



MEMORANDUM

DATE	November 6, 2014
TO	Psychology Board Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	Exempt Settings Legislative Proposal (Business and Professions Code Sections 2909, 2909.5, and 2910)

Background:

Attached is the bill proposal that seeks to ensure employees in exempt settings are working towards licensure as psychologists by the Board. The proposed language was approved by the Board at the August Meeting in San Francisco.

Action Requested:

Motion Requested: Committee/Board vote to approve bill proposal as written.



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

Request for Approval of Proposed Legislation

CONFIDENTIAL-Government Code §6254(I)	
Department:	Governor's Office #
Agency Log #	
Subject/Title:	

SUMMARY

This legislative proposal addresses amendments to Business and Professions Code (BPC) §2909 and §2910, both of which address employment of individuals performing psychological activities within certain organizations or exempt settings.

IDENTIFICATION OF PROBLEM

Current law does not specify whether an employee in an exempt setting must be working under the supervision of a licensed psychologist to accumulate supervision hours towards licensure, or if the exemption grant of the employee is limited to a certain timeframe. This scenario has a negative effect on the Board's consumer protection mandate, because employees in exempt settings are working with particularly vulnerable populations, such as inmates and students, and are not or may never be subject to regulation by the Board. Currently, these employees may or may not be required to be licensed within a specified timeframe by the employment policies of the organization that employs them, raising concern within the Board regarding the indefinite amount of time the exemption potentially provides for the employee to become licensed.

PROPOSED SOLUTION

To address this issue, the supervision requirements and timeframe allowed for the exemption need to be clarified. Clarification can be accomplished by removing §2909(d) from §2909 and listing the subsection under the new section title §2909.5 to emphasize the distinct standards of registered psychologists (distinct from licensed psychologists or psychological assistants) of which this section addresses. In addition, §2910(e) will be amended and replaced with more specific language reflecting the original intent of this subsection – to eventually require employees in exempt settings to become licensed. This section will state that the employee must be gaining supervised professional experience required for licensure in order to be exempt from the requirement for licensure. Section 2910(b) will be added to §2910 to specify the length of time the limited exemption grant will apply to the specified employees. The time the Board has determined to be appropriate is 5 (five) years. This timeframe is also consistent with the exemption period specified in Welfare and Institutions Code (WIC) Section 5751.2 (d).

The exemptions contained in §2909 and §2910 will remain the same with the limitation that employees in these settings are gaining experience for licensure and are supervised by a licensee of the Board.

After consideration by the Board, no reasonable alternatives have been identified.

JUSTIFICATION

Legislation is required to ensure that specified employees, who are given a timeframe for the exemption, are being supervised by a licensed psychologist to accumulate supervised professional experience hours, and ultimately seek licensure. By doing so, confusion regarding requirements and amount of time allotted for exemption will be minimized.

After consideration by the Board, no reasonable alternatives have been identified.

The Business and Professions Code section 2910 lists the various exempt settings and the conditions and limitations that apply to those employees in those particular settings. There is no mention in BPC section 2910 regarding the length of time that an employee may practice without attaining licensure as a psychologist. WIC section 5751.2 provides a license waiver for local government mental health employees for a maximum of three years; "A waiver granted under this subdivision may not exceed five years from the date of employment ..." (WIC §5751.2 (d).) This limitation on the exemption period is not present in the BPC as a result the BPC could be interpreted to permit an indefinite exemption from licensure for those in settings outlined in BPC section 2910.

A statutory change is required to address the discrepancies between the Codes. The Board does not have the authority to change the statute without legislation, and it cannot reinterpret the language in the statute via regulation.

PROGRAM BACKGROUND/LEGISLATIVE HISTORY

Business and Professions Code section 2909 was added in 1981 as a result of SB 950. The bill was proposed so unlicensed psychologists who were transferred involuntarily would remain exempt from needing a license.

Business and Professions Code section 2910 was added in 1967 with an amendment in 1979 that added subsection (d). This law is part of the Psychology Licensing Law that requires the licensure of anyone practicing psychology that does not fall under the definition of an individual practicing in an exempt setting. Prior to this law, anyone could practice as long as they did not hold themselves out to the public as a licensed psychologist.

SB 212 was passed in 1979, which allowed state employees to remain exempt from licensing requirements if he or she stayed in the same position and job classification.

Welfare and Institutions Code (WIC) section 5751.2, specifically section 5751.2(d), relates to Business and Professions Code (BPC) sections 2909 and 2910 in that it addresses an educational requirement waiver granted to specified employees who are gaining experience required for licensure. This law states that a waiver granted under this subdivision may not exceed five years in time from the date of employment. However, WIC section 5751.2 does not reference BPC sections 2909 and 2910, and therefore cannot be used to impose a limited exemption timeframe on those employees in exempt settings covered in the BPC.

ARGUMENTS PRO AND CON

Pros:

The amended law will help the Board meet its consumer protection goals by ensuring that employees in exempt settings are properly supervised and working towards licensure. This will be done by requiring employees to be supervised by licensed psychologists, to be earning supervised professional experience hours, and to be working towards licensure within a given timeframe of five (5) years.

Cons:

Potential opposition may come only from those individuals who have planned to work in exempt settings for a prolonged period of time without seeking licensure by the Board. Settings who employ unlicensed personnel to perform psychological functions may also oppose the legislation.

PROBABLE SUPPORT AND OPPOSITION

The Board foresees minimal opposition to the legislative proposal. Potential opposition may come from those individuals who have planned to work in exempt settings without seeking licensure by the Board.

FISCAL IMPACT:

The Board foresees a negligible fiscal impact due to an increase in applications of the specified employees for licensure.

ECONOMIC IMPACT

The Board cannot determine the potential economic impact. The Board has no way of determining how many unlicensed practitioners are providing services in exempt settings. The number is reduced by the fact that certain exempt settings require a psychologist to be licensed as part of the employment policy; the University of California system and the State Department of Corrections. There will be negligible economic impact on local government, federal government, and public and private entities.

COMPARISON WITH OTHER STATES

Both the states of New York and Ohio have adopted laws with comparable requirements related to the specified exempt employees.

PERFORMANCE INDICATORS

The Board does not anticipate a significant increase in applications for licensure, but the potential that an employee could practice psychology in an exempt setting for an indefinite amount of time will be removed.

OTHER AFFECTED AGENCIES AND THEIR ROLES/VIEWS

No other state agencies will be impacted.

APPOINTMENTS

There will be no changes to Governor's and/or Legislative appointments.

DRAFT LANGUAGE

Business & Professions Code § 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 who are employed in positions as psychologists or psychological assistants, ~~or in a student counseling service,~~ by accredited or approved colleges, junior colleges or universities; by federal, state, county or municipal governmental organizations ~~which that~~ are not primarily involved in the provision of direct health or mental health services; or in a private setting that is 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~~ may conduct research, and 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, Sec. 2. Effective January 1, 2006.)

Business & Professions Code § 2909.5. (new)

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.

Business & Professions Code § 2910.

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

~~(a)~~ (1) Such employees are performing such psychological activities as part of the duties for which they were hired;

~~(b)~~ (2) Such employees are performing those activities solely within the jurisdiction or confines of such organizations;

~~(c)~~ (3) Such ~~persons~~ employees 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)~~ (4) Such ~~persons~~ employees do not offer their services to the public for a fee, monetary or otherwise; and

~~(e)~~ (5) ~~Such persons do not provide direct health or mental health services.~~ Such employees are primarily gaining the supervised professional experience required for licensure that is being accrued consistent with the Board's regulations, and their practice has as the primary supervisor a psychologist licensed in the State

(b) The limited exemption granted under this section may not exceed five years from the date of employment.