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December 7, 2023

Via email

Re: *Cox v. St. of Tex.*, Cause No. D-1-GN-23-008611, pending in the 200th Judicial District Court, Travis County, Texas.

To Whom It May Concern:

It has come to our attention that Damla Karsan, M.D., a physician holding privileges at your hospital, intends to perform a dilation and evacuation abortion on Ms. Katelynn "Kate" Cox. Today, an activist Travis County Judge signed a Temporary Restraining Order ("TRO") purporting to enjoin the Attorney General's Office (the "OAG") and the Texas Medical Board ("TMB") from enforcing some of the state's abortion laws against Dr. Karsan if she performs an abortion on Ms. Cox. We feel it is important for you to understand the potential long-term implications if you permit such an abortion to occur at your facility.

First, the TRO will not insulate you, or anyone else, from civil and criminal liability for violating Texas' abortion laws, including first degree felony prosecutions, Tex. Health & Safety Code § 170A.004, and

civil penalties of not less than \$100,000 for each violation, Tex. Health & Safety Code §§ 170A.005, 171.207-211. And, while the TRO purports to *temporarily* enjoin actions brought by the OAG and TMB against Dr. Karsan and her staff, it does not enjoin actions brought by private citizens. Tex. Health & Safety Code § 171.207; *Whole Woman's Health v. Jackson*, 590 U.S. 30, 44 (2021). Nor does it prohibit a district or county attorney from enforcing Texas' pre-*Roe* abortion laws against you, Dr. Karsan, or anyone else. We remind you that the TRO will expire long before the statute of limitations for violating Texas' abortion laws expires.

Second, it is the hospitals—not the courts—that have the training, responsibility, and discretion to “determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.” 25 Tex. Admin. Code § 133.41(f)(4)(F) (2021). Your hospital may be liable for negligently credentialing the physician and failing to exercise appropriate professional judgment, among other potential regulatory and civil violations, if you permit Dr. Karsan to perform an unlawful abortion. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 546 (Tex. 2004).

Third, it appears that Dr. Karsan failed to follow your hospital's procedures for determining whether Ms. Cox qualifies for the medical exception to Texas' abortion laws. It appears she has not sought a second opinion from a colleague at your hospital to determine whether they agree with her that Ms. Cox qualifies for the medical exception. Nothing in the TRO compels you to waive your hospital's long-standing policies for determining whether a patient, including Ms. Cox, qualifies for the medical exception to Texas' abortion laws.

Fourth, the TRO and the allegations in this lawsuit, on their face, fail to establish that Ms. Cox qualifies for the medical exception to Texas' abortion laws. To fall within the medical exception, the physician must determine “in the exercise of *reasonable medical judgment*, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.” Tex. Health & Safety Code § 170A.002(b) (emphasis added). The TRO states that Dr. Karsan “*believes in good faith*” that “abortion is medically recommended” for Ms. Cox. But that is not the legal standard—reasonable medical judgment and a life-threatening physical condition are. The TRO is further deficient because it fails to identify what “life-threatening” medical condition that Ms. Cox purportedly *has* that is aggravated by, caused by, or arising from a pregnancy, nor does it state with specificity how this unidentified condition places Ms. Cox at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced. The *temporary* ruling fails to show that Dr. Karsan meets all of the elements necessary to fall within an exception to Texas' abortion laws. Judge Guerra Gamble is not medically qualified to make this determination and it should not be relied upon. A TRO is no substitute for medical judgment.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.