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Healthcare Alert

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State actions reveal risks of delivering abortion care across state lines

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Actions against a New York physician highlight risks for out-of-state providers who prescribe abortion-inducing medication to residents of states that ban or restrict abortion.



What's the impact?

- The allegations against the provider range from practicing without a license to criminal abortion.
- While New York's "shield law" is intended to protect healthcare providers from out-of-state prosecutions, there are limitations on the scope of shield laws.

Following the US Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, questions have arisen about the ability and risks for healthcare providers who deliver abortion services across state lines, including virtually. Specifically, the decision raises questions of whether healthcare providers face liability or other consequences for providing abortion-related care to patients that are located in states in which these services are prohibited or restricted.

Civil and criminal cases involving reproductive care providers

A civil case in Texas and a criminal case in Louisiana, both brought against the same New York physician, illustrate the practical and legal risks for out-of-state providers who prescribe abortion-inducing medication to residents of states that ban or restrict abortion. These cases signify that healthcare providers who provide reproductive healthcare and facilitate the practice of abortion for residents of states that ban or restrict abortion services will face legal liability and risk loss of licensure. Notably, practical risks for these providers may follow, as providers are often required to provide notice to employers, payors, insurance companies, and other state licensing agencies of these types of enforcement actions—meaning, those relationships may be at risk as well.

TEXAS CIVIL CASE AGAINST NEW YORK REPRODUCTIVE CARE PROVIDER

On December 12, 2024, Texas Attorney General Ken Paxton (the “Texas AG”) filed a civil lawsuit against a New York-based physician alleging that the physician violated Texas law by providing¹ a Texas woman with abortion-inducing medications (misoprostol and mifepristone) after treatment via telehealth. The Texas AG asserted that the physician (1) engaged in the practice of medicine in Texas without state licensure, and (2) illegally aided an abortion in the state.

Texas law² prohibits abortion except in medical emergencies, and further prohibits a physician or supplier from providing abortion-inducing drugs to a patient via courier, delivery, or mail service. Texas Medical Board Regulations³ provide that a physician who, via telehealth, treats patients located in Texas is considered to be practicing medicine and must possess a Texas medical license. Taken together, these laws create significant barriers for an out-of-state provider to prescribe or provide abortion-inducing medication to a Texas resident.

Under the lawsuit, the Texas AG seeks to

- / enjoin the physician from practicing medicine in Texas and providing abortion-inducing medication to Texas residents,
- / impose at least \$100,000 in damages, and
- / require the physician to pay attorney’s fees and costs incurred in bringing the lawsuit.

¹ The lawsuit does not specify the method through which the physician “provided” the medications, but implies that the physician sent the medications through the mail or other delivery service, which is the basis of the claim.

² Texas Health & Safety Code § 171.063(b-1).

³ 22 Texas Administrative Code § 174.8.

LOUISIANA CRIMINAL CASE AGAINST NEW YORK REPRODUCTIVE CARE PROVIDER

On January 31, 2025, a Louisiana grand jury indicted the same physician and her medical practice, along with a Louisiana woman, for criminal abortion on the basis that the physician provided the woman's minor child with abortion-inducing medication.

Louisiana law⁴ defines criminal abortion to occur when an individual knowingly causes an abortion by delivering, dispensing, distributing, or providing a pregnant individual with an abortion-inducing drug. This case is the first criminal proceeding of its kind since the *Dobbs* decision.

Shield laws intended to protect healthcare practitioners

Following the *Dobbs* decision, several states, including [New York, enacted "shield laws"](#) to protect healthcare practitioners who provide abortion services from out-of-state prosecutions, professional discipline, and civil liability. Shield laws may include protections such as:

- / Requiring the state governor to disregard a demand for extradition when criminal liability arises out of the provision of or assistance with legal abortion services;
- / Prohibiting state and local entities and employees from cooperating with out-of-state investigations concerning a licensed practitioner who is physically located in the shield law state and provides abortion services to an out-of-state patient;
- / Preventing witnesses from being compelled to appear and testify in connection with out-of-state proceedings related to the legal provision of abortion services, and barring state courts from issuing related subpoenas; and
- / Forbidding state licensing boards from recognizing adverse actions by an out-of-state licensing board based solely on a provider's performance or recommendation of abortion services.

In response to the Texas and Louisiana lawsuits, New York Governor Kathy Hochul announced that she will not comply with any extradition request from the state of Louisiana, and took steps to amend New York's existing "shield law" (NY Shield Law) to provide additional protections. On February 3, 2025, Governor Hochul signed into law an amendment to the NY Shield Law specifically aimed at protecting providers who prescribe abortion-inducing medication to patients in states that ban or restrict abortion services. The amended law allows providers to request that a dispensing pharmacy print the name of their practice, rather than their personal name, on prescription labels for abortion-inducing medications. The goal of this legislation is to conceal the identity of the individual prescriber so that states that ban or restrict access to

⁴ Louisiana Revised Statutes § 14:87.9.

abortion services cannot target individual New York providers who provide abortion-inducing medications to residents of such states.

The NY Shield Law will likely come into play in connection with the Louisiana criminal case—New York’s governor has already confirmed that she will not recognize an extradition request from Louisiana. The NY Shield Law will also protect the physician’s New York license to practice medicine and prevent New York state entities, employees, and courts from assisting the Texas AG. However, there are limitations on the scope of these shield laws, and a provider may still have civil liability in connection with a state enforcing its own anti-abortion and practice of medicine laws. Importantly, providers should always be mindful of the requirements to deliver telehealth services on a multi-state basis (abortion or otherwise), which generally require that the provider be licensed in the state where the patient is located.

Future challenges expected for reproductive care providers

The questions and risks for providers of abortion services will likely continue in the post-*Dobbs* legal landscape, particularly under the second Trump administration, which has signaled that it will continue its position of terminating federal involvement in abortion rights established during the first Trump administration. This has been evidenced by actions such as the reinstatement of the Hyde Amendment, which prohibits federal funding for most abortions through programs such as Medicaid. Although the Biden administration previously removed the prohibition, President Donald Trump issued an executive order on January 24, 2025, reinstating the Hyde Amendment and stating the administration’s goal “to end the forced use of [f]ederal taxpayer dollars to fund or promote elective abortion.”

Nixon Peabody will continue to monitor the nationwide reproductive rights and health landscape, as additional novel issues affecting healthcare providers and patients are almost certain to arise. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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