

To the Board of Trustees:

Paragraph (c) of Proposed Rule of Professional Conduct 8.3 is an essential protection for California lawyers who work to help pregnant people secure the reproductive health care they need. While abortion and contraception are fundamental rights under the California constitution, states that now restrict or ban abortion seek to criminalize any activity that “aids or abets” the provision of reproductive health care, no matter where that care is provided. Some states also seek to criminalize the provision of transgender health care. Paragraph (c) exempts from mandatory reporting conduct that does not violate California law. I fully support its inclusion.

But the State Bar must do more for its members. Lawyers need a statement from the Bar that they will not face general discipline, original or reciprocal, for any activity that might violate another state’s restrictive laws. The threat of prosecution or reciprocal discipline is undeniable. Recently, a July 7, 2022 letter to Sidley Austin from the Texas Freedom Caucus threatened felony criminal prosecution and disbarment, alleging firm lawyers “aided or abetted” a violation of Texas law by paying for medication abortions and related travel. Without safeguards, California attorneys are left defenseless against further threats by individuals and organizations, increasing the urgency for a proactive resolution.

California lawyers have a duty to uphold the fundamental rights to abortion, contraception, and other reproductive health care, and should not be deterred by the fear of discipline. We continue to seek an advisory opinion stating that members of the State Bar of California will not face discipline when they work to guarantee access for all to reproductive health care that is legal in California.

Time is of the essence. I look forward to a timely response from the Board of Trustees.