

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 introduced, 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 5,000,000 people
5 worldwide, including nearly 75,000 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 or promote misinformation
35 or disinformation related to COVID-19, including false or
36 misleading information regarding the nature and risks of the virus,
37 its prevention and treatment; and the development, safety, and
38 effectiveness of COVID-19 vaccines.

1 (b) The board shall consider the following factors prior to
2 bringing a disciplinary action against a licensee under this section:

3 (1) Whether the licensee deviated from the applicable standard
4 of care.

5 (2) Whether the licensee intended to mislead or acted with
6 malicious intent.

7 (3) Whether the misinformation or disinformation was
8 demonstrated to have resulted in an individual declining
9 opportunities for COVID-19 prevention or treatment that was not
10 justified by the individual’s medical history or condition.

11 (4) Whether the misinformation or disinformation was
12 contradicted by contemporary scientific consensus to an extent
13 where its dissemination constitutes gross negligence by the
14 licensee.

15 (c) For purposes of this section, the following definitions shall
16 apply:

17 (1) “Physician and surgeon” means person licensed by the
18 Medical Board of California or the Osteopathic Medical Board of
19 California under Chapter 5 (commencing with Section 2000).

20 (2) ”Board” means the Medical Board of California or the
21 Osteopathic Medical Board of California, as applicable.

22 (d) Section 2314 shall not apply to this section.