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Senate Higher Education Committee

April 23, 2012

Fred Heldenfels IV, Chair
Texas Higher Education Coordinating Board
1200 E. Anderson Lane
Austin, TX 78752

Dear Chair Heldenfels:

This is to respond to your letter of April 20 and to reiterate my continued opposition to the Texas Higher Education Coordinating Board's Agenda Item VIII-J, *relating to a request from American University of the Caribbean for a Certificate of Authority to offer courses in Texas leading to a medical degree*. While I appreciate your effort to address those concerns by making the Certificate of Authority contingent upon eight conditions, these do not eliminate or mitigate significant issues stated in my letter of April 17.

In particular, none of the conditions mitigate my concerns or those expressed independently by leaders of our publicly funded medical schools related to the Coordinating Board setting a precedent that would impact other foreign medical schools. With regard to your plan to impose a moratorium on future requests from foreign medical schools, I believe that it is fundamentally unfair and discriminatory to write the rules to satisfy one institution and then to exclude all others. To use your terminology, this could lead to its own set of "adverse unintended consequences." My position is that we should treat all foreign medical schools fairly and not favor one with a deliberate intent of excluding others.

Reinforced by your staff's acknowledgement that the Coordinating Board's allowing foreign medical school students to take clinical rotation positions would be unprecedented, I also want to emphasize my continued concern about whether the Coordinating Board has the authority to grant this approval. For example, in promulgating the definition of the word "Degree" in Rule 7.3 (21), Texas Administrative Code, the Coordinating Board added the word "academic," which potentially narrows the meaning of "Degree" as not including professional credentials such as law, veterinary, or medical degrees. As Chair of the Senate Higher Education

Committee and Co-Chair of the Joint Oversight Committee of Higher Education Governance, Excellence, and Transparency, I strongly believe that, at a minimum, this ambiguity requires the Texas Legislature to deliberate this issue during the legislative session that will begin on January 13. Clearly, because this issue is so important, has strong opposition from medical education scholars, and could have unintended consequences, it should be vetted by the Legislature. At this point, however, I will consider requesting an Attorney General's opinion to help clarify this question.

Additionally, once the Legislature has had an opportunity to consider this issue during the next legislative session, and if we agree that the Coordinating Board has this authority, we should implement it by allowing all similarly situated foreign medical schools, including those from Mexico, to have the opportunity to participate in clinical rotations at Texas hospitals.

While the effort to cap the number of American University of the Caribbean students at 20 may be effective in the short term, capacity issues inevitably will arise as other foreign medical schools enter the Texas clinical rotation market. Additionally, the awarding of a Certificate of Authority could undermine efforts of Texas medical schools to increase enrollment. This is of particular concern because, to the best of my knowledge, the Coordinating Board's statutory requirements under HB 2908 (2011) have not been met, and the impact of this decision on the five-year master plan has not been made available to members of the Legislature. The concern regarding the lack of available data is made more alarming by the admission in your letter that "the Board does not know how many of the approximate 1,400 clinical slots are available..." yet is considering allowing a foreign institution to enter the market.

Even after discussions with Commissioner Raymund Paredes, I believe that the policy you are considering would allow students from foreign institutions to take clinical rotation positions from our own students. A more reasonable alternative would be to place all eligible and interested Texas medical school students in clinical rotation positions, and then to allow qualified students from foreign medical institutions to compete for any additional availabilities. To consider this, we would need to know how many of these positions are available, how many Texas medical school students are interested and eligible for placement, and how many, if any, additional positions are available. Could you please forward this information to me?

A related concern regarding the continued consideration of the granting of the Certificate of Authority pertains to a primary issue highlighted in the Sunset Commission staff report, namely, that the Texas Higher Education Coordinating Board makes "major decisions in isolation" (p.1). This "isolated approach to policy development" (p. 13) is evident in the decision to move forward with this agenda item, despite significant opposition from the leaders of our publicly funded health institutions and unresolved questions about legislative intent and authority.

In closing, I emphasize my continued opposition to Agenda Item VIII-J and further request that it be delayed to allow the Texas Legislature to discuss and address the significant policy implications that this decision would have on Texas medical schools and the public. If you have any questions or concerns regarding this request, feel free to call upon me.

As always, I appreciate the opportunity to work with you and our mutual colleagues and value our productive working relationship, particularly as we resolve our occasional disagreements.

May God bless you.

Very truly yours,



Judith Zaffirini, PhD

JZ/rm

XC: Governor Rick Perry
Lt. Governor David Dewhurst
Speaker Joe Straus
Members, Senate Higher Education Committee
Members, Joint Oversight Committee on Higher Education Governance,
Excellence and Transparency
Representative Dan Branch, Chair, House Higher Education Committee
Members, Texas Higher Education Coordinating Board
Raymund Paredes, PhD, Commissioner