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**Richard A. Jaffe, Esq.**

To: California Legislators  
Re: Healthcare Lawyer's Opposition to AB 2098

May 20, 2022

Dear Legislators:

I am a healthcare lawyer with substantial experience in medical board work in California and throughout the country. The original bill was clearly facially unconstitutional; it purported to discipline physicians for publicly expressing their personal opinions about important and evolving public health issues. Legislative analysis recognized this problem and AB 2098 was amended to attempt to limit its reach to physicians' communications with their patients. However, this fix was incomplete because it did not protect physicians' communications with their patients *en mass* via newsletters, blogs and list serve emails. Such communications are frequently shared by the patients with their families and friends. These circumstances make the amended bill unconstitutional.

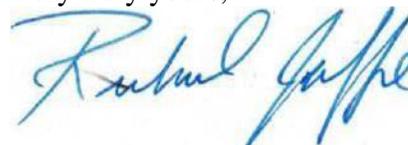
A simple fix to this problem would be further amending "disseminate" to add the bolded language: "(5) Disseminate means the conveyance of information from the licensee to a patient under the licensee's care in the form of treatment or advice, **presented in a physician/patient visit, to which physician/patient confidentiality rules apply.**" FYI, there is no First Amendment right protecting a physician for rendering negligent medical treatment or advice in a physician/patient medical encounter.

Another problem with the amended bill is its vagueness and lack of any kind of guidance or prerequisites for disciplinary action. Greater clarity would assist the Board and licensees to understand the reach of the law. The bill should make clear that, "**A physician and surgeon shall not be subject to discipline under this Section if the speech does not cause bodily injury to the patient.**"

But even with these proposed amendments, the bill is still a bad idea for two primary reasons. First, Covid-19 is a highly charged and politicized issue with passionate activists on both sides. I can envision the Board being inundated with complaints against physicians on both sides of the issues. Second, I think Board investigators, staff and Board retained physician consultants will be inundated with complaints, as they try to apply vague standards to statements by physicians during a time in which data, information, practices and opinions evolve.

AB 2098 will increase the cost, chaos and uncertainty of Board's dealing with the pandemic. It will also negatively impact the physician/patient relationship because patients rely on their physicians to speak the truth as they see it.

Very truly yours,



Richard Jaffe