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California Doctors Sue Gov. Newsom and Calif. Medical Board over New Law Censoring Medical Advice

Tracy Høeg, M.D., Ram Duriseti, M.D., Aaron Kheriaty, M.D., Pete Mazolewski, M.D. and Azadeh Khatibi, M.D. v. Gavin Newsom, Governor of California, in his official capacity; Kristina Lawson, Randy Hawkins, Laurie Rose Lubiano, Michelle Anne Bholat, David E. Ryu, Ryan Brooks, James M. Healzer, Asif Mahmood, Nicole A. Jeong, Richard E. Thorp, Veling Tsai, and Eserick Watkins, in their various official capacities as officers and members of the Medical Board of California; and Rob Bonta, Attorney General of California, in his official capacity.

Washington, DC (November 2, 2022) - A new California law signed by Governor Gavin Newsom empowers the Medical Board of California to discipline physicians who “disseminate” information regarding Covid-19 that departs from the “contemporary scientific consensus.” The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [complaint](#) and [motion for a preliminary injunction](#) in *Høeg, et al. v. Newsom, et al.*, asking the U.S. District Court for the Eastern District of California to prevent AB 2098 from going into effect.

NCLA represents five physicians licensed by the Medical Board of California (MBC), most of whom treat patients on a regular basis. Drs. Hoeg, Duriseti, Kheriaty, Mazolewski, and Khatibi allege [Assembly Bill \(AB\) 2098](#), signed into law on September 30, 2022, violates their First Amendment rights to free speech and their Fourteenth Amendment rights to due process of law. The law not only interferes with the ability of doctors and their patients to freely communicate, but it has already been used as a weapon to intimidate and punish doctors who dissent from mainstream views. Several Plaintiffs have experienced threats from other doctors and individuals on social media to use AB 2098 to have their licenses taken away, an obvious attempt to suppress the doctors’ speech. They are being put between a rock and a hard place, fearing repercussions for acting in their patients’ best interests by honestly giving them the information they believe their patients need in order to make informed care decisions.

In safeguarding Americans’ rights to free speech and expression, the First Amendment applies not only to the expression of majority opinions, but to minority views as well. U.S. Supreme Court and Ninth Circuit precedents highly protect speech uttered in the context of the doctor-patient relationship, recognizing a state interest in free and open communication between doctors and patients. AB 2098 deprives Plaintiffs’ patients of their First Amendment rights to receive advice and hear treatment options unfettered by professional discipline fears.

The term “contemporary scientific consensus” is undefined in the law and is arguably undefinable, which violates Plaintiffs’ Fourteenth Amendment rights to due process of law. Practically speaking, no doctor can know, at any given time, the “consensus” of doctors and scientists on various matters related to prevention and treatment of Covid-19. AB 2098 is thus also void for vagueness. Even if consensus could be defined and known, scientific and medical progress is made when doctors can use their own judgment based on their knowledge, experience, and research, and their patients’ individual circumstances. They should not be bound by a so-called consensus that will always lag the science. AB 2098 also subjects Plaintiffs to discipline and negative professional consequences (including loss of license) for conveying non-consensus messages to their patients. For this reason, the new law practices viewpoint discrimination and creates a severe chilling effect, in direct violation of the First Amendment.

The district court should rule AB 2098 unconstitutional and prevent the government and MBC from enforcing it.

NCLA released the following statements:

“California’s new ‘misinformation’ law is the result of an increasingly censorious mentality that has gripped many lawmakers in this country. That this shocking bill passed through the state legislature and was signed into law by Governor Newsom demonstrates that far too many Americans do not understand the First Amendment. Our country has a strong historical commitment to free and open debate and to protect the ability of those who dissent from the government’s view to express their own opinions. We have no doubt that courts will see this unconstitutional law for what it is and strike it down.”

— **Jenin Younes, Litigation Counsel, NCLA**

“Beyond being an unconstitutional infringement on physicians’ First Amendment rights, the law will interfere with the sacred doctor-patient relationship. As physicians, it is our duty to be honest and transparent with our patients. The text of AB 2098 ironically already contains false information about Covid-19 vaccine effectiveness. Physicians will find themselves in a very difficult position of needing to choose between saying what they truly believe, saying what they think the medical board wants them to say, or simply staying silent. This law will have a poisonous effect on the doctor-patient relationship by diminishing patients’ trust in their doctors and by disincentivizing full honesty from doctors, making their job of caring for patients to the best of their ability even more challenging.”

— **Tracy Høeg, M.D., Lead Plaintiff, *Tracy Høeg, M.D., et al. v. Gavin Newsom, et al.***

“AB 2098 is unconstitutional, infringing the First Amendment free speech rights of physicians and harming the doctor-patient relationship. A physician with a gag order is not a physician you can trust. Progress in science and medicine will be stifled by this law, which will drive good physicians out of California, ultimately harming patients.”

— **Aaron Kheriaty, M.D., Plaintiff, *Tracy Høeg, M.D., et al. v. Gavin Newsom, et al.***

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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