

As a periodic feature within the Journal of Medical Regulation, the “Past and Present” column shares excerpted content that appeared previously in the pages of the Journal along with a current companion commentary. The recent US Supreme Court decision, *Dobbs v. Jackson Women’s Health*, prompts this edition.

Shared below are a series of “News Items” that appeared in the Federation Bulletin between 1919 and 1962. During the long period preceding the establishment of a national Board Action Data Bank by Federation of State Medical Boards (FSMB) in 1962, common practice within the Federation Bulletin called for publishing news items reporting disciplinary actions taken by individual state medical boards. In an era of relatively weak inter-board communications the Bulletin proved invaluable as a means for alerting fellow regulators about physicians with criminal and/or disciplinary history.

Dobbs v. Jackson Women’s Health: An Historical Perspective on Medical Boards, Disciplinary Actions, and Abortion

David A. Johnson, MA

Federation Bulletin, April 1919

“Physicians Lose Licenses—The California State Board of Medical Examiners, March 21, is reported to have revoked the medical licenses held by Drs. James Ottis, Burnette, and George H. Richardson, Los Angeles, charged with having performed illegal operations.”

Federation Bulletin, July 1930

“Licenses Revoked—At a meeting of the State Board of Health of Missouri in St. Louis, June 11, the license of Dr. W. R. Harman was revoked, when he was found guilty of producing a criminal abortion.”

Federation Bulletin, December 1935

“Changes in Status of Licensure—At a meeting of the Massachusetts Board of Registration in Medicine, November 15, the following action was taken... Dr. John Francis Cummings, Brockton, license revoked as the result of his conviction in court on a charge of abortion.”

Federation Bulletin, October 1949

“License Revoked—The North Carolina Board of Medical Examiners reported that Dr. J. B. Davis, Fuquay Springs, was ordered to surrender his medical license...Dr. Davis was indicted for manslaughter and criminal abortion. He plead nolo contendere to the former charge and was found guilty on the latter.”

Federation Bulletin, August 1962

“Texas—At the meeting of the Texas State Board of Medical Examiners, held on June 15, the following actions were taken...The license of William H. Ross, M.D., R. R. No. 4, Box 141, Houston, was revoked and cancelled because of complaint filed against him for unprofessional and dishonorable conduct for performing a criminal abortion, knowing there was no therapeutic need.”

So what is the purpose behind sharing these excerpts? Quite simply, they remind us that until *Roe v. Wade* (1973) a frequent basis for license revocation by a state medical board stemmed from criminal cases involving abortion; and in the wake of *Dobbs*, it seems reasonable to wonder if such cases are now headed once again to state medical boards in numbers beyond what we have seen over the last fifty years.

In one regard, the presence of such cases on the docket of state medical boards of the past should not surprise us. Licensing laws establishing state and territorial medical boards began in 1859 (North Carolina) and spread subsequently across the United States during the post-Civil War era. This same post-war era saw a fundamental shift in the legislative and legal landscape regarding abortion.

Throughout much of the first half of the nineteenth century, social and legal views on abortion were governed predominantly by common law, social mores, and the concept of “quickening,” ie, fetal movement around the mid-point of gestation. Knowledge of botanicals and physical procedures that might initiate abortion (termed in one guide as releasing “obstructed menses”) were commonly available. Home health guides, medical texts intended for a popular audience, folk medicine, and oral knowledge/tradition offered instruction openly.¹

A clear shift in legislation pertaining to abortion began in the 1840s and accelerated beginning in the 1860s. Between 1860 and 1880, 13 states outlawed abortion; another 21 amended (more specifically, tightened) existing laws to curtail abortion. By 1900, virtually every state and territory had outlawed abortion as a medical procedure.² Explaining the historical context and forces contributing to this legislative change is outside the focus of this column, although it should be noted that this country’s two major associations of professional historians have raised serious concerns for the historical contextualizing and accuracy of the majority opinion in *Dobbs*.³ For our purposes, it is more important to note that state medical boards were being established by legislatures across the United States at precisely the same time as this legislative wave.

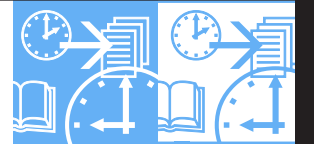
This is not to say abortion cases regularly came before state medical boards—though not for the reason you might think. At the time medical boards were originally established, most did not have statutory power to revoke a license once it had been issued. Indeed, even in the early years of

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the twentieth century, a review of medical practice acts reveals that nearly half of all boards lacked this fundamental authority. Its absence can be traced to a common belief that responsibility for regulating one’s own ranks fell to the medical profession, ie, state and local medical societies.

In most instances during the late nineteenth century, medical practice acts did not list abortion explicitly as the basis for a license revocation. However, the nearly ubiquitous presence of language such as “gross unprofessional conduct” and “moral turpitude” in state statute threw a sufficiently wide net that, when combined with criminal statutes, gave medical boards ample authority to act. By 1918, even this lack of specificity had changed as thirty-four states provided for license revocation related explicitly to abortion cases.⁴

So how often did state medical boards act in abortion-related cases? Precise numbers are unknown. Our state-based system of medical licensure and discipline resulted in decentralized adjudication and reporting of such information and data. As mentioned earlier, even voluntary reporting to a national body collecting board actions did not occur until the 1960s. Still,



a few surrogate measures are relevant and worth sharing.

The California Board of Medical Examiners produced annual reports of its activities on a consistent basis during its first fifty years. Reviewing the board's data for the period 1921-1931 offers one glimpse into board activity and the prevalence of such cases. Over this ten-year

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period the board initiated a little over 1,000 disciplinary cases with 20% (n=208) resulting in sanctions. The most common sanction involved a license revocation or suspension—this occurred in 148 of the 208 sanctioned cases. In 42 of these sanctioned cases, the basis for the board's action involved abortion or "illegal operation."⁵ Whether this data specific to California is reflective of other boards' experience is impossible to say.

While national data on medical board discipline remains absent for most of the first century of these boards' existence, the *Federation Bulletin* offers one surrogate, though admittedly an incomplete one. This writer's review of the *Bulletin* for the news items reporting discipline offers the closest thing available to national data. Between 1950-1959, medical boards reported 1,178 actions to the *Bulletin*. Nearly three-fourths of these involved a license revocation or suspension. The most common basis for an action involved narcotics with 198 actions for prescribing violations or violation of federal narcotics law. The second most common (n=115) involved criminal conviction—a large category that included abortion as well as other criminal convictions such as income tax violations.

The 1962 establishment of the FSMB's Board Action Data Bank marked the beginning of formal national reporting. Although FSMB did not receive disciplinary information from every state medical board in every year until the early 1980s, a national profile was emerging by the end of the 1960s. FSMB's elective president, Robert Derbyshire, MD (1965-1966), drew upon the data bank in his 1969 history of medical licensure in the United States. Derbyshire reported 938 board actions for a five-year period (1963-1967) with nearly half involving license revocation or suspension. While narcotics related violations remained the primary basis, abortion likely served as the second most common basis. Note: It seems reasonable to speculate that abortion related cases may also have been coded to felony conviction, unprofessional conduct, or moral turpitude categories as part of stipulated agreements between boards and physicians.

Table 1

State medical boards disciplinary actions and their bases, 1963-1967

Table with 2 columns: Basis for board action, Number of actions. Rows include Narcotics violations (440), Mental incompetence (94), Fraud and/or deceit in practice (74), Felony conviction (72), Abortion (71), Unprofessional conduct (68), Alcoholism (41), Moral turpitude (26), Other categories (52), and Total (938).

Source: Robert Derbyshire, Medical Licensure and Discipline in the United States (Johns Hopkins University Press, 1969), page 77-79.



This pre-Roe data on state medical board experiences with abortion related disciplinary cases carries distinct limitations. The most significant is also the most obvious: the data is incomplete and not all boards reported or shared such information, whether to the *Bulletin* or the FSMB Board Action Data Bank for the period addressed here. Another limitation is the lack of more complete contextualization regarding how these cases reached state

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medical boards. While exhaustive research has not been undertaken, this writer's sense of the information is that state medical boards were acting predominantly in response to arrests and/or criminal convictions. It does not appear they were acting directly to complaints made to the board against individual physicians.

What might be the implications of *Dobbs* for medical boards today? This is a key question for many medical boards and their staffs. Undoubtedly, criminal abortion cases will present to state medical boards simply by virtue of the ubiquity of existing statutory language and board requirements around reporting for arrests and convictions. One can also envision scenarios in which multiple factors become relevant: the definitional practice of medicine placing it where the patient is located; patient follow-up care when state lines are crossed; reciprocal discipline situations; reporting requirements under the Interstate Medical Licensure Compact and more. Medical board attorneys have already begun considering potential scenarios,

evaluating the legal landscape within their state, and monitoring relevant legislation. This column probably leaves a reader with more questions than answers. Perhaps the observation everyone would agree upon is this: We live in interesting times.

References

1. Regan LJ. Introduction. *When Abortion was a Crime: Women, Medicine and Law in the United States, 1867-1973*. University of California Press; 1997.
2. Mohr JC. *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*. Oxford University Press; 1978: 200-201.
3. The Organization of American Historians and the American Historical Association filed an amicus brief in *Dobbs* tracing the history of the social and legal history of abortion in 18th and 19th century America. Their July 2022 joint statement characterized the history and contextualization of abortion in the majority's opinion as "flawed" and containing "misrepresentations." See "Joint OAH-AHA Statement on the *Dobbs v. Jackson* decision" at <https://www.oah.org/>
4. Thiberge NF. Report of committee on criminal abortion. *New Orleans Medical and Surgical Journal*. 1918;70:805.
5. *Annual reports of the California Board of Medical Examiners, 1914-1931*. California State Printing Office; 1932.

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