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December 7, 2023

The Honorable Maya Guerra Gamble
459th Civil District Court, Travis County Texas
1700 Guadalupe, 11th Floor
Austin, TX 78701

Re: *Cox et al. v. State of Texas et al.*, Cause No. D-1-GN-23-008611

Dear Judge Guerra Gamble:

Hours after Your Honor issued a Temporary Restraining Order (“TRO”) in the above-referenced matter, Defendant Attorney General Ken Paxton sent, published online, and tweeted¹ a letter addressed to three hospitals where he believes Ms. Cox might receive an abortion in accordance with the TRO. We write to draw Your Honor’s attention to the letter, which is attached as **Exhibit A**,² and respectfully request a hearing where Defendant Paxton can appear to answer for the letter and testify to why he misrepresented the Court’s order and seeks to dissuade the recipient hospitals from providing care to Mrs. Cox in accordance with the TRO.

The letter, dated December 7, 2023, begins by impugning Your Honor’s impartiality by referring to you as “an activist Travis County Judge.” Ltr. at 1. Under the Texas Disciplinary Rules of Professional Conduct, as an officer of the Court, “[a] lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.” Tex. Disciplinary R. of Prof. Conduct, Preamble ¶ 4.

¹ <https://twitter.com/TXAG/status/1732849903154450622>.

² After the Attorney General’s Office posted the letter publicly, Defendants’ counsel Johnathan Stone emailed a copy to Plaintiffs’ counsel “to make sure that ya’ll [sic] received a copy.”

Defendant Paxton goes on to misrepresent the Court's TRO, stating that it "*purport[s]* to enjoin the Attorney General's Office . . . and the Texas Medical Board . . . from enforcing some of the state's abortion laws against Dr. Karsan if she performs an abortion on Ms. Cox." Ltr. at 1 (emphasis added). This statement is false.³ The TRO does not "purport" to do anything. It is a duly issued court order that indeed "enjoin[s] Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active participation or concert with them, from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202 against Plaintiffs and their staff, nurses, pharmacists, agents, and patients, as applied to Ms. Cox's current pregnancy." TRO at 4.

The letter further falsely states that the TRO does not enjoin actions brought by private citizens under S.B. 8, and does not prohibit district or county attorneys from enforcing Texas's pre-*Roe* abortion bans against the hospitals, Dr. Karsan, or anyone else acting in concert. Ltr. at 2. But the Court's TRO specifically provides that "Defendant State of Texas enforces all Texas laws and includes persons acting under color of state law who could potentially enforce S.B. 8 and the pre-*Roe* ban." TRO at 4. Contrary to Defendant Paxton's assertion, the clear terms of the Court's TRO foreclose these avenues of threatened enforcement in this case.

On top of threats of enforcement by other entities, Defendant Paxton makes thinly veiled threats of future criminal and civil enforcement from his own office by "remind[ing]" the hospitals that "the TRO will expire long before the statute of limitations for violating Texas' abortion laws expires." Ltr. at 2.⁴ The letter further threatens that the hospitals "may be liable for negligently credentialing [Dr. Karsan] and failing to exercise appropriate professional judgment, among other potential regulatory and civil violations, if [they] permit Dr. Karsan to perform an unlawful abortion." *Id.* And it claims that the TRO and allegations fail to establish that Ms. Cox qualifies for the medical exception. *Id.* The Attorney General continues to assert that the abortion would be unlawful despite the Court's explicit findings that under the present circumstances it "fall[s] within the medical exception to Texas's abortion bans and laws," and that "Texas law therefore permits Dr. Karsan to perform, induce, or attempt an abortion for Ms. Cox." TRO at 3.

The letter closes by stating, "Judge Guerra Gamble is not medically qualified to make this determination and [the TRO] should not be relied upon. A TRO is no

³ "In the course of representing a client a lawyer shall not knowingly . . . make a false statement of . . . law to a third person." Tex. Disciplinary R. of Prof. Conduct, Rule 4.01, Truthfulness in Statements to Others.

⁴ "A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence." Tex. Disciplinary R. of Prof. Conduct, Rule 7.03(c), Solicitation and Other Prohibited Communications.

substitute for medical judgment.” Ltr. at 2. But as Defendant Paxton and the members of his office know well, a judge’s role is to consider the evidence before her, make findings of fact and law, and issue appropriate relief. Your Honor has done so, and Defendant Paxton and the other Defendants must comply.

The repeated misrepresentations of the Court’s TRO, coupled with explicit threats of criminal and civil enforcement and penalties, serve only to cow the hospitals from providing Ms. Cox with the healthcare that she desperately needs.

Plaintiffs respectfully request the Court hold a hearing so Defendant Paxton can explain to Your Honor why he should not be sanctioned.

Sincerely,

/s/ Molly Duane
Molly Duane*
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* Admitted *pro hac vice*

Encl.: Attorney General Ken Paxton Letter (Dec. 7, 2023) (Exhibit A)

Certificate of Service

A true and correct copy of the foregoing has been served on counsel of record for Defendants via electronic service on this 7th day of December, 2023.

/s/Molly Duane
Molly Duane

EXHIBIT A



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Recipients:

The Methodist Hospital
c/o Mike Cantu, Chief Legal Officer
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Houston, TX 77030
Ramon.Cantu@houstonmethodist.org

The Women's Hospital of Texas
c/o Jeanna Bamburg, CEO
7600 Fannin St.
Houston, X 77054
Jeanna.Bamburg@hcahealthcare.com

Texas Childrens Hospital
c/o Lance Lightfoot, Chief Legal Officer
6621 Fannin St.
Houston, TX 77030
LLightfoot@texaschildrens.org

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.