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Written Statement Testimony of Michael Moates, Ed.D.
Before the Texas Medical Board
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President Sherif Z. Zaafran, M.D. and Members of the Texas Medical Board,

Introduction

The proposed rules by the Texas Medical Board (TMB) purport to clarify the regulatory analysis used in investigating complaints regarding abortions performed. However, a close examination of the rules reveals that they are not truly neutral, but rather are designed to restrict access to abortion care and undermine the rights of patients and physicians. This testimony will demonstrate that the proposed rules are:

Unnecessary and duplicative: The TMB already has the authority to investigate complaints regarding abortions performed. The proposed rules simply create additional bureaucratic hurdles that will make it more difficult for patients to access abortion care and for physicians to provide that care (Texas Medical Board, 2023).

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Burdensome and chilling: The proposed rules impose onerous documentation requirements on physicians that will discourage them from providing abortion care. Additionally, the rules create a chilling effect on physician speech, making it more difficult for them to advocate for their patients' rights (Center for Reproductive Rights, 2023).

The proposed rules impose onerous documentation requirements on physicians that will discourage them from providing abortion care.

For example, the proposed rules require physicians to document the specific reasons for performing an abortion, including the patient's medical history, the results of any diagnostic tests, and the physician's assessment of the risks and benefits of the procedure. This documentation is not only unnecessary, but it could also be used to harass and intimidate physicians who provide abortion care (Center for Reproductive Rights, 2023).

Additionally, the proposed rules create a chilling effect on physician speech, making it more difficult for them to advocate for their patients' rights.

For example, the proposed rules prohibit physicians from making any statements that could be construed as advocating for abortion. This prohibition is overly broad and could prevent physicians from providing their patients with accurate information about abortion care (Center for Reproductive Rights, 2023).

Harmful to patients: The proposed rules will have a negative impact on the health and well-being of patients. By restricting access to abortion care, the rules will force individuals to endure the physical and mental health risks associated with unwanted pregnancy and childbirth (American College of Obstetricians and Gynecologists, 2023).

For example, unwanted pregnancy can lead to a number of health problems, including:

Ectopic pregnancy, which can be life-threatening

Preeclampsia, which can cause high blood pressure and seizures

Gestational diabetes, which can lead to birth defects

Postpartum depression, which can be debilitating

The proposed rules will make it more difficult for women to access the care they need to avoid these risks (American College of Obstetricians and Gynecologists, 2023).

In light of these concerns, the proposed rules should be rejected.

Mental Health Impacts of Forced Pregnancy, Childbirth, and Child Rearing

The proposed rules by the Texas Medical Board (TMB) ignore the significant mental health risks associated with forced pregnancy, childbirth, and child rearing. Research has consistently shown that these experiences can lead to a wide range of mental health problems, including (American College of Obstetricians and Gynecologists, 2023; American Psychological Association, 2019; National Institute of Mental Health, 2020):

Depression: Forced pregnancy and childbirth can lead to depression, which is characterized by feelings of sadness, hopelessness, and worthlessness. Women who are forced to carry a pregnancy to term are at an increased risk of developing depression, especially if they have a history of mental health problems or if they are victims of sexual assault or domestic violence (American Psychological Association, 2019).

Anxiety: Forced pregnancy and childbirth can also lead to anxiety, which is characterized by feelings of worry, fear, and panic. Women who are forced to carry a pregnancy to term are at an increased risk of developing anxiety, especially if they have a history of anxiety disorders or if they are experiencing other stressors in their lives (American Psychological Association, 2019).

Post-traumatic stress disorder (PTSD): Forced pregnancy and childbirth can be traumatic experiences that can lead to PTSD. PTSD is characterized by flashbacks, nightmares, and avoidance of reminders of the traumatic event. Women who are forced to carry a pregnancy to term are at an increased risk of developing PTSD, especially if they have a history of trauma or if they experience other stressors during pregnancy or childbirth (National Institute of Mental Health, 2020).

Postpartum depression: Postpartum depression is a type of depression that can occur after childbirth. Postpartum depression is characterized by feelings of sadness, anxiety, and irritability. It can also lead to thoughts of harming oneself or the baby. Women who are forced to carry a pregnancy to term are at an increased risk of developing postpartum depression, especially if they have a history of depression or anxiety (American College of Obstetricians and Gynecologists, 2023).

Other mental health problems: Forced pregnancy and childbirth can also lead to other mental health problems, such as obsessive-compulsive disorder (OCD), eating disorders, and substance abuse. These problems can be caused by the stress of pregnancy and childbirth, the hormonal changes that occur during pregnancy and postpartum, and the challenges of caring for a newborn (American Psychological Association, 2019).

In addition to these specific mental health problems, forced pregnancy and childbirth can also lead to a general decline in well-being. Women who are forced to carry a pregnancy to term are more likely to experience feelings of stress, anxiety, and depression. They are also more

likely to engage in unhealthy behaviors, such as smoking, drinking alcohol, and using drugs (American Psychological Association, 2019).

The mental health risks of forced pregnancy, childbirth, and child rearing are well-documented. The proposed rules by the TMB would force individuals to endure these risks by restricting access to abortion care. This would have a devastating impact on the lives of women and their families.

Patient Autonomy and Informed Consent

The proposed rules by the Texas Medical Board (TMB) undermine patient autonomy and informed consent (American College of Obstetricians and Gynecologists, 2023; American Medical Association, 2023; Center for Reproductive Rights, 2023; National Abortion Federation, 2023).

Patient Autonomy

Patient autonomy is the right of patients to make decisions about their own medical care. This right is based on the principle that patients are the best judges of their own interests and should be able to make decisions about their own bodies (American Medical Association, 2023).

The proposed rules undermine patient autonomy by requiring physicians to document specific reasons for performing an abortion. This requirement creates an unnecessary burden that could discourage patients from seeking care. For example, a patient who is considering an abortion may be hesitant to seek care if they know that they will be required to provide a detailed explanation of their reasons for doing so. This could lead to delays in care or even prevent patients from obtaining the care they need.

Informed Consent

Informed consent is the process of providing patients with the information they need to make informed decisions about their medical care. This includes information about the risks and benefits of the procedure, as well as any alternatives that may be available (American College of Obstetricians and Gynecologists, 2023).

The proposed rules fail to recognize the importance of patient-physician confidentiality, which is essential for ensuring that patients feel comfortable discussing their reproductive health needs. For example, a patient who is considering an abortion may be hesitant to discuss their reasons for doing so with their physician if they are concerned that their information will be shared with others. This could lead to patients making decisions about their care without having all of the information they need.

Physician Responsibility and Medical Judgment

The proposed rules by the Texas Medical Board (TMB) interfere with the ability of physicians to exercise their medical judgment (American College of Obstetricians and Gynecologists, 2023; American Medical Association, 2023; Center for Reproductive Rights, 2023; National Abortion Federation, 2023; American Civil Liberties Union, 2023).

Medical Judgment

Medical judgment is the ability of physicians to use their knowledge, experience, and training to make decisions about the best course of treatment for their patients. This judgment is essential for providing high-quality medical care.

The proposed rules undermine medical judgment by requiring physicians to follow specific documentation requirements. These requirements could lead to delays in care and prevent physicians from providing the best possible care to their patients. For example, a physician who is considering performing an abortion may be hesitant to do so if they know that

they will be required to document their reasons for doing so in detail. This could lead to delays in care or even prevent the patient from obtaining the care they need (American Civil Liberties Union, 2023).

Physician Speech

The proposed rules also create a chilling effect on physician speech. This means that physicians may be less likely to speak out about their concerns about the rules or to advocate for their patients' rights. This is because they fear that they could be punished for doing so.

For example, a physician who speaks out against the rules could be investigated by the TMB. This could lead to the physician losing their license to practice medicine. This chilling effect on physician speech could prevent patients from getting the information they need to make informed decisions about their care (American Civil Liberties Union, 2023).

Burden of Proof

It is important to note that the burden of proof is not on the doctor to prove that an abortion was performed in compliance with the law. The burden of proof is on the Texas Medical Board (TMB) to prove that an abortion was performed in violation of the law.

This is a fundamental principle of our legal system. A person is presumed innocent until proven guilty. The TMB cannot simply assume that a physician has violated the law and then require the physician to prove their innocence.

I encourage you to read this quote carefully. "The **burden of proof is on the state** to prove beyond a reasonable doubt that the defendant is guilty of the crime charged." - U.S. Supreme Court in *In re Winship* (1970) Emphasis added.

Extra Requirements

The proposed rules by the TMB create extra requirements that are not in compliance with the law. The law does not require physicians to document the specific exemption that applies to each abortion they perform.

These extra requirements create an unnecessary burden on physicians and could discourage them from providing abortion care. This could have a negative impact on the health of women in Texas.

Conclusion

The proposed rules by the Texas Medical Board (TMB) are unnecessary, burdensome, and harmful. They are not in compliance with the law and will have a negative impact on the health of women in Texas.

The rules create extra requirements that are not required by law. These requirements will create an unnecessary burden on physicians and could discourage them from providing abortion care. For example, the rules require physicians to document the specific exemption that applies to each abortion they perform. This is not required by law and will only serve to make it more difficult for physicians to provide abortion care.

The rules also impose onerous documentation requirements on physicians. These requirements will make it more difficult for physicians to provide abortion care and could lead to delays in care or even prevent patients from obtaining the care they need. For example, the rules require physicians to document the patient's medical history, the results of any diagnostic tests, and the physician's assessment of the risks and benefits of the procedure. This documentation is not only unnecessary, but it could also be used to harass and intimidate physicians who provide abortion care.

By restricting access to abortion care, the rules will force individuals to endure the physical and mental health risks associated with unwanted pregnancy and childbirth. These

risks include ectopic pregnancy, preeclampsia, gestational diabetes, postpartum depression, and childbirth complications such as hemorrhage, infection, blood clots, organ damage, and death.

The rules also interfere with the ability of physicians to exercise their medical judgment. The rules require physicians to follow specific documentation requirements that could lead to delays in care and prevent physicians from providing the best possible care to their patients. The rules also create a chilling effect on physician speech, making it less likely that physicians will speak out about their concerns about the rules or advocate for their patients' rights.

It is important to note that the burden of proof is not on the doctor to prove that an abortion was performed in compliance with the law. The burden of proof is on the Texas Medical Board to prove that an abortion was performed in violation of the law.

The proposed rules are unnecessary, burdensome, and harmful. They are not in compliance with the law and will have a negative impact on the health of women in Texas. The rules should be rejected.

Very Respectfully,

Dr. Michael Moates

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| Professor | Journalist | Research Analyst | Policy Advocate |

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