

## MEMORANDUM

<b>DATE</b>	November 1, 2018
<b>TO</b>	Board of Psychology
<b>FROM</b>	 Cherise Burns Central Services Manager
<b>SUBJECT</b>	Agenda Item #24(a): AB 2968 (Levine) – Amend Sections 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, the 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. 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.

On May 9, 2018, AB 2968 was heard in the Assembly Committee on Appropriations and was passed by the committee with a vote of 16-0-1. The bill then went to the Assembly Floor where members passed the bill with a vote of 73-0-5 to send the bill to the Senate.

On June 25, 2018, AB 2968 was heard by the Senate Committee on Business, Professions and Economic Development. Dr. Erickson represented the Board during the hearing and provided testimony in support of the bill. The bill passed unanimously and was sent to the Senate Committee on Appropriations. Since the bill does not have costs associated with the bill, the Senate Committee on Appropriations passed the bill straight to the Senate Floor pursuant to Senate Rule 28.8 on August 6, 2018.

In late July, DCA's Division of Legislative Affairs contacted Board staff with technical assistance to provide additional clarity to the provisions in Business and Professions Code Sections 337 and 728. These amendments were submitted by DCA to Assembly Member Levine who accepted the amendments and submitted them to Legislative Counsel for drafting.

On August 14, 2018, the amendments were made on the Senate Floor, and AB 2968 passed out of the Senate on 8/21/2018 with a 39-0-1 vote. The Assembly Floor voted to concur in the Senate amendments to the bill on August 28, 2018 with a vote of 80-0-0. The Governor then signed AB 2968 on September 26, 2018.

Now that AB 2968 has chaptered, edits to the Professional Therapy Never Includes Sex Brochure can be finalized and approved by all four boards and DCA can proceed with publication.

**Location:** 9/26/2018 Chaptered

**Status:** 9/26/2018 Chaptered by Secretary of State - Chapter 778, Statutes of 2018.

**Votes:**

- 4/24/2018 Assembly Committee on Business and Professions (16-0-0)
- 5/9/2015 Assembly Committee on Appropriations (16-0-1)
- 5/17/2018 Assembly Floor (73-0-5)
- 6/25/2018 Senate Committee on Business, Professions and Economic Development (9-0-0)
- 8/16/2018 Assembly Committee on Appropriations ordered to second reading pursuant to Senate Rule 28.8.
- 8/21/2018 Senate Floor (39-0-1)
- 8/28/2018 Assembly Floor - Concurrence Vote (80-0-0)

**Action Requested:**

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

Attachment A: AB 2968 (Levine) Chaptered Text

Attachment B: Letter to the Governor

Attachment C: Letter to the Assembly Floor Concurrence

Attachment D: Letter to the Senate Floor



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 Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California~~ 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~~ Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.

(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) *Information that other civil and criminal remedies may also be available to them in regards to the incident.*

~~(6)~~ (7) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the ~~Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California and affiliated health boards~~ California, or the ~~Osteopathic Medical Board of Behavioral Sciences~~ California regarding a complaint involving ~~psychotherapist patient sexual relations~~ psychotherapist-client sexual behavior and sexual contact.

(d) *The brochure shall be made available on the Internet Web sites of the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.*

**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 by the department~~ developed 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 the brochure prepared by the department~~ the brochure with the client.

(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 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.

**SEC. 2.5.** 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 by the department~~ developed 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 the brochure prepared by the department~~, the brochure with the client.

(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 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 licensed pursuant to Chapter 6.6 (commencing with Section 2900).

(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, as specified in Chapter 16 (commencing with Section 4999.10).
  - (N) A clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10).
- (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~~ meanings 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.
- SEC. 3. Section 2.5 of this bill incorporates amendments to Section 728 of the Business and Professions Code proposed by both this bill and Assembly Bill 93. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 728 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 93, in which case Section 2 of this bill shall not become operative.**

August 31, 2018

The Honorable Edmund G. Brown, Jr.  
Governor  
State Capitol, First Floor  
Sacramento, CA 95814

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

Dear Governor Brown:

The Board of Psychology (Board) is pleased to **SUPPORT** 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.

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**AB 2968: SUPPORT**

August 31, 2018

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.

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. Making the revisions proposed by AB 2968 to the brochure would not create any new costs for DCA for the revising and republishing of the brochure, as these costs would have been incurred and paid by the boards through pro-rata and printing fees regardless of this bill due to other non-statutory changes being made to the brochure by the four boards.

For these reasons, the Board asks for you sign of AB 2968. If you have any questions, please contact the Board's Executive Officer Antonette Sorrick at (916) 574-7113 or [antonette.sorrick@dca.ca.gov](mailto:antonette.sorrick@dca.ca.gov).

Sincerely,



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

Cc: Assembly Member Jones-Sawyer  
Camille Wagner, Secretary, Legislative Affairs, Office of the Governor

## FLOOR ALERT

### **AB 2968 (Levine) – Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure – SUPPORT**

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For these reasons, the Board asks for your support of SB 2968 when it is heard in the Assembly Floor. Thank you.

Contact: Antonette Sorrick, Board of Psychology, (916) 574-7113, [antonette.sorrick@dca.ca.gov](mailto:antonette.sorrick@dca.ca.gov)

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