

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1707
 AUTHOR: Pacheco
 BILL DATE: April 12, 2023, Amended
 SUBJECT: Health Professionals and Facilities: Adverse Actions
 Based on Another State's Laws
 SPONSOR: Planned Parenthood Affiliates of California

DESCRIPTION OF CURRENT LEGISLATION

Protects California-licensed health care professionals from adverse licensing actions or losing staff privileges in this state due to an adverse action taken in another jurisdiction based solely on that state's laws that interfere with a person's right to receive sensitive services, as defined, that would be lawful if provided in California.

BACKGROUND

Current law sets forth the requirements related to the performance of an abortion by certain authorized licensed health care professionals, including physicians and surgeons, osteopathic physicians and surgeons, nurse practitioners, nurse-midwives, and physician assistants. Those requirements are set forth in the respective practice acts of the various licensing boards and the Reproductive Privacy Act, among other provisions.

Recently, various states have enacted legislation that shortens the window of time for a person to obtain an abortion in those states. In Texas, for example, abortions may not be performed, or aided and abetted, by anyone after the detection of a fetal heartbeat.

Similarly, [according to Human Rights Watch](#), various states have enacted or have proposed laws that would ban or limit access to gender-affirming health, including mental health care. In response, [according to NPR](#), other states have enacted or proposed laws that would extend protections to providers or broaden access to these services.

The Medical Practice Act (MPA) authorizes the Board to discipline a licensee who has been disciplined by another state for unprofessional conduct, if that conduct is also a violation of California law.

In 2022, the Board adopted a Support position on [AB 2626](#), which would have prohibited the Board, and other specified licensing boards, from denying an application, or disciplining a licensee who was disciplined by a licensing board, or convicted of a crime, in another state, for performing an abortion in that state. To qualify for that protection, the provider must have performed the abortion within the standard of care and have been licensed in the state that disciplined or convicted them.

A similar bill, SB 345 (Skinner), is on the agenda for this Board meeting, see Agenda Item 8.N.

ANALYSIS

According to the author's fact sheet:

“In the summer of 2022, the U.S. Supreme Court overturned the long-standing legal protections for abortion under Roe v. Wade with its decision in Dobbs v. Jackson Women's Health Organization. Since the decision in Dobbs, additional safeguards have been identified that are needed to strengthen protections for California abortion providers and others against enforcement of hostile abortion laws of other states.

California's health care providers are increasingly providing care to residents in other states and it is critical to ensure that providers in California, abiding by California laws are protected from adverse actions based on another state's hostile law. [As of October 2022, 66 clinics across 15 states](#) in the US had to stop providing abortion. The call for California's abortion network to remain resilient is needed, now more than ever.”

Key Term Defined in AB 1707

The bill defines “sensitive services” to mean all of the following:

- All health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence.
- [Various services](#) where a minor is authorized to receive services without the consent of their parent or guardian, including [HIV testing](#), and [outpatient mental health treatment services](#).

Provisions Related to the Board's Licensing and Enforcement Functions

As discussed below, certain aspects of the bill are not related to the Board's consumer protection mission. With respect to the Board's licensing and enforcement functions, the bill is intended to prevent the Board from taking the following actions against an applicant or licensee who provided sensitive services that would be lawful if provided in California:

- Denying their application for licensure.
- Disciplining their Board-issued license.

The Board's practice is to not discipline a licensee based upon discipline from another jurisdiction for conduct that would not constitute unprofessional conduct, if conducted in

California. Therefore, the bill is not anticipated to impact the Board’s enforcement program.

The protections in the bill do not apply to a civil judgment, criminal conviction, or disciplinary action imposed in another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state. This is intended to allow the Board to still take disciplinary action against a licensee who fails to treat their patient within the standard of care.

The section of the bill related to the Board would benefit from an amendment to clarify that the protections are limited to the provision of sensitive services, which is the limit applied in the other sections of the bill. The sponsor indicates that they will make this amendment.

Provisions Outside the Board’s Programs

The bill, generally, also provides for the following:

- Prohibits a licensed health facility from denying, removing, or restricting staff privileges to a licensed health care provider based on an adverse action of another state against that provider who performed sensitive services.
 - Provides similar protection from out-of-state adverse actions to licensed health clinics and facilities in California.

Consideration of a Board Position

The bill laudably attempts to protect health care providers licensed in California from facing reciprocal discipline for performing health care activities within the standard of care that are permitted in California. Therefore, staff recommend a Support position.

FISCAL: No anticipated costs.

SUPPORT: Ca. Chapter of the American College of Emergency Physicians
California Legislative Women’s Caucus
California Nurse Midwives Association
NARAL Pro-choice California

OPPOSITION: None identified.

POSITION: Staff Recommendation: Support

ATTACHMENT: [AB 1707, Pacheco – Health Professionals and Facilities: Adverse Actions Based on Another State's Law.](#)
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