


MEMORANDUM

DATE	January 22, 2019
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #23(b)(1): 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:

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. The proposed language would also clarify that the Board would retain the final adjudicatory 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. Some examples of inappropriate sexual behaviors that the Board has seen in a variety of cases include:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending flirtatious, sexually suggestive or sexually explicit texts (sexting), messages or emails to a client,
- sending clients photos that include nudity, genitals, or sexually suggestive poses, and
- buying romantic/sexual gifts for a client.

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.

In December 2018, the Committee held a teleconference stakeholder meeting to obtain stakeholder input on the proposed changes to BPC Section 2960.1. Board staff invited a diverse group of stakeholders to attend the teleconference as well as posted the meeting to social media sites and through the Board's email listserv. During the December teleconference meeting, the Committee listened to stakeholder comments and Board staff and Ms. Marks provided clarification on how the proposed language would operate within the disciplinary process and how that process has built-in protections to ensure that allegations of sexual behavior would be reviewed by subject matter experts and sworn peace-officers, thus ensuring that those allegations prosecuted as sexual behavior were serious violations that were not part of appropriate therapeutic interventions relating to sexual issues. The Committee also voted to amend the proposed changes to BPC 2960.1 to provide additional clarity to the public and licensees regarding the Board's ability to stay the revocation if the Board determined that the allegations did not warrant revocation. This amendment is shown in attachment A (highlighted in yellow).

Due to the January 25th deadline to submit proposed bill language to the Office of Legislative Counsel (the Legislature's legal office), staff got the proposed language in Attachment A submitted as unbacked bill language to Legislative Counsel. This simply allows the Office of Legislative Counsel to review and draft the language. It does not ensure the bill will be introduced or that a member of the legislature will author the bill if the Board approves the language. This simply gives the Board an option to pursue the proposed language if it so chooses.

Action Requested:

The Policy and Advocacy Committee recommends that the Board approve the revised statutory language relating to Business and Professions Code Section 2960.1 and direct staff to seek an author for the proposed language.

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

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, but may be stayed by the board.

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.*)