SB 1172 (Lieu) – Sexual Orientation Change Efforts

Introduced February 22, 2012, Amended May 25, 2012

This bill prohibits a mental health provider from engaging in sexual orientation change efforts with a patient under 18 years of age, regardless of the willingness of a patient, patient's parent, guardian, conservator, or other person to authorize such efforts.

According to the author's office, the intent of this bill is to limit deceptive therapies that are harmful to minors by mental health providers. This bill seeks to provide awareness of the alternatives to and the potential harmful effects of sexual orientation change therapies while also protecting children from these treatments. The author states "this so-called reparative therapy, conversion therapy or reorientation therapy is scientifically ineffective and has resulted in much harm." This bill seeks to provide protections for lesbian, gay, bisexual, and transgender youth by preventing these types of therapies that are potentially dangerous as well as making adults aware of the potential harms associated with sexual orientation change therapies.

History of Homosexuality and the American Psychiatric Association (APA). A number of research studies on homosexuality conducted in the 1940s and 1950s, combined with protests during the civil rights movement of the 1960s and 1970s led to the reformation of how homosexuality was classified by mental health and medical associations such as the APA and the APA removed homosexuality from its official Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973.

Prior to the civil rights movement, the medical view of homosexuality was that it was a mental disorder and disease. There were a series of resulting encounters between activists and psychiatrists at the annual meetings of the APA between 1970 and 1972 where gay activists challenged the APA. As a result, the diagnosis of homosexuality was deleted from the DSM-II.

The APA did not initially embrace this change. In recognition of those who opposed deleting the classification, the APA made a compromise. The DSM-II diagnosis of Sexual Orientation Disturbance replaced homosexuality. Accordingly, individuals comfortable with their homosexuality were no longer classified as having a mental disorder. Instead, only those who were "in conflict with" their sexual orientation were classified as having a mental disorder. However, this change engendered continued controversy. Those opposing the diagnosis argued that there were no reported cases of unhappy heterosexual individuals seeking treatment to become homosexual. This problem was addressed in the 1980s DSM-III where Sexual Orientation Disturbance was replaced by ego-dystonic homosexuality (EDH).

In the mid-1980s during the revision of the DSM-III, the diagnosis of EDH also engendered controversy. Those on the APA Advisory Committee working on the revision who desired to retain the EDH diagnosis argued that they believed the diagnosis was clinically useful and that is was necessary for research and statistical purposes. The opponents noted that making a patient's subjective experience of their own homosexuality the determining factor of their illness was not consistent with the new evidence-based approach that psychiatry had embraced. They argued that empirical data did not support the diagnosis and that it was inappropriate to label

culturally induced homophobia as a mental disorder. The APA Committee agreed with the opponents and the diagnosis of EDH was removed from DSM-III-R in 1987.

History of Homosexuality and the World Health Organization (WHO). In 1992, WHO removed the diagnosis of homosexuality as a mental disorder from the International Classification of Disorders-10 (ICD-10). Similar to the DSM, the ICD-10 is a classification system for medical and mental disorders used internationally. WHO replaced homosexuality with the diagnosis of ego-dystonic sexual orientation which falls under the category of "Psychological and behavioral disorders associated with sexual development and orientation". The ICD-10 ego-dystonic sexual orientation diagnosis is defined as "The gender identity or sexual preference (heterosexual, homosexual, bisexual, or pre-pubertal) is not in doubt, but the individual wishes it were different because of associated psychological and behavioral disorders, and may seek treatment in order to change it."

WHO also notes: "Sexual orientation by itself is not to be regarded as a disorder? it is often a result of unfavorable and intolerant attitudes of the society or a conflict between sexual urges and religious belief systems."

Sexual Orientation Change Therapy. Sexual Orientation Change Therapy, sometimes called reparative therapy, conversion therapy, or reorientation therapy, is an attempt to change the sexual orientation of a person from homosexual or bisexual to heterosexual. According to the APA conversion therapy is a type of psychiatric treatment "based upon the assumption that homosexuality is a mental disorder or based upon the assumption that a patient should change his/her homosexual orientation."

Joseph Nicolosi, one of the founders of modern reparative therapy, promotes psychoanalytic theories suggesting that homosexuality is a form of arrested psychosexual development, resulting from "an incomplete bond and resultant identification with the same-sex parent, which is then symbolically repaired in psychotherapy." Nicolosi's intervention plans involve conditioning a man to a traditional masculine gender role via participation in sports activities, avoidance of the other sex unless for romantic contact, avoiding contact with homosexuals, increasing time spent with heterosexuals, engaging in group therapy, marrying a person of the opposite sex and fathering children.

Others, particularly conservative Christian transformational ministries, use the term conversion therapy to refer to the utilization of prayer, religious conversion, individual and group counseling to change a person's sexual orientation.

The federal Ninth Circuit Court of Appeals addressed the issue of sexual orientation therapy in the context of an asylum application. The court held that a Russian citizen who was subjected to sexual orientation change treatments that included sedative drugs and hypnosis "constituted mental and physical torture." (Pitcherskaia v. INS 118 F.3d 641 (9th Cir. 1997))

ARGUMENTS IN SUPPORT: In support of this bill, Equality California writes, "Sexual orientation change efforts pose critical health risks to lesbian, gay, and bisexual people, including depression, shame, decreased self-esteem, social withdrawal, substance abuse, risky behavior and suicidality. Recognizing that there is no evidence that any

type of psychotherapy can change a person's sexual orientation, and that sexual orientation change efforts may cause serious and lasting harms, the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, and the American Academy of Pediatrics uniformly oppose efforts to change the sexual orientation of any individual."

ARGUMENTS IN OPPOSITION: The California Psychological Association (CPA), in their opposition to this bill, states that the professional guilds have researched the efficacy and purpose of sexual orientation change therapy and have passed resolutions based on that data and research. They go on to state, "Each profession has a national organization with a prescribed Code of Ethics, as well as state organizations and licensing boards to which they report and weigh in on professional and ethical conduct. The statutory ban on types of therapy is not the right venue and there is very little precedent in state law to make an outright ban on a specific type of therapy." The CPA believes that this bill micromanages the work of individual therapists.

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 25, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1172

Introduced by Senator Lieu
(Coauthor: Assembly Member Ma)

February 22, 2012

An act to add Article 15 (commencing with Section 865) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Lieu. Sexual orientation change efforts.

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit ~~psychotherapists~~ *a mental health provider*, as defined, from ~~performing~~ *engaging in* sexual orientation change efforts, as defined, ~~in the absence of informed consent of the~~ *with a* patient *under 18 years of age*. ~~The bill would require a specified statement to be included on the informed consent form. Informed consent would not be effective for patients under 18 years of age. The bill would provide for a cause of action against psychotherapists by patients, former patients, or certain other persons in specified cases.~~

The bill would also declare the intent of the Legislature in this regard.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) ~~An individual's sexual orientation, whether homosexual,~~ *Being lesbian, gay, or* bisexual~~, or heterosexual,~~ is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.

(b) ~~Sexual~~ *The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual* orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources. ~~This is documented by the American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation in its 2009 Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation.~~

~~(c) (1) The American Psychological Association, in its 1997 Resolution on Appropriate Therapeutic Responses to Sexual Orientation, states: "We oppose portrayals of lesbian, gay and bisexual youth and adults as mentally ill due to their sexual orientation and support the dissemination of accurate information about sexual orientation and mental health and appropriate~~

~~interventions in order to counteract bias that is based in ignorance of unfounded beliefs about sexual orientation."~~

~~(2) The American Psychological Association also convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts. It concluded: "Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates."~~

(c) The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: "[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth."

(d) The American Psychiatric Association published a position statement in March of 2000 in which it stated: ~~"The~~

"Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm. In the last four decades, 'reparative' therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation, keeping in mind the medical dictum to first, do no harm.

"The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The

possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed.

"Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation."

(e) The American School Counselor Association's position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: "It is not the role of the professional school counselor to attempt to change a student's sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources."

(f) The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."

(g) The American Medical ~~Association's~~ *Association* Council on Scientific Affairs prepared a report in 1994 in which it stated: "Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it."

(h) The National Association of Social Workers prepared a 1997 policy statement in which it stated: "Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation

changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful."

(i) The American Counseling Association Governing Council issued a position statement in April of 1999, and in it the council states: "We oppose 'the promotion of "reparative therapy" as a "cure" for individuals who are homosexual.'"

(j) The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012 and in it the organization states: "These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements." The organization also noted that reparative therapies "lack medical justification and represent a serious threat to the health and well-being of affected people."

~~(i)~~

(k) Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346.

~~(j)~~

(l) California has a compelling interest in protecting the ~~lives and health of~~ *physical and psychological well-being of minors, including* lesbian, gay, ~~and~~ bisexual ~~people~~, *and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.*

(m) Nothing in this act is intended to prevent a minor who is 12 years of age or older from consenting to any mental health treatment or counseling services, consistent with Section 124260 of the Health and Safety Code, other than sexual orientation change efforts as defined in this act.

SEC. 2. Article 15 (commencing with Section 865) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 15. Sexual Orientation Change Efforts

865. For the purposes of this article, the following terms shall have the following meanings:

~~(a) "Informed consent" means consent that is voluntarily provided in writing by a patient to a psychotherapist with whom the patient has a therapeutic relationship. The informed consent must explicitly manifest the patient's agreement to sexual orientation change efforts and include a statement as set forth in Section 865.1. Consent that is provided as a result of therapeutic deception or duress or coercion is not informed consent.~~

~~(b) "Psychotherapist"~~

(a) "Mental health provider" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a *licensed* marriage and family therapist, a registered marriage and family therapist, intern, or trainee, an educational psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, or a registered clinical counselor, intern, or trainee.

~~(c) "Psychotherapy" means the professional assessment, evaluation, treatment, or counseling of a mental or emotional illness, symptom, or condition by a psychotherapist.~~

~~(d)~~

(b) "Sexual orientation change efforts" means ~~psychotherapy aimed at altering the sexual or romantic desires, attractions, or conduct of a person toward people of the same sex so that the desire, attraction, or conduct is eliminated or reduced or might instead be directed toward people of a different sex. It does not include psychotherapy aimed at altering sexual desires, attractions, or conduct toward minors or relatives or regarding sexual activity with another person without that person's consent~~ *practices by mental health providers that seek to change orientation or reduce or eliminate sexual or romantic attractions, feelings, or behaviors because those attractions, feelings, or behaviors are directed toward persons of a particular sex or both sexes. "Sexual orientation change efforts" does not include psychotherapies that*

aim to provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, without seeking to change orientation or reduce or eliminate sexual or romantic attractions, feelings, or behaviors because those attractions, feelings, or behaviors are directed toward persons of a particular sex or both sexes.

~~(e) "Therapeutic deception" means a representation by a psychotherapist that sexual orientation change efforts are endorsed by leading medical and mental health associations or that they can or will reduce or eliminate a person's sexual or romantic desires, attractions, or conduct toward another person of the same sex.~~

~~(f) "Therapeutic relationship" means the relationship that exists during the time the patient receives psychotherapy.~~

~~(g) "Leading medical and mental health associations" means the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, the American Association for Marriage and Family Therapy, and the American Academy of Pediatrics.~~

~~865.1. (a) No psychotherapist shall engage in sexual orientation change efforts without first obtaining the patient's informed consent to therapy as prescribed in subdivision (b).~~

~~(b) To obtain informed consent, a treating psychotherapist shall provide a patient with a form to be signed by the patient that provides informed consent. The form shall include the following statement in size 14 font:~~

~~—~~

~~"Having a lesbian, gay, or bisexual sexual orientation is not a mental disorder. Sexual orientation change efforts have not been shown to be safe or effective and can, in fact, be harmful. The risks include, but are not limited to, depression, anxiety, self-destructive behavior, and suicide.~~

~~The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation and it concluded:~~

~~"Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates."~~

~~The American Academy of Pediatrics states:~~

~~"Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."~~

~~The American Medical Association's Council on Scientific Affairs prepared a report in which it stated:~~

~~"Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it."~~

~~The National Association of Social Workers states:~~

~~"Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful."~~

~~–~~

~~865.2.~~

865.1. ~~(a)~~ Under no circumstances shall *a mental health provider engage in sexual orientation change efforts with* a patient under 18 years of age ~~undergo sexual orientation change efforts~~, regardless of the willingness of a *patient,* patient's parent, guardian, conservator, or other person to authorize such efforts.

~~(b) The right to refuse sexual orientation change efforts is not waived by giving informed consent and that consent may be withdrawn at any time prior to, during, or between sessions of sexual orientation change efforts.~~

~~(c) Any act of duress or coercion by any person or facility shall invalidate the patient's consent to sexual orientation change efforts.~~

~~865.3. (a) (1) A cause of action may be brought against a psychotherapist by a patient, former patient, or deceased former patient's parent, child, or sibling if the sexual orientation change efforts were conducted without first obtaining informed consent or by means of therapeutic deception, or if the sexual orientation change efforts were conducted on a patient who was under 18 years of age at any point during the use of the sexual orientation change efforts.~~

~~(2) The patient, former patient, or deceased former patient's parent, child, or sibling may recover actual damages, or statutory damages in the amount of five thousand dollars ($5,000), whichever is greater, in addition to costs and reasonable attorney's fees.~~

~~(3) The time for commencement of the action shall be within eight years of the date the patient or former patient attains the age of majority or within five years of the date the patient, former patient, or deceased former patient's parent, child, or sibling discovers or reasonably should have discovered that the patient was subjected to sexual orientation change efforts in violation of this article.~~

~~(b) Nothing in this article precludes or limits the right of a patient, former patient, or deceased former patient's parent, child, or sibling to bring a civil action against a psychotherapist arising from other legal claims.~~

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