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Malpractice Settlement Bill Clears Key Calif. Panel

Jeff Chorney
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A bill that chips away at confidentiality agreements in malpractice settlements cleared a key Assembly committee Tuesday with bipartisan support.

AB 320 would forbid anyone regulated by a state professional board, including doctors, accountants and contractors, from signing malpractice settlements that include prohibitions against the plaintiff talking to state regulators.

The bill's author, Assemblyman Lou Correa, D-Santa Ana, Calif., said regulators are often stymied in their attempts to discipline professionals who commit egregious errors or have a history of screwing up. To protect other consumers, Correa believes people who file suits should be able to tell their stories to regulators without fearing they'd lose their settlements.

But medical malpractice defense lawyers warn that taking away such "gag clauses" could cause more cases to go to trial.

Although the bill would affect a variety of professional boards under the Department of Consumer Affairs, the main focus has been on doctors. The California Medical Board supports the measure, and the board's chief of legislation, Linda Whitney, testified at Tuesday's hearing in front of the Assembly Business and Professions Committee, which Correa chairs.

Board investigators can already get access to depositions and other malpractice lawsuit evidence through subpoenas. The board learns of lawsuits from insurance companies and doctors, which are required to report most malpractice claims. But

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Whitney said Correa's bill would make investigations easier.

"A lot of [discipline] cases are closed because there isn't clear and convincing evidence," Whitney said.

Correa went out of his way to explain that he didn't intend to do away with confidentiality clauses. But he admitted that perception could cause him problems as the bill moves through the Legislature.

One reason is that tort reformers and insurance interests are wary of just about anything supported by the plaintiffs bar.

Indeed, Consumer Attorneys of California President-elect Sharon Arkin, of Robinson, Calcagnie & Robinson in Newport Beach, testified in support of the bill. She later explained that Correa's idea was "very coherent" with the plaintiffs attorneys' goal of doing away with confidentiality agreements, especially in medical malpractice cases.

But as yet there is no significant opposition to the bill. In fact, no one voted against the bill Tuesday, and at least six members of Correa's committee asked to sign on as co-authors, including at least one Republican.

But Richard Carroll of Long Beach's Carroll, Kelly, Trotter, Franzen & McKenna, which exclusively does medical malpractice defense, warned of an increase in cases going to trial if Correa's bill passes. Carroll said provisions against talking to regulators are an important incentive for doctors to sign settlements.

"It's not bad for me as a lawyer, [but] I'd hate to see cases that could settle go to trial," Carroll said.

But Arkin disagreed. If the law is changed, agreeing to keep regulators in the dark is "simply no longer a chip that's on the table" in settlement talks, she said.