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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 2098 (Low) - Physicians and surgeons: unprofessional conduct

**Version:** June 21, 2022

**Urgency:** No

**Hearing Date:** August 1, 2022

**Policy Vote:** B., P. & E.D. 9 - 4

**Mandate:** No

**Consultant:** Janelle Miyashiro

**Bill Summary:** AB 2098 provides that the dissemination of misinformation or disinformation related to COVID-19, as specified, constitutes unprofessional conduct for a physician and surgeon licensed under the Medical Board of California and the Osteopathic Medical Board of California.

**Fiscal Impact:** The Osteopathic Medical Board of California (OMBC) estimates a fiscal impact of \$10,000, which is anticipated to be absorbable within existing resources (OMBC Contingent Fund).

The Medical Board of California (MBC) anticipates any fiscal impact to be absorbable within existing resources as the board currently implements an allegation code for COVID-19 related complaints and tracks discipline related to unprofessional conduct.

Actual enforcement costs to the MBC and OMBC are indeterminate and would depend on the volume of complaints received specific to COVID-19 misinformation and disinformation, as well as the complexity of any subsequent investigations.

The Office of Information Services within the Department of Consumer Affairs estimates \$1,600 for workload associated with making information technology changes.

**Background:** The enforcement process begins with a complaint. Complaints are received from various sources, including the public, generated internally by MBC or OMBC, or based on information MBC and OMBC receive from various entities through mandatory reports to the boards.

MBC licensee complaints are received by the Central Complaint Unit, which starts the process of determining next steps for a complaint. All complaints that pertain to treatment provided by a physician require patient medical records to be obtained. Complaints regarding quality of care are received and reviewed by OMBC's Complaint Unit (CU) in Sacramento by a medical consultant. The CU medical consultant determines whether the quality of care issues presented in the complaint and supporting documents warrant investigation.

Pursuant to Business and Professions Code (BPC) Section 2220.08, before a quality of care complaint for MBC licensees is referred for further investigation, it must be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standards of care issues raised by the complaint to determine if further field investigation is required. When a medical reviewer determines that a complaint warrants referral for further investigation, CCU transfers the complaint to the Health Quality Investigation Unit (HQIU) in the DCA's Division of Investigation

(DOI) which handles investigations for a number of health related boards within DCA to be investigated by a sworn investigator, a peace officer. There are 12 HQUI field offices located throughout California that handle these investigations.

For complaints about physicians and surgeons that are subsequently investigated and meet the necessary legal prerequisites, a Deputy Attorney General (DAG) in the Office of the Attorney General (OAG) drafts formal charges, known as an "Accusation". A hearing before an Administrative Law Judge (ALJ) is subsequently scheduled, at which point settlement negotiations take place between the DAG, the physician and their attorney and MBC or OMBC staff. Often times these result in a stipulated settlement, similar to a plea bargain in criminal court, where a licensee admits to having violated charges set forth in the accusation, or admits that the MBC or OMBC could establish a factual and legal basis for the charges in the Accusation at hearing, and accepts penalties for those violations. If a licensee contests charges, the case is heard before an ALJ who subsequently drafts a proposed decision. This decision is reviewed by a panel of MBC members or the OMBC Board who either adopt the decision as proposed, adopt the decision with a reduced penalty or adopt the decision with an increased penalty. If probation is ordered, a copy of the final decision is referred to MBC's Probation Unit or OMBC's probation monitor for assignment to an inspector who monitors the licensees for compliance with the terms of probation.

**Proposed Law:**

- Provides that the dissemination of 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 constitutes unprofessional conduct for a physician and surgeon.
- Establishes definitions related to the above:
  - "Board" means the MBC or OMBC.
  - "Disinformation" means misinformation that the licensee deliberately disseminated with malicious intent or intent to mislead.
  - "Disseminate" means the conveyance of information from the licensee to a patient under the licensee's care in the form of treatment or advice.
  - "Misinformation" means false information that is contradicted by contemporary scientific consensus to an extent where its dissemination constitutes gross negligence by the licensee.
  - "Physician and surgeon" means a person licensed by the MBC or OMBC.
- States legislative findings and declarations related to the spread of misinformation and disinformation about COVID-19 vaccines.

**Staff Comments:** The boards and bureaus within the Department of Consumer Affairs are special fund agencies whose activities are funded by regulatory and license fees and generally receive no support from the General Fund. New legislative mandates,

even those modest in scope, may in totality create new cost pressures and impact the entity's operating costs, future budget requests, or license fees.

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