



Written by [Michael Tennant](#) on September 20, 2023

California Repeals Law Threatening Doctors for Covid-19 Dissent

The California Legislature last week approved a bill that, in part, repeals a law passed a year ago [threatening doctors](#) who spread alleged “misinformation” about Covid-19 with penalties including the loss of their licenses.

Senate Bill 815, which passed on Thursday, primarily concerns revisions to state medical board policies. But tucked into it is a provision repealing Assembly Bill 2098, the so-called “medical misinformation” law that took effect January 1.

AB 2098 reads: “It shall constitute unprofessional conduct for a physician ... to disseminate misinformation or disinformation related to COVID-19, including false or misleading information regarding the nature and risks of the virus, its prevention and treatment; and the development, safety, and effectiveness of COVID-19 vaccines.”

Should a doctor be found guilty of “unprofessional conduct,” he could be disciplined by the state and possibly even lose his license.

The act defines “misinformation” as “false information that is contradicted by contemporary scientific consensus contrary to the standard of care.”

AB 2098 was clearly aimed at punishing doctors who question the prevailing Covid-19 narrative.

The “contemporary scientific consensus,” after all, was and is constantly changing. One day, masks are useless; the next day, they’re mandatory. Vaccines were once required at many universities, then became voluntary at some, and are now (along with masks) [becoming mandatory again](#). Many assertions that supposedly constituted misinformation two or three years ago have since been borne out by scientific studies; some had [already been proven](#) at the time.

Besides, threatening doctors for speaking their minds runs the risk of violating their free-speech rights — something even Governor Gavin Newsom [recognized](#), though dismissed, at the time he signed AB 2098 into law.

Doctors, however, were not so certain that the law, as interpreted by a state that had imposed some of the harshest Covid-19 “mitigation” measures in the country, would be applied fairly. Four separate lawsuits were filed against it, and shortly after the law took effect, U.S. District Judge William Shubb issued a [preliminary injunction](#) against it, finding that its “unclear phrasing and structure” could have a



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“chilling effect” on physicians’ ability to advise their patients. He also declared its “misinformation” definition “grammatically incoherent” and “impossible to parse.”

Even the American Civil Liberties Union (ACLU) of Northern California found the law so egregious that it filed amicus briefs favoring the plaintiffs in all four cases.

“We are happy that the Legislature is attempting to address the defects in last year’s legislation,” ACLU of Northern California senior attorney Chessie Thacher told the [Los Angeles Times](#). “As we argued in court, that bill was dangerously overbroad and confusing.”

In fact, reported [MedPageToday](#), “There was confusion about the bill from the start. Initially, the idea behind it was to discipline doctors who spread false information about COVID anywhere, including on social media or at public events.... But concerns about the First Amendment prompted lawmakers to narrow the scope, applying the language only to those physicians who convey such misinformation to a patient under the licensee’s care, which is much harder to prove.” And, of course, there was the aforementioned matter of determining what the “scientific consensus” is at any given moment.

The provision repealing AB 2098 was so unheralded that even AB 2098 opponents were “unaware” of its existence “until a few days ago,” Jenin Younes, an attorney with the New Civil Liberties Alliance who represented the plaintiffs in one of the lawsuits, told [The Defender](#).

“We hope that the state legislature learns a lesson from this episode and takes Californians’ rights into account when drafting and passing legislation, rather than trying to win a popularity contest with extremist constituents who think it’s appropriate to censor views of ideological opponents,” Younes added.

Children’s Health Defense (CHD) President Mary Holland hailed the repeal, saying, “The California legislature likely saw the writing on the wall — that their statute would be found unconstitutional — so they attempted to quietly scuttle it. This is an example of how legal wins can lead to legislative wins, and this is definitely a win when doctors can practice medicine freely.”

But can they?

Attorney Richard Jaffe, who represented CHD in its lawsuit, told [The Defender](#) that while the repeal is “a big win for proponents of free speech,” it may not mean the end of Covid-19 censorship in California.

“It does look like the medical board still thinks it has the power to sanction doctors for COVID-19 misinformation and that is a problem which we are thinking hard about,” he said.

Supporters of medical censorship are counting on it. Assemblyman Evan Low, a Democrat who sponsored AB 2098, told the [Times](#), “Fortunately, with this update, the Medical Board of California will continue to maintain the authority to hold medical licensees accountable for deviating from the standard of care and misinforming their patients about COVID-19 treatments.”

Still, the repeal of AB 2098, “one would hope, would at least give a medical board pause,” observed CHD acting general counsel Kim Mack Rosenberg.

“Further, the repeal might be an effective argument in any proceeding — whether before a board or initiated by a doctor in a court of law — that it is unconstitutional to attempt to limit doctors’ speech, not only in the doctor-patient relationship context but also in more public speech.”

Then again, one would hope that an appeal to the California and U.S. Constitutions and the American tradition of liberty would suffice to prevent Sacramento from censoring doctors — or anyone else.



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