

RESOLUTION 6-10-2003

DIGEST

Consumer Protection: Effect of Out-Of-State Discipline on California Licensee

Amends Business and Professions Code section 141 to prohibit disciplinary actions against California professionals based on out-of-state discipline and amends both sections 141 and 2305 to require any California discipline run concurrent with the out-of-state discipline.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Business and Professions Code section 141 to prohibit disciplinary actions against California professionals based on out-of-state discipline and amends both sections 141 and 2305 to require any California discipline run concurrent with the out-of-state discipline. This resolution should be disapproved because it would interfere with the California licensing board's obligation to protect consumers.

Currently, under section 141, California licensing boards may bring a disciplinary action against a licensee based solely on the fact that another state or federal agency has taken disciplinary action against that licensee. Section 2305 provides the same authority to the Medical Board of California regarding doctors, but limits the discipline imposed to behavior that "would have been grounds for discipline in California." As a result, the Medical Board relies on the broader authority of section 141 to impose discipline it cannot impose under section 2305. (See *Medical Board of California v. Superior Court* (2001) 88 Cal.App.4th 1001.)

This resolution seeks to foreclose all California licensing boards from using this broader basis for discipline and restrict reliance on non-California discipline to conduct that would be grounds for discipline in California. Such a limitation "would render without consequence out-of-state discipline where the basis for that discipline cannot be determined with precision, because, for instance, it was resolved by stipulation, and no charging documents had been made part of the record." (*Id.* at 1019.) Consequently, California consumers will be left unprotected from a variety of incompetent or unethical licensees acting under the apparent aegis of a state license.

This resolution also adds language to both sections 141 and 2305 requiring any California discipline to run "concurrent" to the non-California discipline on which it was based. California authorities should not be limited in their ability to impose the types and lengths of punishment they determine to be appropriate for the specific offense committed. There is no valid reason to require California to adopt the values and decisions of other jurisdictions.

Finally, this resolution adds language to both sections 141 and 2305 directing the licensing board to "avoid a duplication" of discipline. This provision is so vague as to be unenforceable.

The Medical Board of California and the Department of Consumer Affairs should be able to act against potentially dangerous licensees with broad discretion. Approval of this resolution would not protect the consumer so much as reduce the ability of the state to do so, giving less protection to consumers and patients and more to medical providers who have faced disciplinary charges in other jurisdictions.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code sections 141 and 2305 to read as follows:

1 §141

2 (a) For any licensee holding a license issued by a board under the jurisdiction of the
3 department, a disciplinary action taken by another state, by any agency of the federal government, or
4 by another country for any act substantially related to the practice regulated by the California license,
5 may be a ground for disciplinary action by the respective state licensing board if such conduct
6 independently would have been a basis for discipline of the licensee under California law.
7 Disciplinary action under this section shall be subject to the applicable statute of limitations relating
8 to the conduct. A certified copy of the record of the disciplinary action taken against the licensee by
9 another state, an agency of the federal government, or another country shall be conclusive evidence
10 of the events related therein.

11 (b) Nothing in this section shall preclude a board from applying a specific statutory
12 provision in the licensing act administered by that board that provides for discipline based upon a
13 disciplinary action taken against the licensee by another state, an agency of the federal government,
14 or another country.

15 (c) Any disciplinary action taken by the California licensing board pursuant to these
16 provisions shall run concurrent rather than consecutively to the disciplinary action taken by the other
17 state, agency of the federal government, or other country, and whenever feasible, should avoid a
18 duplication of effort by the licensee and accord credit for any special disciplinary requirements the
19 licensee has met in complying with the other discipline, unless extenuating circumstances or other
20 good cause exists.

21
22 §2305

23 (a) The revocation, suspension, or other discipline, restriction or limitation imposed by
24 another state upon a license or certificate to practice medicine issued by that state, or the revocation,
25 suspension, or restriction of the authority to practice medicine by any agency of the federal
26 government, that would have been grounds for discipline in California of a licensee under this
27 chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the
28 licensee in this state.

29 (b) Any disciplinary action taken by the California licensing board pursuant to these
30 provisions shall run concurrent rather than consecutively to the disciplinary action taken by the other
31 state, agency of the federal government, or other country, and whenever feasible, should avoid a
32 duplication of effort by the licensee and accord credit for any special disciplinary requirements the
33 licensee has met in complying with the other discipline, unless extenuating circumstances or other
34 good cause exists.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Permits the Medical Board of California to discipline physicians and surgeons based merely on the fact of the Board learning that the California-licensed physician had been disciplined by another jurisdiction, and the finding that the “act substantially related to the practice regulated by the California licensee,” even if the practitioner would not otherwise be subject to discipline in California

under the Medical Practice Act. The MPA specifies the area in which the Board has jurisdiction to institute disciplinary proceedings, subject to certain procedural protections and a statute of limitations, mindful that Board proceedings are considered regulatory in nature, not punitive. A similar provision appears in the MPA specifically applicable to physicians and surgeons, Section 2305 of the Business and Professions Code. Whereas the broad scope of Section 141 applies to all licensed professionals in California, Section 2305 applies to medical doctors, with more narrowly drawn scope.

This Resolution: Endeavors to bring Section 141 into line with Section 2305 and the MPA, rather than expanding the Board's jurisdiction with plenary and subjective authority in such cases with the power to punitively proceed against physicians over matters that are not specifically subject to Board discipline under the provisions of the MPA, including acts from the distant past which would be time-barred under California law over matters. The amendment does not preclude the Board from taking action if the report from the other jurisdiction reflects a violation by the California licensee of California's MPA for which disciplinary intervention would lie in California. It also directs that the California licensing agencies should avoid duplication of effort by the licensee concerning the disciplinary action requirements for which the licensee is already obliged by the other jurisdiction, and to avoid stacking of terms beyond those otherwise applicable to his license, unless circumstances or good cause exists to otherwise impose a redundancy of effort or an extended term.

The Problem: Upon receiving reports from other jurisdictions that action has been taken against a California-licensed physician, the MBC typically reacts with the filing of an accusation alleging causes for discipline based on Section 141 as well as Section 2305 of the Business and Professions Code. The broad language of Section 141 allows the Board to individually proceed against a doctor even if not a statutorily proscribed act under the MPA of California and even if not actionable under the statute of limitations seeking to prevent discipline based on stale matters not bearing on present fitness to practice one's profession. To the extent Section 141 endeavors to embrace within the ambit of "disciplinary action taken by another" jurisdiction convictions of "any offense related to the qualifications, functions, or duties of a physician and surgeon," Section 2236 already addresses this by declaring such convictions "unprofessional conduct" within the meaning of the chapter regulating doctors for which discipline lies. Current law also permits stacking of discipline onto the other jurisdiction's terms, and even a duplication of effort by the licensee, which is unfair, unwarranted and more punitive than legitimate regulatory pursuit.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Joel Bruce Douglas

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This legislation would further restrict the Medical Board's ability to discipline doctors (or other licensed individuals under section 141) for behavior which may have an impact on protecting California patients/consumers.