AB 2570 (Hill) – Licensees: Settlement Agreements

Introduced February 24, 2012

This bill would prohibit licensees of any board, bureau or program under the Department of Consumer Affairs (DCA) from including any "regulatory gag clause" in civil settlement agreements. Specifically, this bill:

1) Provides that no licensee who is regulated by a board, bureau, or program within DCA, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the DCA, board, bureau, or program or that requires the other party to withdraw a complaint from the DCA, board, bureau, or program.

2) Provides that a provision of the nature as described above is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

3) Provides that any board, bureau, or program within the DCA that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

4) Specifies that the term "board" means the board in which the administration of the above provisions are vested, and unless otherwise expressly provided, shall include bureau, commission, committee, department, division, examining committee, program, and agency, and specifies that "license" means license, certificate, registration, or other means to engage in a business or profession.

According to the author, "Regulatory gag clauses inhibit the ability of regulatory agencies to comprehensively and conscientiously perform their oversight function. The regulatory boards of the DCA cannot adequately 'protect consumers from unscrupulous and unqualified individuals' (quote from the DCA website) if they are unable to communicate with individuals filing complaints or who have been victimized. Furthermore, pressuring aggrieved consumers and injured parties into agreeing to such clauses enables potentially dangerous licensees to continue operating.

"Settlement agreements are an important and valuable mechanism for parties to willingly resolve differences. However, the inclusion of gag clauses into settlement agreements allows a perilous veil of secrecy to envelop licensees. Denying regulators

the ability to exercise their disciplinary discretion not only allows the conduct to continue, but potentially endangers future consumers."

A regulatory gag clause requires a plaintiff to agree, as a condition of a malpractice or misconduct settlement with the licensee, to the inclusion of a provision prohibiting the plaintiff from contacting or cooperating with the defendant's regulator (or requiring the plaintiff to withdraw a pending complaint before that regulator). A regulatory gag clause is not to be confused with secret settlements, which are agreements that make certain types of information in a settlement agreement confidential and preclude that information from being introduced as evidence in a court action. Prohibiting regulatory gag clauses does not prohibit, or affect, the ability of parties to a civil action to agree to a secret settlement, regardless of whether or not either party is required to hold a professional license issued by DCA. Prohibiting regulatory gag clauses merely prohibits professionals licensed by DCA from hiding activities related to their license from DCA.

ASSEMBLY BILL No. 2570

Introduced by Assembly Member Hill
(Coauthor: Senator Correa)

February 24, 2012

An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, as introduced, Hill. Licensees: settlement agreements.

Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 143.5 is added to the Business and
2 Professions Code, to read:
3 143.5. (a) No licensee who is regulated by a board, bureau, or
4 program within the Department of Consumer Affairs, nor an entity
5 or person acting as an authorized agent of a licensee, shall include
6 or permit to be included a provision in an agreement to settle a
7 civil dispute, whether the agreement is made before or after the
8 commencement of a civil action, that prohibits the other party in
9 that dispute from contacting, filing a complaint with, or cooperating
10 with the department, board, bureau, or program or that requires
11 the other party to withdraw a complaint from the department,
12 board, bureau, or program. A provision of that nature is void as
13 against public policy, and any licensee who includes or permits to
14 be included a provision of that nature in a settlement agreement
15 is subject to disciplinary action by the board, bureau, or program.
16 (b) Any board, bureau, or program within the Department of
17 Consumer Affairs that takes disciplinary action against a licensee
18 or licensees based on a complaint or report that has also been the
19 subject of a civil action and that has been settled for monetary
20 damages providing for full and final satisfaction of the parties may
21 not require its licensee or licensees to pay any additional sums to
22 the benefit of any plaintiff in the civil action.
23 (c) As used in this section, "board" shall have the same meaning
24 as defined in Section 22, and "licensee" means a person who has
25 been granted a license, as that term is defined in Section 23.7.

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