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TO: Department of Health and Human Services, Office for Civil Rights RIN 0945-ZA03

FROM: Donna Harrison M.D. Executive Director American Association of Pro-Life Obstetricians and Gynecologists

RE: RIN 0945-ZA03 or Docket HHS-OCR-2018-0002

DATE: March 26, 2018

The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) writes on behalf of over 4000 members and associates to applaud the proposed rule. AAPLOG has been advocating for the conscience rights of our members to practice Hippocratic Medicine since 1973. As such, we have closely followed the defense or lack of defense of conscience rights of health care providers through several administrations. Our First Committee Opinion (attached) outlines the Hippocratic objection to killing human beings in medical practice.

We applaud the current administration for taking effective action to actually enforce the existing conscience protections as defined in federal statutes, well summarized on the Federal Register website

<https://www.federalregister.gov/documents/2018/01/26/2018-01226/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

Many of the complainants cited on this website are AAPLOG members who have fought publicly for their ability to practice medicine consistent with the Hippocratic Oath. However, AAPLOG is also aware of other members who have decided not to pursue public defense of their conscience rights due to threat of more severe actions against their professional careers or license. AAPLOG members have been subject to loss of tenure, being fired from their academic teaching positions for testifying against abortion, and other forms of bullying and intimidation. What has become clear is that despite statutes forbidding discrimination, the lived reality of medical students, residents and practicing physicians is that of hostility toward them for refusing to kill human beings as part of their medical practice.

The statutes protecting conscience to date have been deceptively impotent, as none of them contain a private right of action, but all require enforcement through OCR, an enforcement that the previous administrations have been reluctant to do. In fact, The previous Chairman of the US Commission on Civil Rights made explicitly clear his disdain for conscientious objection in the OCR document [“Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties”](#). On page 30, Mr. Castro opines:

“The phrases “religious liberty” and “religious freedom” will stand for nothing except hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance.”

It is no wonder that our members and other conscientious objectors were loath to report to an OCR so openly hostile to rights of conscience.

AAPLOG particularly applauds the emphasis of the current administration to enforce existing laws:

“ With the proposed rule, the Department seeks to educate protected entities and covered entities as to their legal rights and obligations; to encourage individuals and organizations with religious beliefs and moral convictions to enter, or remain in, the health care industry; and, by clarifying the Department's general views regarding the operation and applicability of the Weldon Amendment, to prevent others from being similarly dissuaded from filing complaints due to OCR sub-regulatory guidance that is no longer reflective of the views of the Department.

This proposed rule would generally reinstate the structure of the 2008 Rule, supplemented with further definition of Federal health care conscience and associated anti-discrimination laws and robust notice and enforcement provisions. Specifically, the proposed rule would require certain recipients of Federal financial assistance from the Department or of Federal funds from the Department to both notify individuals and entities who are protected under the Federal health care conscience and associated anti-discrimination laws (such as employees, applicants, or students) of their rights and also to assure and certify to the Department their compliance with the requirements of these laws. It would also set forth in more detail the investigative and enforcement responsibility of OCR, along with the tools at OCR's disposal in carrying out its responsibility with respect to those Federal health care conscience and associated anti-discrimination laws.”

The recent surge of reports to OCR regarding conscience violations have occurred due to an understanding that the current administration recognizes and is actually willing to enforce, the existing laws.

AAPLOG deeply appreciates the recognition that violations of conscience rights of health care providers have been occurring for a substantial period of time. AAPLOG has been involved in fighting for the conscience rights of our members since our formation, including the ACGME mandate of 1996 which attempted to require all obgyns in training to perform abortions. The Hoekstra Coats amendment narrowly averted enforcement of this discriminatory mandate. Yet recurrent attempts to legally force our members to perform abortions (Menutti letter and AAPLOG response attached) have continued.

The current OCR website <https://www.federalregister.gov/documents/2018/01/26/2018-01226/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority> does an excellent job of summarizing the need for consistent enforcement of existing federal statutes, obviating the need for repetition of these facts in this letter.

AAPLOG also concurs with the submission of the Freedom2Care network submitted March 26, 2018, and with the recommendations outlined in that submission, and thus will not repeat those recommendations here.

AAPLOG appreciates the integrity of the current administrative efforts to enforce laws already in effect, and to defend the basic right of all Americans to act according to our consciences. This is, after all, the foundation of American society.

Respectfully submitted,

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Life. It's why we are here.