



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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18 OCTOBER 2022

The Honorable Gavin Newsom, Governor of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Honorable Gavin Newsom, Governor of California:

We, the Overarching Reproductive Law Project (ORLP), a project sponsored and directed by WLALA and Southwestern Law School's Women Law Association, are working to secure protections for California lawyers who, in their personal and/or professional capacity, assist residents of states with restrictions on abortion who seek abortion care in states where that abortion care is lawful.

With this letter we are asking you to send a letter to the State Bar of California at the following contact:

Mimi Lee
Lead Program Analyst
The State Bar of California
Committee on Professional Responsibility and Conduct
180 Howard Street
San Francisco, CA 94105

We ask you to urge 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 seek to protect California attorneys from bar discipline for conscientious violation of "aiding and abetting" laws in other states.

A letter sent by your office to the state bar would be persuasive. (Please include a copy to us.) Publicizing your letter will help us enable more lawyers to respond to your recent call for lawyers to protect the fundamental rights of all women in California and beyond, like President Biden's July 8 executive order encouraging lawyers and bar associations "to represent and assist patients, providers, and third parties lawfully seeking these services throughout the country."

AB 2626, which you 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 Model 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 Model 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 Model 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,

Overarching Reproductive Law Project

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