

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED

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PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, ET
AL.,

Plaintiffs,

-vs.-

OHIO DEPARTMENT OF HEALTH,
ET AL.,

Defendants.

CASE NO. A 2101148

JUDGE ALISON HATHEWAY

**DECISION AND ORDER
GRANTING PLAINTIFFS'
THIRD MOTION FOR
PRELIMINARY
INJUNCTION**

This matter is before the Court upon Plaintiffs Planned Parenthood of Southwest Ohio ("PPOSW"), Dr. Sharon Liner, and Planned Parenthood of Greater Ohio ("PPGOH"), Julia Quinn, MSN, WHNP-BC Women's Med Group Professional Corporation ("WMGPC") and Preterm-Cleveland's Third Motion for Preliminary Injunction, filed on February 26, 2025. All parties waived oral arguments and agreed to submit on their briefs. Therefore, the Court, having considered the Motion, responsive briefs, and being fully apprised of the relevant facts and laws, finds Plaintiffs' Motion to be well-taken and **GRANTS** the same.

This Court has previously issued two preliminary injunctions in this case. Those orders remain in effect during the pendency of this litigation and the Court's findings in those entries are fully incorporated as if rewritten here. See Entry Granting Pls.' Mot. for a Prelim. Inj., Apr. 20, 2021; Decision and Order Granting Pls.' Second Mot. for Prelim. Inj. ***nunc pro tunc* Aug. 28, 2024**, Sept. 10, 2024. As relevant here, the Court previously enjoined a series of statutes referred to as the "APC Ban." The issue before the Court now, however, is that despite the Court's previous orders, additional statutes



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continue to effectuate the APC Ban. Specifically, Plaintiffs state that “APCs employed by Plaintiffs Planned Parenthood of Greater Ohio (“PPGOH”) and Planned Parenthood Southwest Ohio Region (“PPSWO”) face licensing sanctions if they actually provide abortions as contemplated under the Court’s order.” Essentially, the Court’s second preliminary injunction order has no effect because of these additional provisions. Consequently, Plaintiffs filed a Motion for Leave to File Second Amended Complaint, which the Court has granted in a separate entry, and a Third Motion for Preliminary Injunction, which seeks to enjoin R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm. Code 3701-47-01.

A. Challenged Statutes

Plaintiffs argue that R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm. Code 3701-47-01 “could be read to preclude APCs from providing medication abortion care” despite the Court’s previous orders enjoining other restrictions on APCs. R.C.4723.28(B) allows the Board of Nursing to “deny, revoke, suspend or place restrictions” on Nurse Practitioners’ (“NPs”) or Certified Nurse Midwives (“CNMs”) nursing licenses; “reprimand or otherwise discipline” NPs or CNMs; or “impose a fine of not more than five hundred dollars per violation” of the provision. Similarly, R.C. 4730.25(B)(24) authorizes the State Medical Board of Ohio to impose sanctions on Physician Assistants (“PA”) for “[p]rescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion.” Taken together with other provisions, Ohio Adm.Code 3701-47-01 could be read to preclude otherwise qualified NPs or CNMs from providing medication abortions merely because they are licensed by the Board of Nursing, not the Medical Board. *See* R.C. 1919.11, R.C. 4731.41(A).

I. LEGAL STANDARD

A. Preliminary Injunction Standard

To succeed on a motion for preliminary injunction, Plaintiffs must show (1) a substantial likelihood that they will prevail on the merits, (2) that they will suffer irreparable injury if the injunction is not granted, (3) that no third parties will be unjustifiably harmed if the injunction is granted, and (4) that the public interest will be served by the injunction. *de Cavel v. DCHW*, 1st Dist. Hamilton No. C-100221, 2011-Ohio-549, ¶ 7, citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist. 2000). In addition, Plaintiffs must prove these elements by clear and convincing evidence, or “that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.” *Miami Twp. Bd. of Trustees v. Weinle*, 2021-Ohio-2284, 174 N.E.3d 1270, ¶¶ 25-26 (1st Dist.), citing *State v. City of Cincinnati Citizens' Complaint Auth. and Black United Front*, 2019-Ohio-5349, 139 N.E.3d 947, ¶ 21 (1st Dist.), *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

B. Ohio's Constitutional Right to Reproductive Freedom

Since the Amendment passed in November 2023, the Ohio Constitution now broadly protects an individual's “right to make and carry out one's reproductive decisions, including but not limited to decisions on...abortion.” Ohio Const., art. I, § 22(A)(5). Further, the Amendment states

The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either: (1) “[a]n individual's voluntary exercise of this right or (2) [a] person or entity that assists an individual in exercising this right, unless the State can show that it is using the least restrictive means to advance patient health in accordance with widely accepted and evidence-based standards.

Id. at § 22(B).

The Amendment explicitly sets an applicable legal standard – one that places a stringent burden on the State. Under the Amendment, patient health is the only state interest that an abortion regulation may constitutionally advance. Therefore, any restrictions on abortion must be narrowly tailored to further protect patient’s health *and* such restrictions must be the least restrictive means to advance the patient’s health “in accordance with widely accepted and evidence-based standards.”

II. LAW AND ANALYSIS

A. Plaintiffs Are Substantially Likely to Succeed on Their Claims.

- 1. Plaintiffs are substantially likely to succeed on their claim that the aforementioned statutes will violate their and their patients’ newly enshrined constitutional right to reproductive freedom.***

The Amendment grants sweeping protections ensuring reproductive autonomy for patients in Ohio. Plaintiffs have provided substantial evidence to prove by clear and convincing evidence that the three provisions at issue here violate these newly enshrined rights in a manner that is not the least restrictive, and actually causes harm to Plaintiffs and their patients. Specifically, the three provisions at issue impose punitive consequences on APCs who provide medication abortions by threatening professional discipline for providing care they are trained and qualified to provide simply because it is abortion care. *See* R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), Ohio Adm.Code 3701-47-01. Consequently, these provisions burden, interfere with, and prohibit Plaintiffs and their providers from providing time-sensitive care to patients they would otherwise be able to assist.

Additionally, and as addressed in the Court’s second preliminary injunction order, these provisions discriminate against APCs who seek to provide abortion care, solely

because it is abortion care. Ohio permits APCs to prescribe the *same medications* utilized for medication abortions for other non-abortion purposes, including miscarriage management. In response, the State fails to make any argument that three provisions are the least restrictive means to advance patient health and are in accordance with widely accepted and evidence-based standards of care. In fact, the State fails to address the alleged unconstitutionality of the provisions at all, but stated it “preserves its previous assertions in opposition to this Court’s previous rulings.” The Court has already found the State’s previous assertions are not well-taken. Without any additional argument or evidence before the Court, that finding remains accurate today.

B. Plaintiffs and Their Patients Will Suffer Irreparable Harm Absent Relief

Because Plaintiffs have shown a substantial likelihood they will succeed on their claims that they and their patients’ constitutional rights are being violated, a finding of irreparable harm is warranted. “[I]mpair[ment]” of a constitutional right “mandates a finding of irreparable injury.” *Magda v. Ohio Elections Comm’n.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001). The State argues that Plaintiffs have failed to establish that they are threatened with any harm. However, the record demonstrates that without preliminary relief, Plaintiffs continue to be limited in their ability to provide reproductive care to their patients, contrary to the Amendment’s broad protections.

Patients all across the state will still be irreparably harmed by obstacles to care and regulations that are more restrictive than the Amendment allows. The threat of discipline that APCs face limits the availability of appointments and the number of sites where medication abortions are offered. In turn, patients experience unnecessary delays

in accessing abortion care, subjecting them to greater health risks. Specifically, patients may be unable to receive their preferred, or medically indicated, form of abortion care in Ohio. Further, patients are compelled to remain pregnant against their will, facing more complex financial and logistical challenges, physiological stressors, and emotional distress.

C. No Third Parties Will Be Harmed and the Public Interest Will Be Served by an Injunction

No third parties would be harmed if the three provisions are enjoined. Plaintiffs have provided ample evidence to show that trained APCs can safely and effectively provide abortion. An injunction will not harm Defendants nor any other third party. Rather, the APC Ban continues to impair patient health and well-being, while also violating Ohioans' constitutional rights. Additionally, the public interest will be served by an injunction, not only because it will prevent future constitutional violations, but also because the public interest is served when the Ohio Constitution is properly applied.

D. An Injunction Will Not Substantially Expand this Court's Prior Orders

The State argues that "the effect of the requested relief would go far beyond this Court's prior orders." Specifically, the State argues that if this Court were to preliminarily enjoin R.C. 4723.28(B)(30) and R.C. 4730.25(B)(24), the Medical and Nursing Boards would be prevented from sanctioning its members, would "allow all registered nurses and dialysis technicians to perform abortions," and would "insulate these practitioners from discipline for the prescription of 'any drug or device' so long as it is prescribed to perform or induce an abortion." While the Court understands the State's concerns, that is not what Plaintiffs are requesting. It is clear to this Court that Plaintiffs are seeking to enjoin R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Adm. Code 3701-47-01 only to the extent that

these provisions prevent APCs from providing medication abortions when they are otherwise qualified and skilled to do so.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Third Motion for a Preliminary Injunction is hereby **GRANTED**. All Defendants and their officers, successors, agents, servants, employees, attorneys and those persons in active concert or participation with them are **PRELIMINARILY ENJOINED** from enforcing R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Adm. Code 3701-47-01, only as to APCs and only to the extent that these provisions prevent APCs from providing medication abortions, until final judgment is entered in this case. Additionally, the Court's Entry Granting Plaintiffs' Motion for a Preliminary Injunction, filed on April 20, 2021, and Decision and Order Granting Plaintiffs' Second Motion for Preliminary Injunction ****nunc pro tunc August 29, 2024**** shall remain in effect until final judgment is entered in this case, as stated in those orders. Lastly, because Defendants face no risk of financial loss from the injunction, and in light of the Plaintiffs' role as nonprofit health care providers, the Court hereby sets Plaintiffs' Civ. R. 65(C) bond requirement at \$0.00.

IT IS SO ORDERED.



Judge Alison Hatheway