


MEMORANDUM

DATE	December 4, 2018
TO	Policy and Advocacy Committee
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #4: Stakeholder Input on Statutory Revisions to Section 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact

Background:

The Board of Psychology (Board) proposes adding sexual behavior to the offenses in Business and Professions Code (BPC) section 2960.1 that require a proposed decision to contain an order of revocation when the finding of facts prove that there were acts of sexual behavior between a psychologist and their client or former client (see Attachment A for the proposed language). This change to section 2960.1 would require revocation to be in the proposed decision and not allow an administrative law judge to propose an alternate decision, but would not remove the Board's prosecutorial discretion to apply a lower level of discipline if the circumstances of the case warrant 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.

Regarding the proposed changes to BPC Section 2960.1, the Policy and Advocacy Committee (Committee) began discussions and policy activities at its April 19, 2018 meeting, where it reviewed and revised the proposed language. 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. The Committee also discussed that the definition for sexual behavior have a consideration for cultural competency, as different cultural norms may impact how an individual views certain behavior as inappropriate or sexual in nature. This discussion highlighted the importance of having a diverse representation at a stakeholder meeting including representatives from various cultural and consumer groups.

This agenda item is intended to provide the various stakeholders invited to participate in the teleconference an opportunity to provide the Committee with input regarding the proposed amendments to BPC section 2960.1. Board staff sent email invitations to various interested stakeholder groups, including consumer mental health organizations, various psychological association groups, and other Board stakeholders.

Action Requested: This item is to gather stakeholder input. No action is required.

Attachment A: Proposed 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