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Norman F. Gant, M.D.,
Executive Director
The American Board of Obstetrics and Gynecology
2915 Vine Street
Dallas, TX 75204
May 13, 2008

Dear Dr. Gant:

On November 7, 2007, the American College of Obstetricians and Gynecologists (ACOG) Committee on Ethics released an Opinion, "The Limits of Conscientious Refusal in Reproductive Medicine" (Opinion #385), which attempts to resolve the issue of ethically appropriate limits of conscientious judgments in reproductive medicine. Unfortunately, however, Opinion #385 not only failed to provide helpful guidance, but expressed opinions and recommendations that threaten to violate the rights of conscience and religious freedom of many ACOG member physicians. The Catholic Medical Association (CMA) has urged ACOG to rescind this opinion immediately (see our letter to ACOG, enclosed).

Our members, and many other pro-life physicians, are concerned that their certification or re-certification by the American Board of Obstetricians and Gynecologists (ABOG) will be jeopardized by ACOG's Opinion #385. Their concern is heightened by a lack of clarity in certain statements in ABOG's Maintenance of Certification Bulletin for 2008.

In discussing "Status with the Board: 5. Revoked Certificate," ABOG's Maintenance of Certification Bulletin for 2008 states,

- a. An individual has had their Dipolomate status revoked by the American Board of Obstetrics and Gynecology for cause.
- b. Cause in this case may be due to, but is not limited to, licensure revocation by any State Board of Medical Examiners, violation of ABOG or ACOG rules and/or ethics principles or felony convictions (page 10, emphasis added).

Later, the Maintenance of Certification Bulletin for 2008 states,

If a physician is involved in litigation or *investigation regarding ethical or moral issues*, the individual will not be scheduled for examination, and the application will be re-examined (page 26, emphasis added).

There is no explanation in this Bulletin exactly which ACOG “rules and/or ethics principles” provide guidance for such an important decision.

This lack of clarity is particularly important to resolve in light of the March 26, 2008 letter sent by Kenneth Noller, M.D. to ACOG Fellows. In that letter, Dr. Noller notes that “This Committee Opinion is not part of the ‘Code of Ethics of the American College of Obstetricians and Gynecologists’.” This distinction might have been dispositive if ABOG had retained language from its Maintenance of Certification Bulletin for 2007. That Bulletin stated in section 3.f that disqualification or Diplomate revocation would occur if a “physician shall have violated any of ‘The Ethical Considerations in the Practice of Obstetrics and Gynecology’ currently published by The American College of Obstetricians and Gynecologists and adhered to by the Board.” However, since ABOG has broadened its language, as noted above, it is possible that the conscientious refusal of a physician to comply with a given provision of Opinion #385 could be interpreted by some as a “violation . . . of ACOG rules and/or ethics principles . . .,” thus constituting “cause” for revocation of Diplomate status. It is critically important that ABOG clarify exactly which “rules and/or ethics principles” provide the standard in determining cause for denial or revocation of ABOG certification.

Your March 19, 2008 response to Health and Human Services Secretary Michael Leavitt makes several notable points, e.g.: (i) that there is no evidence that ABOG has ever asked physicians “to violate their own ethical or moral standards”; (ii) that ABOG has “taken no stand . . . against individual physicians who choose to or choose not to perform abortions or to refer patients to abortion providers”; and (iii) that refusal to perform or refer for abortion “is not a consideration in the applications or in the examinations administered by the American Board of Obstetricians and Gynecologists in any of its certifications or in its Maintenance of Certification requirements or examinations.” However, you do not clearly state that ABOG will not make maintenance of certification decisions based on Opinion #385.

Most public statements to date have focused on the egregious violations of conscience rights and religious freedom that would result from forcing physicians to perform or refer for abortion. However, the flawed ethical analysis and the ideological arguments advanced in Opinion #385 provide a framework for discriminating against physicians based on their religious beliefs or ethical convictions. The Opinion simply dismisses ethical concerns raised by referral for procedures a physician deems unethical. Moreover, it attempts to establish an expectation that a wide variety of elective reproductive services shall be offered to patients even if they violate the ethical convictions of physicians. The Opinion does this by characterizing elective reproductive procedures as “standard” and “indicated,” then dictating “considerations” that can override physicians’ ethical judgments. These considerations, however, are so vague and contentious that they cannot meaningfully function as ethical or

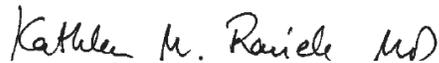
professional guidelines, much less justify overriding a physician's conscientious, professional judgment.

Given the many significant flaws in the content, and process of approval of Opinion #385, and given that enforcing compliance with this Opinion will compel physicians to choose between violating deep conscientious and religious beliefs and their practice of medicine, it is critical that the American Board of Obstetricians and Gynecologists clearly affirm that the ethical "standards" listed in this Opinion will not be used, now or in the future, in ABOG certification. This should not be difficult since Dr. Noller stated, in his above-referenced letter, that: "*This Committee Opinion was not intended to be used as a rule of ethical conduct which could be used to affect an individual's initial or continuing Fellowship in ACOG*" (emphasis added).

Therefore, we urge you to clearly affirm that Opinion #385 will not be cited or relied upon in any way by ABOG in certification or re-certification decisions.

Thank you.

Respectfully,



Kathleen M. Raviele, M.D., F.A.C.O.G.
President, Catholic Medical Association



John F. Brehany, Ph.D.
Executive Director, Catholic Medical Association