



CHOICES
WOMEN'S MEDICAL
CENTER

September 13, 2023

George Macones, President
The American Board of Obstetrics & Gynecology
2828 Routh St., Suite 700
Dallas, TX 75201

Via US Mail and email communications@abog.org

To the American Board of Obstetrics and Gynecology:

It has recently come to my attention through my Assistant Medical Director, examinee Dr. Joseph Ottolenghi (ABOG ID# 9039980), that he is now required to travel to Texas to take his OB/GYN Boards in late December of this year.

I am writing to respectfully urge that ABOG re-examine its decision to revert to onsite OB/GYN Board examinations in Dallas, Texas after their suspension during the Covid Pandemic. We are aware of other medical professionals who have publicly opposed requiring in-person exams in Texas and firmly support their stated concerns, as well as expressing our own.

As Founder and CEO of Choices Women's Medical Center that has provided comprehensive reproductive health care, including abortion services to 24 weeks, for over 52 years in New York City, and co-founder of NAF, the National Abortion Federation, I feel compelled to alert you to the potential danger this poses to abortion providers who are being "forced" to go to Texas for this examination.

It is important to consider that there is a long history of hostility to abortion rights and physicians providing abortion services in Texas. Since 2008, the number of abortion clinics in Texas has decreased by two-thirds, principally because of laws requiring clinics to meet hospital architectural standards like the size of doorways and rooms. The conversion cost of these changes for clinics closed most of them. Adding to this, an abortion Ban on Sept. 1, 2021, Senate Bill 8, limited abortions to under 6 weeks, a time before most pregnancies are detected. After the Dobbs decision, Texas moved to Ban abortions from the moment of conception. Texas also allows anyone to sue abortion providers who they suspect of providing abortions, and it was just reported that Texas will enact Senate Bill 20, a law that forbids prosecutors from adopting a "policy" of refusing to prosecute particular types of crimes, such as abortion cases. Under the new law, these policies constitute "official misconduct" and could lead to prosecutors being removed from office.

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Current trends in political policy, specifically in Texas, and trends in violence towards abortion providers have generated concerns for their safety traveling to Texas. Specifically, Texas has approved more than 100 bills in the last two decades that have loosened regulations on firearms, including laws that ban hotels from prohibiting firearms to HB 1927, which allows Texans to carry handguns without a license or training. The National Abortion Federation's 2022 Violence & Disruption Report shows an alarming increase in violence towards abortion provision. "This year's report shows a rise in major incidents like arson, burglaries, death threats, and invasions with burglary (231%), stalking (229%), and arson (100%) seeing some of the largest increases." This increasing anti-abortion action combined with the lack of gun regulation in Texas causes serious doubts about the safety of abortion providers traveling to Texas.

ABOG publicly posts the test center location and dates of examinations, as well as providing a portal to search doctors' status regarding the exam. This provides anti-abortion extremists an easy pathway to potentially interfere in the test-taking process and cause harm to test-takers.

During the last ½ century, I have withstood verbal and physical threats from anti-abortion zealots of all stripes, have been forcibly evicted two times and continue to have anti-abortion protestors harass and upset my patients coming in for services. I have also mourned the cold-blooded murders of abortion providers, including my long-time friend Dr. George Tiller who was shot and killed in the vestibule of his church in Wichita, Kansas May 31, 2009, by someone who believed they were doing God's work.

I do not want to see any abortion providers gathering needlessly in Texas and becoming easy targets for Right Wing extremists. And I never want to attend the funeral of another abortion provider again.

Dr. Ottolenghi is the Assistant Medical Director of Choices. In this role, Dr. Ottolenghi provides abortion care to a significant number of patients, many of whom travel from other states, including Texas. Dr. Ottolenghi follows evidence-based guidelines from ACOG and SFP and abides by the laws of New York State (where he is practicing). Just as ABOG has spoken out about the restrictions placed on abortion following the Dobbs decision, Dr. Ottolenghi has publicly advocated for access to safe and legal pregnancy termination as essential to reproductive health.

In addition to patient responsibilities, Dr. Ottolenghi is also responsible for the day-to-day supervision of the clinical operations of the clinic. Travel to and from Texas for the exam will triple the time Dr. Ottolenghi is away from clinical and administrative duties, as he will need two days for travel in addition to the day for the exam. This time away from the practice will negatively impact the patient care he is scheduled to deliver.

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According to Dr. Ottolenghi, "Although I have made all efforts to not violate any other state's laws, I am concerned that individuals could seek to hold me liable under SB8. Although the law states that it only applies to abortions performed in Texas, the definition of where an abortion takes place is open to interpretation by courts that continue to show hostility towards abortion access. Attorney Generals in Texas and other restrictive states have made it clear that they intend to interpret these laws as broadly as possible. I have consulted with attorneys who are steeped in this area of the law who confirmed that we are justified to be concerned that travel to Texas exposes me to potential legal action, even if it is ultimately unsuccessful. Although "shield" laws in NY state would protect me from arrest and extradition to another state, travel to Texas would provide Texas authorities (or authorities from another restrictive state) an opportunity to subject me to criminal and civil process".

In ABOG's statement released on October 29th, 2021, titled Statement Regarding ABOG Headquarters and Texas SB4 and SB8, you wrote the following as the rationale for staying in Texas:

- "The economic impact of moving to another state will not solve the current national issues regarding reproductive health. Similar legislation restricting access to care and scope of practice may be passed in other states. At any given time, any location may be affected by proposed restrictive reproductive health state laws."
- "If the U.S. Supreme Court overturns Roe v. Wade, legislation will once again impact the patient/physician relationship throughout the country. The geographic location of ABOG's headquarters will not matter."
- "Moving out of states with restrictions to reproductive health could represent abandonment to those OB GYNs who choose to remain in such states to advocate for their patients. ABOG will continue to support all board-certified OB GYNs across the country in all manner possible within our role as a certifying organization."

As the licensing board for OB/GYN practitioners in this country, your hypothetical analysis of the medical landscape that would arise if Roe fell has proven to be entirely incorrect. We now are living under the Draconian reality of Dobbs with some of the most egregious examples coming out of Texas.

Your Statement Regarding ABOG Headquarters defines physicians moving out of State as abandoning the physicians who choose to stay in the State. I would point out that Texas laws have placed the physicians who remain in Texas in morally wounding and impossible life and death decisions for women. Patients like Elizabeth Weller, who, after her water broke too early for the fetus to survive, was not offered an abortion, but was instead sent home from a Texas hospital until she showed signs of infection. If that is not a definition of physician abandonment, (I would define it as torture), I don't know what is.

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A recent ABOG claim (through their limited data) contends that virtual testing does not meet the standards of in-person testing. This argument goes against their own results and conclusions, which showed "overall pass rates [of virtual test takers] did not differ from those of previous years. This suggests that CE fidelity was preserved despite remote administration" (Shivraj P, Chadha R, Dynis D, et al. The American Board of Obstetrics and Gynecology's remote certifying examination: successes and challenges. AJOG Glob Rep. 2022;2(4):100136. Published 2022 Nov 18. doi:10.1016/j.xagr.2022.100136)

Additionally, suggesting remote administration does not meet standards should invalidate the results of any examinee from the past two years. If remote administration is sub-standard, then exams administered this way are invalid.

We want to ensure that Dr. Ottolenghi and all OB/GYN physicians avoid any unnecessary exposure to legal liability or any physical danger while completing their board examinations. Taking the examination virtually would avoid this. In-person exam-taking has already been proven unnecessary by the fact that during the Pandemic, including last year, these exams were successfully held virtually.

Your press release above states that "ABOG will continue to support all Board-certified OB/GYNs across the country within our role as a certifying organization." You should do nothing less for those taking the Board Certification examination – those like Dr. Ottolenghi who put their lives on the line to provide abortion care.

And your first expression of support should be allowing those who choose the ability to take their Board Certifications virtually. You can and should do nothing less.

Thank you for your consideration.

Merle Hoffman

CC: Brittany Fonteno, President NAF
Herminia Palacio, President Guttmacher Institute
Katharine Bodde, NYCLU
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