

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 17, 2013
ATTENTION: Members, Medical Board
SUBJECT: Summary of the Gag Clause for Physicians
STAFF CONTACT: Linda Whitney, Executive Director and
Renee Threadgill, Chief of Enforcement

History of Gag Clause Legislation:

2003/04 – Assembly Member Correa introduced AB 320. This bill would prohibit a licensee, or an entity acting on behalf of a licensee, which licensee is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs from including, or permitting to be included, a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. This bill passed out of the legislature but was vetoed by the Governor.

2005 - Assembly Member Negrete McLeod introduced AB 446. This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil action to pay additional moneys to the benefit of any plaintiff in the civil action. This bill passed out of the legislature but was vetoed by the Governor.

2006 – Assembly Member Negrete McLeod introduced AB 2260, sponsored by the Medical Board of California. This bill addressed revisions to the special programs (B&P 2111, 2113, 2168) and the gag clause, as follows. This bill would prohibit a physician and surgeon from including certain provisions in an agreement to settle a civil dispute arising from his or her practice that interferes with communications, as specified, between the board and another party to the dispute. The bill would make the violation of this requirement subject to disciplinary action by the board. This bill was signed into law on 9/28/06, effective on 1/1/07.

Business and Professions Code section 2220.7 provides (commonly referred to as prohibition against gag clause or confidentiality agreement):

- “(a) A physician and surgeon shall not include or permit to be included any of the following provision in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after filing the action:
- (1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.
 - (2) A provision that prohibits another party to the dispute from filing a complaint with the board.
 - (3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.
- (b) A provision described in subdivision (a) is void as against public policy.
(c) A physician and surgeon who violates this section is subject to disciplinary action by the board.”

The board has taken several actions against licensees since this law was enacted.