

AAPLOG - AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS

EXECUTIVE OFFICE: AAPLOG 339 River Ave, Holland, MI 49423 Website: www.aaplog.org

Telephone: (616) 546-2639 E-Mail: prolifeob@aol.com

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Executive Director

American Board of Obstetrics and Gynecology

2915 Vine St.

Dallas, TX 75204

September 9, 2008

Dear Dr. Gant,

The board of the American Association of Pro-Life Obstetricians and Gynecologists read with interest your letter of August 22, 2008 to Health and Human Services (HHS) Secretary Leavitt following the HHS press release titled "Regulation Proposed to Help Protect Health Care Providers from Discrimination" (August 21, 2008).

You seem surprised and disturbed that anyone might consider that the *potential* exists for the American Board of Obstetricians and Gynecologists (ABOG) to utilize the American College of Obstetricians and Gynecologists (ACOG) Committee Opinion #385, "The Limits of Conscientious Refusal in Reproductive Medicine," to deny or revoke board certification status. If you read our letter to you dated April 4, 2008 you should be acquainted with the published statements of ABOG which give rise to this concern.

In that letter, we requested a reply from the Board, in writing, addressing a number of concerns related to this issue. Despite your assurance to Secretary Leavitt that the Board "responds to all inquiries and complaints," our inquiry representing the concerns of hundreds of members who are also ABOG Diplomates, has yet to receive a response.

Further, ACOG does not appear to have made any move to rescind, amend or in any other way alter the contents of Committee Opinion #385, despite the controversy surrounding that document. Since that document remains at the center of this issue our prior communication with you remains pertinent.

Therefore, we are hereby reiterating and expanding our previously stated concerns.

In the ABOG Bulletin for 2008 "Maintenance of Certification" released in November of 2007 under the section "Status with the Board," paragraph 5, "Revoked Certificate," the following statements are found (page 8):

a. An individual has had their Diplomate 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. . .violation of ABOG or ACOG rules and/or ethics principles. . .

This statement doesn't clarify what ABOG or ACOG "ethics principles" are, but the assertions of Committee Opinion #385 purport to be based on ethics principles. This would appear to allow the Committee Opinion to fit under the rubric of ACOG "ethics principles." It should not be difficult to see that this could raise concern for *potential* discrimination by the Board against a physician who neither performs nor refers for elective abortions.

In this same ABOG Bulletin under the section "Revocation of Diploma or Certificate," paragraph 3, the following statements are found (page 31):

. . .Disqualification or Diplomate revocation also may occur whenever:
. . .the 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.

Likewise, the Board publication, The Diplomate, Maintenance of Certification: Final Version, Issue No. 33, 2007, contains the following statement under the section "Limitation and Revocation of Diplomate Status":

3.0 Disqualification or Diplomate revocation also may occur whenever:
. . .3.6 the physician shall have violated any of "The Ethical Considerations in the Practice of Obstetrics and Gynecology" currently published by the American College of Gynecologists and adhered to by the ABOG.

In each of these latter two citations a document titled "The Ethical Considerations in the Practice of Obstetrics and Gynecology" is referenced. It is specified as being "currently published" by ACOG and "adhered to by the Board." It does not appear that any document by this title is currently

published by ACOG. Since the Board "adheres" to this document and since violation of the dictates of this document becomes the ground for something as serious as revocation of board certification, it is incumbent upon the Board to clarify exactly what document it is referring to in these ABOG publications.

Once this issue has been clarified, then the pertinent question is whether the referenced document in any way gives credence to the Committee Opinions of the ACOG Ethics Committee as supporting documentation? If there is even the slightest possibility that this may be the case then it should not be difficult to see how the *potential* exists for discrimination against physicians who neither perform nor refer for elective abortions.

As noted in our previous letter to you, we have reason to suspect that the currently published "Code of Professional Ethics of the American College of Obstetricians and Gynecologists" may be the actual document that the Board intends to refer to in these publications.

In the "Code" there is, at certain points, vague language that leaves significant room for varying interpretation. For example:

IV. Professional Relations

. . .2) The obstetrician-gynecologist should consult, refer, or cooperate with other physicians, health care professionals, and institutions to the extent necessary to serve the best interests of their patients.

The Committee Opinions of the Ethics Committee of ACOG are frequent published together with this "Code," giving the appearance that they are either meant to inform the "Code" or that they represent logical outworkings of the "Code." Again, is not difficult to see how the language from the "Code" cited above, together with the language found in Committee Opinion #385 could have the *potential* to be used by the Board to discriminate against physicians who do not perform or refer for abortions. If the "Code" is the document that the ABOG means to refer to in its publications, and if the associated Committee Opinions are not "adhered" to by the Board, then this should be unequivocally delineated in ABOG policy.

At bottom, the question is this: Is it possible that the policy found in the cited ABOG publications, in conjunction with the opinions expressed in ACOG Committee Opinion #385, could ever be interpreted by the Board as

grounds for denying, limiting or revoking board certification status? We believe that any reasonable person would have to conclude that the *potential* for such discrimination exists, as the current language of these documents stands.

We are well aware that no case of discrimination by the Board in these matters has occurred and we do not intend to insinuate that there has been any discrimination to date. However, it should be clear that a letter from you to Secretary Leavitt assuring him that there is no concern for discrimination in this matter [letter dated March 8, 2008], does not constitute legally binding ABOG policy, either now or in the future, particularly while these cited statements remain in official ABOG publications and ACOG Committee Opinion #385 stands.

For these reasons the American Association of Pro-Life Obstetricians and Gynecologists again requests official clarification from ABOG of the specific concerns delineated in this letter. We particularly request a clear policy statement from the Board indicating that exercising a conscientious objection to performing or referring for abortion will not be construed as grounds to deny, limit or revoke Diplomate status, either now or in the future.

For the AAPLOG Board,

Donna J. Harrison, MD, FACOG
President, American Association of ProLife Obstetricians & Gynecologists

cc: Douglas H. Kirkpatrick, MD
President, ACOG
cc: Michael O. Leavitt,
Secretary, U.S. Dept. HHS