

CAUSE NO. D-1-GN-23-

SEATTLE CHILDREN’S HOSPITAL	§	IN THE DISTRICT COURT
	§	
VS.	§	OF TRAVIS COUNTY, TEXAS
	§	
OFFICE OF THE ATTORNEY	§	
GENERAL OF THE STATE OF TEXAS	§	_____ JUDICIAL DISTRICT

**PLAINTIFF SEATTLE CHILDREN’S HOSPITAL’S SPECIAL APPEARANCE
AND SUBJECT THERETO, ORIGINAL PETITION TO SET ASIDE CIVIL
INVESTIGATIVE DEMANDS OR
IN THE ALTERNATIVE, REQUEST FOR EXTENSION OF TIME TO RESPOND
AND REQUEST TO MODIFY DEMANDS**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Seattle Children’s Hospital (“Seattle Children’s”), files this Special Appearance pursuant to Texas Rules of Civil Procedure 120a to object to the jurisdiction over Seattle Children’s, and subject thereto, Seattle Children’s files its Original Petition against the Office of the Attorney General of the State of Texas (“Attorney General”), pursuant to Texas Business & Commerce Code 17.61(g), respectfully requesting the Court to set aside a Civil Investigative Demand and Request for Sworn Written Statement issued by the Texas Office of the Attorney General to Seattle Children’s on November 17, 2023, or in the alternative, requesting an extension of its time to respond and requesting that the Court modify the scope of the requests.

**I.
BACKGROUND AND INTRODUCTION**

Seattle Children’s Hospital is a non-profit healthcare provider organized and licensed under the laws of the State of Washington with its principal place of business in Seattle, Washington. On November 20, 2023, Seattle Children’s was served with a Civil Investigative Demand issued by the Office of the Attorney General of the State of Texas, Consumer Protection Division (attached hereto as **Exhibit “A”**) and a Request for Sworn Written Declaration (attached hereto as **Exhibit**

“B”) (collectively referred to herein as the “Demands”). These documents purport to compel Seattle Children’s to provide information or statements “relevant to the subject matter of an investigation of actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to misrepresentation regarding Gender Transitioning and Reassignment Treatments and Procedures.”

The Demands seek documents and information about Texas residents treated by Seattle Children’s and “Physicians associated with You.” Specifically, the Demands seek documents showing and information regarding diagnoses, medications prescribed, laboratory testing, and treatment protocols utilized by physicians in the treatment of individual patients, during the period of January 1, 2022, to the present. The Demands purport to require Seattle Children’s to respond within 20 days, or by December 7, 2023.

Seattle Children’s files this pleading to contest personal jurisdiction of the Attorney General and his investigative authority, and the courts of Texas, with regard to any claims related to “Gender Transitioning and Reassignment Treatments and Procedures” because Seattle Children’s is a nonresident corporation, and any such services are provided exclusively outside Texas.

Subject to its jurisdictional challenge, as discussed in Paragraph Section II.F.2 below, Seattle Children’s is expressly prohibited by Washington law from responding to the Demands. Furthermore, as discussed in Section II.F.3-5., the Demands are not legitimate exercises of the Attorney General’s authority under the DTPA and would require Seattle Children’s to violate federal privacy laws (the Health Insurance Portability and Accountability Act (“HIPAA”)) and Washington State healthcare privacy laws, Revised Code of Washington (“RCW”) Chapter 70.02. Additionally, the Demands represent an unconstitutional attempt to investigate and chill potential

interstate commerce and travel for Texas residents seeking care in another state. For all of these reasons, Seattle Children's requests the Court set aside the Attorney General's Demands.

Finally, and subject to its jurisdictional challenges and in the alternative to its request to set aside the Demands, Seattle Children's requests a reasonable extension of time to respond and requests modification of the scope of the requests.

II. SPECIAL APPEARANCE

Seattle Children's is a non-profit healthcare organization with physical locations in Washington, Alaska, and Montana. Its principal office is in Washington. Seattle Children's does not provide, and has not provided, "Gender Transitioning and Reassignment Treatment and Procedures" (hereafter referred to as "gender affirming care") within Texas. Accordingly, Seattle Children's files its special appearance challenging the Attorney General's jurisdiction to issue the Demands or to pursue any enforcement action via the courts of the State of Texas related to Seattle Children's provision of gender affirming care for its patients.

JURISDICTIONAL FACTS

Seattle Children's is a non-profit healthcare provider organized under the laws of the State of Washington. *Affidavit of Ruth McDonald, MD*, attached hereto as **Exhibit "C"** ¶ 4. Its principal place of business is in Washington. It does not have a principal place of business in Texas. *Id.* ¶ 5. Seattle Children's does not own any property in Texas. *Id.* ¶ 7. It does not own any healthcare facilities, offices, or physical healthcare clinics in Texas. *Id.* It does not have any bank accounts in Texas. *Id.* ¶ 8.

While Seattle Children's is registered to do business in Texas, that business is limited. Seattle Children's does not employ any clinical staff in Texas to provide gender affirming care. *Id.* ¶ 11. Further, Seattle Children's providers have not provided telemedicine services to Texas

residents for gender affirming care. *Id.* Seattle Children’s employs a limited number of individuals who work remotely and reside in Texas, but none of these administrative employees support Seattle Children’s Gender Clinic services. *Id.* ¶ 11. Seattle Children’s does not advertise for the provision of gender affirming care in Texas. *Id.* Further, Seattle Children’s does not utilize any media or marketing targeted to Texas regarding gender affirming care. *Id.*

Seattle Children’s has not used public money from the State of Texas in support of gender affirming care. *Id.* ¶ 13. Nor has Seattle Children’s received reimbursement from Texas’ Medicaid or Texas’ child health plan program for gender affirming care. *Id.*

SPECIAL APPEARANCE ARGUMENT & AUTHORITY

Texas courts may assert personal jurisdiction over a nonresident defendant if two requirements are met: “(1) the Texas long arm statute must grant jurisdiction; and (2) the exercise of jurisdiction must comport with federal and state constitutional guarantees of due process.” *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 66 (Tex. 2016). The Texas long-arm statute “provides for personal jurisdiction that extends to the limits of the United States Constitution” and therefore the “federal due process requirements shape the contours of Texas courts’ jurisdictional reach.” *Id.*

“Personal jurisdiction over a nonresident is consistent with due process when the nonresident has established minimum contacts with the forum state, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice.” *RSM Prod. Corp. v. Glob. Petroleum Grp., Ltd.*, 507 S.W.3d 383, 392 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). “This minimum contacts analysis inquiry is a forum-by-forum or sovereign-by-sovereign analysis that examines the nature and extent of the [nonresident’s] relationship to the forum to determine whether the [nonresident] is amendable to general or specific jurisdiction.” *State v. Volkswagen Aktiengesellschaft*, 669 S.W.3d 399, 412 (Tex. 2023) (internal quotation marks omitted).

The “general jurisdiction analysis entails a high bar.” *Searcy*, 496 S.W.3d at 72. General jurisdiction exists only if the nonresident’s “affiliations with the [s]tate are so continuous and systematic as to render it *essentially at home* in the forum [s]tate.” *Id.* (emphasis in original, quoted source omitted). “Continuous and systematic contacts that fail to rise to this relatively high level are insufficient to confer general jurisdiction over a nonresident.” *Id.* “Courts do not have general jurisdiction over corporate defendants that are neither incorporated in the forum state nor have their principal place of business there, absent some relatively *substantial* contacts with the forum state.” *Id.* (emphasis added). “Under general-jurisdiction principles, the cause of action ‘may concern events and conduct anywhere in the world,’ subject to certain ‘correlative limits.’” *Volkswagen*, 669 S.W.3d at 412 (quoting *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 592 U.S. ___, 141 S. Ct. 1017, 1019, 209 L. Ed. 2d 225 (2021)).

Specific jurisdiction, however, “covers defendants less intimately connected with [the forum state], but only as to narrower class of claims.” *Ford Motor Co.*, 141 S.Ct. at 1024. “Courts can assert specific jurisdiction over a nonresident when (1) the [nonresident] engages in some act by which it purposefully avails itself of the privilege of conducting activities within the forum state and (2) the claims arise out of or relate to those forum contacts.” *Volkswagen*, 669 S.W.3d at 412-413. (internal quotation marks omitted).

A. Seattle Children’s Is Not Subject To General Jurisdiction Because It Is Not “At Home” In Texas.

The Attorney General cannot meet the “high bar” of establishing general jurisdiction for a nonresident corporate entity. Texas courts do not have, and the Attorney General cannot assert, general jurisdiction over Seattle Children’s because Seattle Children’s is not incorporated in Texas and does not have its principal place of business in this state. *Searcy*, 496 S.W.3d at 72. Further, Seattle Children’s does not have “substantial contacts” with Texas that would establish general

jurisdiction here. Seattle Children’s is a healthcare provider with its facilities located in Washington, Alaska, and Montana. Seattle Children’s does not employ any physicians or other clinical healthcare providers based in Texas to deliver care to patients in Texas.

Seattle Children’s does not have a physical office, own any property, or have any bank accounts in Texas. Seattle Children’s does not advertise for the provision of gender affirming care in Texas. Although Seattle Children’s is registered to do business in Texas, it is for limited clerical or non-clinical purposes—not rendering healthcare in Texas. For instance, Seattle Children’s has a limited number of employees who work remotely and who have elected to live and work in Texas. None of these employees work in any clinical capacity in the State of Texas.

The mere facts that a nonresident company is “registered to do business in Texas and conducts some business in Texas are not on their own enough to establish personal jurisdiction.” *EnerQuest Oil & Gas, LLC v. Antero Res. Corp.*, No. 02-18-00178-CV, 2019 WL 1583921, at *1 (Tex. App.—Fort Worth Apr. 11, 2019, pet. dism’d); *see also Waterman Steamship Corp. v Ruiz*, 355 S.W.3d 387, 418 (Tex. App.—Houston [1st Dist.] 2011, pet denied) (stating “[a]lthough we consider registered to do business in Texas and maintaining a registered agent in Texas in undertaking a minimum contacts analysis, such factors are not dispositive”). Accordingly, Seattle Children’s is not “essentially at home” in Texas. No general jurisdiction exists over Seattle Children’s.

B. Seattle Children’s Contacts Are Insufficient to Establish Specific Jurisdiction Because They Are Unrelated To The Attorney General’s Demands And Do Not Constitute Purposeful Availment.

Specific jurisdiction requires a “claim-by-claim” analysis that “focuses on the relationship between the defendant, the forum state, and the **operative facts of the litigation.**” *Volkswagen*, 669 S.W.3d at 413 (emphasis added). Specific jurisdiction “exists when the [] claims arise out of

or are related to the [nonresident]’s contact with the forum.” *Searcy*, 496 S.W.3d at 67 (internal quotation marks omitted). The “touchstone” of a minimum-contacts analysis is purposeful availment. *Michiana Easy Livin’ Country, Inc. v. Holten*, 169 S.W.3d 777, 784 (Tex. 2005). “[T]here are three features of the ‘purposeful availment’ inquiry as applied to specific personal jurisdiction.

- (1) the relevant contacts are those of the [nonresident], and the unilateral activity of another person or a third party is not pertinent;
- (2) the contacts that establish purposeful availment must be purposeful rather than random, fortuitous, isolated, or attenuated; and
- (3) the [nonresident] must seek some benefit, advantage, or profit by ‘availing’ itself of the jurisdiction.”

Searcy, 496 S.W.3d at 67 (citing *Michiana*, 168 S.W.3d at 777). Specific jurisdiction “does not exist where the [nonresident]’s contacts with the forum state are not **substantially connected to the alleged operative facts of the case.**” *Id.* at 70 (emphasis added and citation and internal quotation marks omitted). *See also M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 890 (Tex. 2017) (specific personal jurisdiction “requires a substantial connection” between the activities the nonresident conducted within the forum state and the operative facts of the litigation”) (internal citation and quotation marks omitted).

There is no specific jurisdiction here because the Attorney General’s claims or potential claims that form the basis of the Demands do not arise out of or relate to Seattle Children’s contact with Texas. The Demands state that they seek information “relevant to the subject matter of an investigation of actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” **Exhibit A**, p.1; *see also Exhibit B*, p.1. Accordingly, to establish specific jurisdiction over Seattle Children’s under these claims, there must be some basis for asserting or believing that Seattle Children’s has made representations intended for a Texas

audience that relate to “Gender Transitioning and Reassignment Treatments and Procedures [*i.e.*, gender affirming care] and Texas law.” However, Seattle Children’s has not made any such representations in Texas or directed to a Texas audience.

The Texas long-arm statute permits the exercise of jurisdiction over a nonresident who commits a tort, but only if the tort was committed “in whole or in part” in Texas. Tex. Civ. Prac. & Rem. Code § 17.042(2). The Attorney General in its Demands has not alleged any facts or made any claims that Seattle Children’s committed a purported tort in Texas, or that Seattle Children’s performed any acts in Texas at all—whether legal or otherwise. Rather, the Demands seek information about care provided in Washington State to patients who may have exercised their constitutional right to travel from Texas.

Seattle Children’s does not advertise for gender affirming care in Texas. **Exhibit C ¶ 11.** Seattle Children’s providers who provide gender affirming care do so solely outside of Texas. Seattle Children’s does not employ any physicians or other clinical healthcare providers based in Texas who provide clinical services in Texas. Further, Seattle Children’s non-clinical staff (*i.e.*, administrative staff) who reside in Texas do not support the services provided by Seattle Children’s Gender Clinic, which is located in Washington. Nor are those administrative employees authorized to make any statements regarding gender affirming care on behalf of Seattle Children’s.

Seattle Children’s does not market or advertise its Gender Clinic services in Texas or otherwise target advertising for gender affirming care to the Texas market. Seattle Children’s does not target social media or traditional media efforts towards Texas residents or to a Texas market regarding the gender affirming care (“Gender Transitioning or Reassignment Procedures and Treatment”) that it provides outside of Texas. Seattle Children’s has not provided gender affirming care to Texas residents via telemedicine.

If any Texas residents receive gender affirming care from Seattle Children's, they must travel to Washington to receive that care. A Texas resident's unilateral choice to obtain healthcare in Washington is insufficient to confer specific jurisdiction on Seattle Children's. The unilateral activity of a third party is not pertinent when analyzing a nonresident's contacts with the forum state. *Searcy*, 496 S.W.3d at 67. Similarly, any contacts between Texas residents and Seattle Children's relating to gender affirming care are "random, fortuitous, isolated, or attenuated." *Searcy*, 496 S.W.3d at 67.

Finally, Seattle Children's has not received any benefit, advantage, or profit by "availing" itself of Texas laws relating to gender affirming care. *Searcy*, 496 S.W.3d at 67. Seattle Children's has not received any public funds from Texas to provide gender affirming care; nor has Seattle Children's received reimbursement from Texas' Medicaid or Texas' child health plan program for gender affirming care. The Attorney General therefore cannot establish specific jurisdiction over Seattle Children's that would authorize or empower the Attorney General to demand the information contained within **Exhibits A and B**. The Demands do not arise out of and are in no way related to Seattle Children's contacts with Texas, and Seattle Children's has not purposefully availed itself of the jurisdiction of Texas with respect to any gender affirming care provided to any of its patients, including any such patients who may reside in Texas. Specific jurisdiction simply does not exist here.

PRAYER FOR RELIEF

For the reasons set forth above, Seattle Children's respectfully requests that the Court grant Plaintiff's Special Appearance and set aside the Demands.

II.
ORIGINAL PETITION REQUESTING TO SET ASIDE THE DEMANDS OR, IN THE ALTERNATIVE, GRANT A REASONABLE EXTENSION TO RESPOND AND MODIFY THE SCOPE OF THE DEMANDS

Subject to its Special Appearance and without waiving the same, Seattle Children's files this Original Petition against the Office of the Attorney General, pursuant to Texas Business and Commerce Code § 17.61(g), respectfully requesting that the Court set aside the Demands. Seattle Children's incorporates by reference Paragraphs I.A and I.B above. There is no personal jurisdiction over Seattle Children's in connection with Seattle Children's provision of gender affirming care to any patients, including any patients who may reside in Texas. In the absence of personal jurisdiction over Seattle Children's related to the business activities at issue, the Demands should be set aside. Further, as addressed below, the Demands must be set aside because Washington law expressly prohibits Seattle Children's from complying with the Demands. The Demands are also an illegitimate exercise of the Attorney General's DTPA authority and responding would violate HIPAA and Washington privacy laws as a result. Furthermore, the Demands are an unconstitutional attempt to investigate and chill potential travel by Texas residents to obtain healthcare in another state.

Alternatively, if the Demands are not set aside, Seattle Children's respectfully requests that the scope of the Demands be modified and an extension of no less than 30 days' time be granted to respond. The Demands are overly broad and insufficiently specific to enable Seattle Children's to respond. Seattle Children's requests the extension so that it may provide specific objections to the scope, breadth and definitions (or lack thereof), should that be necessary.

A. JURISDICTION

There is no basis for personal jurisdiction over Seattle Children’s, as set forth in its Special Appearance. The Court has subject-matter jurisdiction over this petition under Texas Business and Commerce Code § 17.61.

B. PARTIES

Plaintiff Seattle Children’s Hospital is a Washington non-profit corporation with its principal place of business in Washington. Seattle Children’s can be contacted through undersigned counsel.

Defendant Office of the Attorney General of the State of Texas is an agency of the State of Texas and may be served with process by serving its agent at the Price Daniel Sr. State Building, 209 West 14th Street, Austin, Texas 78701.

C. VENUE

Venue is proper in Travis County because a petition challenging a Civil Investigative Demand “may be filed in a district court of Travis County.” Texas Business and Commerce Code § 17.61(g).

D. DISCOVERY CONTROL PLAN

No Discovery Control Plan is necessary at this time. Should one become necessary, discovery should be conducted under Level 3 of Texas Rule of Civil Procedure 190.

E. FACTS

Seattle Children’s incorporates the jurisdictional facts set forth in its Special Appearance. On November 17, 2023, the Attorney General issued the Demands with a response deadline of December 7, 2023 (20 days, including the Thanksgiving holidays). The Demands were served on Seattle Children’s on November 20, 2023. Seattle Children’s obtained counsel the week of

November 27, 2023. Given the short response timeline, the breadth of the Demands' requests, and the complexity of the legal issues to be researched and briefed, Seattle Children's counsel requested the Attorney General agree to a reasonable extension of time in which to respond to the Demands. Seattle Children's counsel requested a 30-day extension or, at a minimum, a two-week extension. Despite acknowledging that requests for reasonable extensions have been routinely and freely given, the Attorney General refused to grant Seattle Children's request for a modest extension. The Attorney General offered Seattle Children's a ten-day extension only if Seattle Children's first committed to a full response and production of documents—essentially offering a conditional extension only if Seattle Children's waived any jurisdictional arguments and agreed in whole to the scope of the Demands. Seattle Children's now seeks relief from this Court.

F. REQUEST TO SET ASIDE CIVIL INVESTIGATIVE DEMANDS

Subject to and without waiving its special appearance and pursuant to Texas Business & Commerce Code 17.61(g), Seattle Children's requests this Court set aside the Attorney General's Demands, or in the alternative extend the date to return and modify the Demands. Good cause exists to set aside the Demands for the following reasons:

1. There Is No Personal Jurisdiction Over Seattle Children's Conferring Authority On The Texas Attorney General To Demand Documents And A Sworn Statement Related to Gender Affirming Care Provided Exclusively Outside of Texas.

The Attorney General does not have personal jurisdiction over Seattle Children's, as set forth in Seattle Children's Special Appearance. The Demands should be set aside for that reason alone. Seattle Children's incorporates by reference the evidence, authority and arguments under Sections I. and II. of this pleading. In the absence of jurisdiction, the Demands should be set aside.

2. Washington State Shield Law Precludes Seattle Children’s From Complying With The Texas Attorney General’s Demands.

The Demands must be set aside because Seattle Children’s is prohibited from responding to them under controlling Washington law. RCW Chapter 7.115, Washington’s “Shield Law,” protects Washington entities, such as Seattle Children’s, “from civil and criminal actions in other states that restrict or criminalize reproductive and gender-affirming care,” otherwise known as “ban states.”¹ Texas, by enacting Senate Bill 14 (“SB 14”)—which threatens civil penalties against providers and recipients of gender-affirming care—is a “ban state” as contemplated by the Shield Law.

The Shield Law provides broad protections for both individuals and entities that are the subject of ban state civil investigations relating to the provision of “protected healthcare services.” “Protected healthcare services” are defined as “gender-affirming treatment and reproductive health care services that are lawful in the state of Washington.” RCW 7.115.010(3). “Gender-affirming treatment” is defined as “health services or products that support and affirm an individual’s gender identity, including social, psychological, behavioral, and medical or surgical interventions.” RCW 7.115.010(2). “Gender-affirming care services include, but are not limited to, evaluation and treatments for gender dysphoria, gender-affirming hormone therapy, and gender-affirming surgical procedures.” *Id.*

One such protection “shields” Washington-based businesses like Seattle Children’s from responding to any investigation by a ban state into the provision of gender-affirming care:

¹ Reproductive and Gender Affirming Care: Shielding Providers, Seekers, and Helpers from Out-of-State Legal Actions, Washington State Attorney General, [https://www.atg.wa.gov/reproductive-and-gender-affirming-care-shielding-providers-seekers-and-helpers-out-state-legal#:~:text=Washington%27s%20Shield%20Law%2C%20enacted%20in,\(%E2%80%9Cban%20states%E2%80%9D\)](https://www.atg.wa.gov/reproductive-and-gender-affirming-care-shielding-providers-seekers-and-helpers-out-state-legal#:~:text=Washington%27s%20Shield%20Law%2C%20enacted%20in,(%E2%80%9Cban%20states%E2%80%9D)) (accessed Dec. 7, 2023).

A business entity that is incorporated, or has its principal place of business, in Washington that provides electronic communication services as defined in RCW 9.73.260 may not . . . [k]nowingly provide records, information, facilities, or assistance in responding to a subpoena, warrant, court order, or other civil or criminal legal process that relates to an investigation into, or the enforcement of, another state’s law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington[.]

RCW 7.115.020(2)(d)(i)(A).

Moreover, **the Shield Law prohibits** Washington-based entities such as **Seattle Children’s from “[c]omply[ing] with a subpoena, warrant, court order, or other civil or criminal legal process for records, information, facilities, or assistance related to protected health care services that are lawful in the state of Washington”** (collectively, an “investigative demand”) RCW 7.115.020(2)(d)(i)(B) (emphasis added). The only exception to this prohibition is if an investigative demand “is accompanied by, an attestation, made under penalty of perjury, stating that the [investigative demand] does not seek documents, information, or testimony relating to an investigation into, or the enforcement of, another state’s law that asserts criminal or civil liability for the provision, receipt, or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington.” RCW 7.115.020(2)(d)(i)(B). No such attestation was included with the Demands. No such attestation could be included because the Demands expressly state that they are related to the provision of gender affirming care:

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of [Texas Deceptive Trade Practices Act (“DTPA”)] sections 17.46(a) and 17.46(b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

Exhibit A, Civil Investigative Demand.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA sections 17.46(a) and (b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures by one of your business associates.

Exhibit B, Notice of Demand for Sworn Written Statement.

In other words, Washington-based businesses that provide electronic communication services are prohibited, under Washington law, from responding to or complying with any civil or criminal investigative demand by any state related to the provision of gender-affirming care in Washington. Seattle Children’s is therefore prohibited by Washington law from responding to the Demands issued by the Texas Attorney General.

First, it is undisputed that the Demands constitute “civil or criminal legal process for records, information, facilities, or assistance related to protected health care services that are lawful in the state of Washington.” The Demands plainly seek records and information regarding gender affirming care. **Exhibit A** at p. 1; **Exhibit B** at p. 2. Gender affirming care is legal in Washington. *See, e.g.*, RCW 7.115.010, 7.115.020.

Second, Seattle Children’s is subject to the Shield Law. The Washington Attorney General has interpreted the Shield Law to apply to *all* “[b]usiness entities that are incorporated or headquartered in Washington.”² Moreover, Seattle Children’s is a business “that provides electronic communication services.” *See* RCW 7.115.020(2)(d)(i).

The Shield Law defines “[e]lectronic communication service” as “any service that provides to users thereof the ability to send or receive wire or electronic communications.” RCW 9.73.260(1)(c). While there is not yet Washington case law interpreting this newly-enacted

² Reproductive and Gender Affirming Care: Shielding Providers, Seekers, and Helpers from Out-of-State Legal Actions, Washington State Attorney General, [https://www.atg.wa.gov/reproductive-and-gender-affirming-care-shielding-providers-seekers-and-helpers-out-state-legal#:~:text=Washington%27s%20Shield%20Law%2C%20enacted%20in,\(%E2%80%9Cban%20states%E2%80%9D\)](https://www.atg.wa.gov/reproductive-and-gender-affirming-care-shielding-providers-seekers-and-helpers-out-state-legal#:~:text=Washington%27s%20Shield%20Law%2C%20enacted%20in,(%E2%80%9Cban%20states%E2%80%9D)) (accessed Dec. 7, 2023).

statute, this definition is identical to the Electronic Communications Privacy Act’s (“ECPA”) definition of “electronic communication service.” *See* 18 U.S.C. § 2510(15) (“‘electronic communication service’ means any service which provides to users thereof the ability to send or receive wire or electronic communications”).³ Just as the Washington Attorney General has interpreted the Shield Law as applying to a broad spectrum of businesses, the United States Department of Justice similarly interprets 18 U.S.C. § 2510(15) to include “[a]ny company or government entity that provides others with the means to communicate electronically can be a ‘provider of electronic communication service’ relating to the communications it provides, regardless of the entity’s primary business or function. *See* Dep’t of Justice, *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* 117–18 (2009).⁴

For example, a company that provides an email service to its employees qualifies as a “provider of electronic communications services.” *See, e.g., Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107, 114–15 (3d Cir. 2003); *see also Bohach v. City of Reno*, 932 F. Supp. 1232, 1236 (D. Nev. 1996) (“The City is the ‘provider’ of the ‘electronic communications service’ at issue here: the Reno Police Department’s terminals, computer and software, and the pagers it issues to its personnel, are, after all, what provide those users with ‘the ability to send and receive’ electronic communications.”); *Meyer v. Mittal*, No. 3:21-cv-00621-HZ, 2023 WL 3004761, at *13 (D. Or. Apr. 17, 2023) (“The act of ‘providing’ an [electronic communication service] under the [ECPA] is not restricted to the company providing internet service or cloud storage. A business or school

³ “When construing state acts which are similar to a federal act, federal decisions are persuasive authority” in Washington. *Constr. Indus. Training Council v. Washington State Apprenticeship & Training Council of Dep’t of Labor & Indus.*, 96 Wn. App. 59, 65 (1999). *See also Washburn v. City of Fed. Way*, 169 Wn. App. 588, 615 (2012) (“[W]e may look to federal decisions interpreting federal rules that are substantially similar to our state’s rules[.]”).

⁴ Available at https://www.justice.gov/d9/criminalccips/legacy/2015/01/14/ssmanual2009_002.pdf.

providing email accounts to its employees or students can also be a provider of [electronic communication services].”).

Seattle Children’s provides electronic communication services. Seattle Children’s provides its employed physicians, nurses, and staff with email addresses containing a uniform email extension. *Affidavit of Renaldo Guardiano*, attached hereto as **Exhibit D ¶ 5**. Certain non-employed members of the Seattle Children’s workforce, such as members of the Seattle Children’s medical staff whose primary practice location is in a Seattle Children’s facility, are also assigned email addresses with this same email extension. *Id.* ¶ 6. To provide the electronic communication services described above, Seattle Children’s owns and maintains servers, networking equipment, and other computer devices at a facility in the Seattle metropolitan area. *Id.* ¶ 9; *Affidavit of Dan Robinet*, attached hereto as **Exhibit E ¶ 10**. Seattle Children’s uses this equipment to provide email communication services to its employees and certain non-employed members of its workforce. **Exhibit D ¶ 10; Exhibit E ¶ 11**. Seattle Children’s also provides electronic communication services through its Epic system, which serves as a repository for electronic health records. **Exhibit E ¶ 6**. For example, the Epic system allows physicians and other healthcare providers who are appropriately provisioned members of the Seattle Children’s workforce to access, enter, and record patient medical information. *Id.* The Epic system also allows authorized physicians, nurses, and other healthcare providers and staff to send email messages to each other in the course of performing their duties at Seattle Children’s. *Id.* ¶ 8. Seattle Children’s also utilizes an AMS Connect system that allows its employees and other members of the Seattle Children’s workforce to text message each other regarding urgent communications. *Id.* ¶ 9.

As a Washington-based entity that provides electronic communication services, including but not limited to electronic mail and text messaging services, Seattle Children’s qualifies as a

provider of electronic communication services under the Shield Law and is prohibited from responding to the Demands. Seattle Children’s cannot provide any information or documents related to the provision of protected health services like gender affirming care without violating Washington law. *See* RCW 7.115.020(2)(d)(i)(A). This is especially true where the Demands explicitly denote that they are investigating “actual or possible violations of DTPA . . . for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” *See Exhibit A* at p. 1. The Demands therefore do not fall under the limited exception set forth in RCW 7.115.020(2)(d)(i)(B). Seattle Children’s is subject to suit by the Washington Attorney General if it were to comply with the Demands—under RCW 7.115.050(1):

The attorney general may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court may grant a permanent or temporary injunction, restraining order, writ of mandamus, or any additional orders or judgments necessary to enjoin such persons from violating this chapter. For any action in which the attorney general prevails, the attorney general may recover the costs of the action, including a reasonable attorney's fee.

The Court should set aside the Demands because Seattle Children’s is legally precluded from responding to them under Washington law.

3. Demands Based On DTPA Claims Of Misrepresentation Are Sham Requests And Ultra Vires Acts.

The Demands should also be set aside because they are not a bona fide investigation into violations of the DTPA and therefore are not a proper exercise of the Attorney General’s authority under DTPA section 17.61. The underlying purposes of the DTPA “are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.” Section

17.44(a). Section 17.46(b) contains a “laundry list” of 34 “false, misleading, or deceptive acts or practices” grounded in misrepresentations and nondisclosures of material facts. *See Business Staffing, Inc. v. Jackson Hot Oil Serv.*, 401 S.W.3d 224, 236 (Tex. App.—El Paso 2012) (DTPA claim requires proof that “defendant either engaged in false, misleading, or deceptive acts (i.e., violated a specific laundry-list provision of the DTPA” or engaged in an unconscionable action or course of action). Although the Demands claim to seek information about purported “misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law” under section 17.46(b), the requests contained in the Demands do not actually seek information and documents related to any of the 34 “DTPA laundry-list violation[s]” set forth in that section.

The Demands instead solicit documents and information about private medical records and health information protected by HIPAA and Washington state privacy laws (RCW Chapter 70.02) regarding minor patients who may have received healthcare exclusively in Washington.

The Demands are an improper attempt by the Attorney General to investigate and enforce recently-enacted SB 14 against Seattle Children’s based on healthcare services that may have been provided by or at Seattle Children’s within the State of Washington. SB 14, codified at section 164.052 of the Texas Health & Safety Code, prohibits “[a] physician or an applicant for a license to practice medicine” from “commit[ting] a prohibited practice” as defined under the statute. SB 14 defines “[p]hysician” to “mean[] a person licensed to practice medicine **in this state.**” Texas Health & Safety Code section 161.701(4). *See also* Texas Health & Safety Code section 161.701(2) (defining “[h]ealth care provider” as “a person other than a physician who is licensed, certified, or otherwise authorized by **this state’s** laws to provide or render health care or to dispense or prescribe a prescription drug . . .”). The Attorney General cannot enforce SB 14

against Seattle Children’s because Seattle Children’s does not employ any clinical staff in the State of Texas to provide any gender affirming care or “Gender Transitioning and Reassignment Treatments and Procedures.” **Exhibit C** ¶ 11. Further, none of the administrative employees who reside in Texas and work remotely for Seattle Children’s provide support for the services of the Gender Clinic located in Washington. *Id.* Moreover, no Seattle Children’s providers provide telemedicine services to Texas residents for gender affirming care or “Gender Transitioning and Reassignment Treatments and Procedures.” *Id.*

SB 14 also prohibits “[t]he child health plan,” Texas Medicaid, and “[t]he medical assistance program” from providing coverage and/or reimbursement for services prohibited by Texas Health & Safety Code section 161.702. *See also* Texas Health & Safety Code sections 62.151 and 161.705; Texas Human Resources Code section 32.024. Seattle Children’s has never received funds from Texas Medicaid, the Texas medical assistance program, or Texas’ child health plan for gender affirming care. **Exhibit C** ¶ 13. Seattle Children’s is not (and cannot be) in violation of SB 14. The Demands are, therefore, an improper and *ultra vires* attempt to enforce SB 14 beyond the scope of the statute and beyond the authority of the Attorney General.

4. Despite Having Broad Investigative Authority, By Issuing the Demands, the Attorney General Has Exceeded His Statutory Authority And Is Acting In An *Ultra Vires* Capacity.

There is no doubt the Attorney General is granted broad investigative powers under Texas law. But those powers are not unlimited. They must comport with general notions of due process and, at a minimum, the subject of the investigation must relate to business being transacted in Texas. The mere fact that a Texas resident does business with a foreign corporation outside of Texas does not give the Attorney General authority to investigate that business transaction. The Attorney General’s investigation must relate to and arise out of business conducted within this state. In the present situation, the Attorney General, through the Demands for documents and

information about gender affirming care provided by Seattle Children's, is improperly attempting to investigate healthcare that did not occur in Texas, and which was legally provided in another state.

The State of Texas, acting through the Office of the Attorney General, may exercise authority to initiate a Civil Investigative Demand only to the extent Seattle Children's, a foreign entity, has submitted to the authority of the state official. When a foreign entity registers to do business in Texas—as Seattle Children's has done—it submits to the authority of the Attorney General to investigate matters within the scope of the Attorney General's authority related to the specific business conducted within the state. But the foreign entity does not submit to—and Seattle Children's has not submitted to—the jurisdiction of Texas courts or the authority of the Attorney General to oversee or conduct investigations related to the foreign entity's other business activities that occur exclusively outside of Texas.

The Texas Office of the Attorney General has exceeded the limit of its authority by improperly attempting to initiate an investigation and by purporting to compel production of documents and information from Seattle Children's related to business activities that are conducted exclusively outside Texas and which do not involve Texas funds. As such, the Attorney General is engaged in *ultra vires* conduct, and the Demands must be set aside.

5. The Law Enforcement Exception To HIPAA And Washington's Uniform Health Care Information Act Does Not Apply and Protected Health Information Cannot Be Accessed Or Provided In Response To The Demands.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) prohibits the disclosure of the private health information and medical records that the Demand improperly seeks. The information sought in the Demands is not discoverable under any exception to HIPAA because it is not “relevant and material to a legitimate law enforcement inquiry.” 45 CFR 164.512(f)(1)(ii)(C)(1). The Demands are an improper attempt to enforce SB 14 under the guise

of a DTPA Civil Investigative Demand and are beyond the scope of the authority of the Attorney General because they constitute an improper attempt to investigate healthcare provided exclusively outside of Texas. Medical records relating to the diagnosis, testing, treatment, treatment protocols used, and prescriptions of minor patients who Seattle Children's may have treated in the State of Washington are neither relevant nor material to the Texas DTPA. Even if the Demands did constitute a legitimate investigation (and they do not), the requests are overly broad because they are not "specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought." 45 CFR 164.512(f)(1)(ii)(C)(2).

Similarly, the information sought in the Demands is protected and may only be disclosed with a patient's written authorization pursuant to Washington's Uniform Health Care Information Act ("UHCIA"). RCW 70.02.020(1). There is a narrow exception permitting disclosure of protected health information to "federal, state, or local law enforcement authorities," defined as officials or agencies empowered by law to investigate or prosecute criminal violations. RCW 70.02.010(13). The Texas Attorney General is not investigating any criminal violations with respect to the Demands. Further, the limited exception under the Washington privacy statute only applies when disclosure is "required by law." RCW 70.02.200(2). Here, the information sought may not be disclosed pursuant to this exception because it is *prohibited* by Washington's Shield Law. RCW 7.115.020(2)(d)(i)(A). In addition, as discussed above, the Demands do not represent a legitimate exercise of the Texas Attorney General's DTPA authority.

6. Enforcing SB 14 Would Violate The Dormant Commerce Clause Of The United States Constitution.

The dormant Commerce Clause prohibits the interstate enforcement of SB 14 against out-of-state entities such as Seattle Children's. "[I]t is settled that because Congress can regulate interstate commerce, the states cannot erect barriers to the free flow of that commerce." *NextEra*

Energy Cap. Holdings, Inc. v. Lake, 48 F.4th 306, 317 (5th Cir. 2022). “This negative aspect of that power, known as the dormant Commerce Clause, prevents the States from adopting protectionist measures and thus preserves a national market for goods and services.” *Id.* (quoting *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. —, 139 S. Ct. 2449, 2459, 204 L.Ed.2d 801 (2019) (internal quotation marks omitted). See *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 135 S. Ct. 1787, 1790, 191 L. Ed. 2d 813 (2015) (dormant Commerce Clause “precludes States from ‘discriminat[ing] between transactions on the basis of some interstate element’”) (alteration in original, quoted source omitted).

The dormant Commerce Clause protects individuals’ right to interstate travel, including to obtain healthcare services. The Attorney General cannot enforce SB 14 against an out-of-state entity such as Seattle Children’s or against individuals who may have traveled to Washington to obtain healthcare services that may be prohibited under the Texas law because enforcement of SB 14 for healthcare services provided outside of Texas is a barrier to the free flow of commerce and discriminates against healthcare “on the basis of some interstate element.” The Demands represent an effort to investigate and chill interstate travel by Texas residents to obtain care in Washington State, and accordingly are unconstitutional under the dormant commerce clause. For the foregoing reasons, the Demands should be set aside in their entirety.

G. IN THE ALTERNATIVE, REQUEST FOR EXTENSION OF TIME TO RESPOND TO DEMANDS

If the Court does not set aside the Demands, Seattle Children’s alternatively requests an extension of time of no less than 30 days in which to object or otherwise respond to the Demands.

The stated purpose of the Civil Investigative Demand is to investigate “actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” The stated purpose of the Notice of Demand for Sworn Written Statement is to investigate

“possible violations of DTPA sections 17.46(a) and (b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures by one of [Seattle Children’s] business associates.” The Demands are overly broad and seek documents and information that is not relevant or reasonably calculated to lead to the discovery of facts relevant to any purported DTPA violation. The definitions provided are inadequate and insufficiently precise to enable Seattle Children’s to respond or determine if it can respond. In the event the Court does not set aside the Demands in their entirety, Seattle Children’s requests a reasonable extension of time to provide objections to the scope of the Demands and an opportunity to present those objections. Seattle Children’s further requests that the Court modify the Demands so they are properly limited to the stated purpose of the demands and consistent with the relevancy requirements of the Texas Rules of Civil Procedure.

H. Prayer for Relief

For the foregoing reasons, Plaintiff Seattle Children’s respectfully prays that the Court:

1. Determine that no personal jurisdiction over Seattle Children’s exists in connection with the Office of the Attorney General’s investigation and therefore set aside the Demands for lack of personal jurisdiction.
2. If the Court determines that personal jurisdiction does exist, provide the following relief:
 - a. Set aside the Demands as beyond the scope of Authority of the Attorney General to Compel; enter an order recognizing that Seattle Children’s cannot comply with the request pursuant to controlling Washington laws; and enter an order setting aside the Demands pursuant to HIPAA and Washington state privacy laws, the *ultra vires* nature

of the Demands, and because the Demands violate the dormant Commerce Clause of the United States Constitution.

b. In the alternative and subject to Seattle Children's Special Appearance, enter an order allowing Seattle Children's a 30-day extension to object or otherwise respond to the Demands, including through submission of a supplemental petition to modify the Demands; and

3. Such other relief as the Court may deem just and proper.

Respectfully submitted,

GERMER BEAMAN & BROWN PLLC
One Barton Skyway
1501 S. Mopac Expy., Suite A400
Austin, Texas 78746
(512) 472-0288
(512) 472-9280 (Fax)

By: /s/ Missy Atwood
Missy Atwood
State Bar No. 01428020
matwood@germer-austin.com
Kaitlin Carrillo
State Bar No. 24087894
kcarrillo@germer-austin.com

CORR CRONIN LLP

Jeffrey Coopersmith (*Pro hac vice to be filed*)
1015 Second Avenue, Floor 10
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Telephone: (206) 625-8600
Facsimile: (206) 625-0900
jcoopersmith@corrcronin.com

**ATTORNEYS FOR PLAINTIFF
SEATTLE CHILDREN'S HOSPITAL**

EXHIBIT A



STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

CIVIL INVESTIGATIVE DEMAND

TO: Seattle Children's Hospital
4800 Sand Point Way NE
Seattle, WA 98105

via CMRRR: 7020 1290 0000 7439 3795
via First Class Mail
Return Date: December 7, 2023

Registered Agent:
c/o Corporation Service Company dba
CSC – Lawyers Incorporating Service Co.
211 E. 7th St., Ste. 620
Austin, TX 78701-3218

via CMRRR: 7020 1290 0000 7439 3788
via First Class Mail

Pursuant to this office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 (“DTPA”), Seattle Children's Hospital, a Foreign Nonprofit Corporation, is hereby directed to produce the items listed in Exhibit “B” attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit “A” on this page and subsequent pages.

You are to make available the documentary material described in Exhibit “B” to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division (“Division”). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on **December 7, 2023**. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 17th day of November, 2023.

/s/ David Shatto
DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

EXHIBIT A: INSTRUCTIONS

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. Unless the context clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter includes the masculine and feminine.
3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. *Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
4. **Relevant Time Period.** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from January 1, 2022, to the date of the production of documents in response to this Civil Investigative Demand, herein called the “Relevant Time Period.”
5. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person’s right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
 - a. the name of each author, sender, creator, and initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date the document was created;
 - d. the date(s) the document was in use;
 - e. a detailed description of the content of the document;
 - f. the reason it is no longer in your possession, custody, or control; and
 - g. the document’s present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.

6. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc. must be produced.

7. **No Redaction.** All materials or documents produced in response to this Civil Investigative Demand shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

9. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes, and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

10. **Privilege Log.** For each Document and any other requested information that you assert is privileged or for any other reason excludable from production, please provide a privilege log, wherein you:

- a. Identify that Document and other requested information;
- b. State each specific ground for the claim of privilege or other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;
- c. State the date of the Document or other requested information; the name, job title, and address (including city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; and
- d. Describe the type and subject matter of the Document or other requested information.

DEFINITIONS

1. **“You,” “Your,” “Seattle Children’s Hospital,”** (also referred to herein as the **“Company”**) means the entity named on page one of this Civil Investigative Demand, with an address of 4800 Sand Point Way NE, Seattle, WA 98105, and a registered agent at 211 E. 7th St., Ste. 620, Austin, TX 78701-3218, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance of or on behalf of any of the above. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.
2. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
3. **“Business Record”** means a report, memorandum, or other record made in the usual course of business.
4. **“Child”** or **“Children”** means an individual who is younger than 18 years of age.
5. **“Communication”** means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.
6. **“Document”** is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-mail), instant messages, text messages or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.
7. **“Gender Transitioning and Reassignment Treatments and Procedures”** means any and all procedures or treatments for the purpose of “transitioning” a Child’s biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the

child's perception of the child's sex if that perception is inconsistent with the child's biological sex, including but not limited to surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

8. **"Identify"** means the following:

- a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;
- b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other affiliated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and
- c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents.

9. **"Person"** includes You and means any entity or natural person.

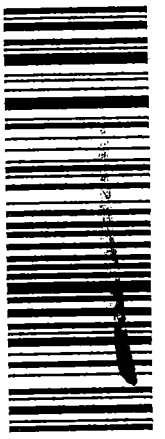
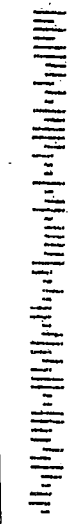
10. **"Physician"** means Medical Doctors or Doctors of Osteopathic Medicine and the Advanced Practice Nurses or Physician Assistants that have been delegated prescriptive authority.

**EXHIBIT B:
DOCUMENTS TO BE PRODUCED**

In accordance with the requirements set forth in the “Definitions” and “Instructions” sections of this Civil Investigative Demand, You are specifically required to respond in writing to each of the following Requests within the time frame set forth below:

Produce within 20 days

1. Business Records sufficient to Identify which medication(s) You, or Physicians associated with You, prescribed for Children that reside(d) in Texas, per month, during the Relevant Time Period.
2. Business Records sufficient to Identify the number of Children that reside(d) in Texas You, or Physicians associated with You, provided medical care for, per month, during the Relevant Time Period.
3. Business Records sufficient to Identify the diagnosis associated with each prescription You, or Physicians associated with You, wrote for Children that reside(d) in Texas.
4. Business Records sufficient to Identify the name of the Texas-based laboratory test companies You, or Physicians associated with You, utilized to perform laboratory tests prior to prescribing medications to Children that reside(d) in Texas.
5. Documents sufficient to Identify the standard protocol or guidance You, or Physicians associated with You, used to guide Your treatment of Children that reside(d) in Texas diagnosed with gender identity disorder, gender dysphoria, or any other similar or related conditions.
6. Documents sufficient to Identify the standard protocol or guidance You, or Physicians associated with You, used to guide Your treatment of Children that reside(d) in Texas that were diagnosed with endocrine disorder.
7. Documents sufficient to Identify the standard protocol or guidance You, or Physicians associated with You, used to wean a Child that reside(d) in Texas off Gender Transitioning and Reassignment Treatments and Procedures as required by Texas Health and Safety Code Ann. § 161.703(c).



7020 1290 0000 7439 3788

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OFFICE OF THE
ATTORNEY GENERAL OF TEXAS
P.O. BOX 12548
AUSTIN, TEXAS 78711-2548

Registered Agent:
c/o Corporation Service Company dba
CSC - Lawyers Incorporating Service Co.
211 E. 7th St., Ste. 620
Austin, TX 78701-3218



EXHIBIT B



STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT

TO: Seattle Children's Hospital
4800 Sand Point Way NE
Seattle, WA 98105

via CMRRR: 7020 1290 0000 7439 3795
via First Class Mail
Return Date: December 7, 2023

Registered Agent:
c/o Corporation Service Company dba
CSC – Lawyers Incorporating Service Co.
211 E. 7th St., Ste. 620
Austin, TX 78701-3218

via CMRRR: 7020 1290 0000 7439 3788
via First Class Mail

The Consumer Protection Division has reason to believe that a “person,” as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 et seq., Tex. Bus. & Com. Code (“DTPA”), Seattle Children’s Hospital (“Seattle Children’s”) is hereby directed to file on the prescribed forms herein written answers under oath to the information requests found in Exhibit “B.”

The information requests must be answered fully, correctly, and under oath, in accordance with the “Definitions and Instructions” set forth in Exhibit “A.” Your sworn written answers must be returned to the undersigned attorney general on or before **December 7, 2023**. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA sections 17.46(a) and (b) for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures by one of your business associates.

TAKE NOTICE THAT pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 17th day of November 2023.

/s/ David Shatto
DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

**EXHIBIT A:
DEFINITIONS AND INSTRUCTIONS**

1. **“You,” “Your,” “Seattle Children’s Hospital,” and/or “Seattle Children’s,”** (also referred to herein as the **“Company”**) means the entity named on page one of this Demand for Sworn Written Statement, with an address at 4800 Sand Point Way NE, Seattle, WA 98105, and a registered agent at 211 E. 7th St., Ste. 620, Austin, TX 78701-3218, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms **“subsidiary,” “affiliate,”** and **“joint venture”** refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.
2. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
3. **“Child”** or **“Children”** means an individual who is younger than 18 years of age.
4. **“Gender Transitioning and Reassignment Treatments and Procedures”** means any and all procedures or treatments for the purpose of **“transitioning”** a Child’s biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child’s perception of the child’s sex if that perception is inconsistent with the child’s biological sex, including but not limited to surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.
5. **“Including”** means including, but not limited to.
6. **“Person”** includes You and means any entity or natural person.
7. **“Physician”** means Medical Doctors or Doctors of Osteopathic Medicine and the Advanced Practice Nurses or Physician Assistants that have been delegated prescriptive authority.
8. **“Relevant Time Period”** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from January 1, 2022, to the date of the production of documents in response to this Sworn Written Statement, herein called the **“Relevant Time Period.”**
9. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.
10. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers’ or employees’ personal knowledge.

You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.

11. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.
12. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.
13. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF _____
COUNTY OF _____

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

[FULL NAME]

Sworn and subscribed to before me this _____ day of _____, 2023.
[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

EXHIBIT B
INFORMATION REQUESTS TO BE ANSWERED UNDER OATH

1. Which medications did You, or Physicians associated with You, prescribe to Children that reside(d) in Texas, by month, during the Relevant Time Period?
2. For each medication identified in request 1, Identify, by month, the number of each prescription written for Children that reside(d) in Texas during the Relevant Time Period.
3. For each prescription identified in request 2, Identify the associated diagnosis, by month, during the Relevant Time Period. If more than one diagnosis, Identify the number of each diagnosis.
4. How many Children that reside(d) in Texas have You, or Physicians related to You, treated for gender identity disorder, gender dysphoria, or other similar or related conditions, per month, during the Relevant Time Period?
5. How many Children that reside(d) in Texas have You, or Physicians associated with You, treated for endocrine disorder, per month, during the Relevant Time Period?
6. How many Children that reside(d) in Texas have You, or Physicians associated with You, provided Gender Transitioning or Gender Reassignment Procedures or Treatments that have or are being weaned off the medications as required by Texas Health and Safety Code Ann. § 161.703(c)?

EXHIBIT C

CAUSE NO. D-1-GN-23-

SEATTLE CHILDREN’S HOSPITAL	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	
OFFICE OF THE ATTORNEY	§	OF TRAVIS COUNTY, TEXAS
GENERAL OF THE STATE OF TEXAS	§	_____ JUDICIAL DISTRICT

**AFFIDAVIT OF RUTH A. MCDONALD, M.D. IN SUPPORT OF
SEATTLE CHILDREN’S HOSPITAL’S SPECIAL APPEARANCE AND
PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND AND
REQUEST FOR SWORN WRITTEN STATEMENT**

Before me, the undersigned authority, on this day personally appeared Ruth A. McDonald, M.D., known to me to be the person subscribed herein, who stated under oath as follows:

1. My name is Ruth A. McDonald, M.D. I am over 21 years of age, am of sound mind, and have never been convicted of a felony. I have personal knowledge of the facts contained herein.
2. I am a doctor licensed to practice medicine in the State of Washington, and I serve as Vice President, Associate Chief Medical Officer, and Chief Medical Operations Officer for Seattle Children’s Hospital (“SCH”).
3. SCH was founded over 100 years ago to provide comprehensive care to children from infancy through young adulthood.
4. SCH is incorporated in Washington State as a non-profit corporation and has been since 1907.
5. SCH’s principal place of business is in Seattle, Washington. SCH does not maintain a principal place of business in Texas.
6. SCH is a healthcare provider that provides care in Seattle, Washington through physicians in nearly 60 pediatric subspecialties. SCH’s mission is to provide hope, care and cures to help every child live the healthiest and most fulfilling possible. In furtherance of its mission,

SCH provides inpatient, outpatient, diagnostic, surgical, rehabilitative, behavioral, emergency and outreach services, regardless of a family's ability to pay.

7. SCH does not own any property in Texas.

8. SCH does not have any bank accounts in Texas.

9. In my role at SCH, I am familiar with the care that SCH provides, and the physicians, other health care providers, and staff who provide that care.

10. SCH does not employ any clinical staff in the State of Texas to provide any "gender-affirming care" as defined in Section 7.115.010 of the Revised Code of Washington, or "Gender Transitioning or Gender Reassignment Procedures and Treatments" as defined in Section 161.702 of the Texas Health & Safety Code. Likewise, SCH providers have not provided telemedicine services to Texas residents for "gender-affirming care" as defined in Section 7.115.010 of the Revised Code of Washington, or "Gender Transitioning or Gender Reassignment Procedures and Treatments" as defined in Section 161.702 of the Texas Health & Safety Code. There are no administrative employees of SCH who reside in Texas and work remotely who support the Gender Clinic services.

11. SCH has not marketed or advertised in Texas regarding gender affirming care as defined in Section 7.115.101 of the Revised Code of Washington, or "Gender Transitioning or Gender Reassignment Procedures and Treatments" as defined in Section 161.702 of the Texas Health & Safety Code. SCH does not target any social media or traditional media efforts towards Texas residents or to a Texas Market regarding "gender affirming care" or "Gender Transitioning or Gender Reassignment Procedures and Treatment."

12. Based on a search of records by our revenue cycle department, there is no record that SCH has provided any "gender-affirming care" as defined in Section 7.115.010 of the Revised Code of Washington, or "Gender Transitioning or Gender Reassignment Procedures and Treatments" as defined in Section 161.702 of the Texas Health & Safety Code using public money from the State of Texas, or with reimbursement from Texas's Medicaid or Texas's child health plan programs.

FURTHER AFFIANT SAYETH NOT

Ruth A McDonald, MD

Ruth A. McDonald, M.D.

Ruth A McDonald, M.D.

Printed Name

STATE OF CALIFORNIA

COUNTY OF _____

§
§
§

[Signature]
See Attached
Notarial Certificate
12/7/2023

Sworn to and subscribed to before me on this _____ day of December, 2023 to which I place my official seal.

Notary Public, State of California

CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

Subscribed and sworn to (or affirmed) before me

on this 7 day of DECEMBER, 2023

by Ruth A. McDonald

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Nels C. Henderson
Nels C. Henderson, Notary Public



[SEAL]

Description of Attached Document (Optional)

Method of Signer Identification

The preceding California Jurat is attached to a document titled/for the purpose of:

Self affidavit

Containing _____ pages, and dated 12/7/2023

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s): _____
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Representing: _____

Proved to me on the basis of satisfactory evidence:

- Form(s) of Identification
- Credible Witness(es)

Notarial Event is detailed in notary journal on:

Page # 11 Entry # 3

Notarized by:

Nels C. Henderson, Notary Public
Santa Barbara Mobile Notary
<http://www.sbmobilenotary.com>
(805) 335-8360

EXHIBIT D

CAUSE NO. D-1-GN-23-

SEATTLE CHILDREN’S HOSPITAL	§	IN THE DISTRICT COURT
	§	
VS.	§	OF TRAVIS COUNTY, TEXAS
	§	
OFFICE OF THE ATTORNEY	§	
GENERAL OF THE STATE OF TEXAS	§	_____ JUDICIAL DISTRICT

AFFIDAVIT OF RENALDO GUARDIANO IN SUPPORT OF SEATTLE CHILDREN’S HOSPITAL’S SPECIAL APPEARANCE

Before me, the undersigned authority, on this day personally appeared Renaldo Guardiano, known to me to be the person subscribed herein, who stated under oath as follows:

1. “My name is Renaldo Guardiano. I am over 21 years of age, am of sound mind, and have never been convicted of a felony. I have personal knowledge of the facts contained herein.
2. I am Senior Director, IT Services – Operations, Infrastructure, and Enterprise Architecture, at Seattle Children’s Hospital (“SCH”).
3. Among other things, I am responsible for the operation and maintenance of the electronic mail (“email”) communications service that SCH provides for use by its employees and other members of its workforce.
4. I am an employee of SCH and my place of employment is at SCH in Seattle, Washington.
5. All employees of SCH, such as employed physicians, nurses, and staff, are assigned email addresses with the email extension “seattlechildrens.org.”
6. Non-employed members of the SCH medical staff whose primary practice is an SCH facility are also assigned email addresses with this same email extension.
7. When a new employee or workforce member from whom the SCH access management process has determined qualifies for network access begins their work at SCH, my team is responsible for making sure that the new employee or workforce member has the ability to send or receive electronic communications in the form of emails.

8. My team and I also continually work to maintain the ability of SCH employees and other workforce members to send or receive electronic communications in the form of emails.

9. In order to provide the electronic communication services described above, SCH owns and maintains servers, networking equipment, and other computer devices at a facility in the Seattle metropolitan area.

10. SCH uses this equipment to facilitate all electronic communication services, including those I have described in this affidavit.”

FURTHER AFFIANT SAYETH NOT



Renaldo Guardiano



Printed Name

STATE OF NEVADA
COUNTY OF CLARK

§
§
§

Sworn to and subscribed to before me on this 06 day of December, 2023 to which I place my official seal.



Notary Public, State of Nevada

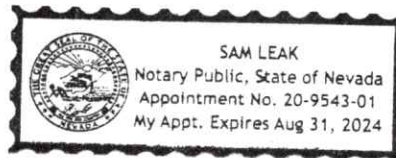


EXHIBIT E



2023-12-06 Affidavit of Robinet - Final.pdf

DocVerify ID: 6384E27C-2FD0-4D36-BD51-A95199D28394
 Created: December 06, 2023 15:27:20 -8:00
 Pages: 2
 Remote Notary: Yes / State: WA

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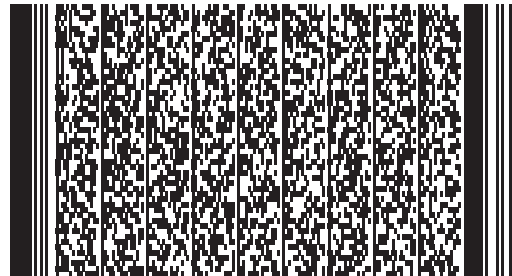
E-Signature 1: Dan Robinet (DR)

December 06, 2023 15:39:46 -8:00 [71667C74F36C] [24.17.230.249]
 dan.robinet@seattlechildrens.org (Principal) (Personally Known)

E-Signature Notary: Sheila LaRussa (sla)

December 06, 2023 15:39:46 -8:00 [A106BAF4FEEA] [76.146.161.206]
 slarussa@corrchronin.com

I, Sheila LaRussa, did witness the participants named above electronically sign this document.



CAUSE NO. D-1-GN-23-

SEATTLE CHILDREN’S HOSPITAL	§	IN THE DISTRICT COURT
	§	
VS.	§	OF TRAVIS COUNTY, TEXAS
	§	
KEN PAXTON IN HIS CAPACITY	§	
AS ATTORNEY GENERAL	§	_____ JUDICIAL DISTRICT

**AFFIDAVIT OF DAN ROBINET IN SUPPORT OF SEATTLE CHILDREN’S
HOSPITAL’S SPECIAL APPEARANCE**

Before me, the undersigned authority, on this day personally appeared Dan Robinet, known to me to the person subscribed herein, who stated under oath as follows:

1. “My name is Dan Robinet. I am over 21 years of age, am of sound mind, and have never been convicted of a felony. I have personal knowledge of the facts contained herein.
2. I am Senior Director, Enterprise Clinical Systems, at Seattle Children’s Hospital (“SCH”).
3. Among other things, I am responsible for the operation of SCH’s electronic health records system (“Epic”), which utilizes software from Epic Systems Corporation.
4. I am also responsible for the operation of SCH’s secure text message alert system, which is AMS Connect, a secure messaging platform that utilizes software provided by American Messaging.
5. I am an employee of SCH, and my place of employment is at SCH in Seattle, Washington.
6. The Epic system at SCH serves as a repository for electronic health records. For example, the Epic system allows physicians and other health care providers who are appropriately provisioned members of the SCH workforce to access, enter, and record patient medical information.
7. SCH also provides electronic communication services through its Epic system.

6384E27C-2FD0-4D36-BD51-A95199D28394 --- 2023/12/06 15:27:20 -8:00 --- Remote Notary



