

January 10, 2025

Greg Brower
Attorney at Law



The Honorable Jim Jordan
Chairman
House Judiciary Committee
United States House of Representatives
2056 Rayburn House Office Building
Washington, DC 20515

The Honorable Chip Roy
Chairman
House Judiciary Subcommittee on the Constitution
and Limited Government
United States House of Representatives
103 Cannon House Office Building
Washington, DC 20515

Via Email

Re: Letter to Chief Executive Officer of Texas Children's Hospital dated December 11, 2024

Dear Chairman Jordan and Chairman Roy:

We write on behalf of our client, Texas Children's Hospital ("TCH"), in response to your letter to TCH's Chief Executive Officer ("CEO") dated December 11, 2024. TCH respects and appreciates Congress's oversight role and seeks to accommodate your requests for information related to the Subcommittee on the Constitution and Limited Government's examination of the ongoing prosecution of Dr. Eithan Haim by the U.S. Department of Justice ("DOJ"). We appreciate your courtesy in allowing our client additional time to respond to your requests given the holiday season.

Based on our discussion with your staff, we understand that responses to your requests 4 and 5 were to be prioritized. Accordingly, we are producing herewith all nonprivileged documents that have been identified within TCH's possession responsive to request 5, as well as documents identified as responsive to requests 3 and 4. As further discussed with your staff, a full production of documents responsive to your requests 1 and 2 will necessarily take some additional time given the scope of these requests. We are diligently working with our client on identifying documents responsive to these requests and will make additional rolling productions as soon as possible.

The information and representations contained herein and the production of documents that accompanies this response are based on TCH's understanding and best efforts undertaken within the timeframe provided, its understanding of the terms of your letter, and information reasonably available. TCH reserves the opportunity to supplement the information and documents provided with this response. In providing information and documents in response to your requests, TCH does not waive any rights or legal options and does not intend to, and does not, waive any applicable privilege, protection, or other legal basis under which information may not be subject to production. If it were found that the information or documents provided include privileged

material, such disclosure would be inadvertent. By any such inadvertent provision of such information, TCH does not waive and has not waived the attorney-client privilege or any other applicable protection.

* * *

In order to provide some context that we believe will be helpful to the Subcommittee's understanding of the documents that are subject of its examination, we offer the following background information relating to this matter. In addition, the information and documents provided may contain proprietary and sensitive information. Accordingly, we respectfully request that if you intend to use any of this information or material publicly, you notify us first so that we may have an opportunity to discuss the same.

Texas Children's Hospital

TCH is a Texas non-profit organization whose mission is to create a healthier future for children and women throughout the global community by leading in patient care, education, and research. Founded in 1954, TCH is consistently ranked among the nation's top children's hospitals and boasts top-ranked programs in a wide range of fields related to pediatric care. Prior to September 1, 2023, a small number of TCH physicians specializing in endocrinology and adolescent medicine provided gender care to TCH patients under the age of 18. This treatment was always provided with the specific consent of the minor patient's parent or guardian, and it was provided within the standard of care at the time recognized as appropriate by leading national and international medical professional associations. This care was limited for minors to certain hormone therapy, *but at no time did this treatment include TCH physicians performing surgeries or any other procedures on minors that resulted in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue.* To be clear, TCH physicians have never performed sex-change operations on minors.

TCH's Pause of Gender Care Services

In February 2022, Texas Attorney General Ken Paxton and Governor Greg Abbott each took certain executive actions relative to the provision of gender care to minor patients within the State of Texas. Specifically, on February 18, 2022, Attorney General Paxton, in response to a request from a member of the Texas Legislature, issued an opinion¹ that concluded certain types of gender care for minor patients, including hormone therapies, could legally constitute child abuse under Texas law. Four days later, on February 22, 2022, Governor Abbott sent a letter to the Texas Department of Family and Protective Services ("DFPS") instructing it to investigate alleged instances of such treatment for potential evidence of child abuse.² In view of these actions, TCH decided to temporarily pause its provision of such care to assess the potential legal ramifications of these governmental actions. On March 4, 2022, TCH responded to a media inquiry about these developments by acknowledging this pause. The story reported: "[a]fter assessing the Attorney General's and Governor's actions,

¹ See Opinion No. KP-0401.

² Press Release, Governor Abbott directs DFPS to Investigate Gender-Transitioning Procedures as Child Abuse, Office of Texas Governor (Feb. 22, 2022), <https://gov.texas.gov/news/post/governor-abbott-directs-dfps-to-investigate-gender-transitioning-procedures-as-child-abuse>.

Texas Children's Hospital paused hormone-related prescription therapies for gender-affirming services. This step was taken to safeguard our healthcare professionals and impacted families from potential criminal legal ramifications."³ This decision was also broadly communicated in an email dated March 8, 2022, from TCH's then-CEO to all staff clarifying that TCH's pause was "just that – a pause," and that TCH intended to resume providing such treatment once it could do so in a legally compliant manner.

The pause lasted only a short period. TCH ultimately concluded that providing medically appropriate gender care to minor patients was not legally prohibited. On this point, the Texas courts agreed. On March 11, 2022, a Travis County, Texas, judge issued a statewide temporary injunction enjoining DFPS from investigating or prosecuting the families of transgender children for "child abuse."⁴ On March 21, 2022, a Texas appellate court issued an order upholding the statewide temporary injunction pending appeal.⁵ On May 13, 2022, the Texas Supreme Court vacated the statewide temporary injunction on jurisdictional grounds, but upheld the injunction with respect to the plaintiffs and declared the Texas Attorney General's legal opinion and Governor Abbott's statements were non-binding and legally insufficient to "alter the pre-existing legal obligations of state agencies or private citizens."⁶ To be clear, TCH was not a party to these lawsuits, but the Courts' decisions on the issues provided additional legal guidance as the hospital navigated the quickly changing legal landscape.

TCH's Continuation of Gender Care Services

Shortly after instituting the pause, and in light of the March 2022 injunction, TCH decided to continue providing gender care to minors. TCH's decision was publicly reported by the Houston Chronicle in an article dated May 3, 2022, in which a TCH spokesperson was quoted as confirming that TCH "has continued to care for transgender patients...."⁷ Such care continued for approximately seventeen months thereafter. During this time, the ongoing provision of gender care for minor patients at TCH was the subject of at least one "grand rounds" or continuing education session widely attended by TCH physicians, residents, and students and conducted by TCH in the months following the confirmation that such care would continue at TCH.⁸

³ Steve Campion, Texas Children's Hospital halts hormone-related prescription therapies for transgender children, KTRK ABC 13 NEWS (Mar. 4, 2022), <https://abc13.com/transgender-children-mental-health-lgbtq-rights-texas-politics/11621048/> (quoting TCH statement).

⁴ *Doe v. Abbott*, Cause No. D-1-GN-22-000977, 2022 WL 831383, at *2 (Tex. Dist. Ct. 353d Judicial Dist., Mar. 11, 2022).

⁵ *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956, at *2 (Tex. App. 3d Dist. Mar. 21, 2022), *vacated sub nom, In re Abbott*, 645 S.W.3d 276 (Tex. 2022).

⁶ *In re Abbott*, 645 S.W.3d 276, 281, 284 (Tex. 2022).

⁷ Julian Gill, *Houston pediatric chief's abrupt exit triggers fear, disappointment within transgender community*, HOUSTON CHRONICLE (May 3, 2022), <https://www.houstonchronicle.com/news/houston-texas/health/article/Pediatric-chief-s-abrupt-exit-from-hospital-17143159.php>. Unfortunately, a Washington Post article dated March 8, 2022, and referenced in footnote 3 of your letter seems to have erroneously reported the pause acknowledged by TCH on March 4 as a decision to permanently stop all such care.

⁸ Grand rounds are routine, regularly scheduled, and advertised within the TCH community and are open to all staff and other invitees. See <https://www.bcm.edu/departments/pediatrics/education/pediatric-grand-rounds>.

Change to Texas Law

Eventually, on May 19, 2023, the Texas Legislature passed and Governor Abbott later signed Texas Senate Bill 14, which prohibited certain types of pediatric gender care in the State of Texas, including some of the type(s) of care provided to patients by TCH. Within a few days of the bill's signing, TCH announced that it would timely comply with the new law upon its effective date of September 1, 2023. On August 1, 2023, TCH began the process of notifying impacted patients terminating their care.

City Journal Story

Prior to the passage of Senate Bill 14, on May 16, 2023, at 1:43 pm CT, a journalist with City Journal emailed TCH's media relations team an image depicting a redacted screenshot of a TCH procedure schedule, which appeared to have been taken from TCH's internal, password-protected electronic medical records system, asking for TCH's comment. A few hours later, City Journal published the story, in which the journalist claimed that he "obtained exclusive whistleblower documents showing that, despite its public statements, [TCH] has *secretly* continued performing transgender medical interventions, including the use of implantable puberty blockers, on minor children."⁹ This statement in the story was inaccurate because there was no secrecy around TCH's medical care. When TCH continued to provide such treatment, it did so transparently and within the bounds of the law as evidenced by the May 3, 2022, Houston Chronicle story and the fact that TCH openly discussed this care during TCH's January 13, 2023, grand rounds presentation.

The story included the image sent to TCH and many others like it. Specifically, the story included a link to a 14-page PDF file containing material that the story's author reported obtaining from an "exclusive" source. Twelve pages of these documents were crudely redacted images of screenshots of procedure schedules. The images listed, in redacted form, dozens of patients, and the schedules had fields for patient names, birthdates, diagnosis code(s), dates of treatment, and other information considered to be protected health information ("PHI") under the Health Information Portability and Accountability Act of 1996 ("HIPAA"). TCH later identified over 50 patients who were on the schedules, many of whom were not gender care patients, let alone minor gender care patients. And, while the patient names and birth dates appear to have been redacted from the images City Journal published, the screenshots were of screens that displayed that data in unredacted form, revealing that the individual who accessed those screens had done so from within TCH's electronic medical records system.

Within 48 hours, an agency of the federal government and attorneys representing patients contacted TCH demanding information about the patient privacy concerns implicated by the material the article published. On May 17, 2023, the day after the story was published, an attorney representing some of the families of TCH patients contacted TCH to express concerns about the fact that they were able to piece together information from the screenshots in a way that allowed them to identify their children despite the redactions. That same day, TCH was contacted by the U.S. Department of Health and Human Services Office of Civil Rights ("HHS-OCR"), the office within HHS that has civil enforcement authority over HIPAA. It notified TCH that it had an

⁹ Sex-Change Procedures at Texas Children's Hospital, CITY JOURNAL (May 16, 2023), <https://www.city-journal.org/article/sex-change-procedures-at-texas-childrens-hospital> (emphasis added).

“open case” for TCH—a compliance review of TCH for a potential HIPAA violation. The next day, in a letter dated May 18, 2023, HHS-OCR informed TCH that a compliance review had been initiated “to determine whether Texas Children’s impermissibly disclosed patient PHI, resulting in its publication in the City Journal magazine.”¹⁰ This letter further informed TCH that HHS-OCR would be “reviewing Texas Children’s compliance with various provisions of the HIPAA Rules.”¹¹

Because of the possible serious breach of patient privacy, TCH immediately began to investigate the matter in accordance with established policies and procedures governing privacy incidents as is required in the event of any suspected HIPAA violation. The material published with the City Journal article allowed TCH to quickly identify the likely source. At the outset, it was clear to TCH that the “exclusive” source for the City Journal story was someone with access to TCH’s confidential electronic medical records system. Moreover, one of the images was of the grand rounds presentation dated January 13, 2023, referenced above. That presentation was stored on a cloud-based storage solution accessible through Microsoft Teams. Because accesses to that system are logged, TCH personnel, acting at the direction of TCH’s legal department, retrieved the relevant access log which showed that Dr. Haim had accessed it nine times from January 30, 2023, to May 9, 2023, with his last access occurring just seven days before the City Journal story was published. Next, TCH personnel, acting at the direction of TCH’s legal department, reviewed Dr. Haim’s history of access to TCH’s electronic medical records system. The access logs show that Dr. Haim had accessed patient data in the electronic record system in April and May 2023, including on May 9, 2023—the same day he accessed the grand rounds presentation. The access logs also showed that in April and May 2023, Dr. Haim accessed records of four pediatric patients that TCH later determined were not under his care. Based on these access logs, by the end of the day on May 17, 2023, TCH’s investigation had identified Dr. Haim as the likely source due to his access to the grand rounds presentation and his sudden access to TCH’s electronic medical records system during the relevant timeframe. Previously, he had not accessed the system since 2021.

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Again, TCH understands the important oversight role of Congress, and, we look forward to assisting the Subcommittee with its oversight responsibilities. If you have any questions concerning the above or about the documents produced herewith, please contact us. In the meantime, we will work on the next production and will be in touch with your staff about that.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Brower', with a stylized, flowing script.

Greg Brower

¹⁰ May 18, 2023, OCR data request – OCR Transaction # 23-529752 at 1

¹¹ *Id.*

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CC (via email): The Honorable Jamie Raskin, Ranking Member, House Judiciary Committee

CC (via email): The Honorable Mary Gay Scanlon, Ranking Member, Subcommittee on the Constitution and
Limited Government