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AB-2626 Medical Board of California: licensee discipline: abortion. (2021-2022)

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Assembly Bill No. 2626

CHAPTER 565

An act to amend Sections 2253 and 3502.4 of, and to add Sections 2746.6 and 2761.1 to, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2626, Calderon. Medical Board of California: licensee discipline: abortion.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law authorizes the board to take action against all persons guilty of violating the Medical Practice Act. Existing law requires the board to enforce and administer various disciplinary provisions as to physician and surgeon certificate holders.

Existing law, the Osteopathic Act, provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California. Under existing law, the board has disciplinary functions pursuant to the act.

Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing. Existing law provides for the certification of nurse-midwives by the Board of Registered Nursing. Existing law, the Physician Assistant Practice Act, establishes the Physician Assistant Board for the licensure and regulation of physician assistants. Existing law requires the Board of Registered Nursing and the Physician Assistant Board to enforce and administer various disciplinary provisions as to nurse practitioners, nurse-midwives, and physician assistants.

Existing law, the Reproductive Privacy Act, provides that every individual possesses a fundamental right of privacy with respect to their personal reproductive decisions. Under existing law, an abortion is unauthorized if either the person performing the abortion is not an authorized health care provider, as specified, or the fetus is viable. Under existing law, the failure of a physician and surgeon to comply with the Reproductive Privacy Act constitutes unprofessional conduct.

This bill would prohibit the Medical Board of California and the Osteopathic Medical Board of California from suspending or revoking the certificate of a physician and surgeon solely for performing an abortion if they performed the abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act. The bill would also prohibit those boards from denying an application for licensure as a physician and surgeon, or suspending, revoking, or otherwise imposing discipline upon a physician and surgeon because the person was disciplined in another state in which they are licensed or certified solely for performing an abortion in that state, or the person was convicted in that state for an offense related solely to the performance of an abortion in that state.

The bill would additionally prohibit the Board of Registered Nursing and the Physician Assistant Board from suspending or revoking the certification or license of a nurse practitioner, nurse-midwife, or a physician assistant for performing an abortion if

they performed the abortion in accordance with the provisions of the Nursing Practice Act or the Physician Assistant Practice Act, as applicable, and the Reproductive Privacy Act. The bill would also prohibit those boards from denying an application for certification or licensure as a nurse practitioner, nurse-midwife, or a physician assistant, or suspending, revoking, or otherwise imposing discipline upon a nurse practitioner, nurse-midwife, or a physician assistant because the person was disciplined in another state in which they are licensed or certified solely for performing an abortion in that state, or the person was convicted in that state for an offense related solely to the performance of an abortion in that state.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2253 of the Business and Professions Code is amended to read:

2253. (a) Failure to comply with the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code) constitutes unprofessional conduct.

(b) (1) Except as provided in paragraph (2), a person is subject to Section 2052 if the person performs an abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon.

(2) A person shall not be subject to Section 2052 if the person performs an abortion by medication or aspiration techniques in the first trimester of pregnancy, and at the time of so doing, has a valid, unrevoked, and unsuspended license or certificate obtained in accordance with the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Osteopathic Act (Article 21 (commencing with Section 2450) of Chapter 5), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)) or the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500)), that authorizes the person to perform the functions necessary for an abortion by medication or aspiration techniques.

(c) In order to perform an abortion by aspiration techniques pursuant to paragraph (2) of subdivision (b), a person shall comply with Section 2725.4 or 3502.4.

(d) The Medical Board of California and the Osteopathic Medical Board of California shall not suspend or revoke the certificate of a physician and surgeon solely for performing an abortion if they performed the abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(e) Notwithstanding any other law, including, but not limited to, Sections 141, 480, 490, 2221, 2305, 2234, and 2236, the Medical Board of California and the Osteopathic Medical Board of California, as applicable, shall not deny an application for licensure as a physician and surgeon, or suspend, revoke, or otherwise impose discipline upon a physician and surgeon licensed in this state under either of the following circumstances:

(1) The physician and surgeon is licensed to practice medicine in another state and was disciplined in that state solely for performing an abortion in that state.

(2) The physician and surgeon is licensed to practice medicine in another state and was convicted in that state for an offense related solely to the performance of an abortion in that state.

SEC. 2. Section 2746.6 is added to the Business and Professions Code, to read:

2746.6. (a) The board shall not suspend or revoke a certificate to practice nurse-midwifery solely for performing an abortion if the holder performed the abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(b) Notwithstanding any other law, including, but not limited to, Sections 141, 480, 490, and 2761, the board shall not deny an application for certification as a certified nurse-midwife, or suspend, revoke, or otherwise impose discipline upon a person certified in this state to practice nurse-midwifery under either of the following circumstances:

(1) The person is licensed or certified to practice nurse-midwifery in another state and was disciplined in that state solely for performing an abortion in that state.

(2) The person is licensed or certified to practice nurse-midwifery in another state and was convicted in that state for an offense related solely to the performance of an abortion in that state.

SEC. 3. Section 2761.1 is added to the Business and Professions Code, to read:

2761.1. (a) The board shall not suspend or revoke the certification or license of a nurse practitioner solely for performing an abortion if the holder performed the abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(b) Notwithstanding any other law, including, but not limited to, Sections 141, 480, 490, and 2761, the board shall not deny an application for certification or licensure as a nurse practitioner, or suspend, revoke, or otherwise impose discipline upon a person certified or licensed in this state as a nurse practitioner under either of the following circumstances:

(1) The person is licensed or certified as a nurse practitioner in another state and was disciplined in that state solely for performing an abortion in that state.

(2) The person is licensed or certified as a nurse practitioner in another state and was convicted in that state for an offense related solely to the performance of an abortion in that state.

SEC. 4. Section 3502.4 of the Business and Professions Code is amended to read:

3502.4. (a) In order to receive authority from the physician assistant's supervising physician and surgeon to perform an abortion by aspiration techniques pursuant to Section 2253, a physician assistant shall complete training either through training programs approved by the board pursuant to Section 3513 or by training to perform medical services that augment the physician assistant's current areas of competency pursuant to Section 1399.543 of Title 16 of the California Code of Regulations. Beginning January 1, 2014, and until January 1, 2016, the training and clinical competency protocols established by Health Workforce Pilot Project (HWPP) No. 171 through the Department of Health Care Access and Information shall be used as training and clinical competency guidelines to meet this requirement.

(b) In order to receive authority from the physician assistant's supervising physician and surgeon to perform an abortion by aspiration techniques pursuant to Section 2253, a physician assistant shall comply with protocols developed in compliance with Section 3502 that specify:

(1) The extent of supervision by a physician and surgeon with relevant training and expertise.

(2) Procedures for transferring patients to the care of the physician and surgeon or a hospital.

(3) Procedures for obtaining assistance and consultation from a physician and surgeon.

(4) Procedures for providing emergency care until physician assistance and consultation are available.

(5) The method of periodic review of the provisions of the protocols.

(c) The training protocols established by HWPP No. 171 shall be deemed to meet the standards of the board. A physician assistant who has completed training and achieved clinical competency through HWPP No. 171 shall be authorized to perform abortions by aspiration techniques pursuant to Section 2253, in adherence to protocols described in subdivision (b).

(d) It is unprofessional conduct for any physician assistant to perform an abortion by aspiration techniques pursuant to Section 2253 without prior completion of training and validation of clinical competency.

(e) The board shall not suspend or revoke the license of a physician assistant solely for performing an abortion if the licensee performed the abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(f) Notwithstanding any other law, including, but not limited to, Sections 141, 480, 490, and 3527, the board shall not deny an application for licensure as a physician assistant, or suspend, revoke, or otherwise impose discipline upon a person licensed in this state as a physician assistant under either of the following circumstances:

(1) The person is licensed or certified to practice as a physician assistant in another state and was disciplined in that state solely for performing an abortion in that state.

(2) The person is licensed or certified to practice as a physician assistant in another state and was convicted in that state for an offense related solely to the performance of an abortion in that state.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In response to the draft opinion of the United State Supreme Court stating that it would overrule the Roe v. Wade decision, several states around the nation are poised to allow professional boards to take disciplinary action against a health care provider

for coordinating or providing abortion care, thus it is necessary for this act to take effect immediately to protect physicians, surgeons, certified nurse-midwives, nurse practitioners, and physician assistants.