

# COMMITTEE ON PUBLIC HEALTH

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P.O. Box 2910 • AUSTIN, TEXAS 78768-2910

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FILE # ML-39890-97  
I.D. # 39890

Opinion Committee

October 31, 1997

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin TX 78711-2548

RQ-1018

Dear General Morales:

On behalf of the House Committee on Public Health, I respectfully request your opinion on the constitutionality of Rider 36 and Rider 37, Article III, of the Appropriations Act passed by the 75th Legislature.

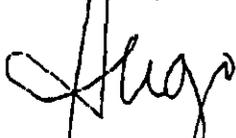
House Bill 1511, passed by the 75th Legislature, set forth policy regarding the distribution of certain graduate medical education funds. Riders 36 and 37 also establish policy, regarding the distribution of these funds, that is not consistent with the intent of H.B. 1511. The effect of Rider 37 could be severe, in that it restricts all general revenue funds, and could impair several residency programs throughout Texas. I am concerned that these riders will be legally challenged based on their constitutionality.

Please take the following issues into consideration:

- Judge Scott McCown's recent decision in Planned Parenthood of Houston and Southeast Texas vs. Paul Patterson, M.D., et al., which questioned the constitutionality of a rider based on the one-subject rule of Article III, Section 35 of the Texas Constitution.
- The extent to which Riders 36 and 37 conflict with H.B. 1511, also passed by the 75th Legislature.
- The extent to which Riders 36 and 37 conflict with other existing laws at the state and federal level and may impact the receipt of federal monies for residency programs.
- The constitutionality of denying funding to a residency program based on whether or not the program has international medical school graduates. These graduates of foreign medical schools are selected to participate in an approved Texas residency program after passing the Texas medical licensure exam.

Your opinion in this matter is important as the Higher Education Coordinating Board considers the impact of these riders on their graduate medical education programs.

Sincerely,



Hugo Berlanga, Chair  
House Committee on Public Health

Attachment - 1

cc: Speaker James E. "Pete" Laney  
Representative Dianne Delisi  
Representative Rob Junell  
Representative John Hirschi  
Senator Judith Zaffirini  
Senator Carlos Truani  
Don Brown, Commissioner, Higher Ed. Coordinating Board  
Dr. Bruce Levy, Chairman, GME Advisory Committee

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October 16, 1997

Mr. Leonard Rauch, Chairman  
Texas Higher Education Coordinating Board  
7745 Chevy Chase Dr.  
Austin TX 78752

via fax: (512) 483-6169

Dear Chairman Rauch:

I am writing to express my deep concern for the constitutionality and impact of riders numbers 36 and 37, Article III, of the Appropriations Act passed by the 75<sup>th</sup> Legislature.

Riders numbers 36 and 37 read as follows:

**"36. Graduate Medical Education.** Funds appropriated above are for the purpose of supporting the educational costs of primary care graduate medical education programs accredited by the Accreditation Council for Medical Education or the American Osteopathic Association, Bureau of Professional Education. For the purposes of this rider, primary care shall include family practice, obstetrics/gynecology, general internal medicine, and general pediatrics. Each entity incurring the costs of faculty responsible for instruction or supervision of resident physicians in such accredited programs may receive funds in an amount not to exceed \$12,500 in each fiscal year for each filled residency position that is filled by a graduate of a school of medicine or osteopathy accredited by the Liaison Committee on Medical Education or the American Osteopathic Association. The Higher Education Coordinating Board shall promulgate rules for the equitable distribution of these funds, taking into account other state programs and the physician workforce needs of the state."

**"37. State Support for Graduate Medical Education.** Effective September 1, 1998, all General Revenue Funds appropriated explicitly for the purpose of graduate medical education, including costs for faculty instruction or supervision, costs for compensation of resident physicians, and other program costs, shall be expended solely for residency positions filled by a graduate of an accredited school of medicine or osteopathy."

I believe the constitutionality of these riders could be questioned because they amend current law

by limiting the use of Medicaid funds, and other funds used to pay for graduate medical education, to funding resident positions filled solely by graduates of accredited schools of medicine and osteopathy within the United States and Canada. This inappropriately limits the discretion of each school appointing residents and the reimbursement currently allowed by law. This was not the intent of the legislature in enacting H.B. 1511. A similar amendment was attempted during the committee debate of H.B. 1511 and was overwhelmingly rejected.

A recent decision by Judge F. Scott McCown in Planned Parenthood of Houston and Southeast Texas, Inc. vs. Patti Patterson, M.D., et al., addressed a similar rider in our appropriations bill. Judge McCown found the rider in question, unconstitutional based on the one-subject rule of Article III, Section 35 of the Texas Constitution, which provides:

"No bill, (except general appropriations bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject."

In relevant part, Judge McCown's decision stated:

"The reason our constitution limits a bill to one subject is to ensure majority rule. When one bill contains numerous subjects, the members of the legislature are prevented from expressing their will separately on each subject. Thus a minority can manipulate a majority into accepting the minority's will on one subject by linking numerous subjects for a single vote.

A general appropriations bill, however, must necessarily contain more than one subject because it aggregates all the subjects on which the state spends money. So an exception to the one-subject rule is made for the general appropriations bill. But the exception has a limitation. The limitation is that the general appropriations bill must be strictly limited to the subjects and accounts of money.

An explanation of how an account of money is to be spent is generally a permissible part of the general appropriations bill. Such an explanation is within the limitation. These explanations are referred to as "riders".

A rider, however, cannot repeal or amend a general law because that goes beyond merely accounting for money. See Strake v. Court of Appeals, 704 S.W.2d 746, 748-49 (Tex. 1986) ("A rider which attempts to alter existing substantive law is a general law which may not be included in an appropriations act."); Moore v. Sheppard, 192 S.W. 2d 559, 562 (Tex. 1946) ("[T]hat portion of the Appropriation Bill setting out for the first time matters not germane thereto, and dealing with general legislation on [a] different and wholly unrelated 'subject' ... is in conflict with the mandate of Article III, Section 35, and is unconstitutional."); see also Op. Tex. Att'y Gen. No. 2787 (1929) ("The Legislature does not have the authority by means of a rider to an appropriations bill to enact a statute affecting the fees or costs of clerks of Courts of Civil Appeals when the same fixed by general statute."); Op. Tex. Att'y Gen. No. 2970 (1935) ("A General Law may not be repealed or amended by the terms or provisions in an Appropriation Bill.").

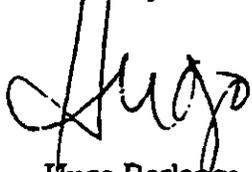
Even if the rider is nothing more than an explanation of how money is to be spent, it cannot repeal or amend a general law about how money is to be spent. While the general appropriations act can leave a general law unfunded, if funds are appropriated, the general appropriations act cannot mandate by a rider that the

funds be disbursed or withheld in a manner inconsistent with general law. This limitation on riders follows from the one-subject rule. If a rider could repeal or amend a general law, then it would be doing more than merely accounting for money and would therefore go beyond the limitation to the exception to the one-subject rule.

Our general appropriations bills have become laden with riders - and this should be of grave concern. Unlike the process of making a general law on a specific subject, the appropriations process gives little notice to the members of the legislature of a proposed rider, little opportunity to be heard in opposition to the rider, and little ability to defeat the rider, which is always a small part of a complex and important bill. Moreover, the governor cannot veto a rider, and thus is denied his constitutional role in lawmaking when the rider goes beyond its legitimate purpose of merely allocating money and detailing how it is to be spent. To protect majority rule, therefore, the courts must strike down unconstitutional riders."

If there is an attempt to implement Riders 36 or 37 as interpreted by Lynn Rodriguez in the memorandum dated September 5, 1997, I am concerned that the decision will be challenged and the same result obtained. I urge you to seriously consider these riders in the context of Judge McCown's decision, and implement H.B. 1511 as adopted under current law.

Sincerely,



Hugo Berlanga, Chairman  
House Committee on Public Health

cc: Speaker James E. "Pete" Laney  
Representative John Hirschi  
Senator Judith Zaffirini  
Senator Carlos Truan  
Don Brown, Commissioner, Higher Ed. Coordinating Board  
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