



A project of the Women Lawyers Association of Los Angeles (WLALA) and Southwestern Law School's Women Law Association

Led by ORLP Executive Committee & supervised by Prof. Julie Werner-Simon, WLALA member

**Overarching Reproductive Law Project
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George Cardona, Chief Trial Counsel
State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

Mr. Cardona:

We, the Overarching Reproductive Law Project (ORLP), a project sponsored and directed by WLALA and Southwestern Law School's Women Law Association, are trying to secure protections for lawyers who, in their personal and/or professional capacity, assist those seeking access to abortion care in states where abortion care is unlawful.

With this letter we are asking you to make a statement in your capacity that California attorneys who conscientiously violate "aiding and abetting" laws in other states by helping people access abortion care in California are 1. Not committing acts of "moral turpitude" and 2. Not subject to bar discipline.

In October 2022, we asked the bar to issue the advisory opinion we suggested (see below, "BACKGROUND") to permit California lawyers to assist people seeking abortion care without fear of discipline, or reciprocal discipline, for engaging in activity that is legal in California. Specifically, we are seeking to protect California attorneys from bar discipline due to conscientiously violating "aiding and abetting" laws in other states.

A statement from you would be persuasive and will help us enable more lawyers to fulfill President Biden's July 8, 2022 request urging lawyers to help medical professionals in this ongoing crisis.

AB 2626, which was signed into law on September 27, 2022, prohibits licensing boards from suspending or revoking a license solely for performing an abortion in accordance with the licensee's practice act. Your letter to the state bar is needed so that those who have the power to change the meaning of the Rules of Professional Conduct for attorneys will protect lawyers from similar discipline including license revocation.

BACKGROUND

We are seeking an advisory opinion (on shortened time) so that California lawyers can aid out-of-state pregnant individuals with seeking abortion care in or involving states which permit abortion access.

In the aftermath of the U.S. Supreme Court's June 24, 2022 opinion, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, 142 S. Ct. 2228 (2022), and *Whole Women's Health v. Jackson*, 594 U.S. ___, 141 S. Ct. 2228 (2021) (S.B. 8 litigation), in which the U.S. Supreme Court allowed a Texas law to stand effectively banning abortion by permitting private causes of action against people assisting residents of Texas with seeking abortion care, we asked that the State Bar issue the following advisory opinion via a letter sent Oct 3:

As a result of and in response to the U.S. Supreme Court cases Dobbs v. Jackson Women's Health Organization and Whole Women's Health v. Jackson (S.B. 8 litigation), a California lawyer who engages in conduct that is legal in California, specifically that of seeking an abortion, or facilitating or aiding and abetting a person seeking abortion care or other reproductive health care access to secure that care, in a state where that care is legal, whether or not that facilitation or care is legal or authorized in another state, the California attorney will not face discipline (original or reciprocal) from the California Bar. Aiding a person who seeks abortion care is not considered an act of moral turpitude, nor does it affect the lawyer's fitness to practice law.

RATIONALE FOR THE REQUEST:

- (i) California Lawyers

California Professional Rule 1.2.1(a) states that:

A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal.

California Professional Rule 8.4(b) which states that:

It is professional misconduct for a lawyer to: (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

California Professional Rule 8.2 Comment [4] which states that:

A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

The above opinion contemplates these six scenarios:

1. An attorney who is a member of the California Bar is domiciled in a restrictive state, such as Texas, working in an in-house counsel position at a national company, and helps a woman travel to another state to seek abortion care. Absent this opinion, the attorney would be subject to discipline by the California bar for breaking a Texas law (due to choice of law).
2. An attorney who is a member of the California Bar in California has a client domiciled in a restrictive state such as Texas, who has retained the attorney on another matter. Through privileged or non-privileged communications, the attorney learns the client needs abortion care and helps the client in that pursuit.
3. An attorney who is a member of the California Bar helps a non-client domiciled in a restrictive state such as Texas seek an abortion in California (or another more protective state) in violation of state law.
4. An attorney who is a member of the California Bar engages in digital communications with a client or non-client in a restrictive state, such as Texas, in furtherance of seeking abortion care.
5. An attorney who is a member of the California Bar is disciplined by the Bar of another state due to violating anti-aiding and abetting statutes in a restrictive state.

6. An attorney who is a member of the California Bar represents a corporation or entity with employees in a restrictive state such as Texas and provides legal advice regarding his/her/their client's intention to provide health care benefits to those employees that include abortion care and/or funds to facilitate travel to procure abortion care.

We urge you to endorse this effort and to urge the State Bar of California to issue the preceding advisory opinion.

Sincerely,

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