

MEMORANDUM

DATE	July 26, 2017
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #5(b)(1)(G) – SB 798 (Hill) Healing Arts: Boards

Background:

This bill is the Sunset Bill for the Medical Board of California (MBC), which previously included provisions transferring the licensing and regulation of Research Psychoanalysts to the Board of Psychology (Board). These provisions were removed from the bill in the July 6 amendments, and the bill now would keep the licensing and regulation of Research Psychoanalysts under the MBC.

Currently Research Psychoanalysts are licensed and regulated by MBC, which organizationally is a historical remnant that the Senate Committee on Business, Professions, and Economic Development and the Medical Board believe it is time to remedy. The Senate Committee on Business, Professions, and Economic Development (Senate BP&ED) expressed to Board staff that the Board appears to be the most appropriate regulatory body for these professionals and wishes to transfer their oversight to the Board.

On April 21, 2017 the Board took a **Support if Amended** position on SB 798, seeking delayed implementation of the research psychoanalyst provisions, addition of a provision to transfer and extend current regulatory provisions until the Board can promulgate new regulations, and a technical amendment regarding which fund registration money should be deposited into once these provisions take effect. Board members also had questions regarding implementation of the provisions, current MBC practices, and code of ethics and disciplinary guideline questions that Board staff will be researching and meeting with the MBC on in the near future to answer.

After the Board's approval of the position, staff contacted Senate BP&ED to formally notify them of the Board's position and requested amendments. SB 798 was amended on May 26, the amendments relating to research psychoanalysts are now found in sections 92-96 and 98-103 of the bill (Attachment B). The amendments include, among other things, delayed implementation of the transfer of the research psychoanalyst registration program to the Board until January 1, 2019, continuation of all agreements entered into with, and orders and regulations issued by, MBC as if they were entered

into with, or issued by, the Board, and specification that registration fees for the program will be paid into the Psychology Fund.

Board staff and the Board's legal counsel initiated conversations with MBC staff to get clarification on the current registration program's operations and will continue to meet with MBC staff during implementation of the bill. Staff also began researching the Board's questions related to the research psychoanalyst statutory and regulatory provisions, disciplinary issues, and a code of ethics for these professionals. Board staff also looked into reaching out to the American Psychoanalytic Association (APsaA) to gather additional information on the field.

On July 6, the provisions transferring the Research Psychoanalyst registration program to the Board were removed from the bill due to concerns by stakeholders in the research psychoanalyst community, as expressed in the letter to the author by the University of Southern California (Attachment B).

At this time, Board Staff recommends removing the Support position and proceed to watch the bill for the remainder of the legislative session as the bill no longer impacts the Board or its licensees.

Location: Assembly Committee on Business and Professions

Status: 7/11/2017 Set first hearing, testimony taken.

Votes: 5/31/2017 Senate Floor (36-4-0)
5/25/2017 Senate Committee on Appropriations (7-0-0)
5/15/2017 Senate Committee on Appropriations (7-0-0) Placed on
Suspense
4/24/2017 Senate Committee on Business, Professions, and Economic
Development (8-0-1)

Action Requested:

Staff recommends that the Board remove its Support position on SB 798 (Hill) and proceed to watch the bill for the remainder of the legislative session since the bill no longer impacts the Board or its licensees.

Attachment A: SB 798 (Hill) Text

Attachment B: University of Southern California Letter

**SB-798 Healing arts: boards.** (2017-2018)

SECTION 1. Section 115.6 of the Business and Professions Code is amended to read:

115.6. (a) A board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if he or she meets the requirements set forth in subdivision (c):

- (1) Registered nurse license by the Board of Registered Nursing.
- (2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (6) Veterinarian license issued by the Veterinary Medical Board.
- (7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.
- (8) All licenses issued by the Medical Board of California.

(9) All licenses issued by the California Board of Podiatric Medicine.

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

- (1) The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.
- (2) The applicant shall hold a current, active, and unrestricted license that confers upon him or her the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which he or she seeks a temporary license from the board.
- (3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of his or her knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.
- (4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.
- (5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

(c) The applicant has satisfactorily completed a postgraduate training program approved by the Council on Podiatric Medical Education.

(d) The applicant, within the past 10 years, has passed any oral and practical examination that may be required of all applicants by the board to ascertain clinical competence.

(e) The applicant has committed no acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475).

(f) The board determines that no disciplinary action has been taken against the applicant by any podiatric licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of podiatric medicine that the board determines constitutes evidence of a pattern of negligence or incompetence.

(g) A disciplinary databank report regarding the applicant is received by the board from the Federation of Podiatric Medical Boards.

~~SEC. 88.~~SEC. 87. Section 2492 of the Business and Professions Code is amended to read:

2492. (a) The board shall examine every applicant for a certificate to practice podiatric medicine to ensure a minimum of entry-level competence at the time and place designated by the board in its discretion, but at least twice a year.

(b) Unless the applicant meets the requirements of Section 2486, applicants shall be required to have taken and passed the examination administered by the National Board of Podiatric Medical Examiners.

(c) The board may appoint qualified persons to give the whole or any portion of any examination as provided in this article, who shall be designated as examination commissioners. The board may fix the compensation of those persons subject to the provisions of applicable state laws and regulations.

(d) The provisions of Article 9 (commencing with Section 2170) shall apply to examinations administered by the board except where those provisions are in conflict with or inconsistent with the provisions of this article. ~~In respect to applicants under this article any references to the "Division of Licensing" or "division" shall be deemed to apply to the board.~~

~~SEC. 89.~~SEC. 88. Section 2499 of the Business and Professions Code is amended to read:

2499. There is in the State Treasury the Board of Podiatric Medicine Fund. Notwithstanding Section 2445, the ~~division 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 on behalf of the board, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into the fund. All revenue received by the board and the division from fees authorized to be charged relating to the practice of podiatric medicine shall be deposited in the fund as provided in this section, and shall be available, upon appropriation of the Legislature, to carry out the provisions of this chapter relating to the regulation of the practice of podiatric medicine.

SEC. 89. *Section 2499.7 is added to the Business and Professions Code, to read:*

2499.7. (a) *Certificates to practice podiatric medicine shall expire at midnight on the last day of the birth month of the licensee during the second year of a two-year term.*

(b) *To renew an unexpired certificate, the licensee, on or before the date on which the certificate would otherwise expire, shall apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.*

~~SEC. 91.~~SEC. 90. Section 2525.2 of the Business and Professions Code is amended to read:

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of ~~California~~ *California, the California Board of Podiatric Medicine,* or the Osteopathic Medical Board of California shall not recommend medical cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

SEC. 91. *The heading of Chapter 5.1 (commencing with Section 2529) of Division 2 of the Business and Professions Code is repealed.*

~~SEC. 93.~~SEC. 92. Section 2529 of the Business and Professions Code is amended to read:

2529. (a) Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Center, or institutes deemed equivalent by the Medical Board of California who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

(b) Those students and graduates seeking to engage in psychoanalysis under this chapter shall register with the Medical Board of California, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of those persons for unprofessional conduct as defined in Sections 726, 2234, 2235, and 2529.1

(c) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.

~~SEC. 94.~~SEC. 93. Section 2529.1 of the Business and Professions Code is amended to read:

2529.1. (a) The use of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the registrant, or to any other person or to the public, or to the extent that this use impairs the ability of the registrant to practice safely or more than one misdemeanor or any felony conviction involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The board may order discipline of the registrant in accordance with Section 2227 or may order the denial of the registration 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 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing this 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, complaint, information, or indictment.

(c) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.

~~SEC. 95.~~SEC. 94. Section 2529.5 of the Business and Professions Code is amended to read:

2529.5. (a) Each person to whom registration is granted under the provisions of this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the Medical Board of California at a sum not in excess of one hundred dollars (\$100).

(b) The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the board at a sum not in excess of fifty dollars (\$50). Students seeking to renew their registration shall present to the board evidence of their continuing student status.

(c) The money in the Contingent Fund of the Medical Board of California shall be used for the administration of this chapter.

(d) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.

~~SEC. 96.~~SEC. 95. Section 2529.6 of the Business and Professions Code is amended to read:

2529.6. (a) Except as provided in subdivisions (b) and (c), the board shall revoke the registration of any person who has been required to register as a sex offender pursuant to Section 290 of the Penal Code for conduct that occurred on or after January 1, 2017.

(b) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(c) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

(d) A proceeding to revoke a registration pursuant to this section 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.

(e) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.

SEC. 96. *Section 2566.2 is added to the Business and Professions Code, to read:*

2566.2. *Every registration issued to a dispensing optician, contact lens dispenser, and spectacle lens dispenser shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.*

~~SEC. 404.~~**SEC. 97.** Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the *California Board of Podiatric Medicine, the* Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice podiatry, and who is duly registered by the Medical Board of California, the *Osteopathic Medical Board of California, the* State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, or the *California* Board of ~~Osteopathic Examiners of this state.~~ *Podiatric Medicine.*

~~SEC. 405.~~**SEC. 98.** Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the appropriate licensing entity, including the Medical Board of California, the Veterinary Medical Board, the Dental Board of California, the State Board of Optometry, the *California Board of Podiatric Medicine, the* Osteopathic Medical Board of California, the Board of Registered Nursing, the Bureau of Naturopathic Medicine, or the Physician Assistant Committee, all



May 19, 2017

The Honorable Jerry Hill
Chair, Senate Business & Professions Committee
State Capitol, Room 5035
Sacramento, California 95814

**Re: SB 798 (Hill): Healing Arts: boards.
CONCERNS (as amended April 18, 2017)**

Dear Senator Hill:

On behalf of the University of Southern California, I write to express concerns with the language in your measure (SB 798) relating to Research Psychoanalysts (RP). Your bill proposes to sunset the RP registration currently overseen by the California Medical Board and transfer oversight to the Board of Psychology. Instead we request that RP jurisdiction remain with the Medical Board.

We understand that neither the Medical Board nor the Board of Psychology has asked for a change in RP oversight. There is no problem that needs fixing. RPs are different from other professions sunsetted in SB 798 which previously were supervised by the Medical Board but now have their own agencies.

Assembly Bill 246 (Berman, Chapter 1191, Statutes of 1977) added B&P Code 2529 to provide RPs access to full clinical training in psychoanalysis. USC faculty had a leadership role in initiating and supporting this law, and we have an interest in its continued successful functioning.

Our practical concern is this. Under B&P Code 2529, the Medical Board decides which psychoanalytic institutes are equivalent to those named in the statutes, so that their students and graduates can have RP registration. The Medical Board has carried out this responsibility fairly. Psychoanalytic training is very different from psychologist training, and there is a contentious history between the two disciplines. For those reasons, California RPs fear that some future members of the Board of Psychology might bring their own agenda to the recognition of psychoanalytic institutes, evaluating them through the lenses of the psychologist training standards they are used to administering. We don't want the legislature to create this possibility through SB 798 and have to hope for a future legislative remedy if our fears are realized.

RPs are very different from clinical psychologists. Clinical psychologists provide clinical services. They are trained in academic graduate schools in a range of techniques and theoretical approaches in order to use "the science of psychology."

RPs are scholars and teachers who do not have some other license and need RP registration to allow them to learn and practice psychoanalysis. The RP registration is available to only a few

exceptionally well qualified individuals who have already earned a Ph.D. or equivalent in their original discipline, and who will learn and practice psychoanalysis only as an adjunct to their teaching or research. Psychoanalysis is a valuable part of the scholarship and teaching in a broad range of our departments, including Medicine, Social Work, Anthropology, Theater, Law, English, French, History, Comparative Literature, German, Sociology, and Cinematic Arts. It is extremely beneficial that professors in a variety of disciplines receive full training at psychoanalytic institutes and can receive actual experience as psychoanalysts.

There has long been a contentious relationship between the three disciplines: psychoanalysts trained in psychoanalytic institutes, Ph.D. psychologists trained in academic graduate schools, and M.D. psychiatrists trained in medical schools. Psychoanalysis was founded by Sigmund Freud as part of the practice of medicine, though he subsequently envisaged it as its own independent, rigorous scientific discipline. In the United States, psychoanalysis has historically been regulated and led by M.D. psychiatrists, who accredited psychoanalytic institutes, authorized who could be training analysts, and decided on the rare exception to the rule that only M.D. psychiatrists were admitted to be trained in psychoanalytic institutes.

Ph.D. psychologists have had an ambivalent relationship with psychoanalysis. Psychologists typically are trained in research protocols and psychological testing, and many psychologists do not respect psychoanalysts because their training is so different, and regard psychoanalysis as unscientific. In 1977, psychologists testified *against* the establishment of an RP registration; apparently regarding RPs as invading their turf. They opposed the efforts to recognize by statute psychoanalysis as an independent scientific and clinical identity. On the other hand, other psychologists have resented the monopoly that M.D.s had over the established psychoanalytic institutes and wanted to obtain that training for themselves. Finally, psychologists sued and won a court decision opening psychoanalytic institutes to non-M.D.s. Given this touchy history, it would be anomalous if psychologists were now granted psychoanalytic regulatory authority so long exercised by MDs.

Responding to the lobbying by psychologists, the RP statute explicitly states that “psychoanalysts” cannot practice “psychology” and cannot call themselves “psychologists.” Given those provisions, it would be strange to transfer supervision of RPs to the Board of Psychology.

USC believes that the current oversight model effectively serves the best practices of medicine. We respectfully ask that you reconsider your decision to transition RP oversight from the Medical Board to the Board of Psychology.

Sincerely,



Martha M. Escutia
Vice President
Government Relations