LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

STATEMENT OF POSITION

GUIDANCE RELATING TO TERMINATION OF PREGNANCY

BACKGROUND: The United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* on June 24, 2022, overruled the Court's prior holding in *Roe v. Wade* that the United States Constitution confers a right to abortion. Accordingly, authority to regulate abortion was returned to the states. The Louisiana State Board of Medical Examiners has received numerous inquiries from licensees, other practitioners, and the public seeking guidance regarding termination of pregnancy in Louisiana. Although the Board cannot give legal advice and nothing in this statement should be construed as providing a legal opinion, the Board has determined that a general statement of position offering general guidance is warranted.

STATEMENT OF POSITION: By declaring this Statement, the Board intends to (1) protect the public and ensure the quality of health care in Louisiana and (2) inform physicians and other interested parties of general guidance relating to termination of pregnancy in this state.

Act 545 of the 2022 Regular Legislative Session and La. R.S. 40:1061, *et seq.*, ban almost all abortions and the administration or prescription of abortion-inducing drugs, with no exception for rape or incest.

The law allows certain physicians to lawfully terminate a pregnancy under specified conditions and circumstances, consistent with ethical and professional standards. These include (i) a medical procedure performed with the intention to save the life or preserve the health of an unborn child; (ii) the removal of a dead unborn child or the inducement or delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman's medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended or is in the unavoidable and untreatable process of ending due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion; (iii) the removal of an ectopic pregnancy; (iv) the use of methotrexate to treat an ectopic pregnancy; (v) the performance of a medical procedure necessary in good faith medical judgment or reasonable medical judgment to prevent the death or substantial risk of death to the pregnant woman due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. (However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice); (vi) the removal of an unborn child who is deemed to be medically futile. (The diagnosis shall be a medical judgment certified by two qualified physicians and recorded in the

woman's medical record. The medical procedure shall be performed in a licensed ambulatory surgical center or hospital. Upon the completion of the procedure, the physician shall submit an individual abortion report consistent with R.S. 40:1061.21 that includes appropriate evidence of the certified diagnosis.)[1]

Based on the foregoing, it is the Board's position that any decision or action to terminate pregnancy should be taken in strict and full compliance with the law. This general statement does not, nor does it attempt to, reproduce the entirety of the laws and regulations regarding this issue. Physicians should consult their private attorneys, the attorneys for any institutions or facilities where they routinely practice, and/or attorneys employed by their professional liability insurers for answers to specific legal questions. Legal challenges continue in this arena and the status of the law may be in a state of flux for some time to come, and further rulemaking is anticipated.

It is the Board's further position that detailed and meticulous documentation (including the notation of relevant and current applicable versions of CPT and ICDCM codes where indicated) and record keeping as to the medical necessity and justification for termination procedures will be essential, including preservation of all supporting documentation, laboratory results, and consultation records. The treating physician should clearly and comprehensively discuss with the patient the treatment recommended and the risks and benefits associated with it, as well as any alternatives to the recommended treatment. That discussion, and the patient's understanding and consent to the treatment, should be fully documented. Even where the law does not specifically require a second opinion, if there is any question or concern in the treating physician's mind about the treatment plan, that physician should consider consulting a board-certified provider (ideally a Louisiana-licensed physician) and documenting the second opinion in the chart.

In addition to these general principles of best practices for evidence-based medicine, the Board would anticipate that hospitals and other institutions will likely develop protocols for various treatment scenarios that will be available to guide practitioners, and consultation with an institution's ethics committee may be another resource for physicians when it is possible and practical to consult them regarding a particular case or circumstance.

[1]La, R.S. 14.87.1(1)(b)(i-vi) as enacted by Act 545 of the 2022 Regular Legislative Session.