



## AMA Journal of Ethics®

March 2023, Volume 25, Number 3: E210-218

### MEDICINE AND SOCIETY: PEER-REVIEWED ARTICLE

#### How Should State Licensing and Credentialing Boards Respond When Government Clinicians Spread False or Misleading Health Information?

Allison M. Whelan, JD, MA

##### Abstract

The spread of health misinformation by health care professionals who also hold government positions represents a long-standing problem that intensified during the COVID-19 pandemic. This article describes this problem and considers legal and other response strategies. State licensing and credentialing boards must use their authorities to discipline clinicians who spread misinformation and to reinforce the nature and scope of professional and ethical obligations of government and nongovernment clinicians. Individual clinicians must also play an important role by actively and vigorously correcting misinformation disseminated by other clinicians.

*The American Medical Association designates this journal-based CME activity for a maximum of 1 AMA PRA Category 1 Credit™ available through the AMA Ed Hub™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.*

##### Introduction

The American public expresses a relatively high degree of trust in health care professionals (HCPs), although the degree of that trust varies among different demographics.<sup>1,2,3,4,5</sup> With such trust comes a responsibility to not misuse or abuse that trust in ways that harm individual and public health. Among other things, this responsibility requires that HCPs ensure the accuracy of the health information they disseminate to patients and the public at large.

Health misinformation is not a new phenomenon, but it spread “at unprecedented speed and scale” during the COVID-19 pandemic, facilitated in part by social media and the 24/7 news cycle.<sup>6</sup> The term *misinformation* proves difficult to define with precision, and what constitutes misinformation can change over time as new evidence becomes available. For purposes of this article, misinformation includes information that is demonstrably false, inaccurate, based on insufficient or poor-quality data, or misleading according to the best available evidence.<sup>6,7</sup> It can also include deliberately overstating the certainty of the evidence about a particular issue.

Misinformation has many sources—including members of the lay public as well as the medical profession. This article focuses on government clinicians, defined as individuals

with health care-related degrees or training who are also vested with government authority. Government clinicians need not hold an active license to practice medicine and their medical training may or may not be relevant to their government positions. Their medical backgrounds, however, are known to the public and may be leveraged or even weaponized to inflate the credibility of their statements about science, medicine, and health.

Health misinformation spread by government clinicians raises important questions about whether and how to regulate such misinformation. This article explores this issue and concludes that state licensing boards and professional societies must take more robust and affirmative actions against government clinicians who spread health misinformation. Additionally, they should develop explicit professional obligations to discourage and counteract misinformation. To have the greatest impact, these obligations must also extend to nongovernment clinicians, and individual clinicians must play an active role in **countering misinformation** spread by fellow clinicians.

### **Misinformation Spread by Government Clinicians**

During the COVID-19 pandemic, government clinicians made statements that were misinformed at best and false or even dangerous at worst. For example, as the United States experienced a spike in COVID-19 cases in October 2020, Scott Atlas—a radiologist by training, adviser to President Trump, and member of the White House Coronavirus Task Force—tweeted, “Masks Work? NO,” along with misrepresentations about the science behind the effectiveness of masking.<sup>8</sup> This tweet contradicted guidance from the Centers for Disease Control and Prevention (CDC) and was removed by Twitter for violating its policy against sharing false or misleading COVID-19 information that could lead to harm.<sup>8</sup> Atlas espoused many controversial and questionable positions about COVID-19, clashing frequently with public health officials. Among other things, he promoted a disputed and potentially dangerous approach to herd immunity, suggesting it could be achieved by allowing the virus to spread among healthy Americans.<sup>9,10</sup> Many public health experts believed such an approach could result in the deaths of hundreds of thousands, if not millions, of Americans.<sup>10</sup> Officials from the World Health Organization (WHO) called such a strategy “very dangerous.”<sup>11</sup>

Throughout the pandemic, US Senator Roger Marshall, an obstetrician-gynecologist by training, regularly went unmasked at campaign events, said he used hydroxychloroquine to prevent COVID-19 despite warnings from the US Food and Drug Administration (FDA) against using the drug as a preventative, proposed legislation to ban vaccine mandates, and disputed guidance that people who have had COVID-19 should get vaccinated.<sup>12</sup> Senator Marshall ensures that the public knows he is a physician by, for example, putting “Doc” in the letterhead of his US Senate office’s news releases and using “MD” in his Twitter handle.<sup>12,13,14</sup>

Mark McDonald is a California psychiatrist who, although not a government official, advised Florida Governor Ron DeSantis on the state’s pandemic response.<sup>15</sup> McDonald espoused many controversial positions throughout the pandemic, including that ivermectin was an “effective, safe, inexpensive treatment” for COVID-19, despite many public health agencies and medical professionals warning against the use of ivermectin as a COVID-19 treatment.<sup>15</sup> Misinformation about ivermectin resulted in increased demand for the drug and caused a spike in calls to poison centers throughout the country due to its improper use.<sup>15</sup>

These are just a few examples of government clinicians spreading what arguably qualifies as **health misinformation about COVID-19**. More egregious examples of misinformation can be found in statements by nongovernment clinicians, such as a San Francisco physician who stated that 5G networks cause COVID-19.<sup>16,17</sup>

Misinformation from government clinicians also extends beyond COVID-19. In 2015, for example, Senator Rand Paul, an ophthalmologist by training, misleadingly stated that “many” children have developed “profound mental disorders” due to vaccines, a claim refuted by the weight of scientific evidence.<sup>18</sup>

Health misinformation risks serious consequences for individual and public health.<sup>19</sup> During the COVID-19 pandemic, misinformation “caused confusion and led people to decline COVID-19 vaccines, reject public health measures such as masking and physical distancing, and use unproven treatments.”<sup>6</sup> When misinformation comes from authority figures, the consequences are potentially more profound.<sup>20,21</sup> Authority bias, for example, can cause individuals to “attribute more significance to statements from authority figures even in regard to areas beyond the scope of their authority.”<sup>22</sup> Government clinicians hold positions of authority, and their medical credentials bolster their perceived authority and expertise on matters of health. The significant harms of misinformation make it a pressing issue that demands attention and action.

### **Government Regulation of Misinformation**

Freedom of speech is not absolute, but regulating speech is fraught with legal challenges and controversies. Regulating misinformation proves particularly challenging during rapidly evolving situations, such as the COVID-19 pandemic, when it is difficult to determine what constitutes misinformation vs legitimate uncertainty. Indeed, new information requires government health officials to revise guidance, and the revised guidance may at times contradict prior recommendations, as illustrated by the US government’s initial advice that masks were not necessary to protect the general public from COVID-19.<sup>23</sup> After discouraging healthy Americans from wearing masks during the initial weeks of the pandemic, the CDC reversed course and recommended that all people wear face coverings while in public.<sup>23</sup>

This article does not endeavor to comprehensively analyze the First Amendment rights of clinicians, a nuanced and complicated issue. In short, there are many potential constraints on regulating government clinicians’ speech through state and federal laws. The extent to which their speech can be regulated depends, in part, on how the speech is categorized.<sup>19,24,25</sup> Is the government clinician speaking as a medical professional, a government official or employee, or a private citizen? Is the speech commercial speech, political or ideological speech, professional or occupational speech, or government speech? Is the government clinician speaking about a matter of public concern?<sup>19,24,25,26</sup> In certain contexts, even knowingly false speech may be protected.<sup>27,28</sup> Importantly, there are constitutional limits on the government’s authority to police a government clinician’s speech in the public sphere—such as on social media—if the clinician is speaking in their capacity as a private citizen rather than a government clinician.<sup>19,25</sup>

Regulating and restricting the speech of government clinicians would undoubtedly be subject to challenge, particularly if there is debate about whether the clinician is speaking in a public or private capacity, a line that can be especially blurry for speech on social media. The lawfulness of a restriction is highly context specific, creating uncertainty about whether a restriction would withstand judicial scrutiny in any given

case. Furthermore, some believe the American judiciary, particularly the US Supreme Court, has become increasingly protective of free speech, although the strength of that protection depends, in part, on the topic of the speech being restricted.<sup>29,30,31,32,33</sup> This uncertainty renders government enforcers and the judiciary unreliable and inconsistent mechanisms for combatting misinformation. Furthermore, there are significant questions about whether they are appropriate arbiters of what constitutes health misinformation. And importantly, in the wrong hands, restrictions can be taken to the extreme and cause more harm than good.<sup>34,35</sup> Indeed, the instinct to exert control over information, particularly in times of crisis, may be counterproductive because “[r]umor and misinformation thrive in an environment of secrecy,” whereas “an open and expressive environment fosters public trust in institutions.”<sup>34</sup>

### **State Medical Boards and Professional Self-Regulation**

Given the uncertainties of government regulation, other methods to combat misinformation spread by government clinicians must be considered. Many clinicians have done their part throughout the COVID-19 pandemic to counter misinformation.<sup>36</sup> That said, a clearer and more formal obligation remains necessary. There is no single solution to solving the problem. State medical boards, through their **licensing powers**,<sup>37</sup> and HCPs, through professional self-regulation,<sup>37,38,39</sup> both have an important role to play in the enforcement of existing standards and obligations.

State medical boards determine whether HCPs meet recognized standards of professional conduct. While state laws vary, unprofessional conduct often includes “dishonesty.”<sup>37</sup> Thus, in appropriate circumstances, a state medical board may discipline a licensed HCP who spreads misinformation when the board determines that the misinformation meets its state’s definition or interpretation of dishonesty. Such discipline may include suspending or revoking the HCP’s license.<sup>40</sup> There are, however, a number of limitations to relying solely on state medical boards to combat misinformation spread by HCPs. First, while discipline may be possible in some states, disciplinary actions against physicians—for any reason—are rare.<sup>41</sup> Second, medical boards—as entities of the state—may also run into the First Amendment challenges mentioned above. And third, the threat of discipline will be an inadequate deterrent for government clinicians who do not practice or have an active license to practice.

Nevertheless, for clinicians who are licensed, state licensing and credentialing boards should provide further clarity about what constitutes dishonesty and explicitly state that spreading health misinformation to individual patients or the public may provide grounds for discipline. Importantly, state medical boards should commit to more robust enforcement of state licensing standards by taking disciplinary actions against HCPs who fall short of these standards by spreading health misinformation. State medical boards should also consider publishing fact-checks of statements made by government clinicians who are or have been licensed.

Professional self-regulation, which does not require that those disciplined have an active license, can also help combat misinformation spread by government clinicians. Professional self-regulation can occur in many ways, such as through counteracting public statements or reprimands issued by professional organizations like the American Medical Association (AMA), various board certification organizations like the American Academy of Pediatrics, and individual clinicians. Individual clinicians have an important, yet often overlooked, role to play in combatting misinformation. This article asserts that government and nongovernment clinicians have professional and ethical obligations not

only to avoid spreading misinformation but also to actively and vigorously correct misinformation spread by other government and nongovernment clinicians, as well as other sources. While the second obligation need not require clinicians to actively seek out misinformation to correct, it would obligate them to correct or report any misinformation of which they become aware.

Highest priority should be given to correcting misinformation that is demonstrably false or that presents a significant threat or potential threat to public health and safety. In high-priority cases, state medical boards should be involved to determine an appropriate disciplinary response if the clinician spreading misinformation holds an active license. In cases that are less clear—of which there will be many, given the inherent difficulty in defining misinformation—instead of formal discipline, such as license suspension or revocation, greater reliance should be placed on public reprimand and on state medical boards, professional organizations, and individual clinicians counteracting such statements. These counteracting statements should refute the misinformation and provide the public with the best available evidence on the particular issue.

Existing ethical principles support these obligations. The AMA's Principles of Medical Ethics, for example, state:

1. "A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities."<sup>42</sup> This principle supports clinicians' obligations to not spread misinformation and to "report" clinicians who do spread misinformation. Broadly interpreted, "reporting" a clinician could include issuing public statements and leveraging the media to counteract the misinformation with accurate information based on the best available evidence.
2. "A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, [and] make relevant information available to patients, colleagues, and the public."<sup>42</sup> In line with this principle, clinicians should correct misinformation and provide accurate information to "advance scientific knowledge."<sup>42</sup>
3. "A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health."<sup>42</sup> To abide by this principle, clinicians should avoid making statements that are not supported by the best available evidence and should play an active role in countering misinformation from other clinicians in order to contribute to "the improvement of the community" and for the "betterment of public health."<sup>42</sup>

Government clinicians are also subject to ethical standards applicable to government employees set forth in various laws, regulations, and policies. These include "ensur[ing] that every citizen can have complete confidence in the integrity of the Federal government"<sup>43</sup> and "disclos[ing] waste, fraud, abuse, and corruption to appropriate authorities."<sup>44</sup> Read broadly, these principles provide additional support for the position that government clinicians, even if they do not hold an active medical license, have an obligation to not spread misinformation and to disclose or report misinformation spread by other government clinicians.

As shown, these and other principles can be interpreted so as to support the obligations to avoid spreading misinformation and to correct misinformation. That said, this approach requires broad interpretations of existing obligations and thus remains less than ideal. Existing principles of ethics should therefore be updated to address misinformation and include these obligations explicitly. For government clinicians specifically, a separate set of ethical obligations should be developed to make clear that their positions of medical and governmental authority impose heightened responsibilities, regardless of whether they practice or hold an active license to practice.

### Conclusion

The rapid spread of health misinformation by government and nongovernment clinicians requires that government clinicians recognize their professional and ethical responsibilities to make truthful statements and to counteract misinformation spread by other clinicians. These obligations, however, do not fall solely on government clinicians. More than ever, society needs all clinicians to step up and speak up. Furthermore, professional organizations and state medical boards must make more robust use of their powers to take appropriate disciplinary action against clinicians who violate professional standards by spreading health misinformation.

Misinformation is a widespread societal problem without one clear and concise solution. Combatting misinformation requires the government, the medical profession, and the public to join forces to protect the public's health from dangerous health misinformation. Indeed, addressing health misinformation "will take more than individual efforts.... [It] will require a whole-of-society effort."<sup>6</sup> The medical profession must take a leading role in this fight.

### References

1. ABIM Foundation. Surveys of trust in the US health care system. NORC; 2021. Accessed August 17, 2022. [https://www.norc.org/PDFs/ABIM%20Foundation/20210520\\_NORC\\_ABIM\\_Foundation\\_Trust%20in%20Healthcare\\_Part%201.pdf](https://www.norc.org/PDFs/ABIM%20Foundation/20210520_NORC_ABIM_Foundation_Trust%20in%20Healthcare_Part%201.pdf)
2. Swanson E, Murphy T. High trust in doctors, nurses in US, AP-NORC poll finds. *US News & World Report*. August 10, 2021. Accessed August 17, 2022. <https://www.usnews.com/news/health-news/articles/2021-08-10/ap-norc-poll-americans-have-high-trust-in-doctors-nurses>
3. Honesty/ethics in professions. *Gallup News*. Accessed August 17, 2022. <https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx>
4. Hamel L, Lopes L, Muñana C, Artiga S, Brodie M. KFF/The Undeclared survey on race and health. Kaiser Family Foundation. October 13, 2020. Accessed August 17, 2022. <https://www.kff.org/report-section/kff-the-undeclared-survey-on-race-and-health-main-findings/#HealthCareSystem>
5. Washington J. New poll shows Black Americans put far less trust in doctors and hospitals than White people. *Andscape*. Accessed August 17, 2022. <https://theundeclared.com/features/new-poll-shows-black-americans-put-far-less-trust-in-doctors-and-hospitals-than-white-people/>
6. Murthy VH. Confronting health misinformation: the US Surgeon General's advisory on building a healthy information environment. US Department of Health and Human Services; 2021. Accessed August 17, 2022. <https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf>



7. Swire-Thompson B, Lazer D. Public health and online misinformation: challenges and recommendations. *Annu Rev Public Health*. 2020;41(1):433-451.
8. Diamond J, LeBlanc P. Twitter removes tweet from Trump coronavirus adviser that undermined importance of masks. *CNN*. October 18, 2020. Accessed August 17, 2022. <https://www.cnn.com/2020/10/17/politics/scott-atlas-face-masks-coronavirus/index.html>
9. Brumfiel G, Keith T. President Trump's new COVID-19 adviser is making public health experts nervous. *NPR*. September 4, 2020. Accessed 17, 2022. <https://www.npr.org/sections/health-shots/2020/09/04/909348915/president-trumps-new-covid-19-advisor-is-making-public-health-experts-nervous>
10. Oweremohle S, Lim D. Trump advisers consult scientists pushing disputed herd immunity strategy. *Politico*. October 6, 2020. Accessed August 17, 2022. <https://www.politico.com/news/2020/10/06/trump-herd-immunity-scientists-426911>
11. Wan W. What is herd immunity, and why are Trump officials pursuing an idea WHO calls "dangerous"? *Washington Post*. August 31, 2020. Accessed August 17, 2022. <https://www.washingtonpost.com/health/2020/08/31/herd-immunity-covid-19/>
12. Hanna J. GOP doc dispenses sketchy medical advice on virus immunity. *US News & World Report*. October 9, 2021. Accessed August 17, 2022. <https://www.usnews.com/news/health-news/articles/2021-10-09/gop-doc-dispenses-sketchy-medical-advice-on-virus-immunity>
13. About Doc. Doc Marshall, US Senator for Kansas. Accessed August 17, 2022. <https://www.marshall.senate.gov/about/>
14. @RogerMarshallMD. Accessed August 17, 2022. <https://twitter.com/RogerMarshallMD>
15. Contorno S, Wilson K. Doctor advising DeSantis promoted ivermectin to treat COVID-19 despite FDA warnings. *Tampa Bay Times*. August 28, 2021. Accessed August 17, 2022. <https://www.tampabay.com/news/florida-politics/2021/08/28/doctor-advising-desantis-promoted-ivermectin-to-treat-covid-19-despite-fda-warnings/>
16. Knight V. Will "Dr. Disinformation" ever face the music? *Kaiser Health News*. September 22, 2021. Accessed August 17, 2022. <https://khn.org/news/article/disinformation-dozen-doctors-covid-misinformation-social-media/>
17. Benen S. New Covid variant leads to new Republican conspiracy theory. *MSNBC*. November 29, 2021. Accessed August 17, 2022. <https://www.msnbc.com/rachel-maddow-show/new-covid-variant-leads-new-republican-conspiracy-theory-n1284898>
18. Levitan D. Fact check: Rand Paul repeats baseless vaccine claims. *FactCheck.org*. February 3, 2015. Updated February 4, 2015. Accessed August 17, 2022. <https://www.factcheck.org/2015/02/paul-repeats-baseless-vaccine-claims/>
19. Wu JT, McCormick JB. Why health professionals should speak out against false beliefs on the internet. *AMA J Ethics*. 2018;20(11):E1052-E1058.
20. Sinclair HC. The source of misinformation matters. *Psychology Today* blog. August 3, 2020. Accessed August 17, 2022. <https://www.psychologytoday.com/us/blog/unpacking-social-relations/202008/the-source-misinformation-matters>

21. Niburski K, Niburski O. Impact of Trump’s promotion of unproven treatments and subsequent internet trends: observational study. *J Med Internet Res*. 2020;22(11):e20044.
22. Tredinnick L, Laybats C. Evaluating digital sources: trust, truth and lies. *Bus Inf Rev*. 2017;34(4):172-175.
23. Dwyer C, Aubrey A. CDC now recommends Americans consider wearing cloth face coverings in public. *NPR*. April 3, 2020. August 17, 2022. <https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826219824/president-trump-says-cdc-now-recommends-americans-wear-cloth-masks-in-public>
24. Schweikart SJ. Constitutional regulation of speech (and false beliefs) in health care. *AMA J Ethics*. 2018;20(11):E1041-E1048.
25. Federal employee speech and the First Amendment: a know-your-rights guide. American Civil Liberties Union. Accessed August 17, 2022. [https://www.acludc.org/sites/default/files/field\\_documents/free\\_speech\\_fed\\_employees\\_kyr.pdf](https://www.acludc.org/sites/default/files/field_documents/free_speech_fed_employees_kyr.pdf)
26. Killion VL. The First Amendment: categories of speech. Congressional Research Service. Updated January 16, 2019. Accessed August 17, 2022. <https://sgp.fas.org/crs/misc/IF11072.pdf>
27. *United States v Alvarez*, 567 US 709 (2012).
28. Weinstein J. What lies ahead?: the marketplace of ideas, *Alvarez v United States*, and First Amendment protection of knowing falsehoods. *Seton Hall Law Rev*. 2020;51:135-167.
29. Thomson-DeVeux A. Chief Justice Roberts is reshaping the First Amendment. *FiveThirtyEight*. March 20, 2018. Accessed August 17, 2022. <https://fivethirtyeight.com/features/chief-justice-roberts-is-reshaping-the-first-amendment/>
30. Robertson CB, Hoffman S. Professional speech at scale. *UC Davis Law Rev*. 2022;55:2063-2132.
31. Gora JM. Free speech matters: the Roberts Court and the First Amendment. *J Law Policy*. 2016;25:63-129.
32. Brief of Law Professors as *Amici Curiae* in Support of Appellee Prison Legal News, *Prison Legal News v Secretary, Florida Department of Corrections*, No. 15-14220 (11th Cir 2015).
33. McNamara R, Sherman P. *NIFLA v Becerra*, a seismic decision protecting occupational speech. *Cato Supreme Court Rev*. 2018;197-223.
34. Karanicolas M. Even in a pandemic, sunlight is the best disinfectant: COVID-19 and global freedom of expression. *Oregon Rev Int Law*. 2021;22(1):1-22.
35. Schetzer A. Governments are making fake news a crime—but it could stifle free speech. *Conversation*. July 7, 2019. Accessed August 17, 2022. <https://theconversation.com/governments-are-making-fake-news-a-crime-but-it-could-stifle-free-speech-117654>
36. Krisberg K. Health misinformation a “threat to public health”—leaders call out sources of disinformation, social media sites. *Nations Health*. 2022;52(1):1-11. Accessed January 11, 2022. <https://www.thenationshealth.org/content/52/1/1.1>
37. Drew C, Thompson JN. The role of state medical boards. *Virtual Mentor*. 2005;7(4):virtualmentor.2005.7.4.pfor1-0504.
38. Bertkau A, Halpern J, Yadla S. The privileges and demands of professional self-regulation. *Virtual Mentor*. 2005;7(4):virtualmentor.2005.7.4.fred1-0504.



39. Cruess SR, Cruess RL. The medical profession and self-regulation: a current challenge. *Virtual Mentor*. 2005;7(4):virtualmentor.2005.7.4.oped1-0504.
40. FSMB: spreading COVID-19 vaccine misinformation may put medical license at risk. News release. Federation of State Medical Boards; July 29, 2021. Accessed August 17, 2022. <https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-misinformation-may-put-medical-license-at-risk/>
41. Wolfe S, Oshel RE. Ranking of the rate of state medical boards' disciplinary actions, 2017-2019. Public Citizen. March 31, 2021. Accessed August 17, 2022. <https://www.citizen.org/wp-content/uploads/2574.pdf>
42. American Medical Association. AMA principles of medical ethics. *Code of Medical Ethics*. Updated June 2001. Accessed August 17, 2022. <https://www.ama-assn.org/about/publications-newsletters/ama-principles-medical-ethics>
43. Basic Obligation of Public Service. 5 CFR §2635.101(a) (2023).
44. Basic Obligation of Public Service. 5 CFR §2635.101(b)(11) (2023).

**Allison M. Whelan, JD, MA** is an assistant professor at the Georgia State University College of Law in Atlanta. She is an interdisciplinary scholar whose research and teaching encompass a broad set of medical, science, and social policy issues at the intersection of administrative law, food and drug law, health law, constitutional law, bioethics, and reproductive justice.

#### Citation

*AMA J Ethics*. 2023;25(3):E210-218.

#### DOI

10.1001/amajethics.2023.210.

#### Conflict of Interest Disclosure

The author(s) had no conflicts of interest to disclose.

*The viewpoints expressed in this article are those of the author(s) and do not necessarily reflect the views and policies of the AMA.*