



*State of New Jersey*


OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO BOX 080  
TRENTON, NJ 08625-0080

PHILIP D. MURPHY  
*Governor*

MATTHEW J. PLATKIN  
*Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

**TO:** Board of Medical Examiners, Board of Nursing, Board of Pharmacy, Physician Assistant Advisory Committee, and Midwifery Liaison Committee

**FROM:** Matthew J. Platkin, Attorney General 

**DATE:** December 7, 2022

**SUBJECT:** Protecting Reproductive Freedom Under the Freedom of Reproductive Choice Act and P.L. 2022, Ch. 51.

In the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, Governor Murphy signed into law critical protections for reproductive freedom. Among other things, these protections make clear that no health care provider should be subject to discipline in our State for providing reproductive care that is legal in New Jersey. I write to explain the obligations New Jersey law now imposes on New Jersey's professional boards.

On January 13, 2022, Governor Murphy signed the Freedom of Reproductive Choice Act. That statute codified the right to reproductive choice, which has long been recognized as a fundamental right enshrined in the New Jersey State Constitution. *See Planned Parenthood of Cent. New Jersey v. Farmer*, 165 N.J. 609 (2000); *Right to Choose v. Byrne*, 91 N.J. 287 (1982). The Act also affirmed New Jersey's commitment to "ensuring that no barriers to reproductive freedom exist in the State." N.J.S.A. 10:7-1(g)-(h)(1). To secure the fundamental right to reproductive choice, the Legislature considered it essential to "enable all qualified health care professionals to provide pregnancy termination services in the State...." N.J.S.A. 10:7-1(h)(2).

Then, on July 1, 2022, one week after the *Dobbs* decision, Governor Murphy signed P.L. 2022, c. 51 ("Chapter 51")—a critical step toward fulfilling the promise of the Freedom of Reproductive Choice Act. This law immediately went into effect.

This law imposes several important obligations on our professional boards. First, under this statute, boards are now prohibited from disciplining a licensee or denying an application for licensure based solely



on the fact that the licensee or applicant provided abortion care.<sup>1</sup> As a result, boards cannot discipline a licensee or deny an application for licensure based solely on the fact that an individual faces disciplinary or criminal actions for providing abortion care in a state where abortion is illegal or for providing abortion care in New Jersey to residents of states that have banned abortion. So long as the licensee or applicant’s conduct would have been legal under New Jersey law, that individual cannot be denied a license or subject to discipline based on that conduct.

This law protects not only licensees who provide abortion care directly, but also those who authorize, participate in, refer for, or assist with any health care, medical service, or procedure that is related to an abortion. Among other things, that means that the boards cannot discipline a licensee or deny a licensure application based solely on the fact that the licensee or applicant helped someone who lives in another State where abortion is illegal obtain abortion care—whether by, for example, providing a referral to an abortion provider, providing information regarding abortion care options, or providing travel assistance.

The law does not preclude boards from disciplining a licensee or denying an application for licensure based on conduct that would provide a basis for discipline or denial of an application under New Jersey law—for instance, if a practitioner took actions while providing abortion care that were grossly negligent, fraudulent, or otherwise constituted professional misconduct. But the mere fact that another state has disciplined or criminally punished an applicant or a licensee for providing or assisting with the provision of abortion care cannot serve as a basis for disciplining a licensee or denying an application for licensure in New Jersey.

Second, the law also prohibits state entities—including professional boards—from cooperating with interstate investigations or proceedings that seek to impose civil or criminal liability on a person or entity for, among other things, seeking, receiving, providing, assisting with the provision of, or responding to inquiries about reproductive care. The law does allow for cooperation to the extent such cooperation is necessary to comply with a valid court order or applicable provisions of New Jersey or federal law, or if the conduct in question would be subject to liability under New Jersey law if committed in New Jersey.<sup>2</sup> But absent these circumstances, the board cannot share information regarding a licensee’s provision of abortion care in

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<sup>1</sup> P.L. 2022, c. 51 provides: “Notwithstanding the provisions of any law, rule, or regulation to the contrary, a board shall not refuse to admit a person to an examination and shall not suspend, revoke, or refuse to renew any certificate, registration or license issued by the board based solely on the applicant’s or the certificate, registration, or license holder’s provision of, authorization of, participation in, referral for, or assistance with any health care, medical service, or procedure related to an abortion for a person who resides in a jurisdiction where the provision, authorization, participation, referral, or assistance is illegal, if the provision, authorization, participation, referral, or assistance would not be a basis for refusing to admit a person to an examination or for suspending, revoking, or refusing to renew a certificate, registration, or license in this State.” N.J.S.A. 45:1-21.

<sup>2</sup> In particular, P.L. 2022, c. 51 provides that “[a] public entity of this State . . . shall not provide any information or expend or use time, money, facilities, property, equipment, personnel or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for: (1) the provision, receipt, or seeking of, or inquiring or responding to an inquiry about, reproductive health care services . . . that are legal in this State; or (2) assisting, advising, aiding, abetting, facilitating, soliciting, or conspiring with any person or entity providing, receiving, seeking, or inquiring or responding to an inquiry about, reproductive health care services . . . that are legal in this State. This section shall not apply to any investigation or proceeding when the conduct subject to potential liability under the investigation or proceeding would be subject to liability under the laws of this State if committed in this State. This section shall not apply if it is necessary for the agency or person to engage in conduct otherwise prohibited by this section in order to comply with a valid order issued by a court with jurisdiction over the agency or person, or to comply with applicable provisions of State or federal law.” N.J.S.A. 2A:84A-22.19.



connection with an investigation or proceeding seeking to punish an individual for receiving, providing, or assisting with abortion care.

The U.S. Supreme Court has sent this country down a dangerous and uncertain path. The *Dobbs* decision has already had a profound impact on reproductive health care, and has returned parts of this country to a dark period in its history—to a time when those seeking abortion care were too often forced to pursue risky and unsafe options. And the consequences of this decision are not being experienced equally. The risks and burdens of banning abortion or restricting abortion access are falling disproportionately on vulnerable populations that lack the resources to travel to jurisdictions where abortion remains lawful.

It is now more crucial than ever that New Jersey guarantee reproductive justice for both residents and visitors. We must be prepared to defend the right to choose—a right that is indispensable to bodily autonomy, equality, and the integrity of the patient-practitioner relationship. At this pivotal moment in our nation’s history, we must hold fast to the principles that have animated the health care professions since their inception—compassion, integrity, and an unshakeable commitment to patient well-being. To that end, all professional boards must comply with Chapter 51.

I thank you for your leadership within your professional community and for your partnership at this critical time.

