to promote safer health care for women.

Sincerely yours,

Amy E. Young, MD
Executive Director
American Board of Obstetrics & Gynecology

/mc

EXHIBIT C

Outlook

Request for Virtual Examination Option for CFP Certifying Exam

From [redacted]
Date Mon 1/6/2025 10:53 AM
To [redacted]@abog.org [redacted]@abog.org>; Exams [redacted]@abog.org>; Info [redacted]@abog.org>
Cc [redacted]

Dear Dr. [redacted] and Members of the American Board of Obstetrics and Gynecology,

We, the undersigned candidates for the Complex Family Planning certifying exam, are writing to request that the exam be offered virtually due to significant safety and legal concerns surrounding travel to Texas. Given the current legal environment regarding abortion care, and political developments since our last discussion, we believe it is unsafe and unreasonable to require us to travel to Texas to present and discuss abortion cases—a core element of our specialty.

As you know, Texas law criminalizes abortion care, and discussing such cases during the oral exam could expose us to legal consequences. With the election of Donald Trump, who has been hostile toward reproductive rights, the risks to our safety and legal security have increased. In addition, the recent lawsuit filed against a New York provider offering telemedicine abortion to a patient in Texas highlights the evolving and hostile landscape. While there are shield laws in place in *some* states we are practicing in, that is not the case for all of us. This new lawsuit appears to be the first to challenge these shield laws, and it is likely to raise more unprecedented legal questions in the coming months. These developments make it both reckless and unsafe to require abortion providers to travel to Texas to take the exam.

We believe that requiring us to travel under these circumstances not only endangers our safety but also undermines fairness and equity. It is unreasonable to expect candidates to risk legal repercussions for presenting the standard of care in reproductive health, which the exam is designed to evaluate.

We respectfully urge the board to offer a virtual option for the exam. A remote format would allow us to proceed with certification without these legal and personal risks. The integrity and rigor of the exam can be maintained remotely, as demonstrated by your virtual general Obstetrics and Gynecology exams and those of other certification boards in response to shifting legal and public health conditions.

We understand ABOG's preference for in-person exams but believe that the unique circumstances surrounding the CFP exam—particularly the criminalization of our work in Texas—warrant a distinct approach. We urge you to offer a virtual exam for the CFP certifying exam specifically.

We appreciate your attention to this matter and look forward to your response.

Sincerely,

On behalf of all the candidates for the CFP certifying exam

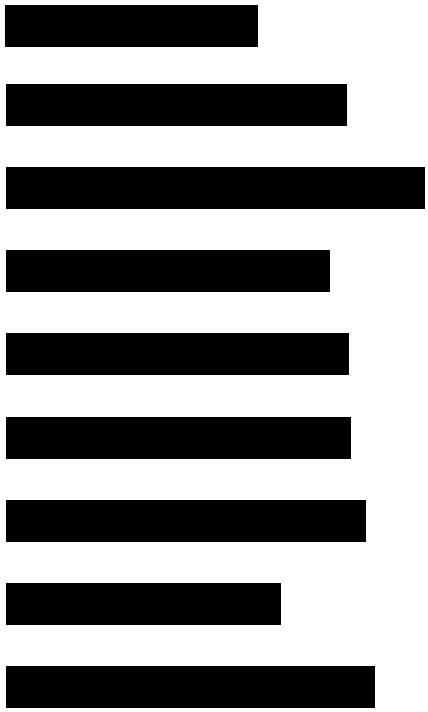


EXHIBIT D

Dear Dr. [redacted] and Members of the American Board of Obstetrics and Gynecology,

We are writing to follow up on our letter dated January 6, 2025, in which we respectfully requested that the Complex Family Planning (CFP) certifying exam be offered virtually due to significant safety and legal concerns associated with traveling to Texas. Since we have not received a response, we feel it is necessary to reiterate and expand upon our concerns, particularly given recent developments that underscore the risks of in-person attendance.

As we previously noted, Texas law criminalizes abortion care, and requiring our travel to the state for the oral exam could expose us to legal repercussions. The recent lawsuit filed against a New York provider offering telemedicine abortion to a Texas patient exemplifies the evolving legal threats we face. This case is testing the limits of shield laws, raising unprecedented legal questions, and reinforcing the unpredictable and hostile environment surrounding abortion care.

Since our initial communication, the recent pardons issued by President Donald Trump for individuals convicted under the Freedom of Access to Clinic Entrances (FACE) Act have further heightened our concerns. These pardons not only embolden anti-abortion extremists but also exacerbate the climate of hostility and danger for abortion providers, particularly in states like Texas where abortion is criminalized. His recent enforcement of the Hyde Amendment, further restricting abortion access for low-income individuals, underscores the administration's escalating hostility toward reproductive healthcare. This hostility is exemplified by the forced resignation of the Texas Medical Board director, reportedly driven by pressure from anti-abortion fringe groups, reflecting the dangerous environment for those associated with reproductive health in Texas. Together with actions like his recent freezing of NIH and CDC functions and the shutdown of ReproductiveRights.gov, these developments compound the risks we face as providers, particularly when traveling to Texas for the CFP exam, where our work is criminalized.

We also wish to highlight an important gap in ABOG's stated safety measures for in-person certifying exams. According to the FAQ section on your website, these safety and security measures do not extend to the transportation and lodging required for candidates to attend the exam. This omission leaves us unprotected during critical phases of travel to and from a state with laws and a social climate hostile to our work. It is not within our control whether information about our subspecialty's focus on abortion care and group attendance to discuss abortion cases will be known to others, but any attention to it leaves us vulnerable to both personal and legal safety concerns. Given this gap in safety protocols, requiring candidates to appear in person is not just unreasonable but also exposes us to avoidable risks.

The integrity and rigor of the CFP exam can be upheld through a virtual format, as demonstrated by ABOG's virtual general Obstetrics and Gynecology exams during the COVID-19 pandemic and the virtual exams of other certifying boards. A remote exam would ensure that all candidates can participate without compromising their safety, legal security, or ability to present the standard of care in reproductive health.

The lack of response to our initial letter is deeply concerning, as it signals that these urgent issues may not be receiving the attention they deserve. We respectfully ask for an update on this matter and urge ABOG to prioritize the safety, equity, and fairness of this certification process. The stakes are too high for continued inaction.

Thank you for your time and attention to this critical issue. We look forward to your prompt response.

Sincerely,

[redacted]

EXHIBIT E

ABOG
American Board of Obstetrics & Gynecology
First in Women's Health®

January 28, 2025

[redacted]

Dear Dr. [redacted]:

After careful review and thoughtful consideration of your request submitted on January 6, 2025, ABOG offers the following response.

We have consistently worked alongside you to address a range of issues, making considerable efforts to find common ground. Our commitment to upholding the highest standards of quality and excellence, both for our diplomates and the patients they serve, remains unwavering. As a national organization, ABOG's dedication to advancing women's healthcare is informed by a broad, evidence-based perspective, grounded in scientific data rather than regional considerations or legislative influences. While the administration of the certifying exam takes place in Texas, it is essential to recognize that the exam process itself is not shaped by the laws of any one state. Texas laws govern Texas-licensed physicians and clinical care in Texas. These laws do not impact, or have relevance to, the administration of the Certifying Exam. Furthermore, case lists are anonymized and lists documenting out-of-state medical care for individuals who are not Texas residents are beyond the jurisdiction of Texas. Both case lists and oral examinations are protected by applicable peer review statutes and privileges, including with respect to subpoenas or discovery in court proceedings. Moreover, participation in our certification process is confidential, disclosed only between the candidate and ABOG. It is the candidate's prerogative to share details of their participation, should they choose to do so.

We also have diligently monitored candidate performance to assess any impact related to testing in Texas on candidates providing termination of pregnancy. The results for these

candidates are statistically indistinguishable from those of their counterparts who do not perform termination of pregnancy.

We recognize that you are committed to highly admirable principles, which we respect and share. Because of that, we have exercised flexibility where possible and have compromised in ways that did not diminish our responsibility as a certifying body. However, it is important not to conflate the administration of the exam with the state laws of Texas. As a national certifying body, our mission has remained independent of geographical considerations for nearly 100 years. This important distinction further underscores our position that the certifying exam will continue to be administered in person at the ABOG National Center, and this point is non-negotiable.

Additional reasons for this stance have been articulated in previous communications and are reiterated here:

- In-person exams provide the most effective and standardized experience for both candidates and examiners.
- Remote exams introduce the potential for bias, technological inequities, and security concerns related to exam content.
- The logistical and financial challenges associated with offering alternative exam sites are substantial, and efforts to replicate the operational efficiencies and effectiveness of our facility would not be feasible.

As you know, board certification is a voluntary process. For those who wish to pursue it, in alignment with American Board of Medical Specialties' requirements, ABOG allows up to eight years for completion of the certifying process, offering flexibility for candidates.

The health and safety of all candidates remain our top priority. ABOG has established a partnership with UT Southwestern (UTSW) to ensure access to high-quality medical care in the event of any unforeseen medical situations during the exam. UTSW is in close proximity to the ABOG National Center and provides exceptional obstetrical and gynecological care. Additionally, the Texas Medical Board's "Exceptions to the Abortion Ban" rules now offer specific guidance on emergent conditions, which include the treatment of ectopic pregnancies or previable premature rupture of membranes.

It is also worth noting that countless CFP physicians have successfully taken their exams in Texas without incident, and numerous CFP subspecialists serve as ABOG volunteers, spending time in Texas regularly without issues.

While remote exam administration was an essential solution during the pandemic, it was intended as a temporary measure to address the unique challenges of that time. As outlined in the rationale offered in this response, ABOG has returned to, and remains steadfast in its commitment to, in-person exam administration.

The certifying exam represents the final and crucial step in the certification process. Offering a suboptimal virtual alternative would fail to uphold our responsibility to OB-GYN patients. In-person exam administration ensures that we are certifying candidates who are fully prepared to provide evidence-based, high-quality care to their patients. Our ultimate duty is to those patients, and we are dedicated to employing the most reliable, standardized methods to honor that responsibility.

We hope for your family planning community and the patients you serve that you will pursue your subspecialty certification. The next step in the process is to submit your case list and complete your registration before the February 10th deadline. Should you choose not to pursue the next step by February 10th, we offer the reminder that per the American Board of Medical Specialties' requirements, there is an eight-year eligibility period to earn certification.

Lastly, we express our sincere appreciation and applaud you for the valuable work you do each day in providing essential abortion and complex reproductive care to women across the country.

Respectfully,

[redacted]
Executive Director, ABOG

[redacted]
CFP Division Chair, ABOG

EXHIBIT F

Joseph Ottolenghi, MD
Choices Women's Medical Center
147-32 Jamaica Ave
Jamaica, NY 11435

April 22, 2025

Via E-Mail and Registered Mail

Amy Young, MD
American Board of Obstetrics and Gynecology
2727 Laclede St.
Dallas, TX 75204

Re: Request for Accommodations for ABOG's 2025 Specialty Certifying Exam

Dear Dr. Young,

This is a formal request for testing accommodations for the 2025 Specialty Certifying Exam to be held at the American Board of Obstetrics and Gynecology ("ABOG")'s facilities in Dallas, Texas.

I am unable to travel to Texas due to concerns for the legal risks (both criminal and civil) as well as those to my personal safety that I would face in Texas as a result of my work as a New York-based provider of reproductive healthcare, including abortion care. Accordingly, I request accommodations to allow me to take the test remotely or in a state that, unlike Texas, neither outlaws abortion care nor imposes draconian penalties against abortion care providers.

Since ABOG returned to in-person testing in 2023, the legal and political landscape for abortion care providers in America and Texas has changed dramatically. In 2022, the Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey,* eliminating the constitutional right to abortion. Since then, certain states—including Texas—have enacted so-called trigger laws restricting access to abortion. In the case of Texas, that law criminalizes the provision of abortion care and establishes significant fines, penalties, and prison sentences for abortion care providers who violate the law. Additionally, the Texas "Heartbeat Act" permits private citizens to sue abortion care providers and anyone else who aids or abets access to abortion. These legal developments have occurred against a backdrop of harassment and violence against abortion care providers.

In response to these types of laws, certain states where abortion remains legal, including New York where I practice, have enacted shield laws to offer some legal protection to abortion care providers practicing in those states, so they can safely continue to treat patients (including those who may have traveled into the state from Texas or other states that restrict access to needed abortion care) without undue risk. But these protections—which have not yet been tested in courts—on their face offer no protection to an abortion care provider who travels to a hostile state like Texas.

ABOG legal counsel John Polzer has stated that ABOG cannot give advice on the legal and safety concerns that abortion care providers may have in sitting for the Certifying Exam in Texas and that ABOG recommends that test-takers with such concerns seek their own legal counsel. I have followed that recommendation and consulted with legal counsel regarding these questions, and I remain concerned that travel to Texas exposes me to civil and criminal liability as well as threats to my physical safety.

First, I am concerned that I could be held liable by Texas state authorities or private citizens under Texas laws that target abortion care providers. As a New York practitioner, I have made every effort not to violate any other state's laws, but the outer contours of these draconian laws have not been tested or clarified by the courts. While I understand that Texas' laws appear only to apply to abortions performed in Texas, the definition of where an abortion takes place may be open to interpretation by courts that continue to demonstrate hostility toward abortion care. Indeed, Attorneys General in Texas and other restrictive states have made it clear that they intend to interpret these laws as broadly as possible. Although shield laws in New York would protect me from arrest and extradition to another state, such protection is meaningless if I were to be physically present in Texas (as ABOG's current testing protocol requires) and thus subject to Texas' criminal and civil processes.

Second, given my visible and vocal role as an abortion care provider—I have spoken proudly and publicly about providing needed abortion care—and based on my prior experience living in Texas, I have serious concerns for my physical safety if I were to travel to Texas to sit for the Certifying Exam. Among other things, I have been quoted in national and foreign media discussing my provision of abortion care to patients who are forced to travel to New York from states where the procedure is banned. As an example, I enclose a *USA Today* article, where I am quoted numerous times and my picture is included.

ABOG has previously provided options to take the Certifying Exam remotely, yet the board has decided that the 2025 Certifying Exam will be conducted only in person and, critically, only in Texas, a state notoriously hostile—legally, politically, and culturally—to abortion care providers. Moreover, ABOG has offered no assurance to abortion care providers with respect to their legal risk or physical safety in traveling to Texas for the exam. Based on the individual legal counsel I have sought (as recommended by ABOG), I respectfully submit this request for accommodations to sit for the 2025 Certifying Exam remotely or in a state without laws hostile to abortion care providers.

Thank you for taking the time to consider my concerns and request for accommodations.

Respectfully,

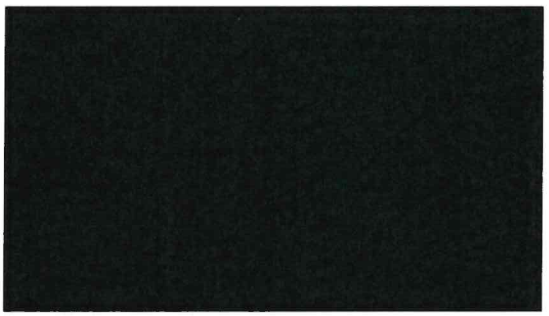
Joseph Ottolenghi, MD
Medical Director
Choices Women's Medical Center

Enclosure: Alyssa Goldberg, *People Are Flocking Out-of-State for Abortion Care. Clinics Are Fighting to Keep Up*, USA Today (Mar. 5, 2025), https://www.usatoday.com/story/life/health-wellness/2025/03/05/abortion-clinic-fund-travel-sustainability/80697629007/.

HEALTH AND WELLNESS

Abortion Add Topic +

People are flocking out-of-state for abortion care. Clinics are fighting to keep up.



US Abortion Rates Climb In 2023, Despite State Bans

A recent report by the Guttmacher Institute has revealed a significant increase in abortions in the US in 2023. This is despite bans on the procedure in over a dozen states. With over a million abortions reported, marking the highest number in over a decade and a 10% rise since 2020, the data suggests a growing trend. The increase is attributed to both residents having more abortions and an increase in patients traveling across state lines. Almost every state without an abortion ban saw an increase in the number of abortions in 2023. Medication abortions have also surged, with accessibility improvements driving the trend. However, experts caution that increased restrictions may further strain abortion access and clinics. *unbranded · Newsworthy*

Alyssa Goldberg
USA TODAY

March 6, 2025 · Updated March 18, 2025 11:59 a.m. ET

On an early morning Zoom call, Michele Landeau is working from her home in St. Louis. But most mornings, she drives across the state border to Granite City, Illinois.

Landeau is the chief operating officer at Hope Clinic, an abortion clinic that has tripled its intake of out-of-state patients since the 2022 Supreme Court case Dobbs v. Jackson, which overturned Roe v. Wade and the constitutional right to abortion. Bordering five restrictive abortion states – including two with total abortion bans (Indiana and Kentucky) – the Illinois Supreme Court embedded protections into the state's constitution,

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making it a popular destination for women seeking abortions.

The vast majority of patients at Hope Clinic pre-Dobbs came from Missouri and Illinois, but after Dobbs, they experienced a 700% increase in patients from other states – from 6% of all patients to now 40%.

Studies have shown that states with the strictest abortion laws already have the weakest maternal health care support, with 52.5% of the Arkansas and 49.2% of the Oklahoma populations living in maternity care deserts – areas where there are no obstetric providers or birth centers – as of 2022. Both states have total abortion bans with limited exceptions. A new 2025 study also found that infant mortality rates are higher than expected in states after implementing abortion bans, and these increases were larger among infants who were Black, had congenital anomalies, or were born in southern states. As more physicians are deterred from practicing medicine in states with abortion bans, researchers warn of implications for workforce sustainability and the availability of timely and accessible health care.

As the need for out-of-state care rapidly increases, abortion clinics and funds caution that even in protective states, the infrastructure is under strain. With fewer health care centers to turn to, people have to travel further for care, more resources are depleted from abortion funds, and providers are stretching their bandwidth to support the influx of patients. With no end in sight, are their efforts sustainable?

After Dobbs, Hope Clinic added another clinic day to remain open six days per week, and increased their staff by about 40%. They've also implemented a policy that no patient gets turned away for the lack of ability to pay; the clinic works with abortion funds throughout the state and country, such as the Chicago Abortion Fund, to provide financial assistance. Now, they're able to see patients within two days.

"Not only is it just against our values to make people stay pregnant for longer than they want to be or have to be, but if you have to wait a week or two, that could mean that your cost goes up," Landeau explains. "There's a lot of financial barriers in place that people have to overcome initially, so

we don't want to put more financial barriers in the way of them being able to access care."

Not all patients are seeking elective abortions. For instance, in Indiana and Iowa, lethal fetal anomaly exceptions (when the fetus is unlikely to survive outside the womb or will die shortly after birth) are only applicable up to 22 weeks from an individual's last menstrual period. Even if the anomaly is discovered within the gestational age limitation, Iowa only has two abortion clinics, and Indiana has no abortion clinics. Doctors in restrictive states also fear legal repercussions for providing abortion care or counseling, even in cases where the patient's life is at risk. In 2021, a Texas mother died after doctors in the state delayed treating her miscarriage for 40 hours. She told her husband that her medical team couldn't act until the fetal heartbeat had stopped due to Texas Senate Bill 8, according to reports from ProPublica.

Clinics in New York see increases, despite not bordering extremely restrictive states

Over in New York City borough of Queens, Choices Women's Medical Center has been serving patients seeking abortion care for 54 years. Merle Hoffman, founder, president and CEO, calls the clinic an "oasis in the storm" for many of their young patients.

Just a five-minute walk from the Jamaica subway station and AirTrain, which takes travelers to JFK-Airport in under 15 minutes, Choices Women's Medical Center rests in a quiet alleyway off a bustling avenue. Inside the clinic, an expansive waiting room seats about 40 patients per day, Hoffman says. After checking in, patients are led into a separate, security-guarded waiting room and seen by the medical director, Dr. Joseph Ottolenghi, and the director of counseling, Rebecca Glassman.

The total number of out-of-state patients seen at Choices Women's Medical Center increased by 46% from 2023 to 2024. Though New York City does not border extremely restrictive states, they are often the most accessible for out-of-state patients.

"A lot of those clinics (on border states) were already sort of operating at capacity," Ottolenghi says. "Because we have two operating rooms and more space than a lot of other places, we're able to accommodate more. So we may not be the first place that patients call necessarily, but we may have the best availability or the soonest appointment."

Choices Women's Medical Center also has a policy that no patient will be turned away if they can't afford care. Hoffman has her own nonprofit to front the cost and works with abortion funds nationally, but she has always worried using abortion funds to provide care is not sustainable. When she co-founded Rise Up 4 Abortion Rights in 2022, she says her fellow organizers proposed fundraising to fly people to New York or other states where abortion would remain legal if Roe v. Wade was overturned.

"I kept saying, 'This is not sustainable, and you're funding your own oppression,'" she says.

Merle Hoffman is the founder of Choices Women Medical Center and author of "Choices: A Post-Roe Abortion Rights Manifesto" *Nirit Mitrany/Courtesy Of Choices Medical Center*

'We're all relying on the same places': Chicago's largest abortion fund spent $5 million in 2024

Hope Clinic works closely with Chicago Abortion Fund, Illinois' statewide abortion fund and one of the largest funds in the country. The fund receives between 150 to 200 calls per week and works with over 75 clinics and providers across the Midwest, according to Executive Director Megan Jeyifo.

Costs covered by Chicago Abortion Fund can include flights, ride-hailing service, lodging, food and "whatever they need to get from A to B," even if that means extra clothing.

In 2020, the fund spent $300,000 supporting patients' financial needs. By

2024, that skyrocketed to $5 million. "It does kind of make your head spin," Jeyifo says.

Many people who aren't immersed in this line of work, Jeyifo explains, assume that being in a protective state means there aren't barriers to care.

"What we always talk about," she says, "is that those protections mean nothing without support in our ability to access them. Legal protections don't mean anything if you don't have money in your bank account or gas in your tank, or if you can't afford to pay for a babysitter while you go to the clinic."

Alicia Hurtado, movement building director at Chicago Abortion Funds, leads a chant at a protest against abortion bans. *Chicago Abortion Fund*

The Chicago Abortion Fund is still assisting patients from Chicago alongside those from cities like Memphis, Tennessee, New Orleans and Miami. Jeyifo hopes their work can be a blueprint for other protective states to follow because "at a certain point, Illinois is not going to be able to handle all these increases."

"People in states where you feel protected, know that the lines have been obliterated," she says. "We're all relying on the same places."

Before Dobbs, the majority of their funding came from institutional support foundations, and now it's 50/50 between those foundations and individual donors. They also hired a director of development in 2024 to ramp up their fundraising efforts, and receive funding from the city of Chicago and the state of Illinois.

"We are trying to use each moment as a catalyst to get to the next moment to be here and support people for the long haul," Jeyifo says. "If you had told me five years ago that we would have been able to help 15,000 people last year, I would've laughed in your face. We know how high the stakes are and we are not slowing down. We are going to be relentless."

At a fundraiser for the Chicago Abortion Fund, a banner calls for safe and accessible abortion care. *Chicago Abortion Fund*

Providers are discouraged as patients fear returning home

At Choices Women's Medical Center, Ottolenghi says there's more tension in the air.

"It takes more time to sit and talk with those patients and talk about why this is safe and why they should feel secure," he says. Recently, an anesthesiologist told Ottolenghi he had a patient who was more nervous than expected. When Ottolenghi told him she was an out-of-state patient, it clicked.

"He didn't quite understand why she was as anxious as she was until he knew that she was from out of town," he explains.

It can be angering, he adds, to learn about people's situations in other places and not be able to do anything about it. But knowing he can help patients come to the clinic brings comfort.

Dr. Joseph Ottolenghi, the medical director at Choices Women's Medical Center, has been reassuring his patients that they are safe receiving care in New York. *Choices Women's Medical Center*

Landeau says another major issue is misinformation around legislation, and that some patients are fearful about being prosecuted for traveling to get abortion care after hearing about bills that get introduced and pick up traction in the media or on social media. Even though these bills ultimately haven't gone through the legislative process, the fear sticks.

Qudsiyyah Shariyf, deputy director at Chicago Abortion Fund, speaks at City of Chicago Press Conference. *Chicago Abortion Fund*

At Choices Women's Medical Center, Ottolenghi has patients ask if they can get arrested in their home states. "These people are going back to states in which there are penalties for what they've done," he says. "And there's nothing illegal about what they've done, because getting health care in New York is not restricted, but they're very scared."

"I think these are preventable drains on the infrastructure," says Rebecca Glassman, Choices Women's Medical Center's director of counseling. If a patient feels safe obtaining abortion care in New York, she explains, but then goes home to a state like Texas, they may not know where to turn for follow-up care. Instead of flying back to New York, Glassman says abortion funds and referral networks can redirect them to nearby states where they can access the care they need with less wear on the system.

But for every patient who is afraid to return home, Glassman has another who is simply exhausted and can't wait to get back. Many of her patients have other kids or had to take off work to obtain care.

The burden can be greater when patients are going through the process alone, as some of Glassman's patients don't want to tell someone else what's going on, or are traveling alone regardless – whether it be "across the city or across the country."

Glassman admits that it is "easy for morale to drop" as providing abortion care becomes increasing "difficult and discouraging." Having support from colleagues and being clear on your mission, she adds, is essential.

And despite the strain on the system, Hoffman says abortion providers are "very good at pivoting and meeting the moment," and will keep trudging forward. "Existing is resisting," she says. She doesn't expect to "win" when it comes to the fight for abortion rights, instead, she sees it as "a power struggle that'll go on for a very long time."

Likewise, Jeyifo "doesn't know what sustainability looks like." To her, it's just about "putting one foot in front of the other" and getting the work done.

EXHIBIT G

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From: Amy Young[redacted]
Sent: Monday, May 5, 2025 10:57 AM
To: Joseph Ottolenghi[redacted]
Subject: RE: Request for Accommodations for ABOG's 2025 Specialty Certifying Exam

Dear Dr. Ottolenghi,

ABOG is delighted that you are voluntarily reconsidering your desire to continue your path to accreditation with ABOG. As you are likely aware, successful completion of the certification process assures the public that you have achieved the knowledge, skills and professional attitudes to provide safe care to OB-GYN patients. Candidates have 8 years after completion of training to earn subspecialty certification.

ABOG has reviewed your recent request for accommodation due to your perceived safety concerns. Since we last communicated in the fall of 2023, ABOG has continued to provide accommodations consistent with applicable law. Your request falls outside the scope of the current accommodations that are offered.

Again, based on our experience and research, and as previously explained, a virtual exam is not a commensurate assessment option. Since our 2023 conversations, ABOG has explored alternative sites but has not identified a commensurate experience. Additionally, in the interim, further clarification of Texas laws and codes around abortion have reassured the Board that candidates, examiners, and board volunteers can participate in board activities safely.

ABOG has now administered almost 4,500 certifying exams in Texas without incident, including the first-ever administration of the in-person certifying exam for the Complex Family Planning subspecialty which was truly a milestone event. Solidifying Complex Family Planning elevates the field of contraception and abortion care for our OB-GYN patients. ABOG regularly has candidates, examiners, and other volunteers who provide full scope OB-GYN care, including family planning services, travel from all parts of the country and participate in exams and other ABOG initiatives on-site at The ABOG National Center for Continuing Certification and Continuing Education.

Please refer to our recently updated FAQs for additional information.
Sincerely,

Amy Young, MD
Executive Director, ABOG

[redacted]