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ADMINISTRATIVE COMPLAINT

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PRELIMINARY STATEMENT

1. This complaint is filed by Kyleigh Thurman, through her attorneys, pursuant to the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA"). In February 2023, Ascension Seton Williamson Hospital ("Ascension Williamson") violated EMTALA when it refused Ms. Thurman the treatment necessary to stabilize her emergency medical condition. Specifically, Ascension Williamson failed to provide Ms. Thurman timely treatment to terminate her ectopic pregnancy.

2. Ms. Thurman had a tubal ectopic pregnancy, a pregnancy in which a fertilized egg implanted in one of her fallopian tubes, instead of in her uterus. An ectopic pregnancy is never a viable pregnancy. If not treated promptly, it can be deadly for the pregnant patient. A tubal ectopic pregnancy's growth can cause the fallopian tube to rupture. Rupture can cause major internal bleeding and/or death. Treating a ruptured fallopian tube may require surgical removal of the tube, which harms the patient's fertility. A patient who is near rupture needs immediate treatment to preserve the patient's reproductive organs and to protect the patient's life and health.

3. Nevertheless, Ascension Williamson discharged Ms. Thurman without treating her ectopic pregnancy or transferring her to another facility. Days later, when she returned to Ascension Williamson because she continued to experience vaginal bleeding, Ascension Williamson denied care even though her OB/GYN had concluded she had an ectopic pregnancy, and an attending hospital physician concluded her symptoms were those of an ectopic pregnancy. It was not until her OB/GYN pleaded to hospital staff that she be given care that the hospital provided the necessary care. This care was too late, and Ms. Thurman's ectopic pregnancy ruptured due to the hospital's delay in treating her. Ascencion Williamson's discharge of Ms. Thurman and failure to provide immediate medical attention to stabilize her emergency medical

condition "could reasonably be expected to result in": "placing the health of the individual . . . in serious jeopardy"; "serious impairment to bodily functions"; or "serious dysfunction of a[] bodily organ or part", in violation of EMTALA, 42 U.S.C. § 1395dd(b) and (e)(1)(A).

4. Ms. Thurman's experience is not isolated. Since *Roe v. Wade* was overturned in 2022, there have been numerous reports of delays and denials of pregnancy-related care in emergency rooms in states with abortion bans, even for care that is legal under state law.[1] This is because of the extreme penalties for physicians who violate state abortion bans. In Texas, a physician who provides a prohibited abortion faces up to life in prison, loss of medical license, and at least $100,000 in fines. *See* Tex. Health & Safety Code §§ 170A.004–170A.007; Tex. Penal Code §§ 12.32–12.33; Tex. Health & Safety Code §§ 171.207–171.211. Thus, some clinicians have been reluctant to provide medical intervention for a suspected or presumed ectopic pregnancy. Instead, they have forced patients to wait days or weeks and undergo additional testing to confirm and reconfirm the diagnosis.[2] They are doing so out of concern that, if their diagnosis is incorrect, termination would be a prohibited abortion that could result in criminal and civil penalties. The results for patients are often disastrous.[3]

5. These concerns do not permit denying patients care in violation of EMTALA. Hospitals cannot justify refusing to terminate ectopic pregnancies as stabilizing care required

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[1] Amanda Seitz, *Emergency Rooms Refused to Treat Pregnant Women, Leaving One to Miscarry in a Lobby Restroom*, The Associated Press (April 19, 2024), https://apnews.com/article/pregnancy-emergency-care-abortion-supreme-court-roe-9ce6c87c8fc653c840654de1ae5f7a1c.

[2] *See* Kellie Mullany et al., *Overview of Ectopic Pregnancy Diagnosis, Management, and Innovation*, 19 Women's Health, 1, 9-10 (2023); Daniel Grossman et al., *Preliminary Findings: Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision, Advancing New Standards in Reproductive Health* (May 2023) ("Care Post-*Roe* Report"), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf.

[3] *See* Charlotte Huff, *In Texas, Abortion Laws Inhibit Care for Miscarriages*, NPR (May 10, 2022), https://www.npr.org/sections/health-shots/2022/05/10/1097734167/in-texas-abortion-laws-inhibit-care-for-miscarriages.

under EMTALA for emergency medical conditions by pointing to state abortion bans. Regardless of concerns about state law, EMTALA forbids hospitals like Ascension Williamson from refusing stabilizing treatment to patients with presumed or suspected ectopic pregnancies, like Ms. Thurman, because such patients' health is in serious jeopardy without immediate treatment. Moreover, although Texas law bans nearly all abortions, Texas law explicitly *allows* termination of ectopic pregnancies.

6. Ms. Thurman respectfully requests that the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services ("CMS") and Region 6 Office investigate Ascension Williamson's refusal to provide her with emergency medical treatment in February 2023 and issue a finding that Ascension Williamson violated EMTALA by failing to provide her with stabilizing care. This investigation and finding are necessary to safeguard access to emergency medical treatment for all pregnant Texans who remain at risk that hospitals will deny them care if they experience an emergency medical condition, such as an ectopic pregnancy. Especially in states like Texas that severely criminalize certain pregnancy-related care, enforcing EMTALA's mandates is critical to protect the lives, health, and fertility of pregnant patients.

7. Ms. Thurman further requests that, for reasons discussed herein, CMS initiate an independent investigation into this Complaint without referral to the Texas Department of State Health Services, or, at a minimum, conduct an independent assessment of the facts discussed in this Complaint before reaching its final compliance determination.

8. Ms. Thurman also directs this complaint to the Office of Civil Rights ("OCR") to request an investigation and finding against the subjects of this complaint for having violated EMTALA, and to request a written, reasoned explanation of that finding, in light of HHS's commitment to work with CMS to address EMTALA complaints and compliance.

JURISDICTION

9. CMS is responsible for ensuring compliance with EMTALA. The CMS Region 6 Office, based in Dallas, Texas, serves the region that includes Texas, where the Recipient Ascension Williamson is located.[4]

10. CMS Regional Offices evaluate EMTALA complaints and, for those requiring further investigation, generally refer the case to state survey agencies to investigate on CMS's behalf.[5] However, even when a state agency conducts the investigation, CMS Regional Offices "retain delegated enforcement authority and final enforcement decisions are made there."[6] Moreover, administrative decisionmaker CMS Regional Offices are not bound by a state agency's factual findings and may consider additional information to determine whether a facility is in compliance with EMTALA.[7]

11. In certain instances, CMS does not refer alleged EMTALA violations to state survey agencies. For example, "CMS refers appropriate cases to the OIG [Office of Inspector General] for investigation."[8] "Appropriate cases" for OIG investigation may include those where a physician failed to treat or stabilize a patient with a condition that required immediate medical care.[9]

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[4] Ctrs. for Medicare & Medicaid Servs., *CMS Regional Offices*, https://www.cms.gov/Medicare/Coding/ICD10/CMS-Regional-Offices (last visited July 22, 2024).

[5] Ctrs. for Medicare & Medicaid Servs., State Operations Manual, Chapter 5 – Complaint Procedures § 5430.1 (Feb. 10, 2023), https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05pdf.pdf (hereinafter "SOM Ch. 5").

[6] SOM Ch. 5, Appx. V; *see also id.* (noting that "it is the responsibility of the [Regional Office]" to determine if an EMTALA violation has occurred).

[7] *See* SOM Ch. 5 § 5460 *et seq.*; *see also* SOM Ch. 5 Appx. V (advising state survey agencies that staff should not tell hospitals whether investigation shows an EMTALA violation occurred "since it is the responsibility of the [CMS regional office] to make that determination").

[8] SOM Ch. 5 § 5480.2.

[9] *Id.*

12. Here, CMS should not rely solely on a state agency's assessment of the facts in reaching its determination because of Texas state officials' hostility toward interpreting EMTALA as requiring hospitals to provide pregnancy termination to pregnant patients experiencing emergency medical conditions. Texas submitted an amicus brief to the U.S. Supreme Court arguing that EMTALA does not require hospitals to provide abortions that are necessary to stabilize a pregnant person's emergency medical condition because such abortions "place the health of an unborn child in serious jeopardy—indeed, it results in the child's destruction."[10] And after a federal district court in Texas issued an order in *Texas v. Becerra* preliminarily enjoining part of CMS's post-*Dobbs* EMTALA guidance, Texas Attorney General Ken Paxton issued a press release lauding the decision: "We're not going to allow left-wing bureaucrats in Washington to transform our hospitals and emergency rooms into walk-in abortion clinics," and "I will fight back to defend our pro-life laws and Texas mothers and children."[11]

13. Outside the EMTALA context, Texas officials have fought efforts to allow pregnancy termination necessary to protect patient health. In *Cox v. Texas*, a Texas physician went to state trial court and obtained a court order allowing her to provide abortion care to Kate Cox for a non-viable pregnancy that posed a risk to her future fertility, but before even requesting appellate relief, the Attorney General threatened the hospitals where the physician practices with enforcement of Texas's abortion bans for civil or criminal liability if the hospitals allowed the

[10] *Idaho v. United States*, No. 23A470, 2024 WL 1421914, Br. of Indiana, et al., as Amici Curiae in Supp. of Idaho's Emergency Appeal for Stay Pending Appeal at 6, (Nov. 27, 2023) (internal citations and quotations omitted), https://www.supremecourt.gov/DocketPDF/23/23727/290617/20231127144632815_23A470%20tsac%20Indiana%20et%20al%20ISO%20Emergency%20Application%20for%20Stay.pdf.

[11] Ken Paxton, Tex. Att'y Gen., *Paxton Secures Victory Against Biden Administration, Blocks HHS from Forcing Healthcare Providers to Perform Abortions in Texas* (Aug. 24, 2022), https://www.texasattorneygeneral.gov/news/releases/paxton-secures-victory-against-biden-administration-blocks-hhs-forcing-healthcare-providersperform.

court-authorized abortion.[12] And in *Zurawski v. Texas*, twenty Texas patients who were denied or delayed abortion care for serious obstetrical complications and two Texas OB/GYNs sought clarity regarding the medical exception to Texas's abortion bans, but the Attorney General and Texas Medical Board fought against any clarity in the trial court and in the Texas Supreme Court.[13] The state's medical expert in both *Cox* and *Zurawski* works for an anti-abortion advocacy organization and was recently appointed to Texas's Maternal Mortality and Morbidity Review Committee.[14] And despite the Texas Supreme Court's urging, the Texas Medical Board issued regulations failing to meaningfully clarify when physicians can provide abortion care under the exceptions to Texas's abortion bans.[15]

14. In light of these concerns and events, Ms. Thurman requests that CMS and the Region 6 Office and/or OCR conduct an independent investigation of this Complaint, whether by referring this matter to OIG or otherwise. Alternatively, if CMS refers the matter to the Texas Department of State Health Services for investigation, Ms. Thurman requests that CMS conduct a full, independent investigation and consider the facts contained in this Complaint before concluding its investigation and determining whether Ascension Williamson complied with EMTALA.

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[12] Ken Paxton (@TXAG), Twitter (Dec. 7, 2023, 2:49 PM), https://twitter.com/TXAG/status/1732849903154450622; *In re Texas*, 682 S.W.3d (Tex. 2023) (per curiam).

[13] *Texas v. Zurawski*, No. 23-0629, 2024 Tex. LEXIS 401 (Tex. May 31, 2024).

[14] Eleanor Klibanoff, *Anti-Abortion Doctor Appointed to Texas Maternal Death Review Committee*, Texas Tribune (May 22, 2024), https://www.texastribune.org/2024/05/22/texas-maternal-mortality-committee-ingrid-skop-abortion-doctor.

[15] *See Zurawski*, No. 23-0629 at n.6 (Busby, J., & Lehrmann, J., concurring) ("But instead of fulfilling its own obligation to speak clearly and specifically, the Board has proposed a regulation that does nothing more than restate the relevant statutes."); Bayliss Wagner, *Texas OB-GYNs Slam Proposed TMB Abortion Rules: 'Dead Mothers do not Lead to Live Babies,'* Austin American-Statesman (May 21, 2024), https://www.statesman.com/story/news/politics/state/2024/05/21/texas-medical-board-abortion-guidelines-women-obgyns-hospital-associations-slam-proposed-rules/73767779007/.

FACTUAL ALLEGATIONS

A. Ectopic Pregnancy is an Emergency Medical Condition that Requires Stabilizing Treatment

14. Pregnancy can lead to any number of emergency medical conditions for which stabilizing care is needed because failure to provide such immediate medical attention "could reasonably be expected to result in" "placing the health" of the pregnant patient "in serious jeopardy," "serious impairment to bodily functions," or "serious dysfunction of a[] bodily organ or part," in violation of EMTALA, 42 U.S.C. § 1395dd(b) and (e)(1)(A). Delaying such care can lead to serious complications, including hemorrhage, loss of reproductive organs, sepsis, or even death of the pregnant patient.

15. An ectopic pregnancy is a pregnancy where the fertilized egg implants and grows in a location other than inside of the uterine cavity. Ectopic pregnancies often implant in one of the fallopian tubes but may also implant in the scar from a previous cesarean delivery or other locations including the abdominal cavity, the cervix, or an ovary. Ectopic pregnancies cannot result in live births and are life-threatening to the pregnant person because the pregnancy will grow and rupture if left untreated and can cause massive internal bleeding. Ectopic pregnancies must be terminated with medication or surgery as soon as possible after diagnosis.[16]

16. Treatment of a tubal ectopic pregnancy involves either medication or surgery. If an ectopic pregnancy is detected early and the patient's vital signs are stable, it is most commonly treated with injection of a medication called methotrexate, which prevents the cells in the

[16] *See* The American College of Obstetricians and Gynecologists ("ACOG"), *Practice Bulletin 193: Tubal Ectopic Pregnancy*, 131 Obstetrics Gyn. e91 (2018) (hereinafter "ACOG Practice Bulletin 193"); Soc'y for Maternal Fetal Med. ("SMFM") et al., *SMFM Consult Series #63: Cesarean Scar Ectopic Pregnancy*, 227 Am. J. Obstetrics Gyn. B9 (2022); ACOG, *Facts Are Important: Understanding Ectopic Pregnancy*, https://www.acog.org/advocacy/facts-are-important/understanding-ectopic-pregnancy.

pregnancy from continuing to grow.[17] The pregnancy is then absorbed by the body over a couple of weeks. If the ectopic pregnancy is not detected early and has grown too large to be treated with methotrexate, the pregnancy must be surgically removed from the fallopian tube.[18] Surgical intervention entails removal of part or all of the affected fallopian tube (salpingectomy) or removal of the ectopic pregnancy while leaving the affected fallopian tube in site (salpingostomy).[19]

17. Ectopic pregnancy is the leading cause of maternal mortality in the first trimester, accounting for 5-10% of all pregnancy-related deaths.[20] Texas's Maternal Mortality and Morbidity Review Committee and the Department of State Health Services released a joint report in 2022 finding that the leading cause of pregnancy-related deaths in Texas was obstetric hemorrhage, and one of the most common underlying causes of such hemorrhage was ruptured ectopic pregnancy. In 2019, at least 13 women in Texas died from a ruptured ectopic pregnancy.[21]

B. Ascension Williamson Refused to Provide Stabilizing Treatment to Ms. Thurman for an Ectopic Pregnancy[22]

14. Ms. Thurman lives in Burnet, a county in central Texas.

15. Ms. Thurman had never been pregnant before when, in January 2023, she suspected something was wrong with her body. She had taken steps to prevent pregnancy, her period that

[17] ACOG, *FAQs: Ectopic Pregnancy* (Feb. 2018), https://www.acog.org/womens-health/faqs/ectopic-pregnancy.

[18] *Id.*

[19] ACOG Practice Bulletin 193 at e98.

[20] Kellie Mullany et al., *Overview of Ectopic Pregnancy Diagnosis, Management, and Innovation*, at 1.

[21] Texas Health and Human Servs., *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022* ("Texas MMRC 2022 Report"), https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Joint-Biennial-MMMRC-Report-2022.pdf.

[22] The allegations contained herein are to the best of Ms. Thurman's knowledge and recollection.

month had been irregular, and she was experiencing intermittent cramping and dizziness. She had been bleeding continuously for nearly a month. When her symptoms worsened, she sought medical care.

16. On February 17, 2023, Ms. Thurman contacted her OB-GYN who instructed her to take a pregnancy test. It was positive. Based on her symptoms, her OB-GYN already suspected an ectopic pregnancy. Because her OB-GYN's office was an hour away and had no remaining appointments that day, Ms. Thurman's OB-GYN advised her to go to her hometown emergency room.

17. Staff at the emergency room discharged her after being unable to locate an intrauterine pregnancy and measuring her pregnancy hormone human chorionic gonadotropin (hCG) levels. Ms. Thurman returned to her hometown emergency room two days later, but the staff discharged her again and told her to return two days later.

18. Ms. Thurman's OB-GYN reviewed the hCG blood test and ultrasound results and advised Ms. Thurman by phone that her pregnancy was likely ectopic. Her OB-GYN recommended an injection of methotrexate to terminate the pregnancy. Ms. Thurman's OB-GYN did not have methotrexate in her office and told Ms. Thurman to go to an emergency room for the medication. Ms. Thurman's hometown hospital did not appear to stock methotrexate either, so Ms. Thurman drove an hour away to a larger hospital.

19. On February 21, Ms. Thurman arrived at Ascension Williamson. Ms. Thurman's OB-GYN contacted the on-call physician and advised that Ms. Thurman had an ectopic pregnancy and needed methotrexate immediately. An ultrasound showed no intrauterine pregnancy, revealed a two-centimeter "rounded structure" on her right fallopian tube, and her hCG levels had slightly decreased in the last two days. All these are signs of a tubal ectopic pregnancy. Yet, Ascension

Williamson denied Ms. Thurman methotrexate or any other treatment for ectopic pregnancy. She was again sent home with instructions to return in two days.

20. Ms. Thurman continued to experience vaginal bleeding over the next few days. Her OB-GYN encouraged her to return to Ascension Williamson's emergency room.

21. On February 24, Ms. Thurman drove again to Ascension Williamson and explained again that her OB-GYN had diagnosed her with an ectopic pregnancy. But as before, hospital staff did not offer Ms. Thurman treatment even though the staff noted that her hCG hormone levels had "plateaued which is concerning for a possible ectopic pregnancy." Ms. Thurman called her OB-GYN's office for advice. Infuriated, Ms. Thurman's OB-GYN met Ms. Thurman at Ascension Williamson to plead with the medical staff to give her methotrexate. Ascension Williamson staff eventually agreed.

22. The methotrexate injection was too late. Several days later, Ms. Thurman experienced sudden, blinding pain on her right side, began bleeding, and almost passed out. The ectopic pregnancy was rupturing—a life-threatening condition.

23. Ms. Thurman returned to her hometown emergency room, but they did not have the staff or resources to treat such a serious condition. Ms. Thurman was transferred to Ascension Williamson where she was told she was bleeding out. Her right fallopian tube was removed to save her life. After the surgery, Kyleigh was overwhelmed by the horror of the ordeal. The removal of the fallopian tube that was necessitated by the delay in treatment likely will impact her ability to have a child in the future. In addition to the physical toll, this experience caused Kyleigh significant psychological harm. Waiting any longer could have cost Ms. Thurman her life.

LEGAL ALLEGATIONS

24. Congress enacted EMTALA in 1986 to "provide an 'adequate first response to a medical crisis' for all patients." *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 880 (4th Cir. 1992) (quoting 131 Cong. Rec. S13904 (daily ed. Oct. 23, 1985) (statement of Sen. Durenberger)). Any hospital that has an emergency department and receives Medicare funds is subject to EMTALA's requirements. 42 U.S.C. § 1395cc(a)(1). Because Ascension Williamson operates an emergency department and participates in Medicare, it is subject to EMTALA.[23]

25. Under EMTALA, when an individual "comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide "such treatment as may be required to stabilize the medical condition" or transfer the individual to another medical facility. 42 U.S.C. § 1395dd(b)(1). EMTALA defines "emergency medical condition" as "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, or (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part." *Id.* § 1395dd(e)(1).

26. Patients who are determined to have an "emergency medical condition" must receive stabilizing care within the hospital's capabilities. "'[T]o stabilize'" is defined as "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical

[23] Ascension Williamson operates an emergency department. *See* Ascension Seton Williamson Hospital, *Locations*, https://healthcare.ascension.org/locations/texas/txaus/round-rock-ascension-seton-williamson (last visited July 24, 2024). Ascension Seton Williamson Hospital participates in Medicare. *See* Ascension Seton Williamson Hospital, *Insurance Accepted*, https://healthcare.ascension.org/locations/texas/txaus/round-rock-ascension-seton-williamson/insurance-accepted (last visited July 24, 2024).

probability, that no material deterioration of the condition is likely to result from or occur during" the patient's discharge or transfer. 42 U.S.C. § 1395dd(e)(3)(A). Although hospitals may admit a patient "as an inpatient in good faith in order to stabilize the emergency medical condition," 42 C.F.R. § 489.24(d)(2)(i), EMTALA "requires more than the admission and further testing of a patient; it requires that actual care, or treatment, be provided as well," *Moses v. Providence Hosp. and Med. Ctrs., Inc.*, 561 F.3d 573, 582 (6th Cir. 2009).

27. An ectopic pregnancy is an emergency medical condition requiring stabilization under EMTALA. As discussed above, ectopic pregnancies are never viable and, without treatment, can rupture or burst. Rupturing or bursting can lead to major internal bleeding, removal of the fallopian tube(s), and death. The absence of medical treatment for an ectopic pregnancy can "reasonably be expected to result" in (1) placing the health of the pregnant patient "in serious jeopardy," (2) as well as causing "serious impairment to bodily functions," and (3) "serious dysfunction of any bodily organ or part." *See* 42 U.S.C. § 1395dd(e)(1).

28. Ascension Williamson violated EMTALA for these three independent reasons when it discharged Ms. Thurman without providing her the stabilizing care necessary to treat her ectopic pregnancy. First, hospital staff knew that failing to treat Ms. Thurman could reasonably be expected to result in seriously jeopardizing her health—specifically, in a ruptured ectopic pregnancy. Second, hospital staff knew that failing to treat Ms. Thurman for ectopic pregnancy could result in causing serious impairment to bodily functions related to becoming pregnant and childbirth. Third, hospital staff knew that failing to treat Ms. Thurman could result in a dysfunction of her reproductive system and fallopian tubes. Indeed, hospital staff refused to provide care even though they noted that her hCG hormone levels had "plateaued which is concerning for a possible ectopic pregnancy." Only after Ms. Thurman's OB/GYN demanded

that she be given care did hospital staff provide Ms. Thurman with the necessary treatment. The absence of immediate medical attention resulted in a ruptured pregnancy that led to removing Ms. Thurman's right fallopian tube to protect her life. The delay and discharge by Ascension Williamson thus recklessly endangered Ms. Thurman's health, as well as bodily functions and organs involved in future fertility, in violation of EMTALA.

29. Ascension Williamson had the capacity to provide stabilizing care to Ms. Thurman. Her providers never indicated that they were incapable of providing the necessary treatment, and they eventually provided treatment to Ms. Thurman.

30. Although not required to support a determination that Ascension Williamson violated EMTALA based on the above facts, it is clear that terminating Ms. Thurman's ectopic pregnancy would have been legal under Texas law. Under that law, an act "done with the intent to[] . . . remove an ectopic pregnancy" "is not an abortion" within the meaning of that state law, and is therefore not prohibited. Tex. Health & Safety Code § 245.002(1)(C); *see also id.* §§ 170A.001(1), 170A.002 (prohibiting "abortion" as defined in Tex. Health & Safety Code § 245.002). Ectopic pregnancy is defined as "the implantation of a fertilized egg or embryo outside of the uterus." *Id.* § 245.002(4-a). Further, the Texas Legislature recently created an affirmative defense to civil liability for physicians providing "medical treatment to a pregnant woman in response to: (1) an ectopic pregnancy at any location." Tex. Civ. Prac. & Remedies Code § 74.552(a)(1).

31. There can be no valid argument, even under Texas law, that a hospital is justified in discharging a patient and instructing them to wait two days and then return for additional testing to reconfirm their ectopic diagnosis or that a hospital must obtain absolute certainty about the diagnosis before providing treatment. As just discussed, providing medical treatment "with the

intent to[] . . . remove an ectopic pregnancy" "is not an abortion" in Texas. Tex. Health & Safety Code § 245.002(1)(C) (emphasis added). So if a physician determines that a patient likely has an ectopic pregnancy and provides treatment with the intent to terminate the presumed ectopic pregnancy, that act is not an abortion under Texas law, even in the remote circumstance that the pregnancy was not in fact ectopic. Texas law does not require absolute certainty that a pregnancy is ectopic before treatment can be provided.

32. The refusal of Ascension Williamson to treat Ms. Thurman was not justified by the preliminary injunction that had been issued by the federal court in *Texas v. Becerra*. In that case, the court enjoined CMS's post-*Dobbs* EMTALA guidance, which states that if abortion is the stabilizing treatment necessary to resolve a pregnant patient's emergency medical condition, then an abortion must be provided under EMTALA, even if unlawful under state law. *Texas v. Becerra*, 89 F.4th 529, 535-36 (5th Cir. 2024). CMS's enjoined guidance does not come into play in Ms. Thurman's situation because, as just discussed, terminating her ectopic pregnancy would not have been an unlawful abortion under Texas law. As the Fifth Circuit explained, Texas physicians can "comply with both EMTALA and state law by offering stabilizing treatment in accordance with state law." *Id.* at 542.

33. To prevent further danger to pregnant patients' health, lives, bodily functions and organs, it is critical that EMTALA be enforced against hospitals like Ascension Williamson that refuse to provide stabilizing treatment for the emergency medical condition of ectopic pregnancy. That is true even if state law were to indicate that such treatment was unlawful, but that issue need not be decided here because the treatment was *lawful* under Texas law. Enforcing EMTALA in these circumstances would dispel any physician concerns and ensure that hospitals in Texas

are appropriately concerned that *refusing* stabilizing treatment for patients with ectopic pregnancies would risk investigations, penalties, and liability.

34. The need for enforcement is urgent because Ms. Thurman's mistreatment is not unique. Preliminary findings from a study including Texas physicians reported that physicians are undertaking additional documentation and consultations with other physicians before providing care for ectopic pregnancies.[24] These additional steps have resulted in delays and refusals in care.

35. Similarly, a study of the impact of Louisiana's abortion ban on maternal health care found that medical treatment of ectopic pregnancies has been delayed even though the law does not criminalize care in those circumstances.[25] Physicians there are also undertaking burdensome, additional, and unnecessary documentation procedures before providing care to patients with ectopic pregnancies to ensure their medical judgment will not be second-guessed by state officials.[26] Patients presenting to the hospital with ectopic pregnancies were often required to delay treatment for a day, then return the next day because, as a doctor opined, they "need to prove beyond a very reasonable doubt that the bad thing is happening."[27] There are also reports of pregnant people with ectopic pregnancies forgoing care in their state and instead traveling out of state due to fear that receiving treatment is a crime.[28] Pregnant Louisianans who have suffered

[24] Care Post-*Roe* Report at 10.

[25] *Id.*

[26] *Id.*

[27] Physicians for Human Rights, et al., *Criminalized Care: How Louisiana's Abortion Bans Endanger Patients and Clinicians* at 28 (Mar. 2024) (hereinafter "Criminalized Care"), https://phr.org/wp-content/uploads/2024/03/PHR-Report-Criminalized-Care-March-2024.pdf.

[28] Care Post-*Roe* Report at 10.

ectopic pregnancies have also experienced hours-long delays due to medical staff's refusal to provide care due to fear of prosecution in cases where fetal cardiac activity is still detected.[29]

36. This situation is untenable and warrants swift investigation and a determination that Ascension Williamson's failure to treat Ms. Thurman's ectopic pregnancy violated EMTALA.

RELIEF REQUESTED

37. Ms. Thurman respectfully requests that CMS, HHS OIG, and/or OCR:

a. Conduct an independent investigation of Ascension Williamson for EMTALA violations arising from their refusal to provide her with necessary stabilizing treatment to preserve her life, health, bodily functions, and bodily organs;

b. Take all necessary steps to remedy all unlawful conduct identified in its investigation, including by imposing all appropriate penalties;

c. Monitor any resulting agreements between CMS and Ascension Williamson to ensure compliance with EMTALA; and

d. Provide other appropriate equitable relief.

[29] Criminalized Care at 28.

Respectfully submitted,

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