

March 7, 2021

SB2060

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Dear House Industry, Business, and Labor Committee,

Chair and Representatives, there are parts of this bill that I am in direct opposition to. Much is clarification which is fine. However I will address only the parts I am opposed to. I will be brief:

43-06-04.1.3 - Pg 5 line 8 -- The board may impose a civil penalty not exceeding ten thousand dollars **per violation** as a result of the disciplinary proceedings.

Page 12 line 27 and

- Per incident:

This can mean that if, for example, chart notes are not 100% pristine or a form isn't exactly how it is "judged" it should be, that a person could be literally driven out of business for errors they don't even intentionally make and are irrelevant to patient satisfaction and quality of care. (and I've had this conversation with others where the board HAS done this...).

Example: 50 chart notes deemed insufficient—this would mean a \$500,000 fine for that doctor. (that happened to a ND DC as I've been told). Medicare patients pay around \$23 per visit. They are basically charity cases for us, as we about break even with what it costs us to take care of them with overhead expenses. We do it because they need help. I have a compliance officer who I pay to help me remain compliant. However what happens if even that is not deemed adequate? Am I subject to a complaint? If so, these "charity" cases would drive me out of business.

2nd example: The board refuses to proactively approve marketing ads before they are sent out, even when submitted to them prior. They make you get the complaint before they give approval/disapproval. Let's say the board does not like wording on a mailer ad. 5000 mailers go out—500,000,000 million dollar fine? That is excessive and unfair, especially when practitioner does their best to do things ethically and the right way, without any harm done or intended.

- Instead of "per incident" - A potential remedy would be to say **\$10000 PER CATEGORY of infraction** (e.g. "standard of documentation/standard of care CATEGORY of infraction).
- The \$10,000 per infraction is listed twice- clarify that this is not \$10,000 twice (\$20,000). As well as decrease it to \$5000

43-06-04.1.1.h Page 6 Line 3

- "Any other rules or regulations as may be necessary to give this chapter full force and effect."

This single line gives unchecked power to the board. It allows the board to make up any and all rules they want as they go. **Please ask them what is the purpose of this and why was it added? And how they will ensure this is not used to target practitioners they don't like,** or their competition down the street. Don't rules and regulations need to be approved by the legislative body?

43-06-15.8.f(1) P12 line 23

- Require payment of all costs of proceedings resulting in a disciplinary action, **including administrative costs, investigation costs, attorney's fees, peer review committee costs, witness costs and fees, the costs of the offices of administrative hearings services, and court costs**

Here's the problem: Lets say the board wants to fine a doctor his license and 1million dollars. The doctor is innocent so he fights it and it is deemed that the doctor was mostly free from infraction but there was one that ends up being a \$10000 fine due to "any other rules and regulations" inserted at will. But through the different avenues and the zealous pursuit of "something" to pin on the doctor, the board incurs \$100,000 in expenses. SO now the doctor needs to come up with \$100,000 to pay the board's costs because, since there technically was a "disciplinary action"? Or for a "t" that wasn't crossed correctly?

This makes it really hard for doctors in private practice to stand up when they know they didn't do anything wrong, and just take the penalties that the board doles out.

Furthermore it is an open checkbook on the doctor's dime. What is to keep the board responsible with costs of investigating? If all they need is one small "violation" resulting in "disciplinary action" and the doctor is liable for all their costs. Seems like leverage to scare a practitioner away from defending themselves and just taking their whipping instead, even if innocent.

Please request clarification of 43-06-04.1.3 prior to any approval.

Please demand removal of line 43-06-04.1.1.h prior to approval.

Please request clarification and confines to 43-06-15.8.f(1) to ensure responsible use of funds and avoid overzealous pursuit and overreach.

I'm happy to answer any questions you may have.

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