

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 345
 AUTHOR: Skinner
 BILL DATE: April 27, 2023, Amended
 SUBJECT: Health Care Services: Legally Protected Health Care Activities
 SPONSOR: Black Women for Wellness Action Project
 NARAL Pro-Choice California
 ACCESS Reproductive Justice
 TEACH (Training in Early Abortion For Comprehensive Health Care)
 California Nurse-Midwives Association

DESCRIPTION OF CURRENT LEGISLATION

Enacts various legal protections for California health care professionals who provide health care services related to reproductive health care and gender-affirming health and mental health care in jurisdictions outside this state.

Regarding the Medical Board of California (Board) the bill, in general, prevents any licensing board within the Department of Consumer Affairs from denying an application for licensure or otherwise imposing discipline upon a licensee who was disciplined or convicted of a crime in another state for providing or recommending certain health care activities performed within the standard of care that are unlawful within that other state, if that activity is permitted under the law of 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 care, 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, AB 1707 (Pacheco), is on the agenda for this Board meeting, see Agenda Item 8.I.

ANALYSIS

According to the author's fact sheet:

“There is an ongoing assault on reproductive justice which is the right to bodily autonomy, to bear children or not, and to parent our children in safe communities. This assault has also extended to those seeking gender affirming care. While Dobbs ostensibly has left it to states to legislate these issues, that has not satisfied anti- abortion or anti-trans dogmatists. Courts are now ruling in ways that endanger safe, federally-approved medications and healthcare practices.

As a result, regardless of where someone lives or where they may be located when in need of such care, there are obstacles to receiving that care in a legal and medically-safe manner. Healthcare professionals who want to do their jobs pursuant to their medical training also face these obstacles, preventing them from providing the care they know is best for their patients.

While California's laws have done much to address these issues, to date our laws do not address how to protect a healthcare provider who is delivering such care regardless of their patient's location. Accessing a provider and obtaining a prescription remotely for medication abortions, contraception, or gender affirming care is one way to help ensure that people in communities with few medical providers, students who are away for college, individuals who travel for work, or others who for any number of reasons cannot travel to a physical location for their care, can obtain these essential healthcare services.”

Key Terms Defined in SB 345

The bill defines the following key terms:

- “Legally protected health care activity” means any of the following:
 - The exercise and enjoyment, or attempted exercise and enjoyment, by a person of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California or the provision of insurance coverage for such services.
 - An act or omission undertaken to aid or encourage, or attempt to aid or encourage, a person in the exercise and enjoyment or attempted exercise and enjoyment of rights to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services secured by the Constitution or laws of California.
 - The provision of reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services by a person duly licensed under the laws of California and the provision of insurance coverage for the services, if the service is permitted under the laws of California, regardless of the patient’s location.

- “Legally protected health care activity” does **not** include a service rendered below the applicable professional standard of care or that would violate antidiscrimination laws of California.

- “Reproductive health care services” means and includes all services, care, or products of a medical, surgical, psychiatric, therapeutic, diagnostic, mental health, behavioral health, preventative, rehabilitative, supportive, consultative, referral, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the constitution and laws of this state, whether provided in person or by means of telehealth services which includes, but is not limited to, all services, care, and products relating to pregnancy, assisted reproduction, contraception, miscarriage management, the termination of a pregnancy, or self-managed terminations.

- “Gender affirming health care” means medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:
 - Interventions to suppress the development of endogenous secondary sex characteristics.
 - Interventions to align the patient’s appearance or physical body with the patient’s gender identity.
 - Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

- “Gender affirming mental health care” means mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally

appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance.

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 would prevent the Board from the taking the following actions against an applicant or licensee who engaged in a legally protected health care activity:

- 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 construction of the language in the proposed Business and Professions Code section 852, however, could also shield a Board licensee from discipline even if they intentionally and knowingly provided medical care to a person in a jurisdiction without a license in that jurisdiction. Proponents have expressed their desire to work with the Board to address any concerns about this aspect of the bill.

Provisions Outside the Board's Programs

The bill, generally, also provides for the following:

- Prohibits a person or business from tracking, using, storing, or selling geographic data that contains personally identifiable information of a person located in or near certain facilities that provide reproductive health care services.
- States that California law governs civil, administrative, or criminal actions against providers who provide care that was legal in the state where provided, if the care of legal at the time of service.
- Prohibits the Governor from agreeing to a demand for extradition of a person to another state, except where required by federal law, charged with a crime related to a legally protected health care activity.
- Prohibits California state and local governments and employees from participating in any proceeding that seeks to impose civil or criminal liability or professional sanctions on a person related to their involvement in a legally protected health care activity in this state or that would be legal if it occurred in this state.
- Prohibits a court from enforcing a money judgment or real estate lien against a person for exercising their U.S. constitutional rights, as interpreted by the U.S. Supreme Court at the time they exercised that right, or against a person or entity who aided or abetted the exercise of those rights.

- Enacts various related civil laws protections for health care providers.

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.

As noted above, however, the bill could inadvertently facilitate the unlicensed practice of medicine, as the bill does not require the provider to have a license in the other state to qualify for these protections. Although this is a concern, the provider will not be shielded from out-of-state action; they just would not be subject to additional discipline in California based on the out-of-state action for legally protected health care activities. Accordingly, staff recommend a Support position on this bill.

FISCAL: No anticipated fiscal impact.

SUPPORT: ARIA Medical
 CA Board of Registered Nursing
 California Conference of Bar Associations
 California Women’s Law Center
 Center for Reproductive Rights
 City and County of San Francisco, Dept. of the Status of Women
 CHOIX INC
 Equality California
 Essential Access Health Support
 Essential Health Access, Los Angeles
 Feminist Majority
 John Burton Advocates for Youth
 National Assn. of Social Workers, California Chapter (NASW-CA)
 [partial list]

OPPOSITION: Frederick Douglass Foundation for California
 Right to Life League

POSITION: Recommendation: Support

ATTACHMENT: [SB 345, Skinner – Health Care Services: Legally Protected Health Care Activities.](#)
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