

AMENDED IN SENATE JUNE 21, 2022

AMENDED IN ASSEMBLY APRIL 20, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2098

Introduced by Assembly Member Low
(Coauthors: Assembly Members Aguiar-Curry, Akilah Weber, and
Wicks)

(Coauthors: Senators Pan and Wiener)

February 14, 2022

An act to add Section 2270 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Low. Physicians and surgeons: unprofessional conduct.

Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and the Osteopathic Medical Board of California. Existing law requires the applicable board to take action against any licensed physician and surgeon who is charged with unprofessional conduct, as provided.

This bill would designate the dissemination ~~or promotion~~ of misinformation or disinformation related to the SARS-CoV-2 coronavirus, or "COVID-19," as unprofessional conduct. ~~The bill would require the board to consider specified factors prior to bringing a disciplinary action against a physician and surgeon.~~ The bill would also make findings and declarations in this regard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The global spread of the SARS-CoV-2 coronavirus, or
4 COVID-19, has claimed the lives of over 6,000,000 people
5 worldwide, including nearly 90,000 Californians.

6 (b) Data from the federal Centers for Disease Control and
7 Prevention (CDC) shows that unvaccinated individuals are at a
8 risk of dying from COVID-19 that is 11 times greater than those
9 who are fully vaccinated.

10 (c) The safety and efficacy of COVID-19 vaccines have been
11 confirmed through evaluation by the federal Food and Drug
12 Administration (FDA) and the vaccines continue to undergo
13 intensive safety monitoring by the CDC.

14 (d) The spread of misinformation and disinformation about
15 COVID-19 vaccines has weakened public confidence and placed
16 lives at serious risk.

17 (e) Major news outlets have reported that some of the most
18 dangerous propagators of inaccurate information regarding the
19 COVID-19 vaccines are licensed health care professionals.

20 (f) The Federation of State Medical Boards has released a
21 statement warning that physicians who engage in the dissemination
22 of COVID-19 vaccine misinformation or disinformation risk losing
23 their medical license, and that physicians have a duty to provide
24 their patients with accurate, science-based information.

25 (g) In House Resolution No. 74 of the 2021–22 Regular Session,
26 the California State Assembly declared health misinformation to
27 be a public health crisis, and urged the State of California to
28 commit to appropriately combating health misinformation and
29 curbing the spread of falsehoods that threaten the health and safety
30 of Californians.

31 SEC. 2. Section 2270 is added to the Business and Professions
32 Code, to read:

33 2270. (a) It shall constitute unprofessional conduct for a
34 physician and surgeon to disseminate misinformation or
35 disinformation related to COVID-19, including false or misleading
36 information regarding the nature and risks of the virus, its
37 prevention and treatment; and the development, safety, and
38 effectiveness of COVID-19 vaccines.

1 ~~(b) Prior to bringing a disciplinary action against a licensee~~
2 ~~under this section, the board shall consider both whether the~~
3 ~~licensee departed from the applicable standard of care and whether~~
4 ~~the misinformation or disinformation resulted in harm to patient~~
5 ~~health.~~

6 ~~(e)~~

7 (b) For purposes of this section, the following definitions shall
8 apply:

9 ~~(1) “Physician and surgeon” means person licensed by the~~
10 ~~Medical Board of California or the Osteopathic Medical Board of~~
11 ~~California under Chapter 5 (commencing with Section 2000).~~

12 ~~(2)~~

13 (1) “Board” means the Medical Board of California or the
14 Osteopathic Medical Board of California, as applicable.

15 ~~(3) “Misinformation” means false information that is~~
16 ~~contradicted by contemporary scientific consensus to an extent~~
17 ~~where its dissemination constitutes gross negligence by the~~
18 ~~licensee.~~

19 ~~(4)~~

20 (2) “Disinformation” means misinformation that the licensee
21 deliberately disseminated with malicious intent or an intent to
22 mislead.

23 ~~(5)~~

24 (3) “Disseminate” means the conveyance of information from
25 the licensee to a patient under the licensee’s care in the form of
26 treatment or advice.

27 (4) *“Misinformation” means false information that is*
28 *contradicted by contemporary scientific consensus to an extent*
29 *where its dissemination constitutes gross negligence by the*
30 *licensee.*

31 (5) *“Physician and surgeon” means a person licensed by the*
32 *Medical Board of California or the Osteopathic Medical Board*
33 *of California under Chapter 5 (commencing with Section 2000).*

34 ~~(d)~~

35 (c) Section 2314 shall not apply to this section.

36 SEC. 3. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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