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DEPARTMENT OF CONSUMER AFFAIRS

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Business and Professions Code

Section Affected	Type of Change
480	Amended
490	Amended
2920	Amended
2933	Amended

Penal Code

Section Affected	Type of Change
11167.5	Amended
11170	Amended

CALIFORNIA CODE OF REGULATIONS

Section Affected	Type of Change
1387	Amended

General Provisions of the Business and Professions Code
(Only certain sections of the entire law are included here.)

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

Section

25 Training in Human Sexuality
28 Child Abuse Assessment Training
32 Legislative Findings; AIDS Training for Health Care Professionals

Training in Human Sexuality

§ 25. Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker or as a licensed psychologist shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that he or she has completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt any persons whose field of practice is such that they are not likely to have use for this training.

''Human sexuality'' as used in this section means the study of a human being as a sexual being and how he or she functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

In the event that any licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies which have established or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

Amended by Stats. 2005, ch. 658 (SB 229), § 1, effective January 1, 2006.

Child Abuse Assessment Training

§ 28. The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with child abuse victims, potential child abuse victims, and child abusers and potential child abusers are provided with adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences.

The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist,

clinical social worker, or marriage and family therapist on or after January 1, 1987. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal on or after January 1, 1987.

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist on or after January 1, 1987, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting which meets the requirements of this section, including detailed knowledge of Section 11165 of the Penal Code. The training shall meet all of the following requirements:

(a) Be completed after January 1, 1983.

(b) Be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Sections 2902, 4980.40, and 4996.18, including extension courses offered by those institutions.

(2) A continuing education provider approved by the responsible board.

(3) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

(c) Have a minimum of 7 contact hours.

(d) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(e) An applicant shall provide the appropriate board with documentation of completion of the required child abuse training.

The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the board that there would be no need for the training in his or her practice because of the nature of that practice.

It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, or marriage and family therapist have minimal but appropriate training in the areas of child abuse assessment and reporting. It is not intended that by solely complying with the requirements of this section, a practitioner is fully trained in the subject of treatment of child abuse victims and abusers.

(f) This section shall become operative on January 1, 1997.

Amended by Stats. 2004, ch. 695 (SB 1913), § 1.

Legislative Findings; AIDS Training for Health Care Professionals

§ 32. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency

syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage and family therapists, licensed educational psychologists, and clinical social workers.

Amended by Stats. 2002, ch. 1013 (SB 2026), § 4.

CHAPTER 1. THE DEPARTMENT

Section
118 Withdrawal of Application—Effect of Suspension or Forfeiture

Withdrawal of Application—Effect of Suspension or Forfeiture

§ 118. (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, ''board'' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and ''license'' includes ''certificate,'' ''registration,'' and ''permit.''

Added by Stats. 1961, ch. 1079, § 1.

DIVISION 1.5. DENIAL, SUSPENSION AND REVOCATION OF LICENSES

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CHAPTER 1. GENERAL PROVISIONS

Section

475 Grounds of Denial of License
476 Exceptions
477 "Board" and "License" Defined
478 Terms Defined

Grounds of Denial of License

§ 475. (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

Amended by Stats. 2004, ch. 33 (AB 1467), § 13, effective April 13, 2004.

Exceptions

§ 476. Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

Added by Stats. 1972, ch. 903, p. 1606, § 1. Amended by Stats. 1983, ch. 721, § 1.

"Board" and "License" Defined

§ 477. As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

Amended by Stats. 1991, ch. 654 (AB 1893), § 5.

Terms Defined

§ 478. (a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, ''material'' includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

Added by Stats. 1992, ch. 1289 (AB 2743), § 6.

CHAPTER 2. DENIAL OF LICENSES

Section

480 Applicant's Grounds for Denial
481 Criteria for Related Crimes Required
482 Criteria for Rehabilitation Required
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Applicant's Grounds for Denial

§ 480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

Amended by Stats. 2008, ch. 179, § 2.

Criteria for Related Crimes Required

§ 481. Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to de-

termine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

Added by Stats. 1974, ch. 1321, § 6.

Criteria for Rehabilitation Required

§ 482. Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Amended by Stats. 1974, ch. 1321, § 7.

Attestations of Good Moral Character Not Required

§ 484. No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

Amended by Stats. 1974, ch. 1321, § 9.

Procedure for Board Upon Denial

§ 485. Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

Amended by Stats. 1997, ch. 758 (SB 1346), § 2.3.

Reapplication After Denial

§ 486. Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

Amended by Stats. 1997, ch. 758 (SB 1346), § 2.4.

Hearing; Time

§ 487. If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

Amended by Stats. 1986, ch. 220, § 1, effective June 30, 1986.

Hearing Request

§ 488. Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

(d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

Added by Stats. 2000, ch. 568 (AB 2888), § 2.

When Denial of Application Does Not Require a Hearing

§ 489. Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

Amended by Stats. 1997, ch. 758 (SB 1346), § 2.5.

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

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490 Conviction of a Crime—Substantial Relationship Required
490.5 Noncompliance with Support Order or Judgment
491 Information to Ex-Licensee

492 Healing Arts; Disciplinary Action or License Denial Notwithstanding Drug Diversion Program; Exception
493 Record of Criminal Conviction—Moral Turpitude
494 Interim Orders of Suspension

Conviction of a Crime—Substantial Relationship Required

§ 490. (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

Amended by Stats. 2008, ch. 33 (SB 797), § 2, effective June 23, 2008.

Noncompliance with Support Order or Judgment

§ 490.5. A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

Added by Stats. 1994, ch. 906 (AB 923), § 1, effective January 1, 1996.

Information to Ex-Licensee

§ 491. Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

Amended by Stats. 1975, ch. 678, § 1.

Healing Arts; Disciplinary Action or License Denial Notwithstanding Drug Diversion Program; Exception

§ 492. Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

Amended by Stats. 1994, ch. 26 (AB 1807), § 15, effective March 30, 1994.

Record of Criminal Conviction—Moral Turpitude

§ 493. Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, ''license'' includes ''certificate,'' ''permit,'' ''authority,'' and ''registration.''

Renumbered by Stats. 1989, ch. 1104, § 1.3.

Interim Orders of Suspension

§ 494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in

the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(*l*) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) ''Board,'' as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical

Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

Amended by Stats. 1994, ch. 1275 (SB 2101), § 4.

CHAPTER 4. PUBLIC REPROVALS

Section

495 Procedure

Procedure

§ 495. Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproval, public reproval and suspension, or public reproval and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

Amended by Stats. 1997, ch. 220 (SB 68), § 2.

CHAPTER 5. EXAMINATION SECURITY

Section

496 Violation of Exam Security
498 Fraud and Deceit
499 False Statement re: Application of Another

Violation of Exam Security

§ 496. A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

Added by Stats. 1989, ch. 1022, § 3.

Fraud and Deceit

§ 498. A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

Added by Stats. 1992, ch. 1289 (AB 2743), § 8.

False Statement re: Application of Another

§ 499. A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

Added by Stats. 1992, ch. 1289 (AB 2743), § 9.

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

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Article 10.5. Unprofessional Conduct

Section	
725	Excessive Prescribing or Treatment; Treatment for Intractable Pain
726	Sexual Relations with Patients
727	Subdivision (2) of Section 1103 of Evidence Code Applies
728	Provision of Brochure by Psychotherapist to Patient Alleging Sexual Intercourse or Contact with Previous Psychotherapist During Course of Prior Treatment
729	Sexual Exploitation—Penalties
731	Violation at Work as Unprofessional Conduct

Excessive Prescribing or Treatment; Treatment for Intractable Pain

§ 725. (a) Repeated acts of clearly excessive prescribing, furnishing, dispensing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5.

Amended by Stats. 2007, ch. 130 (AB 299), § 2, effective January 1, 2008.

Sexual Relations with Patients

§ 726. The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

Amended by Stats. 1993, ch. 1072 (SB 743), § 1.

Subdivision (2) of Section 1103 of Evidence Code Applies

§ 727. The provisions of subdivision (2) of Section 1103 of the Evidence Code shall apply in disciplinary proceedings brought against a licensee for acts in violation of Section 726.

Amended and renumbered by Stats. 1981, ch. 714, § 4.

Provision of Brochure by Psychotherapist to Patient Alleging Sexual Intercourse or Contact with Previous Psychotherapist During Course of Prior Treatment

§ 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 contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. 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 psychological assistant, marriage and family therapist registered intern or trainee, or associate clinical social worker.

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

(3) ''Intimate part'' and ''touching'' have the same meaning as defined in subdivisions (f) and (d), 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. 2002, ch. 1013 (SB 2026), § 6.

Sexual Exploitation—Penalties

§ 729. (a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) ''Psychotherapist'' has the same meaning as defined in Section 728.

(2) ''Alcohol and drug abuse counselor'' means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) ''Sexual contact'' means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) ''Intimate part'' and ''touching'' have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when

that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

Amended by Stats. 1994, ch. 1118 (SB 1768), § 1.

Violation at Work as Unprofessional Conduct

§ 731. (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for the first offense, and not to exceed five thousand dollars ($5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

Added by Stats. 1998, ch. 971 (AB 2721), § 2.

Article 12.5. Mental Illness or Physical Illness

Section

820 Examination to Ascertain Effect of Illness May Be Ordered
821 Failure to Comply with Order
822 Actions by Licensing Agency
823 Reinstatement Procedures
824 Proceeding Under Applicable Sections
826 Statutory Authority for Procedures
827 Protecting Privacy of Licentiate
828 No Action Against Licentiate—Time Limit on Preserving Agency Records of Proceedings

Examination to Ascertain Effect of Illness May Be Ordered

§ 820. Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The

report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Added by Stats. 1989, ch. 1104, § 1.7.

Failure to Comply with Order

§ 821. The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

Added by Stats. 1982, ch. 1183, § 1.

Actions by Licensing Agency

§ 822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Added by Stats. 1982, ch. 1183, § 1.

Reinstatement Procedures

§ 823. Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

(a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

Added by Stats. 1982, ch. 1183, § 1.

Proceeding Under Applicable Sections

§ 824. The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

Added by Stats. 1982, ch. 1183, § 1.

Statutory Authority for Procedures

§ 826. The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

Added by Stats. 1982, ch. 1183, § 1.

Protecting Privacy of Licentiate

§ 827. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

Added by Stats. 1982, ch. 1183, § 1.

No Action Against Licentiate—Time Limit on Preserving Agency Records of Proceedings

§ 828. If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiates fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

Added by Stats. 1982, ch. 1183, § 1.

CHAPTER 5. MEDICINE

Article 12. Enforcement

Section
2290.5 Telemedicine Informed Consent

Telemedicine Informed Consent

§ 2290.5. (a) (1) For the purposes of this section, ''telemedicine'' means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes ''telemedicine'' for purposes of this section.

(2) For purposes of this section, ''interactive'' means an audio, video, or data communication involving a real time (synchronous) or near real time (asynchronous) two-way transfer of medical data and information.

(b) For the purposes of this section, ''health care practitioner'' has the same meaning as ''licentiate'' as defined in paragraph (2) of subdivision (a) of Section 805 and also includes a person licensed as an optometrist pursuant to Chapter 7 (commencing with Section 3000).

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, ''surrogate decisionmaking'' means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

Amended by Stats. 2007, ch. 507 (AB 1224), § 1, effective January 1, 2008.

LAWS AND REGULATIONS RELATING TO THE PRACTICE OF PSYCHOLOGY

Extracted From

BUSINESS AND PROFESSIONS CODE

CHAPTER 6.6. PSYCHOLOGISTS

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Article 1. General Provisions

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Psychology Licensing Law

§ 2900. The Legislature finds and declares that practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

Added by Stats. 1967, ch. 1677, § 2.

Title

§ 2901. This chapter shall be known and may be cited as the ''Psychology Licensing Law.''

Added by Stats. 1967, ch. 1677, § 2.

Definitions

§ 2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided the following definitions apply:

(a) ''Licensed psychologist'' means an individual to whom a license has been issued pursuant to the provisions of this chapter, which license is in force and has not been suspended or revoked.

(b) ''Board'' means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words ''psychology,'' ''psychological,'' ''psychologist,'' ''psychology consultation,'' ''psychology consultant,'' ''psychometry,'' ''psychometrics'' or ''psychometrist,'' ''psychotherapy,'' ''psychotherapist,'' ''psychoanalysis,'' or ''psychoanalyst,'' or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) ''Accredited,'' as used with reference to academic institutions, means the University of California, the California State University, or an institution that is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) ''Approved,'' as used with reference to academic institutions, means an institution having ''approval to operate'', as defined in Section 94718 of the Education Code.

Amended by Stats. 2004, ch. 695 (SB 1913), § 19.

Licensure Requirement; Practice of Psychology; Psychotherapy; Fee

§ 2903. No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

As used in this chapter, ''fee'' means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.

Amended by Stats. 2001, ch. 728 (SB 724), § 24.2.

Biofeedback Instruments

§ 2903.1. A psychologist licensed under this chapter may use biofeedback instruments which do not pierce or cut the skin to measure physical and mental functioning.

Added by Stats. 1976, ch. 734, § 1.

Limitations

§ 2904. The practice of psychology shall not include prescribing drugs, performing surgery or administering electroconvulsive therapy.

Added by Stats. 1967, ch. 1677, § 2.

Applicability of Telemedicine Provisions of Section 2290.5

§ 2904.5. A psychologist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

Added by Stats. 2003, ch. 20 (AB 116), § 3.

Practice—Defined

§ 2905. The practice of psychology shall be as defined as in Section 2903, any existing statute in the State of California to the contrary notwithstanding.

Added by Stats. 1967, ch. 1677, § 2.

Corporations

§ 2907. Corporations shall have no professional rights, privileges, or powers, and shall not be permitted to practice psychology, nor shall the liability of any licensed psychologist be limited by a corporation.

Added by Stats. 1967, ch. 1677, § 2.

Psychological Corporations

§ 2907.5. Nothing in Section 2907 shall be deemed to apply to the acts of a psychological corporation practicing pursuant to the Moscone-Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code and Article 9 (commencing with Section 2995) when the psychological corporation is in compliance with (a) the Moscone-Knox Professional Corporation Act; (b) Article 9 (commencing with Section 2995); and (c) all other statutes now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

Amended by Stats. 1980, ch. 1314, § 11.

Exemption of Other Professions

§ 2908. Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words ‘‘psychological,’’ ‘‘psychologist,’’ ‘‘psychology,’’ ‘‘psychometrist,’’ ‘‘psychometrics,’’ or ‘‘psychometry,’’ or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

Amended by Stats. 2002, ch. 1013 (SB 2026), § 10.

Applicability to School and Public Employees

§ 2909. Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which

they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be identified in the setting as a ''registered psychologist.'' Those persons shall be exempt from this chapter for a maximum period of 30 months from the date of registration.

Amended by Stats. 2005, ch. 658 (SB 229), § 2, effective January 1, 2006.

Academic or Governmental Employees—Exemption

§ 2910. Nothing in this chapter shall be construed to restrict or prevent activities of a psychological nature on the part of persons who are salaried employees of accredited or approved academic institutions, public schools or governmental agencies, provided:

(a) Such employees are performing such psychological activities as part of the duties for which they were hired;

(b) Such employees are performing those activities solely within the jurisdiction or confines of such organizations;

(c) Such persons do not hold themselves out to the public by any title or description of activities incorporating the words ''psychology,'' ''psychological,'' ''psychologist,'' ''psychometry,'' ''psychometrics'' or ''psychometrist'';

(d) Such persons do not offer their services to the public for a fee, monetary or otherwise;

(e) Such persons do not provide direct health or mental health services.

Amended by Stats. 1979, ch. 996, § 3.

Internship—Exemption

§ 2911. Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited or approved college or university and working in a training program, or a postdoctoral trainee working in a postdoctoral placement overseen by the American Psychological Association (APA), the Association of Psychology Postdoctoral and Internship Centers (APPIC), or the California Psychology Internship Council (CAPIC), provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title ''psychological intern,'' ''psychological trainee,'' ''postdoctoral intern,'' or another title clearly indicating the training status appropriate to his or her level of training. The aforementioned terms shall be reserved for persons enrolled in the doctoral program leading to one of the degrees listed in subdivision (b) of Section 2914 at an accredited or approved college or university or in a formal postdoctoral internship overseen by APA, APPIC, or CAPIC.

Amended by Stats. 2005, ch. 658 (SB 229), § 3, effective January 1, 2006.

Out-of-State Psychologist—Exemption

§ 2912. Nothing in this chapter shall be construed to restrict or prevent a person who is licensed as a psychologist at the doctoral level in another state or territory of the United States or in Canada from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

Amended by Stats. 2005, ch. 658 (SB 229), § 4, effective January 1, 2006.

Psychological Assistants

§ 2913. A person other than a licensed psychologist may be employed by a licensed psychologist, by a licensed physician and surgeon who is board certified in psychiatry by the American Board of Psychiatry and Neurology, by a clinic which provides mental health services under contract pursuant to Section 5614 of the Welfare and Institutions Code, by a psychological corporation, by a licensed psychology clinic as defined in Section 1204.1 of the Health and Safety Code, or by a medical corporation to perform limited psychological functions provided that all of the following apply:

(a) The person is termed a ''psychological assistant.''

(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree which qualifies for licensure under Section 2914, in an accredited or approved university, college, or professional school located in the United States or Canada.

(c) The person is at all times under the immediate supervision, as defined in regulations adopted by the board, of a licensed psychologist, or board certified psychiatrist, who shall be responsible for insuring that the extent, kind, and qual-

ity of the psychological services he or she performs are consistent with his or her training and experience and be responsible for his or her compliance with this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2960.

(d) The licensed psychologist, board certified psychiatrist, contract clinic, psychological corporation, or medical corporation, has registered the psychological assistant with the board. The registration shall be renewed annually in accordance with regulations adopted by the board.

No licensed psychologist may register, employ, or supervise more than three psychological assistants at any given time unless specifically authorized to do so by the board. No board certified psychiatrist may register, employ, or supervise more than one psychological assistant at any given time. No contract clinic, psychological corporation, or medical corporation may employ more than 10 assistants at any one time. No contract clinic may register, employ, or provide supervision for more than one psychological assistant for each designated full-time staff psychiatrist who is qualified and supervises the psychological assistants. No psychological assistant may provide psychological services to the public for a fee, monetary or otherwise, except as an employee of a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation.

(e) The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

(f) No person shall practice as a psychological assistant who is found by the board to be in violation of Section 2960 and the rules and regulations duly adopted thereunder.

Amended by Stats. 1989, ch. 888, § 3.

Applicant's Requirements

§ 2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree

earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(f) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assess-

ment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.

(3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

Amended by Stats. 2005, ch. 658 (SB 229), § 5, effective January 1, 2006.

Continuing Education; Geriatric Pharmacology

2914.1. The board shall encourage every licensed psychologist to take a continuing education course in geriatric pharmacology as a part of his or her continuing education.

Added by Stats. 1990, ch. 1539 (SB 2827), § 3.

Continuing Education; Psychopharmacology and Biological Basis of Behavior

§ 2914.2. The board shall encourage licensed psychologists to take continuing education courses in psychopharmacology and biological basis of behavior as part of their continuing education.

Added by Stats. 1998, ch. 822 (SB 983), § 1.

Training in Psychopharmacology and Related Topics

§ 2914.3. (a) The board shall encourage institutions that offer a doctorate degree program in psychology to include in their biobehavioral curriculum, education and training in psychopharmacology and related topics including pharmacology and clinical pharmacology.

(b) The board shall develop guidelines for the basic education and training of psychologists whose practices include patients with medical conditions and patients with mental and emotional disorders, who may require psychopharmacological treatment and whose management may require collaboration with physicians and other licensed prescribers. In developing these guidelines for training, the board shall consider, but not be limited to, all of the following:

(1) The American Psychological Association's guidelines for training in the biological bases of mental and emotional disorders.

(2) The necessary educational foundation for understanding the biochemical and physiological bases for mental disorders.

(3) Evaluation of the response to psychotropic compounds, including the effects and side effects.

(4) Competent basic practical and theoretical knowledge of neuroanatomy, neurochemistry, and neurophysiology relevant to research and clinical practice.

(5) Knowledge of the biological bases of psychopharmacology.

(6) The locus of action of psychoactive substances and mechanisms by which these substances affect brain function and other systems of the body.

(7) Knowledge of the psychopharmacology of classes of drugs commonly used to treat mental disorders.

(8) Drugs that are commonly abused that may or may not have therapeutic uses.

(9) Education of patients and significant support persons in the risks, benefits, and treatment alternatives to medication.

(10) Appropriate collaboration or consultation with physicians or other prescribers to include the assessment of the need for additional treatment that may include medication or other medical evaluation and treatment and the patient's mental capacity to consent to additional treatment to enhance both the physical and the mental status of the persons being treated.

(11) Knowledge of signs that warrant consideration for referral to a physician.

(c) This section is intended to provide for training of clinical psychologists to improve the ability of clinical psychologists to collaborate with physicians. It is not intended to provide for training psychologists to prescribe medication. Nothing in this section is intended to expand the scope of licensure of psychologists.

Added by Stats. 1998, ch. 822 (SB 983), § 2.

Continuing Education Requirements; Practice Outside Fields of Competence

§ 2915. (a) Except as provided in this section, on or after January 1, 1996, the board shall not issue any renewal license unless the applicant submits proof that he or she has completed no less than 18 hours of approved continuing education in the preceding year. On or after January 1, 1997, except as provided in this section, the board shall issue renewal licenses only to those applicants who have completed 36 hours of approved continuing education in the preceding two years.

(b) Each person renewing his or her license issued pursuant to this chapter shall submit proof of compliance with this section to the board. False statements submitted pursuant to this section shall be a violation of Section 2970.

(c) A person applying for relicensure or for reinstatement to an active license status shall certify under penalty of perjury that he or she is in compliance with this section.

(d) (1) The continuing education requirement shall include, but shall not be limited to, courses required pursuant to Sections 25 and 28. The requirement may include courses pursuant to Sections 32 and 2914.1.

(2) (A) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(B) Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under subdivision (a).

(C) A licensed psychologist whose practice does not include the direct provision of mental health services may apply to the board for an exemption from the requirements of this paragraph.

(3) Continuing education instruction approved to meet the requirements of this section shall be completed within the State of California, or shall be approved for continuing education credit by the American Psychological Association or its equivalent as approved by the board.

(e) The board may establish a policy for exceptions from the continuing education requirement of this section.

(f) The board may recognize continuing education courses that have been approved by one or more private nonprofit organizations that have at least 10 years' experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:

(1) Maintaining and managing related records and data.

(2) Monitoring and approving courses.

(g) The board shall adopt regulations as necessary for implementation of this section.

(h) A licensed psychologist shall choose continuing education instruction that is related to the assessment, diagnosis, and intervention for the client population being served or to the fields of psychology in which the psychologist intends to provide services, that may include new theoretical approaches, research, and applied techniques. Continuing education instruction shall include required courses specified in subdivision (d).

(i) A psychologist shall not practice outside his or her particular field or fields of competence as established by his or her education, training, continuing education, and experience.

(j) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

(k) Continuing education credit may be approved for those licensees who serve as commissioners on any examination pursuant to Section 2947, subject to limitations established by the board.

(*l*) This section shall become operative on January 1, 2004.

Added by Stats. 2002, ch. 481 (SB 564), operative January 1, 2004.

Coursework in Aging and Long-Term Care Required for Licensure of New Applicants

§ 2915.5. (a) Any applicant for licensure as a psychologist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

Added by Stats. 2002, ch. 541 (SB 953), § 4.

Continuing Education Course in Aging and Long-Term Care Required for First License Renewal

§ 2915.7. (a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of that course.

(b) The course should include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) A licensee whose practice does not include the direct provision of mental health services may apply to the board for an exception to the requirements of this section.

(f) This section shall become operative on January 1, 2005.

Amended by Stats. 2004, ch. 695 (SB 1913), § 20.

Separability Clause

§ 2916. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any of the

provisions or applications of this chapter which can be given effect without such invalid provisions or application, and to this end the provisions of this chapter are declared to be severable.

Added by Stats. 1967, ch. 1677, § 2.

Confidentiality

§ 2918. The confidential relations and communications between psychologist and client shall be privileged as provided by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

Added by Stats. 1973, ch. 757, § 4.

Retention of Health Service Records

§ 2919. A licensed psychologist shall retain a patient's health service records for a minimum of seven years from the patient's discharge date. If the patient is a minor, the patient's health service records shall be retained for a minimum of seven years from the date the patient reaches 18 years of age.

Added by Stats. 2006, ch. 89 (AB 2257), § 1, effective January 1, 2007.

Article 2. Administration

Section
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Board of Psychology (Repealed January 1, 2011)

§ 2920. The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

Amended by Stats. 2008, ch. 385 (SB 963), § 1.

Priority of Board; Protection of the Public

§ 2920.1. Protection of the public shall be the highest priority for the Board of Psychology in exercising its licensing, regulatory, and disciplinary functions.

Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Added by Stats. 2002, ch. 107 (AB 269), § 12.

Terms

§ 2921. Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.

Amended by Stats. 1989, ch. 888, § 6.

Appointment

§ 2922. In appointing the members of the board, except the public members, the Governor shall use his or her judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

The Governor shall appoint two of the public members and the five licensed members of the board qualified as provided in Section 2923. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

Amended by Stats. 1998, ch. 589 (SB 1983), § 2.

Qualifications

§ 2923. Each member of the board shall have all of the following qualifications:

(a) He or she shall be a resident of this state.

(b) Each member appointed, except the public members shall be a licensed psychologist.

The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

Amended by Stats. 1989, ch. 888, § 8.

Removal

§ 2924. The Governor has power to remove from office any member of the board for neglect of any duty required by this chapter, for incompetency, or for unprofessional conduct.

Added by Stats. 1989, ch. 888, § 9.

Officers

§ 2925. The board shall elect annually a president and vice president from among its members.

Amended by Stats. 1998, ch. 589 (SB 1983), § 3.

Meetings

§ 2926. The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the chairman or at the written request of any two members of the board.

Amended by Stats. 1989, ch. 888, § 11.

Quorum

§ 2927. Five members of the board shall at all times constitute a quorum.

Renumbered by Stats. 1994, ch. 26 (AB 1807), § 69, effective March 30, 1994.

Notice of Regular Meetings; Publication

§ 2927.5. Notice of each regular meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

Amended by Stats. 1994, ch. 26 (AB 1807), § 66, effective March 30, 1994.

Administration and Enforcement

§ 2928. The board shall administer and enforce this chapter.

Amended by Stats. 1997, ch. 758 (SB 1346), § 35.

Seal

§ 2929. The board shall adopt a seal, which shall be affixed to all licenses issued by the board.

Amended by Stats. 1997, ch. 758 (SB 1346), § 36.

Rules and Regulations

§ 2930. The board shall from time to time adopt rules and regulations as may be necessary to effectuate this chapter. In adopting rules and regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended by Stats. 1989, ch. 888, § 14.

Fictitious Name Permits; Issuance; Revocation or Suspension; Delegation of Authority

§ 2930.5. (a) Any psychologist, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of subdivision (r) of Section 2960 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the committee under this section.

(b) The committee shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the committee finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses and no charges of unprofessional conduct are pending against any such licensed person.

(2) The place, or portion thereof, in which the applicant's or applicants' practice, is owned or leased by the applicant or applicants.

(3) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(4) The name under which the applicant or applicants propose to practice contains one of the following designations: ''psychology group'' or ''psychology clinic.''

(c) Fictitious-name permits issued by the committee shall be subject to Article 7 (commencing with Section 2980) pertaining to renewal of licenses.

(d) The committee may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2965.

(e) The committee may also proceed to revoke the fictitious-name permit of a licensee whose license has been revoked, but no proceeding may be commenced unless and until the charges of unprofessional conduct against the licensee have resulted in revocation of the license.

(f) The committee may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

Amended by Stats. 1992, ch, 1099 (AB 3034), § 1.

Board Functions

§ 2931. The board shall examine and pass upon the qualifications of the applicants for a license as provided by this chapter.

Amended by Stats. 1989, ch. 888, § 15.

Employees; Executive Officer (Repealed January 1, 2011)

§ 2933. Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

Amended by Stats. 2008, ch. 385 (SB 963), § 2.

Directory of Licensed Psychologists

§ 2934. Notwithstanding Section 112, the board may issue, biennially, a current geographical directory of licensed psychologists. The directory may be sent to licensees and to other interested parties at cost.

Amended by Stats. 1989, ch. 888, § 19.

Compensation

§ 2935. Each member of the board shall receive a per diem and expenses as provided in Section 103.

Amended by Stats. 1989, ch. 888, § 19.

Rules of Ethical Conduct; Posting of Notice

§ 2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the ''Ethical Principles and Code of Conduct'' published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

''NOTICE TO CONSUMERS: The Department of Consumer Affair's Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or complaints, you may contact the board on the Internet at www.psychboard.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology
1422 Howe Avenue, Suite 22
Sacramento, California 95825-3236''

Amended by Stats. 2005, ch. 658 (SB 229), § 8, effective January 1, 2006.

Article 3. License

Section

2940 Application and Fee
2941 Examination Required
2942 Examination
2943 Scope of Examination
2944 Examination of Records
2946 Reciprocity and Waiver of Examination
2947 Examination Commissioners
2948 License Issuance

Application and Fee

§ 2940. Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.

The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the board.

Amended by Stats. 1997, ch. 758 (SB 1346), § 38.

Examination Required

§ 2941. Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.

Amended by Stats. 1997, ch. 758 (SB 1346), § 39.

Examination

§ 2942. The board may examine by written or computer-assisted examination or by both. All aspects of the examination shall be in compliance with Section 139. The examination shall be available for administration at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

Amended by Stats. 2005, ch. 658 (SB 229), § 9, effective January 1, 2006.

Scope of Examination

§ 2943. The board may examine for knowledge in whatever theoretical or applied fields in psychology as it deems appropriate. It may examine the candidate with regard to his or her professional skills and his or her judgment in the utilization of psychological techniques and methods.

Amended by Stats. 1989, ch. 888, § 24.

Examination of Records

§ 2944. The board shall grade the written examination and keep the written examination papers for at least one year, unless a uniform examination is conducted pursuant to Section 2942.

Amended by Stats. 1989, ch. 888, § 25.

Reciprocity and Waiver of Examination

§ 2946. The board shall grant a license to any person who passes the board's supplemental licensing examination and, at the time of application, has been licensed for at least five years by a psychology licensing authority in another state or Canadian province if the requirements for obtaining a certificate or license in that state or province were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state or province and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive the examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered

by the examinations. The board at its discretion may waive the examinations for diplomates of the American Board of Professional Psychology.

Amended by Stats. 2005, ch. 658 (SB 229), § 11, effective January 1, 2006.

Examination Commissioners

§ 2947. The board may appoint qualified persons to give the whole or any portion of any examination provided for in this chapter, who shall be designated as commissioners on examination. A commissioner on examination need not be a member of the board but he or she shall have the same qualifications as a member of the board, including those set forth in Chapter 6 (commencing with Section 450) of Division 1. The board may also appoint occasional professional commissioners for short-term specified periods to assist in its nonpolicy workload.

Public commissioners may examine and evaluate candidates in areas of knowledge such as the law, ethics, and awareness of community resources.

Amended by Stats. 1989, ch. 888, § 28.

License Issuance

§ 2948. The board shall issue a license to all applicants who meet the requirements of this chapter and who pay to the board the initial license fee provided in Section 2987.

Amended by Stats. 1997, ch. 758 (SB 1346), § 40.

Article 4. Denial, Suspension and Revocation

Section	
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Causes for Disciplinary Action

§ 2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

Amended by Stats. 2000, ch. 836 (SB 1554), § 20.

Limitation Period

2960.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act

or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

Amended by Stats. 2001, ch. 617 (AB 1616), § 2.

Decision Containing Finding That Licensee or Registrant Engaged in Sexual Contact with Patient or Former Patient; Order of Revocation

§ 2960.1. Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

Amended by Stats. 1998, ch. 879 (SB 2238), § 3.

Psychological Evaluations of Peace Officers

§ 2960.2. (a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

Added by Stats. 2003, ch. 777 (AB 1669), § 2, effective January 1, 2005.

Mental Illness or Chemical Dependency; Grounds

§ 2960.5. The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

Added by Stats. 1992, ch. 384 (SB 1773), § 1.

Disciplinary Action by Foreign State; Disciplinary Action by a Healing Arts Board; Grounds

§ 2960.6. The board may deny any application for, or may suspend or revoke a license or registration issued under this chapter for, any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state or country on a license, certificate, or registration issued by that state or country to practice psychology shall constitute grounds for disciplinary action for unprofessional conduct against that licensee or registrant in this state. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by any board established in this division, or the equivalent action of another state's or country's licensing agency, of the license of a healing arts practitioner shall constitute grounds for disciplinary action against that licensee or registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action.

Amended by Stats. 1994, ch. 1275 (SB 2101), § 22.

Board Action

§ 2961. The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2965.

Amended by Stats. 1989, ch. 888, § 31.

Reinstatement; Modification of Penalty; Petition; Examination

§ 2962. (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination of probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

Amended by Stats. 2000, ch. 836 (SB 1554), § 21.

Conviction of Crime

§ 2963. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions and duties of a psychologist or psychological assistant is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

Amended by Stats. 1989, ch. 888, § 33.

Reporting Revoked and Restored Licenses

§ 2964. Whenever the board orders a license revoked for cause, with the exception of nonpayment of fees, or restores a license, these facts shall be reported to all other state psychology licensing boards.

Amended by Stats. 1989, ch. 888, § 34.

Sex Offender Licensure Ineligibility

§ 2964.3. Any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.

Amended by Stats. 1998, ch. 589 (SB 1983), § 8.

Additional Training Required

§ 2964.5. The board at its discretion may require any licensee placed on probation or whose license is suspended, to obtain additional professional training, to pass an examination upon the completion of that training, and to pay the necessary examination fee. The examination may be written or oral or both, and may include a practical or clinical examination.

Amended by Stats. 1991, ch. 1091 (AB 1487), § 5.

Probation Terms; Payment of Monitoring Costs

§ 2964.6. An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation.

Added by Stats. 1995, ch. 708 (SB 609), § 12.

Proceedings

§ 2965. The proceedings under this article shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Amended by Stats. 1989, ch. 888, § 35.

Automatic Suspension

§ 2966. (a) A psychologist's license shall be suspended automatically during any time that the holder of the license is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the psychologist has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the psychologist of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a psychologist, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board. The issue of substantial relationship shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a psychologist and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the psychology profession.

(d) (1) Discipline or the denial of the license may be ordered in accordance with Section 2961, or the board may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. The hearing shall not be commenced until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a psychologist. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

Added by Stats. 1998, ch. 589 (SB 1983), § 9.

Penalties for Failure to Provide Medical Records; Failure to Comply with Court Order; Multiple Acts

§ 2969. (a) (1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) The imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(f) For purposes of this section, ''health care facility'' means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

Added by Stats. 2000, ch. 836 (SB 1554), § 22.

Article 5. Penalties

Section
2970 Misdemeanor
2971 Injunctive Relief

Misdemeanor

§ 2970. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand dollars ($2,000), or by both.

Amended by Stats. 1983, ch. 1092, § 12, effective September 27, 1983, operative January 1, 1984.

Injunctive Relief

§ 2971. Whenever any person other than a licensed psychologist has engaged in any act or practice that constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7, Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the board may commence action in the superior court under this section.

Amended by Stats. 1997, ch. 758 (SB 1346), § 41.

Article 7. Revenue

Section
2980 Psychology Fund; Report to Controller
2981 Continuously Appropriated
2982 Expiration of License/Birth Date Renewal
2983 Initial Fee
2984 Time for Renewal; Renewal and Delinquency Fees; Licenses Under Prior Law
2985 Renewal of Suspended and Revoked Licenses
2986 Renewal Time Limitation; Requirements for New License; Examination Fee Waiver or Refund
2987 Fee Schedule
2987.2 Mental Health Practitioner Education Fund Fee
2987.3 Fictitious-Name Permits; Initial, Renewal, and Delinquency Fees
2987.5 Exemption from Renewal Fee
2988 Inactive License
2989 Regulations Required

Psychology Fund; Report to Controller

§ 2980. There is in the State Treasury the Psychology Fund. The board shall report to the Controller at the beginning of each calendar month, for the month preceding, the amount and source of all revenue received by it, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into

that fund. All revenue received by the board from fees authorized to be charged relating to the practice of psychology shall be deposited into that fund as provided in this section.

Amended by Stats. 1997, ch. 758 (SB 1346), § 42.

Continuously Appropriated

§ 2981. The money in the Psychology Fund shall be used for the administration of this chapter.

Amended by Stats. 2005, ch. 74 (AB 139), § 9, effective July 19, 2005.

Expiration of License/Birth Date Renewal

§ 2982. All licenses expire and become invalid at 12 midnight on the last day of February, 1980, and thereafter shall expire at 12 midnight of the legal birth date of the licensee during the second year of a two-year term, if not renewed.

The board shall establish by regulation procedures for the administration of the birth date renewal program, including but not limited to, the establishment of a pro rata formula for the payments of fees by licentiates affected by the implementation of that program and the establishment of a system of staggered license application dates such that a relatively equal number of licenses expire annually.

To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

Amended by Stats. 1989, ch. 888, § 38.

Initial Fee

§ 2983. Every person to whom a license is issued shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee.

Amended by Stats. 2005, ch. 658 (SB 229), § 12, effective January 1, 2006.

Time for Renewal; Renewal and Delinquency Fees; Licenses Under Prior Law

§ 2984. Except as provided in Section 2985, a license that has expired may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

Amended by Stats. 2001, ch. 435 (SB 349), § 8.

Renewal of Suspended and Revoked Licenses

§ 2985. A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while the

license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

Added by Stats. 1967, ch. 1677, § 2.

Renewal Time Limitation; Requirements for New License; Examination Fee Waiver or Refund

§ 2986. A person who fails to renew his or her license within the three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the requirements of this chapter provided that he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure.

(b) Establishes to the satisfaction of the board that with due regard for the public interest, he or she is qualified to practice psychology.

(c) Pays all of the fees that would be required if application for licensure was being made for the first time.

The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without examination pursuant to this section.

Amended by Stats. 1994, ch. 26 (AB 1807), § 81, effective March 30, 1994.

Fee Schedule

§ 2987. The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400). The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).

(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy-five dollars ($75).

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).

(h) The delinquency fee is twenty-five dollars ($25).

(i) The endorsement fee is five dollars ($5).

Notwithstanding any other provision of law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.

Amended by Stats. 2005, ch. 658 (SB 229), § 13, effective January 1, 2006.

Mental Health Practitioner Education Fund Fee

§ 2987.2. In addition to the fees charged pursuant to Section 2987 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

Added by Stats. 2003, ch. 437 (AB 938), § 2.

Fictitious-Name Permits; Initial, Renewal, and Delinquency Fees

§ 2987.3. The following fees apply to fictitious-name permits issued under Section 2930.5.

(a) The initial permit fee is an amount equal to the renewal fee in effect at the beginning of the current renewal cycle. If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the fee in effect at the beginning of the current renewal cycle.

(b) The biennial renewal fee shall be fixed by the committee at an amount not to exceed fifty dollars ($50). The amount of this fee shall not exceed the actual cost of issuing a fictitious-name permit.

(c) The deliquency fee is twenty dollars ($20).

Added by Stats. 1988, ch. 800, § 3.

Exemption from Renewal Fee

§ 2987.5. Every person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

While engaged in full-time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista.

Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full-time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full-time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

The time spent in that full-time active service or full-time training and active service shall not be included in the computation of the three-year period for renewal of a license provided in Section 2986.

The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full-time service in the

Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista.

Amended by Stats. 1996, ch. 829 (AB 3473), § 71.

Inactive License

§ 2988. A licensed psychologist who for reasons, including, but not limited to, retirement, ill health, or absence from the state, is not engaged in the practice of psychology, may apply to the board to request that his or her license be placed on an inactive status. A licensed psychologist who holds an inactive license shall pay a biennial renewal fee, fixed by the board, of no more than forty dollars ($40). A psychologist holding an inactive license shall be exempt from continuing education requirements specified in Section 2915, but shall otherwise be subject to this chapter and shall not engage in the practice of psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed the continuing education requirements specified in Section 2915 may, upon their request have their license to practice psychology placed on active status.

Amended by Stats. 2005, ch. 658 (SB 229), § 14, effective January 1, 2006.

Regulations Required

§ 2989. The fees in this article shall be fixed by the board and shall be set forth with the regulations which are duly adopted under this chapter.

Amended by Stats. 1989, ch. 888, § 44.

Article 9. Psychological Corporations

(Repealed and added by Stats. 1980, Ch. 1314.)

Section
2995 Definition
2996 Unprofessional Conduct
2996.1 Unprofessional Conduct
2996.2 Income
2997 Directors and Officers
2998 Corporation Name
2999 Regulations

Definition

§ 2995. A psychological corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage and family therapists, licensed clinical social workers, chiropractors, acupuncturists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

Amended by Stats. 2001, ch. 159 (SB 662), § 10.

Unprofessional Conduct

§ 2996. It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

Added by Stats. 1980, ch. 1314, § 15.

Unprofessional Conduct

§ 2996.1. A psychological corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person licensed under this chapter.

Added by Stats. 1980, ch. 1314, § 15.

Income

§ 2996.2. The income of a psychological corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the psychological corporation.

Added by Stats. 1980, ch. 1314, § 15.

Directors and Officers

§ 2997. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a psychological corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

Added by Stats. 1980, ch. 1314, § 15.

Corporation Name

§ 2998. The name of a psychological corporation and any name or names under which it may render professional services shall contain one of the words specified in subdivision (c) of Section 2902, and wording or abbreviations denoting corporate existence.

Added by Stats. 1980, ch. 1314, § 15.

Regulations

§ 2999. The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a psychological corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of that corporation within any time as those regulations may provide, and (b) that a psychological corporation shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.

Amended by Stats. 1989, ch. 888, § 46.

DIVISION 7. GENERAL BUSINESS REGULATIONS

PART 3. REPRESENTATIONS TO THE PUBLIC

CHAPTER 1. ADVERTISING

Article 1. False Advertising in General

Section	
17500	False or Misleading Statements Generally
17500.1	Prohibition Against Enactment of Rule, Regulation, or Code of Ethics Restricting or Prohibiting Advertising Not Violative of Law
17506.5	"Board Within the Department of Consumer Affairs"; "Local Consumer Affairs Agency"
17507	Disclosure of Price Differentials Respecting More Than One Article of Merchandise or Type of Service Within Same Class
17508	Purportedly Fact—Based or Brand—Comparison Advertisements

False or Misleading Statements Generally

§ 17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

Amended by Stats. 1998, ch. 599 (SB 597), § 2.5.

Prohibition Against Enactment of Rule, Regulation, or Code of Ethics Restricting or Prohibiting Advertising Not Violative of Law

§ 17500.1. Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the

Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

Amended by Stats. 1979, ch. 653, § 12.

"Board Within the Department of Consumer Affairs"; "Local Consumer Affairs Agency"

§ 17506.5. As used in this chapter:

(a) ''Board within the Department of Consumer Affairs'' includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) ''Local consumer affairs agency'' means and includes any city or county body which primarily provides consumer protection services.

Added by Stats. 1979, ch. 897, § 4.

Disclosure of Price Differentials Respecting More Than One Article of Merchandise or Type of Service Within Same Class

§ 17507. It is unlawful for any person, firm, corporation or association to make an advertising claim or representation pertaining to more than one article of merchandise or type of service, within the same class of merchandise or service, if any price is set forth in such claim or representation does not clearly and conspicuously identify the article of merchandise or type of service to which it relates. Disclosure of the relationship between the price and particular article of merchandise or type of service by means of an asterisk or other symbol, and corresponding footnote, does not meet the requirement of clear and conspicuous identification when the particular article of merchandise or type of service is not represented pictorially.

Added by Stats. 1971, ch. 682, § 1.

Purportedly Fact—Based or Brand—Comparison Advertisements

§ 17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the

advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, any city attorney, or any district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if the Director of Consumer Affairs, Attorney General, city attorney, or district attorney shall have reason to believe that the advertising claim is false or misleading, do either or both of the following:

(1) Seek an immediate termination or modification of the claim by the person in accordance with Section 17535.

(2) Disseminate information, taking due care to protect legitimate trade secrets, concerning the veracity of the claims or why the claims are misleading to the consumers of this state.

(d) The relief provided for in subdivision (c) is in addition to any other relief that may be sought for a violation of this chapter. Section 17534 shall not apply to violations of this section.

(e) Nothing in this section shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertising claims referred to in subdivision (a), unless the publisher or broadcaster is the person making the claims.

(f) The plaintiff shall have the burden of proof in establishing any violation of this section.

(g) If an advertisement is in violation of subdivision (a) and Section 17500, the court shall not impose a separate civil penalty pursuant to Section 17536 for the violation of subdivision (a) and the violation of Section 17500 but shall impose a civil penalty for the violation of either subdivision (a) or Section 17500.

Amended by Stats. 2006, ch. 538 (SB 1852), § 24, effective January 1, 2007.

Article 2. Particular Offenses

Section
17535 Obtaining Injunctive Relief
17535.5 Penalty for Violating Injunction; Proceedings; Disposition of Proceeds

Obtaining Injunctive Relief

§ 17535. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor

in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

Added by Stats. 1941, ch. 63, § 1. Amended by Stats 1972, ch. 711, § 3; amendment approved by voters, Prop. 64, § 5, effective November 3, 2004.

Penalty for Violating Injunction; Proceedings; Disposition of Proceeds

§ 17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the

State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

Amended by Stats. 1979, ch. 897, § 5.

STATE OF CALIFORNIA

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DEPARTMENT OF CONSUMER AFFAIRS

REGULATIONS

RELATING TO THE PRACTICE OF

PSYCHOLOGY

Title 16, Division 13.1

California Code of Regulations

ISSUED BY

BOARD OF PSYCHOLOGY

2005 Evergreen Street, Suite 1400, Sacramento, CA 95815

Telephone (916) 263-2699

Division 13.1 Board of Psychology

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DIVISION 13.1. BOARD OF PSYCHOLOGY

Article 1. General Provisions

§ 1380. Citation and Authority.

This chapter may be cited and referred to as the ''Psychology Regulations.''

NOTE: Authority and reference cited: Section 2930, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1380 to Section 1380.1 and new Section 1380 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Register 76, No. 52.
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1380.1. Location of Principal Office.

The principal office of the Board of Psychology is located at 2005 Evergreen Street, Suite 1400, Sacramento, California 95815–3831.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2930, Business and Professions Code.

HISTORY:

1. Renumbering of section 1380 to section 1380.1 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Register 76, No. 52.
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
3. Amendment filed 2-29-2000; operative 3-30-2000 (Register 2000, No. 9).
4. Change without regulatory effect amending section filed 4-14-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 1380.2. Tenses, Gender and Number.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1380.1 to 1380.2 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1380.3. Definitions.

For the purpose of the regulations contained in this chapter, the term ''board'' means the Board of Psychology, and the term ''code'' means the Business and Professions Code.

NOTE: Authority and reference cited: Section 2930, Business and Professions Code.

HISTORY:

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Renumbering of section 1380.2 to section 1380.3 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1380.4. Delegation of Functions.

Except for those powers reserved exclusively to the ''agency itself'' under the Administrative Procedure Act (section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer for the board, or in his or her absence, the chairperson of the board, or in his or her absence, the vice chairperson of the board, all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2928 and 2965, Business and Professions Code; and Section 11500, Government Code.

HISTORY:
1. Renumbering and amendment of section 1380.3 to section 1380.4 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment filed 6-14-93; operative 7-1-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 25).

§ 1380.5. Filing of Address.

Each person holding a license as a psychologist shall file with the board his proper and current mailing address, and shall report immediately to the board at its Sacramento office any and all changes of address, giving both his old and new address.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2982, Business and Professions Code.

HISTORY:
1. Renumbering of section 1380.4 to section 1380.5 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1380.6. Display of License Number.

Pursuant to Section 137 of the code, every licensed psychologist shall include his or her number in any advertising, public directory or solicitation, regardless of whether such a presentment is made under the licensee's own name, a fictitious business or group name or a corporate name.

This requirement shall not apply to psychologists practicing in governmental organizations, nonprofit organizations which are engaged in research, education or services which services are defined by a board composed of community representatives and professionals.

NOTE: Authority cited: Sections 137 and 2930, Business and Professions Code. Reference: Section 137, Business and Professions Code.

HISTORY:
1. New section filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

§ 1380.7. Declaratory Decisions.

No decision or opinion issued by the Board of Psychology is a declaratory decision under Government Code Sections 11465.10–11456.70 unless the decision or opinion specifically states that it is a ''Declaratory Decision''.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 11465.10–11465.70, Government Code.

HISTORY:
1. New section filed 7-2-99; operative 8-1-99 (Register 99, No. 27).

§ 1380.10. Emergency Meetings and Additions to Meeting Agendas.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. New section filed 4-27-78; effective thirtieth day thereafter (Register 78, No. 17).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

Article 1.5. Psychological Assistants

HISTORY:
1. Repealer of Article 1.5 (Sections 1380.5–1380.16) filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Registers 68, No. 42, 73, No. 4, 75, No. 7, 75, No. 15, 76, No. 52 and 77, No. 8.

Article 2. Applications

§ 1381. Applications.

All applications shall be accompanied by such evidence, statements or documents as therein required to establish that the applicant meets all of the requirements for licensing or registration as set forth in the code.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2940 and 2941, Business and Professions Code.

HISTORY:
1. Amendment filed 7-14-76; effective thirtieth day thereafter (Register 76, No. 29).
2. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
5. Amendment filed 9-23-2004; operative 10-23-2004 (Register 2004, No. 39).

§ 1381.1. Abandonment of Applications.

An application shall be denied without prejudice when, in the discretion of the board, an applicant does not exercise due diligence in the completion of his or her application, in furnishing additional information or documents requested or in the payment of any required fees.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2940, Business and Professions Code.

HISTORY:
1. Amendment filed 12-22-76, effective thirtieth day thereafter (Register 76, No. 52).
2. Editorial correction to add section erroneously omitted (Register 78, No. 12).
3. Amendment filed 3-31-78; effective thirtieth day thereafter (Register 78, No. 13).
4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1381.2. Petition for Hearing.

An applicant for examination or licensure whose credentials indicate ineligibility shall be notified of the deficiency. The applicant may correct the deficiency indicated or in the alternative file a request for hearing before the appropriate committee.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2940, Business and Professions Code.

HISTORY:
1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1381.3. Appearances Before the Committee.

HISTORY:
1. Repealer filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).

§ 1381.4. Failure to Appear for Examination—Withdrawal of Application.

Any applicant approved to take or retake a board licensing examination who fails to appear for such examination in any twelve month period shall have his or her application withdrawn. An applicant who subsequently decides to take the examination shall be required to file a new application and pay the current application and examination fees.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2914, 2931, 2940, 2941, and 2942, Business and Professions Code.

HISTORY:
1. New section filed 3-31-78; effective thirtieth day thereafter (Register 78, No.13).
2. Amendment of NOTE filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment filed 3-13-97; operative 4-12-97 (Register 97, No. 11).
5. Repealer and new section filed 7-11-2001; operative 8-10-2001 (Register 2001, No. 28).

1381.5. Failure to Pay Initial License Fee.

An application shall be deemed to have been abandoned if an applicant fails to pay the initial license fee within three years after notification by the board. An applicant whose application has been deemed abandoned may again be eligible for licensure upon the filing of a new application and meeting all current licensing requirements, including payment of any fees. Such applicant shall not be required to take the Examination for Professional Practice in Psychology (EPPP) but shall take and pass the California Psychology Supplemental Examination (CPSE).

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2940 and 2983, Business and Professions Code.

HISTORY:

1. New section filed 3-31-78; effective thirtieth day thereafter (Register 78, No.13).
2. Renumbering from section 1382 to section 1381. 5 filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment filed 3-13-97; operative 4-12-97 (Register 97, No. 11).
5. Change without regulatory effect amending section filed 8-11-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 33).
6. Amendment filed 4-9-2007; operative 5-9-2007 (Register 2007, No. 15).
7. Amendment filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

§ 1381.6. Permit Processing Times.

"Permit" as defined by the Permit Reform Act of 1981 means any license, certificate, registration permit or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the board's various programs are set forth below. The actual processing times apply to those applicants who have passed all appropriate examinations.

Program	*Maximum time for notifying the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required*	*Maximum time after receipt of a complete application to issue or deny license*	*ACTUAL PROCESSING TIMES FOR ISSUANCE OF A LICENSE BASED ON PRIOR TWO YEARS*		
			Minimum	*Median*	*Maximum*
Psychological Assistants	60	60	31	69	202
Psychologists	60	180	102	403	1,832
Registered Psychologists	180	-0- (Retroactive approval to date of completion)	1	15	216

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 15736, Government Code.

HISTORY:

1. New section filed 5-14-91; operative 6-13-91 (Register 91, No. 27).

Article 3. Education and Experience

§ 1382. Human Sexuality Training.

Unless otherwise exempted, all persons applying for a license as a psychologist shall, in addition to all other requirements for licensure, have completed coursework or training in human sexuality which meets the requirements of this section. Such training shall:

(a) Be completed after January 1, 1970.

(b) Be obtained

(1) In an accredited or approved educational institution, as defined in section 2901 of the Code, including extension courses offered by such institutions, or

(2) In an educational institution approved by the Department of Education pursuant to section 94310 of the Education Code, or

(3) From a continuing education provider approved by a professional association, or

(4) In a course sponsored or offered by a professional association, or

(5) In a course sponsored, offered or approved by a local, county or state department of health or mental health or by health agencies of the Federal Government.

(c) Have a minimum length of ten (10) contact hours.

(d) Include the study of physiological-psychological and social-cultural variables associated with sexual identity, sexual behavior or sexual disorders.

All applicants shall provide the board with documentation of completion of the required human sexuality training.

It is the intent of the board that all persons licensed to practice psychology have minimal training in human sexuality. It is not intended that by complying with the requirements of this section only, a practitioner is fully trained in the subject of sex therapy.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 25, Business and Professions Code.

HISTORY:

1. Renumbering of section 1382 to section 1381.5 and new section 1382 filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39). For history of former Section 1382, see Register 78, No. 13.
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1382.1. Human Sexuality Training Required for Licensees.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 25, Business and Professions Code.

HISTORY:

1. New section 1382.1 filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).
2. Repealer of subsections (a) and (b) and amendment of subsection (c) filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Change without regulatory effect repealing section filed 12-24-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 52).

§ 1382.2. Exemption from Human Sexuality Training Requirement.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 25, Business and Professions Code.

HISTORY:

1. New section filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).
2. Amendment filed 9-14-79; effective thirtieth day thereafter (Register 79, No. 37).
3. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1382.3. Training in Alcoholism/Chemical Dependency Detection and Treatment.

The requirements set forth in Section 2914 (e) of the code shall be satisfied by completion of a graduate level course which meets the following criteria:

(a) The course shall be devoted solely to the topic of alcoholism and chemical dependency detection and treatment and shall not be less than a semester or a quarter term in length.

(b) The course must be obtained at an educational institution, or in an extension course offered by an institution, which is either credited under Education Code Section 94310.1, or approved under Education Code Section 94310.2, by the State Department of Education.

(c) An original transcript indicating successful completion of the course shall be deemed sufficient evidence for purposes of satisfying this requirement.

(d) The course shall include training in each of the following subjects as they relate to alcoholism and chemical dependency:

(1) The definition of alcoholism and other chemical dependency, and the evaluation of the user.

(2) Current theories of, and research on, the etiology of substance abuse.

(3) Physiological and medical aspects and effects of alcoholism and other chemical dependency.

(4) Psychopharmacology and the interaction of various classes of drugs, including alcohol.

(5) Diagnosing and differentiating alcoholism and substance abuse in patients referred for other clinical symptoms, such as depression, anxiety, psychosis, and impotence.

(6) Populations at risk with regard to substance abuse.

(7) Cultural and ethnic considerations.

(8) Prenatal effects.

(9) Adolescent substance abuse.

(10) Implications for the geriatric population.

(11) Iatrogenic dependency.

(12) Major treatment approaches to alcoholism and chemical dependency, including research and application.

(13) The role of persons and systems which support or compound abuse.

(14) Family issues which include treatment approaches with families of alcoholics and/or substance abusers.

(15) The process of referring affected persons.

(16) Community resources offering assessment, treatment and follow-up for the abuser and family.

(17) Ethical and Legal issues for clinical practice.

(18) Prevention of substance abuse.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914(e), Business and Professions Code.

HISTORY:

1. Change without regulatory effect renumbering former section 1387.6 to section 1382.3 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).
2. Change without regulatory effect amending first paragraph and subsection (d)(1) and adding subsection (d)(5) designator filed 8-20-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 34).

§ 1382.4. Child Abuse Assessment Training Requirements.

All persons applying for a license or renewal of a license as a psychologist shall in addition to all other requirements for licensure, have completed coursework or training in child abuse assessment and reporting and shall submit documentation thereof to the board. The coursework or training in child abuse assessment and reporting shall consist of not less than 7 instructional hours and shall include training in each of the subject areas described in section 28 of the Code. The coursework or training shall be:

(a) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board or approved by the State Department of Education pursuant to section 94310.2 of the Education Code; or

(b) Obtained from a statewide professional association representing the professions of psychology, social work, or marriage, family and child counseling; or

(c) Obtained from or sponsored by a local county, state or federal governmental entity.

(d) Completed after January 1, 1983.

NOTE: Authority cited: Sections 28 and 2930, Business and Professions Code. Reference: Section 28, Business and Professions Code.

HISTORY:

1. Change without regulatory effect renumbering former section 1387.7 to section 1382.4 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).

§ 1382.5. Spousal or Partner Abuse Assessment, Detection, and Intervention Strategies Training Requirements.

All persons applying for a license as a psychologist who began their graduate training on or after January 1, 1995 shall, in addition to all other requirements for licensure, have completed coursework in spousal or partner abuse assessment, detection, and intervention, strategies and shall submit documentation thereof to the board. The coursework in spousal or partner abuse assessment, detection, and intervention strategies shall consist of not less than a combined total of two (2) hours focused on this topic. All persons applying for a license as a psychologist who began their graduate training on or after January 1, 2004 shall also meet the above requirement, however, such course shall consist of at least fifteen (15) contact hours.

The coursework shall be:

(a) taken in fulfillment of other educational requirements in the applicant's graduate and/or doctoral training, or

(b) taken in a separate course approved by the board's recognized continuing education accrediting agency, or

(c) taken in a separate course provided by a sponsor approved by the American Psychological Association.

(d) completed after January 1, 1995.

An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

NOTE: Authority cited: Sections 2914(f) and 2930, Business and Professions Code. Reference: Section 2914(f), Business and Professions Code.

HISTORY:

1. Change without regulatory effect renumbering former section 1387.8 to section 1382.5 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).
2. Amendment of section heading, first paragraph and subsection (d) filed 10-22-2004; operative 11-21-2004 (Register 2004, No. 43).

§ 1382.6. Aging and Long-Term Care Training Requirements.

All persons applying for a license as a psychologist who began their graduate training on or after January 1, 2004, shall, in addition to all other requirements for licensure, have completed coursework in aging and long-term care which shall include but not be limited to the biological, social, and psychological aspects of aging, and shall submit documentation thereof to the board. The coursework in aging and long-term care shall consist of not less than a combined total of ten (10) contact hours focused on this topic. The coursework shall be:

(a) taken in fulfillment of other educational requirements in the applicant's graduate and/or doctoral training, or

(b) taken in a separate course approved by the board's recognized continuing education accrediting agency, or

(c) taken in a separate course provided by a sponsor approved by the American Psychological Association.

(d) completed after January 1, 2004.

NOTE: Authority cited: Section 2915.5 and 2930, Business and Professions Code. Reference: Section 2915.5, Business and Professions Code.

HISTORY:

1. New section filed 10-22-2004; operative 11-21-2004 (Register 2004, No. 43).

§ 1383. Comparable Programs.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Amendment filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
3. Repealer and new section filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31).
4. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
5. Amendment of subsection (a) filed 5-24-91; operative 6-23-91 (Register 91, No. 27).
6. Change without regulatory effect repealing section filed 8-24-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

§ 1383.1. Criteria for Approval of Comparable Programs.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31). For history of former section, see Register 79, No. 17.
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
3. Change without regulatory effect repealing section filed 8-24-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

§ 1383.2. W.A.S.C. Accreditation.

HISTORY:
1. New section filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
2. Repealer of NOTE filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Repealer filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31).

§ 1384. Criteria for Evaluation of Equivalent Education.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. Amendment filed 1-23-73; effective thirtieth day thereafter (Register 73, No. 4).
2. Amendment filed 7-27-77 as an emergency; effective upon filing (Register 77, No. 31).
3. Certificate of Compliance filed 10-21-77 (Register 77, No. 43).
4. Amendment of subsection (a) filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).
5. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17)
6. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1384.5. Effect of Revised Criteria for Evaluation of Equivalent Education.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:
1. New section filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
2. Amendment filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Amendment of subsections (a) and (b) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
4. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1384.6. Revised Criteria for Evaluation of Education.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:
1. Amendment of subsection (c) filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39). For prior history, see Registers 77, No. 8, 77, No. 31, 77, No. 43 and 77, No. 48.
2. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
3. Repealer and new subsection (c) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
4. Renumbering of Section 1384.6 to Section 1386 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1384.7. Original Research Dissertation Requirement Defined.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:
1. New section filed 2-15-78 as an emergency; effective upon filing (Register 78, No. 7).
2. Certificate of Compliance transmitted to OAL 6-9-78 and filed 6-15-78 (Register 78, No. 24).
3. Amendment filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 24).
4. Repealer filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).

§ 1385. Foreign Graduates.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2914 and 2940, Business and Professions Code.

HISTORY:
1. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Change without regulatory effect repealing section filed 8-24-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

§ 1386. Revised Criteria for Evaluation of Education.

(a) Only those doctorate degrees which are designated as being earned in a department or school of psychology, educational psychology or education with the field of specialization in counseling psychology or educational psychology shall be

accepted as an earned doctorate degree as specified in section 2914, subdivisions (b)(1) through (3), of the code. If it is not evident on the official transcript, the board may require that any doctorate degree earned in education with the field of specialization in counseling psychology or educational psychology be certified by the registrar as such a degree.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1386 to section 1387.5, and renumbering of former section 1384.6 to section 1386 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 80, No. 9; 79, No. 17; and 78, No. 39.
2. Amendment filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31).
3. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment of subsections (a) and (b) filed 5-24-91; operative 6-23-91 (Register 91, No. 27).
5. Amendment of subsection (c) filed 8-18-93; operative 9-17-93 (Register 93, No. 34).
6. Change without regulatory effect amending subsection (a) and repealing subsections (b)–(f) filed 8-24-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

§ 1386.5. Effect of Revised Criteria for Evaluation of Experience.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. New section filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
2. Amendment and repealer of NOTE filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1387. Supervised Professional Experience.

This section applies to all trainees, pre- or post-doctoral, who intend for hours of supervised professional experience (SPE) to count toward meeting the licensing requirement stated in section 2914(c) of the Business and Professions Code. Those trainees accruing hours of supervised experience in areas of psychology that do not include direct mental health services should refer to section 1387.3 for information on establishing an alternate plan for SPE.

SPE is defined as an organized program that consists of a planned, structured and administered sequence of professionally supervised comprehensive clinical training experiences. SPE shall have a logical training sequence that builds upon the skills and competencies of trainees to prepare them for the independent practice of psychology once they become licensed.

SPE shall include socialization into the profession of psychology and shall be augmented by integrated modalities including mentoring, didactic exposure, role-modeling, enactment, observational/ vicarious learning, and consultative guidance.

SPE shall include activities which address the integration of psychological concepts and current and evolving scientific knowledge, principles, and theories to the professional delivery of psychological services to the consumer public.

SPE shall include only the time spent by the trainee engaged in psychological activities that directly serve to prepare the trainee for the independent practice of psychology once licensed. SPE shall not include custodial tasks such as filing, transcribing or other clerical duties.

The term ‘‘trainee’’ as used in these regulations means a psychology trainee working under one of the conditions listed in subsections (a)(1) and (a)(2) of this section.

(a) Pursuant to section 2914(c) of the code, two years of qualifying SPE shall be completed and documented prior to licensure. One year of SPE shall be defined as 1500 hours. At least one year of SPE shall be completed postdoctorally. Each year of SPE shall be completed within a thirty (30) consecutive month period. If both

years of SPE (3000 hours) are completed postdoctorally, they shall be completed within a sixty (60) month period. Upon showing of good cause as determined by the board, these specified time limitations may be reasonably modified.

(1) Predoctoral SPE: Up to 1500 hours of SPE may be accrued predoctorally but only after completion of 48 semester/trimester or 72 quarter units of graduate coursework in psychology not including thesis, internship or dissertation. Predoctoral SPE may be accrued only as follows:

(A) In a formal internship placement pursuant to section 2911 of the code, which is accredited by the American Psychological Association (APA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC) or the California Psychology Internship Council (CAPIC) and registration with the board is not required. A formal internship placement that actually began prior to January 1, 2007 that meets the membership requirements of, but is not a member of, APPIC or CAPIC will satisfy the requirements of this section; or

(B) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(C) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(D) Pursuant to a Department of Mental Health Waiver (5751.2 Welfare and Institutions Code) for which registration with the board is not required.

(2) Postdoctoral SPE: At least 1500 hours of SPE shall be accrued postdoctorally. ''Postdoctorally'' means after the date certified as ''meeting all the requirements for the doctoral degree'' by the Registrar or Dean of the educational institution, or by the Director of Training of the doctoral program. Postdoctoral SPE may be accrued only as follows:

(A) For postdoctoral SPE accrued on or after January 1, 2006, in a formal postdoctoral training program pursuant to section 2911 of the code, which is accredited by the American Psychological Association (APA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC) or the California Psychology Internship Council (CAPIC) and registration with the board is not required; or

(B) As a registered psychologist pursuant to section 2909(d) of the code and registration with the board prior to commencing work is required; or

(C) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(D) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(E) Pursuant to a Department of Mental Health Waiver (5751.2 Welfare and Institutions Code) for which registration with the board is not required.

(b) Supervision Requirements:

(1) Primary supervisors shall meet the requirements set forth in section 1387.1.

(2) Delegated supervisors shall meet the requirements set forth in section 1387.2.

(3) Trainees shall have no proprietary interest in the business of the primary or delegated supervisor(s) and shall not serve in any capacity which would hold influence over the primary or delegated supervisor(s)' judgment in providing supervision.

(4) Trainees shall be provided with supervision for 10% of the total time worked each week. At least one hour per week shall be face-to-face, direct, individual supervision with the primary supervisor.

(5) A maximum of forty four (44) hours per week will be credited toward meeting the SPE requirement. This shall include the required 10% supervision.

(6) The primary supervisor shall be employed by the same work setting as the trainee and be available to the trainee 100% of the time the trainee is accruing SPE. This availability may be in-person, by telephone, by pager or by other appropriate technology.

(7) Primary supervisors shall ensure that a plan is in place to protect the patient/client in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the trainee is working. The primary supervisor shall ensure that the trainee thoroughly understands the plan in the event of a crisis/emergency.

(8) SPE shall not be obtained from supervisors who have received payment, monetary or otherwise, from the trainee for the purpose of providing such supervision.

(9) SPE gained while the trainee is functioning in under another mental health license shall not be credited toward meeting the requirements for the psychologist's license.

(10) Prior to the start of the experience, the primary supervisor and the trainee shall together prepare a document which identifies at least the following:

- Name and signature of primary supervisor;
- Name and signature of trainee:
- Statutory authority under which the trainee will function;
- Start date of the experience and the anticipated completion date;
- Duties to be performed;
- Address of the locations at which the duties will be performed and,
- Goals and objectives of the plan for SPE.

Additionally, the document shall reflect that both supervisor and trainee have discussed and understand each term of SPE as required by the California Code of Regulations. The primary supervisor shall maintain the document until the hours of supervised experience are completed. Once the supervised experience outlined in the document has been completed, the primary supervisor shall submit directly to the board both the document and a verification of the experience signed by the primary supervisor under penalty of perjury. The verification shall certify to completion of the hours consistent with the terms of the supervision agreement document. The supervisor must indicate, in his/her best professional judgment, whether the trainee demonstrated an overall performance at or above the level of minimal competence expected for the trainee's level of education, training and experience. When SPE is accrued in a formal predoctoral internship or postdoctoral training program, the program's training director shall be authorized to perform the verification and rating duties of the primary supervisor provided that the internship training director is a licensed psychologist who possesses a valid, active license free of any disciplinary action.

(c) Delegated Supervision Requirements:

(1) Except as provided in 1391.5, which regulates the supervision of psychological assistants, primary supervisors may delegate supervision to other qualified psychologists or to other qualified mental health professionals including licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers and board certified psychiatrists.

(2) The primary supervisor remains responsible for providing the minimum one hour per week of direct, individual face-to-face supervision.

(3) The primary supervisor remains responsible for ensuring compliance with this section.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2911 and 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history see Register 93, No. 34.
2. Editorial correction deleting former section 1387 "Revised Criteria for Evaluation of Experience" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).
3. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
4. New fifth and seventh paragraphs and amendment of subsection (b)(10) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).
5. Repealer of sixth paragraph, amendment of subsection (a)(1)(A), new subsection (a)(2)(A), subsection relettering, amendment of subsections (b)(9)–(10) and amendment of Note filed 4-27-2007; operative 5-27-2007 (Register 2007, No. 17).
6. Amendment of subsection (a)(2)(A) filed 12-30-2008; operative 12-30-2008 pursuant to Government Code section 11343.4 (Register 2009, No. 1).

§ 1387.1. Qualifications and Responsibilities of Primary Supervisors.

All primary supervisors shall be licensed psychologists, except that board certified psychiatrists may be primary supervisors of their own registered psychological assistants. In this regard, a maximum of 750 hours of experience out of the required 3000, can be supervised by a board certified psychiatrist and can be counted toward meeting the SPE licensing requirements.

(a) Primary supervisors shall possess and maintain a valid, active license free of any formal disciplinary action, and shall immediately notify the supervisee of any disciplinary action, including revocation, surrender, suspension, probation terms, or changes in licensure status including inactive license, delinquent license or any other license status change that affects the primary supervisor's ability or qualifications to supervise.

(b) Primary supervisors who are licensed by the board shall complete a minimum of six (6) hours of supervision coursework every two years.

(1) Primary supervisors shall certify under penalty of perjury to completion of this coursework requirement each time the supervisor completes a verification form as referenced in section 1387(b)(10).

(c) Primary supervisors shall be in compliance at all times with the provisions of the Psychology Licensing Law and the Medical Practice Act, whichever is applicable, and the regulations adopted pursuant to these laws.

(d) Primary supervisors shall be responsible for ensuring compliance at all times by the trainee with the provisions of the Psychology Licensing Law and the regulations adopted pursuant to these laws.

(e) Primary supervisors shall be responsible for ensuring that all SPE including record keeping is conducted in compliance with the Ethical Principles and Code of Conduct of the American Psychological Association.

(f) Primary supervisors shall be responsible for monitoring the welfare of the trainee's clients.

(g) Primary supervisors shall ensure that each client or patient is informed, prior to the rendering of services by the trainee (1). that the trainee is unlicensed and is functioning under the direction and supervision of the supervisor; (2). that the primary supervisor shall have full access to the treatment records in order to perform supervision responsibilities and (3). that any fees paid for the services of the trainee must be paid directly to the primary supervisor or employer.

(h) Primary supervisors shall be responsible for monitoring the performance and professional development of the trainee.

(i) Primary supervisors shall ensure that they have the education, training, and experience in the area(s) of psychological practice they will supervise.

(j) Primary supervisors shall have no familial, intimate, business or other relationship with the trainee which would compromise the supervisor's effectiveness, and/or which would violate the Ethical Principles and Code of Conduct of the American Psychological Association.

(k) Primary supervisors shall not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(*l*) Primary supervisors shall not exploit trainees or engage in sexual relationships or any other sexual contact with trainees.

(m) Primary supervisors shall require trainees to review the pamphlet ''Professional Therapy Never Includes Sex.''

(n) Primary supervisors shall monitor the supervision performance of all delegated supervisors.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).
2. Repealer of first paragraph, amendment of subsection (b), new subsections (c)–(c)(3) and subsection relettering filed 7-17-2002; operative 1-1-2003 (Register 2002, No. 29).
3. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
4. Amendment of subsection (m) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.2. Qualifications and Responsibilities of Delegated Supervisors.

Delegated supervisors shall be qualified psychologists or those other qualified mental health professionals listed in section 1387(c). The delegated supervisor(s) shall be employed in the same work setting as the trainee.

(a) Delegated supervisors shall have and shall maintain a valid, active license free of any formal disciplinary action, shall immediately notify the trainee and the primary supervisor of any disciplinary action, including revocation, surrender, suspension, probation terms, or changes in licensure status including inactive license, or any other license status change that affects the supervisor's ability or qualifications to supervise.

(b) Delegated supervisors shall be in compliance at all times with the provisions of the Psychology Licensing Law and the regulations adopted pursuant to these laws.

(c) Delegated supervisors shall be responsible for ensuring compliance by the trainee with the provisions of the Psychology Licensing Law and the regulations adopted pursuant to these laws.

(d) Delegated supervisors shall be responsible for ensuring that all SPE and record keeping performed under the supervision delegated to them is conducted in compliance with the Ethical Principles and Code of Conduct of the American Psychological Association.

(e) Delegated supervisors shall be responsible for monitoring the welfare of the trainee's clients while under their delegated supervision.

(f) Delegated supervisors shall be responsible for monitoring the performance and professional development of the trainee and for reporting this performance and development to the primary supervisor.

(g) Delegated supervisors shall ensure that they have the education, training, and experience in the area(s) of psychological practice to be supervised.

(h) Delegated supervisors shall have no familial, intimate, business or other relationship with the trainee which would compromise the supervisor's effectiveness and/or which would violate the Ethical Principles and Code of Conduct of the American Psychological Association.

(i) Delegated supervisors shall not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(j) Delegated supervisors shall not exploit trainees or engage in sexual relationships, or any other sexual contact with trainees.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).
2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
3. Amendment of first paragraph filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.3. Alternate Plan for Supervised Professional Experience in Non-Mental Health Services

This section pertains only to those trainees who are preparing for practice, once licensed, in the non-mental health areas of the profession of psychology.

Due to lack of training sites and qualified supervisors, typically in the areas of applied psychological research, industrial-organizational psychology, media and social-experimental psychology, but not including those involving direct mental health services, trainees in these areas of psychology shall submit a plan for supervised professional experience to the board for approval on a case-by-case basis as provided for in section 2914(c) of the code. In all such cases, the proposed plan must be submitted by the supervisee and approved by the board prior to commencement of supervision. Supervised professional experience (SPE) which is accrued prior to the approval of the plan will not count towards licensure.

(a) Supervision Plan Required

The proposed supervision plan (''plan'') submitted by the trainee for approval shall be signed by all participants involved. It shall describe the qualifications and responsibilities of the supervisor (and co-supervisor, if appropriate) for supervision. The plan shall be developed for and shall demonstrate appropriate preparation of the trainee to practice effectively in non-mental health services, and within the specific non-mental health setting. The plan shall address how the quality of work done by the trainee working in a non-mental health role will be monitored and assure protection of the client. As used in this section, ''trainee'' means a psychology trainee working under the provisions of this section.

(b) Hours and Setting Requirements

(1) Pursuant to section 2914(c) of the code, two years of qualifying SPE shall be completed and documented prior to licensure. One year of SPE shall be defined as 1500 hours. At least one year of SPE shall be completed postdoctorally. Each year of SPE shall be completed within a thirty (30) consecutive month period. If both years of SPE (3000 hours) are completed postdoctorally, they shall be completed within a sixty (60) month period. Upon showing of good cause as determined by the board, these specified time limitations may be reasonably modified.

(2) Predoctoral SPE under this section may be accrued only as follows:

(A) In a formal internship placement pursuant to section 2911 of the code and a registration with the board is not required; or

(B) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(C) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required.

(3) Postdoctoral SPE may be accrued only as follows:

(A) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(B) As a registered psychologist pursuant to section 2909(d) of the code and registration with the board prior to commencing work is required; or

(C) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required.

(c) Supervision Requirements

(1) The trainee shall be provided with supervision for 10% of the total time worked each month. At least four hours per month shall be face-to-face, direct, individual supervision with the primary supervisor. The plan shall address how the supervision will be provided. The remainder of the 10% may be provided by the delegated supervisor or co-supervisor and may include supervision via electronic means.

(2) A maximum of forty-four (44) hours per week, including the required 10% supervision, may be credited toward meeting the supervised professional experience requirement.

(3) The trainee shall have no proprietary interest in the business of the primary, delegated or co-supervisor and shall not serve in any capacity that would hold influence over the primary, delegated or co-supervisor's judgment in providing supervision.

(4) Neither the primary supervisor nor any delegated or co-supervisor shall receive payment, monetary or otherwise, from the trainee for the purpose of providing supervision.

(5) The trainee will not function under any other license with the same client or in the same setting during the supervised experience accrued pursuant to the plan.

(6) A clear and accurate record of the trainee's supervision shall be maintained. The trainee shall maintain this record in an SPE log pursuant to section 1387.5 but shall also include information relevant to the co-supervisor;

(7) Except as provided in section 1391.5(c), a primary supervisor who is a licensed psychologist may delegate supervision pursuant to section 1387.2.

(8) If the primary supervisor is unlicensed, the trainee shall also obtain a co-supervisor who meets the requirements of subsection (f).

(d) Qualifications and Responsibilities of Primary Supervisors

The primary supervisor shall:

(1) possess a degree that meets the requirements of section 2914(b) of the code;

(2) meet the requirements of section 2913 of the code if supervising a psychological assistant;

(3) if licensed, possess and maintain a valid, active license issued by the board free of any formal disciplinary action during the period of supervision covered by the plan. The primary supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision. If not licensed, the primary supervisor shall never have been denied, or possessed a professional license for providing psychological or other mental health services issued by any jurisdiction that was subject to discipline, or surrendered with charges pending;

(4) be employed or contracted by the same organization as the trainee;

(5) be available to the trainee 100% of the time the trainee is accruing SPE pursuant to the plan. This availability may be in person, through telephone, pager or other appropriate technology(ies);

(6) if licensed, complete a minimum of six hours of supervision coursework every two years as described in section 1387.1(b);

(7) ensure that all parties work together throughout the training experience to ensure that the trainee will be engaged in duties that are considered doctoral level;

(8) maintain ongoing communication between all parties regarding supervisory needs and experiences;

(9) ensure that all parties to the plan comply at all times with the provisions of the Psychology Licensing Law or the Medical Practice Act, whichever might apply, and the regulations adopted pursuant to these laws;

(10) ensure that all SPE accrued under the plan complies with the Ethical Principles and Code of Conduct of the American Psychological Association;

(11) monitor the welfare of the trainee's clients;

(12) ensure that each client of the trainee is informed prior to rendering of services by the trainee that the trainee is unlicensed and is functioning under the direction and supervision of the primary supervisor;

(13) monitor the performance and professional development of the trainee which shall include socialization into the practice of psychology;

(14) have the education, training, and experience in the area(s) of psychological practice for which they are providing supervision;

(15) have or have had no familial, intimate, sexual, social, or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association;

(16) not supervise a trainee who is a current or former client of psychological services provided by the supervisor; and

(17) monitor the supervision performance of all delegated supervisors and co-supervisors.

(e) Qualifications and Responsibilities of Delegated Supervisors

Except as provided in section 1391.5, which regulates the supervision of psychological assistants, primary supervisors may delegate supervision to other qualified psychologists or to other qualified mental health professionals including licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers and board certified psychiatrists.

The delegated supervisor shall:

(1) possess and maintain a valid, active license free of any formal disciplinary action during the period covered by the plan. The supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision;

(2) be employed or contracted by the same organization as the trainee;

(3) be responsible for ensuring compliance by the trainee with the provisions of the Psychology Licensing Law, the licensing laws of the Board of Behavioral Sciences, or the Medical Practice Act, whichever might apply, and the regulations adopted pursuant to these laws.

(4) ensure that all SPE accrued under the supervision delegated to them complies with the Ethical Principles and Code of Conduct of the American Psychological Association;

(5) monitor the welfare of the trainee's clients while under their delegated supervision;

(6) monitor the performance and professional development of the trainee and is responsible for reporting this performance and development to the primary supervisor;

(7) have the education, training, and experience in the area(s) of psychological practice to be supervised;

(8) have or have had no familial, intimate, social, sexual or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association; and

(9) not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(f) Qualifications and Responsibilities of the Co-Supervisor (This section only applies when the primary supervisor is not licensed)

The co-supervisor shall:

(1) possess and maintain a valid, active license issued by the board free of any formal disciplinary action during the period covered by the plan. The co-supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision;

(2) complete a minimum of six hours of supervision coursework every two years as described in section 1387.1(b);

(3) monitor the performance and professional development of the trainee and is responsible for reporting this performance and development to the primary supervisor;

(4) not supervise a trainee who is a current or former client of psychological services provided by the supervisor;

(5) have or have had no familial, intimate, social, sexual or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association;

(6) ensure that all parties work together throughout the training experience to ensure that the trainee will be engaged in duties that are considered doctoral level;

(7) maintain ongoing communication between all parties regarding supervisory needs and experiences; and

(8) not supervise more than five trainees under any section at any given time.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history see Register 93, No. 34.
2. Editorial correction deleting former section 1387.3 "Qualifications of Supervisors" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).
3. Amendment of section heading and section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
4. New first paragraph and amendment of subsection (a) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).
5. Amendment of section heading and section filed 4-24-2008; operative 5-24-2008 (Register 2008, No. 17).

§ 1387.4. Out-of-State Experience.

(a) All out of state SPE must be (1) supervised by a primary supervisor who is a psychologist licensed at the doctoral level in the state, U.S. territory or Canadian province in which the SPE is taking place, (2) in compliance with all laws and regulations of the jurisdiction in which the experience was accrued and (3) in substantial compliance with all the supervision requirements of section 1387.

(b) Supervised professional experience can be accrued at a U.S. military installation so long as the experience is supervised by a qualified psychologist licensed at the doctoral level in the U.S. or Canada.

(c) SPE can be accrued in countries outside the U.S. or Canada which regulate the profession of psychology pursuant to the same requirements as set forth in section 2914 of the code. SPE accrued in countries outside the U.S., its Territories or Canada must comply with all the supervision requirements of section 1387. The burden shall be upon the applicant to provide the necessary documentation and translation that the board may require to verify the qualification of the SPE.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).
2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1387.5. SPE Log.

(a) The trainee shall maintain a written weekly log of all hours of SPE earned toward licensure. The log shall contain a weekly accounting of the following information and shall be made available to the board upon request:

(1) The specific work setting in which the SPE took place.

(2) The specific dates for which the log is being completed.

(3) The number of hours worked during the week.

(4) The number of hours of supervision received during the week.

(5) An indication of whether the supervision was direct, individual, face-to-face, group, or other (specifically listing each activity).

(6) An indication of whether the SPE performed that week was satisfactory.

(b) This log must also contain the following information:

(1) The trainee's legibly printed name, signature and date signed.

(2) The primary supervisor's legibly printed name, signature, license type and number, and date signed.

(3) Any delegated supervisors' legibly printed name, license type and number.

(4) A description of the psychological duties performed during the period of supervised professional experience.

(5) A statement signed by the primary supervisor attesting to the accuracy of the information.

(c) When SPE is accrued as part of a formal internship, the internship training director shall be authorized to provide all information required in section 1387.5(b).

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history, see Register 83, No. 25.
2. Editorial correction deleting former section 1387.5 "Pre-Doctoral Experience" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).
3. Repealer of first paragraph and amendment of subsections (a) and (b)(1) filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
4. New subsection (a)(6) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.6. Psychological Assistants.

In order to accrue hours of SPE, a psychological assistant shall at all times be in compliance with the supervision requirements of section 1387 and with the requirements for psychological assistants set forth in Article 5.1 of this chapter.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51). For prior history, see Register 2002, No. 8.
2. Amendment filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.7. Registered Psychologists.

Persons working as registered psychologists pursuant to section 2909 of the code in order to accrue postdoctoral hours of SPE shall at all times be in compliance with the supervision requirements of section 1387 and with the requirements for registered psychologists set forth in Article 5 of this chapter.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

HISTORY:

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51). For prior history, see Register 2002, No. 8.

§ 1387.8. [Renumbered]

NOTE: Authority cited: Sections 2914(f) and 2930, Business and Professions Code. Reference: Section 2914(f), Business and Professions Code.

HISTORY:

1. New section filed 2-29-2000; operative 3-30-2000 (Register 2000, No. 9).
2. Change without regulatory effect renumbering former section 1387.8 to section 1382.5 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).

Article 4. Examinations

1388. Examinations.

(a) The board recognizes the expertise of the Department of Consumer Affairs' (DCA) Office of Examination Resources (OER). The board shall utilize the services of the OER in licensing examination development and validation through an interagency agreement.

(b) An applicant shall successfully take and pass the licensing examinations prior to being licensed. The licensing examinations shall consist of the Association of State and Provincial Psychology Boards' (ASPPB) Examination for Professional Practice in Psychology (EPPP), and the California Psychology Supplemental Examination (CPSE) except that the EPPP and the CPSE shall be waived for those applicants who meet the criteria in section 1388.6 of this chapter. Such applicants shall be required to take and pass the California Psychology Law and Ethics Examination (CPLEE).

(c) An applicant is eligible to take the EPPP upon completion of a qualifying doctorate degree and 1500 hours of qualifying professional experience. An applicant shall pass the EPPP and complete all 3000 hours of supervised professional experience prior to being eligible for the CPSE or the CPLEE, whichever is applicable, pursuant to section 1388.6.

(d) Upon application, the board will notify applicants of their eligibility to take the EPPP. Applicants are responsible for completing any administrative requirements for taking the EPPP established by ASPPB or its agent, including paying any fees. This subsection applies to those re-taking the EPPP as well as to those taking it for the first time.

(e) For forms of the EPPP taken prior to September 1, 2001, the passing score is the score that was recognized by the board at that time. For computer administered forms of the EPPP, the board shall apply a scaled score of 500 as recommended by ASPPB.

(f) Qualified applicants desiring to take the CPSE or the CPLEE, for those applications who qualify for a waiver of the CPSE pursuant to section 1388.6, shall submit to the board the fee set forth in section 1392 of this chapter. Applicants shall comply with all instructions established by the DCA examination vendor for taking the CPSE or the CPLEE.

(g) The passing score on the CPSE and the CPLEE shall be determined for each form of the examination by a criterion referenced procedure performed by OER.

NOTE: Authority cited: Sections 2930 and 2942, Business and Professions Code. Reference: Sections 123, 496, 2941, 2942, 2943 and 2960, Business and Professions Code.

HISTORY:

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Amendment of subsection (b) filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
3. Repealer and new section filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
4. Amendment of subsection (b) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
6. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

7. Amendment of subsection (b) and Note filed 6-14-93; operative 7-1-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 25).
8. Amendment of subsection (c) and Note filed 8-11-95; operative 9-10-95 (Register 95, No. 32).
9. Amendment of subsection (b) filed 1-8-99 as an emergency; operative 1-8-99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-8-99 order transmitted to OAL 5-7-99 and filed 6-15-99 (Register 99, No. 25).
11. Amendment of subsections (a)–(c) and new subsections (d)–(g) filed 7-11-2001; operative 8-10-2001 (Register 2001, No. 28).
12. Change without regulatory effect amending subsection (f) filed 8-13-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 33).
13. Amendment of subsections (a)–(c) and (e) and new subsections (h)–(i) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).
15. Amendment filed 2-11-2003; operative 3-1-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 7).
16. Amendment of subsections (b), (c), (f) and (g) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
17. Amendment of subsections (b), (c), (f) and (g) filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

§ 1388.5. Oral Examinations.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2931, 2941, 2942 and 2945, Business and Professions Code; and Section 12944, Government Code.

HISTORY:

1. New section filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment of subsections (b)–(c) and Note filed 8-11-95; operative 9-10-95 (Register 95, No. 32).
5. New subsection (d) filed 1-8-99 as an emergency; operative 1-8-99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-8-99 order transmitted to OAL 5-7-99 and filed 6-15-99 (Register 99, No. 25).
7. Repealer filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

1388.6. License Requirements and Waiver of Examination.

(a) When a California-licensed psychologist has been licensed for at least five years and has allowed his/her license to expire by not renewing the license for at least three years, the psychologist shall not be required to take the EPPP or the CPSE.

(b) If an applicant for licensure as a psychologist has been licensed in another state, Canadian province, or U.S. territory, for at least five years the applicant shall not be required to take the EPPP or the CPSE.

(c) An applicant for licensure as a psychologist who holds a Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB), shall not be required to take the EPPP or the CPSE. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(d) An applicant for licensure as a psychologist who is credentialed as a Health Service Provider in Psychology by the National Register of Health Service Providers in Psychology (NRHSPP) and has been licensed based on a doctoral degree in another state, Canadian province, or U.S. territory for a minimum of five

years shall not be required to take the EPPP or the CPSE. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(e) An applicant for licensure as a psychologist who is certified by the American Board of Professional Psychology (ABPP) and has been licensed based on a doctoral degree in another state, Canadian province, or U.S. territory for a minimum of five years shall not be required to take the EPPP or the CPSE. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(f) Although the EPPP and the CPSE are waived under this section, an applicant must file a complete application and meet all current licensing requirements not addressed above, including payment of any fees, take and pass the California Psychology Law and Ethics Examination (CPLEE), and not been subject to discipline.

NOTE: Authority cited: Sections 2930 and 2946, Business and Professions Code. Reference: Section 2946, Business and Professions Code.

HISTORY:

1. New section filed 3-13-97; operative 4-12-97 (Register 97, No. 11).
2. Amendment of subsections (a)–(c), new subsection (d), subsection relettering, and amendment of newly designated subsection (e) filed 12-1-98; operative 12-31-98 (Register 98, No. 49).
3. Amendment filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).
4. Amendment filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).
6. Amendment of section heading and section filed 8-7-2003; operative 9-6-2003 (Register 2003, No. 32).
7. Amendment of subsection (f) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
8. New subsection (e) and subsection relettering filed 4-9-2007; operative 5-9-2007 (Register 2007, No. 15).
9. Amendment filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

§ 1389. Reconsideration of Examinations.

(a) There shall be no reconsideration of the grade received on the EPPP or on the CPSE.

(b) Nothing in this section shall be construed to deprive an applicant of his or her rights of appeal as afforded by other provisions of law.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2942 and 2944, Business and Professions Code.

HISTORY:

1. Repealer and new section filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).
2. Amendment filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
3. Amendment of subsection (c) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
4. Amendment of subsections (b) and (c) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83,No. 25).
6. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
7. Amendment of subsection (a), repealer of subsection (b), subsection relettering, and amendment of newly designated subsection (c) filed 8-11-95; operative 9-10-95 (Register 95, No. 32).
8. Repealer of subsections (a)–(b), subsection relettering, and amendment of newly designated subsection (a) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).
10. Amendment of subsection (a) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

§ 1389.1. Inspection of Examinations.

(a) All examination materials, except those owned by an examination service, shall be retained by the board at the board's office in Sacramento for a period of two (2) years after the date of the examination.

(b) No inspection is allowed of the written examination administered by the board.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2942 and 2944, Business and Professions Code; and Section 12944, Government Code.

HISTORY:

1. Renumbering of former section 1390 to new section 1389.1 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

Article 5. Registered Psychologists

§ 1390. Citation.

This article may be cited and referred to as the "Registered Psychologist Regulations."

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

HISTORY:

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Editorial correction (Register 77, No. 15).
3. Amendment filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
4. New subsection (c) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
6. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
7. Amendment of subsections (a)-(b) filed 8-11-95; operative 9-10-95 (Register 95, No. 32).
8. Change without regulatory effect repealing subsection (b) and relettering former subsection (c) to new subsection (b) filed 4-7-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).
9. Relocation and amendment of article 5 heading from preceding section 1391 to preceding section 1390, renumbering of former section 1390 to section 1389.1 and renumbering of former section 1391 to section 1390 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
10. Amendment of article heading, section and Note filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1390.1. Registration.

Any person desiring to register at a qualifying agency as a registered psychologist shall submit an application on a form provided by the board.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

HISTORY:

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1390.2. Withdrawal of Applications.

Applications for registration which have not been completed within ninety (90) days after additional information has been requested shall be deemed to be withdrawn.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

HISTORY:

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1390.3. Statement of Purpose.

A person meeting the requirements set forth in section 2909(d) of the code, may provide psychological services under supervision at a non-profit community agency that receives at least 25% of its funding from a governmental source for the purpose

of training and providing services so long as that person registers with the board as a registered psychologist. The employing agency must provide the board with evidence of the requisite level of government funding.

(a) The registered psychologist is authorized to function only in the agency to which he or she is registered and only after a registration number has been issued by the board;

(b) The registration shall be in effect for two years from the date of issuance and cannot be renewed and the registrant cannot re-register as a registered psychologist to the same agency;

(c) The registered psychologist shall at all times be under the primary supervisor of a qualified licensed psychologist who is employed by the same agency. The primary supervisor shall be available to the trainee 100% of the time that the trainee is working in such a capacity. This availability can be in-person, by telephone, by pager or by other appropriate technology.

(1) The primary supervisor shall comply with the coursework requirements set forth in section 1387.1(b) of the code.

(2) The primary supervisor shall ensure that a plan is in place in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the trainee is working. The primary supervisor shall ensure that the trainee thoroughly understands the plan in the event of such an emergency.

(d) In order to qualify as "supervised professional experience" pursuant to section 2914(c) of the code, experience gained as a registered psychologist must comply with section 1387.

(e) Each patient or client of a registered psychologist shall be informed, prior to the rendering of services, that the registrant is unlicensed and under the supervision of a qualified licensed psychologist as an employee of the agency and that the supervisor shall have access to the patient's chart in fulfilling his/her supervisorial duties.

(f) No supervisor or employing agency of a registered psychologist may charge a fee or otherwise require monetary payment in consideration for the employment or supervision of a registered psychologist.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

HISTORY:

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
2. Amendment of subsection (c)(1) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

Article 5.1. Psychological Assistants

§ 1391. Citation.

This article may be cited and referred to as the "Psychological Assistant Regulations."

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. New Article 4.5 (Sections 1391–1391.14) filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
2. Renumbering of Article 4.5 to Article 5 filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
4. Relocation and amendment of article 5 heading from preceding section 1391 to preceding section 1390 and renumbering of former section 1391 to section 1390 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
5. New article 5.1 and new section filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1391.1. Registration.

Any person desiring to supervise a psychological assistant shall submit an application on a form provided by the board.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1391.2. Withdrawal of Applications.

Applications for registration which have not been completed within ninety (90) days after additional information has been requested shall be deemed to be withdrawn.

§ 1391.3. Required Training.

Any person who possesses a doctorate degree which will qualify for licensure as a psychologist pursuant to Section 2914 of the code shall be deemed to have completed "one fully matriculated year of graduate training in psychology" and will be eligible for registration as a psychological assistant upon compliance with other provisions of Section 2913 of the code.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.4. Limited Psychological Functions.

As used in Section 2913 of the code, the phrase "limited psychological functions" means those functions which are performed under the direction and supervision of the qualified supervisor pursuant to the American Psychological Association's (APA) January 1, 1997 version of the Guidelines and Principles for Accreditation of Programs in Professional Psychology and the APA Code of Conduct and Ethical Principles.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Amendment of section and new Note filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.5. Statement of Purpose; Supervision Required.

(a) A psychological assistant shall be under the direction and supervision of a licensed psychologist or board-certified psychiatrist who is employed in the same setting in which the psychological assistant is employed. A licensed psychologist who is supervising psychological assistants must comply with the supervision course requirements set forth in section 1387.1.

(b) The supervisor shall provide a minimum of one (1) hour per week of individual supervision to the psychological assistant, unless more such supervision is required under Section 1387 or by the nature of the psychological functions performed by the psychological assistant.

(c) A registered psychological assistant employed by one of the organizations specified in section 2913 of the code may receive delegated supervision pursuant to section 1387(c) from a qualified psychologist or a board certified psychiatrist other than the supervisor to whom he/she is registered if the delegated supervisor is also

employed within the same organization. Otherwise, supervision may not be delegated under a psychological assistant registration.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:
1. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).
2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.6. Supervisor's Responsibility.

(a) Every supervisor of a psychological assistant shall be responsible for supervising the psychological functions performed by the psychological assistant and ensuring that the extent, kind and quality of the psychological functions performed by the assistant are consistent with the supervisor's training and experience, and that the assistant complies with the provisions of the code, the board's regulations, and the standards established by the American Psychological Association.

(b) The supervisor shall inform each client or patient prior to the rendering of services by the psychological assistant that the assistant is unlicensed and is under the direction and supervision of the supervisor as an employee and that the supervisor shall have access to the patient's chart in fulfilling his/her supervision duties.

(c) The supervisor shall be available to the assistant 100% of the time the assistant is performing psychological functions. The availability can be in-person, by telephone, by pager or by other appropriate technology.

(d) The supervisor shall ensure that a plan is in place to protect the patient or client in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the supervisee is working. The supervisor shall ensure that the supervisee thoroughly understands the plan in the event a patient crisis or emergency occurs.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:
1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.7. Supervised Professional Experience.

In order to qualify as "supervised professional experience" pursuant to Section 2914(c) of the code, experience gained as a psychological assistant must comply with Section 1387.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:
1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Change without regulatory effect amending section filed 1-18-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 3).

§ 1391.8. Employer-Employee Business Relationship.

(a) No supervisor or employer of a psychological assistant may charge a fee or otherwise require monetary payment in consideration for the employment or supervision of a psychological assistant. The supervisor or employer shall supply all provisions necessary to function as a psychological assistant.

(b) The psychological assistant shall have no proprietary interest in the business of the supervisor or the employer.

(c) The psychological assistant shall not rent, lease, sublease, or lease-purchase office space from any entity for purposes of functioning as a psychological assistant.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).
2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.9. Continuing Education.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1391.10. Annual Reports.

On or before January 31 of each year, every supervisor of a psychological assistant shall submit to the board on a form provided by the board a report for the preceding calendar year showing:

(a) The nature of the psychological functions performed by the psychological assistant being supervised;

(b) Certification of employment.

(c) The locations at which the psychological assistant provided the psychological functions and the type, extent and amount of supervision.

(d) A certification that the limited psychological functions performed by the psychological assistant were performed at a level satisfactory to ensure safety to the public.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).
3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
4. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.11. Notification of Termination.

Within thirty (30) days after the termination of the employment of a psychological assistant, the employer shall notify the board in writing of such termination, setting forth the date thereof.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:

1. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1391.12. Psychological Assistant Renewals.

(a) The registration of a psychological assistant shall be renewed by the employer no later than January 31 of each year.

(b) Those registrations renewed 30 days after the deadline must be accompanied by the delinquency fee required in section 1392.1.

(c) A psychological assistant who has been registered with the board but whose registration has not been renewed by the employer shall not function as a psychological assistant.

(d) A psychological assistant employed and registered by more than one employer shall have his or her registration renewed by each employer.

(e) Those registrations not renewed within 60 days after the renewal date shall become void and a new application for registration shall be submitted by the employer.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

HISTORY:
1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
3. Change without regulatory effect amending subsection (b) filed 10-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 42).

§ 1391.13. Effect of Violation, Psychological Assistant.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1391.14. Effect of Violation, Employer.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

Article 5.5. Psychological Corporations

NOTE: Authority cited: Sections 2119 and 2151.9, Business and Professions Code.

HISTORY:
1. Repealer of Article 5.5 (Sections 1392.2–1392.9) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17). For former history, see Registers 76, No. 52, 71, No. 12, and 70, No. 5.

Article 6. Fees

1392. Psychologist Fees.

(a) The application fee for a psychologist is $40.00.

(b) The fee for the California Psychology Supplemental Examination (CPSE) is $129.00.

(c) The fee for the California Psychology Law and Ethics Examination (CPLEE) is $129.00.

(d) An applicant taking or repeating either licensing examination shall pay the full fee for that examination.

(e) The initial license fee and the biennial renewal fee for a psychologist are $400.00, except that if an initial license will expire less than one year after its issuance, then the initial license fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(f) The biennial renewal fee for an inactive license is $40.00.

NOTE: Authority cited: Sections 2930, 2987 and 2989, Business and Professions Code. Reference: Sections 2987, 2988 and 2989, Business and Professions Code.

HISTORY:
1. Amendment of subsections (a) and (b) filed 7-10-89; operative 8-9-89 (Register 89, No. 49). For prior history, see Register 83, No. 25.
2. New subsection (d) filed 12-1-89; operative 12-31-89 (Register 89, No. 49).
3. Amendment of subsection (c) filed 5-17-90; operative 6-16-90 (Register 90, No. 26).
4. Amendment of subsection (c) filed 5-24-91; operative 6-23-91 (Register 91, No. 27).
5. Amendment of subsections (b) and (c) and Note filed 6-14-93; operative 7-1-93 pursuant to Government Code section 113462(d) (Register 93, No. 25).

6. Amendment of subsection (c) filed 3-8-95; operative 4-7-95 (Register 95, No. 10).
7. Amendment of subsection (b) and Note filed 3-24-97; operative 4-23-97 (Register 97, No. 13).
8. Amendment of subsection (b) filed 10-22-98; operative 11-21-98 (Register 98, No. 43).
9. Amendment of subsections (b) and (c) filed 2-14-2000; operative 3-15-2000 (Register 2000, No. 7).
10. Amendment of subsection (b) filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).
11. Repealer of subsections (b)–(c), new subsections (b)–(e) and subsection relettering filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).
13. Repealer of subsection (b) and subsection relettering filed 2-11-2003; operative 3-1-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 7).
14. Amendment of subsection (b) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
15. New subsection (c), subsection relettering and amendment of newly designated subsection (e) filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

§ 1392.1. Psychological Assistant Fees.

(a) The application fee for registration of a psychological assistant which is payable by the supervisor is $40.00.

(b) The annual renewal fee for registration of a psychological assistant is $40.00.

(c) The delinquency fee for a psychological assistant is $20.00.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2688 and 2689, Business and Professions Code.

HISTORY:

1. New section filed 1-22-79 as an emergency; effective upon filing (Register 79, No. 4).
2. Certificate of Compliance filed 3-7-79 (Register 79, No. 10).
3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1392.2. Professional Corporation Fees.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. New section filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

Article 7. Restoration of Suspended or Revoked Licenses

§ 1393. Requirements for Psychologists on Probation.

Each psychologist who has been placed on probation by the board shall be subject to the board's probation program and shall be required to fully cooperate with the assigned probation monitor.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960 and 2961, Business and Professions Code.

HISTORY:

1. Repealer of former section 1393, and renumbering and amendment of former section 1395 to section 1393 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 79, No. 17.
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
3. Amendment filed 3-6-2003; operative 4-5-2003 (Register 2003, No. 10).

§ 1394. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license or registration under the Psychology Licensing Law (Chapter 6.6 of Division 2 of the Code), if to a substantial degree it evidences present or potential unfitness of a person holding a license or registration to perform the functions authorized by his or her license or registration or in a manner

consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of that law.

(b) Conviction of a crime involving fiscal dishonesty.

NOTE: Authority cited: Sections 481 and 2930, Business and Professions Code. Reference: Sections 481, 490, 2960 and 2963, Business and Professions Code.

HISTORY:

1. Repealer of former Section 1394, and renumbering and amendment of former Section 1396 to Section 1394 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; 75, Nos. 24 and 8; and 74, No. 8.

§ 1395. Rehabilitation Criteria for Denials and Reinstatements.

When considering the denial of a license or registration under section 480 of the code, or a petition for reinstatement under section 11522 of the Government Code, the board in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

NOTE: Authority cited: Sections 482 and 2930, Business and Professions Code. Reference: Sections 480, 482, 2960, 2962 and 2963, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 1395 to section 1393, and renumbering and amendment of former section 1396.1 to section 1395 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; and 75, Nos. 24 and 18.
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1395.1. Rehabilitation Criteria for Suspensions or Revocations.

When considering the suspension or revocation of a license or registration on the ground that a person holding a license or registration under the Psychology Licensing Law (chapter 6.6 of division 2 of the code) has been convicted of a crime the board in evaluating the rehabilitation of such person and his or her eligibility for a license or registration will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registration holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

NOTE: Authority cited: Sections 482 and 2930, Business and Professions Code. Reference: Sections 482, 2960 and 2963, Business and Professions Code.

HISTORY:
1. Renumbering and amendment of former section 1396.2 to section 1395.1 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; and 75, Nos. 24 and 18.
2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

Article 8. Rules of Professional Conduct

§ 1396. Competence.

A psychologist shall not function outside his or her particular field or fields of competence as established by his or her education, training and experience.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

HISTORY:
1. Repealer of Article 8 heading, renumbering of Article 9 to Article 8 (Sections 1396–1397.40, not consecutive), renumbering and amendment of former Section 1396 to Section 1394, and renumbering and amendment of former Section 1397.3 to Section 1396 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 76, No. 52.

§ 1396.1. Interpersonal Relations.

It is recognized that a psychologist's effectiveness depends upon his or her ability to maintain sound interpersonal relations, and that temporary or more enduring problems in a psychologist's own personality may interfere with this ability and distort his or her appraisals of others. A psychologist shall not knowingly undertake any activity in which temporary or more enduring personal problems in the psychologist's personality integration may result in inferior professional services or harm to a patient or client. If a psychologist is already engaged in such activity when becoming aware of such personal problems, he or she shall seek competent professional assistance to determine whether services to the patient or client should be continued or terminated.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

HISTORY:
1. Renumbering and amendment of former Section 1396.1 to Section 1395, and renumbering of former Section 1397.4 to Section 1396.1 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 76, No. 52.

§ 1396.2. Misrepresentation.

A psychologist shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products and/or services with which he or she is associated.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

HISTORY:
1. Renumbering and amendment of former Section 1396.2 to Section 1395.1, and renumbering of former Section 1397.5 to Section 1396.2 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 76, No. 52; and 68, No. 9.

§ 1396.3. Test Security.

A psychologist shall not reproduce or describe in public or in publications subject to general public distribution any psychological tests or other assessment devices, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the techniques; and shall limit access to such tests or devices to persons with professional interests who will safeguard their use.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

HISTORY:
1. Renumbering and amendment of former Section 1397.7 to Section 1396.3 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 68, No. 42.

§ 1396.4. Professional Identification.

(a) When engaged in any professional psychological activity, whether for a fee or otherwise, a psychologist shall at all times and under all circumstances identify himself or herself as a psychologist.

(b) A psychological assistant shall at all times and under all circumstances identify himself or herself to patients or clients as a psychological assistant to his or her employer or responsible supervisor when engaged in any psychological activity in connection with that employment.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Sections 2913 and 2936, Business and Professions Code.

HISTORY:

1. Renumbering of former Section 1397.8 to Section 1396.3 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 76, No. 52; and 73, No. 4.

§ 1396.5. Consumer Information.

Licensed psychologists who provide services to a client in a language other than English shall:

(a) Provide to the client as appropriate the translations of required or approved notices or publications made available by the board in that language;

(b) Discuss with the client as appropriate the content of any required or approved notice or publication for those notices or publications not available in the language in which services are provided;

(3) Post the Notice to Consumers pursuant to section 2936 of the Code, if made available by the board in that language.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 728, 2930 and 2936, Business and Professions Code.

HISTORY:

1. New section filed 2-28-2007; operative 3-30-2007 (Register 2007, No. 9).

§ 1397. Advertising.

A licensed psychologist may advertise the provision of any services authorized to be provided by such license within the psychologist's field of competence in a manner authorized under Section 651 of the code, so long as such advertising does not promote the excessive or unnecessary use of such services.

NOTE: Authority cited: Sections 651, 2930 and 2936, Business and Professions Code. Reference: Sections 651, 2936 and 2960, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former Section 1397.11 to Section 1397 filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31). For history of former Section 1397, see Register 83, No. 25.

§ 1397.1. Child Abuse Reporting Requirements.

Failure to comply with the reporting requirements contained in Penal Code Section 11166 shall constitute unprofessional conduct.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Sections 2936 and 2960(i), Business and Professions Code.

HISTORY:

1. New section filed 4-6-88; operative 5-6-88 (Register 88, No. 17).

§ 1397.2. Effect of Violation.

NOTE: Authority cited: Section 2936, Business and Professions Code. Reference: Sections 2913, 2936, and 2960, Business and Professions Code.

HISTORY:

1. New Article 8 (Sec. 1397.2 through 1397.7) filed 12-6-67 as an emergency; effective upon filing (Register 67, No. 49).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 2-26-68 (Register 68, No. 9).
3. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).

4. Renumbering of Article 8 to Article 9, and amendment of Article title filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
5. Repealer of Article 9 heading and section filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.3. Competence.

HISTORY:
1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Renumbering and amendment of Section 1397.3 to Section 1396 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.4. Interpersonal Relations.

HISTORY:
1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Renumbering and amendment of Section 1397.4 to Section 1396.1 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.5. Misrepresentation.

HISTORY:
1. Amendment filed 2-26-68; effective thirtieth day thereafter (Register 68, No. 9).
2. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
3. Renumbering of Section 1397.5 to Section 1396.2 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.6. Confidentiality.

HISTORY:
1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.7. Test Security.

HISTORY:
1. Amendment filed 11-4-68; effective thirtieth day thereafter (Register 68, No. 42).
2. Renumbering and amendment of Section 1397.7 to Section 1393.3 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.8. Professional Identification.

HISTORY:
1. New section filed 1-23-73; effective thirtieth day thereafter (Register 73, No. 4).
2. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
3. Renumbering of Section 1397.8 to Section 1396.4 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.9. Employment of Psychological Assistant.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. New section filed 1-23-73; effective thirtieth day thereafter (Register 73, No. 4).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.10. Unprofessional Conduct.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:
1. New section filed 3-31-78; effective thirtieth day thereafter (Register 78, No. 13).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.11. Advertising.

NOTE: Authority cited: Sections 651, 2930 and 2936, Business and Professions Code. Reference: Sections 651, 651.3, 2936 and 2960, Business and Professions Code.

HISTORY:
1. New section filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
2. Renumbering and amendment of Section 1397.11 to Section 1397 filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31).

§ 1397.12. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider the disciplinary guidelines entitled "Disciplinary Guidelines," as amended 2/07" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

HISTORY:

1. New section filed 3-7-97; operative 4-6-97 (Register 97, No. 10).
2. Amendment filed 3-1-2000; operative 3-31-2000 (Register 2000, No. 9).
3. Amendment "Disciplinary Guidelines" (incorporated by reference) and amendment of section and Note filed 3-3-2003; operative 4-2-2003 (Register 2003, No. 10).
4. Amendment filed 12-5-2006 as an emergency; operative 1-4-2006 (Register 2006, No. 49).
5. Change without regulatory effect amending Disciplinary Guidelines (incorporated by reference) and amending section filed 2-8-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 6).

§ 1397.30. Citation.

These regulations may be cited and referred to as the "Psychology Corporation Regulations."

NOTE: Authority and reference cited: Sections 2930 and 2999, Business and Professions Code.

HISTORY:

1. New Article 10 (Sections 1397.30–1397.41) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
2. Repealer of Article 10 heading and amendment of section filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.31. Professional Relationships and Responsibilities Not Affected.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. Amendment filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
2. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.32. Office for Filing.

NOTE: Authority cited: Section 2930, Business and Professions Code.

HISTORY:

1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.33. Application.

NOTE: Section 2930, Business and Professions Code.

HISTORY:

1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.34. Approval and Issuance of Certificates.

NOTE: Section 2930, Business and Professions Code.

HISTORY:

1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.35. Requirements for Professional Corporations.

A professional corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of the Moscone-Knox Professional Corporation Act (Part 4, Division 3, Title 1 of the Corporations Code).

(b) Each shareholder, director and officer (except as provided in Section 13403 of the Corporations Code and Section 2997 of the code) holds a valid psychology license; provided that, a licensed physician, podiatrist, marriage, family, and child counselor, licensed clinical social worker, chiropractor, optometrist or registered nurse may be a shareholder, director or officer of a psychology corporation so long as such licensees own no more than 49% of the total shares issued by the psychology corporation and the number of licensed physicians, podiatrists, marriage, family, and child counselors, licensed clinical social workers, chiropractors, optometrists or registered nurses owning shares in the psychology corporation does not exceed the number of psychologists owning shares in such a corporation. A psychologist may be a shareholder in more than one psychology corporation.

(c) Each professional employee of the applicant who will practice psychology, podiatry, medicine, marriage, family and child counseling, clinical social work, chiropractic, optometry or professional nursing, whether or not a shareholder, director or officer, holds a valid license.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2995, Business and Professions Code; and Sections 13401, 13401.5, 13403, 13406 and 13407, Corporations Code.

HISTORY:

1. Amendment of subsections (b) and (d) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
3. Amendment of subsections (b) and (c) filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

§ 1397.36. Namestyle.

NOTE: Authority cited: Sections 2930 and 2996.6, Business and Professions Code. Reference: Section 2995.8, Business and Professions Code; Section 13409, Corporations Code.

HISTORY:

1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.37. Shares: Ownership and Transfer.

(a) Where there are two or more shareholders in a psychology corporation and one of the shareholders:

(1) Dies; or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, his or her shares shall be sold and transferred to the corporation, its shareholders or other eligible licensed persons on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and ninety (90) days after the shareholder becomes a disqualified person. The requirements of this subsection shall be set forth in the psychology corporation's articles of incorporation or bylaws.

(b) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again becomes an eligible shareholder.

(c) The share certificates of a psychology corporation shall contain an appropriate legend setting forth the restrictions of subsection (a).

(d) Nothing in these regulations shall be construed to prohibit a psychology corporation from owning shares in a nonprofessional corporation.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2999, Business and Professions Code; and Sections 13401, 13403, 13406 and 13407, Corporations Code.

HISTORY:

1. Amendment of subsections (e) and (f) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.38. Certificates of Registration: Continuing Validity and Reports.

NOTE: Authority cited: Sections 2930 and 2996.6, Business and Professions Code. Reference: Sections 2995.4 and 2995.6, Business and Professions Code.

HISTORY:
1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.39. Corporate Activities.

(a) A psychology corporation may perform any act authorized in its articles of incorporation or bylaws so long as that act is not in conflict with or prohibited by these rules, the Psychology Licensing Law, the Medical Practice Act, the Optometry Law or the Nursing Practice Act or the regulations adopted pursuant thereto.

(b) A psychology corporation may enter into partnership agreements with other psychologists practicing individually or in a group or with other psychology corporations.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2996.6, Business and Professions Code; and Sections 13403, 13408 and 13410, Corporations Code.

HISTORY:
1. Amendment of subsection (a) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.40. Trusts.

The restrictions on the ownership of the shares of psychology corporations shall apply to both the legal and equitable title to such shares.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Sections 13406 and 13407, Corporations Code.

HISTORY:
1. Repealer of subsection (b) filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.41. Effect of Surrendered or Revoked Certificates; Probate.

NOTE: Authority cited: Section 2999, Business and Professions Code.

HISTORY:
1. Repealer filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25.)

Article 9. Citations and Fines

§ 1397.50. Citations and Fines.

(a) For purposes of this article, ''board official'' shall mean the executive officer of the board or his or her representative.

(b) A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed psychologist of the statutes referred to in section 1397.51.

(c) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail, return receipt requested.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:
1. New article 9 (sections 1397.50–1397.55) and section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.51. Amount of Fines.

The amount of any fine to be levied by a board official shall take into consideration the factors listed in subdivision (b)(3) of section 125.9 of the code and shall be within the range set forth below.

(a) A board official may issue a citation under section 1397.50 for a violation of the provisions listed in this section. The fine for a violation of the following code sections shall be from $100 to $2500:

(1) Business and Professions Code section 125
(2) Business and Professions Code section 125.6
(3) Business and Professions Code section 475(a)(1)
(4) Business and Professions Code section 490
(5) Business and Professions Code section 496
(6) Business and Professions Code section 580
(7) Business and Professions Code section 581
(8) Business and Professions Code section 582
(9) Business and Professions Code section 583
(10) Business and Professions Code section 584
(11) Business and Professions Code section 650
(12) Business and Professions Code section 651
(13) Business and Professions Code section 654.2
(14) Business and Professions Code section 702
(15) Business and Professions Code section 810
(16) Business and Professions Code section 2903
(17) Business and Professions Code section 2960(a)
(18) Business and Professions Code section 2960(c)
(19) Business and Professions Code section 2960(d)
(20) Business and Professions Code section 2960(f)
(21) Business and Professions Code section 2960(g)
(22) Business and Professions Code section 2960(h)
(23) Business and Professions Code section 2960(i)
(24) Business and Professions Code section 2960(k)
(25) Business and Professions Code section 2960(l)
(26) Business and Professions Code section 2960(m)
(27) Business and Professions Code section 2960(n)
(28) Business and Professions Code section 2960(p)
(29) Business and Professions Code section 2960(q)
(30) Business and Professions Code section 2960(r)
(31) Business and Professions Code section 2960.6
(32) Business and Professions Code section 17500
(33) Penal Code section 11166.5
(34) Business and Professions Code section 2913(c)
(35) Business and Professions Code section 2914(c)
(36) Business and Professions Code section 2915

(b) At his or her discretion, a board official may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.

(c) Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between $2,501 and $5,000 if one or more of the following circumstances apply:

(1) The citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) The cited person has a history of two or more prior citations of the same or similar violations;

(3) The citation involves multiple violations that demonstrate a willful disregard of the law;

(4) The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).
2. New subsections (a)(34)–(36) filed 7-2-99; operative 8-1-99 (Register 99, No. 27).
3. New subsections (c)–(c)(4) filed 7-11-2005; operative 8-10-2005 (Register 2005, No. 28).

§ 1397.52. Compliance with Orders of Abatement.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction with the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the board official who issued the citation. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the Board of Psychology or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.53. Citations for Unlicensed Practice.

A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a psychologist is required under the laws and regulations relating to the practice of psychology. Each citation issued shall contain an order of abatement. Where appropriate, a board official shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of section 125.9 of the code. The provisions of section 1397.50 and 1397.52 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.54. Contest of Citations.

(a) In addition to requesting a hearing as provided for in subdivision (b)(4) of section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the board official who issued the citation in writing of his or her request for an informal conference with the board official regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The board official who issued the citation shall, within 30 days from the receipt of the request, hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. At the conclusion of the informal conference the board official may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The board official shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the person cited within ten (10) days from the date of the informal conference, as provided in subsection (b) of section 1397.52. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by a board official. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 of the code.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.55. Disconnection of Telephone Service.

(a) If, upon investigation, the board official has probable cause to believe that an unlicensed person, who is not otherwise exempt from licensure, has advertised to provide psychological services in an alphabetical or classified directory in violation of section 2903 of the code, the board official may issue a citation containing an order of abatement pursuant to section 1397.50 of these regulations. The order of abatement shall require the unlicensed person to cease the unlawful advertising and to notify the telephone company furnishing services to the cited person to (1) disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to that number shall not be referred by the telephone company to any new number obtained by that person. The cited person shall provide written evidence of compliance to the board official.

(b) If the person to whom a citation is issued under subdivision (a) submits a written request to the board official to appeal the citation, the board official shall afford an opportunity for a hearing, as provided in section 1397.54 of these regulations.

(c) If the person to whom the citation and order of abatement is issued fails to comply with the order of abatement after the order is final as provided in section 1398.54(b) of these regulations, the board official shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

HISTORY:

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

Article 10. Continuing Education

§ 1397.60. Definitions.

As used in this article:

(a) An "accreditation agency" means an organization recognized by the board which evaluates and approves each provider of continuing education, evaluates and approves each course offering, and monitors the quality of the approved continuing education courses.

(b) A "provider" means an organization, institution, association, university, or other person or entity assuming full responsibility for the course offered, whose qualifications as a continuing education provider have been approved by a board recognized accreditation agency.

(c) A "course" or "presentation" means an approved systematic learning experience of at least one hour in length. One hour shall consist of 60 minutes of actual instruction. Courses or presentations less than one hour in duration shall not be approved.

(d) "Continuing education" means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, seminars, workshops, grand rounds, in-service training programs, video conferencing, and independent learning technologies.

(e) A "conference" means a course consisting of multiple concurrent or sequential free-standing presentations. Approved presentations must meet all standards of an approved continuing education course.

(f) "Grand rounds" or "in-service training program" means a course consisting of sequential, free-standing presentations designed to meet the internal educational needs of the staff or members of an organization and is not marketed, advertised or promoted to professionals outside of the organization. Approved presentations must meet all standards of an approved continuing education course.

(g) "Independent learning" means the variety of forms of organized and directed learning experiences that occur when the instructor and the student are not in direct visual or auditory contact. These include, but are not limited to, courses delivered via the Internet, CD-ROM, satellite downlink, correspondence and home study. Self-initiated, independent study programs without an approved CE sponsor are not acceptable for continuing education. Except for qualified individuals with a disability who apply to and are approved by the board pursuant to section 1397.62(c), independent learning can be used to meet no more than 75% (27 hours) of the continuing education required in each renewal cycle. Independent learning courses must meet all standards of an approved continuing education course.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29 and 2915, Business and Professions Code.

HISTORY:

1. New Article 10 (sections 1397.60–1397.69) and section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsections (c) and (d) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
3. Amendment of subsection (d), new subsections (e)–(g) and amendment of Note filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
4. Amendment of subsection (g) filed 12-17-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
5. Amendment of subsections (d) and (g) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

§ 1397.61. Continuing Education Requirements.

(a) Except as provided in section 2915(e) of the Business and Professions Code and section 1397.62 of these regulations, each licensed psychologist shall submit with the application for license renewal proof satisfactory to the board that he or she

has completed the continuing education requirements set forth in section 2915 of the code. A licensee who renews his or her license for the first time after the initial issuance of the license is only required to accrue continuing education for the number of months that the license was in effect, including the month the license was issued, at the rate of 1.5 hours of approved continuing education per month. Continuing education earned via independent learning pursuant to section 1397.60(g) shall be accrued at no more than 75% of the continuing education required for the first time renewal. The required hours of continuing education may not be accrued prior to the effective date of the initial issuance of the license. A licensee who falsifies or makes a material misrepresentation of fact on a renewal application or who cannot verify completion of continuing education by producing verification of attendance certificates, whenever requested to do so by the board, is subject to disciplinary action under section 2960 of the code.

(b) Any person renewing or reactivating his or her license shall certify under penalty of perjury to the Board of Psychology as requested on the application for license renewal, that he or she has obtained training in the subject of laws and ethics as they apply to the practice of psychology in California. The training shall include recent changes/updates on the laws and regulations related to the practice of psychology; recent changes/updates in the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association; accepted standards of practice; and other applications of laws and ethics as they affect the licensee's ability to practice psychology with safety to the public. Training pursuant to this section may be obtained in one or more of the following ways:

(1) Formal coursework in laws and ethics taken from an accredited educational institution;

(2) Approved continuing education course in laws and ethics;

(3) Workshops in laws and ethics;

(4) Other experience which provide direction and education in laws and ethics including, but not limited to, grand rounds or professional association presentation.

If the licensee chooses to apply a specific continuing education course on the topic of laws and ethics to meet the foregoing requirement, such a course must meet the content requirements named above, must comply with section 1397.60(c) of this Article, and may be applied to the 36 hours of approved continuing education required in Business and Professions Code section 2915(a).

(c) Those licensees who began graduate training prior to January 1, 2004, shall, prior to his or her first license renewal after January 1, 2004, take continuing education instruction in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Such course shall be taken within the two years prior to the licensee's renewal date and shall be no less than one (1) hour in length. This is a one-time only continuing education requirement.

(d) Those licensees who began graduate training prior to January 1, 2004, shall, prior to his or her first license renewal after January 1, 2005, take continuing education instruction in the biological, social, and psychological aspects of aging and long-term care. Such course shall be taken within the two years prior to the licensee's renewal date and shall be no less than three (3) hours in length. This is a one-time only continuing education requirement.

(e) Licensees are encouraged to participate in periodic training in subject matter for which the Legislature or the board finds cause, including but not limited to: geriatric pharmacology; the characteristics and methods of assessment and treatment of HIV disease; and issues of human diversity.

(f) This subsection shall become effective on January 1, 2006.

(1) The Board of Psychology recognizes and accepts for continuing education credit courses that are:

(A) Provided by American Psychological Association (APA) approved sponsors;

(B) Continuing Medical Education (CME) courses specifically applicable and pertinent to the practice of psychology and that are accredited by the California Medical Association (CMA) or the Accreditation Council for Continuing Medical Education (ACCME);

(C) Sponsored by the Academies of the specialty boards of the American Board of Professional Psychology (ABPP).

(2) The board may recognize other entities to perform an accrediting function if the entity:

(A) Has had at least 10 years experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:

(i) Maintaining and managing records and data related to continuing education programs.

(ii) Monitoring and approving courses.

(B) Has a means to avoid a conflict of interest between any provider and accreditation functions.

(C) Submits a detailed plan of procedures for monitoring and approving the provider functions. The plan must demonstrate that it has the capacity to evaluate each course, including provisions requiring the following:

(i) Topics and subject matter shall be pertinent to the practice of psychology. Courses predominantly focused on business issues, marketing, or exploring opportunities for personal growth are not eligible for credit. Course material must have a relevance or direct application to a consumer of psychological services.

(ii) Each continuing education course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.

(iii) Instructors shall be competent in the subject matter of the course and shall be qualified by education, training, experience, scope of practice and licensure.

(iv) Each continuing education course shall have a syllabus which provides a general outline of the course.

(v) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.

(vi) An evaluation mechanism shall be completed by each participant to evaluate the continuing education course.

(vii) Respond to complaints from the board concerning its activities.

(viii) The entity agency shall provide services to all licensees without discrimination.

(D) An entity must submit, in writing, evidence that it meets the qualifications in this subdivision.

(E) Upon written confirmation from the board that the entity has been recognized, the entity may advertise that it has been recognized by the board.

(3) Any licensee who receives approved continuing education course credit hours pursuant to this section shall submit verification of course completion and the participant report recording fee specified in section 1397.69 to a board recognized accrediting agency.

(g) Failure of the entity to substantially comply with the provisions as set forth in subsection (f) shall constitute cause for revocation of recognition by the board. Recognition can be revoked only by a formal board action, after notice and hearing, and for good cause.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29, 2915 and 2915.7, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsections (b) and (d), new subsections (e)–(f) and amendment of Note filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
3. Amendment of subsection (b), new subsection (c), subsection relettering, and amendment of newly designated subsections (e) and (g) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).
4. Repealer of subsection (g) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
5. Amendment of subsection (a), repealer of subsections (b) and (e), subsection relettering and new subsections (d)–(e) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
6. Amendment of subsections (d)–(f) and new subsections (g)–(h) filed 9-2-2003; operative 10-2-2003 (Register 2003, No. 36).
7. Amendment of section and Note filed 9-24-2004; operative 10-24-2004 (Register 2004, No. 39).
8. Amendment of subsection (a) filed 11-21-2005; operative 12-21-2005 (Register 2005, No. 47).
9. Amendment of subsections (f)–(f)(3) filed 11-29-2005; operative 1-1-2006 (Register 2005, No. 48).
10. Amendment of subsection (a) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).
11. Amendment of subsection (b) and new subsections (b)(1)–(4) filed 12-20-2006; operative 1-19-2007 (Register 2006, No. 51).

§ 1397.62. Continuing Education Exemptions and Exceptions.

At the time of making application for renewal of a license, a psychologist may as provided in this section request an exemption or an exception from all or part of the continuing education requirements.

(a) The board shall grant an exemption only if the psychologist verifies in writing that, during the two year period immediately prior to the expiration date of the license, he or she:

(1) Has been residing in another country or state for at least one year reasonably preventing completion of the continuing education requirements; or

(2) Has been engaged in active military service; or

(3) Has been prevented from completing the continuing education requirements for reasons of health or other good cause which includes:

(A) Total physical and/or mental disability of the psychologist for at least one year; or

(B) Total physical and/or mental disability of an immediate family member for at least one year where the psychologist has total responsibility for the care of that family member.

Verification of a physical disability under subsection (a)(3) shall be by a licensed physician and surgeon or, in the case of a mental disability, by a licensed psychologist or a board certified or board eligible psychiatrist.

(b) An exception to the requirements of Business and Professions Code section 2915(d) may be granted to licensed psychologists who are not engaged in the direct delivery of mental health services for whom there is an absence of available continuing education courses relevant to their specific area of practice.

(1) An exception granted pursuant to this subsection means that the board will accept continuing education courses that are not approved pursuant to sections 1397.61(d), (e), (f) provided that they are directly related to the licensee's specific area of practice and offered by recognized professional organizations. The board will review the licensee's area of practice, the subject matter of the course, and the provider on a case-by-case basis. This exception does not mean the licensee is

exempt from completing the continuing education required by Business and Professions Code section 2915 and this article.

(2) Licensees seeking this exception shall provide all necessary information to enable the board to determine the lack of available approved continuing education and the relevance of each course to the continuing competence of the licensee. Such a request shall be submitted in writing and must include a clear statement as to the relevance of the course to the practice of psychology and the following information:

(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course), particularly as it relates to the practice of psychology.

(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held and length of experience and expertise in the relevant subject matter), particularly as it relates to the practice of psychology.

(C) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience and similar courses previously offered by the provider), particularly as it relates to the practice of psychology.

(3) This subsection does not apply to licensees engaged in the direct delivery of mental health services.

(c) Psychologists requiring reasonable accommodation according to the Americans with Disabilities Act may be granted an exemption from the on-site participation requirement and may substitute all or part of their continuing education requirement with an American Psychological Association or accreditation agency approved independent learning continuing education program. A qualified individual with a disability must apply to the board to receive this exemption.

(d) Any licensee who submits a request for an exemption or exception which is denied by the board shall complete any continuing education requirements within 120 days of the notification that the request was denied.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (a) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).
3. Amendment of subsection (e) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
4. Amendment of section heading and section filed 7-21-2003; operative 8-20-2003 (Register 2003, No. 30).
5. Amendment of subsection (a)(2) filed 12-10-2004; operative 1-9-2005 (Register 2004, No. 50).
6. Amendment of subsection (c) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

§ 1397.63. Hour Value System.

(a) Licensees will earn one hour continuing education credit for each hour of approved instruction. One 3-unit academic quarter is equal to 10 hours of continuing education credit and one 3-unit academic semester is equal to 15 hours of continuing education credit.

(b) (1) Licensees who serve the Board of Psychology as selected participants in any examination development related function will receive one hour of continuing education credit for each hour served. Selected board experts will receive one hour of continuing education credit for each hour attending Board of Psychology sponsored Expert Training Seminars. Any licensee who receives approved continuing education credit as set forth in subsection (b)(1) shall have his/her credit reported by the board to the board recognized accrediting agency.

(2) Licensees who serve as examiners for the Academies of the specialty boards of the American Board of Professional Psychology (ABPP) will receive one hour of

continuing education credit for each hour served, not to exceed fours hours each two year renewal period. Any licensee who receives continuing education credit as set forth in subsection (b)(2) shall submit verification and the course attendee fee specified in section 1397.68 to the board recognized accreditation agency.

(c) An approved instructor may claim the course for his/her own credit only one time that he/she teaches the approved course during a renewal cycle, receiving the same credit hours as the participant.

(d) No course may be taken and claimed more than once during a renewal period for continuing education credit.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (b) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
3. Redesignation and amendment of former subsection (b) as new subsection (b)(1) and new subsection (b)(2) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).
4. Amendment of subsection (c) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
5. Amendment of subsection (b)(1) filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).
6. Amendment of subsection (b)(1) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

§ 1397.64. Accreditation Agencies.

(a) Upon written application to the board, continuing education accreditation agencies will be recognized if the board determines that the organization meets the criteria set forth in section 2915(f) of the code and:

(1) The organization submits a plan demonstrating that it has the capacity to evaluate each continuing education provider's course in accordance with the following criteria:

(A) Topics and subject matter shall be pertinent to the practice of psychology. Courses predominantly focused on business issues, or marketing, or that are predominantly designed to explore opportunities for personal growth are not eligible for credit. Course material must have a relevance or direct application to a consumer of psychological services.

(B) Each continuing education course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.

(C) Instructors shall be competent in the subject matter of the course and shall be qualified by education, training, experience, scope of practice and licensure.

(D) Each continuing education course shall have a syllabus which provides a general outline of the course.

(E) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.

(F) An evaluation mechanism shall be completed by each participant to evaluate the continuing education course.

(2) The accreditation agency agrees to perform the following:

(A) Maintain a list of the names and addresses of the persons designated as responsible for the provider's continuing education courses and records. The

accreditation agency shall require that any change in the designated responsible person's identity shall be reported to the agency within 30 days of the effective date of such change.

(B) Notify the board of names, addresses and responsible party of each provider and each course on a quarterly basis. Provide without charge to any licensee who makes a request, a current list of providers and approved courses.

(C) Verify attendance of licentiates at specific courses by maintaining a record of approved continuing education courses completed by licensees. The record must include the licensees' name and license number, and all agency approved continuing education courses successfully completed by each licensee. In addition, and for an activity reporting fee paid by the licensee and on forms acceptable to the agency (see form No. 07M-BOP-15(New 10/94)), incorporate into licensee's record all non-agency approved continuing education courses as defined in sections 1397.61 and 1397.63 of these regulations. The accreditation agency shall provide a copy of this combined record to the board upon request. The records must be retrievable by license number.

(D) Respond to complaints from the board concerning activities of any of its approved providers or their course(s). Respond to complaints and inquiries regarding providers, courses, and general continuing education questions presented by any licensee. The accreditation agency shall provide services to all licensees without discrimination.

(E) Audit at least 10% of the continuing education courses approved by the agency, for compliance with the agency's requirements and requirements of the board, and on request, report the findings of such audits to the board.

(F) Take such action as is necessary to assure that the continuing education course material offered by its providers meets the continuing education requirements of the board as defined in sections 1397.64(a)(1) and 1397.65 of these regulations.

(G) Establish a procedure for reconsideration of its decision that a provider or a provider's course does not meet statutory or regulatory criteria.

(b) Failure of a recognized accreditation agency to substantially comply with the provisions as set forth in this article shall constitute cause for revocation of recognition by the board. Recognition can be revoked only by a formal board action, after notice and hearing, and for good cause.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsections (a)(2)(B) and (a)(2)(D) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
3. Amendment of subsection (a)(1)(A) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
4. Amendment of subsection (a)(1)(A) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
5. Change without regulatory effect amending subsection (a)(2)(F) filed 4-7-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).

§ 1397.65. Requirements for Approved Providers.

(a) Providers of continuing education courses in psychology shall apply to a board recognized accreditation agency for approval as a provider, and for approval of each course, prior to offering any such courses.

(b) (1) Upon satisfactory completion of the provider requirements of the accreditation agency, including payment of the appropriate fees and receipt of written approval therefrom, a continuing education provider may represent itself as a California approved provider of continuing education courses for psychologists for one year.

(2) Upon presentation of satisfactory evidence, organizations approved by the American Psychological Association (APA) as Sponsors of Continuing Education for Psychologists will be recognized as California approved providers of continuing education courses for psychologists during the duration of their APA approval, and shall be exempt from the annual continuing education provider fee described in section 1397.68. Such APA providers shall be held to all other requirements of California approved providers of continuing education for psychologists except for the individual course review requirement.

(c) The provider is responsible for assuring the educational quality of its course material. All continuing education course material shall meet the standards set forth in section 1397.64(a)(1) of these regulations and shall be:

(1) approved in advance by an accreditation agency (except for those courses offered by providers defined in section 1397.61(d), (e) and (f));

(2) specifically applicable and pertinent to the practice of psychology;

(3) accurate and timely;

(4) presented in an organized manner conducive to the learning process;

(5) complete and objective, and not reflecting predominantly any commercial views of the provider or presenter or of anyone giving financial assistance to the provider or presenter;

(6) based on stated educational goals and objectives; and

(7) accompanied by a syllabus which contains, at a minimum, the instructional objectives for each course and a summary containing the main points of each topic.

(d) All providers shall furnish a list of course participants, with the accompanying course attendee fee as required in section 1397.68, to the accreditation agency, and verification of attendance certificates to all participants within 45 days of course completion. The list and the certificate shall contain the name of the licensee and license number, name and number of the provider, title of the course, number of completed hours, date of completion, course number, if applicable, and the name of the accreditation agency.

(e) Every approved provider shall apply to the accreditation agency, on forms approved by the board (see form No. 07M-BOP-14(New 10/94)), at least 30 days in advance, for each continuing education course offered or presented, whether for the first time or repeated.

(f) The approved provider shall be required to maintain attendance records for three (3) years for each continuing education course. Acceptable documentation of participation shall include attendance rosters, sign-in and sign-out sheets, and completed course evaluation forms.

(g) The approved provider's course shall be valid for up to one year following the initial approval provided a notification and activity registration fee is submitted to the accreditation agency at least 30 days in advance for each time the course is offered or presented.

(h) The approved provider's advertisements for approved courses shall clearly indicate the provider's name, course title, course approval number, the number of credit hours, and the name of the accrediting agency.

(i) The approved provider shall have a written policy, available upon request, which provides information on:

1. refunds in case of non-attendance
2. time period for return of fees
3. notification if course is canceled.

(j) Providers may not grant partial credit for continuing education courses. However, conferences, in-service training programs and grand rounds consisting of

a series of presentations may obtain approval for the entire conference, in-service training program or grand round as one course wherein credit may be granted to participants separately for each individual presentation in such courses.

(k) Provider approval is non-transferable. Approved providers shall inform the accrediting agency in writing within 30 days of any changes in organizational structure and/or person(s) responsible for continuing education program, including name and address changes.

(*l*) Providers are responsible for meeting all applicable local, state and federal standards which include, but are not limited to, the Americans with Disabilities Act.

(m) Providers may obtain approval for grand rounds activities for an entire year with one application provided the staff person responsible for grand rounds submits to the accreditation agency a general descriptive outline of grand rounds activities for the year. This outline shall be of sufficient detail regarding content to be covered in the weekly grand rounds activities to allow the accreditation agency to determine whether the activities are appropriate for continuing education credit for licensed psychologists.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsections (d) and (j) and new subsection (m) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
3. Redesignation and amendment of former subsection (b) as new subsection (b)(1), new subsection (b)(2) and amendment of subsection (h) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).
4. Amendment of subsection (c)(8) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).
5. Amendment of subsections (b)(2), (c)(1) and (c)(6)–(7) and repealer of subsection (c)(8) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).

§ 1397.66. Provider Audit Requirements.

Upon written request from the accreditation agency or the board, relating to an audit of course material, each approved provider shall submit such materials as are required by the accreditation agency or the board.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendemnt filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

§ 1397.67. Renewal After Inactive or Delinquent Status.

(a) To activate licenses which have been placed on inactive status pursuant to section 2988 of the code, the licensee must submit evidence of completion of the requisite 36 hours of qualifying continuing education courses for the two-year period prior to establishing the license as active.

(b) For the renewal of a delinquent psychologist license within three years of the date of expiration, the applicant for renewal shall provide documentation of completion of the required hours of continuing education.

After a license has been delinquent for three years, the license is automatically cancelled and the applicant must submit a complete licensing application, meet all current licensing requirements, and successfully pass the licensing examination just as for the initial licensing application unless the board grants a waiver of the examination pursuant to section 2946 of the code.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, 2984, 2986, and 2988, Business and Professions Code.

HISTORY:
1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of section and NOTE filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

§ 1397.68. Provider Fees.

(a) The following fees are established to be paid to an accreditation agency by the course provider:

(1) Continuing education annual provider approval fee $200
(2) Continuing education course registration fee $35
(3) Continuing education conference fee $100
(4) Continuing education course attendee fee ..... $7 per licensee

These fees are to be paid by the provider to an accreditation agency as defined in section 1397.65(b), (d), and (g).

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:
1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (a)(3) and new subsection (a)(4) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

§ 1397.69. Participant Fees.

The following fees are established to be paid by the course participant:

(a) Participant report recording fee $35

This fee is to be paid to an accreditation agency to report non-accrediting agency approved courses taken by the participant as defined in section 1397.61(d), 1397.63(b) and 1397.64(a)(2)(C).

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:
1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).
2. Amendment of Form No. 07M-BOP-14 is filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

ACCREDITING AGENCY
LOGO W/ADDRESS AND PHONE

Mandatory Continuing Education for Psychologists (MCEP)

NON–ACCREDITING AGENCY MCEP CREDIT REPORTING FORM

This form is used to report courses that are directly authorized for MCEP credit by law or BOP regulation rather than by a recognized accrediting agency. The purpose of this report is to integrate MCEP credit from all sources into one complete record for each psychologist. If you need further assistance with this report, call the accrediting agency at the number above.

DATE:_____ Psychology License #:_____
Last Name:_____
First Name:_____ Phone #:_____
Address:_____
Address:_____
City:_____ State:_____ Zip:_____

Course/ Date	Provider Name	Course Title	# of Credit Hrs

Verification must be submitted for each course listed. Licensee must retain proof of attendance in the event the Board of Psychology requests verification. If more room is needed to list courses, please attach additional copies of this form. In order for this report to be processed, the regulated $35 filing fee must be enclosed.

07M–BOP–15(New 10/94)

Accrediting Agency
TEL:
FAX:

Course Application

Failure to complete this cover sheet and application will result in the return of the course application without further review. A separate course form is required for each course. Some of the information supplied may be published. Responses must be typed in the spaces provided.

Cover Sheet

A. Provider Information:

Provider Name:	
MCEP Provider #:	Phone:
MCEP Program Administrator:	MCEP Program Developer:

B. Course Information:

Course Title:	
Standard Course Fee: Discounts available? ☐ Yes ☐ No	
Course Description (limit to 50 words):	
Course Date(s):	Course Time(s):
Course Site Address	Phone:
	City State Zip
Course Level (choose one): ☐ Introductory (useful for psychologists new to this field) ☐ Intermediate (useful for psychologists with limited experience in this field) ☐ Advanced (useful for psychologists with extensive experience in this field)	Target Audience ☐ Licensed Psychologists ☐ Other Non–Mental Health Professionals ☐ MFCC/LCSW/LED's ☐ General Public ☐ MD/RN's
Total Instructional Time:	

C. Co–Sponsorship Information:

Is this course co–sponsored? ☐ Yes ☐ No	Name of co–sponsoring organization:
Contact Name:	Phone:
Address:	
	City State Zip

D. Primary Instructor Information:

Name:	Daytime Phone:	Fax:
Address:		
	City State Zip	

07M–BOP–14 (Revised 11/97)

MCEP Course Application
California Psychological Association Accrediting Agency

Section I – Course Material

Standard: Course material will be pertinent, accurate and will clearly contribute in the area of practice, theory or methodology at a post–doctorate level.

Please enclose the following documents:

√ Course syllabus containing:
- ☐ Course Outline
- ☐ Description of Content
- ☐ Course Goals and Objectives

√ Primary Instructor vita.

Section II – Evaluation Process

Standard: Every course shall include an evaluation process that assesses both the effectiveness of the course and participant achievement in accordance to the course's goals and objectives.

Are the course evaluations part of a larger evaluation or needs assessment process? If yes, please describe their use.

Please enclose the following documents:

√ Course evaluation form

√ Describe the evaluation mechanism you will use for participants to assess their achievement in accordance with course objectives.

Section III – Administration

Standard: Course monitoring procedures (attendance list, credit assignment) and record keeping is in accordance with state regulations and policy.

A. Course Monitoring

1. Describe your procedures for monitoring course attendance.

2. How do you plan to identify psychology licensees who attend your programs?

MCEP Course Application
California Psychological Association Accrediting Agency
Please enclose the following documents.

√ Sample attendee list format √ Sample attendance certificate √ Signed After Course Agreement

B. Co-sponsorship
If this course, or the larger event this course is part of, is sponsored in full or in part by another organization, this section of the application must be completed.

Identify the organization responsible for each of the following areas:

Course content
Course presentation
Course monitoring
Course records
Advertising/Marketing
Financial Arrangements
Administrative Policies

Section IV—Authorization

I certify, on behalf of _____ *, that the preceding statements and the enclosed*
provider organization
documents are true. I understand that any false statements may result in the revocation of provider approval. I understand that I am responsible for maintaining all standards outlined in the provider application and that this course may be subject to either an unannounced on–site course audit or an administrative audit.

_____ _____
Program Developer Signature Date

_____ _____
Program Administrator Signature Date

Both signatures are required to process application.

Section V—Payment

A non–refundable MCEP course application fee of $35, made payable to the California Psychological Association Accrediting Agency must accompany 3 copies of the application including all attachments.

☐ Check enclosed ☐ Please bill my credit card:
☐ Visa ☐ Mastercard ☐ Discover ☐ American Express

Account #: _____ Exp. Date: _____

Signature: _____

Important

Completion of this form does not constitute MCEP course approval status. If granted, MCEP course approval will become effective on the date set forth in the notification of approval letter.

§ 1397.70. Sanctions for Noncompliance.

(a) If documentation of the CE requirement is improper or inadequate, the license becomes invalid for renewal. The continued practice of psychology is prohibited while the license is invalid for renewal, and the renewal is forfeited. Notwithstanding section 2984, the licensee shall correct the deficiency within six months. If the deficiency is not corrected within six months, the license remains invalid for renewal. Continued practice without a valid license shall constitute grounds for appropriate disciplinary action pursuant to sections 148 and/or 2960 of the code.

(b) Misrepresentation of compliance shall constitute grounds for disciplinary action.

NOTE: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
2. Amendment of subsection (a) filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

§ 1397.71. Denial, Suspension and Revocation of CE Provider Status.

(a) A board recognized accreditation agency may deny, suspend, place on probation with terms and conditions, or revoke its approval of an applicant or provider of continuing education for good cause. Good cause includes, but is not limited to, one or more of the following:

(1) Conviction of a felony or misdemeanor substantially related to the activities of an accreditation agency approved provider.

(2) Failure of an applicant or provider who is a psychologist, psychological assistant, psychological intern or registered psychologist to comply with any provisions of the Psychology License Law (Business and Professions Code Section 2900 et seq.) or the regulations adopted pursuant thereto in Division 13.1 of Title 16 (commencing with section 1380) of the California Code of Regulations.

(3) Failure of an applicant or provider, who is a licensee of another healing arts board, to comply with the statutes and regulations governing that license.

(4) Making a material misrepresentation of fact in information submitted to the board recognized accreditation agency or to the board.

(5) Failure to comply with provisions of the Psychology License Law (Business and Professions Code Section 2900 et seq.), or the regulations adopted pursuant thereto in Division 13.1 of Title 16 (commencing with section 1380) of the California Code of Regulations, applicable to continuing education providers.

(b) After a thorough case review, if the board recognized accreditation agency denies, suspends, places on probation with terms or conditions, or revokes its approval of a provider, it shall give the applicant or provider written notice setting forth its reasons for the denial, suspension, placing on probation with terms and conditions, or revocation. The applicant or provider may appeal the action in writing within fifteen (15) days after receipt of the notice, and request a hearing before a panel appointed by the recognized accreditation agency. A suspension or revocation of approval shall be stayed upon the filing of an appeal. A denial of approval shall not be stayed.

The panel shall consist of three persons who have not been involved in the determination to deny, suspend or revoke the approval of the applicant or provider. The panel shall hear the appeal within 60 days of the receipt of the appeal, and maintain a record of the proceedings. A decision in writing shall be issued within 30 days of the date of the hearing.

If the appointed panel sustains the denial, placing on probation with terms and conditions, suspension or revocation, the applicant or provider may appeal the decision of the panel to a Continuing Education Appeals Committee (CE Appeals

Committee) of the board. The CE Appeals Committee shall be appointed by the board's president and consist of two board members, one public member and one licensed psychologist member. The appeal must be filed with the board within seven (7) days after receipt of the panel's decision. Upon filing of the appeal, the CE Appeals Committee chairperson shall have discretion to extend the stay of the suspension or revocation. The hearing of the CE Appeals Committee shall take place at a date and location established by the Committee chairperson, the date not to exceed 60 days from the date of the filing of the appeal. The record of the panel's hearing shall be made available to the CE Appeals Committee. The Committee shall issue a written decision within 30 days of the date of the hearing.

The decision of the CE Appeals Committee is final. An applicant or provider who has had his or her application or provider status denied or revoked may not reapply for provider status for a period of one year from the date of the CE Appeals Committee's decision.

NOTE: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

HISTORY:

1. New section filed 7-6-2001; operative 8-5-2001 (Register 2001, No. 27).

EXTRACTED FROM
BUSINESS AND PROFESSIONS CODE

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 1. THE DEPARTMENT

Section
101.6 Purpose

Purpose

§ 101.6. The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

Added by Stats. 1980, ch. 375, § 1.

CHAPTER 4. CONSUMER AFFAIRS

Article 6. Information

Section
337 Informational Brochure for Victims of Psychotherapist-Patient Sexual Contact; Contents

Informational Brochure for Victims of Psychotherapist-Patient Sexual Contact; Contents

§ 337. (a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and 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 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 for reporting psychotherapist-patient sexual 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 and their allied health boards or the Board of Behavioral Science Examiners regarding a complaint involving psychotherapist-patient sexual relations.

Amended by Stats. 2007, ch. 588 (SB 1048), § 1, effective January 1, 2008.

EXTRACTED FROM
PENAL CODE

TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS

CHAPTER 1. RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION

Section

261.5 Unlawful Sexual Intercourse with a Minor; Misdemeanor or Felony Violation; Civil Penalties

Unlawful Sexual Intercourse with a Minor; Misdemeanor or Felony Violation; Civil Penalties

§ 261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a ''minor'' is a person under the age of 18 years and an ''adult'' is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

Amended by Stats. 1999, ch. 853 (SB 832), § 10.

CHAPTER 5. BIGAMY, INCEST, AND THE CRIME AGAINST NATURE

Section

288 Lewd or Lascivious Acts Involving Children

Lewd or Lascivious Acts Involving Children

§ 288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is

guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) ''Caretaker'' means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) ''Board and care facilities'' means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) ''Dependent person'' means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. ''Dependent person'' includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

Amended by Stats. 2004, ch. 823 (AB 20), § 7.

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS

CHAPTER 2. CONTROL OF CRIMES AND CRIMINALS

Article 2. Reports of Injuries

Section

11160 Injuries Required to be Reported; Method of Reporting; Team Reports; Internal Procedures
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Injuries Required to be Reported; Method of Reporting; Team Reports; Internal Procedures

§ 11160. (a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the agency or agencies designated by the Director of Finance pursuant to Section 13820, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, ''injury'' shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, ''assaultive or abusive conduct'' shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Sexual penetration, in violation of Section 289.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with

this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

Amended by Stats. 2003, ch. 229 (AB 1757), § 15.

Report by Physician or Surgeon; Medical Records; Referrals

§ 11161. Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

(a) The physician or surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) It is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

Added by Stats. 1993, ch. 992 (AB 1652), § 5.

Immunity from Liability

§ 11161.9. (a) A health practitioner who makes a report in accordance with this article shall not incur civil or criminal liability as a result of any report required or authorized by this article.

(b) (1) No person required or authorized to report pursuant to this article, or designated by a person required or authorized to report pursuant to this article, who takes photographs of a person suspected of being a person described in this article about whom a report is required or authorized shall incur any civil or criminal liability for taking the photographs, causing the photographs to be taken, or disseminating the photographs to local law enforcement with the reports required by this article in accordance with this article. However, this subdivision shall not be deemed to grant immunity from civil or criminal liability with respect to any other use of the photographs.

(2) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds that the suit is frivolous.

(c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse shall not incur civil or criminal liability as a result of providing that access.

(d) No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(e) This section does not apply to mandated reporting of child abuse, as provided for in Article 2.5 (commencing with Section 11164).

Added by Stats. 1993, ch. 992 (AB 1652), § 6.

Violation of Article; Punishment

§ 11162. A violation of this article is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

Amended by Stats. 1993, ch. 992 (AB 1652), § 7.

Definitions

§ 11162.5. As used in this article, the following definitions shall apply:

(a) ''Health practitioner'' has the same meaning as provided in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7.

(b) ''Clinic'' is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.

(c) ''Health facility'' has the same meaning as provided in Section 1250 of the Health and Safety Code.

(d) ''Reasonably suspects'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

Amended by Stats. 2006, ch. 701 (AB 525), § 1.

Claim for Attorney's Fees Incurred in Action Based on Reporting

§ 11163. (a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

(b) (1) Therefore, a health practitioner may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The California Victim Compensation and Government Claims Board shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

Amended by Stats. 2006, ch. 538 (SB 1852), § 524.

Application of Privileges; Confidentiality of Reports

§ 11163.2. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

Added by Stats. 1993, ch. 992 (AB 1652), § 11.

Article 2.5. Child Abuse and Neglect Reporting Act

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Citation of Article; Intent

§ 11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

Amended by Stats. 2000, ch. 916 (AB 1241), § 1.

Child

§ 11165. As used in this article ''child'' means a person under the age of 18 years.

Added by Stats. 1987, ch. 1459, § 2.

Sexual Abuse; Sexual Assault; Sexual Exploitation

§ 11165.1. As used in this article, ''sexual abuse'' means sexual assault or sexual exploitation as defined by the following:

(a) ''Sexual assault'' means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as ''sexual assault'' includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

Amended by Stats. 2000, ch. 287 (SB 1955), § 21.

Neglect; Severe Neglect; General Neglect

§ 11165.2. As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

Added by Stats. 1987, ch. 1459, § 7.

Willful Harming or Injuring of a Child or the Endangering of the Person or Health of a Child

§ 11165.3. As used in this article, ''the willful harming or injuring of a child or the endangering of the person or health of a child,'' means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Amended by Stats. 2004, ch. 842 (SB 1313), § 1.

Unlawful Corporal Punishment or Injury

§ 11165.4. As used in this article, ''unlawful corporal punishment or injury'' means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Amended by Stats. 1993, ch. 346, (AB 331), § 1.

Abuse or Neglect in Out-of-Home Care

§ 11165.5. As used in this article, the term ''abuse or neglect in out-of-home care'' includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. ''Abuse or neglect in out-of-home care'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Amended by Stats. 2007, ch. 393 (AB 673) § 1.

Child Abuse or Neglect

§ 11165.6. As used in this article, the term ''child abuse or neglect'' includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. ''Child abuse or neglect'' does not include a mutual affray between minors. ''Child abuse or neglect'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Amended by Stats. 2007, ch. 393 (AB 673), § 2.

Mandated Reporter

§ 11165.7. (a) As used in this article, ''mandated reporter' ' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

Amended by Stats. 2006, ch. 901 (SB 1422), § 9.5.

Reports to Authorities

§ 11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse

or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

Amended by Stats. 2006, ch. 701 (AB 525), § 2.

Licensing Agency

§ 11165.11. As used in this article, ''licensing agency'' means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

Added by Stats. 1987, ch. 1459, § 18.

Definitions Relating to Reports

§ 11165.12. As used in this article, the following definitions shall control:

(a) ''Unfounded report'' means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) ''Substantiated report'' means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

(c) ''Inconclusive report'' means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

Amended by Stats. 2004, ch. 842 (SB 1313), § 6.

Effect of Positive Toxicology Screen at Time of Delivery of Infant

§ 11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

Amended by Stats. 2000, ch. 916 (AB 1241), § 11.

Duty to Report; Mandated Reporters; Punishment for Violation

§ 11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child

whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report

of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, ''any other person'' includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and

Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

Amended by Stats. 2007, ch. 393 (AB 673), § 3.

Reporting Child Suffering Serious Emotional Damage

§ 11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

Amended by Stats. 2004, ch. 842 (SB 1313), § 9.

Duty of Agency

§ 11166.1. (a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

Amended by Stats. 2000, ch. 916 (AB 1241), § 17.

Additional Duty of Agency

§ 11166.2. In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

Amended by Stats. 2001, ch. 133 (AB 102), § 7, effective July 31, 2001.

Coordination of Duties in Connection with Investigation of Suspected Child Abuse or Neglect Cases

§ 11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

Amended by Stats. 2001, ch. 133 (AB 102), § 8, effective July 31, 2001.

Required Statements of Mandated Reporters

§ 11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

Amended by Stats. 2004, ch. 842 (SB 1313), § 10.5.

Required Information; Confidentiality of Reporter's Identity; Advising Individual of Complaint or Allegations

§ 11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licens-

ing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

Amended by Stats. 2006, ch. 701 (AB 525), § 4.

Confidentiality of Reports; Violations; Disclosure

§ 11167.5. (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, ''hospital scan team'' means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of

which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a post mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

Amended by Stats. 2008, ch. 699 (SB 1241), § 17; Stats. 2008 ch. 701 (AB 2651), § 9.

Forwarding of Reports to Department of Justice

§ 11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on

the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

Amended by Stats. 2004, ch. 842 (SB 1313), § 17.

Index of Reports; Notice to Child Protection Agencies or District Attorneys; Availability of Information

§ 11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report, of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation, relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in

Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(10) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (4), (5), or (8), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (com-

mencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state

agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (10) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

Amended by Stats. 2008 ch. 701 (AB 2651), § 10.

Peace Officer's Application for Order Directing X-Rays of Suspected Child Abuse or Neglect Victim

§ 11171.5. (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent.

Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.

(c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

Amended by Stats. 2000, ch. 916 (AB 1241), § 30.

Immunity from Liability; Liability for False Reports; Attorney Fees; Failure to Report

§ 11172. (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of ful-

filling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

Amended by Stats. 2006, ch. 538 (SB 1852), § 525.

Guidelines for Investigation of Abuse in Out-of-Home Care

§ 11174. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

Amended by Stats. 1988, ch. 269, § 5.

Guidelines for Investigation of Child Abuse or Neglect in Day Care Facilities

§ 11174.1. (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for

children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

Amended by Stats. 2000, ch. 916 (AB 1241), § 32.

Interview with Suspected Victim of Child Abuse or Neglect at School; Presence of School Staff Member at Interview; Confidentiality; Notification of Requirements

§ 11174.3. (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Amended by Stats. 2000, ch. 916 (AB 1241), § 33.

Interagency Child Death Review Team; Autopsy Protocol; Records Exempt from Disclosure; Report on Findings, Conclusions, and Recommendations of Review Team

§ 11174.32. (a) Each county may establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death review teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death review team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

(d) Records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team.

(e) (1) No less than once each year, each child death review team shall make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths.

(2) In its report, the child death review team shall withhold the last name of the child that is subject to a review or the name of the deceased child's siblings unless the name has been publicly disclosed or is required to be disclosed by state law, federal law, or court order.

Amended by Stats. 2006, ch. 813 (SB 1668), § 1.

EXTRACTED FROM
WELFARE AND INSTITUTIONS CODE

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES

PART 1. THE LANTERMAN-PETRIS-SHORT ACT

CHAPTER 2. INVOLUNTARY TREATMENT

Article 1. Detention of Mentally Disordered Persons for Evaluation and Treatment

Section
5150 Grounds for Detention; Application

Grounds for Detention; Application

§ 5150. When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

Amended by Stats. 1980, ch. 968, p. 3064, § 1.

Article 4. Certification for Intensive Treatment

Section
5250 Conditions for Certification

Conditions for Certification

§ 5250. If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d) (1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not ''gravely disabled'' if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

Amended by Stats. 1989, ch. 999, § 1.

Article 7. Legal and Civil Rights of Persons Involuntarily Detained

Section

5325 Enumeration; Posting
5325.1 Protection of Legal Rights and Responsibilities
5328 Confidentiality of Records; Authorized Disclosures

Enumeration; Posting

§ 5325. Each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

(a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.

(e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Mental Health shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Mental Health to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook.

The State Department of Mental Health shall prepare and provide the forms specified in this section and in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

Amended by Stats. 1981, ch. 841, p. 3231, § 2.

Protection of Legal Rights and Responsibilities

§ 5325.1. Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and

the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds. It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

Added by Stats. 1978, ch. 1320, p. 4319, § 1.

Confidentiality of Records; Authorized Disclosures

§ 5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall

be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____
Date

> As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.
>
> I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is

unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 4070.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, ''qualified professional persons'' means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this sub-

division after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, ''psychotherapist'' means anyone so defined within Section 1010 of the Evidence Code.

(s) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, ''designated officer'' and ''emergency response employee'' have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that has been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

Amended by Stats. 2004, ch. 406 (SB 1819), § 2.

DIVISION 9. PUBLIC SOCIAL SERVICES

PART 3. AID AND MEDICAL ASSISTANCE

CHAPTER 11. ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

Article 2. Definitions

Section
15610.05 "Abandonment"
15610.06 "Abduction"
15610.07 "Abuse of an Elder or a Dependent Adult"
15610.17 "Care Custodian"
15610.23 "Dependent Adult"

15610.27 "Elder"
15610.30 "Financial Abuse" of Elder or Dependent Adult
15610.37 "Health Practitioner"
15610.55 "Multidisciplinary Personnel Team"
15610.57 "Neglect"
15610.63 "Physical Abuse"

"Abandonment"

§ 15610.05. "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Added by Stats. 1994, ch. 594 (SB 1681), § 8.

"Abduction"

§ 15610.06. "Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

Added by Stats. 1997, ch. 663 (SB 628), § 2.

"Abuse of an Elder or a Dependent Adult"

§ 15610.07. "Abuse of an elder or a dependent adult" means either of the following:

(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

Amended by Stats. 1998, ch. 946 (SB 2199), § 2.

"Care Custodian"

§ 15610.17. "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.

(e) Adult day health care centers and adult day care.

(f) Secondary schools that serve 18-to 22-year-old dependent adults and post-secondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(*l*) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Designated area agencies on aging.

(o) Regional centers for persons with developmental disabilities.

(p) State Department of Social Services and State Department of Health Services licensing divisions.

(q) County welfare departments.

(r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(s) The office of the long-term care ombudsman.

(t) Offices of public conservators, public guardians, and court investigators.

(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illness.

(v) Humane societies and animal control agencies.

(w) Fire departments.

(x) Offices of environmental health and building code enforcement.

(y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.

Amended by Stats. 2002, ch. 54 (AB 255), § 2.

"Dependent Adult"

§ 15610.23. (a) "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

Amended by Stats. 2002, ch. 54 (AB 255), § 4.

"Elder"

§ 15610.27. "Elder" means any person residing in this state, 65 years of age or older.

Added by Stats. 1994, ch. 594 (SB 1681), § 3.

"Financial Abuse" of Elder or Dependent Adult

§ 15610.30. (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

(c) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Added by Stats. 1994, ch. 594 (SB 1681), § 3. Amended by Stats. 1997, ch. 724 (AB 1172), § 37; Stats. 1998, ch. 946 (SB 2199), § 5; Stats. 2000, ch. 813 (SB 1742), § 2; Stats. 2000, ch. 442 (AB 2107), § 5.

"Health Practitioner"

§ 15610.37. "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern

registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner.

Amended by Stats. 2003, ch. 62 (SB 600), § 334.

"Multidisciplinary Personnel Team"

§ 15610.55. (a) ''Multidisciplinary personnel team'' means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent adults and who are qualified to provide a broad range of services related to abuse of elderly or dependent adults.

(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

(1) Psychiatrists, psychologists, or other trained counseling personnel.

(2) Police officers or other law enforcement agents.

(3) Medical personnel with sufficient training to provide health services.

(4) Social workers with experience or training in prevention of abuse of elderly or dependent adults.

(5) Public guardians.

(6) The local long-term care ombudsman.

Amended by Stats. 2002, ch. 54 (AB 255), § 7.5.

"Neglect"

§ 15610.57. (a) ''Neglect'' means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

Amended by Stats. 2002, ch. 54 (AB 255), § 8.

"Physical Abuse"

§ 15610.63. ''Physical abuse'' means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Sexual penetration, as defined in Section 289 of the Penal Code.

(9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

Amended by Stats. 2004, ch. 823 (AB 20), § 18.

Article 3. Mandatory and Nonmandatory Reports of Abuse

Section

15630 Duties of Mandated Reporter; Punishment for Failure to Report
15631 Other Persons Making Report
15632 Application of Physician-Patient or Psychotherapist-Patient Privilege

Duties of Mandated Reporter; Punishment for Failure to Report

§ 15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse

by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

Except in an emergency, the local ombudsperson and the local law enforcement agency shall, as soon as practicable, do all of the following:

(i) Report to the State Department of Health Services any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Health Services and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, ''penitential communication'' means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall

not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services

agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610. 63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 of the Welfare and Institutions Code discovers the offense.

(i) For purposes of this section, ''dependent adult'' shall have the same meaning as in Section 15610.23.

Amended by Stats. 2005, ch. 163 (AB 1188), § 2.

Other Persons Making Report

§ 15631. (a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

Added by Stats. 1994, ch. 594 (SB 1681), § 9.

Application of Physician-Patient or Psychotherapist-Patient Privilege

§ 15632. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

Added by Stats. 1994, ch. 594 (SB 1681), § 11.

Article 4. Confidentiality

Section

15633 Confidentiality of Reports; Disclosure *(Text of Section Operative Until January 1, 2013.)*
15633.5 Other Persons to Whom Disclosure May be Made
15634 Civil or Criminal Liability of Reporter *(Text of Section Operative Until January 1, 2013.)*
15637 Evidentiary Privileges

Confidentiality of Reports; Disclosure *(Text of Section Operative Until January 1, 2013.)*

§ 15633. (a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

Amended by Stats. 2005, ch. 140 (SB 1018), § 5, operative January 1, 2007.

Other Persons to Whom Disclosure May be Made

§ 15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

(1) An adult protective services agency.
(2) A long-term care ombudsperson program.
(3) A licensing agency.
(4) A local law enforcement agency.
(5) The office of the district attorney.
(6) The office of the public guardian.
(7) The probate court.
(8) The bureau.
(9) The Department of Consumer Affairs, Division of Investigation.
(10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:

(1) To the district attorney in a criminal prosecution.
(2) When a person reporting waives confidentiality.
(3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

Amended by Stats. 2000, ch. 552 (AB 2735), § 2.

Civil or Criminal Liability of Reporter *(Text of Section Operative Until January 1, 2013.)*

§ 15634. (a) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photo-

graphs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the State Board of Control a claim for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

Amended by Stats. 2005, ch. 140 (SB 1018) § 7, operative January, 1, 2007.

Evidentiary Privileges

§ 15637. In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported pursuant to this chapter. Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

Added by Stats. 1985, ch. 1164, § 13, effective September 28, 1985.

Article 5. Local Agency Cross-Reporting

Section
15640 Criminal Activity and Abuse Instances Requiring Reports; Referring Agencies; Abuse by Licensed Health Practitioners; Abuse at Long-Term Care Facilities; Consent of Victim for Reporting; Neglect or Abandonment *(Text of Section Operative Until January 1, 2013.)*

Criminal Activity and Abuse Instances Requiring Reports; Referring Agencies; Abuse by Licensed Health Practitioners; Abuse at Long-Term Care Facilities; Consent of Victim for Reporting; Neglect or Abandonment *(Text of Section Operative Until January 1, 2013.)*

§ 15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 or 15630.1 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program

when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

Added by Stats. 1994, ch. 594 (SB 1681), § 20. Amended by Stats. 1995, ch. 91 (SB 975), § 188; Stats. 1998, ch. 946 (SB 2199), § 9.5; Stats. 2005, ch. 140 (SB 1018), § 9, operative January 1, 2007.

Article 6. Investigation of Reports

Section

15650 Designation of Agency to Receive Reports; Inventory of Service Agencies to Assist Victims

Designation of Agency to Receive Reports; Inventory of Service Agencies to Assist Victims

§ 15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the long-term care ombudsman program, for instances of physical and financial abuse, the local law

enforcement agency, and for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman program and the bureau.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency and the local law enforcement agency unless another public agency is given responsibility for investigation in that jurisdiction.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of Mental Health and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

Amended by Stats. 1998, ch. 946 (SB 2199), § 10.

Article 9. (First of Two) Reporting Forms

Section

15658 Forms for Written Abuse Reports; Contents

Forms for Written Abuse Reports; Contents

§ 15658. (a) (1) The written abuse reports required for the reporting of abuse, as defined in this chapter, shall be submitted on forms adopted by the

State Department of Social Services after consultation with representatives of the various law enforcement agencies, the California Department of Aging, the State Department of Developmental Services, the State Department of Mental Health, the bureau, professional medical and nursing agencies, hospital associations and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.

(2) The forms required by this section shall contain the following items:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) (1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(2) The county's report to the department shall not include reports it receives from the long-term care ombudsman program pursuant to subdivision (c).

(3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, abandonment, isolation, and financial abuse, and other abuse it receives from county adult protective services agencies.

(c) Each long-term care ombudsman program shall report to the office of the Long-Term Care Ombudsman of the California Department of Aging monthly on the reports it receives pursuant to this chapter with a copy sent to the county adult protective services agency. The office of the state ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the office of the state ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

Added by Stats. 1994, ch. 594 (SB 1681), § 24. Amended by Stats. 1998, ch. 946 (SB 2199), § 11.5.

Article 10. Employee Statement

Section
15659 Statement as to Knowledge of Compliance with Reporting Requirements

Statement as to Knowledge of Compliance with Reporting Requirements

§ 15659. (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, clergy member, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment, shall sign a statement on a form that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The employer shall provide a copy of Section 15630 to the employee. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 15630. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons who were employed prior to January 1, 1995, and who are required to make reports pursuant to Section 15630, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send to the person a statement substantially similar to the one contained in subdivision (a) at the same time that it transmits to the person the document indicating licensure or certification.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b), shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report abuse of elders or dependent adults pursuant to Section 15630 or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

Amended by Stats. 2002, ch. 54 (AB 255), § 12.7.

EXTRACTED FROM
EVIDENCE CODE

DIVISION 8. PRIVILEGES

CHAPTER 1. DEFINITIONS

Section
901 "Proceeding"

"Proceeding"

§ 901. "Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

CHAPTER 4. PARTICULAR PRIVILEGES

Article 7. Psychotherapist—Patient Privilege

Section
1010 "Psychotherapist"
1010.5 Communication Between Patient and Educational Psychologist
1011 "Patient"
1012 "Confidential Communication Between Patient and Psychotherapist"
1013 "Holder of the Privilege"
1014 Psychotherapist—Patient Privilege
1015 When Psychotherapist Required to Claim Privilege
1016 Patient—Litigant Exception
1017 Exception: Psychotherapist Appointed by Court or Board of Prison Terms
1018 Crime or Tort
1019 Parties Claiming Through Deceased Patient
1020 Breach of Duty Arising Out of Psychotherapist—Patient Relationship
1023 Proceeding to Determine Sanity of Criminal Defendant
1024 Patient Dangerous to Self or Others
1025 Proceeding to Establish Competence
1026 Required Report
1027 Exception; Patient Under 16 Who is Victim of Crime

"Psychotherapist"

§ 1010. As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(*l*) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

Amended by Stats. 2001, ch. 420 (AB 1253), § 1.5 effective October 2, 2001, operative January 1, 2002.

Communication Between Patient and Educational Psychologist

§ 1010.5. A communication between a patient and an educational psychologist, licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, shall be privileged to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist described in subdivisions (c), (d), and (e) of Section 1010.

Added by Stats. 1985, ch. 545, § 1.

"Patient"

§ 1011. As used in this article, ''patient'' means a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition or who submits to an examination of his mental or emotional condition for the purpose of scientific research on mental or emotional problems.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

"Confidential Communication Between Patient and Psychotherapist"

§ 1012. As used in this article, ''confidential communication between patient and psychotherapist'' means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

Stats. 1970, ch. 1397, p. 2627, § 2.

"Holder of the Privilege"

§ 1013. As used in this article, ''holder of the privilege'' means:

(a) The patient when he has no guardian or conservator.

(b) A guardian or conservator of the patient when the patient has a guardian or conservator.

(c) The personal representative of the patient if the patient is dead.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Psychotherapist—Patient Privilege

§ 1014. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure. The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapy corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, or a licensed clinical social workers corporation

as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Stats. 2002, ch. 1013 (SB 2026), § 78.

When Psychotherapist Required to Claim Privilege

§ 1015. The psychotherapist who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Patient—Litigant Exception

§ 1016. There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

(d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Exception: Psychotherapist Appointed by Court or Board of Prison Terms

§ 1017. (a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.

(b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

Amended by Stats. 1987, ch. 687, § 1.

Crime or Tort

§ 1018. There is no privilege under this article if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Parties Claiming Through Deceased Patient

§ 1019. There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Breach of Duty Arising Out of Psychotherapist—Patient Relationship

§ 1020. There is no privilege under this article as to a communication relevant to an issue of breach, by the psychotherapist or by the patient, of a duty arising out of the psychotherapist-patient relationship.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Proceeding to Determine Sanity of Criminal Defendant

§ 1023. There is no privilege under this article in a proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code initiated at the request of the defendant in a criminal action to determine his sanity.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Patient Dangerous to Self or Others

§ 1024. There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Proceeding to Establish Competence

§ 1025. There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Required Report

§ 1026. There is no privilege under this article as to information that the psychotherapist or the patient is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection.

Stats. 1965, ch. 299, § 2, operative January 1, 1967.

Exception; Patient Under 16 Who is Victim of Crime

§ 1027. There is no privilege under this article if all of the following circumstances exist:

(a) The patient is a child under the age of 16.

(b) The psychotherapist has reasonable cause to believe that the patient has been the victim of a crime and that disclosure of the communication is in the best interest of the child.

Added by Stats. 1970, ch. 1397, p. 2627, § 3.

EXTRACTED FROM
CIVIL CODE

DIVISION 1. PERSONS

PART 2. PERSONAL RIGHTS

Section

43.92 Psychotherapist's Duty to Warn of Patient's Violent Behavior; Immunity from Liability
43.93 Patient's Action Against Psychotherapist for Sexual Contact

Psychotherapist's Duty to Warn of Patient's Violent Behavior; Immunity from Liability

§ 43.92. (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist who, under the limited circumstances specified above, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

Amended by Stats. 2006, ch. 136 (AB 733), § 1.

Patient's Action Against Psychotherapist for Sexual Contact

§ 43.93. (a) For the purposes of this section the following definitions are applicable:

(1) ''Psychotherapy'' means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) ''Psychotherapist'' means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist intern or trainee, an educational psychologist, an associate clinical social worker, or a licensed clinical social worker.

(3) ''Sexual contact'' means the touching of an intimate part of another person. ''Intimate part'' and ''touching'' have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) ''Therapeutic relationship'' exists during the time the patient or client is rendered professional service by the therapist.

(5) ''Therapeutic deception'' means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

Amended by Stats. 2002, ch. 1013 (SB 2026), § 73.

PART 2.6. CONFIDENTIALITY OF MEDICAL INFORMATION

CHAPTER 2. DISCLOSURE OF MEDICAL INFORMATION BY PROVIDERS

Section

56.10 Authorization; Necessity; Exceptions
56.103 Disclosure of a Minor's Medical Information; Mental Health Condition
56.11 Form and Contents of Authorization

Authorization; Necessity; Exceptions

§ 56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information

may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator in the course of any investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of a well- recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care

services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

Amended by Stats. 2007, ch. 553 (AB 1727), § 1.9.

Disclosure of a Minor's Medical Information; Mental Health Condition

56.103. (a) A provider of health care may disclose medical information to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.

(b) For purposes of this section, health care services and medical treatment includes one or more providers of health care providing, coordinating, or managing health care and related services, including, but not limited to, a provider of health care coordinating health care with a third party, consultation between providers of health care and medical treatment relating to a minor, or a provider of health care referring a minor for health care services to another provider of health care.

(c) For purposes of this section, a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor shall be considered a third party who may receive any of the following:

(1) Medical information described in Sections 56.05 and 56.10.

(2) Protected health information described in Section 160.103 of Title 45 of the Code of Federal Regulations.

(d) Medical information disclosed to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of a minor shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment of the minor and the disclosure is authorized by law. Medical information disclosed pursuant to this section may not be admitted into evidence in any criminal or delinquency proceeding against the minor. Nothing in this subdivision shall prohibit identical evidence from being admissible in a criminal proceeding if that evidence is derived solely from lawful means other than this section and is permitted by law.

(e) (1) Notwithstanding Section 56.104, if a provider of health care determines that the disclosure of medical information concerning the diagnosis and treatment of a mental health condition of a minor is reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor, that information may be disclosed to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of the minor. The information shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law.

(2) As used in this subdivision, ''medical information'' does not include psychotherapy notes as defined in Section 164.501 of Title 45 of the Code of Federal Regulations.

(f) The disclosure of information pursuant to this section is not intended to limit the disclosure of information when that disclosure is otherwise required by law.

(g) For purposes of this section, "minor" means a minor taken into temporary custody or as to who a petition has been filed with the court, or who has been adjudged to be a dependent child or ward of the juvenile court pursuant to Section 300 or 600 of the Welfare and Institutions Code.

(h) (1) Except as described in paragraph (1) of subdivision (e), nothing in this section shall be construed to limit or otherwise affect existing privacy protections provided for in state or federal law.

(2) Nothing in this section shall be construed to expand the authority of a social worker, probation officer, or custodial caregiver beyond the authority provided under existing law to a parent or a patient representative regarding access to medical information.

Added by Stats. 2007, ch. 552 (AB 1687), § 3.

Form and Contents of Authorization

56.11. Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

Amended by Stats. 2003, ch. 562 (AB 715), § 3.

CHAPTER 3. USE AND DISCLOSURE OF MEDICAL INFORMATION BY EMPLOYERS

Section

56.20 Confidentiality; Necessity of Authorization
56.21 Form and Contents of Authorization

Confidentiality; Necessity of Authorization

§ 56.20. (a) Each employer who receives medical information shall establish appropriate procedures to ensure the confidentiality and protection from unauthorized use and disclosure of that information. These procedures may include, but are not limited to, instruction regarding confidentiality of employees and agents handling files containing medical information, and security systems restricting access to files containing medical information.

(b) No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization under this part. However, nothing in this section shall prohibit an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization under this part.

(c) No employer shall use, disclose, or knowingly permit its employees or agents to use or disclose medical information which the employer possesses pertaining to its employees without the patient having first signed an authorization under Section 56.11 or Section 56.21 permitting such use or disclosure, except as follows:

(1) The information may be disclosed if the disclosure is compelled by judicial or administrative process or by any other specific provision of law.

(2) That part of the information which is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment may be used or disclosed in connection with that proceeding.

(3) The information may be used only for the purpose of administering and maintaining employee benefit plans, including health care plans and plans providing short-term and long-term disability income, workers' compensation and for determining eligibility for paid and unpaid leave from work for medical reasons.

(4) The information may be disclosed to a provider of health care or other health care professional or facility to aid the diagnosis or treatment of the patient, where the patient or other person specified in subdivision (c) of Section 56.21 is unable to authorize the disclosure.

(d) If an employer agrees in writing with one or more of its employees or maintains a written policy which provides that particular types of medical information shall not be used or disclosed by the employer in particular ways, the employer shall obtain an authorization for such uses or disclosures even if an authorization would not otherwise be required by subdivision (c).

Added by Stats. 1981, ch. 782, § 2.

Form and Contents of Authorization

§ 56.21. An authorization for an employer to disclose medical information shall be valid if it complies with all of the following:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature that serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information that pertains to a competent minor and that was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(3) The beneficiary or personal representative of a deceased patient.

(d) States the limitations, if any, on the types of medical information to be disclosed.

(e) States the name or functions of the employer or person authorized to disclose the medical information.

(f) States the names or functions of the persons or entities authorized to receive the medical information.

(g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the employer is no longer authorized to disclose the medical information.

(i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

Amended by Stats. 2006, ch. 538 (SB 1852), § 39.

EXTRACTED FROM
FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

Section
6920 Minor's Capacity to Consent to Medical or Dental Care Without Consent of Parent or Guardian
6921 Minor's Consent Not Subject to Disaffirmance
6922 Consent by Minor 15 or Older Living Separately
6924 Consent by Minor to Mental Health Treatment or Counseling or Residential Shelter Services
6925 Consent by Minor to Pregnancy Treatment
6926 Consent by Minor to Treatment for Communicable Disease
6927 Consent by Rape Victim to Treatment
6928 Consent by Assault Victim to Treatment
6929 Consent by Minor to Drug or Alcohol Treatment; Involvement, Liability and Rights of Parent or Guardian

Minor's Capacity to Consent to Medical or Dental Care Without Consent of Parent or Guardian

§ 6920. Subject to the limitations provided in this chapter, notwithstanding any other provision of law, a minor may consent to the matters provided in this chapter, and the consent of the minor's parent or guardian is not necessary.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Minor's Consent Not Subject to Disaffirmance

§ 6921. A consent given by a minor under this chapter is not subject to disaffirmance because of minority.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Consent by Minor 15 or Older Living Separately

§ 6922. (a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or

needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Consent by Minor to Mental Health Treatment or Counseling or Residential Shelter Services

§ 6924. (a) As used in this section:

(1) ''Mental health treatment or counseling services'' means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) ''Professional person'' means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code.

(3) ''Residential shelter services'' means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

Amended by Stats. 2000, ch. 519 (AB 2161), § 1.

Consent by Minor to Pregnancy Treatment

§ 6925. (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

Amended by Stats. 1996, ch. 1023 (SB 1497), § 46, effective September 29, 1996.

Consent by Minor to Treatment for Communicable Disease

§ 6926. (a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.

(b) The minor's parents or guardian are not liable for payment for medical care provided pursuant to this section.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Consent by Rape Victim to Treatment

§ 6927. A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Consent by Assault Victim to Treatment

§ 6928. (a) "Sexually assaulted" as used in this section includes, but is not limited to, conduct coming within Section 261, 286, or 288a of the Penal Code.

(b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.

(c) The professional person providing medical treatment shall attempt to contact the minor's parent or guardian and shall note in the minor's treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful. This subdivision does not apply if the professional person reasonably believes that the minor's parent or guardian committed the sexual assault on the minor.

Stats. 1992, ch. 162 (AB 2650), § 10, operative January 1, 1994.

Consent by Minor to Drug or Alcohol Treatment; Involvement, Liability and Rights of Parent or Guardian

§ 6929. (a) As used in this section:

(1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) "LAAM" means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, marriage and family therapist, marriage and family therapist registered intern when appropriately employed and supervised pursuant to subdivision (f) of Section 4980.40 of the Business and Professions Code, psychological assistant when appropriately employed and supervised pursuant to Section 2913 of the Business and Professions Code, or associate clinical

social worker when appropriately employed and supervised pursuant to Section 4996.18 of the Business and Professions Code.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug-or alcohol-related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug-or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug-or alcohol-related problem of a minor child, the physician shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

Amended by Stats. 2004, ch. 59 (AB 2182), § 1.

EXTRACTED FROM HEALTH AND SAFETY CODE

DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL

PART 1. ADMINISTRATION OF COMMUNICABLE DISEASE PREVENTION AND CONTROL

CHAPTER 3.5. COMMUNICABLE DISEASES EXPOSURE NOTIFICATION ACT

Section	
120260	Legislative Findings
120261	Definitions
120262	Testing of Source Patient; Notification to Exposed Individual
120263	Liability of Health Care Provider

Legislative Findings

§ 120260. (a) The Legislature finds and declares all of the following:

(1) Early knowledge of infection with communicable disease is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.

(2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose communicable disease infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent transmission of communicable diseases, there will be occasions when they experience significant exposure to the blood or other potentially infectious materials of patients.

(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the communicable disease infection status of the patient.

Added by Stats. 2002, ch. 342 (AB 2423), § 1.

Definitions

§ 120261. For the purposes of this chapter, the following definitions apply:

(a) ''Attending physician of the source patient'' means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source

patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

(1) The private physician of the source patient.

(2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.

(3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) ''Available blood or patient sample'' means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the release of the source patient from the physician's or health care provider's facility.

(c) ''Certifying physician'' means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) ''Communicable disease'' means any disease that was transferable through the exposure incident, as determined by the certifying physician.

(e) ''Exposed individual'' means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(f) ''Health care provider'' means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or health care facilities or health care providers described in this subdivision.

(g) ''First responder'' means a police officer, firefighter, rescue worker, or any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person's occupational duties or as a volunteer.

(h) ''Other potentially infectious materials'' means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting a communicable disease.

(i) ''Significant exposure'' means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting a communicable disease.

(j) "Source patient" means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

Added by Stats. 2002, ch. 342 (AB 2423), § 1.

Testing of Source Patient; Notification to Exposed Individual

§ 120262. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed whether the patient has tested positive or negative for a communicable disease if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever a person becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure, as defined in subdivision (h) of Section 120261. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of the testing performed, the need for followup testing, and the procedures that the exposed individual must follow regardless of whether the source patient has tested positive or negative for a communicable disease. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of infection to a communicable disease, without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on whether the source patient has tested positive or negative for a communicable disease, and the availability of blood or other patient samples. An attending physician shall respond to the request for information within three working days.

(c) If test results of the source patient are already known to be positive for a communicable disease then, except as provided in subdivisions (b) and (c) of Section 121010, when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending

physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed the testing results of the source patient regarding communicable diseases. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the test results regarding communicable diseases of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.

(d) If the communicable disease status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline test for communicable diseases, the source patient shall be given the opportunity to give informed consent to a test for communicable diseases in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with a certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2). An inability of the source patient to provide informed consent shall constitute a refusal of consent pursuant to paragraph (2), provided all of the following conditions are met:

(i) The source patient has no authorized legal representative.

(ii) The source patient is incapable of giving consent.

(iii) In the opinion of the attending physician, it is likely that the source patient will be unable to grant informed consent within the 72-hour period during which the physician is required to respond pursuant to paragraph (1).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform a test for a communicable disease, on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for testing for communicable diseases from the source patient.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup, if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to test for a communicable disease after a documented effort has been made to obtain consent, any available blood or patient sample of the source patient may be tested. The source patient or authorized legal repre-

sentative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the test results regarding communicable diseases.

(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform a test for a communicable disease on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the test for communicable diseases only if he or she wishes to be so informed. If a patient refuses to provide informed consent to testing for communicable diseases and refuses to learn the results of the testing, he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the test results regarding communicable diseases. Test results for communicable diseases shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, the test results regarding communicable diseases of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(6) The source patient's identity shall be encoded on the communicable disease test result record.

(e) If an exposed individual is informed of the status of a source patient with regard to a communicable disease pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the communicable disease test results, and that medical information regarding the communicable disease status of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the test and counseling for communicable diseases of the exposed individual, or the source patient, or both, shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup

counseling, or both, or treatment, he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.

(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude testing of source patients for a communicable disease, as authorized by any other provision of law.

(j) Except as otherwise provided under this section, all confidentiality requirements regarding medical records that are provided for under existing law apply to this section.

Added by Stats. 2002, ch. 342 (AB 2423), § 1.

Liability of Health Care Provider

§ 120263. (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing tests for a communicable disease on the available blood or patient sample of a source patient, or for disclosing the communicable disease status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of a test for a communicable disease on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars ($10,000), or by both.

Amended by Stats. 2003, ch. 62 (SB 600), § 195.

PART 4. HUMAN IMMUNODEFICIENCY VIRUS (HIV)

CHAPTER 2. CALIFORNIA ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) PROGRAM (CAP)

Section
120800 Legislative Intent

Legislative Intent

§ 120800. The intent of the Legislature in enacting this chapter is as follows:

(a) To fund specified pilot AIDS education programs.

(b) To fund pilot projects to demonstrate the value of noninstitutional health care services such as hospice, home health, and attendant care in controlling costs and providing humane care to people with AIDS and AIDS-related conditions.

(c) To fund clinical research.

(d) To fund the development of an AIDS Mental Health Project.

(e) To fund specified needs assessments, studies, and program evaluations.

(f) To authorize the use of funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for preventive education for individuals who are seropositive as a result of antibody testing.

(g) To promote broad-based support for AIDS programs by encouraging community level networking and coordination of efforts among private sector, nonprofit, and public service agencies as well as health care professionals and providers of essential services.

(h) To promote an aggressive community-based HIV infection prevention program in all communities and areas where behaviors and prevalence indicate high risk of HIV infection, and to encourage local programs to involve racial and ethnic minorities in a leading role to plan the development, implementation, and evaluation of preventive education, HIV testing, delivery of care, and research activities that are necessary to the formation of a comprehensive, community-based, culturally sensitive HIV infection prevention strategy.

(i) To promote education of health care practitioners concerning new clinical manifestations of HIV, particularly among women and children.

Added by Stats. 1995, ch. 415 (SB 1360), § 7.

CHAPTER 7. MANDATED BLOOD TESTING AND CONFIDENTIALITY TO PROTECT PUBLIC HEALTH

Section	
120975	Privacy Rights of Persons Subject to AIDS Blood Tests
120980	Civil and Criminal Liability for Wrongful Disclosure of AIDS Test Results
120985	Disclosure to Health Care Providers
120990	Written Consent to Test; Exceptions
121015	Liability for Disclosure of AIDS Test Results; Confidentiality of Identity of Person Tested and Persons Contacted
121020	Requirement of Written Consent for Incompetent Subject; Consent for Minor; Disclosure of Results
121022	Use of Patients Name When Reporting Cases of HIV Infection to Local Health Officers; Reporting Unduplicated HIV Cases by Name to State Department of Health; Promulgation of Specified Emergency Regulations; Disclosure of HIV Information to Federal, State, and Local Health Agencies; Penalties for Breach of Confidentiality

Privacy Rights of Persons Subject to AIDS Blood Tests

§ 120975. To protect the privacy of individuals who are the subject of blood testing for antibodies to human immunodeficiency virus (HIV), the following shall apply:

Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual who is the subject of a blood test to detect antibodies to HIV.

Amended by Stats. 2006, ch. 20 (SB 699), § 3, effective April 17, 2006.

Civil and Criminal Liability for Wrongful Disclosure of AIDS Test Results

§ 120980. (a) Any person who negligently discloses results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully or maliciously discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully, maliciously, or negligently discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars ($25,000), or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) Except as provided in Article 6.9 (commencing with Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the results of an HIV test, as defined in subdivision (c) of Section 120775, that identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) ''Written authorization,'' as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in subdivision (c) of Section 120775, in accordance with any reporting requirement for a case of HIV infection, including AIDS by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

(j) The department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics that would identify individual donors.

(k) ''Disclosed,'' as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(*l*) When the results of an HIV test, as defined in subdivision (c) of Section 120775, are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

Amended by Stats. 2006, ch. 20 (SB 699), § 4, effective April 17, 2006.

Disclosure to Health Care Providers

§ 120985. (a) Notwithstanding Section 120980, the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization of the subject of the test, or the subject's representative as set forth in Section 121020, to the test subject's providers of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section ''providers of health care'' does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

Added by Stats. 1995, ch. 415 (SB 1360), § 7.

Written Consent to Test; Exceptions

§ 120990. (a) Prior to ordering a test that identifies infection with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) shall not apply when a person independently requests an HIV test from the provider.

(c) Except as provided in subdivision (a), no person shall administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020, signs a written statement documenting the person's informed consent to the test. This requirement does not apply to such a test performed at an alternative site pursuant to Sections 120890 or 120895. Nothing in this section shall be construed to allow a person to administer a test for HIV unless that person is otherwise permitted under current law to administer an HIV test.

(d) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a test to detect HIV on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(e) (1) The requirements of subdivision (c) do not apply when blood is tested as part of a scientific investigation conducted either by a medical researcher operating under the approval of an institutional review board or by the department, in accordance with a protocol for unlinked testing.

(2) For purposes of this subdivision, ''unlinked testing'' means blood samples that are obtained anonymously, or that have the name or identifying information of the individual who provided the sample removed in a manner that prevents the test results from ever being linked to a particular individual who participated in the research or study.

(f) Nothing in this section shall be construed to permit any person to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, or who test positive for HIV, or are presumed to be HIV-positive.

Added by Stats. 2007, ch. 550 (AB 682), § 2.

Liability for Disclosure of AIDS Test Results; Confidentiality of Identity of Person Tested and Persons Contacted

§ 121015. (a) Notwithstanding Section 120980 or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect HIV infection of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the local health officer, that the patient has tested positive on a test to detect HIV infection, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected, except as required in Section 121022.

(b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, that shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has

attempted to obtain the patient's voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient's contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon shall refer that person for appropriate care, counseling, and followup. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.

(c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect HIV infection are limited to the provisions contained in this chapter, Chapter 10 (commencing with Section 121075) and Sections 1603.1 and 1603.3. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be infected with HIV, except as required by Section 121022.

(d) The local health officer may alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on an HIV test about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and followup. Upon completion of the local health officer's efforts to contact any person pursuant to this subdivision, all records regarding that person maintained by the local health officer pursuant to this subdivision, including, but not limited to, any individual identifying information, shall be expunged by the local health officer.

(e) The local health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.

(f) Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual reported or person contacted pursuant to this section.

Amended by Stats. 2006, ch. 20 (SB 699), § 5, effective April 17, 2006.

Requirement of Written Consent for Incompetent Subject; Consent for Minor; Disclosure of Results

§ 121020. (a) (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

(2) Notwithstanding paragraph (1), when the subject of the test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare

and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.

(b) Written consent shall only be obtained for the subject pursuant to subdivision (a) when necessary to render appropriate care or to practice preventative measures.

(c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:

(1) Notwithstanding Sections 120975 and 120980, receive the results of the test on behalf of the subject without written authorization.

(2) Disclose the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 120975 and 120980.

Added by Stats. 1995, ch. 415 (SB 1360), § 7.

Use of Patients Name When Reporting Cases of HIV Infection to Local Health Officers; Reporting Unduplicated HIV Cases by Name to State Department of Health; Promulgation of Specified Emergency Regulations; Disclosure of HIV Information to Federal, State, and Local Health Agencies; Penalties for Breach of Confidentiality

§ 121022. (a) To ensure knowledge of current trends in the HIV epidemic and to assure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the department.

(b) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(c) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Title 17 of the California Code of Regulations, consistent with this chapter, within one year of the effective date of this section.

(d) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality, and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(f) No person shall disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency,

employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(g) (1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency.

(h) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(i) Nothing in this section shall be construed to limit other remedies and protections available under state or federal law.

Added by Stats. 2006, ch. 20 (SB 699), § 6, effective April 17, 2006.

DIVISION 106. PERSONAL HEALTH CARE (Including Maternal, Child, and Adolescent)

PART 1. GENERAL ADMINISTRATION

CHAPTER 1. PATIENT ACCESS TO HEALTH RECORDS

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Definitions

§ 123105. As used in this chapter:

(a) ''Health care provider'' means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) ''Mental health records'' means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. ''Mental health records'' includes, but is not limited to, all alcohol and drug abuse records.

(c) ''Patient'' means a patient or former patient of a health care provider.

(d) ''Patient records'' means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. ''Patient records'' includes only records pertaining to the patient requesting the records or whose representative requests the records. ''Patient records'' does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. ''Patient records'' does not include information contained in aggregate form, such as indices, registers, or logs.

(e) ''Patient's representative'' or ''representative'' means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) ''Alcohol and drug abuse records'' means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

Amended by Stats. 2006, ch. 249 (SB 1307), § 1.

Inspection of Records; Copying of Records; Violations; Construction of Section

§ 123110. (a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.

(b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty-five cents ($0.25) per page or fifty cents ($0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.

(c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

(d) (1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, ''relevant portion of the patient's records'' means those

records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.

(2) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. For purposes of this subdivision, ''private attorney'' means any attorney not employed by a nonprofit legal services entity.

(e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.

(f) If a patient or his or her representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

(g) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. Nothing in this chapter shall be deemed to supersede any rights that a patient or representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. Nothing in this chapter shall require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

(h) This chapter shall not be construed to render a health care provider liable for the quality of his or her records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section.

Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hun-

dred dollars ($100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision (i).

Amended by Stats. 2001, ch. 325 (AB 1311), § 1.

Representatives of Minors; Risks of Adverse Consequences to Patient in Inspecting Records

§ 123115. (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection or copying under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by request of the patient. Any marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code. Prior to providing copies of mental health records to a marriage and family therapist registered intern, a receipt

for those records shall be signed by the supervising licensed professional. The licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or marriage and family therapist registered intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

Amended by Stats. 2006, ch. 100 (AB 1994), § 1.

Action to Enforce Right to Inspect or Copy

§ 123120. Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Exception for Alcohol, Drug Abuse and Communicable Disease Carrier Records

§ 123125. (a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner, prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91-616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not prohibit disclosure of the records. All other alcohol and drug abuse records shall be fully subject to this chapter.

(b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Preparation of Summary of Record; Conference with Patient

§ 123130. (a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date

of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:

(1) Chief complaint or complaints including pertinent history.

(2) Findings from consultations and referrals to other health care providers.

(3) Diagnosis, where determined.

(4) Treatment plan and regimen including medications prescribed.

(5) Progress of the treatment.

(6) Prognosis including significant continuing problems or conditions.

(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.

(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law.

(d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.

(e) Subdivision (c) of Section 123110 shall be applicable whether or not the health care provider elects to prepare a summary of the record.

(f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient's representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Construction of Chapter

§ 123135. Except as otherwise provided by law, nothing in this chapter shall be construed to grant greater access to individual patient records by any person, firm, association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency. Therefore, this chapter does not do any of the following:

(a) Relieve employers of the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(b) Relieve any person subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) from the requirements of that act.

(c) Relieve government agencies of the requirements of the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Completion of Screening Program; Environmental Abatement

§ 123140. The Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) shall prevail over this chapter with respect to records maintained by a state agency.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Preservation of Records After Licensee Ceases Operation; Action for Abandonment of Records

§ 123145. (a) Providers of health services that are licensed pursuant to Sections 1205, 1253, 1575 and 1726 have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.

(b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.

(c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

Report to Patient of Results of Clinical Laboratory Test

§ 123148. (a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be conveyed in plain language and in oral or written form, except the results may be conveyed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test.

(b) (1) Consent of the patient to receive his or her laboratory results by Internet posting or other electronic means shall be obtained in a manner consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event

that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be delivered to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are delivered to a patient by Internet posting or other electronic manner.

(2) Nothing in paragraph (1) shall prohibit direct communication by Internet posting or the use of other electronic means to convey clinical laboratory test results by a treating health care professional who ordered the test for his or her patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests to receive his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic provision of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic means:

(1) HIV antibody test.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

Amended by Stats. 2002, ch. 128 (AB 2831), § 1.

Requirements for Providers of Health Services Utilizing Electronic Recordkeeping Systems Only

§ 123149. (a) Providers of health services, licensed pursuant to Sections 1205, 1253, 1575, and 1726, that utilize electronic recordkeeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records are retained.

(b) Any use of electronic recordkeeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of all electronic media used to store patient records by employing an off-site backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.

(c) Original hard copies of patient records may be destroyed once the record has been electronically stored.

(d) The printout of the computerized version shall be considered the original as defined in Section 255 of the Evidence Code for purposes of providing copies to patients, the Division of Licensing and Certification, and for introduction into evidence in accordance with Sections 1550 and 1551 of the Evidence Code, in administrative or court proceedings.

(e) Access to electronically stored patient records shall be made available to the Division of Licensing and Certification staff promptly, upon request.

(f) This section does not exempt licensed clinics, health facilities, adult day health care centers, and home health agencies from the requirement of maintaining original copies of patient records that cannot be electronically stored.

(g) Any health care provider subject to this section, choosing to utilize an electronic recordkeeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.

(h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

(i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

CHAPTER 2. DESTRUCTION OF RECORDS AND EXHIBITS OF HUMAN HEALTH

Section
123150 Legislative Findings and Declarations

Legislative Findings and Declarations

§ 123150. The board of supervisors may authorize the destruction or the disposition to a public or private medical library of any X-ray photographs and case records that are more than five years old and that were taken by the county health officer in the performance of his or her duties with regard to tuberculosis if any of the following conditions are complied with:

(a) The county health officer has determined that the X-ray photographs or a series of X-ray photographs in conjunction with case records do not show the existence of tuberculosis in the infectious stage.

(b) The individual of whom the X-ray photographs were taken has been deceased not less than two years or the 102nd anniversary of the individual's birthdate has occurred and the county health officer cannot reasonably ascertain whether the individual is still living.

(c) The place of residence of the individual of whom the X-ray photographs were taken has been unknown to the county health officer for 10 years.

Added by Stats. 1995, ch. 415 (SB 1360), § 8.

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