



Winter 2023 CLE Workshop - January 25 – 27, 2023

# Student Affairs

Ethically Navigating the Changing Landscape  
of Reproductive Rights on Campus

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# Agenda

- Scope of the session: an ethics lens
- Update on post-*Dobbs* legislation
- Overview of key ethical implications when advising on reproductive legislation
- Scenarios for discussion
- Questions and answers(?)

# Dobbs v. Jackson Women's Health Org.

- June 2022 Supreme Court decision that overturned *Roe vs. Wade*.
- Returned decision-making on abortion issues to the states.
- Impacted:
  - Campuses in states with abortion bans
  - Campuses in multiple jurisdictions (bans/no bans)
  - Campuses with employees or students who travel to or reside in states with bans

# States Vary in Approach

- Model legislation - National Right to Life Center
- Trigger laws
- Proposed laws, enacted laws, judicially paused laws
- Types of laws
  - Outright bans
  - Bans with some temporal or causation exemptions (i.e. rape)
  - Bans directed at health care providers
  - Civil enforcement actions and monetary payments for reporting
  - Aiding and abetting (specific to abortion or existing criminal law)

# Model Ethics Rules (check your state)

- **MRPC 1.13 Organization as Client**

- Not students
- Not patients
- Not employees acting outside the course and scope
- Not board members who are acting individually

# Model Ethics Rules (check your state)

- **MRPC 2.1 Advisor (moral, social, political factors)**
  - Legal advice can be informed by other factors
  - Not your personal view
  - Not a view that is objectively illegal
  - Challenging area where exemptions to bans are implicated
- **MRPC 3.4 Fairness to Opposing Party & Counsel (data)**
  - Can't advise on destruction of data or information (see also MRPC 3.4(d).)
  - See also Title IX and HR-related retention requirements

# Model Ethics Rules (check your state)

- **MRPC 4.1 Truthfulness in Statements to Others**

- Shall not knowingly fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client unless disclosure is prohibited by 1.6

- **MRPC 8.4 Misconduct**

- Violating any of the MRPC
- Criminal acts that reflect on honesty, trustworthiness
- Deceitful, deceptive conduct
- Prejudicial to the administration of justice

# Model Ethics Rules (check your state)

## MRPC 1.6: Client-Lawyer Relationship

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)...



# Model Ethics Rules (check your state)

## MRPC 1.6: Client-Lawyer Relationship

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- ...
- (6) to comply with other law or a court order;

# Scenario One: Student Health Clinic (SHC)

- A student comes to the SHC seeking a medication abortion. The student tells the provider, a campus employee, that they confided in a professor that they were pregnant and wanted an abortion and the professor encouraged them to come to the SHC because abortion is illegal in the student's home state. The student will take the first dose of the medication abortion in the clinic but is scheduled to be home on break when they are supposed to take the second dose. The provider calls you asking how to advise the student regarding where to take the medication and whether the professor's actions should be reported.

# Scenario One: SHC

## MRPC 2.1: Advisor

- MRPC 2.1 states that in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.
  - *What if you, as an individual, are morally opposed to abortion?*
  - *What if you empathize, morally, with the actions taken by the professor?*
  - *Do you need to consider any possible reputational harm to the University when advising regarding either the provider or the professor?*

# Scenario One: SHC

## MRPC 1.13: Organization as Client

- MRPC 1.13(a) states that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
  - *With regard to the student, what ability or obligation do you have to warn of potential criminal liability? What if the actions of the student have criminal liability implications for your employee-provider acting within the scope of their employment?*
  - *Was the professor acting within or outside the scope of his or her duties?*
  - *What if the professor calls you asking to discuss their potential criminal liability?*

# Scenario Two: Student Affairs

After a positive pregnancy test, Student seeks care at her college's student health center. In consultation with her medical provider, Student decides to pursue a self-managed medication abortion. The physician prescribes a two-drug regimen to be self-administered several days apart. Student plans to administer the first drug while on campus. She plans to return to her home state so that she can be surrounded by family, before administering the second drug.

She goes to her Student Affairs seeking an extension on several class assignments and an emergency loan to cover transportation costs. She also confides in her soccer coach, math professor, campus minister and her campus therapist explaining her medical circumstances and the reason for her planned absence. Several of these people take care, contemporaneous notes while meeting with the student.

Student asks all of these campus employees to keep the information confidential because her home state criminalizes abortion.

# Scenario Two: Student Affairs

## MRPC 3.4 Fairness and Opposing Party & Counsel

- MRPC 3.4(a) states that a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.
  - *Student Affairs began processing Student's request for an academic extension and emergency transportation funding, alluding to the reason for the request. However, after a quick online search, Student Affairs finds that Student's home state criminalizes "any person, who performs, attempts to perform, induces, or attempts to induce an abortion through a medical procedure or the provision of medication."*
  - *Panicked, Student Affairs call you asking for advice, hoping to delete their file.*

# Scenario Two: Student Affairs

## MRPC 4.1 Truthfulness in Statements to Others

- MRPC 4.1(a) states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. 4.1
  - *After administering the second drug in her home state, Student suffers complications and is forced to seek emergency life saving treatment. Several months later, Student Affairs, and the Therapist receive deposition subpoenas as Student is now facing criminal charges.*
  - *The university receives a document request from the criminal prosecution for requests for accommodations, emergency funding applications, email, text and messaging communications, student activity involvement and campus affiliations related to Student A's medical abortion. Leadership wants to protect the student at all costs.*

# Scenario Two: Student Affairs

## MRPC 8.4 Misconduct

- MRPC 3.4(a) states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
  - *The Soccer Coach calls you explaining the Student's situation. Apparently, the student forgot the second drug in her dorm room and has asked the Coach to send it to her via overnight FedEx.*
  - *The Math Professor is anti-abortion and feels ethically compelled to report the Student to law enforcement but wants to know from you, whether they could face University discipline for reporting.*



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