



Matthew S. Bowman
Legal Counsel

E-mail: mbowman@telladf.org

July 5, 2011

Attorney General J.B. Van Hollen
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
Fax: (608) 267-2779

**Re: Request for Attorney General Opinion on the Newly Amended Wis. Stat. § 20.927,
Specifying that the UWHCA's Payment for Abortion Performance Is Illegal**

Dear Attorney General Van Hollen,

The Alliance Defense Fund writes on behalf of Pro-Life Wisconsin and its State Director, Peggy Hamill. We respectfully request your opinion confirming that the recent amendment of Wis. Stat. § 20.927 reinforces the illegality of payments by the University of Wisconsin Hospital and Clinics Authority (UWHCA) to physicians for performing abortions at Planned Parenthood. The UWHCA apparently wants to continue its funding of abortion performance, and has misinterpreted state law and former Attorney General opinions in order to do so. Only your office can correct those legalistic manipulations and ensure that the law against state agencies funding abortions is followed.

In April 2010, we wrote to you to report that UWHCA admitted, in a public records request response, that it pays various medical residents—who are physicians—to train at Planned Parenthood of Wisconsin in performing abortions (see Attachment A). In that response the UWHCA stated as follows:

UWHCA continues to pay its residents while they are training at PPW. The prorata portion of their stipends and benefits for the time spent training at PPW was:

Jan 2007 - Dec 2007	\$	21,149
Jan 2008 - Dec 2008	\$	19,301
Jan 2009 - Dec 2009	\$	18,428

Hours spent are reported quarterly so we do not yet have data for 2010.

After we reported this fact to you, the UWHCA wrote a letter to Kevin Potter of your office (see Attachment B) in which it claimed that it was not violating Wis. Stat. § 20.927 by using agency funds to pay these physicians for performing abortions because it claimed that the phrase “agency of the state” in § 20.927 did not include the UWHCA pursuant to the definitions in § 20.001(1) (and despite the more proximate definition in § 20.9275). See Att. C at 5.

The State of Wisconsin has now mooted this argument by the UWHCA. In 2011 Wisconsin Act 32, recently signed by Governor Walker, the State amended Wis. Stat. § 20.927 to explicitly include, as an “agency of the state,” “an authority created in ch. 233.” UWHCA is, of course, an authority created under Chapter 233.

As a result, Wis. Stat. § 20.927 unequivocally prohibits the UWHCA’s continuing payments for residents to perform abortions at Planned Parenthood (or at any other location). Section 20.927 declares that “no funds of this state or . . . of any . . . agency of this state . . . shall be authorized for or paid to a physician or surgeon or a hospital, clinic or other medical facility for the performance of an abortion.” The UWHCA is admittedly using its funds (which are, by definition, the funds of “an agency of this state”) to pay residents to go to Planned Parenthood of Madison and perform abortions as part of their training.

Similarly, until the end of 2010 UWHCA was formally planning to operate its own late-second-trimester abortion facility at the Madison Surgery Center (which it co-owns), and under that plan it most likely would have been paying “a physician or surgeon or a hospital, clinic or other medical facility for the performance of” those abortions. A UW Health spokesperson publicly claimed that the plan would be abandoned at the Madison Surgery Center, but reserved comment on whether the plan would occur somewhere else. She likewise declared that future details would remain clouded in complete secrecy so the people of Wisconsin (who by and large opposed the plan) would no longer know if, where, or when the plan would be proceeding.

The amendment to Wis. Stat. § 20.927 prohibits all such abortion payments. The UWHCA must not be allowed to ignore its legal obligations by pursuing or continuing any scheme in which it seeks to fund the performance of abortions.

The UWHCA reaffirmed the existence of its abortion expenditures in a letter and press release sent on June 20, 2011 (see Attachment C), urging Governor Walker to partially veto 2011 Wisconsin Act 32 so that the UWHCA would not be subject to Wis. Stat. § 20.927. However, the UWHCA argued that it can continue its payment of physicians to perform abortions at Planned Parenthood even under Wis. Stat. § 20.927 because, it alleged, “UWHCA is reimbursed completely for the costs of their stipends and benefits for this PPWI rotation by another, non-public, hospital.” Here again the UWHCA is attempting to twist state law: there is no “reimbursement exception” to Wis. Stat. § 20.927. This section simply prohibits the UWHCA from paying for performing abortions in the first place, under any circumstances, regardless of whether someone else allegedly “reimburses” the expenses later.

The UWHCA’s letters also argue extensively that it can or should be able to continue funding physicians to perform abortions because UWHCA funds are not “state funds.” But Wis. Stat. § 20.927 prohibits not only the use of “funds of this state,” but also, separately, of “funds . . . of any . . . agency of this state, including an authority created in ch. 233,” from being paid for

performing an abortion. The State of Wisconsin has decided that neither “funds of the state” nor “funds of state agencies,” including funds of UWHCA, should pay for abortions.

The UWHCA’s letters further argue that its payment to physicians for performing abortions is allowed under Wis. Stat. § 20.927 because the funds pay residents stipends and benefits regardless of what rotations the residents select, and therefore they do not constitute sufficiently “direct” payment according to 1995 Op. Att. Gen. 1-951 (Feb. 14, 1995). This argument is specious. There is no more direct way to pay a physician to perform abortions than to pay them a stipend and benefits for a training program that includes their going to Planned Parenthood to perform abortions. The legislature has now specifically subjected UWHCA to Wis. Stat. § 20.927 in light of this exact controversy, to make it clear that it cannot continue to pay physicians to engage in abortion training. Moreover, the UWHCA is misreading 1995 Op. Att. Gen. 1-951. That opinion suggested that insurance trust funds were not directly “state” funds to a sufficient degree—but it did not hold that using the funds was not directly payment for abortions. Here, the UWHCA’s payments to physicians for performing abortions are directly “agency” funds, and they are paying physicians a stipend and benefits for work that includes performing abortions.

Of course, 1995 Op. Att. Gen. 1-951 predates the new amendment to Wis. Stat. § 20.927. To the extent that 1995 Op. Att. Gen. 1-951 might suggest, contrary to the plain and amended text of Wis. Stat. § 20.927, that payment for performing abortions during training is not payment for the performance of abortions (or is not sufficiently “direct”), **we respectfully request that you issue an Attorney General opinion clarifying that Wis. Stat. § 20.927 and 1995 Op. Att. Gen. 1-951 impose no “direct-indirect” distinction allowing the UWHCA’s payments for abortion training at Planned Parenthood.**

Last year you indicated to us that investigation of the UWHCA’s illegal abortion funding was appropriately under the purview of the State Auditor. We believe that your office can also investigate this issue as an inherent matter concerning compliance with state law. But apart from who investigates, it is clear that the *interpretation* of Wis. Stat. § 20.927, and especially the clarification or correction of 1995 Op. Att. Gen. 1-951, is within the special discretion of your office. The Attorney General in 1995 had the authority to issue an opinion interpreting Wis. Stat. § 20.927. You have the same authority. It is imperative that Wis. Stat. § 20.927 and 1995 Op. Att. Gen. 1-951 not be manipulated by the UWHCA or others to let them illegally pay for the performance of abortions.

We therefore write to ask that you: (1) issue an opinion specifying that Wis. Stat. § 20.927 prohibits a state agency, including the UWHCA, from paying physicians to perform abortions, including but not limited to paying for their training to do so at Planned Parenthood; (2) issue an opinion clarifying that nothing in 1995 Op. Att. Gen. 1-951 may be used to conclude to the contrary; (3) ask the UWHCA if it plans to cease its now clearly illegal payments for performing abortions during training at Planned Parenthood, or if it will continue (in whole or in

part) its misreading and violation of state law, and ask it to document its most recent payments; and (4) if the UWCHA plans to continue paying physicians in any way to perform abortions, follow up on the State Auditor's investigation of last year. To the extent that investigation was not completed or was not enforced against the UWHCA, it is even more essential that your office conduct an investigation of your own and issue guidance so that Wis. Stat. § 20.927 and 1995 Op. Att. Gen. 1-951 are not misused to allow the UWHCA to fund abortion performance at Planned Parenthood.

Please let us know if you would like more information. We look forward to your response. Thank you.

Yours truly,

A handwritten signature in blue ink, appearing to read "Glen Lavy", with a long horizontal flourish extending to the right.

Glen Lavy
Matthew S. Bowman
Alliance Defense Fund

for

Peggy Hamill, State Director
Pro-Life Wisconsin

Attachment

A

Request for Opinion on UWHCA Payments for Abortion
July 5, 2011

March 5, 2010

Mathew S. Bowman
Alliance defense Fund
801 G Street NW
Suite 509
Washington DC 20001

RE: Records request dated February 25, 2010

Mr. Bowman:

Medical residents from the University of Wisconsin Hospitals and Clinics Authority participate in training at the Planned Parenthood of Wisconsin (PPW) facility in Madison, WI. We enclose a copy of the current agreement of affiliation under which that training takes place. We previously supplied you with the predecessor agreement. UWHCA makes no payments to Planned Parenthood of Wisconsin.

1. UWHCA continues to pay its residents while they are in training at PPW. The prorata portion of their stipends and benefits for the time spent in training at PPW was:

Jan 2007 - Dec 2007	\$ 21,149
Jan 2008 - Dec 2008	\$ 19,301
Jan 2009 - Dec 2009	\$ 18,428

Hours spent are reported quarterly so we do not yet have data for 2010.

No other students of UWHCA receive training at or otherwise assigned to work at PPW.

UWHCA has no relationship with any entity known as Madison Abortion Clinic.

2. UWHCA paid no expenses to PPW during 2007-2010.

UWHCA has no relationship with any entity known as Madison Abortion Clinic.

3. UWHCA does not budget or allocate amounts for training residents or students at PPW or at other training sites. UWHCA budgets and allocates funds for their entire training experience. The amounts paid for the time at PPW are included in the answer to Request #1 above.

UWHCA has no relationship with any entity known as Madison Abortion Clinic.

4. UWHCA provides malpractice insurance coverage for its medical residents during their entire training program through the Wisconsin Patient's Compensation Fund and commercial primary insurance. Only first year residents were in training at PPW during 2007 - 2009. For first year residents UWHCA does not pay an individual PCF assessment and does not purchase individual primary insurance. First year residents are covered under the hospital's PCF coverage for itself and its employees. There is no separate coverage for first year residents or for the time in training at PPW. There is no incremental cost to UWHCA for the coverage for first year residents.

Hours spent are reported quarterly so we do not yet have data for 2010.

No other students of UWHCA receive training at or otherwise assigned to work at PPW.

UWHCA does not pay for liability insurance for UW faculty.

UWHCA has no relationship with any entity known as Madison Abortion Clinic.

5. UWHCA paid no other costs associated with training residents at PPW from Jan. 2007 through Dec. 2009.

We believe that this is responsive to your request. To the extent this letter is a denial of your open records request, it may be subject to review by mandamus under Section 19.37 of the Wisconsin Statutes or upon application to the attorney general or district attorney.

Sincerely,



James C. Dechene
Senior Vice President & General Counsel
University of Wisconsin Hospitals and Clinics Authority

AGREEMENT FOR THE AFFILIATION OF
PLANNED PARENTHOOD OF WISCONSIN, INC., WITH
UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY
FOR THE TRAINING OF RESIDENTS

THIS AGREEMENT (Agreement) is made and entered into this 14th day of April, 2009 by PLANNED PARENTHOOD OF WISCONSIN, INC. (PPWI), and the University of Wisconsin Hospitals and Clinics Authority (UWHC), a public body corporate and politic created by the laws of the State of Wisconsin.

WHEREAS, UWHC conducts training programs for resident physicians, seeks varied sites for training resident physicians;

WHEREAS, UWHC desires that certain resident physicians receive training at PPWI ("Residents");

WHEREAS, PPWI is willing to be a training site for UWHC Residents;

THEREFORE, these parties agree as follows:

TERMS

1. Purposes, Term, and General Policy.

1.1 Purposes. The purpose of this affiliation is to support residency training opportunities at PPWI.

1.2 Term and Termination.

1.2.1 The initial term of this Agreement is from the above stated date through June 30, 2012. On each subsequent June 30, the agreement shall automatically renew for an additional year unless one party gives the other party one year's written notice of non-renewal.

1.2.2 The parties may terminate this Agreement at any time by written mutual consent or on at least six month's written notice to be effective on the following June 30. In the event of termination the parties will endeavor to complete any residency training programs. The parties will give special attention to avoiding hardships for Residents.

1.3 General Policy.

1.3.1 Departmental Basis for Residency Programs. As necessary or desirable, PPWI, through its Director of Medical Education, and the departmental Residency Program Director at UWHC may mutually agree to establish a specific departmental residency program. The departmental Residency Program Director and the Director of Medical Education for PPWI shall agree on the specific structure and content of such departmental residency programs and submit the developed program to the UWHC Senior Vice President/ Medical Affairs for approval.

1.3.2 Program Coordination. The UWHC Senior Vice President/ Medical Affairs shall have primary authority for the conduct of all educational programs involving Residents

at UWHC. The departmental Residency Program Director shall have primary authority over that entire departmental program, including any training received by Residents at PPWI. PPWI agrees to designate a physician from the University of Wisconsin School of Medicine and Public Health (UWSMPH) as the Director of Medical Education at PPWI to serve as coordinator of all educational activities at PPWI under this agreement.

1.3.3 Compliance with Legal and Accreditation Standards Each party, its employees, and professional staff shall conduct themselves in compliance with: all applicable federal and state laws, rules, and regulations; the rules, regulations, and standards of the United States Department of Health and Human Services, and the Wisconsin Department of Health Services; applicable institutional rules, policies, and procedures; and the standards of the Accreditation Council for Graduate Medical Education. Residents assigned to PPWI shall conduct themselves in compliance with the rules, regulations and standards of Planned Parenthood Federation of America while engaged in activities at PPWI within the scope of their training program.

1.3.4 Program Review. Appropriate representatives of the parties, as identified in Section 1.3.2 of this Agreement (the departmental Residency Program Directors and the Director of Medical Education at PPWI or his or her designee), shall meet, as necessary and at least once a year, in order to review departmental program agreements, program coordination, program objectives, program budgets, and other matters related to the programs established for Residents by this Agreement.

2. Clinical Faculty and Staff

2.1 Supervision of Residents while at PPWI shall be by physicians who have UWSMPH faculty appointments and are members of the medical staff at PPWI, or, at the specific direction of the Director of Medical Education at PPWI, by other licensed PPWI physicians.

3. Status of Residents and Students

3.1 Because the major purpose of this Agreement is to support Resident training, the parties expressly intend that this Agreement be construed in accordance with such declared purpose.

3.2 Residents sent to PPWI from UWHC are UWHC employees. Each Resident retains his or her original employment status regardless of the site at which he or she receives training.

3.3 The parties recognize that PPWI has duties and obligations to all physicians admitted to its medical staff and permitted to practice at its institutions. The parties also recognize that PPWI must establish rules, regulations, and policies concerning the practice of medicine at its institutions. The parties agree that with this Agreement they do not intend to:

i) substitute the activities of Residents for the performance of patient services by medical staff at PPWI; or

ii) create any obligation for or to authorize control by PPWI over UWHC's Residents beyond that control which PPWI exercises over other health care providers employed by and practicing at PPWI.

The departmental Residency Program Director shall exercise primary control over the activities of UWHC Residents, as appropriate, during training periods at PPWI.

4. RESIDENTS - Assignment, Rights and Responsibilities, and Performance Evaluation.

4.1 Assignment. UWHC is responsible for assigning Residents to programs based at PPWI. With regard to each Resident who participates in PPWI's programs, UWHC is responsible for:

4.1.1 Sending only those Residents for training who meet all requirements and qualifications and who agree to follow PPWI institutional rules and regulations;

4.1.2 Submitting to appropriate PPWI officials, three (3) months before the beginning of the academic year, the beginning and ending dates of the training period for each Resident and that Resident's assigned area;

4.1.3 Notifying Residents of their assignments;

4.1.4 Providing documentation that each Resident has successfully received the following immunizations, tests, and training:

4.1.4.1 Cardiopulmonary resuscitation training and

4.1.4.2 A tuberculin test and those immunizations to which the parties mutually agree;

4.1.4.3 The drug screening routinely performed by UWHC.

4.1.5 Providing Residents with appropriate training in occupational safety and health.

4.1.6 Providing PPWI with documentation of compliance with the Wisconsin caregiver background check requirements for the Residents.

4.2 Rights and Responsibilities of Residents.

4.2.1 Residents assigned to PPWI shall comply with the applicable bylaws, rules, regulations, and policies of PPWI.

4.2.2 UWHC Residents who fail to conform to the bylaws, rules, regulations, or policies of PPWI, or whose performance is unsatisfactory in the opinion of the appropriate program officials, or whose health status prevents successful completion of a training assignment may be terminated from an assignment to PPWI through the following procedure:

The Director of Medical Education for PPWI shall first attempt to achieve an informal resolution of the problem. If this informal resolution is unsuccessful, the Director of Medical Education for PPWI will inform the departmental Residency Program Director about the problem. The Director for Medical Education at PPWI will make a recommendation to both the individual Resident and the departmental Residency Program Director about the Resident's continued participation in the training program at PPWI

accompanied by a written statement of reasons for the recommendation. The individual Resident shall have an opportunity to meet (in person or by teleconference) with the departmental Residency Program Director to respond to the written statement of the Director of Medical Education. Following this response (or the opportunity for a response), the departmental Residency Program Director shall make a final decision, in consultation with the Director of Medical Education at PPWI, about the Resident's continued participation in the training program at PPWI. No Resident may continue to participate in the training program at PPWI, however, without the consent and approval of the Director of Medical Education.

The above procedure does not preclude PPWI from immediately suspending the assignment of a Resident to a PPWI program if such action is necessary to safeguard patient care. In such a case, the Resident will be entitled to the procedure described above following his or her suspension.

4.3 Performance Evaluation. Clinical faculty for the teaching programs at PPWI, in accordance with the rules, regulation, and procedures of UWHC, shall provide timely reports evaluating the performance and progress of UWHC's Residents assigned to PPWI.

5. PPWI's Responsibilities for Resident Assignment, Orientation, and Supervision It is PPWI's responsibility to:

5.1 Advise appropriate officials at UWHC of the number of Residents that PPWI can accommodate;

5.2 Conduct orientation programs to acquaint Residents with PPWI's facilities, faculty and staff, bylaws, rules, regulations, policies, procedures, and the particular individuals and groups with whom the Residents will be working;

5.3 Maintain administrative and professional supervision of Residents insofar as their presence and program assignments affect the operations of and patient care at PPWI.

6. Numbers of Residents and Notice Regarding Change The parties will mutually agree on the numbers of Residents trained each year at PPWI no later than four (4) months prior to the beginning of any program period.

To facilitate planning for participation in the residency matching process, UWHC and PPWI agree to notify each other before January 1 if either one intends to reduce the number of Residents that it will accept the following July 1.

7. Clinical and Program Facilities UWHC and PPWI each agree to provide the following facilities for the educational programs established by this Agreement:

7.1. Adequate facilities to fulfill the purposes of this Agreement;

7.2. Space for and access to reference materials for Residents;

8. Independent Relationship None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship of the parties other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this Agreement. None of the parties or any of their officers, directors, employees, or agents shall

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be construed to be the agent, employee, or representative of any other party. This Agreement shall not be deemed a joint venture. As independent parties, PPWI and UWHC each shall maintain separate and independent management. Each party also has full, complete, absolute, and sole authority over, as well as responsibility for, its own operations. No party shall have any direction or control over the manner in which any other party performs its obligations.

9. Recruitment and Appointment of Clinic and Authority Residents The recruitment and appointment of qualified graduates of medical schools to positions as Residents employed by UWHC shall be the sole responsibility of UWHC.

10. Liability Coverage. UWHC is covered by the Wisconsin Injured Patients and Families Compensation Fund ("PCF"), established under Chapter 655, Wisconsin Statutes, for professional malpractice liability of UWHC and its Residents. UWHC shall provide and maintain the primary liability coverage required by the PCF in compliance with PCF requirements. UWHC shall make such payments as may be required to maintain PCF requirements.

PPWI shall promptly advise the CEO of UWHC, or his or her designee, in the event it has reason to believe a claim may exist against UWHC or any of its agents or employees for services performed under this Agreement.

11. Public Reference to the Affiliation. The parties agree to obtain the written approval of the CEO of the other party before referring to the other party in any publication, website, release or other materials.

12. No Mutual Indemnification. The parties agree that each party is and shall be solely responsible for any claim or damage resulting from its own negligence, acts, or omissions. This Agreement shall not be construed to require any party to indemnify any other party from its own negligence, acts, or omissions.

13. Nondiscrimination. The parties shall not discriminate in their training or education of any person or in the conditions of training or education or in other actions taken as a result of this Agreement by reason of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation, or national origin. Each party will make reasonable accommodations to assure accessibility to training programs for persons with disabilities.

14. Entire Agreement; Modifications. This Agreement contains all terms among the parties and may be amended only in writing and if signed by all parties.

15. Severability. Each paragraph of this Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph of this Agreement is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

16. Assignment. Nothing in this Agreement shall be construed to permit the assignment by the UWHC or PPWI of any rights or obligations hereunder, and such assignment by a party is expressly prohibited without the prior written consent of the other parties.

17. Notice. Notice to any party must be in writing, signed by the party giving the notice, and shall be deemed given when mailed, postage prepaid, by United States Postal Service first class, certified, or express mail or hand delivered to the parties at the following addresses:

To UWHC: University of Wisconsin Hospitals and Clinics Authority
President & CEO
Room H4/810 Clinical Sciences Center
600 Highland Avenue
Madison, WI 53792

To PPWI: Planned Parenthood of Wisconsin, Inc.
Chief Executive Officer
302 North Jackson Street
Milwaukee WI 53202

18. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any legally enforceable right on any party other than UWHC and PPWI.

19. Paragraph Headings. The paragraph headings in this Agreement exist only for ease of reference and do not limit, modify, construe, or interpret any provisions of this Agreement.

The duly authorized representatives of the parties sign this Agreement in acknowledgment of the terms and conditions that it contains.

For Planned Parenthood of Wisconsin, Inc.:

Teri Huyck
Print name: Teri Huyck
Print Title: Chief Executive Officer

date: 4-14-09

For the University of Wisconsin Hospitals and Clinics Authority:

Donna Katen-Bahensky
Print name: Donna Katen-Bahensky
Print Title: President & CEO

date: 4/14/09

MEMORANDUM OF UNDERSTANDING BETWEEN
 THE UNIVERSITY OF WISCONSIN MADISON
 AND
 PLANNED PARENTHOOD OF WISCONSIN, INC.


PURPOSE	<p>This memorandum provides an understanding for the interchange of employees of the University of Wisconsin Madison School of Medicine and Public Health (SMPH), hereinafter referred to as "the sending agency" to Planned Parenthood of Wisconsin, Inc. (PPWI) hereinafter referred to as "the receiving agency." In addition, this memorandum describes the supervisory role which employees of the SMPH will play, on behalf of the UW-SMPH with respect to educational programs in which UW-Madison medical students and UWHC residents and fellows gain training experiences at the receiving agency's site, the Comprehensive Reproductive Health Center, 3706 Orin Road, Madison, Wisconsin, 53704.</p>
ASSIGNMENT	<p>Faculty members of the Department of Obstetrics and Gynecology will assume various duties and responsibilities related to work on behalf of the receiving agency as detailed in Attachment A. This work will be performed at Comprehensive Reproductive Health Center, or other clinics as designated by PPWI. In addition, faculty members of the Department of Obstetrics and Gynecology will assume supervisory responsibilities with respect to the UW-Madison medical students and the UWHC residents and fellows who are receiving training in family planning, colposcopy and abortion services at the Comprehensive Reproductive Health Center. Since it is difficult to separate this supervisory/educational activity from the related patient care services which generally take place simultaneously, no separate allocation of Faculty Time is being made for this purpose and the Faculty Time devoted to this activity is included in the time purchased by the receiving agency.</p>
EMPLOYEE STATUS	<p>The faculty members performing the services identified in Attachment A will be on detail to the receiving agency and solely responsible to that agency for the performance of the responsibilities outlined in Attachment A and for adherence to receiving agency's policies and procedures, but will remain employees of the sending agency and subject to all appropriate and applicable university policies and procedures and will receive the salary and benefits to which entitled.</p>
TRAVEL EXPENSES & OTHER COSTS	<p>All travel expenses and other related costs incurred in connection with the employee's assignments at the receiving agency will be paid for by the receiving agency on the same basis as a regular employee of the receiving agency.</p>

<p>REIMBURSEMENT</p>	<p>For the duration of this agreement the receiving agency will reimburse the sending agency the full cost of the Faculty Time (salary plus fringe benefits) for all work performed on behalf of the receiving agency as described in Attachment A as well as for the other work described in the Assignment and Purpose sections above. The salary and benefit costs are detailed in Attachment A. Payment will be made by the receiving agency upon receipt of invoice, accompanied by appropriate receipts for expenses, from the sending agency. Payment will also be made for appropriate travel by the Associate Medical Director at the then current IRS mileage rate. In addition, payment will be made for travel, hotel and registration expenses, if any, for one national meeting per 12 months related to the role of Associate Medical Director, up to a total maximum reimbursement amount of \$2,500. Appropriate documentation of expenses relating to this meeting must be presented with the claim for reimbursement. Invoices should be sent to:</p> <p>Teri Huyck, CEO Planned Parenthood of Wisconsin, Inc. 302 N. Jackson Street Milwaukee, WI 53202</p>
<p>LIABILITY COVERAGE</p>	<p>Receiving agency warrants that a faculty member participating pursuant to this agreement is under the receiving agency's direction and control while performing duties and responsibilities on behalf of the receiving agency as outlined in Attachment A. Receiving agency will procure and maintain adequate medical malpractice liability coverage applicable to a faculty member's performance of these duties at the receiving agency. Receiving agency will defend, indemnify and hold harmless the sending agency and its respective officers, directors, employees, agents and successors from and against all actions, suits, proceedings, claims, demands, investigations, fees, costs, expenses (including reasonable attorneys' fees) and liabilities relating to a faculty member's performance of the duties and responsibilities performed on behalf of the receiving agency at the receiving agency under this agreement. The foregoing receiving agency obligation to defend, indemnify, and hold harmless as set forth above, does not extend to treatment provided by the sending agency or any of its faculty members to a receiving agency's patient subsequent to that patient becoming a patient of the sending agency and any of its faculty members. Faculty members participating in the supervision/training of UW-Madison medical students and UWHC residents and fellows are under the direction and control of and responsible to the Chair of the UW-SMPH Department of Obstetrics and Gynecology with respect to that activity. The foregoing receiving agency obligation to defend, indemnify, and hold harmless as set forth above, does not extend to negligent training and supervision by any of the sending agency's faculty members under this agreement. The sending agency will hold harmless the receiving agency and its respective officers, directors, employees, agents and successors from and against all actions, suits,</p>

	proceedings, claims, demands, investigations, fees, costs, expenses (including reasonable attorneys' fees) and liabilities arising from negligent training and supervision by a faculty member or arising from treatment provided by the sending agency or any of its faculty members to the receiving agency's patient subsequent to that patient becoming a patient of the sending agency and any of its faculty members.
DURATION	This memorandum of understanding is effective December 20, 2008 and shall continue in effect through December 31, 2009, unless terminated in writing by any party to this interchange agreement prior to that date. Any extension of this agreement will need to be negotiated by the parties prior to November 30, 2009.

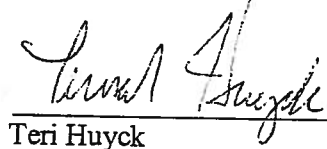
UNIVERSITY OF WISCONSIN-MADISON

PLANNED PARENTHOOD OF WISCONSIN, INC.



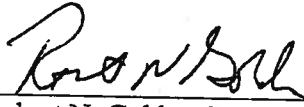
 Laurel Wysong Rice, M.D.
 Department Chair
 Obstetrics and Gynecology

12/16/08
 Date




 Teri Huyck
 Chief Executive Officer

12/18/08
 Date



 Robert N. Golden, M.D.
 Dean, School of Medicine and
 Public Health

12/16/08
 Date



 Darrell Bazzell
 Vice Chancellor for Administration

12/16/08
 Date

ATTACHMENT A

PPWI will purchase the 0.5 FTE of Faculty Time (20 hours/week) which time will be spent performing the following activities:

1. On behalf of the receiving agency:
 - a) Act as Associate Medical Director, to assist in the direction and administration of the Affiliate Medical Program and ensure that the medical / surgical policies and clinical standards established by the National Medical Committee of PPFA (NMC) and relevant federal, state and local laws are implemented and maintained. (Dr. Caryn Dutton).
 - b) Direct, coordinate and provide services to PPWI patients in family planning, colposcopy, and abortion, (Drs. Caryn Dutton, Laurel Rice, Sabine Droste, Barbara O'Connell, Maria Sandgren and Doug Laube).
2. On behalf of the sending agency:
 - a) Provide supervision and training for UW-Madison medical students and UWHC residents and fellows.

The activities described in 1 b) and 2 above will be carried on at the Comprehensive Reproductive Health Center in Madison.

The 2009 salary & benefits for 0.5 FTE = 1,040 hours @ \$150.00 : \$ 156,000

Attachment

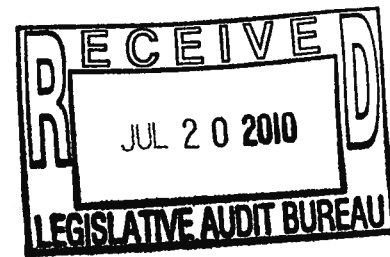
B

Request for Opinion on UWHCA Payments for Abortion
July 5, 2011

July 16, 2010

COPY

Attorney Kevin Potter
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857



Dear Mr. Potter:

The University of Wisconsin Hospitals and Clinics Authority (UWHC) recently received a letter dated July 07, 2010, from Senator Kathleen Vinehout and Representative Peter Barca, co-chairs of the Joint Legislative Audit Committee. That letter was a follow up to your letter of May 25, 2010, to State Auditor Janice Mueller requesting her assistance "in assessing [UWHC's] compliance with s. 20.927, Wis. Stats...." Senator Vinehout and Representative Barca's letter suggested that UWHC could most expeditiously address the matter by responding to the Department of Justice (DOJ) directly with an explanation of UWHC's compliance regarding all applicable laws prohibiting state payments for the performance of abortions by "outlining the facts and circumstance of the graduate medical education program's statutory compliance, including specifically its accredited specialty of obstetrics and gynecology." We are happy to provide our response to the invitation of Senator Vinehout and Representative Barca.

A. Facts and Circumstances of Obstetrics & Gynecology Training Program

UWHC maintains a graduate physician training program in Obstetrics & Gynecology (OB/ Gyn) that is accredited by the Accreditation Council for Graduate Medical Education (ACGME). As is the traditional model for graduate physician training programs, all of the participants in the OB/Gyn Residency program (a/k/a residents) are employees of UWHC, which provides each of them with a stipend and benefits. The amount residents are paid is not tied to their specialty or what they do as part of their training. Thus, a first year resident in Family Practice is paid the same stipend as a first year resident in Surgery. There also is no variation in compensation based on the rotations to which a particular resident may be assigned.

In order to maintain its ACGME Accreditation, UWHC's residency program must meet the Program Requirements of ACGME. For the OB/Gyn residency program, the ACGME requires the following with respect to abortion procedures:

No program or resident with a religious or moral objection shall be required to provide training in or to perform induced abortions. Otherwise, access to experience with induced abortion must be part of residency education. The education can be provided outside the institution. Experience with management of complications of abortion must be provided to all residents. If a residency program has a religious, moral, or legal restriction that prohibits the residents from performing abortions within the institution, the program must ensure that the residents receive satisfactory education and experience in managing the complications of abortion. Furthermore, such residency programs (1) must not impede residents in the programs who do not have religious or moral objections from receiving education and experience in performing abortions at another institution and (2) must publicize such policy to all applicants in those residency programs.

ACGME Requirement IV.A.2.d. UWHC satisfies its obligations to maintain its ACGME accreditation for the OB/Gyn residency program by providing an opportunity for OB/Gyn residents to participate in a family planning rotation at Planned Parenthood.

With respect to the Planned Parenthood rotation:

- There is no requirement that any residents participate in this rotation.
- For those residents who elect to participate, the rotation is for a period of approximately one month.
- The rotation is wholly for the purpose of providing the training opportunities for OB/Gyn residents that is required by ACGME Requirement IV.A.2.d. It is not for the purpose of providing residents to perform medical procedures, although as is typical of resident training, residents may participate in medical procedures with the supervisory physician as part of the training process.
- The rotation may include training in pregnancy termination/abortion procedures.
- The training at Planned Parenthood is under the supervision and direction of faculty members of the University of Wisconsin School of Medicine and Public Health (UWSMPH). It is UWHC understands that UWSMPH, or UW –Madison on behalf of UWSMPH, has a contract with Planned Parenthood that has been provided to you, although UWHC is not a party to that contract.

Attorney Kevin Potter
Assistant Attorney General
July 16, 2010
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- UWHC does maintain an Agreement of Affiliation with PPWI that is similar to agreements it maintains with other resident training sites. Among other things, that agreement provides:
 - The purpose of the affiliation “is to support residency training opportunities at PPWI.”
 - The Agreement specifically provides that PPWI should not “substitute the activities of Residents for the performance of patient services by medical staff at PPWI.”

We are enclosing herewith a complete copy of the UWHC Agreement of Affiliation with PPWI for your information.

B. UWHC’s OB/Gyn Training Program Does Not Violate any State or Federal Law

There is nothing about the ACGME-accredited OB/Gyn training program at UWHC that violates any Wisconsin or Federal law. In fact, if UWHC were not able to offer the PPWI or similar rotation, it would be in serious risk of losing its ACGME accreditation and residency training program in that area, which in turn would threaten the entire academic program in Obstetrics and Gynecology. Specifically:

- There are no **federal laws** directly at issue. The current version of the Hyde Amendment, originally passed by Congress in 1976, excludes abortions from the comprehensive health care services provided to low-income women by the federal government through Medicaid, but allows funding for the limited exceptions of incest, rape, and when the life of the woman is in danger. Hyde Amendment, Pub. L. No. 110-116, §§ 507-508, 121 Stat. 2208, 2009 (2007). The state Medicaid program is responsible for following this regulation, and we have no knowledge that it has not done so. Therefore, the Hyde Amendment is not implicated.
- The federal “conscience laws” also are not violated because any resident who has a moral or religious objection is not obligated to participate in the PPWI rotation.
- Although **Wis. Stat. § 940.04** explicitly criminalizes abortion, it was rendered unenforceable by *Roe v. Wade*, 410 U.S. 113 (1973), and thus it is of no present relevance to our discussion here.
- **Wis. Stat. § 253.09**, “Hospital and medical staff not required to perform abortions,” is not implicated in the performing of abortions at PPWI because any

OB/Gyn residents who object to abortions on moral or religious grounds are not required to participate in the PPWI rotation.

- **Wis. Stat. § 253.10**, “Voluntary and informed consent for abortions,” also does not directly implicate the legality of OB/Gyn residency rotation at PPWI. It is, of course, PPWI’s responsibility to comply with this provision, and we understand that PPWI follows the requirements in the “consent” statute.
- **Wis. Stat. § 20.927**, “Subsidy of abortions prohibited,” which prohibits state funds from being paid “for the performance of an abortion” does not implicate the OB/Gyn training rotation at PPWI for several reasons, as explained below.

First, even if, *arguendo*, UWHC were funding the performance of abortions at PPWI (which it is not), the funds of UWHC would not constitute “funds of this state” because UWHC is not funded by the state. See *Takle v. Univ. of Wis. Hosp. & Clinics Auth.*, 402 F.3d 768, 769 (7th Cir. 2005) (“The hospital is not financed by the state”); *Rouse v. Theda Clark Med. Center, Inc.*, 2007 WI 87, ¶ 32, 302 Wis. 2d 358, 735 N.W.2d 30 (“[UWHC] does not receive general purpose revenue from the state.”); *cf.* Wis. Stat. § 36.27(5) (defining “state funds” for this subsection to be the “total amount of general purpose revenue appropriated under s. 20.285 in any fiscal year”).

This view of “funds of the state” is supported by a 1995 Attorney General Opinion. Op. Atty. Gen. 1-951 (Feb. 14, 1995). In concluding that health insurance plans provided to state and local government employees by the Group Insurance Board did not violate § 20.927 by providing insurance coverage for abortions, the opinion noted that these trust funds were not “state funds.” “It has long been an accepted legal principle that ‘state funds’ are not all monies passing through the state Legislature, but are of a more restricted and unique character.” *Id.* at 2. (Note that UWHC funds do not even “pass through” the state Legislature.)

It also is significant that the legislature prohibited the use of “funds of the state” under § 20.927 rather than a broader description of “public funds.” In contrast, there are other Wisconsin statutes regulating the use of “public funds.” See, e.g., Wis. Stat. § 106.56(1) (prohibiting discrimination on the basis of physical condition or developmental disability by any postsecondary school “which is supported wholly or in part by public funds”); Wis. Stat. § 93.40(4) (providing that the Department of Agriculture, Trade and Consumer Protection may promulgate rules to “ensure that public funds are efficiently used to promote dairy products and the dairy industry of this state”); Wis. Stat. § 565.32(1) (prohibiting the expenditure of “public funds” for promotional advertising of the state lottery or any multi-jurisdictional lottery). In contrast to the approach in Wisconsin, a number of the funding bans adopted by other states prohibit the use of “public funds” instead of “state funds.” See, e.g., Ky. Rev. Stat. Ann. § 311.75; La. Rev. Stat. Ann. § 1299.34.5; Mo. Ann. Stat. § 188.205.

Second, UWHC does not constitute an “agency of the state” under Wis. Stat. § 20.927, and therefore this statute does not govern UWHC’s funds. UWHC does not fit into any of the categories of “state agency” as defined by Wis. Stat. § 20.001(1) which provides the definition of “state agency” for Chapter 20 generally, including § 20.927. We are mindful that some advocates have suggested that UWHC should be considered an “agency of the state” because a separate statute, Wis. Stat. § 20.9275, states that only for purposes of that particular provision, UWHC shall be considered an agency of the state. However, by its express terms, the definitions of § 20.9275 apply only to that provision, and do not apply to § 20.927.

Third, the stipends paid to OB/Gyn residents, even if UWHCA’s funds were to be (incorrectly) considered “funds of the State,” cannot credibly be characterized as a payment for the performance of abortions. In the 1995 Attorney General Opinion referenced above, Wis. Stat. § 20.927 was interpreted to require “direct use of state funds to pay for abortions” in order for the funding ban to be implicated. Op. Atty. Gen. 1-951 at 4 (Feb. 14, 1995) (emphasis added). UWHC expects that PPWI requires the patients receiving these services to directly pay PPWI for them. UWHC does not pay for the performance of abortions at PPWI.

- **Wis. Stat. § 20.9275**, “Prohibitions of funding for abortion-related services,” also does not implicate UWHC’s OB/Gyn residency program, as explained below.

The funding ban set forth in § 20.9275 is limited to funding that “involves pregnancy programs, projects or services” and “is a grant, subsidy or other funding” from one of the seven statutes listed in Wis. Stat. § 20.9275. This reading of the statute is supported by its legislative history:

The amendment prohibits any abortion-related activities (including providing abortion services, promoting, encouraging or counseling in favor of abortion, or making direct or indirect abortion referrals) by publicly funded programs that are intended to aid pregnant women and to prevent pregnancy.

...

The persons responsible for expending public funds cannot grant money to a pregnancy program that is engaged in abortion-related activities.

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Assistant Attorney General
July 16, 2010
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Budget Amendments 1997-1998, Statement of Intent from Legislator Scott Walker re: ARC – 175: Use of public funds for abortion related activity (July 24, 1997) (emphasis added).

UWHC has not provided any funding to the UWHC OB/Gyn residency program from any source related to the seven statutes listed in § 20.9275. In fact, the only funding UWHC has received pursuant to these statutes is an annual grant of approximately \$15,000 through Great Lakes Hemophilia Foundation pursuant to a 42 U.S.C. § 701 program for hemophilia patients. This funding does not involve pregnancy programs, and no monies were paid from this grant to support the OB/Gyn residency program.

Moreover, as described in the discussion above about Wis. Stat. § 20.927, there are no “funds of this state” (or “of any local governmental unit” or “federal funds”) used to support performing of abortions at PPWI because, even if UWHC were to fund the performance of abortions at PPWI (which it does not), UWHC funds do not constitute “funds of this state.”

The legislative history surrounding the passage of this statute provides further support that this statute does not preclude the OB/Gyn residency rotation at PPWI. Wis. Stat. § 20.9275 was passed as part of a budget amendment proposal in 1997. In addition to this statute prohibiting certain funding for abortion-related services, another statute prohibiting the use of public employees and public property in engaging in abortion-related activity was also introduced. Numbered as § 20.2973, this bill which was specifically aimed at prohibiting the use of public employees and public facilities in the performance of abortions was not passed. The proposed statute provided, in relevant part:

20.9273 Prohibition on the use of public employees and public property to perform abortions or engage in abortion-related activity.

...

(2) Beginning on the effective date of this subsection
[revisor inserts date], no person employed by this state, by a state agency or by a local governmental unit may do any of the following while acting within the scope of his or her employment:

(a) Provide abortion services.

(b) Promote, encourage or counsel in favor of abortion services.

(c) Make direct or indirect abortion referrals in any instance other than when an abortion is directly or medically necessary to save the life of the pregnant woman.

(3)(a) Except as provided in pars. (b) and (c), beginning on the effective date of this paragraph [revisor inserts date], no public property may be used to do any of the following:

...

Assembly Amendment, to Assembly Substitute Amendment 1, to 1997 Senate Bill 77, Proposed Wis. Stat. § 20.9273, LRBb1412/2 (emphasis added).

This proposed statute failed to secure passage on two different occasions. On the first attempt, it ultimately was dropped from the budget amendments relating to abortion. A fax regarding the "Final Package for budget amendments relating to abortion," stated that LRBb1412/2 (Amendment #177) "[w]ill be taken out of the budget process and introduced as a separate bill." Fax re: Final Package for budget amendments relating to abortion from Legislator Scott Walker (Sept. 11, 1997). LRBb1412/2 was later listed in the same fax as one of the two amendments which were "removed" from the proposed budget amendment. *Id.* Lastly, the end of the fax indicated that "[t]his is the agreed upon version with the condition no amendments are offered on the floor relating to this subject and the Governor does not change this version." *Id.* (emphasis added). Proposed Wis. Stat. § 20.9273 was re-introduced on January 27, 1998 as Assembly Bill 740. 1997 Assembly Bill 740, LRB-0352/6; introduced Jan. 27, 1998. On April 2, 1998, the Assembly Bill 740 failed to pass. *See* Senate Joint Resolution 1, LRB-0352/6.

The legislative history of proposed Wis. Stat. § 20.9273 / Assembly Bill 740 cautions against an overly broad reading of Wis. Stat. §§ 20.927 and 20.9275 to include some general ban on public involvement.

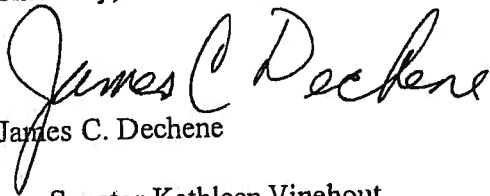
We hope that the detailed facts, circumstances, legal, and legislative background above satisfies you, as it has us, that UWHC's providing its OB/Gyn residents with the option of a family planning rotation at PPWI does not violate any state or federal law. Indeed, if state or federal law were construed to prohibit OB/Gyn residents from having the option

Attorney Kevin Potter
Assistant Attorney General
July 16, 2010
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of participating in a rotation at PPWI, the continued viability of an exceptional OB Gyn training program would be in jeopardy.

Please feel free to contact me if you wish to discuss this further.

Sincerely,

A handwritten signature in cursive script that reads "James C. Dechene". The signature is written in black ink and is positioned above the printed name.

James C. Dechene

cc: Senator Kathleen Vinehout
Representative Peter Barca

Enclosures

Attachment

C

Request for Opinion on UWHCA Payments for Abortion
July 5, 2011



June 20, 2011

Governor Scott Walker
State of Wisconsin
Room 115 East State Capitol
Madison, WI 53703

Dear Governor Walker:

As leaders of UW Health, we respectfully request a veto of Section 817m of Assembly Bill 40. This provision would establish the funds of the University of Wisconsin Hospitals and Clinics Authority (UWHCA) as “funds of this state” by defining UWHCA as a “subdivision or agency of this state” for purposes of Section 20.927(1m) of Wisconsin Statutes, which prohibits funds of this state and federal funds flowing through the state treasury from being “authorized for or paid to a physician or surgeon or a hospital, clinic or other medical facility for the performance of an abortion.”

This provision could have disastrous consequences for UWHCA because it takes the unprecedented step of incorrectly calling UWHCA’s funds “state funds” which they are not and by doing so, threatening the financial stability that UWHCA has worked 15 years to build. Moreover, this provision serves no meaningful purpose as UWHCA does not and does not plan to use its funds to pay “for the performance of an abortion.” The elective procedures at issue are not offered at the University of Wisconsin Hospital and Clinics. While UWHCA has an accredited training program for physicians who are training to be obstetricians and gynecologists, and that training program is required by the accrediting body to offer training in those medical procedures, that training is done at a separate, non-public facility and is not funded by UWHCA.

A. Calling UWHCA Funds “State Funds” is Incorrect, and Sets a Dangerous Precedent

Contrary to this proposed change, UWHCA funds are not and never have been funds of the state. UWHCA receives no General Purpose Revenue funds but, instead, is self-funded by patient revenue dollars.¹ UWHCA was established as a public authority

¹ Court cases have confirmed that UWHCA funds are not funds of the state. *See, e.g., Takle v. Univ. of Wis. Hosp. and Clinics Authority*, 402 F.3d 768, 769 (7th Cir. 2005) (“The hospital is not financed by the state . . .”); *Rouse v. Theda Clark Med. Center, Inc.*, 2007 WI 87, ¶ 32, 302 Wis. 2d 358, 735 N.W.2d 30 (“[UWHCA] does not receive general purpose revenue from the state.”); *see also* Wis. Stat. § 36.27(5) (defining “state funds” for this subsection to be the “total amount of general purpose revenue appropriated under s. 20.285 in any fiscal year”).

moving away from being part of a state agency, the University of Wisconsin (UW) 15 years ago in order to give it increased flexibility to compete in the healthcare marketplace. When it was established as a public authority, part of the flexibility and independence UWHCA was given included the ability to issue bonds and make representations to bondholders about its financial independence and stability. UWHCA currently holds hundreds of millions of dollars in bonds that it has used, among other things, to build the American Family Children's Hospital and make much-needed improvements to its aging hospital facility.

When UWHCA has gone to the bond market, it has spent much effort convincing banks and, in the past bond insurers, that its funds truly were independent of the state. For example, because the statute creating UWHCA as a public authority provided that UWHCA would revert to the UW should the UW terminate the required long-term lease or affiliation agreements with UWHCA, bond insurers in the early 2000s were unwilling to insure UWHCA's bonds without assurances from the UW that it would not terminate the lease or affiliation agreement with UWHCA (thus causing UWHCA to lose its authority status) except in extreme circumstances and only then if adequate protections were given to bondholders. In order to move forward with the bond deal at that time, UWHCA had to secure from the Board of Regents a resolution promising to only revoke UWHCA's lease and/or affiliation agreements under the most extreme circumstances, and even then with assurances to bondholders.

Likewise, when UWHCA recently re-financed approximately \$100 million in bonds this spring, the banks involved questioned the power of the UW to interfere with UWHCA's operations and long-term stability, but they were re-assured upon being provided copies of the Board of Regents resolutions from the 2000s that provided the above-described assurances to potential bondholders. We would be happy to provide copies of these Board of Regents resolutions upon request.

In short, the flexibility and independence given to UWHCA by making it a public authority in 1996 (under then-Governor Tommy Thompson) has been essential to UWHCA's growth and success. At the same time, the state was absolved of any responsibility for funding UWHCA as part of the UW. The state has also benefitted from UWHCA's increased flexibility and success in that UWHCA has been able to increase its support to the University of Wisconsin School of Medicine and Public Health, which is part of UW, and which otherwise would have to look to UW and elsewhere for the support that UWHCA now provides. This year alone, that support amounted to almost \$70 million contributed to strengthen UWSMPH's programs and the entire UW Health enterprise.

Thus, we are greatly concerned with the language of Section 817m of Assembly Bill 40 in that it includes the false statement that UWHCA funds are "funds of this state" they clearly are not. If, however, this language becomes law, we fear this sends the message that state government can simply declare that UWHCA funds are state funds, and that message would jeopardize the foundation of financial independence and stability that UWHCA has spent 15 years solidifying. UWHCA has repeatedly fought and won hard battles to obtain favorable financial terms by assuring bondholders and others that,

despite the State of Wisconsin's financial troubles, UWHCA's funds are separate from state funds and that UWHCA is a good credit risk (currently rated A+/AA). Opening the door to calling UWHCA's funds state funds is a dangerous precedent and could seriously harm UWHCA in the financial marketplace.

B. UWHCA Does Not Pay for the Performance of Abortions, So There is Nothing to Be Gained by the Legislation

Clearly the intent of the legislative change is to prevent UWHCA from using its funds to pay "for the performance of an abortion." Because UWHCA does not use its funds to pay for the performance of abortions, there is nothing to be gained from this provision. Intended or not, this bill could undermine UWHCA's accredited graduate physician training program in Obstetrics & Gynecology (Ob/Gyn). We provide some background and facts about that program, which we believe are important in considering the present issue, below. We especially want to emphasize the dire consequences that would ensue if indeed physicians-in-training in that program were prohibited from obtaining training that they otherwise would have elected to receive.

1. Background on UWHCA's Physician Training Program in Obstetrics and Gynecology

UWHCA's Ob/Gyn training program is accredited by the Accreditation Council for Graduate Medical Education (ACGME). As is the traditional model for graduate physician training programs, all of the participants in the Ob/Gyn Residency program (a/k/a physicians-in-training) are employees of UWHCA, which provides each of them with a stipend and benefits. The amount physicians-in-training are paid is not tied to their specialty or what they do as part of their training. Thus, a first year resident in Ob/Gyn is paid the same stipend as a first year resident in Surgery. Moreover, specifically with respect to Ob/Gyn physicians-in-training who may elect to do a rotation involving training in pregnancy termination procedures, that training would take place at Planned Parenthood of Wisconsin (PPWI), and UWHCA is reimbursed completely for the costs of their stipends and benefits for this PPWI rotation by another, non-public, hospital.

2. UWHCA Does Not Pay for the Performance of Abortions

UWHCA does not pay for the performance of abortions through sponsoring an ACGME-accredited Ob/Gyn training program. The stipends that are paid to physicians-in-training which are for all intents and purposes not paid by UWHCA for the PPWI rotation in any event are not for the performance of abortions but are simply the same educational stipend received by all physicians-in-training in all fields and regardless of what they do as part of their training.

3. Accreditation of UWHCA's Obstetrics & Gynecology Training Program

In order to maintain its ACGME Accreditation, UWHC's residency program must meet the Program Requirements of ACGME. For the Ob/ Gyn residency program, the ACGME requires the following with respect to abortion procedures:

No program or resident with a religious or moral objection shall be required to provide training in or to perform induced abortions. Otherwise, access to experience with induced abortion must be part of residency education. The education can be provided outside the institution. Experience with management of complications of abortion must be provided to all physicians-in-training. If a residency program has a religious, moral, or legal restriction that prohibits the physicians-in-training from performing abortions within the institution, the program must ensure that the physicians-in-training receive satisfactory education and experience in managing the complications of abortion. Furthermore, such residency programs (1) must not impede physicians-in-training in the programs who do not have religious or moral objections from receiving education and experience in performing abortions at another institution and (2) must publicize such policy to all applicants in those residency programs.

ACGME Requirement IV.A.2.d (emphasis added). Thus, the ACGME absolutely requires its accredited training programs to train their physicians-in-training to be competent in managing the full range of family planning and the complications of abortion. UWHC satisfies its obligations to maintain its ACGME accreditation by providing an opportunity for a family planning rotation at PPWI.

With respect to the Planned Parenthood rotation:

- There is no requirement that physicians-in-training participate in this rotation.
- The rotation is for a period of approximately one month for those physicians-in-training who elect to participate in this training rotation (less than 2% of their training).
- The elective rotation is wholly for the purpose of providing training opportunities for physicians-in-training. It is not for the purpose of providing trainees to perform medical procedures; however, as part of the training process, physicians-in-training may participate in medical procedures (including pregnancy termination procedures) with the supervising physician.
- UWHC does maintain an Agreement of Affiliation with PPWI that is similar to agreements it maintains with other resident training sites. Among other things, that agreement provides:
 - The purpose of the affiliation “is to support residency training opportunities at PPWI.”The Agreement specifically provides that

PPWI should not “substitute the activities of Physicians-in-training for the performance of patient services by medical staff at PPWI.”

Thus, the understanding with PPWI is clear that physicians-in-training who do a rotation at PPWI are not there to perform services; they are there for their own educational purposes. The provision of basic medical training in the full spectrum of women’s reproductive health is recognized even among Catholic teaching hospitals, which often just as UWHCA does with PPWI provide the option to receive training from an outside healthcare provider. In fact, if UWHCA were not able to offer the PPWI or similar rotation, it would be in serious risk of losing its ACGME accreditation and residency training program in Ob/Gyn, which in turn would threaten the entire academic program in Obstetrics and Gynecology, as well as the reputation of the entire UWHCA residency program and the University of Wisconsin School of Medicine and Public Health.

There exists in Wisconsin an impending physician shortage. National research shows that where a physician completes his/her residency is a major determinant of where they ultimately practice. According to the 2008 Wisconsin Hospital Association Physician Shortage Report, Ob/Gyns were the fourth most recruited out of 10 different physician groups in the state. Eliminating one of only two Ob/Gyn accredited residency programs in the state would ultimately be detrimental to patient care and women’s health in our state.

In light of the significant risk to UWHCA if the bill is passed, especially in light of the absence of any need for the legislation, we urge you to veto Section 817m of Assembly Bill 40. In advance, thank you for your consideration of a possible veto and please feel free to contact us if you desire additional information.

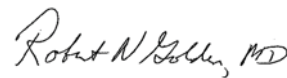
Sincerely,



Donna Katen-Bahensky
President and CEO
UW Hospital & Clinics



Jeff Grossman, M.D.
President and CEO
UW Medical Foundation



Robert N. Golden, M.D.
Dean
UW School of Medicine and
Public Health



FOR IMMEDIATE RELEASE
Date: June 20, 2011

CONTACT: Lisa Brunette
(608) 263-5830
lbrunette@uwhealth.org

Governor asked to consider veto to preserve independence of hospital authority

MADISON, Wis. UW Health has requested a gubernatorial veto of a state budget provision that attempts to designate funds of University of Wisconsin Hospital and Clinics as state funding. UW Hospital and Clinics does not receive state funds.

The letter, sent to the governor today, argues that UW Hospital and Clinics is a public authority that does not receive state funds and that calling its funds state funds is “incorrect” and potentially harmful to the hospital.

The proposed statute (Sec. 817m.20.927) makes the state law that prohibits funds of the state from being used to pay for the “performance of an abortion” apply to UW Hospital, even though its funds are not truly state funds.

According to the veto request, UW Hospital and Clinics does not pay for the performance of abortions, so there is no need for the provision. Hospital leadership argues that calling its funds state funds when it gets no state funding sets a dangerous precedent in interfering with the independence it gained when it was made a public authority in 1996, under prior Gov. Tommy Thompson.

UW Hospital and Clinics also expressed fears that the provision was intended to interfere with the hospital’s physician training program in obstetrics and gynecology, through which physicians-in-training may elect to do a training rotation for one month at Planned Parenthood of Wisconsin. Physicians-in-training are not paid to perform medical procedures but do receive an educational stipend that is the same regardless of what area of medicine they choose, or what training rotations they do while in the training program. UW Hospital and Clinics typically is reimbursed by outside facilities for training rotations not done at UW Hospital and Clinics. UW Hospital and Clinics does receive reimbursement for the stipends of all Ob/Gyn physicians-in-training, as most of that training takes place outside of UW Hospital and Clinics.

Finally, UW Hospital expresses fear that if its Ob/Gyn physician training program is harmed, it will reduce the number of Ob/Gyns in Wisconsin, and that could threaten access for women’s health services across the state.