


MEMORANDUM

DATE	October 27, 2017
TO	Psychology Board Members
FROM	 Antonette Sorrick Executive Officer
SUBJECT	Review Draft Omnibus Legislative Proposal to Amend sections 337 and 728 of the Business and Professions Code Regarding the Brochure Addressing Sexual Contact between a Psychotherapist and a Patient: Agenda Item 19(c)

Background:

At the March 16, 2017 Licensing Committee (Committee) meeting, the Committee discussed the current draft of the Professional Therapy Never Includes Sex Brochure which is required to be provided to trainees accruing supervised professional experience. The Committee agreed that the Outreach and Education Committee should review the draft and work with the Medical Board of California and the Board of Behavioral Sciences to update the brochure.

At the March 21, 2017 Outreach and Education Committee meeting, that Committee discussed a plan to have all three board's staff review/amend the brochure, convene an expert panel to review proposed amendments, and present it to the Department of Consumer Affairs for final consideration. While reviewing the statutory requirement to produce the brochure, all three boards agreed that changes to the general provisions of the Business and Professions Codes should be made.

Action Requested:

Move to adopt the attached language and work with the Senate Business, Professions, and Economic Development Committee to include the section changes in an Omnibus bill.

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS [100 - 472.5]

(Heading of Division 1 amended by Stats. 1973, Ch. 77.)

CHAPTER 4. Consumer Affairs [300 - 337]

(Chapter 4 added by Stats. 1970, Ch. 1394.)

ARTICLE 6. Information [337- 337.]

(Article 6 added by Stats. 1970, Ch. 1394.)

337.

(a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual behavior and sexual contact and their advocates for those victims. This brochure shall be developed by the department ~~in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.~~

(b) The brochure shall include, but is not limited to, the following:

(1) A legal and an informal definition of psychotherapist-patient sexual behavior and sexual contact.

(2) A brief description of common personal reactions ~~and histories of victims and victim's families.~~

(3) A patient's bill of rights.

(4) ~~Options~~ Instructions for reporting psychotherapist-patient sexual behavior and sexual contact ~~relations and instructions for each reporting option.~~

(5) A full description of administrative, ~~civil, and professional associations~~ complaint procedures.

(6) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the Medical Board of California, the Board of Psychology, and affiliated health boards, or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual behavior and sexual contact ~~relations.~~

(Amended by Stats. 2007, Ch. 588, Sec. 1. Effective January 1, 2008.)

BUSINESS AND PROFESSIONS CODE - BPC
DIVISION 2. HEALING ARTS [500 - 4999.129]
(*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 1. General Provisions [500 - 865.2]
(*Chapter 1 enacted by Stats. 1937, Ch. 399.*)

ARTICLE 10.5. Unprofessional Conduct [725 - 733]
(*Article 10.5 added by Stats. 1979, Ch. 348.*)

728.

(a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual behavior or sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the patient a brochure developed ~~promulgated~~ by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a licensed professional clinical counselor, a psychological assistant, an associate marriage and family therapist ~~registered intern~~ or marriage and family therapist trainee, an ~~intern~~ associate professional clinical counselor or clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10), or an associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Sexual behavior" means inappropriate communication (including, but not limited to texting, emailing, or phone calls) of a sexual nature.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

(*Amended by Stats. 2010, Ch. 328, Sec. 5. Effective January 1, 2011.*)