

California's Legislative Response to Dobbs and Its Implications for Medical Staffs

Insights

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On June 24, 2022, the United States Supreme Court issued its long-awaited decision in *Dobbs v. Jackson Women's Health Organization*[1] ("Dobbs"). A majority of the Court voted to overturn *Roe v. Wade*[2] ("Roe") and held that the right to an abortion was not protected under the Constitution. Accordingly, it returned the authority to regulate abortion back to individual states and their elected representatives. The Court's decision in *Dobbs* opens the door to a wide range of individual state laws regulating abortion access and care. Faced with these conflicting laws, medical staffs across the country are facing an array of questions and concerns regarding the impact of *Dobbs* on their ability to provide reproductive health care.

This article provides an overview of newly enacted laws and pending bills before the California Legislature designed to protect and expand abortion access in the state, and offers some considerations for health care providers and medical staffs as they attempt to navigate this new (and still changing) legal landscape post- *Roe*.

California's Efforts to Protect Health Care Providers

California's response to *Dobbs* was swift. The same day the Supreme Court issued its decision Governor Gavin Newsom signed [Assembly Bill \("AB"\) 1666](#) into law. The bill added section 123467.5 to the Health & Safety Code and declared that another state's law authorizing a civil action against a person or entity that receives or seeks, performs or induces, knowingly engages in conduct that aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of California. It also prohibits the application of that state's law to a case or controversy heard in a California state court, as well as the enforcement or satisfaction of a civil judgment received under that law.

The newly added section 123467.5 took effect immediately as an urgency statute and affords some legal protection to California providers—namely, protection from civil liability for providing abortion care to patients when such claims are based on another state's anti-abortion laws. Although the enactment of AB 1666 offers some protection, concerns still remain for those practitioners and entities such as medical staffs, who provide reproductive care including abortions, to out-of-state patients.

Several bills aimed at protecting and expanding abortion access are also currently in committee and moving their way through the California State Legislature:

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- [AB 2626](#) would prohibit the Medical Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, and the Physician Assistant Board from suspending or revoking the certificate or license of a physician and surgeon, certified nurse midwife, nurse practitioner, or physician assistant solely for performing an abortion, provided that they conducted the procedure in the first trimester of pregnancy and, at the time of doing so, had a valid, unrevoked, and unsuspended license or certificate, which authorized them to perform the abortion.
- [AB 2091](#) seeks to enhance privacy protections under California's Confidentiality of Medical Information Act for patients' medical records related to abortion care by prohibiting disclosures to law enforcement and out-of-state parties seeking to enforce abortion bans in other states. It would also prohibit a person from being compelled to identify or provide information that would identify a woman who has sought or obtained an abortion, if the information is being requested based on either (1) another state's laws, which interfere with a woman's rights to choose or obtain an abortion, or (2) a civil action authorized by another state's law to punish an offense against the public justice of that state.
- [AB 2223](#) would prevent a person from being subject to civil or criminal liability or penalty by the state of California, based solely on their actions to aid or assist a pregnant person in exercising their fundamental right of privacy with respect to their personal reproductive decisions.

These bills are all part of the state's efforts to protect health care providers who will likely see an increase in out-of-state patients forced to seek care in California due to their state's restrictive abortion laws.

Legal Considerations for Medical Staffs

The complexities of state-specific trigger bans mean that health care providers now face unprecedented legal risks. Although California's recently enacted and pending legislation are important steps to protecting reproductive freedom in the state, there are still issues that providers and medical staffs should be aware of and ready to respond to, such as:

- The impact of disciplinary actions by licensing boards in states with restrictive abortion laws, on current and prospective medical staff members;
- The disclosure of medical or peer review records to state licensing boards or credentialing bodies;
- The ability of California providers to render reproductive telehealth services to patients who reside in states with anti-abortion laws;
- The extent to which dually licensed California practitioners can prescribe medications for abortion to patients via telehealth, under their license in a state where such prescribing is illegal or restricted;
- The potential liability for providers who aid or assist patients who cross state lines in order to receive sexual and reproductive health care, including abortions; and
- Compliance with the federal Emergency Medical Treatment and Labor Act ("EMTALA") and related hospital policies and procedures.

The Supreme Court's decision in *Dobbs* has created uncertainty for both clinicians and hospitals as they grapple with the challenges of providing quality reproductive care in a post-*Roe* world. It is important for health care providers and medical staffs to be aware of pertinent developments in the law and seek legal counsel in those instances where available guidance is unclear or lacking.

^[1] 597 U.S. __ (2022); 2022 WL 2276808 (June 24, 2022).

^[2] 505 U.S. 833 (1992).

Hooper, Lundy & Bookman, P.C. is monitoring developments closely as federal agencies issue further guidance and states enact new laws in response to the Supreme Court's decision. The firm has also launched a new [Reproductive Health Practice Group](#) to assist providers seeking to understand their legal obligations. For more information, please contact [Catherine S. Wicker](#) or [Jennifer Hansen](#) in San Diego, [Ross Campbell](#), [Ruby Wood](#), [Emily L. Brinkman](#), or [Andrea Frey](#) in San Francisco,

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