July 5, 2025

VIA ELECTRONIC MAIL

Hon. James Comer
Chairman

Hon. Stephen F. Lynch
Ranking Member

Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: *Dr. Kevin O'Connor*

Dear Chairman Comer and Ranking Member Lynch:

All Americans have certain things in common. One of those is that each of us, at some point in time and often on a regular basis, sees a doctor regarding a medical condition, concerning symptoms, or a routine checkup. When we do so, each of us feels secure that the information we convey to the physician about our health is confidential, as is the information the doctor gleans from observing, examining, diagnosing, and treating us. We confide in our physicians to enable them to treat us, and we trust that physicians will hold our confidences inviolate. This simple proposition dates back more than two thousand years. As stated in the contemporary version of the Hippocratic Oath recited by many medical students upon their graduation into the profession: "*I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know*." *See* Ralph Ruebner & Leslie Ann Reis, *Hippocrates to HIPAA: A Foundation for a Federal Physician-Patient Privilege*, 77 Temp. L. Rev. 505, 508 n.8 (Fall 2004).

When we first engaged in discussions with your staff regarding Dr. Kevin O'Connor's upcoming deposition, we believed that you and your Committee appreciated the value of the doctor-patient privilege and the ethical obligation of confidentiality that every physician owes his or her patient. After a productive discussion with your staff about the contours of the physician-patient privilege and how Dr. O'Connor's testimony might proceed in a way that provides the Committee with certain information it seeks but also preserves the confidentiality of privileged information, we trusted that you would respond with a proposal to accommodate Dr. O'Connor's legal and ethical obligations to his patient.

We were wrong. In an email dated July 2, 2025, your staff wrote: "The Chairman cannot agree to your request regarding limiting the scope of the deposition. Dr. O'Connor's unique knowledge concerning these areas is the reason Dr. O'Connor's testimony is necessary to [the] Committee's investigation." In other words, you have declined to accommodate *to any degree* Dr. O'Connor's objections that his testimony before the Committee on the stated subjects of your

investigation would cover matters within the scope of the physician-patient privilege and Dr. O'Connor's ethical duty of confidentiality.

We believe that the position you have asserted is unprecedented. We are unaware of any prior occasion on which a Congressional Committee has subpoenaed a physician to testify about the treatment of an individual patient. And the notion that a Congressional Committee would do so without any regard whatsoever for the confidentiality of the physician-patient relationship is alarming.

Your position also is in stark contrast to Congress's longstanding practice of seeking to accommodate traditional privileges when possible. In 1954, the Senate considered adopting rules that would have explicitly recognized "the confidential status of communications traditionally protected in judicial proceedings[,]" including doctor-patient communications. Thomas Millet, *The Applicability of Evidentiary Privileges for Confidential Communications before Congress*, 21 J. Marshall L. Rev. 309, 316 (1988). *See also* Bradley J. Bondi, *No Secrets Allowed: Congress's Treatment and Mistreatment of the Attorney-Client Privilege and the Work-Product Protection in Congressional Investigations and Contempt Proceedings*, 25 J. of L. & Pol. 145, 159 (2009) (noting that House also considered such a Rules amendment). Congress declined to adopt the amendments, but one of its rationales was that the privileges *were generally honored through committee practice so that an amendment was unnecessary*. As the Senate Committee on Rules and Administration report reflects:

> With few exceptions, it has been committee practice to observe the testimonial privileges of witnesses with respect to communications between clergyman and parishioner, *doctor and patient*, lawyer and client, and husband and wife. Controversy does not appear to have arisen in this connection. While the policy behind the protection of confidential communication may be applicable to legislative investigations as well as to court proceedings, no rule appear [sic] to be necessary at this time.

Millet, 21 J. Marshall L. Rev. at 316 (quoting S. Rep. No. 84-2, at 27-28 (1954)) (emphasis added); Bondi, 25 J. of L. & Pol. at 159 & n.80 (same). *Cf. Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020) (recipients of legislative subpoenas "have long been understood to retain common law and constitutional privileges with respect to certain materials").

We ask that you reconsider your position. Dr. O'Connor has legal and ethical obligations that he must satisfy and for which violations carry serious consequences to him professionally and personally. We outline these concerns below and ask that you afford us the opportunity to meet with you to discuss them further. We believe that a brief delay in Dr. O'Connor's scheduled deposition – to the week of July 28 or August 4 – would allow us time to continue to discuss and work through with your Staff these very significant issues and reach an accommodation that will protect Dr. O'Connor's interests and advance the interests of the Committee and its investigation.

Dr. O'Connor is a licensed physician in the District of Columbia. The District of Columbia has enacted and enforces "a strong public policy in favor of confidentiality of physician-patient relationships." *Vassiliades v. Garfinckel's, Brooks Brothers*, 492 A.2d 580, 591 (D.C. 1985). This policy is evident in the District's medical licensing statute, which subjects doctors to disciplinary action for, among other infractions, "[w]illfully breach[ing] a statutory, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient or client of the health professional, unless ordered by a court[.]" D.C. Code § 3-1205.14(a)(16). The potential penalties for willfully violating these duties of confidentiality include revocation of one's medical license and civil fines. *See* D.C. Code § 3-1205.14(c).

Dr. O'Connor is subject to several "statutory, regulatory, or ethical requirement[s] of confidentiality" that would be violated by open-ended testimony before the Committee without accommodations. First, as you know, the District of Columbia has a physician-patient privilege statute that prohibits a physician from disclosing, without the written consent of the patient, "any confidential information that the individual has acquired in attending the client in a professional capacity and that was necessary to enable the individual to act in that capacity[.]" D.C. Code § 14-307(b). This statute reflects "the policy in this jurisdiction [ ] to encourage candor by patients and confidentiality by physicians." *Vassiliades*, 492 A.2d at 591.

You noted in your letter of June 5, 2025, that the statutory physician-patient privilege applies to testimony "[i]n the Federal courts in the District of Columbia and District of Columbia courts[.]" While that is true, the *policy* behind the physician-patient privilege applies equally to testimony before Congress. After all, testimony is testimony. Whether in a courtroom or a committee room, testimony by a physician about the treatment of a patient lets the cat out of the bag. And any patient who knows that his or her physician may later be required to inform inquiring lawmakers of the details of their private and sensitive communications about personal medical matters will be less inclined to offer those communications to begin with. *See* Millet, 21 J. Marshall L. Rev. at 310 (the rationales for privileges protecting confidential communications "apply with the same logical force to the legislative arena as the judicial one"). The House Report accompanying the original enactment of the District's physician-patient privilege statute in 1896 made this very point:

> The issues of life and death are placed in the hands of the trusted family physician. The patient should frankly, freely, truthfully, unreservedly make disclosures to the doctor, and he in turn should be at perfect liberty to ask for and demand all the information bearing upon the disability that would enable him to properly diagnose the case and apply the remedy, *without being compelled to make disclosures thereof in court or elsewhere*.

Simpson v. Braider, 104 F.R.D. 512, 518 (D.D.C. 1985) (quoting H.R. Rep. No. 1677, 54th Cong. 1st Sess. 4 (1896)) (emphasis added; earlier emphasis omitted).

Turning to Dr. O'Connor's ethical duty of confidentiality reflected in Principal No. IV of the Code of Ethics of the American Medical Association (AMA), this duty applies broadly to disclosures to *any third parties*, without limitation to the context of testimony. In your letter of June 5, 2025, you recite the AMA's Code of Medical Ethics Opinion 9.7.1, but that opinion addresses the context of a physician testifying as a fact witness "in legal claims involving a patient they have treated." Your investigation is not a "legal claim involving a patient," and you cite no authority that it is. The more relevant AMA Code of Medical Ethics Opinion is 3.2.1, entitled "Confidentiality." Opinion 3.2.1 states:

> Patients need to be able to trust that physicians will protect information shared in confidence. They should feel free to fully disclose sensitive personal information to enable their physician to most effectively provide needed services. Physicians in turn have an ethical obligation to preserve the confidentiality of information gathered in association with the care of the patient.

Opinion 3.2.1 makes clear that "[i]n general, patients are entitled to decide whether and to whom their personal health information is disclosed." While the Opinion notes an exception for disclosures "[t]o appropriate authorities when disclosure is required by law[,]" the word "authorities" indicates that the exception applies to mandatory disclosures to *law-enforcement or regulatory authorities* (*e.g.*, suspected child abuse). Your investigation does not fall within this exception.

As Opinion 3.2.1 illustrates, Dr. O'Connor's ethical duty of confidentiality is distinct from and broader than the testimonial physician-patient privilege. "The duty is rooted in the ethical underpinnings of [the physician-patient] relationship and serves to prevent a physician from disclosing sensitive medical information *to any third party*." *Sorensen v. Barbuto*, 177 P.3d 614, 617 (Utah 2008). Congress itself, through enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), "has given its full mandate to physicians to fulfill their ethical obligations of confidentiality, except where other laws may require disclosure." Ruebner & Reis, 77 Temp. L. Rev. at 519. We ask that your Committee work with us to ensure that Dr. O'Connor can fulfill his ethical obligations of confidentiality as well.

A breach of the ethical duty of physician-patient confidentiality and/or the physician-patient privilege could subject Dr. O'Connor not only to revocation of his medical license but also to tort liability. The District of Columbia Court of Appeals has held that "the breach of a physician-patient relationship is an actionable tort." *Vassiliades*, 492 A.2d at 592. The Court explained: "It should be no less true for patients receiving medical treatment in the District of Columbia than for those in other jurisdictions that confidences made by a patient to a physician may not be disclosed without the permission of the patient" and that patients "have the right to rely on this common understanding of the ethical requirements which have been placed on the medical profession and to obtain damages against a physician if he violates such confidentiality." *Id.* (internal quotation marks omitted).

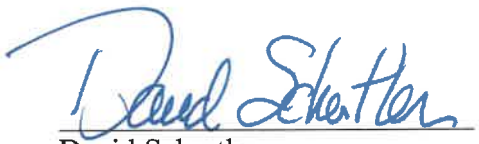
Dr. O'Connor has a time-honored obligation of confidentiality to all his patients, including former President Biden. Through the statutory physician-patient privilege, the obligation extends to testimony. Through ethical mandates, the obligation extends to disclosures of confidential information to any third party. Both obligations apply in the context of testimony before your Committee and prohibit Dr. O'Connor from divulging confidential information related to former President Biden's medical treatment without the consent of the patient. Dr. O'Connor has no discretion in the matter. He is ethically bound to invoke the physician-patient privilege and to protect the confidentiality of his patient.

"The physician-patient relationship has historically been one of the most sacrosanct and protected relationships throughout the globe." *Trenshaw v. Jennings*, 568 P.3d 413, 417 (Colo. 2025). All Americans understand this principle and rely on it. It would be an unnecessary spectacle to require Dr. O'Connor to testify before your Committee next week without any accommodations for the well-established doctrine of doctor-patient confidentiality and to subject himself to potential criminal prosecution for contempt of Congress for doing the right thing – honoring his legal and ethical obligations to a patient.

We ask you to work with us in the coming weeks toward a mutually acceptable arrangement. Again, a brief delay in Dr. O'Connor's scheduled deposition – to the week of July 28 or August 4 – would give us an opportunity to continue our discussions with you and your Staff to reach an accommodation that will protect the very substantial privilege and confidentiality interests of Dr. O'Connor and former President Biden and advance the interests of the Committee and its investigation.

Thank you in advance for your consideration.

Sincerely,



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