An Overview of Abortion Laws for Nurses to Advocate for Themselves and Their Patients

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Article

Abstract

The impact of the Dobbs decision on abortion policy, nurses, health systems, and health care leaders is profound and complex. Understanding the history of abortion legislation and the impact of that legislation on nursing practice and licensure is important if policy and law are to reflect the needs of society. This article provides a focused history of abortion policy and law, the current implications of the Dobbs' holding on the practice of nursing, and the future considerations for practice, policy and nursing education that are presented by abortion regulation.

Key Words: abortion, licensure, advanced practice, laws, legislation

A contemporary controversial policy issue, abortion implicates several license and regulatory considerations for nurses, physicians, and the health delivery system. Following Dobbs v. Jackson Women's Health Organization (2022), the number of abortions soared to over one million, the highest number since 2012 (Simmons-Duffin, 2024). The Dobb's Court impacted the health policy landscape in the United States by holding that the Constitution does not provide a right to abortion, and it returned the authority to regulate abortion to the people and their elected representatives (Dobbs v Jackson Women's Health Organization, 2022). The decision provided an abrupt end to federal protections for the procedure, which caused a cascade of state legal responses that providers, birthing people, and families on both sides of the issue found unacceptable and challenging. The purpose of this article is to provide a focused history of abortion policy and law, the current implications of Dobbs' holding on the practice of nursing, and the future considerations for practice, policy, and nursing education that are presented by this issue.

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The History of Abortion Law and Policy in the United States

U.S. Abortion Policy Was Established as Medicine and Nursing was Professionalized

Regulation of abortion did not start with Roe v. Wade, and it will not end with Dobbs. Abortion was not always a controversial issue in the United States. Before the Civil War, abortion was legal and performed by a variety of practitioners, including pregnant women themselves, lay providers, and physicians (Jenkins et al., 2023). The common law right to abortion was a state-level issue before the 1800s without federal oversight. Abortion was not considered a social evil in the early 1800s. As a result, the number of abortions increased, and the birth rate in the states declined (Johnson, 2017). A Connecticut law that criminalized abortion after "quickening" in 1821 began the erosion of the right (Dynak et al., 2003).

At the time of the initial laws criminalizing abortion, neither medicine nor nursing were well-organized professions with standardized education. The American Medical Association (AMA) was established in 1947 to professionalize the practice of medicine by "setting nationwide standards and denouncing amateurs who dominated the field" (Johnson, 2017, p. 16). As the profession organized, the Flexner Report was published in 1910. The publication identified the need for strict state laws and

standards to move medical education to academic institutions, called for rigorous certification exam requirements for practice, and removed the control of other practitioners (Dynak et al., 2003). The report provided the basis for efforts to regulate the profession.

The AMA advocated for the criminalization of abortion through an antiabortion campaign, which partnered with the states to win the power to set reproductive policy as the profession evolved and began setting standards for care delivery (Johnson, 2017; Dynak et al., 2003). These physicians began the campaign to abolish abortion because they believed it was contrary to the Hippocratic Oath and moral practice (Johnson, 2000; McGregor, 2000; Dyer, 1999). While there were physicians who performed abortions, most of the AMA felt that a physician's refusal to perform abortions forced women to non-physician practitioners whose practice was not included in the development of the standards of medical practice (Johnson, 2017).

The AMA partnered with the states to abolish the lay practice of midwifery to provide for women's safety, which accompanied formal medical training (Johnson, 2017). Dr. Horatio Robinson Storer concentrated his practice on the treatment of female diseases. He led the AMA's efforts to criminalize abortion, forming the AMA's Committee on Criminal Abortion in 1857 (McGregor, 2000, Dyer, 1999). By 1900, the common law right to abortion was lost in every state with few physician-approved exceptions (Dynak et al., 2003).

In 1893, the American Society of Superintendents of Training Schools for Nurses was founded to establish the standard for nursing education, higher minimum entrance requirements, and increased opportunities for post-graduate and specialized training; and in 1894, the first sets of bylaws to establish and maintain universal standards of training was held in New York. The Nurses Associated Alumnae of the United States was formed in 1897 to improve the practice of nursing (National League of Nursing [NLN], 2023). In the early 1910s, public health nurses were sent to England for midwifery training as a response to the professionalization of medicine (Jefferson et al., 2021). There is a dearth of evidence to understand the role of nurses in abortion care before the time abortion was legalized in the U.S. (Haugeberg, 2018).

Legalization of Abortion

The twentieth century brought changes to abortion law as women, physicians, and lawyers responded to the rising medical sequelae of unsafe abortion practices and increased live births of babies with birth defects associated with thalidomide and rubella (Harvey & Cooper, 2024). California abortion law was liberalized by 1967 with the establishment of the Therapeutic Abortion Committees, which approved women's requests for abortions through doctors, and the AMA called for the legalization of abortion in 1970 (Dynak et al., 2003). New York became the first state to legalize abortion in 1970 (Harvey & Cooper, 2024).

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Federal protections were provided to those seeking abortion under the right to privacy found in the Bill of Rights (First, Fourth, and Fifth Amendments to the U.S. Constitution) with the Court's acknowledgment that the rights of a pregnant person may conflict with the state's rights to protect a potential human life (McCall, M. & Cooper, A., 2023a; Roe v Wade, 1973). Roe v Wade was a landmark case that left room for future legal challenges. Justice Ginsburg, who supported abortion, was critical of basing abortion rights on privacy and "moving the ball from the legislators' court" (Ginsburg, p. 1205, 1992).

Following Roe v Wade, federal legislation continued to develop that cut against an unrestricted right to abortion. The Hyde Amendment restricts Medicaid funding to obtain an abortion unless the abortion is: 1) to save a life; 2) the pregnancy is the result of incest or rape and was reported to law enforcement or public health services; or 3) long-lasting physical health damage to the mother would result if the pregnancy were carried to term as determined by two physicians (Congressional Research Service, 2022).

Following Dobbs, abortion laws and policies are swiftly reforming across the U.S. and continue to evolve because abortion law is now within the jurisdiction of individual states. For this reason, some information discussed in this article may be outdated at the time of publication. Readers are asked to become familiar with their state and organization laws and policies within the state(s) they practice.

Before Dobbs and after Dobbs, state legislation has limited abortion. Some states have imposed laws that banned abortions after a fetal heartbeat is detected, and other states have imposed gag laws to restrict reproductive health providers' speech. Yet, other state laws require pre-abortion ultrasounds and/or waiting periods and counseling after initial visits with abortion providers (McCall & Cooper, 2023b). In other states, face-to-face informed consent must be obtained at least 72 hours prior to the abortion (Kaller, et al., 2021). Legislation aimed at abortion travel or residency restrictions to prevent those seeking an abortion from travel to states that perform abortions or prevent those from outside the state from seeking abortions within a state that allows abortion (Francis & Francis, 2023; Berhman et al., 2024). Criminal implications aimed at abortion providers

and organizations limit abortion by criminalizing the medical procedures that are performed purposefully or knowingly to terminate a pregnancy or the administration or sale of drugs, medicines, or substances with the intent or knowledge that they will terminate a pregnancy (Berhman et al., 2024).

Citizens may also be impacted by abortion-limiting laws that provide for civil liability. Many laws that limit abortion are aimed at the person seeking abortion or the practitioner performing the abortion or ordering abortion medications. Some states have also created civil liability for anyone who assists a person seeking an abortion with travel or payment for the services. These include liability for those who assist people in crossing over state lines to obtain an abortion and insurance companies who provide funding for abortions within the state's jurisdiction (Berhman et al., 2024).

Professional and Legal Scope of Practice Considerations

Navigating the evolving legal landscape and addressing ethical dilemmas remain significant concerns for nurses providing abortion care in the post-Dobbs era because of the implications for professional licensure and criminal and civil litigation. Nurses must be well-informed about abortion laws and regulation in the state(s) where they practice, stay updated on changes, and understand available nursing education opportunities. Adhering to the Nurses' Code of Ethics and advocating for their patients through the policy process at the organizational, state, and federal level to protect their license to practice is essential.

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Registered Nurses (RNs) and Advanced Practice Registered Nurses (APRNs) play an important role in abortion care (Mainey et al., 2020). Significantly, they provide technical and psychological care to individuals seeking abortion care (Jenkins et al, 2023). Each has distinct roles and professional limitations imposed by state Nurse Practice Acts (Pozgar & Santucci, 2023). Nurses must understand the importance of scope of practice in determining their responsibilities. Professional Scope of Practice refers to a provider's role based on their peers and professional organizations. Legal Scope of Practice is permitted by law in each jurisdiction (Jenkins, et al., 2023). Nurses must abide by both Professional and Legal Scope of Practice to protect their license and avoid litigation.

RNs are generally not authorized to perform abortions but play a critical role in abortion care. Depending on state laws and regulations, RNs may provide education and counseling and offer general information about abortion procedures and post-care instructions as defined by the care provider. In March 2022, the American Nurses Association (ANA) affirmed that nurses may discuss abortion as a reproductive health alternative if any other law in that state does not prohibit the practice (ANA, 2022). Additionally, nurses are obligated to discuss relevant sexual and reproductive health choices in an unbiased manner with their patients and support the decisions of their patients regarding sexual health and reproductive choices (American Nurses Association [ANA], 2022).

Nurse Practitioners (NPs) may work in three practice environments in the U.S.: full practice, reduced practice, and restricted authority (Kleinpell, et al., 2023). Nurse Practitioners in Women's Health (NPWH) are the only NPs uniquely qualified in high-risk obstetrics and postpartum care. These NPs specialize in comprehensive health care for women, addressing reproductive, obstetric, and gynecologic care throughout the lifespan (Nurse Practitioners in Women's Health [NPWH], 2024). Generally, under the professional scope of practice, NPs in full practice states can evaluate, diagnose, order tests, and manage treatments independently under their state nursing board license (American Association of Nurse Practitioners [AANP], n.d.). In restricted authority states, at least one element of NP practice is restricted, and they are required to practice under career-long supervision, delegation, or team management (AANP, n.d.). Depending on the state law, NPs providing abortion care have the legal and professional duties to provide comprehensive counseling, respect patient autonomy, and support informed decision-making (ANA, 2022).

In some states (New Hampshire, Vermont, Oregon, New York, Montana, and the District of Columbia), NPs have been permitted to provide procedural abortions prior and/or since 2012 (Jenkins et al., 2023). Jenkins et al. (2023) provides that other states that have liberal abortion laws. These states repealed laws that only allowed physicians to provide abortion procedures and replaced these laws with laws that permitted Nurse Practitioners or Certified Nurse Midwives to provide procedural or medication abortions (Jenkins et al., 2023).

Certified Nurse Midwives (CNMs) are APRNs who have advanced training and education in two disciplines: nursing and midwifery. CNMs independently provide care during pregnancy, childbirth, and the postpartum period, as well as sexual and reproductive health and family planning services, including preconception care (American College of Nurse-Midwives, 2024). CNMs are also permitted to provide procedural or medical abortions dependent upon their jurisdictional laws.

Ethical Considerations in Providing Abortion Care

Regardless of the degree of restrictiveness or permissiveness in abortion laws, nurses may encounter scenarios that challenge their ethical commitment to delivering comprehensive, high-quality care. “Nurses cannot access their privilege of a conscience-based objection in the face of a legal mandate. If a nurse decides to participate in caring for a patient and practicing in a state with restrictive laws or regulatory directives where they must deny a patient care and/or report the patient to authorities, there may be consequences including loss of employment, sanctions on the nursing license and/or criminal penalties” (ANA, n.d).

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Nurses must deliver care within constraints that limit the availability and accessibility of comprehensive care. Confidentiality and reporting obligations add another layer of complexity. As such, they must balance the need to maintain patient confidentiality with mandatory reporting requirements, carefully managing situations where reporting could deter patients from seeking necessary care (ANA, 2022).

Resource allocation is another critical issue, requiring decisions on best utilizing limited resources for abortion care. These challenges demand a nuanced approach to uphold both ethical standards and legal requirements in providing care. Balancing patient autonomy and quality with state regulations presents significant challenges for nurses in restrictive abortion law states.

Not all nurses feel that abortion is an ethical option, and some may think that being involved in abortion care violates their religious freedom. According to the Center for Reproductive Rights (CPR), conscientious objection in abortion care occurs when a healthcare provider refuses to provide abortion services or information due to personal or religious beliefs (CRR, 2024). In this case, a provider may refuse to participate in sexual and reproductive health care (SRH) based on ethical grounds if patient safety is assured and care by others has been arranged (ANA, n.d).

Next Steps

The future implications for nurses who care for individuals who seek abortion care are comprehensive. Preparing nurses to advocate at the organizational, state, and federal levels from pre-licensure through advanced practice is no longer a choice. If nurses are to advocate for their patients and themselves, they must be adequately prepared to know how to find the law, impact it, and participate in the policy process. In some nursing programs, this may require adding to the curriculum.

Sexual and Reproductive Health (SRH) education is comprehensive, and requirements vary between states, institutions, scope of practice, and jurisdiction. Nurses must go to each state licensing board to assess the practice act and rules and regulations because no federal law governs practice (Taylor et al., 2018). To date, formal continuing education requirements in the legal considerations of abortion care are not a known requirement for registered nurse license renewal in any state. “While certain states and institutions provide abortion care training for advanced practice providers, numerous bedside nurses must seek out abortion care training on their own” (Lambrych, 2023). Furthermore, nurse leaders and institutions must have practices in place to assist nurses with conscientious objections to performing abortion care. While individuals should seek institutions and units to practice in that align with their personal views, leaders and administrators must provide practitioners with options to transfer care to other providers when necessary.

According to Lambrych (2023), Nurses for Sexual and Reproductive Health (NSRH) is a leading resource for abortion education and SRH. Through NSRHs, a Training in Abortion Care and Residency program is available. Nurses receive clinical training to gain hands-on experience in abortion care to develop their nursing skills and prepare to become a regional abortion advocate. Through its online institute, members can access an online learning portal of webinars and modules on SRH. Additionally, NSRH members have access to several educational series discussions on various topics about the impact of systemic issues on individuals and communities. The NSRH’s 8-week Abortion Nursing Corp. helps nurses who want clinical experience in abortion care find placement to gain valuable experiences. Detailed guidelines and protocols can be found in the ANA Position Statement on Sexual and Reproductive Health and the National Abortion Federation [NAF] Clinical Policy Guidelines (ANA, 2022; NAF, 2024).

The landscape for abortion policy has changed considerably since Dobbs. As states resolve the issues associated with the changes necessary since the decision, there is a need for nurses at all levels of preparation to take time to understand how we got to where we are, what role nursing plays in advocating for policy reform and ethical practice, and how we can best respectfully support each other understanding that each nurse has their own beliefs regarding abortion. Through respectful discourse and continued communication with lawyers and colleagues inside and outside nursing, nurses can be empowered to provide compassionate, person-centered care while protecting their license and preventing moral distress.

Disclaimer: The authors have no conflicts to report. This article is not intended for edcuational purposes only. This article does not establish an attorney-client relationship snd is not intended to be used as legal advice or a solicitiation for legal

advice.

Readers are advised to seek legal counsel from a licensed attorney in their jurisdiction if they have a legal question.

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