

Federal Judge Issues Order Temporarily Blocking California COVID 'Misinformation' Law



A federal judge [issued a preliminary injunction](#) on Wednesday against a controversial law in California that allows the state's medical boards to discipline physicians who "disseminate" information regarding COVID-19 that departs from the "contemporary scientific consensus."

In his [ruling](#), Senior Judge William B. Shubb of the U.S. District Court for the Eastern District of California found Plaintiffs had standing to challenge the law and that "contemporary scientific consensus" lacks an established meaning within the medical community.

Because the term 'scientific consensus' is so "ill-defined and vague," the plaintiffs in the lawsuit are "unable to determine if their intended conduct contradicts the scientific consensus, and accordingly what is prohibited by the law,"

the [judge wrote](#).

The law, known as [Assembly Bill 2098](#), took effect on Jan. 1, 2023, and applies to information regarding the nature and risks of the virus, its prevention and treatment, and the development, safety, and effectiveness of COVID-19 vaccines.

A group of five California physicians [filed a lawsuit](#) in November against California Gov. Gavin Newsom's administration, saying the law violates their First Amendment rights and constitutional right to due process. Plaintiffs are represented by the [New Civil Liberties Alliance](#) (NCLA).

Plaintiff [Dr. Aaron Kheriaty](#) broke the news of the ruling in a series of tweets:

"Judge just granted our request for a preliminary injunction against AB 2098—the gag order on physicians in CA—in our Hoeg v. Newsom lawsuit. This effectively halts the implementation of this terrible law while our case is being tried.

"The ruling bodes well for our case: It indicates that our arguments that this law is unconstitutional have strong pre-trial facial plausibility. Not to get ahead of ourselves, of course, or try to predict the final outcome of the case, but this is a very positive development.

"So grateful to be a part of this superb and courageous team of doctors and lawyers fighting for medical freedom and informed consent in CA [. . .].

"One more detail here: The preliminary injunction ruling also establishes that we five physicians have standing to challenge the law. This is important because a similar challenge filed against AB 2098 was dismissed based on a ruling that the plaintiffs lacked standing."

During oral arguments, defense counsel declined to explain what specific conduct the law may prohibit, and the statute

itself provides no clarity on the term's meaning, leaving open multiple important questions, the ruling states.

Judge Shubb, in his ruling, wrote:

“For instance, who determines whether a consensus exists to begin with? If a consensus does exist, among whom must the consensus exist (for example, practicing physicians, or professional organizations, or medical researchers, or public health officials, or perhaps a combination)? In which geographic area must the consensus exist (California, or the United States, or the world)?

“What level of agreement constitutes a consensus (perhaps a plurality, or a majority, or a supermajority)? How recently in time must the consensus have been established to be considered “contemporary”? And what source or sources should physicians consult to determine what the consensus is at any given time (perhaps peer-reviewed scientific articles, or clinical guidelines from professional organizations, or public health recommendations)? The statute provides no means of understanding to what “scientific consensus” refers.”

The [NCLA argued](#) the term “contemporary scientific consensus” is “undefined in the law and undefinable as a matter of logic.”

“No one can know, at any given time, the “consensus” of doctors and scientists on various matters related to the prevention and treatment of COVID-19,” the NCLA [said in a statement](#). Judge Shubb agreed with this analysis, stating, “COVID-19 is such a new and evolving area of scientific study, it may be hard to determine which scientific conclusions are ‘false’ at a given point in time.”

Plaintiffs said the law prevents them from communicating freely with patients or treating them properly—according to their best judgment—when they fear being reported and

potentially subject to discipline for giving a patient advice that departs from a supposed “scientific consensus.” Other physicians [have argued](#) the law would prevent a patient from seeking a second opinion – because a doctor, in essence, would not be able to hold an alternative opinion.

The very concept of “scientific consensus” is problematic and represents a misunderstanding of the scientific process, the [NCLA said](#).

“This Act is a blatant attempt to silence doctors whose views, though based on thorough scientific research, deviate from the government-approved ‘party line,’ [said Dr. Greg Dolan](#), senior litigation counsel for the NCLA. “At no point has the state of California been able to articulate the line between permissible and impermissible speech, further illustrating how problematic the statute is. NCLA is pleased the Court recognized all the problems with AB2098 and enjoined this unconstitutional law.”