


MEMORANDUM

DATE	April 25, 2018
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #21(d): Review and Consideration of Statutory Revisions to Section 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact

Background:

During the Board of Psychology's (Board's) February 2018 meeting, the Board considered linking the legislative changes it was proposing to the trigger for psychotherapists to provide clients with the Professional Therapy Never Includes Sex Brochure (Brochure) with the Board's current provisions relating to discipline for acts of sexual contact with a client or former client. Specifically, staff proposed using the definition for sexual behavior that was developed for the trigger of the provision of the Brochure to also be used in Business and Professions Code (BPC) section 2960.1 that requires a proposed decision to include revocation when the finding of facts prove that there were acts of sexual behavior between a psychologist and their client or former client. This change to 2960.1 would have required revocation to be in the proposed decision and not allow an administrative law judge to propose an alternate decision, but would not have removed the Board's prosecutorial discretion to apply a lower level of discipline if the circumstances of the case warranted such a reduction.

The impetus to add inappropriate sexual behavior to the statutory provisions requiring revocation in the proposed decision for cases involving inappropriate sexual behaviors that did not rise to the definition of sexual contact was due to the Board's experiences prosecuting cases with clearly inappropriate sexual behavior, but being unable to achieve disciplinary terms that matched the egregiousness of the acts in the case. In other cases, clients did not complain to the Board or know that the behavior was inappropriate until sexual contact was initiated, but there were clear sexual grooming behaviors exhibited by the psychologist before sexual contact was initiated. Examples of inappropriate sexual behaviors that the Board has seen in a variety of cases are provided in Attachment B.

During the discussion of this proposed change at the February Board Meeting, it was determined that the definition of sexual behavior used for the trigger for psychotherapists to provide the brochure to a client may be too broad for the purposes of discipline when it relates to automatic revocation. The broadness of the definition for sexual behavior for the provision and content of the Brochure helps ensure that new inappropriate behaviors that arise with modern modes of communication can be incorporated over time and helps educate clients and the public that these behaviors are inappropriate and are not part of legitimate therapeutic interventions. However, this broad definition may not give adequate weight and consideration to the fact that some sexual behaviors, or combination of sexual behaviors, are more calculated and egregious than others. To this affect, the Board proposed bifurcating the proposal allowing for the broader definition for the

purposes of the brochure to proceed, and pursuing a separate legislative track for the changes related to discipline for those inappropriate sexual behaviors.

The Committee began the discussion and policy activities at its April 19, 2018 meeting by reviewing and revising the draft amendments to BPC section 2960.1 (Attachment A). During this discussion, the Committee members expressed support for a broader definition of sexual behavior, as the violation could be a series or pattern of lesser behaviors or one extremely egregious behavior, and specific behaviors would change over time with advances in technology and communication mediums. There was also a discussion about providing vignettes to a Fall stakeholder meeting that would clearly articulate the types of sexual behaviors that the Board is looking at for the purposes of discipline to help in the crafting of the definition of sexual behavior. Lastly, the Committee discussed that the definition for sexual behavior have a consideration for cultural competency, as different cultural norms may impact how an individual views certain behaviors as inappropriate or sexual in nature. This discussion highlighted the importance of having a diverse representation at a Fall stakeholder meeting including representatives from various cultural and consumer groups.

Action Requested:

The Policy and Advocacy Committee recommends that the Board review and revise the statutory amendments provided in Attachment A, and delegate staff to use these revisions as the starting point for discussion in a stakeholder meeting to be organized and held in the Fall of 2018.

Attachment A: Draft Amendments to Business and Professions Code Section 2960.1

Attachment B: Examples of Inappropriate Sexual Behaviors

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

CHAPTER 6.6. Psychologists [2900 - 2999]
(*Chapter 6.6 repealed and added by Stats. 1967, Ch. 1677.*)

ARTICLE 4. Denial, Suspension and Revocation [2960 - 2969]
(*Article 4 added by Stats. 1967, Ch. 1677.*)

2960.1.

a) 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, or sexual behavior, as defined in subsection b, when that act is with a **patientclient**, or with a former **patientclient** within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

b) “Sexual behavior” means inappropriate contact or communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse. “Sexual behavior” does not include the provision of appropriate therapeutic interventions relating to sexual issues.

(*Amended by Stats. 1998, Ch. 879, Sec. 3. Effective January 1, 1999.*)

Examples of Inappropriate Sexual Behaviors

The behaviors listed here are provided as examples of inappropriate sexual behaviors and are not an all-inclusive list. These behaviors may occur as a pattern of multiple behaviors or as a singular behavior.

Inappropriate Contact That Does Not Meet Statutory Definition of Sexual Contact:

- Kissing patient/client/supervisee/associate/intern
- Patient/client/supervisee/ associate/intern kissing therapist where therapist fails to stop the behavior and inform them why it cannot happen again
- Spending the night with a patient/client/parent of minor patient/supervisee/ associate/intern without sexual contact unless necessary to a therapeutic or supervisory activity

Consensual Inappropriate Communications:

- Asking for personal or intimate photos of patient/client/supervisee/associate/intern (with or without provocative clothing, including nudity, genitals, or sexually suggestive poses)
- Providing photos of self to patient/client/parent of minor patient/supervisee/ associate/intern (with or without provocative clothing, including nudity, genitals, or sexually suggestive poses)
- Engaging in sexual discussions that are not part of a therapeutic intervention and that are not documented as part of patient/client's record
- Role playing with patient using overtly sexual or sexually fetishistic behaviors when it does not relate to relevant therapeutic interventions

Grooming Behaviors

- Allowing or introducing alcohol, marijuana, or controlled substances during therapy session, then initiating physical contact
- Initiating handholding, kissing or other romantic physical contact
- Providing intimate personal details about self to patient/client in notes, cards, emails, texts, or messages, such as troubles with marriage/relationship, sex life, or sexual history
- Buying personal romantic gifts for patient/client/supervisee/associate/intern (jewelry, flowers, lingerie, etc.)
- Accompanying patient/client/supervisee/associate/intern to social or familial events outside of therapeutic or supervisory role (e.g. attending weddings, funerals, or other social functions "as their date")

- Sending flirtatious, sexually suggestive or sexually explicit texts, messages or emails to patient/client/parent of minor patient/supervisee/associate/intern
- Sharing professional's sexual fantasies about the patient/client/supervisee/associate/intern with the patient/client/supervisee/intern
- When unrelated to a clinical interview or therapeutic interventions appropriate to the patient/client, asking about and encouraging discussion of patient/client sexual habits, masturbation, or frequency of sexual encounters
- Excessively complimenting the patient/client/supervisee/associate/intern on their physical appearance, sexual attributes, or beauty
- Renting an apartment or paying rent for patient/client/supervisee/associate/intern in anticipation of sexual contact