

MEMORANDUM

DATE	April 24, 2018
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #21(a)(1): AB 2968 (Levine) – Amend sections 337 and 728 of the Business and Professions Code Regarding the Brochure Addressing Sexual Contact between a Psychotherapist and a Patient

Background:

At the March 2017 Outreach and Education Committee meeting, that Committee discussed a plan to have all relevant board's staff review/amend the Professional Therapy Never Includes Sex brochure, convene an expert panel to review proposed amendments, and present it to the Department of Consumer Affairs for final consideration. While reviewing the statutory requirement to produce the brochure, these boards agreed that changes to the general provisions of the Business and Professions Codes should be made.

At the November 2017 Board Meeting, the Board approved the draft Omnibus Legislative Proposal and directed Staff to submit the proposal to the Senate Committee on Business, Professions and Economic Development (Senate BP&ED) for inclusion in their omnibus bill. In December 2017, Staff submitted the Omnibus Legislative Proposal to Senate BP&ED for consideration of inclusion in their omnibus bill.

In January 2018, Senate BP&ED staff notified Staff that they did not accept the Board's Omnibus Legislative Proposal for inclusion in their omnibus bill, but offered assistance in finding an individual Senator or Assembly Member to author the bill. Our proposal was not selected for inclusion as the Senate BP&ED staff believed its provisions were more complex and did not fit into the category of a Sunset clean-up provision. Staff then sought an author for the proposal.

In February 2018, Assembly Member Marc Levine graciously offered to author the proposal as amended at our February 2018 Board Meeting. During the drafting of the bill language Legislative Council made some minor changes to the language, but Staff believes these changes do not substantively alter the legislative language. If additional drafting amendments are desired by the Board, this can be accomplished during upcoming hearings. AB 2968 (Levine) was heard by the Assembly Committee on Business and Professions (Assembly B&P) on April 24, 2018. Dr. Michael Erickson represented the Board during the hearing and provided testimony in support of the bill. The bill was well received and received unanimous support from Assembly B&P which passed the bill on a

vote of 16-0-0. The bill heads to the Assembly Committee on Appropriations for its next hearing.

Location: 4/24/2018 Assembly Committee on Business and Professions

Status: 4/24/2018 From committee: Do pass and re-refer to Assembly Committee on Appropriations. (Ayes 16. Noes 0.) (April 24). Re-referred to Assembly Committee on Appropriations.

Votes: 4/24/2018 Assembly Committee on Business and Professions (16-0-0)

Action Requested:

This item is for informational purposes only. No action is required.

Attachment A: AB 2968 (Levine) Bill Text

Attachment B: Sexual Behaviors Definition vs. Current Statute (Updated)

Attachment C: Board Letter to Assembly Committee on Business and Professions

Attachment D: Assembly Committee on Business and Professions Analysis


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AB-2968 Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure.
(2017-2018)

SECTION 1. *Section 337 of the Business and Professions Code is amended to read:*

337. (a) The department shall prepare and disseminate an informational brochure for victims of ~~psychotherapist-patient sexual contact and advocates for those victims.~~ *psychotherapist-client sexual behavior and sexual contact and their advocates.* 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.~~ *department.*

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

- (1) A legal and an informal definition of ~~psychotherapist-patient sexual~~ *psychotherapist-client sexual behavior and sexual* contact.
 - (2) A brief description of common personal ~~reactions and histories of victims and victim's families.~~ *reactions.*
 - (3) A ~~patient's~~ *client's* bill of rights.
 - (4) ~~Options~~ *Instructions* for reporting ~~psychotherapist-patient~~ *psychotherapist-client* sexual ~~relations and instructions for each reporting option.~~ *behavior and sexual contact.*
 - (5) A full description of ~~administrative, civil, and professional associations~~ *administrative* 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 affiliated health boards~~ *California, the Osteopathic Medical Board of California, the Board of Psychology,* or the Board of Behavioral Sciences regarding a complaint involving ~~psychotherapist-patient sexual relations.~~ *psychotherapist-client sexual behavior and sexual contact.*

SEC. 2. *Section 728 of the Business and Professions Code is amended to read:*

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a ~~patient~~ *client* that the ~~patient~~ *client* had alleged sexual intercourse or alleged sexual *behavior or sexual* contact with a previous psychotherapist during the course of a prior treatment shall provide to the ~~patient~~ *client* a brochure ~~promulgated~~ *developed* by the department *pursuant to Section 337* that delineates the rights of, and remedies for, ~~patients~~ *clients* who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss with the ~~patient~~ *client* 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 any of the following:*

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

(B) A psychologist.

(C) A psychological assistant.

(D) A registered psychologist.

(E) A trainee under the supervision of a licensed psychologist.

(F) A marriage and family therapist.

(G) An associate marriage and family therapist.

(H) A marriage and family therapist trainee.

(I) A licensed educational psychologist.

(J) A clinical social worker.

(K) An associate clinical social worker.

(L) A licensed professional clinical counselor.

(M) An associate professional clinical counselor.

(N) A clinical counselor trainee.

(2) "Sexual behavior" means inappropriate contact or communication of a sexual nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues.

~~(2)~~ (3) "Sexual contact" means the touching of an intimate part of another person.

~~(3)~~ (4) "Intimate part" and "touching" have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

~~(4)~~ (5) "The course of a prior treatment" means the period of time during which a ~~patient~~ *client* 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~~ *client* as being within his or her scope of practice, until the ~~psychotherapist-patient~~ *psychotherapist-client* relationship is terminated.

Attachment B

Business and Professions Code Section	APA Ethical Principles of Psychologists and Code of Conduct	AB 2968 (Levine)
<p><u>CONSENSUAL INAPPROPRIATE COMMUNICATION OF A SEXUAL NATURE</u></p>	<p><u>CONSENSUAL INAPPROPRIATE COMMUNICATION OF A SEXUAL NATURE</u></p> <p><i>[Note: Sexual intimacies is not defined in the APA Ethical Principles of Psychologists and Code of Conduct]</i></p>	<p><u>CONSENSUAL INAPPROPRIATE COMMUNICATION OF A SEXUAL NATURE</u></p> <p>BPC Section 728(c) (excerpt) (c) For the purpose of this section, the following definitions apply: <u>(3) “Sexual behavior” means inappropriate contact or communication of a sexual nature. This definition does not include the provision of appropriate therapeutic interventions relating to sexual issues.</u></p> <p><i>[Note: Underline here indicates added text.]</i></p>
<p><u>PHYSICAL SEXUAL CONTACT OR RELATIONS</u></p> <p>BPC Section 729 (a) & (c) (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. (c) For purposes of this section: (1) “Psychotherapist” has the same meaning as defined in Section 728.</p>	<p><u>PHYSICAL SEXUAL CONTACT OR RELATIONS</u></p> <p>Ethical Standard 10.05 Sexual Intimacies With Current Therapy Clients/Patients Psychologists do not engage in sexual intimacies with current therapy clients/patients.</p> <p><i>[Note: Sexual intimacies are not defined in the APA Ethical Principles of Psychologists and Code of Conduct]</i></p> <p>Ethical Standard 10.06 Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.</p> <p>Ethical Standard 10.07 Therapy With Former Sexual Partners Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.</p>	<p><u>PHYSICAL SEXUAL CONTACT OR RELATIONS</u></p> <p>BPC Section 728(c) (excerpt) (c) For the purpose of this section, the following definitions apply: (2) “Sexual contact” means the touching of an intimate part of another person. <u>(3) “Sexual behavior” means inappropriate contact or communication of a sexual nature. This definition does not include the provision of appropriate therapeutic interventions relating to sexual issues.</u> (34) “Intimate part” and “touching” have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code. (45) “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.</p> <p><i>[Note: Underline here indicates added text.]</i></p>

Attachment B

Business and Professions Code Section	APA Ethical Principles of Psychologists and Code of Conduct	AB 2968 (Levine)
<p>(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.</p> <p>(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.</p> <p>(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.</p> <p>BPC Section 728(c) (excerpt)</p> <p>(c) For the purpose of this section, the following definitions apply: ...</p> <p>(2) "Sexual contact" means the touching of an intimate part of another person.</p> <p>(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.</p> <p>(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.</p> <p>Penal Code Section 243.4 (excerpt)</p> <p>(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.</p> <p>(g) As used in this section, the following terms have the following meanings:</p> <p>(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.</p>	<p>Ethical Standard 10.08 Sexual Intimacies With Former Therapy Clients/Patients</p> <p>(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.</p> <p>(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)</p>	

Attachment B

Business and Professions Code Section	APA Ethical Principles of Psychologists and Code of Conduct	AB 2968 (Levine)
<p><u>SEXUAL HARASSMENT</u></p> <p><i>[Note: Sexual Harassment is not defined in the Psychology Licensing Law, rather it is incorporated by reference through BPC 2936, and violation of Ethical Standard 3.02 Sexual Harassment is grounds for discipline through BPC 2960(i and/or k)]</i></p>	<p><u>SEXUAL HARASSMENT</u></p> <p>Ethical Standard 3.02 Sexual Harassment Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist’s activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard 1.08, Unfair Discrimination Against Complainants and Respondents.)</p>	<p><u>SEXUAL HARASSMENT</u></p> <p><i>[Note: Sexual Harassment is not included in the Professional Therapy Never Includes Sex Brochure as it is not required in BPC Section 728]</i></p>
<p><u>GENERAL PROVISIONS</u></p> <p>BPC Section 2936 (excerpt) ... The board shall establish as its standards of ethical conduct relating to the practice of psychology, the “Ethical Principles of Psychologists 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.</p> <p>BPC Section 726 (a) (a) 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 or under any initiative act referred to in this division.</p>	<p><u>GENERAL PROVISIONS</u></p> <p>Ethical Standard 3.08 Exploitative Relationships Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as clients/ patients, students, supervisees, research participants, and employees. (See also Standards 3.05, Multiple Relationships; 6.04, Fees and Financial Arrangements; 6.05, Barter With Clients/Patients; 7.07, Sexual Relationships With</p>	<p><u>GENERAL PROVISIONS</u></p>

Attachment B

Business and Professions Code Section	APA Ethical Principles of Psychologists and Code of Conduct	AB 2968 (Levine)
<p>BPC Section 2960 (excerpt) 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:</p> <p>(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>	<p>Students and Supervisees; 10.05, Sexual Intimacies With Current Therapy Clients/Patients; 10.06, Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients; 10.07, Therapy With Former Sexual Partners; and 10.08, Sexual Intimacies With Former Therapy Clients/Patients.)</p>	

*Note: Highlighting was added for emphasis

April 18, 2018

The Honorable Evan Low
Chair, Assembly Committee on Business and Professions
State Capitol, Room 4126
Sacramento, CA 95814

RE: AB 2968 (Levine) – Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure – SPONSOR

Dear Assembly Member Low:

The Board of Psychology (Board) is pleased to **SPONSOR** AB 2968 (Levine). This bill would update and modernize statutory provisions relating to the Department of Consumer Affairs (DCA) informational brochure for victims of psychotherapist-patient sexual impropriety titled “Professional Therapy Never Includes Sex” by removing obsolete language, including other recognized forms of sexual exploitation, behavior facilitated by modern modes of communication, and more clearly articulating to consumers the most effective course of action when reporting these types of allegations. This bill would also add a new threshold for when a psychotherapist is legally required to provide the brochure to a client.

Business and Professions Code sections 337 and 728 requires the Department of Consumer Affairs (DCA) to prepare and disseminate the Professional Therapy Never Includes Sex brochure for victims of psychotherapist-patient sexual impropriety. These provisions also require psychotherapists to provide this informational brochure to clients if they become aware that the client alleges having had sexual intercourse or sexual contact with a previous psychotherapist. However, current law defines sexual contact narrowly as “sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse”. Additionally, current law defines an intimate part as “the sexual organ, anus, groin, or buttocks of any person, and the breast of a female”. This results in these code sections narrowly defining when a patient is required to be provided the informational brochure by a therapist, and narrowly defines the inappropriate behavior included in the brochure.

These narrow definitions overlook currently-recognized forms of sexual exploitation and ignore behavior facilitated by modern modes of communication and sexually exploitative grooming behaviors that do not reach the level of sexual contact as currently defined in the Business and Professions Code. Examples of sexually exploitative behaviors that the Board has seen in disciplinary cases that do not reach the level of sexual contact include kissing a client, touching or exposing oneself inappropriately, sending flirtatious, sexually suggestive or sexually explicit texts, messages or emails to a client, sending clients photos that include nudity, genitals, or sexually suggestive poses, and buying romantic gifts for a patient.

Acceptance or encouragement of sexual contact or behaviors in the psychotherapist-patient relationship by the licensed professional is one of the most egregious ethical violations by a psychotherapist, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the patient, and can create harmful, long-lasting emotional and psychological effects. The updating of the Professional Therapy Never Includes Sex brochure and the threshold for when psychotherapists are required to provide it to a client are intended to help consumers who have been victims of sexual contact or behaviors and to better educate the public about behaviors that are unethical and not a part of appropriate therapeutic interventions.

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AB 2968: SPONSOR

April 18, 2018

The Board is cognizant that during psychotherapy, and especially during therapeutic interventions related to sexual issues, there will be in-depth discussions and communications of a sexual nature with the client. When these discussions are a part of appropriate and documented therapeutic interventions, these communications would not be considered sexual behavior under AB 2968.

The provisions in AB 2968 are the product of a collaborative effort by the Board of Psychology, Board of Behavioral Sciences, Medical Board of California, and Osteopathic Medical Board of California to update and modernize the current brochure and its related statutory provisions.

For these reasons, the Board asks for your support of AB 2968 when it is heard in the Assembly Committee on Business and Professions on Tuesday, April 24. If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SC Phillips', written over a light blue horizontal line.

STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Members of the Assembly Committee on Business and Professions
Assembly Member Marc Levine
Vincent Chee, Consultant, Assembly Committee on Business and Professions
Bill Lewis, Consultant, Assembly Republican Caucus

Date of Hearing: April 24, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2968 (Levine) – As Amended March 23, 2018

SUBJECT: Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure.

SUMMARY: Updates requirements for psychotherapists and the Department of Consumer Affairs (DCA) relating to outreach on psychotherapist-patient sexual contact, as specified.

EXISTING LAW:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency, specifies that the DCA is under the control of the Director of Consumer Affairs, and establishes within the DCA licensing entities, including boards and bureaus, to ensure that 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. (Business and Professions Code (BPC) §§ 100-144.5)
- 2) Promotes and protects the interests of consumers under the Consumer Affairs Act, requires the Director of Consumer Affairs to administer and implement the Act, and specifies the powers and duties of the director. (BPC §§ 300-337)
- 3) Requires the DCA to prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and the victims' advocates and requires the DCA to develop the brochure in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General. (BPC § 337(a))
- 4) Requires the psychotherapist-patient sexual contact brochure to include, at a minimum, the following:
 - a) A legal and an informal definition of psychotherapist-patient sexual contact. (BPC § 337(b)(1))
 - b) A brief description of common personal reactions and histories of victims and victim's families. (BPC § 337(b)(2))
 - c) A patient's bill of rights. (BPC § 337(b)(3))
 - d) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option. (BPC § 337(b)(4))
 - e) A full description of administrative, civil, and professional associations complaint procedures. (BPC § 337(b)(5))
 - f) A description of services available for support of victims. (BPC § 337(b)(6))

- 5) Requires the brochure to be provided to each individual contacting the Medical Board of California, affiliated health boards, or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual relations. (BPC § 337(c))
- 6) Regulates various health care practitioners under their respective practice acts, which are administered and implemented by the DCA healing arts licensing entities or other entities established or named under the practice acts, and specifies generally applicable requirements and penalties. (BPC §§ 500-4999.129)
- 7) Requires a psychotherapist or employer of a psychotherapist, if the psychotherapist or employer of a psychotherapist becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during a prior treatment, to provide to and discuss with the patient the DCA's psychotherapist-patient sexual contact brochure and makes it unprofessional conduct to fail to do so. (BPC § 728)
- 8) Defines, for purposes of the requirement to provide and discuss the DCA psychotherapist-patient sexual contact brochure, the following:
 - a) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a licensed professional clinical counselor, a psychological assistant, a marriage and family therapist registered intern or trainee, an intern or clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10), or an associate clinical social worker. (BPC § 728(c)(1))
 - b) "Sexual contact" means the touching of an intimate part of another person. (BPC § 728(c)(2))
 - c) "Intimate part" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (BPC § 728(c)(3))
 - d) "Touching" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (BPC § 728(c)(3))
 - e) "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. (BPC § 728(c)(4))

THIS BILL:

- 1) Defines "sexual behavior" as inappropriate contact or communication of a sexual nature.
- 2) Excludes from the definition of "sexual behavior" the provision of appropriate therapeutic interventions relating to sexual issues.

- 3) Requires the DCA to include "sexual behavior" in its psychotherapist-patient sexual contact brochure.
- 4) Adds "sexual behavior" to the type of allegation that a psychotherapist or employer of a psychotherapist may become aware of from a patient that would trigger the requirement to provide to and discuss with the patient the DCA psychotherapist sexual behavior and sexual contact brochure.
- 5) Adds to the definition of "psychotherapist" previously excluded or subsequently regulated mental health practitioners, including:
 - a) A registered psychologist.
 - b) A trainee under the supervision of a licensed psychologist.
 - c) A licensed educational psychologist.
 - d) An associate clinical social worker.
 - e) An associate professional clinical counselor.
- 6) Replaces the term "patient" with "client" in the requirements relating to the DCA psychotherapist-client sexual contact brochure.
- 7) Requires the DCA to provide the psychotherapist-client sexual behavior and sexual contact brochure to individuals contacting the Osteopathic Medical Board and the Board of Psychology, in addition to the Medical Board of California and the Board of Behavioral Sciences, instead of "affiliated health boards."
- 8) Deletes the requirement that the DCA develop the psychotherapist sexual behavior and sexual contact brochure with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.
- 9) Makes other technical, updating, and clarifying changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author, who is working closely with the **California Board of Psychology**. According to the author, "[this bill] updates and modernizes statutory provisions by removing obsolete language and adding currently recognized forms of sexual exploitation and modern modes of communication. It more clearly articulates to consumers the most effective course of action when reporting these types of allegations."

Background. Pursuant to existing law, the DCA produces and distributes a brochure entitled *Professional Therapy Never Includes Sex*. At the Board of Psychology's February 16, 2018, board meeting, the Board voted to approve updates and other changes to modernize the brochure that were produced and updated by the Board of Psychology, the Board of Behavioral Sciences, the Medical Board of California, and the Osteopathic Medical Board of California.

According to the Board of Psychology, the statutory language narrowly defines "when a patient is required to be provided the informational brochure by a therapist, and narrowly defines the inappropriate behavior included in the brochure. These narrow definitions overlook currently-recognized forms of sexual exploitation and ignore behavior facilitated by modern modes of communication and sexually exploitative grooming behaviors that do not reach the level of sexual contact as currently defined in the Business and Professions Code."

Psychotherapy. According to the federal National Institute of Mental Health, "Psychotherapy... is a term for a variety of treatment techniques that aim to help a person identify and change troubling emotions, thoughts, and behavior. Most psychotherapy takes place with a licensed and trained mental health care professional and a patient meeting one on one or with other patients in a group setting."

The Board of Psychology is one of the licensing entities under the DCA that licenses and regulates mental health providers that provide psychotherapy. Specifically, the Board of Psychology implements, administers, and enforces the Psychology Licensing Law, which establishes the state licensing scheme for licensed psychologists. According to the DCA's *2017 Annual Report*, the Board of Psychology reported overseeing a total of 22,449 licensees, including 20,726 licensed psychologists, 1,494 psychological assistants, and 229 registered psychologists.

Prior Related Legislation. AB 1317 (Frazier), Chapter 352, Statutes of 2013 implemented the Governor's Reorganization Plan No. 2, which abolished the Office of Criminal Justice Planning and transferred the duties and obligations to the Office of Emergency Services, with the exception of the duties relating to the adult and juvenile criminal justice system, which were assumed by the Board of State and Community Corrections.

REGISTERED SUPPORT:

American Association for Marriage and Family Therapists, California Division
Board of Psychology
Osteopathic Medical Board

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301