



2024 NLC Legal Conference Series

June 6, 13 & 27, 2024

July 11, 18 & 25, 2024





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Welcome | July 11, 2024



Unravelling *Dobbs*' Impact on the NLC

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Discussion Topics

1. Scope of practice under the compact in a post-Dobbs environment
2. Disciplinary pathways post-Dobbs
3. Intersection of Dobbs legislation and the NLC



Setting the Stage



June 24, 2022

- Supreme Court decision (6-3) in *Dobbs*
 - Eliminated constitutional right to abortion
 - Returned the decision regarding abortion regulation to the states
- State legislative action
 - Pre-*Roe* trigger laws
 - Newly introduced legislation
 - Restricting access to abortion and regulating providers
 - Increasing access to abortion and protecting providers



Provider Impact in Restrictive States

- Fourteen (14) states have near-total abortion bans during any point in pregnancy in effect, and seven states have implemented abortions bans with limits from 6 to 20 weeks after a person’s last menstrual period.
- Most bans are enforced through criminal penalties and jail time for providers.
 - Idaho, Texas, and Oklahoma have passed “bounty hunter” abortion bans modeled after Texas’ law, known as SB 8. SB 8 permits any individual to sue those who perform an abortion or simply help someone secure care.



Provider Impact in Protective States

- Many states to action to codify access to abortion services
 - States added constitutional protections for access to abortion care via ballot initiatives
 - State laws were enacted to codify abortion access
 - States enacted so-called “Shield Laws”, protecting providers from restrictive abortion laws in other states
 - Ex. California, Colorado, Maine, Massachusetts, New York, Vermont and Washington



Scope of Practice for Multistate Licensees



NLC Scope of Practice

- **Scope of practice** the services LPNs and RNs can provide to patients in the jurisdiction where the patient is located at the time care is delivered
- **NLC Design:** protect each state's constitutional right to regulate the practice of nursing within its boundaries and the multistate licenses issued to nurses
- **Longevity and consistency** NLC provisions apply equally regardless of the political issue of the time

Art. III

“e. A nurse practicing in a party state must comply with the state practice laws of **the state in which the client is located at the time service is provided.** The practice is not limited to patient care, **but shall include all nursing practice as defined by the state practice act in which the client is located at the time service is provided.**”

“d. **All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege** such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions.”



Scope of Practice Scenario 1:

- A nurse whose PSOR is in **State A** in which the scope of nursing practice includes abortion care is a travel nurse who also is practicing in **State B** in which the scope of nursing practice does not permit rendering care to a woman seeking an abortion.
- **The nurse provides abortion care to a patient located in State B at the time practice takes place.**
- **State B** imposes discipline on the nurse's privilege to practice in **State B** based upon her involvement rendering care to a patient undergoing an abortion in **State B**.

Question:

Is the **State B** action justified under the terms of the NLC?



Scope of Practice Scenario 2:

- A nurse whose home state license is in **State A** in which the scope of nursing practice includes abortion care is a travel nurse who also is practicing in **State B** in which the scope of nursing practice does not permit rendering care to a woman seeking an abortion.
- **The nurse provides abortion care to a patient located in State A at the time practice takes place.**
- **State B** imposes discipline on the nurse's privilege to practice in **State B** based upon her involvement rendering care to a patient undergoing an abortion in **State A.**

Question:

Is the **State B** action justified under the terms of the NLC?



**Does State A have to take
reciprocal action?**



Discipline Under the NLC

- **Home state and party state** have authority to take action against a multistate licensee's license or privilege to practice in the jurisdiction
- **NLC Design:** protect each state's constitutional right to regulate the practice of nursing within its boundaries and the multistate licenses issued to nurses
- **Longevity and consistency** NLC provisions apply equally regardless of the political issue of the time

Art. V

“a. In addition to the other powers conferred by state law, a licensing board shall have the authority to

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

i. Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state.

In so doing, the home state shall apply its own state laws to determine appropriate action.”



Compact Compare: IMLC

- The basis for the authority of physicians and other licensed professionals is the state's Medical Practice Act. Each state has the sovereign right, as established by the Tenth (10th) Amendment to the U.S. Constitution, to define what constitutes the practice of medicine and other healthcare professions within its jurisdiction.
- The Interstate Medical Licensure Compact (IMLC) further reinforces this authority by requiring physicians to comply with the state practice laws of the state where the patient is located at the time of service.
 - Physicians must be licensed in the state where the patient is receiving care and must practice according to the laws and regulations of that state.
- The IMLC recognizes and protects the property right of physicians to practice in multiple states while ensuring that they are subject to the jurisdiction and laws of the state where the patient is located. See IMLC Sec. 1.

- [IMLCC - Analysis of Protection of Licensees Under Scope of Practice Provisions - December 2023](#)
- [Information Release - Physicians licensed in multiple states and the practice of medicine 6/29/2022](#)
- IMLC Rule, Chapter 6, paragraph 6.6 - Created to empower member boards to help mitigate punitive disciplinary action taken in other jurisdictions - supportive of Shield Laws / Prohibition Laws from both sides of the issues raised about abortion/women's health and gender affirming care.
 - **6.6 State Authority regarding Disciplinary Actions:** A member board authorized or required to impose an automatic licensing action against a Compact physician, under IMLC Statute, Section 10(b) and (d), may immediately terminate, reverse, or rescind such automatic action pursuant to the Medical Practice Act of that state.



Investigatory Impacts



Shield Laws

“The provisions of these laws vary, but, at their core, they seek to protect abortion providers, helpers, and seekers in states where abortion remains legal from legal attacks taken by antiabortion state actors.”

Abortion Shield Laws, New England Journal of Medicine DOI: 10.1056/EVIDra2200280



NLC Subpoena Provisions

- **Home state and party state** licensing boards have the authority to issue subpoenas for hearings and investigations.
- **NLC Design:** protect each state’s constitutional right to enforce the nursing laws within its boundaries and the multistate licenses issued to nurses
- **Longevity and consistency** NLC provisions apply equally regardless of the political issue of the time

Art. V

“a. In addition to the other powers conferred by state law, a licensing board shall have the authority to ...

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state **shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it.**



Subpoena Scenario:

- A nurse whose PSOR is in **State A** in which the scope of nursing practice includes abortion is a travel nurse who also is practicing in **State B** in which the scope of nursing practice does not permit rendering care to a woman seeking an abortion.
- **The nurse provides abortion care to a patient located in State B at the time practice takes place.**
- **State B** is investigating the nurse and subpoenas **State A** as part of the investigation. **State A** has enacted a shield law.

Question:

Does State A have to enforce the subpoena?



What's Next?



Legal Questions Remain

The New York Times

Abortion Shield Laws: A New War Between the States

 NPR

How state abortion bans complicate telehealth abortions : Shots - Health News

Prescribing medical abortions across state lines is now risky for doctors. "We're talking about something that's a protected right in one..."


 Idaho Capital Sun

Idaho women, physicians seek clarity on abortion law through lawsuit. State seeks dismissal. • Idaho Capital Sun



ABC News - Breaking News, Latest News and Videos

Judge: Alabama groups can sue over threat of prosecution for helping with abortion travel

 The New York Times

A New Abortion Access Strategy

Doctors in a handful of blue states are using shield laws to provide abortions to women in red states.

 The Washington Post

Texas man files legal action to probe ex-partner's out-of-state abortion





Thank You!

