

**NOTICE OF BOARD MEETING**

**Hilton Los Angeles Airport  
5711 West Century Boulevard  
Carmel Meeting Room  
Los Angeles, CA 90045  
(310) 410-4000**

**April 24-26, 2019**

**Board Members**

Stephen Phillips, JD, PsyD, President  
Seyron Foo, Vice-President  
Lucille Acquaye-Baddoo  
Alita Bernal  
Sheryll Casuga, PsyD  
Mary Harb Sheets, PhD  
Jacqueline Horn, PhD  
Nicole J. Jones  
Lea Tate, PsyD

**Legal Counsel**

Norine Marks

**Board Staff**

Antonette Sorrick, Executive Officer  
Sandra Monterrubio, Enforcement  
Program Manager  
Cherise Burns, Central Services Manager  
Stephanie Cheung, Licensing Unit  
Manager  
Curtis Gardner, Probation Monitor  
Liesel McCockran, Continuing Education  
and Renewals Coordinator

The Board plans to webcast this meeting on its website. Webcast availability cannot, however, be guaranteed due to limitations on resources or technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast. A link to the webcast will be available on the Board's Website at 9:00 a.m. April 24, 2019, or you may access it at: <https://thedcapage.wordpress.com/webcasts/>. Links to agenda items with attachments are available at [www.psychology.ca.gov](http://www.psychology.ca.gov), prior to the meeting date, Wednesday, April 24, 2019.

Wednesday, April 24, 2019

**AGENDA****10:00 a.m. – OPEN SESSION**

Unless noticed for a specific time, items may be heard at any time during the period of the Board meeting.

The Board welcomes and encourages public participation in its meetings. The public may take appropriate opportunities to comment on any issue before the Board at the time the item is heard. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment.

1. Call to Order/Roll Call/Establishment of a Quorum
2. President's Welcome
3. Acknowledgement of Ms. Lucille Acquaye-Baddoo and Ms. Nicole J. Jones
4. Public Comment for Items Not on the Agenda. Note: The Board May Not Discuss or Take Action on Any Matter Raised During this Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)]
5. President's Report (S. Phillips)
  - a) 2019 Meeting Calendar and Locations
  - b) Committee Updates
6. Executive Officer's Report (A. Sorrick)
  - a) Organizational Update
7. DCA Executive Update

#### **11:00 a.m. - Petition Hearing**

8. Petition for Reinstatement of License – Leslie Price, PsyD

#### **BREAK FOR LUNCH (TIME APPROXIMATE)**

#### **1:30 p.m. - Petition Hearing**

9. Petition for Early Termination of Probation – Adriana Camargo-Fernandez, PhD

#### **CLOSED SESSION**

10. The Board will Meet in Closed Session Pursuant to Government Code Section 11126(c)(3) to Discuss Disciplinary Matters Including the Above Petitions, Proposed Decisions, Stipulations, Petitions for Reconsideration, and Remands.

#### **RETURN TO OPEN SESSION**

#### **RECESS FOR THE DAY**

Thursday, April 25, 2019

**9:30 a.m. – OPEN SESSION**

11. Call to Order/Roll Call/Establishment of a Quorum
12. Public Comment for Items Not on the Agenda. Note: The Board May Not Discuss or Take Action on Any Matter Raised During this Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)]
13. Discussion and Possible Approval of the Board Meeting Minutes: February 7-8, 2019
14. Budget Report (C. Burns)
15. Outreach and Education Updates (A. Bernal)
  - a) Website
  - b) Social Media
  - c) Newsletter
  - d) Outreach Activities
  - e) DCA Brochure “Professional Therapy Never Includes Sex” – Update

**11:00 a.m. - Petition Hearing**

16. Petition for Early Termination of Probation – Amy Reyes, PsyD

**BREAK FOR LUNCH (TIME APPROXIMATE)**

**1:30 p.m. - Petition Hearing**

17. Petition for Early Termination of Terms and Conditions – Chelsea Spitze, PhD

**CLOSED SESSION**

18. The Board will Meet in Closed Session Pursuant to Government Code Section 11126(c)(3) to Discuss Disciplinary Matters Including the Above Petitions, Proposed Decisions, Stipulations, Petitions for Reconsideration, and Remands.

**RETURN TO OPEN SESSION**

**RECESS FOR THE DAY**

**9:30 a.m. – OPEN SESSION**

19. Call to Order/Roll Call/Establishment of a Quorum
20. Licensing Report (S. Cheung)
21. Continuing Education and Renewals Report (L. McCockran)
22. Policy and Advocacy Committee Report -- Consideration and Possible Approval of Committee Recommendations (Foo – Chairperson, Casuga, Jones, Phillips)
  - a) Review and Consideration of Revisions to the Goal of the Policy and Advocacy Committee
  - b) Board Sponsored Legislation for the 2019 Legislative Session: Review and Possible Action
    - 1) SB 275 (Pan) – Amendments to Section 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact
    - 2) Update on Amendments to Sections 2912, 2940-2944 of the Business and Professions Code Regarding Examinations, and New Section to the Business and Professions Code Regarding Voluntary Surrender
  - c) Review and Consideration of Proposed Legislation: Potential Action to Take Positions on Bills
    - 1) Newly Introduced Bills –Potential Action to Recommend Active Positions to the Board
      - A. AB 544 (Brough) Professions and vocations: inactive license fees and accrued and unpaid renewal fees
      - B. AB 1145 (Garcia) Child abuse: reportable conduct.
      - C. SB 53 (Wilk) Open meetings.
      - D. SB 66 (Atkins) Medi-Cal: federally qualified health center and rural health clinic services.
      - E. SB 425 (Hill) Health care practitioners: licensee’s file: probationary physician’s and surgeon’s certificate: unprofessional conduct.
    - 2) Newly Introduced Bills – Potential Action to Recommend the Board Watch Bills
      - A. AB 8 (Chu) Pupil health: mental health professionals.
      - B. SB 163 (Portantino) Healthcare coverage: pervasive developmental disorder or autism.
      - C. SB 201 (Wiener) Medical procedures: treatment or intervention: sex characteristics of a minor.
      - D. AB 71 (Melendez) Employment standards: independent contractors and employees.
      - E. AB 166 (Gabriel) Medi-Cal: violence prevention counseling services.

- F. AB 184 (Mathis) Board of Behavioral Sciences: registrants and licensees.
- G. AB 189 (Kamlager-Dove) Child abuse or neglect: mandated reporters: autism service personnel.
- H. AB 193 (Patterson) Professions and vocations.
- I. AB 241 (Kamlager-Dove) Implicit bias: continuing education: requirements.
- J. AB 312 (Cooley) State government: administrative regulations: review.
- K. AB 396 (Eggman) School employees: School Social Worker Pilot Program.
- L. AB 469 (Petrie-Norris) State records management: records management coordinator.
- M. AB 476 (Rubio, Blanca) Department of Consumer Affairs: task force: foreign-trained professionals.
- N. AB 496 (Low) Business and professions.
- O. AB 512 (Ting) Medi-Cal: specialty mental health services.
- P. AB 536 (Frazier) Developmental services.
- Q. AB 565 (Maienschein) Mental health workforce planning: loan forgiveness, loan repayment, and scholarship programs.
- R. AB 577 (Eggman) Medi-Cal: maternal mental health.
- S. AB 613 (Low) Professions and vocations: regulatory fees.
- T. AB 630 (Arambula) Board of Behavioral Sciences: marriage and family therapists: clinical social workers: educational psychologists: professional clinical counselors: required notice.
- U. AB 744 (Aguiar-Curry) Healthcare coverage: telehealth.
- V. AB 768 (Brough) Professions and vocations.
- W. AB 770 (Garcia, Eduardo) Medi-Cal: federally qualified health clinics: rural health clinics.
- X. AB 895 (Muratsuchi) School-based early mental health intervention and prevention services.
- Y. AB 1055 (Levine) Mental health: involuntary commitment.
- Z. AB 1058 (Salas) Medi-Cal: specialty mental health services and substance use disorder treatment.
- AA. AB 1271 (Diep) Licensing examinations: report.
- BB. AB 1601 (Ramos) Office of Emergency Services: behavioral health response.
- CC. SB 331 (Hurtado) Suicide-prevention: strategic plans.
- DD. SB 601 (Morrell) State agencies: licenses: fee waiver.
- EE. SB 639 (Mitchell) Medical services: credit or loan.

3) Newly Introduced Bills – Potential Action to Recommend the Board Watch Spot Bills

- A. AB 5 (Gonzalez) Worker status: independent contractors.
- B. AB 289 (Fong) Public records appeals: ombudsman.
- C. AB 862 (Kiley) Professional licenses.
- D. AB 994 (Mathis) Health care practitioner identification.
- E. AB 1132 (Gabriel) The Information Practices Act of 1977.
- F. AB 1184 (Gloria) Public records.

- G. AB 1201 (Boerner Horvath) Unfair Practices Act.
- H. AB 1264 (Petrie-Norris) Department of Consumer Affairs.
- I. AB 1474 (Wicks) Mental Health Master Plan.
- J. AB 1752 (Kalra) Consumers.
- K. SB 144 (Mitchell) Fees: criminal administrative fees.
- L. SB 180 (Chang) Health care professionals.
- M. SB 181 (Chang) Healing arts boards.
- N. SB 342 (Hertzberg) Consumer complaints.
- O. SB 546 (Hueso) Unlicensed activity.
- P. SB 700 (Roth) Business and professions: noncompliance with support orders and tax delinquencies.
- Q. SB 749 (Durazo) California Public Records Act.

d) Update on California Psychological Association Legislative Proposal Regarding New Registration Category for Psychological Testing Technicians

- 23. Legislative Items for Future Meeting. The Board May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Board to Discuss Such Items Pursuant to Government Code Section 11125.4
- 24. Regulatory Update, Review, and Consideration of Additional Changes (Foo)
  - a) 16 CCR Sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants
  - b) 16 CCR Section 1396.8 – Standards of Practice for Telehealth
  - c) 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees
  - d) 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development
  - e) 16 CCR Section 1395.2 – Disciplinary Guidelines
  - f) 16 CCR Sections 1394 – Substantial Relationship Criteria; Section 1395 – Rehabilitation Criteria for Denials and Reinstatements; Section 1395.1 – Rehabilitation Criteria for Denials Suspensions or Revocations
- 25. Enforcement Report (S. Monterrubio)
  - a) Statistical Update
  - b) Discussion and Potential Action on Designating Cases as Precedential Decisions
- 26. Enforcement Committee Report and Consideration of Committee Recommendations (Acquaye-Baddoo – Chairperson, Phillips)
  - a) Child Custody Summary Report and Committee Recommendation
  - b) Guidelines for Petition Hearings
  - c) Consideration of Designation of the *Decision in the Matter of the Citation and Fine against Shari Lorraine Schreiber* (Case No. 2017090162) as a Precedential Decision

27. Recommendations for Agenda Items for Future Board Meetings. Note: The Board May Not Discuss or Take Action on Any Matter Raised During This Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code Sections 11125 and 11125.7(a)]

## **ADJOURNMENT**

Except where noticed for a time certain, all times are approximate and subject to change. The meeting may be canceled without notice. For verification, please check the Board's Web site at [www.psychology.ca.gov](http://www.psychology.ca.gov), or call (916) 574-7720. Action may be taken on any item on the agenda. Items may be taken out of order, tabled or held over to a subsequent meeting, and items scheduled to be heard on Wednesday may be held over to Thursday or Friday; Thursday may be held over to Friday; items scheduled to be heard on Thursday may be moved up to Wednesday; items scheduled to be heard on Friday may be moved up to Wednesday or Thursday, for convenience, to accommodate speakers, or to maintain a quorum.

In the event a quorum of the Board is unable to attend the meeting, or the Board is unable to maintain a quorum once the meeting is called to order, the president may, at his discretion, continue to discuss items from the agenda and to vote to make recommendations to the full board at a future meeting [Government Code section 11125(c)].

Meetings of the Board of Psychology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The public may take appropriate opportunities to comment on any issue before the Board at the time the item is heard, but the President may, at his discretion, apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Antonette Sorrick, Executive Officer, at (916) 574-7720 or email [bopmail@dca.ca.gov](mailto:bopmail@dca.ca.gov) or send a written request addressed to 1625 N. Market Boulevard, Suite N-215, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

*The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.*

## 2019 Meeting Calendar and Locations

### Board Meeting

| Event         | Date               | Location        | Agenda/Materials       | Minutes | Webcast  |
|---------------|--------------------|-----------------|------------------------|---------|--|
| Board Meeting | February 7-8, 2019 | Sacramento, CA  | <a href="#">Agenda</a> |         | <a href="#">Feb 7, Webcast</a><br><a href="#">Feb 8, Webcast</a> |
| Board Meeting | March 29, 2019     | Teleconference  | <a href="#">Agenda</a> |         |  |
| Board Meeting | April 24-26, 2019  | Los Angeles, CA | <a href="#">Agenda</a> |         | <a href="#">Webcast</a>  |
| Board Meeting | August 15-16, 2019 | Berkeley, CA    |                        |         | <a href="#">Webcast</a>  |
| Board Meeting | October 3-4, 2019  | San Diego, CA   |                        |         | <a href="#">Webcast</a>  |

### Licensing Committee

| Event                       | Date                  | Location       | Agenda/Materials       | Minutes | Webcast                 |
|-----------------------------|-----------------------|----------------|------------------------|---------|-------------------------|
| Licensing Committee Meeting | January 11, 2019      | Sacramento, CA | <a href="#">Agenda</a> |         |                         |
| Licensing Committee Meeting | June 13, 2019         | Sacramento, CA |                        |         | <a href="#">Webcast</a> |
| Licensing Committee Meeting | September 12-13, 2019 | Sacramento, CA |                        |         | <a href="#">Webcast</a> |

### Outreach and Education Committee

| Event                                    | Date              | Location       | Agenda/Materials | Minutes | Webcast |
|--|-------------------|----------------|------------------|---------|---------|
| Outreach and Education Committee Meeting | May 17, 2019      | Sacramento, CA |                  |         |         |
| Outreach and Education Committee Meeting | November 15, 2019 | Sacramento, CA |                  |         |         |

### Policy and Advocacy Committee

| Event                                 | Date           | Location       | Agenda/Materials                                    | Minutes | Webcast |
|---------------------------------------|----------------|----------------|---|---------|---------|
| Policy and Advocacy Committee Meeting | March 18, 2019 | Sacramento, CA | <a href="#">Agenda</a><br><a href="#">Materials</a> |         |         |
| Policy and Advocacy Committee Meeting | July 8, 2019   | Sacramento, CA |   |         |         |

### Outside Board Events

| Event                  | Date                | Location        | Agenda/Materials | Minutes | Webcast |
|------------------------|---------------------|-----------------|------------------|---------|---------|
| CPA Convention         | April 4-7, 2019     | Long Beach, CA  |                  |         |         |
| ASPPB Mid-Year Meeting | April 8-14, 2019    | Santa Fe, NM    |                  |         |         |
| APA Convention         | August 8-11, 2019   | Chicago, IL     |                  |         |         |
| ASPPB Annual Meeting   | October 16-20, 2019 | Minneapolis, MN |                  |         |         |

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | March 25, 2019                               |
| <b>TO</b>      | Psychology Board Members                     |
| <b>FROM</b>    | Antonette Sorrick, Executive Officer         |
| <b>SUBJECT</b> | Agenda Item 6(a): Executive Officer's Report |

**Background:**

The report below is provided to the Board at each Board Meeting.

**Action Requested:**

This item is for informational purposes only.

**Board of Psychology Update**

**Staffing Update**

Authorized Positions: 23.30

BL 12-03 (999 Blanket) Positions: 1.20

Temp Help: 4.00

| <b>New Hires</b>           |                |
|----------------------------|----------------|
| <b>Classification</b>      | <b>Program</b> |
| Enforcement Analyst (AGPA) | Enforcement    |
| Enforcement Analyst (AGPA) | Enforcement    |
|                            |                |
|                            |                |

| <b>Promotions</b> |  |
|-------------------|--|
| None              |  |

| <b>Other</b> |  |
|--------------|--|
| None         |  |
|              |  |

| <b>Vacancies</b>                         |  |
|--|--|
| Enforcement Analyst (SSA) – Limited Term |  |

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Liezel McCockran<br>Continuing Education and Renewals Coordinator                                   |
| <b>SUBJECT</b> | Agenda Item #13 – Discussion and Possible Approval of the Board Meeting Minutes: February 7-8, 2019 |

**Background:**

Attached are the draft minutes of the February 7-8, 2019 Board Meeting.

**Action Requested:**

Review and approve the minutes of the February 7-8, 2019 Board Meeting.

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**BOARD MEETING**

State Capitol, Room 112  
Sacramento, CA 95814  
(916) 324-0333

**Thursday, February 7, 2019**

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 9:00 a.m. A quorum was present and due notice had been sent to all interested parties.

**Members Present**

Stephen Phillips, JD, PsyD, President  
Seyron Foo, Vice-President  
Lucille Acquaye-Baddoo  
Alita Bernal  
Sheryll Casuga, PsyD  
Mary Harb Sheets, PhD  
Jacqueline Horn, PhD  
Nicole J. Jones  
Lea Tate, PsyD

**Others Present**

Antonette Sorrick, Executive Officer  
Jeffrey Thomas, Assistant Executive Officer  
Norine Marks, DCA Legal Counsel  
Cherise Burns, Central Services Manager  
Stephanie Cheung, Licensing Unit Manager  
Sandra Monterrubio, Enforcement Program Manager  
Curtis Gardner, Probation Monitor  
Jason Glasspiegel, Central Services Coordinator

**Agenda Item #2: Presidents Welcome**

Dr. Phillips welcomed the attendees to the Board's quarterly meeting and read the Board's mission statement. Dr. Phillips stated that because of the Board's movement towards a Paper Lite system, Board members would be viewing the meeting packets via laptops rather than paper copies. Dr. Phillips thanked Senator Glazer and Sarah Huchel for making this room available to the Board. Dr. Phillips administered the Oath of Office to new Board Members Mary Harb Sheets, PhD and Lea Tate, PsyD. On behalf of the Board, Dr. Phillips read and presented a Certificate of Appreciation for former Board Member Michael Erickson, PhD, who completed his second full term on the Board in 2018.

46 **Agenda Item #3: Public Comment for Items not on the Agenda. The Board May**  
47 **Not Discuss or Take Action on Any Matter Raised During this Public Comment**  
48 **Section, Except to Decide Whether to Place the Matter on the Agenda of a Future**  
49 **Meeting [Government Code sections 11125 and 11125.7(a)]**  
50

51 Dr. Jo Linder-Crow, Chief Executive Officer of the California Psychological Association  
52 (CPA), requested an agenda item on a future Board agenda to consider the creation of  
53 a new registration category for psychological testing technicians in the State of  
54 California. She stated that psychological testing technicians administer and score  
55 psychological and/or neuropsychological tests under the direct supervision of licensed  
56 psychologists and they are recognized in many states. Dr. Linder-Crow stated that  
57 currently there is no law in California regulating or overseeing these professionals.  
58

59 **Agenda Item #4: President's Report**  
60

61 Dr. Phillips addressed the 2019 meeting calendar and provided the following committee  
62 updates:  
63

64 Licensing Committee – this committee will be chaired Dr. Horn with Dr. Harb Sheets  
65 and Mr. Foo as committee members. Dr. Phillips stated he will be stepping down as he  
66 has served on this committee for many years.  
67

68 Outreach and Education Committee – this committee will be chaired by Ms. Bernal with  
69 Ms. Acquaye-Baddoo and Dr. Tate as committee members.  
70

71 Policy and Advocacy Committee – this committee will be chaired by Mr. Foo with Dr.  
72 Casuga, Ms. Jones, and Dr. Phillips as committee members.  
73

74 Enforcement Committee – this committee will be chaired by Ms. Acquaye-Baddoo with  
75 Dr. Phillips as a committee member.  
76

77 Sunset Review Committee – this committee will consist of Dr. Phillips and Mr. Foo as  
78 committee members.  
79

80 Telepsychology Committee – this committee will be chaired by Dr. Phillips and Dr.  
81 Erickson will continue to work with the committee.  
82

83 **Agenda Item #5: Executive Officer's Report**  
84

85 Ms. Sorrick provided the Executive Officer's Report which included a staffing update,  
86 the annual report, and accomplishments made during the year.  
87

88 **Agenda Item #6: DCA Executive Update**  
89

90 Karen Nelson, Assistant Deputy Director of Board and Bureau Relations, provided the  
91 Board with the DCA executive update.

92

93 **Agenda Item #7: Petition for Early Termination of Probation – Leslie Hemedes,**  
94 **PsyD**

95

96 Administrative Law Judge Heather Rowen presided. Deputy Attorney John Gatschet  
97 was present and represented the People of the State of California. Leslie Hemedes,  
98 PsyD, was present and represented herself.

99

100 **Agenda Item #8: Petition for Reinstatement of License – Debra Lynn Langley, PhD**

101

102 Administrative Law Judge Heather Rowen presided. Deputy Attorney John Gatschet  
103 was present and represented the People of the State of California. Lynn Langley, PhD,  
104 was present and was represented by A. Steve Frankel, PhD, JD, ABPP.

105

106 **Agenda Item #9: Petition for Early Termination of Probation – Paul Gabrinetti, PhD**

107

108 This petition was not heard as it was pulled at the request of the respondent prior to the  
109 meeting.

110

111 **Agenda Item #10: Closed Session**

112

113 The Board met in closed session pursuant to Government Code Section 11126(c)(3) to  
114 discuss disciplinary matters including the above Petitions, Proposed Decisions,  
115 Stipulations, Petitions for Reconsideration, and Remands.

116

117 **Agenda Item #11: Closed Session**

118

119 The Board met in closed session pursuant to Government Code Section 11126(e) to  
120 confer with and receive advice from Legal Counsel regarding pending litigation.

121

122 Meeting adjourned at 5:43 p.m.

123

124 **Friday, February 8, 2019**

125

126 **Agenda Item #12: Call to Order/Roll Call/Establishment of a Quorum**

127

128 Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order  
129 at 9:11 a.m. A quorum was present and due notice had been sent to all interested  
130 parties.

131

132 **Members Present**

133 Stephen Phillips, JD, PsyD, President

134 Seyron Foo, Vice-President

135 Lucille Acquaye-Baddoo  
136 Alita Bernal  
137 Sheryll Casuga, PsyD  
138 Mary Harb Sheets, PhD  
139 Jacqueline Horn, PhD  
140 Nicole J. Jones  
141 Lea Tate, PsyD

142  
143 **Others Present**

144 Antonette Sorrick, Executive Officer  
145 Norine Marks, DCA Legal Counsel  
146 Cherise Burns, Central Services Manager  
147 Stephanie Cheung, Licensing Unit Manager  
148 Sandra Monterrubio, Enforcement Program Manager  
149 Jason Glasspiegel, Central Services Coordinator

150  
151 **Agenda Item #10: Closed Session**

152  
153 The Board met in closed session pursuant to Government Code Section 11126(c)(3) to  
154 discuss disciplinary matters including the above Petitions, Proposed Decisions,  
155 Stipulations, Petitions for Reconsideration, and Remands.

156  
157 **Agenda Item #11: Closed Session**

158  
159 The Board met in closed session pursuant to Government Code Section 11126(e) to  
160 confer with and receive advice from Legal Counsel regarding pending litigation.

161  
162 **Agenda Item #13: Public Comment for Items not on the Agenda. The Board May**  
163 **Not Discuss or Take Action on Any Matter Raised During this Public Comment**  
164 **Section, Except to Decide Whether to Place the Matter on the Agenda of a Future**  
165 **Meeting [Government Code sections 11125 and 11125.7(a)]**

166  
167 Connie Valentine, California Protective Parents Association, spoke about the complaints  
168 the California Protective Parents Association received regarding court appointed  
169 psychologists. She asked the Board to open a special investigation with hearings so  
170 that the complainants can bring these issues to the Board directly.

171  
172 Kathleen Russell, Executive Director of the Center for Judicial Excellence, stated that a  
173 psychologist who has had multiple complaints against him is still allowed to practice and  
174 is harming people because the complaints are being closed due to "Insufficient  
175 Evidence". Ms. Russell asked the Board to do something about harmful psychologists  
176 such as this one.

177  
178 **Agenda Item #16: Budget Report**

179

180 Mr. Glasspiegel provided the Board with the budget report. He introduced the Board's  
181 Budget Analyst, Sarah Hinkle, and the Budget Manager, Robert de los Reyes, from the  
182 Department of Consumer Affairs. Ms. Hinkle and Mr. de los Reyes explained the annual  
183 budget process and broke down the Board's budget. Dr. Phillips asked when the budget  
184 reports will go back to what was previously presented before the Fi\$CAL system, where  
185 the budget line items were not as specific. Mr. de los Reyes stated that hopefully in a  
186 year or two the budget reports will be able to get back to the way they were previously  
187 presented, which presented the information in general categories rather than specific  
188 transactions.

189  
190 **Agenda Item #17: Consider Implementation of Enhanced EPPP, Including Latest**  
191 **Information from Association of State and Provincial Psychology Boards**  
192 **(ASPPB), and Possible Approval to Initiate Regulatory Amendments to Title 16,**  
193 **California Code of Regulations sections 1388-1389.1**

194  
195 Dr. Horn recused herself and left the room while this item was being discussed as she  
196 works with the Association of State and Provincial Psychology Boards (ASPPB) to help  
197 create the Enhanced EPPP.

198  
199 Dr. Casuga provided an update.

200  
201 Dr. Matt Turner, ASPPB's Director of Examination Services, explained which types of  
202 validity are used for the purposes of the test, which types are not used, and how the  
203 development process unfolds.

204  
205 The Board discussed the outcomes of adopting or not adopting the Enhanced EPPP.

206  
207 Melodie Schaefer, PsyD, representing CPA Division II & California Psychology  
208 Internship Council, stated she agreed with the Board in reconsidering the previous vote.

209  
210 It was M(Foo)/S(Harb Sheets)/C to reconsider the motion of August 2018 related to the  
211 Enhanced EPPP.

212  
213 Vote: 7 aye (Bernal, Casuga, Foo, Jones, Phillips, Harb Sheets, Tate), 1 no (Acquaye-  
214 Baddoo)

215  
216 Dr. Linder-Crow asked if staff is directed to not proceed with the regulatory package,  
217 and for clarification on whether California is going to be an early adopter of the  
218 Enhanced EPPP.

219  
220 Ms. Marks stated that if there is an additional motion then the Board is saying they will  
221 not be an early adopter of Enhanced EPPP.

222  
223 Cindy Yee-Bradbury, PhD, Director of Clinical Training at UCLA, and representing UC  
224 Berkeley and UC San Diego, and speaking on behalf of the Council of University

225 Directors of Clinical Psychology (CUDCP), provided the Board and Mr. Turner with  
226 CUDCP's thoughts and recommendations on the Enhanced EPPP. CUDCP is  
227 advocating for ASPPB to combine the EPPP with the Enhanced EPPP examinations to  
228 offer a single and more viable exam.

229

230 Because credibility of the test was being questioned, Mr. Turner stated he wanted to  
231 assure the Board that ASPPB is competent in creating the Enhanced EPPP exam.

232

233 Dr. Schaefer addressed the Board regarding transportability of a license. She wanted to  
234 bring to the Board's attention how it may seem unfair to applicants within the State of  
235 California that out-of-state applicants can transfer their EPPP scores when they haven't  
236 completed the California requirements.

237

238 Marilyn Immoos, PhD, California Department of Corrections and Rehabilitations  
239 (CDCR), asked if the Enhanced EPPP will include specific settings and if it does, what  
240 about the people who do not work in those specific settings. Dr. Immoos questioned the  
241 content validity of the test.

242

243 Mr. Turner stated that this is a general licensure exam and it does not get into  
244 specialties. He also stated that most of the psychologists who evaluated the content  
245 validity of the Enhanced EPPP were California psychologists.

246

247 It was M(Foo)/S(Harb Sheets)/C to direct staff to not proceed with the rulemaking  
248 package as was put forward in the August 2018 Board meeting.

249

250 Vote: 8 aye (Acquaye-Baddoo, Bernal, Casuga, Foo, Jones, Phillips, Harb Sheets,  
251 Tate), 0 no

252

253 Ms. Marks stated there might be some issues with the Board's regulatory language  
254 concerning the examinations when the Enhanced EPPP is rolled out. Ms. Sorrick stated  
255 that since the Board approved the language in Pathways to Licensure, staff can pull the  
256 examination portions out and address the language that way if needed.

257

258 **Agenda Item #14: Discussion and Possible Approval of the Board Meeting**  
259 **Minutes: November 15-16, 2018**

260

261 The Board provided their edits to staff.

262

263 It was M(Foo)/S(Tate)/C to approve the minutes as amended with technical, non-  
264 substantive changes.

265

266 Vote: 8 aye (Acquaye-Baddoo, Bernal, Casuga, Foo, Horn, Phillips, Harb Sheets, Tate),  
267 0 no

268

269 **Agenda Item #15: Review and Possible Approval of Draft Board 2019-2023**  
270 **Strategic Plan**

271  
272 The Board discussed the draft 2019-2023 Strategic Plan (Strategic Plan) and provided  
273 their edits to staff. Board discussion then ensued regarding “Goal 5: Outreach and  
274 Education” of the draft Strategic Plan and whether the Board should narrow the focus  
275 and quantity of these goals. It was decided not to narrow the focus or quantity of goals  
276 in this section, but to be more focused and mindful of Board resources when  
277 implementing these goals.

278  
279 Dr. Immoos stated her opinion of the Strategic Plan and that she is looking forward to  
280 CDCR psychologists to review the plan.

281  
282 It was M(Bernal)/S(Jones)/C to accept the Strategic Plan as amended.

283  
284 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
285 0 no

286  
287 The adopted Strategic Plan is available here  
288 [https://www.psychology.ca.gov/forms\\_pubs/strat\\_plan\\_1923.pdf](https://www.psychology.ca.gov/forms_pubs/strat_plan_1923.pdf).

289  
290 **Agenda Item #22: Licensing Committee Report and Consideration of Committee**  
291 **Recommendations**

292  
293 c. Temporary Practice of Psychology in California for Licensed Psychologists who are  
294 Licensed in Other States in the U.S. or in Canada: Discuss Business and Professions  
295 Code Section 2912

296  
297 Dr. Horn stated that in a previous Licensing Committee meeting, draft amendments  
298 were made to the language in Business and Professions Code Section 2912.

299  
300 It was M(Foo)/S(Harb Sheets)/C to approve the language as written and seek an  
301 author.

302  
303 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
304 0 no

305  
306 The proposed language reads as follows:

307  
308 **Business and Professions Code § 2912.**

309  
310 Nothing in this chapter shall be construed to restrict or prevent a person who is licensed  
311 as a psychologist at the doctoral level in another state or territory of the United States or  
312 in Canada from offering psychological services in this Sstate for a period not to  
313 exceed no more than 30 days in any calendar year. These days do not need to be

314 consecutive, and practice for any part of a day is considered a full day for the purposes  
315 of this section.

316  
317 d. Continuing Education Audit Process

318  
319 Dr. Horn stated that the Licensing Committee received an overview of the Continuing  
320 Education Audit Process at its last meeting and will continue to monitor the Continuing  
321 Education Audit Process to ensure the process is working efficiently and effectively.

322  
323 e. Consideration of Licensing Committee Recommendations Regarding Requests for an  
324 Extension of the 30-Consecutive Month Limitation to Accrue 1500 Hours of Post-  
325 Doctoral Supervised Professional Experience Pursuant to Section 1387(a) of Title 16 of  
326 the California Code of Regulations

327  
328 Dr. Horn provided an overview of Psychological Assistant #1's request and requested  
329 the Board consider the Licensing Committee's recommendation.

330  
331 It was M(Harb Sheets)/S(Jones)/C to deny the one-year extension request of the 72-  
332 month limitation for the psychological assistant registration.

333  
334 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
335 0 no

336  
337 **Agenda Item #23: Legislative Update – Discussion and Possible Action**

338  
339 b. Board Sponsored Legislation for the 2019 Legislative Session: Review and Possible  
340 Action

341 1) Review and Consideration of Statutory Revisions to Section 2960.1 of the  
342 Business and Professions Code Regarding Denial, Suspension and Revocation  
343 for Acts of Sexual Contact

344  
345 Ms. Burns provided background information on the proposed revisions to Business and  
346 Professions Code Section 2960.1.

347  
348 It was M(Casuga)/S(Tate)/M to approve the revised statutory language relating to  
349 Business and Professions Code Section 2960.1 and direct staff to seek an author for  
350 the proposed language.

351  
352 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
353 0 no

354  
355 The proposed language reads as follows:

356  
357 **Business and Professions Code § 2960.1.**

358

359 a) Notwithstanding Section 2960, any proposed decision or decision issued under this  
360 chapter in accordance with the procedures set forth in Chapter 5 (commencing with  
361 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains  
362 any finding of fact that the licensee or registrant engaged in any act of sexual contact,  
363 as defined in Section 728, or sexual behavior, as defined in subsection b, when that act  
364 is with a patient/client, or with a former patient/client within two years following  
365 termination of therapy, shall contain an order of revocation. The revocation shall not be  
366 stayed by the administrative law judge, but may be stayed by the board.

367  
368 b) “Sexual behavior” means inappropriate contact or communication of a sexual nature  
369 for the purpose of sexual arousal, gratification, exploitation, or abuse. “Sexual behavior”  
370 does not include the provision of appropriate therapeutic interventions relating to sexual  
371 issues.

372  
373 **Agenda Item #24: Legislative Items for Future Meeting. The Board May Discuss**  
374 **Other Items of Legislation in Sufficient Detail to Determine Whether Such Items**  
375 **Should be on a Future Board Meeting Agenda and/or Whether to Hold a Special**  
376 **Meeting of the Board to Discuss Such Items Pursuant to Government Code**  
377 **Section 11125.4**

378  
379 Dr. Phillips reiterated what was previously mentioned regarding the CPA proposal to  
380 register psychological testing technicians.

381  
382 **Agenda Item #25: Regulatory Update, Review, and Consideration of Additional**  
383 **Changes**

384  
385 **d. 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing**  
386 **Professional Development**

387  
388 Mr. Foo and Ms. Burns provided the Board with an explanation of the proposed  
389 changes to the language that clarify the provisions relating to reactivation and  
390 reinstatement requirements being based on the 24-month period prior to returning to an  
391 active practicing status. Ms. Sorrick also thanked Dr. Horn for her assistance in refining  
392 the Initial Statement of Reasons for this package.

393  
394 Dr. Linder-Crow asked if the 2021 date is still the implementation date.

395  
396 Ms. Burns stated that the implementation date of 2021 is the goal, however, that date  
397 may have to change depending on the regulatory process timeline.

398  
399 Dr. Horn asked if changing the date of implementation would be a substantive change.  
400 Ms. Marks stated that if the implementation date is changed, then it is a substantive  
401 change, but it will not need to go through the whole process again. She stated that there  
402 will be times during the regulatory process where it can be brought to the Board to be  
403 changed.

404  
405 It was M(Horn)/S(Casuga)/C to approve the language as amended and to direct staff to  
406 resubmit.

407  
408 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
409 0 no

410  
411 The proposed language reads as follows:

412  
413 **§ 1381.9. Renewal of Expired License; Reissuance of Reapplication After**  
414 **Cancelled License.**  
415 (a) In the event a licensee does not renew his or her license as provided in section 2982  
416 of the Code, the license expires. In addition to any other requirements, a licensee  
417 renewing pursuant to section 2984 of the Code shall furnish a full set of fingerprints as  
418 required by and set out in section 1381.7(b) as a condition of renewal.  
419  
420 (b) After a license has been expired for three years, the license is automatically  
421 cancelled, and a new license must be obtained in order to provide psychological  
422 services. A person whose license has been cancelled pursuant to section 2984 of the  
423 Code for failure to renew for three years may obtain a new license pursuant to the  
424 requirements in section 2986 of the Code, and if the person:  
425 (1) submits a complete licensing application pursuant to section 1381;  
426 (2) meets all current licensing requirements within the provisions of the Psychology  
427 Licensing Law and regulations;  
428 (3) successfully passes the examination pursuant to section 1388.6;  
429 (4) provides evidence of continuing professional development education taken pursuant  
430 to section 1397.67(b), and no fact, circumstance, or condition exists that would be  
431 grounds for denial of licensure under Section sections 480 or Division/ Chapter/ Article 4  
432 2960 of the Code.

433  
434 NOTE: Authority cited: Sections 2930 and 2982, Business and Professions Code.  
435 Reference: Sections 118, 480, 2984 and 2986, Business and Professions Code; and  
436 Section 11105(b)(10), Penal Code.

437  
438 **§ 1397.60. Definitions. [Effective January 1, 2013 until December 31, 2020.]**

439  
440 This section shall ~~be applicable~~ apply to a license that expires on or after, or is  
441 reinstated or issued on or after, January 1, 2013, ~~and becomes~~ is repealed on January  
442 1, 2021.

443  
444 As used in this article:

445  
446 (a) "Conference" means a course consisting of multiple concurrent or sequential free-  
447 standing presentations. Acceptable presentations must meet the requirements of  
448 section 1397.61(c).

449  
450 (b) "Continuing education" (CE) means the variety of forms of learning experiences,  
451 including, but not limited to, lectures, conferences, seminars, workshops, grand rounds,  
452 in-service training programs, video conferencing, and independent learning  
453 technologies.

454  
455 (c) "Course" or "presentation" means an approved systematic learning experience of at  
456 least one hour in length. One hour shall consist of 60 minutes of actual instruction.  
457 Courses or presentations less than one hour in duration shall not be acceptable.

458  
459 (d) "Grand rounds" or "in-service training program" means a course consisting of  
460 sequential, free-standing presentations designed to meet the internal educational needs  
461 of the staff or members of an organization and is not marketed, advertised or promoted  
462 to professionals outside of the organization. Acceptable presentations must meet the  
463 requirements of section 1397.61(c).

464  
465 (e) "Independent learning" means the variety of forms of organized and directed  
466 learning experiences that occur when the instructor and the student are not in direct  
467 visual or auditory contact. These include, but are not limited to, courses delivered via  
468 the Internet, CD-ROM, satellite downlink, correspondence and home study. Self-  
469 initiated, independent study programs that do not meet the requirements of section  
470 1397.61(c) are not acceptable for continuing education. Except for qualified individuals  
471 with a disability who apply to and are approved by the Board pursuant to section  
472 1397.62(c), independent learning can be used to meet no more than 75% (27 hours) of  
473 the continuing education required in each renewal cycle. Independent learning courses  
474 must meet the requirements of section 1397.61(c).

475  
476 (f) "Provider" means an organization, institution, association, university, or other person  
477 or entity assuming full responsibility for the course offered, whose courses are accepted  
478 for credit pursuant to section 1397.61(c)(1).

479  
480 Note: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
481 Reference: Sections 29 and 2915, Business and Professions Code.

482  
483 **§ 1397.60. Definitions. [Effective January 1, 2021.]**

484  
485 This section shall be applicable to a license that expires on or after, or is renewed,  
486 reactivated, or reinstated on or after, January 1, 2021.

487  
488 Continuing Professional Development (CPD) means required learning activities  
489 approved for the purpose of license renewal. CPD shall be met in the following four  
490 categories: Professional Activities; Academic; Sponsored Continuing Education; and  
491 Board Certification.

492  
493 (a) Acceptable CPD learning activities under "Professional Activities" include:

- 494 (1) “Peer Consultation”  
495 (A) “Peer Consultation” means structured and organized interaction, in  
496 person or electronically mediated, with professional colleagues designed  
497 to broaden professional knowledge and expertise, reduce professional  
498 isolation and directly inform the work of the psychologist. CPD pursuant to  
499 this section may only be obtained through individual or group case  
500 consultation, reading groups, or research groups. These activities must be  
501 focused on maintaining, developing, or increasing conceptual and applied  
502 competencies that are relevant to psychological practice, education, or  
503 science.  
504 (B) “Peer Consultation” does not include “Supervision” as defined in  
505 section (b)(3).  
506  
507 (2) “Practice Outcome Monitoring” (POM)  
508 “Practice Outcome Monitoring” (POM) means the application of outcome  
509 assessment protocols with clients/patients, in order to monitor one’s own  
510 practice process and outcomes, with the goal of assessing effectiveness.  
511 All outcome measures must be sensitive to cultural and diversity issues.  
512  
513 (3) “Professional Services”  
514 “Professional Services” means ongoing participation in services related to  
515 the field of psychology, or other related disciplines, including but not  
516 limited to, serving on psychological association boards or committees,  
517 editorial boards of peer reviewed journals related to psychology or other  
518 related disciplines, scientific grant review teams, boards of regulatory  
519 bodies, program development and/or evaluation activities separate and  
520 apart from a fee for service arrangement.  
521  
522 (4) “Conference/Convention Attendance”  
523 “Conference/Convention Attendance” means attending a professional  
524 gathering that consists of multiple concurrent or sequential free-standing  
525 presentations related to the practice of psychology, or that may be applied  
526 to psychological practice, where the licensee interacts with professional  
527 colleagues and participates in the social, interpersonal, professional, and  
528 scientific activities that are part of the environment of those gatherings.  
529 CPD credit may be accrued for “Conference/Convention Attendance”  
530 separate from credit earned for completing sponsored CE coursework or  
531 sessions at the same conference/convention.  
532  
533 (5) “Examination Functions”  
534 “Examination Functions” means serving in any examination development-  
535 related function for the Board or for the development of the EPPP.  
536  
537 (6) “Expert Review/Consultation”

538 “Expert Review/Consultation” means serving in any expert capacity for the  
539 Board.

540

541 (7) “Attendance at a California Board of Psychology Meeting”

542 “Attendance at a California Board of Psychology Meeting” means physical  
543 attendance at a full day Board meeting or physical attendance at a  
544 separately noticed Committee meeting of the Board.

545

546 (b) Acceptable CPD learning activities under “Academic” include:

547 (1) “Academic Coursework”

548 “Academic Coursework” means completing and earning academic credit  
549 for a graduate-level course related to psychology from an institution whose  
550 degree meets the requirements of section 2914 of the Code.

551

552 (2) “Academic/Sponsor-Approved Continuing Education (CE) Instruction”

553 (A) “Academic Instruction” means teaching a graduate-level course that is  
554 part of a degree program that meets the requirements of section 2914(c)  
555 of the Code.

556 (B) “Sponsor-Approved CE Instruction” means teaching a sponsored CE  
557 course that relates to the practice of psychology as defined in 1397.60(c).

558

559 (3) “Supervision”

560 “Supervision” means overseeing the professional experience of a trainee  
561 who is accruing hours toward licensure as a Psychologist, Marriage and  
562 Family Therapist, Licensed Clinical Social Worker, Licensed Professional  
563 Clinical Counselor, Licensed Educational Psychologist, or Physician and  
564 Surgeon.

565

566 (4) “Publications”

567 “Publications” means authoring or co-authoring peer-reviewed journal  
568 articles, book chapters, book(s), or editing or co-editing a book, related to  
569 psychology or related discipline.

570

571 (5) “Self-Directed Learning”

572 “Self-Directed Learning” means independent educational activities focused  
573 on maintaining, developing, or increasing conceptual and applied  
574 competencies that are relevant to psychological practice, education, or  
575 science, such as reading books or peer-reviewed journal articles or books,  
576 watching videos or webcasts, or listening to podcasts.

577

578

579 (c) Acceptable CPD learning activities under “Sponsored Continuing Education” means  
580 Sponsor-Approved Continuing Education, which includes any approved structured,  
581 sequenced learning activity, whether conducted in-person or online. “Course” or  
582 “presentation” means a sponsor-approved systematic learning experience. “Provider”

583 means an organization, institution, association, university, or other person or entity  
584 assuming full responsibility for the CE program offered, and whose courses are  
585 accepted for credit pursuant to section 1397.61(k).

586  
587 (d) Acceptable CPD learning activities under “Board Certification” are defined as  
588 earning a specialty certification in an area of psychology from the American Board of  
589 Professional Psychology (ABPP) in one of the following categories:

590 (1) ABPP Board Certification

591 (2) “Senior Option” ABPP Board Certification

592

593 Note: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.

594 Reference: Sections 29 and 2915, Business and Professions Code.

595

596 **§ 1397.61. Continuing Education Requirements. [Effective January 1, 2013 until**  
597 **December 31, 2020.]**

598

599 This section shall be applicable apply to a license that expires on or after, or is reinstated  
600 or issued on or after, January 1, 2013, and becomes repealed on January 1, 2021.

601

602 (a) Except as provided in section 2915(e) of the Business and Professions Code and  
603 section 1397.62 of these regulations, each licensed psychologist shall certify on the  
604 application for license renewal that he or she has completed the continuing education  
605 requirements set forth in section 2915 of the Code. A licensee who renews his or her  
606 license for the first time after the initial issuance of the license is only required to accrue  
607 continuing education for the number of months that the license was in effect, including  
608 the month the license was issued, at the rate of 1.5 hours of approved continuing  
609 education per month. Continuing education earned via independent learning pursuant to  
610 section 1397.60(e) shall be accrued at no more than 75% of the continuing education  
611 required for the first time renewal. The required hours of continuing education may not  
612 be accrued prior to the effective date of the initial issuance of the license. A licensee  
613 who falsifies or makes a material misrepresentation of fact on a renewal application or  
614 who cannot verify completion of continuing education by producing verification of  
615 attendance certificates, whenever requested to do so by the Board, is subject to  
616 disciplinary action under section 2960 of the Code.

617

618 (b) Any person renewing or reactivating his or her license shall certify under penalty of  
619 perjury to the Board of Psychology as requested on the application for license renewal,  
620 that he or she has obtained training in the subject of laws and ethics as they apply to  
621 the practice of psychology in California. The training shall include recent  
622 changes/updates on the laws and regulations related to the practice of psychology;  
623 recent changes/updates in the Ethical Principles of Psychologists and Code of Conduct  
624 published by the American Psychological Association; accepted standards of practice;  
625 and other applications of laws and ethics as they affect the licensee's ability to practice  
626 psychology with safety to the public. Training pursuant to this section may be obtained  
627 in one or more of the following ways:

- 628 (1) Formal coursework in laws and ethics taken from an accredited educational  
629 institution;  
630 (2) Approved continuing education course in laws and ethics;  
631 (3) Workshops in laws and ethics;  
632 (4) Other experience which provide direction and education in laws and ethics  
633 including, but not limited to, grand rounds or professional association  
634 presentation.

635  
636 If the licensee chooses to apply a specific continuing education course on the topic of  
637 laws and ethics to meet the foregoing requirement, such a course must meet the  
638 content requirements named above, must comply with section 1397.60(c), and may be  
639 applied to the 36 hours of approved continuing education required in Business and  
640 Professions Code section 2915(a).

641  
642 (c) The Board recognizes and accepts for continuing education credit courses pursuant  
643 to this section. A licensee will earn one hour continuing education credit for each hour of  
644 approved instruction.

645 (1) Continuing education courses shall be:

646 (A) provided by American Psychological Association (APA), or its  
647 approved sponsors;

648 (B) Continuing Medical Education (CME) courses specifically applicable  
649 and pertinent to the practice of psychology and that are accredited by the  
650 California Medical Association (CMA) or the Accreditation Council for  
651 Continuing Medical Education (ACCME); or

652 (C) provided by the California Psychological Association, or its approved  
653 sponsors.

654 (D) approved by an accrediting agency for continuing education courses  
655 taken prior to January 1, 2013, pursuant to this section as it existed prior  
656 to January 1, 2013.

657  
658 (2) Topics and subject matter for all continuing education shall be pertinent to the  
659 practice of psychology. Course or learning material must have a relevance or  
660 direct application to a consumer of psychological services.

661 (3) No course may be taken and claimed more than once during a renewal  
662 period, nor during any twelve (12) month period, for continuing education credit.

663 (4) An instructor may claim the course for his/her own credit only one time that  
664 he/she teaches the acceptable course during a renewal cycle, or during any  
665 twelve (12) month period, receiving the same credit hours as the participant.

666  
667 (d) Examination Functions. A licensee who serves the Board as a selected participant in  
668 any examination development related function will receive one hour of continuing  
669 education credit for each hour served. Selected Board experts will receive one hour of  
670 continuing education credit for each hour attending Board sponsored Expert Training  
671 Seminars. A licensee who receives approved continuing education credit as set forth in

672 this paragraph shall maintain a record of hours served for submission to the Board  
673 pursuant to section 1397.61(e).

674  
675 (e) A licensee shall maintain documentation of completion of continuing education  
676 requirements for four (4) years following the renewal period, and shall submit  
677 verification of completion to the Board upon request. Documentation shall contain the  
678 minimum information for review by the Board: name of provider and evidence that  
679 provider meets the requirements of section 1397.61(c)(1); topic and subject matter;  
680 number of hours or units; and a syllabus or course description. The Board shall make  
681 the final determination as to whether the continuing education submitted for credit  
682 meets the requirements of this article.

683  
684 (f) Failure to provide all of the information required by this section renders any  
685 application for renewal incomplete and not eligible for renewal.

686  
687 Note: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
688 Reference: Sections 29, 32, 2915 and 2915.7, Business and Professions Code.

689  
690 **§ 1397.61. Continuing Professional Development Requirements. [Effective**  
691 **January 1, 2021.]**

692  
693 This section shall be applicable to a license that expires on or after, or is renewed,  
694 reactivated, or reinstated on or after, January 1, 2021.

695  
696 (a) Except as provided in section 2915(e) of the Business and Professions Code and  
697 section 1397.62 of these regulations, a psychologist shall certify under penalty of  
698 perjury to the Board on the application for license renewal that he or she has completed  
699 the CPD requirements set forth in this Article and section 2915 of the Code. Failing to  
700 do so, or falsifying or making a material misrepresentation of fact on a renewal  
701 application, or failing to provide documentation verifying compliance whenever  
702 requested to do so by the Board, shall be considered unprofessional conduct and  
703 subject the licensee to disciplinary action and render his or her license ineligible for  
704 renewal.

705  
706 (b) A psychologist renewing or reactivating his or her license shall certify under penalty  
707 of perjury on the application for license renewal or reactivation that he or she has  
708 engaged in a minimum of four (4) hours of training in the subject of laws and ethics, as  
709 they apply to the practice of psychology in California for each renewal period. This  
710 includes recent changes or updates on the laws and regulations related to the practice  
711 of psychology; recent changes or updates in the Ethical Principles of Psychologists and  
712 Code of Conduct published by the American Psychological Association; accepted  
713 standards of practice; and other applications of laws and ethics as they affect the  
714 licensee's ability to practice psychology safely. This requirement shall be met using any  
715 combination of the four (4) CPD categories and the licensee shall indicate on his or her

716 documentation which of the CPD activities are being used to fulfill this requirement. The  
717 four (4) hours shall be considered part of the 36 hour CPD requirement.

718  
719 (c) A psychologist renewing or reactivating his or her license shall certify under penalty  
720 of perjury on the application for license renewal or reactivation that he or she has  
721 engaged in a minimum of four (4) hours of training for each renewal [redacted] pertinent to  
722 Cultural Diversity and/or Social Justice issues issues as they apply to the practice of  
723 psychology in California for each renewal period. This requirement shall be met using  
724 any combination of the four (4) CPD categories and the licensee shall indicate on his or  
725 her documentation which of the CPD activities are being used to fulfill this requirement.  
726 The four (4) hours shall be considered part of the 36 hour CPD requirement.

727  
728 (d) Topics and subject matter for all CPD activities shall be pertinent to the practice of  
729 psychology.

730  
731 (e) The Board recognizes and accepts CPD hours that meet the description of the  
732 activities set forth in section 1397.60. With the exception of 100% ABPP Board  
733 Certification, a licensee shall accrue hours during each renewal period from at least two  
734 (2) of the four (4) CPD activity categories: Professional Activities; Academic; Sponsored  
735 Continuing Education; and Board Certification. Unless otherwise specified, for any  
736 activity for which the licensee wishes to claim credit, no less than one (1) hour credit  
737 may be claimed and no more than the maximum number of allowable hours, as set forth  
738 in subsection (f), may be claimed for each renewal period.

739  
740 (f) Acceptable CPD learning activities under "Professional Activities" include:

741 (1) "Peer Consultation"

742 (A) A maximum of 18 hours shall be credited in "Peer Consultation".

743 (B) One (1) hour of activity in "Peer Consultation" equals one (1) hour of  
744 credit.

745 (C) The licensee shall maintain a record of this activity. This record shall  
746 include: date(s), type of activity, and total number of hours.

747

748 (2) "Practice Outcome Monitoring" (POM)

749 (A) A maximum of nine (9) hours shall be credited in "POM".

750 (B) "POM" for one (1) patient/client equals one (1) hour credited.

751 (C) The licensee shall maintain a record of this activity. This record shall  
752 include: date(s) of monitoring, client identifier, and how outcomes were  
753 measured.

754

755 (3) "Professional Service"

756 (A) A minimum of 4.5 hours and a maximum of 12 hours shall be credited  
757 in "Professional Service".

758 (B) One (1) year of "Professional Service" for a particular activity equals  
759 nine (9) hours credited and six (6) months equals 4.5 hours credited.

760 (C) The licensee shall maintain a record of this activity. This record shall  
761 include: board or program name, role of licensee, dates of service, and  
762 term of service (six months or one year).

763  
764 (4) "Conference/Convention Attendance"

765 (A) A maximum of six (6) hours shall be credited in  
766 "Conference/Convention Attendance".

767 (B) One (1) full conference/convention day attendance equals one (1) hour  
768 credited.

769 (C) The licensee shall maintain a record of this activity. This record shall  
770 include: name of conference/convention attended, proof of registration,  
771 and date(s) of conference/convention attended.

772  
773 (5) "Examination Functions"

774 (A) A maximum of 12 hours shall be credited in "Examination Functions".

775 (B) One (1) hour of service equals one (1) hour of credit.

776 (C) The licensee shall maintain a record of this activity. This record shall  
777 include: name of exam, dates of service, and number of hours.

778  
779 (6) "Expert Review/Consultation"

780 (A) A maximum of 12 hours shall be credited in "Expert  
781 Review/Consultation".

782 (B) One (1) hour of service in an expert capacity equals one (1) hour of  
783 credit.

784 (C) The licensee shall maintain a record of this activity. This record shall  
785 include: dates of service and number of hours.

786  
787 (7) "Attendance at a California Board of Psychology Meeting"

788 (A) A maximum of eight (8) hours shall be credited in "Attendance at a  
789 California Board of Psychology Meeting".

790 (B) Attendance for one (1) day Board or Committee meeting equals six (6)  
791 hours of credit. For Board or Committee meetings that are three (3) hours  
792 or less, one (1) hour of attendance equals one (1) hour of credit.

793 (C) The licensee shall maintain a record of hours. This record shall  
794 include: date of meeting, name of meeting, and number of hours  
795 attended. A psychologist requesting CPD credit pursuant to this  
796 subdivision shall have signed in and out on an attendance sheet providing  
797 his or her first and last name, license number, time of arrival and time of  
798 departure from the meeting.

799  
800 (g) Acceptable CPD learning activities under "Academic" include:

801 (1) "Academic Coursework"

802 (A) A maximum of 18 hours shall be credited in "Academic Coursework".

803 (B) Each course taken counts only once for each renewal period and may  
804 only be submitted for credit once the course is completed.

805 (C) Each one (1) semester unit earned equals six (6) hours of credit and  
806 each one (1) quarter unit earned equals 4.5 hours of credit.

807 (D) The licensee shall maintain a record of this activity. This record shall  
808 include a transcript with evidence of a passing grade (C or higher or  
809 “pass”).

810

811 (2) “Academic/Sponsor-Approved CE Instruction”

812 (A) “Academic Instruction”

813 (i) A maximum of 18 hours shall be credited in “Academic Instruction”.

814 (ii) Each course taught counts only once for each renewal period and may  
815 only be submitted for credit once the course is completed.

816 (iii) A term-long (quarter or semester) academic course equals 18 hours of  
817 credit.

818 (iv) The licensee shall maintain a record of this activity. This record shall  
819 include: course syllabus, title of course, name of institution, and dates of  
820 instruction.

821

822 (B) “Sponsored-Approved CE Instruction”

823 (i) A maximum of 18 hours shall be used in “Sponsored-Approved CE  
824 Instruction”.

825 (ii) Each course taught counts only once for each renewal period and may  
826 only be submitted for credit once the course is completed.

827 (iii) One (1) hour of instruction equals 1.5 hours of credit.

828 (iv) The licensee shall maintain a record of this activity. This record shall  
829 include: course syllabus, title of course, dates of instruction, name of  
830 sponsoring entity, and number of hours taught.

831

832 (3) “Supervision”

833 (A) A maximum of 18 hours shall be credited in “Supervision”.

834 (B) One (1) hour of supervision equals one (1) hour of credit.

835 (C) The licensee shall maintain a record of this activity. This record shall  
836 include: dates of supervision and a trainee identifier.

837

838 (4) “Publications”

839 (A) A maximum of nine (9) hours shall be credited in “Publications”.

840 (B) One (1) publication equals nine (9) hours of credit.

841 (C) A publication may only be counted once.

842 (D) The licensee shall maintain a record of this activity. This record shall  
843 include: either a letter of acceptance for publication, or proof of publication  
844 with publication date in the renewal period for which it is being submitted.

845

846 (5) “Self-Directed Learning”

847 (A) A maximum of six (6) hours shall be credited in “Self-Directed  
848 Learning”.

849 (B) One (1) hour of activity in “Self-Directed Learning” equals one (1) hour  
850 of credit.

851 (C) The licensee shall maintain a record of this activity. This record shall  
852 include: date(s), medium (e.g. webinar), topic or title, and total number of  
853 hours.

854  
855

856 (h) Acceptable “Sponsored Continuing Education” includes:

857 (1) A maximum of 27 hours shall be credited in “Sponsored Continuing  
858 Education”.

859 (2) Credit may be granted only once during a renewal cycle for each course  
860 taken.

861 (3) One (1) hour of sponsored continuing education equals one (1) hour of credit.

862 (4) The licensee shall maintain proof of attendance provided by the sponsor of  
863 the continuing education.

864  
865

866 (i) Acceptable CPD learning activities under “Board Certification” include:

867 (1) ABPP Board Certification

868 (A) ABPP Board Certification may count for 100% (36 hours) of required  
869 CPD in the renewal cycle in which the certification is awarded.

870 (B) The licensee shall maintain proof of specialty certification.

871  
872

872 (2) “Senior Option” ABPP Board Certification

873 (A) “Senior Option” ABPP Board Certification may count for 50% (18  
874 hours) of required CPD in the renewal cycle in which the certification is  
875 awarded.

876 (B) The licensee shall maintain proof of specialty certification.

877

878 (j) To satisfy the requirements of section 2915 of the Code, an organization seeking the  
879 authority to approve a provider of continuing education shall meet the following  
880 requirements. An organization authorized pursuant to this section may also provide  
881 continuing education. An organization previously approved by the Board to approve  
882 providers of CE are deemed authorized under this section.

883 (1) The approving organization must:

884 (A) have a 10-year history of providing educational programming for  
885 psychologists.

886 (B) have documented procedures for maintaining a continuing education  
887 approval program, including, but not limited to:

888 (i) maintaining and managing records and data related to approved CE  
889 programs, and

890 (ii) monitoring and approving CE providers and courses

891 (C) have policies in place to avoid a conflict of interest between its provider  
892 and approval functions.

893 (D) evaluate each CE provider seeking approval, including itself, according to  
894 current evidence as to what constitutes an appropriate program in terms of  
895 content and level of presentation, as set out in subsection (k)(2),  
896 (E) conduct periodic reviews of courses offered by providers approved by the  
897 organization, as well as its own courses, to determine compliance with the  
898 organization's requirements and the requirements of the Board,  
899 (F) establish a procedure for determining if an approved provider meets  
900 regulatory criteria as established in subsection (k), and  
901 (G) have a process to respond to complaints from the Board, providers, or  
902 from licensees concerning activities of any of its approved providers or their  
903 courses.

904  
905 (2) The approving organization shall ensure that approved providers:

906 (A) offer content at post-licensure level in psychology that is designed to  
907 maintain, develop, broaden, and/or increase professional competencies,  
908 (B) demonstrate that the information and programs presented are intended to  
909 maintain, develop, and increase conceptual and applied competencies that  
910 are relevant to psychological practice, education, or science, and have a  
911 direct consumer application in at least one of the following ways:

912 (i) programs include content related to well-established psychological  
913 principles,

914 (ii) programs are based on content that extends current theory,  
915 methods or research, or informs current practice,

916 (iii) programs provide information related to ethical, legal, statutory, or  
917 regulatory guidelines and standards that impact the practice of  
918 psychology, and/or

919 (iv) program's content focuses on non-traditional or emerging practice  
920 or theory and can demonstrate relevance to practice.

921 (C) use a formal (written) evaluation tool to assess program effectiveness  
922 (what was learned) and assess how well each of the educational goals was  
923 achieved (this is separate from assessing attendee satisfaction with the CE  
924 program),

925 (D) use results of the evaluation process to improve and plan future  
926 programs,

927 (E) provide CE credit on the basis of one hour of credit will be earned for each  
928 hour of approved instruction,

929 (F) provide attendance verification to CE attendees that includes the name of  
930 the licensee, the name of the course, the date of the course, the number of  
931 credit hours earned, and the approving agency,

932 (G) provide services to all licensees without discrimination, and

933 (H) ensure that advertisements for CE courses include language that  
934 accurately reflects the approval status of the provider.

935  
936 (3) Failure of the approving organization to meet the provisions of this section  
937 shall constitute cause for revocation of authorization by the Board. Authorization

938 shall be revoked only by a formal Board action, after notice and hearing, and for  
939 good cause.

940  
941 (k) Each person who applies to ~~reactivate~~renew or reinstate his or her license issued  
942 shall certify under penalty of perjury that he or she ~~is in~~has compliedance with all the  
943 requirements of this section within the 24 month period prior to the request to reactive or  
944 reinstate and shall maintain proof of compliance for four (4) years from the date of the  
945 reactivation or reinstatementrenewal for which it has been submitted, and shall submit  
946 such proof to the Board upon request.

947  
948 (l) No CPD activity may be claimed for credit more than once during a renewal period.

949  
950 (m) No activity may be claimed for credit in more than one CPD category.

951  
952 (n) For a license that renews or is reactivated between January 1, 2021, and December  
953 31, 2021, the hours accrued will qualify for renewal if they meet either the requirements  
954 of this section as it existed prior to January 1, 2021 or as it exists after January 1, 2021.

955  
956 Note: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
957 Reference: Sections 29, 32, 2915 and 2915.7, Business and Professions Code.

958  
959 **§ 1397.62. Continuing Education Exemptions and Exceptions. [Effective January**  
960 **1, 2013 until December 31, 2020.]**

961  
962 This section shall be applicable to a license that expires on or after, or is reinstated or  
963 issued on or after, January 1, 2013, and ~~becomes inoperative~~repealed on December  
964 31, 2017January 1, 2021.

965  
966 At the time of making application for renewal of a license, a psychologist may as  
967 provided in this section request an exemption or an exception from all or part of the  
968 continuing education requirements.

969  
970 (a) The Board shall grant an exemption only if the psychologist verifies in writing that,  
971 during the two year period immediately prior to the expiration date of the license, he or  
972 she:

973 (1) Has been engaged in active military service reasonably preventing  
974 completion of the continuing education requirements, except that a licensee  
975 granted an exemption pursuant to this section shall still be required to fulfill the  
976 laws and ethics requirement set forth in section 1397.61(b); or

977  
978 (2) Has been prevented from completing the continuing education requirements  
979 for reasons of health or other good cause which includes:

980 (A) Total physical and/or mental disability of the psychologist for at least  
981 one year; or

982 (B) Total physical and/or mental disability of an immediate family member  
983 for at least one year where the psychologist has total responsibility for the  
984 care of that family member.

985  
986 Verification of a physical disability under subsection (a)(2) shall be by a licensed  
987 physician and surgeon or, in the case of a mental disability, by a licensed psychologist  
988 or a board certified or board eligible psychiatrist.

989  
990 (b) An exception to the requirements of Business and Professions Code section 2915(d)  
991 may be granted to licensed psychologists who are not engaged in the direct delivery of  
992 mental health services for whom there is an absence of available continuing education  
993 courses relevant to their specific area of practice.

994 (1) An exception granted pursuant to this subsection means that the Board will  
995 accept continuing education courses that are not acceptable pursuant to section  
996 1397.61(c) provided that they are directly related to the licensee's specific area of  
997 practice and offered by recognized professional organizations. The Board will  
998 review the licensee's area of practice, the subject matter of the course, and the  
999 provider on a case-by-case basis. This exception does not mean the licensee is  
1000 exempt from completing the continuing education required by Business and  
1001 Professions Code section 2915 and this article. (2) Licensees seeking this  
1002 exception shall provide all necessary information to enable the Board to  
1003 determine the lack of available approved continuing education and the relevance  
1004 of each course to the continuing competence of the licensee.

1005  
1006 Such a request shall be submitted in writing and must include a clear statement as to  
1007 the relevance of the course to the practice of psychology and the following information:

1008 (A) Information describing, in detail, the depth and breadth of the content  
1009 covered (e.g., a course syllabus and the goals and objectives of the  
1010 course), particularly as it relates to the practice of psychology.

1011 (B) Information that shows the course instructor's qualifications to teach  
1012 the content being taught (e.g., his or her education, training, experience,  
1013 scope of practice, licenses held and length of experience and expertise in  
1014 the relevant subject matter), particularly as it relates to the practice of  
1015 psychology.

1016 (C) Information that shows the course provider's qualifications to offer the  
1017 type of course being offered (e.g., the provider's background, history,  
1018 experience and similar courses previously offered by the provider),  
1019 particularly as it relates to the practice of psychology.

1020  
1021 (3) This subsection does not apply to licensees engaged in the direct delivery of  
1022 mental health services.

1023  
1024 (c) Psychologists requiring reasonable accommodation according to the Americans with  
1025 Disabilities Act may be granted an exemption from the on-site participation requirement  
1026 and may substitute all or part of their continuing education requirement with an

1027 American Psychological Association or accreditation agency approved independent  
1028 learning continuing education program. A qualified individual with a disability must apply  
1029 to the Board to receive this exemption.

1030

1031 (d) Any licensee who submits a request for an exemption or exception that is denied by  
1032 the Board shall complete any continuing education requirements within 120 days of the  
1033 notification that the request was denied.

1034

1035 NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
1036 Reference: Section 2915, Business and Professions Code.

1037

1038 **§ 1397.62. Continuing Education Exemptions. [Effective January 1, 2021]**

1039

1040 This section shall be applicable to a license that expires on or after, or is renewed,  
1041 reactivated, reinstated on or after, January 1, 2021.

1042

1043 (a) To be granted an exemption from all or part of the CPD requirements, a licensee  
1044 must certify in writing that he or she has met the requirement of section 114.3 of the  
1045 Code that during the two year period immediately preceding the expiration of the  
1046 license, he or she was on active military duty. The request for exemption must be  
1047 submitted no less than thirty (30) days prior to the submission of an application for the  
1048 renewal of the license. For the first renewal after discharge from active military service,  
1049 he or she shall be exempt from the CPD renewal requirements, except that he or she  
1050 must accrue, as a condition of renewal, 1.5 hours per month (or portion of month)  
1051 remaining in the renewal cycle post-discharge, calculated 60 days after discharge date.  
1052 The licensee shall then, at a minimum, fulfill the Laws and Ethics requirement set out in  
1053 section 1397.61(b), and the Cultural Diversity and/or Social Justice requirement set out  
1054 in section 1397.61(c).

1055

1056 (b) Any licensee who submits a request for an exemption that is denied, in whole or in  
1057 part, by the Board shall complete any CPD requirements within 120 days of the  
1058 notification that the request was denied.

1059

1060 NOTE: Authority cited: Sections 114.3, 2915(g), and 2930, Business and Professions  
1061 Code. Reference: Sections 114.3 and 2915, Business and Professions Code.

1062

1063 **§ 1397.67. Renewal After Inactive or Delinquent Expired Status. [Effective January**  
1064 **1, 2013 until December 31, 2020.]**

1065

1066 This section shall be applicable apply to a license that expires on or after, or is reinstated  
1067 or issued on or after, January 1, 2013, and becomes-is repealed on January 1, 2021.

1068

1069 (a) To activate a license which has been placed on inactive status pursuant to section  
1070 2988 of the Code, the licensee must submit evidence of completion of the requisite 36

1071 hours of qualifying continuing education courses for the two-year period prior to  
1072 establishing the license as active.

1073  
1074 (b) For the renewal of a delinquent psychologist license within three years of the date of  
1075 expiration, the applicant for renewal shall provide evidence of completion of 36 hours of  
1076 qualifying continuing education courses for the two-year period prior to renewing the  
1077 license.

1078  
1079 After a license has been delinquent for three years, the license is automatically  
1080 cancelled and the applicant must submit a complete licensing application, meet all  
1081 current licensing requirements, and successfully pass the licensing examination just as  
1082 for the initial licensing application unless the board grants a waiver of the examination  
1083 pursuant to section 2946 of the Code.

1084  
1085 NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
1086 Reference: Section 2915, 2984, and 2988, Business and Professions Code.

1087  
1088 **§ 1397.67. Continued Professional Development Requirements for Reactivation.**  
1089 **[Effective January 1, 2021.]**

1090  
1091 This section shall be applicable to a license that expires on or after, or is renewed,  
1092 reactivated, reinstated on or after, January 1, 2021.

1093  
1094 (a) To activate a license that has been placed on inactive status pursuant to section  
1095 2988 of the Code, the licensee shall submit evidence of completion of the requisite 36  
1096 hours of qualifying CPD for the two-year period prior to reactivating the license.

1097  
1098 (b) For the renewal of an expired psychologist license within three years of the date of  
1099 expiration, the applicant for renewal shall provide evidence of completion of 36 hours of  
1100 qualifying CPD for the two-year period prior to renewing the license.

1101  
1102 NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code.  
1103 Reference: Section 2915, 2984, and 2988, Business and Professions Code.

1104  
1105 **Agenda Item #26: Review and Consider Draft Language to Initiate the Rulemaking**  
1106 **Process to Implement AB 2138 (Low) Regarding Licensing Boards: Denial of**  
1107 **Application: Revocation or Suspension of Licensure: Criminal Conviction**

1108  
1109 a. 16 CCR Sections 1394 – Substantial Relationship Criteria;  
1110 1395 - Rehabilitation Criteria for Denials and Reinstatements;  
1111 1395.1 – Rehabilitation Criteria for Denials Suspensions or Revocations;  
1112 1395.2 – Disciplinary Guidelines

1113  
1114 Mr. Foo provided an overview of AB 2138. Ms. Burns provided an overview of the  
1115 language and the different options for each regulatory section.

1116  
1117 In relation to 16 CCR Section 1394 relating to Substantial Relationship Criteria, Mr.  
1118 Templet clarified the importance of specifying the substantially related crimes and how  
1119 that can reduce the amount of time spent proving the crime is substantially related at a  
1120 hearing. Discussion ensued regarding the preference of the Board to make it clear to  
1121 the public and applicants what crimes are substantially related to the practice of  
1122 psychology rather than adopting substantial relationship criteria that must be litigated  
1123 each time.  
1124  
1125 Dr. Harb Sheets expressed concerns about potentially missing crimes with the specified  
1126 list of crimes, and raised a concern regarding crimes that had been plead down to  
1127 trespassing being automatically denied. Ms. Burns clarified that the provisions in  
1128 subsection b would still apply and the Board would have to consider the criteria, so it  
1129 would not be automatic. Ms. Marks clarified that these criteria are not eligibility criteria  
1130 but instead establish what may or may not make one fit for licensure and this would  
1131 categorize certain acts that would make an individual unfit for licensure but would still be  
1132 reviewed on a case-by-case basis.  
1133  
1134 It was M(Tate)/S(Harb Sheets)/C to approve Option 1 language for section 1394 –  
1135 Substantial Relationship Criteria.  
1136  
1137 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
1138 0 no  
1139  
1140 In relation to 16 CCR Section 1395 relating to Rehabilitation Criteria for Denials and  
1141 Reinstatements, discussion ensued regarding the substantive differences between the  
1142 options and the reasons for staff recommending option 1. The Board expressed its  
1143 preference that all factors of an individual’s rehabilitation be factored into the  
1144 Rehabilitation Criteria determination.  
1145  
1146 It was M(Casuga)/S(Acquaye-Baddoo)/C to approve Option 1 language for section 1395  
1147 – Rehabilitation Criteria for Denials and Reinstatements.  
1148  
1149 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
1150 0 no  
1151  
1152 In relation to 16 CCR Sections 1395.1 relating to Rehabilitation Criteria for Suspensions  
1153 or Revocations and 1395.2 relating to Disciplinary Guidelines, the Board discussed how  
1154 there was not multiple options and how that relates to the provisions in AB 2138 being  
1155 primarily focused on applicants and not licensees. The Board, Ms. Marks and Mr.  
1156 Templet discussed whether the Board needed to use the broader term discipline to  
1157 cover actions like interim suspension orders rather than the current language of  
1158 suspension and revocations in the first paragraph of 16 CCR Section 1395.1. Ms. Marks  
1159 noted that the Board would need to be clear in the Initial Statement of Reasons that  
1160 suspension in this section means all of those restrictions that may lead up to an

1161 unstayed revocation as opposed to suspension being a term that refers to something  
1162 less than revocation. The consensus from this discussion was that suspension or  
1163 revocation adequately covered the needs of the Board for this section as this section  
1164 would not need to apply to interim suspension orders since they are separate from  
1165 discipline and have their own criteria and processes. Ms. Marks noted that Section  
1166 1395.1 could have the same automatic rehabilitation provisions as Option 2 in Section  
1167 1395 if the Board wanted to consider that. Ms. Jones asked for staff's recommendation  
1168 regarding exploring the potential Option 2. Staff expressed that Option 1 is the  
1169 recommended option.

1170  
1171 It was M(Tate)/S(Harb Sheets)/C to approve language as amended with regard to  
1172 1395.1 and 1395.2.

1173  
1174 Vote: 8 aye (Acquaye-Baddoo, Casuga, Foo, Horn, Jones, Phillips, Harb Sheets, Tate),  
1175 0 no

1176  
1177 It was M(Casuga)/S(Acquaye-Baddoo)/C to start the formal rulemaking process, set for  
1178 hearing and delegate to staff to make non-substantive changes in the rulemaking file  
1179 with relation to the approved languages for Option 1 in 16 CCR Sections 1394, 1395,  
1180 1395.1, and 1395.2.

1181  
1182 The proposed language reads as follows:

1183  
1184 **Title 16. Board of Psychology**

- 1185  
1186 1. Amend Section 1394 of Article 7 of Division 13.1 of Title 16 of the California  
1187 Code of Regulations to read:

1188  
1189 **§ 1394. Substantial Relationship Criteria.**

1190 (a) For the purposes of denial, suspension, or revocation of a license or registration  
1191 pursuant to section 141 or Division 1.5 (commencing with Section 475) of the Code, a  
1192 crime, professional misconduct, or act shall be considered to be substantially related to  
1193 the qualifications, functions or duties of a person holding a license or registration under  
1194 the Psychology Licensing Law (Chapter 6.6 of Division 2 of the Code), if to a substantial  
1195 degree it evidences present or potential unfitness of a person holding a license or  
1196 registration to perform the functions authorized by his or her the license or registration,  
1197 or in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts~~

1198  
1199  
1200 (b) In making the substantial relationship determination required under subdivision (a)  
1201 for a crime, the board shall consider the following criteria:

- 1202 (1) The nature and gravity of the offense;  
1203 (2) The number of years elapsed since the date of the offense; and  
1204 (3) The nature and duties of a licensee or registrant.

1205

- 1206 (c) For purposes of subdivision (a), substantially related crimes, professional  
 1207 misconduct, or acts shall include, but are not limited to, the following:  
 1208 ~~(a)~~(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting  
 1209 the violation of or conspiring to violate any provision or term of that law the Psychology  
 1210 Licensing Law.  
 1211 ~~(b)~~(2) Conviction of a crime or act involving fiscal dishonesty.  
 1212 (3) Conviction or act involving child abuse.  
 1213 (4) A conviction requiring a person to register as a sex offender pursuant to section 290  
 1214 of the Penal Code.  
 1215 (5) Conviction or act involving lewd conduct or sexual impropriety.  
 1216 (6) Conviction or act involving assault, battery, or other violence.  
 1217 (7) Conviction or act involving the use of drugs or alcohol to an extent or in a manner  
 1218 dangerous to the individual or the public.  
 1219 (8) Conviction or act involving harassment, trespass, or stalking.

1220  
 1221 Note: Authority cited: Sections 481, 493, and 2930, Business and Professions Code.  
 1222 Reference: Sections 141, 480, 481, 490, 493, 2960, and 2963, and 2964.3 Business  
 1223 and Professions Code.

- 1224  
 1225 2. Amend Section 1395 of Article 7 of Division 13.1 of Title 16 of the California  
 1226 Code of Regulations to read:

1227  
 1228 **§ 1395. Rehabilitation Criteria for Denials and Reinstatements.**  
 1229 When considering the denial of a license or registration under section 480 of the Code,  
 1230 or a petition for reinstatement under section ~~11522 of the Government Code~~ 2962 of the  
 1231 Code, the Board ~~in~~ will evaluate ~~ing~~ whether the applicant or petitioner has made a  
 1232 showing of rehabilitation of the applicant and his or her has established present  
 1233 eligibility/fitness for a license or registration.  
 1234 (a) Where the denial is, or the surrender or revocation was, in part on the ground(s) that  
 1235 the applicant or petitioner was convicted of a crime, the Board shall consider whether  
 1236 the applicant or petitioner made a showing of rehabilitation only if the person completed  
 1237 the criminal sentence at issue without a violation of parole or probation. In making this  
 1238 determination, the Board shall will consider the following criteria, as available:  
 1239 (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for  
 1240 denial.  
 1241 (2) The reason for granting and the length(s) of the applicable parole or probation  
 1242 period(s).  
 1243 (3) The extent to which the applicable parole or probation period was shortened or  
 1244 lengthened, and the reason(s) the period was modified.  
 1245 (4) The terms or conditions of parole or probation and the extent to which they bear on  
 1246 the applicant's or petitioner's rehabilitation.  
 1247 (5) The extent to which the terms or conditions of parole or probation were modified,  
 1248 and the reason(s) for modification.

1249

1250 (b) Where the denial is, or the surrender or revocation was not based on a conviction, or  
1251 the Board determines that the applicant or petitioner did not make a showing of  
1252 rehabilitation based on the criteria in subdivision (a), the Board shall apply the following  
1253 criteria in evaluating an applicant's or petitioner's rehabilitation:  
1254 ~~(2)(1)~~ Evidence of any act(s) committed subsequent to the act(s) or crime(s) ~~under~~  
1255 ~~consideration as~~ that are grounds for denial, or that were grounds for surrender or  
1256 revocation, which also could be considered as grounds for denial under section 480 of  
1257 the Code, and the time that has elapsed between them.  
1258 ~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in~~  
1259 ~~subdivision (1) or (2).~~  
1260 ~~(4)(2)~~ The extent to which the applicant or petitioner has complied with any terms of  
1261 parole, probation, restitution, or any other sanctions lawfully imposed against the  
1262 applicant or petitioner.  
1263 (3) The criteria in subdivision (a)(1)-(5), as applicable.  
1264 ~~(5)(4)~~ Evidence, if any, of rehabilitation submitted by the applicant demonstrating that  
1265 the applicant or petitioner has a mature, measured appreciation of the gravity of the  
1266 misconduct and remorse for the harm caused. Evidence should also show a  
1267 demonstrated course of conduct by the applicant or petitioner that convinces and  
1268 assures the Board that the public will be safe if the person is permitted to be licensed or  
1269 registered to practice psychology.

1270  
1271 Note: Authority cited: Sections 482 and 2930, Business and Professions Code.  
1272 Reference: Sections 480, 482, 2960, 2962 and 2963, Business and Professions Code.  
1273

1274 3. Amend Section 1395.1 of Article 7 of Division 13.1 of Title 16 of the California  
1275 Code of Regulations to read:

1276  
1277 **§ 1395.1. Rehabilitation Criteria for Suspensions or Revocations.**  
1278 When considering the suspension or revocation of a license or registration ~~on the~~  
1279 ~~ground that~~ of a person holding a license or registration under the Psychology Licensing  
1280 Law (chapter 6.6 of division 2 of the Code) ~~has been convicted of a crime,~~ the Board ~~in~~  
1281 ~~will evaluate~~ ing whether the licensee or registrant has made a showing of the  
1282 rehabilitation of such person and his or her eligibility and is presently fit for a license or  
1283 registration.  
1284 (a) Where the basis for discipline is the conviction of a crime, the Board shall consider  
1285 whether the licensee or registrant has made a showing of rehabilitation only if the  
1286 person completed the criminal sentence at issue without a violation of parole or  
1287 probation. In making this determination, the Board shall will consider the following  
1288 criteria, as available:  
1289 (1) Nature and severity of the act(s) or offense(s) crime(s).  
1290 (2) The reason for granting and the length(s) of the applicable parole or probation  
1291 period(s).  
1292 (3) The extent to which the applicable parole or probation period was shortened or  
1293 lengthened, and the reason(s) the period was modified.

1294 (4) The terms or conditions of parole or probation and the extent to which they bear on  
1295 the licensee's or registrant's rehabilitation.

1296 (5) The extent to which the terms or conditions of parole or probation were modified,  
1297 and the reason(s) for modification.

1298

1299 (b) Where the basis for discipline is not based on a conviction, or the Board determines  
1300 that the licensee or registrant did not make a showing of rehabilitation based on the  
1301 criteria in subdivision (a), the Board shall apply the following criteria in evaluating the  
1302 licensee's or registrant's rehabilitation:

1303 (2) Total criminal record and/or record of discipline or other enforcement action.

1304 (3) The time that has elapsed since commission of the act(s) or offense(s) crime(s).

1305 (4) Whether the licensee or ~~registration holder~~ registrant has complied with any terms of  
1306 parole, probation, restitution or any other sanctions lawfully imposed against such  
1307 person.

1308 (5) If applicable, evidence of expungement ~~dismissal~~ proceedings pursuant to section  
1309 1203.4 of the Penal Code.

1310 (6) The criteria in subdivision (a)(1)-(5), as applicable.

1311 (7) Evidence, if any, of rehabilitation submitted by the licensee or ~~registration holder~~  
1312 registrant demonstrating that the licensee or registrant has a mature, measured  
1313 appreciation of the gravity of the misconduct and remorse for the harm caused.

1314 Evidence should also show a demonstrated course of conduct by the licensee or  
1315 registrant that convinces and assures the Board that the public will be safe if the person  
1316 is permitted to remain licensed or registered to practice psychology.

1317

1318 Note: Authority cited: Sections 482 and 2930, Business and Professions Code.

1319 Reference: Sections 482, 2960 and 2963, Business and Professions Code.

1320

1321 4. Amend Section 1395.2 of Article 7 of Division 13.1 of Title 16 of the California  
1322 Code of Regulations to read:

1323

1324 **§ 1395.2. Disciplinary Guidelines and Uniform Standards Related to Substance**  
1325 **Abusing Licensees.**

1326 (a) In reaching a decision on a disciplinary action under the administrative adjudication  
1327 provisions of the Administrative Procedure Act (Government Code Section 11400 et  
1328 seq.), the Board of Psychology shall consider and apply the "Disciplinary Guidelines and  
1329 Uniform Standards related to Substance Abusing Licensees (~~4/15~~insert Board approval  
1330 date)," which is hereby incorporated by reference.

1331 (b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the  
1332 licensee shall be presumed to be a substance-abusing licensee for purposes of section  
1333 315 of the Code. If the licensee does not rebut that presumption, in addition to any and  
1334 all other relevant terms and conditions contained in the Disciplinary Guidelines, the  
1335 terms and conditions that incorporate the Uniform Standards Related to Substance  
1336 Abusing Licensees shall apply as written and be used in the order placing the license on  
1337 probation.

1338 (c) Deviation from the Disciplinary Guidelines, including the standard terms of probation,  
1339 is appropriate where the Board of Psychology in its sole discretion determines that the  
1340 facts of the particular case warrant such a deviation; for example: the presence of  
1341 mitigating or aggravating factors; the age of the case; or evidentiary issues.  
1342

1343 Note: Authority cited: Section 2930, Business and Professions Code. Reference:  
1344 Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963,  
1345 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code;  
1346 and Section 11425.50(e), Government Code

1347 **HISTORY**

1348 1. Renumbering of former section 1397.12 to new section 1395.2, including amendment  
1349 of section heading, section and Note, filed 8-3-2016; operative 1-1-2017 (Register 2016,  
1350 No. 32).

1351

1352 **Agenda Item #18: Outreach and Education Updates**

1353

1354 **a) Website**

1355

1356 Mr. Glasspiegel provided the website update.

1357

1358 **b) Social Media**

1359

1360 Mr. Glasspiegel provided the social media update.

1361

1362 **c) Newsletter**

1363

1364 Ms. Sorrick provided the Board with the *Winter Journal*. She stated the *Spring Journal* is  
1365 currently in review.

1366

1367 **d) Outreach Activities**

1368

1369 Ms. Sorrick provided the outreach activities update.

1370

1371 **e) DCA Brochure “Professional Therapy Never Includes Sex” – Update**

1372

1373 Ms. Sorrick provided the Board with a progress update on the revisions to the DCA  
1374 Brochure “Professional Therapy Never Includes Sex.”

1375

1376 **Agenda Item #19: Enforcement Report**

1377

1378 Dr. Phillips noted that the Enforcement Committee has not met since the November  
1379 Board Meeting and would be meeting in March to discuss enforcement related issues  
1380 including review of the Child Custody Stakeholder Meeting information.

1381

1382 Ms. Monterrubio provided the Board with the enforcement report. Dr. Horn had a  
1383 question regarding the rate of out-of-compliance probationers and whether that number  
1384 is high. Ms. Monterrubio noted that the number is pretty average and that probationers  
1385 can be confused about the terms and conditions in their orders which is why the Board's  
1386 probation monitor goes over the entire order at the probation intake meeting.

1387

1388 **Agenda Item #20: Licensing Report**

1389

1390 Ms. Cheung provided the Board with the licensing report.

1391

1392 **Agenda Item #21: Continuing Education and Renewals Report**

1393

1394 Ms. Burns provided the Board with the continuing education and renewals report.

1395

1396 Dr. Horn asked about the continuing education audit data related to citations upheld and  
1397 what that means. Ms. Burns explained the appeals process for continuing education  
1398 citations and how citations may be revised or withdrawn due to mitigating evidence  
1399 presented at Informal Conferences.

1400

1401 Dr. Harb Sheets asked a question about renewals and what the Board is doing to get  
1402 the message out to licensees about that renewing online happens immediately as  
1403 where sending a check takes a significant amount of time to be processed. Ms. Burns  
1404 mentioned that the Board writes a number of newsletter articles on the subject and  
1405 educates licensees when they call about the four (4) to six (6) weeks it can take to  
1406 process the paper renewal. Ms. Burns also provided an explanation of the process and  
1407 timeline for processing of paper renewals. Dr. Harb Sheets mentioned that detailing this  
1408 process and the timeline could be a future newsletter article.

1409

1410 Dr. Tate stated that the continuing education requirements are well known so she is  
1411 astounded that there is such a low continuing education audit passage rate. Dr. Horn  
1412 mentioned that the Licensing Committee was looking into the high failure rate for the  
1413 continuing education audits to see where the problems are and where the confusion  
1414 might lie. Ms. Burns mentioned the broad spectrum of reasons that cause licensees to  
1415 fail.

1416

1417 Dr. Casuga mentioned that under the Strategic Plan adopted by the Board, licensed  
1418 Board Members will now be audited for continuing education requirements each cycle  
1419 and wondered when this would start. Ms. Burns mentioned that staff still have to do the  
1420 action planning for the Strategic Plan during which implementation timelines would be  
1421 discussed.

1422

1423 Dr. Harb Sheets mentioned the importance of educating licensees regarding when they  
1424 renew, they are certifying that their continuing education has been completed at that  
1425 time. Ms. Burns mentioned that staff uses educational letters to inform licensees about  
1426 this when it comes up in the audit process that the licensee certified 36 hours of

1427 continuing education on their renewal but completed some of those hours after they  
1428 submitted their renewal but before their expiration date.

1429  
1430 Dr. Phillips highlighted the issue that licensees who fail their audit get audited a second  
1431 time during their next renewal and how startling it is that so many are failing the second  
1432 audit. He stated that this was remarkable and seems so at odds with being a licensed  
1433 psychologist, so it will be interesting to hear more about this as Licensing Committee  
1434 looks into this.

1435  
1436 Ms. Sorrick also mentioned that as part of the newly adopted Strategic Plan, the Board  
1437 would be moving to Paper Lite processes and the goal to move all renewals online by  
1438 2020, either using BreZE or downloading the application from the Board's website and  
1439 stopping the automated paper renewal coupon that is mailed to licensees. Ms. Jones  
1440 commented that she appreciated the move to Paper Lite processes, but also expressed  
1441 concerns that we need to ensure that licensees are educated about this transition and  
1442 that they can get help from staff during this transition process. She noted that there is a  
1443 generational gap in how we deal with technology and her hope that the Board would  
1444 continue to connect with and educate licensees not just through the written word. Ms.  
1445 Burns noted that staff resources would need to be dedicated to helping licensees  
1446 through this transition.

1447  
1448 **Agenda Item #22: Licensing Committee Report and Consideration of Committee**  
1449 **Recommendations**

1450  
1451 **a) Foreign Degree Evaluation Process Presentation for Discussion: National**  
1452 **Association of Credential Evaluation Services (NACES) and National Register of Health**  
1453 **Service Psychologist (NRHSP) relating to Business and Professions Code Section 2914**  
1454

1455 Dr. Horn stated that the Licensing Committee and Board staff are working on amending  
1456 BPC section 2914 to allow NRHSP as an acceptable evaluator of foreign degrees for  
1457 the Board and to ensure applicants get a good evaluation that will tell the Board what it  
1458 needs to know for licensure purposes. Dr. Tate clarified that NACES is the only  
1459 approved evaluator currently. Dr. Horn confirmed this to be correct.

1460  
1461 Mr. Foo mentioned that the Board received public comment supporting the addition of  
1462 NRHSP as an evaluator of foreign degrees and that was part of the Board meeting  
1463 materials.

1464  
1465 **b) Informational Video for Supervisors: Discussion and Recommendations for Content**  
1466 **to be Included in the Video**

1467  
1468 Dr. Horn stated that the Licensing Committee agreed that an informational video for  
1469 supervisors would be an additional resource for current supervisors and may be used  
1470 as a guiding tool to prepare a licensee who will assume the role as a supervisor in the  
1471 future.

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Dr. Schaeffer stated that on the second Saturday in March, Division II will be having a conference on the topic of supervision. She stated that if the Board wanted to provide something such as a survey of what should be on the supervision video, she would be willing to send it out to the attendees and CAPIC members.

Ms. Sorrick stated that Board staff will be attending the supervision conference Dr. Schaefer is referring to since that staff member will be working on the Pathways to Licensure regulatory package.

**Agenda Item #23: Legislative Update – Discussion and Possible Action**

**a) Overview of 2019 Legislative Visits with the Chairs and Vice-Chairs of the Senate Business, Professions and Economic Development Committee and Assembly Business and Professions Committees**

Mr. Foo provided a summary of the legislative visits held on February 6, 2019. He mentioned the Board Members and staff that attended these meetings and the topics of discussion at these meetings.

Board Members discussed their experience during the legislative visit, the high turnout for the meetings, the great conversations at the meetings, and the benefits of having these meetings.

**b) Board Sponsored Legislation for the 2019 Legislative Session: Review and Possible Action**

**2) Update on Revisions to Sections 2940-2944 of the Business and Professions Code Regarding Examinations and Addition of New Section to the Business and Professions Code Regarding Voluntary Surrender**

Mr. Foo provided an update to the Board.

**Agenda Item #25: Regulatory Update, Review, and Consideration of Additional Changes**

Mr. Glasspiegel provided the regulatory update.

**Agenda Item #27: Recommendations for Agenda Items for Future Board Meetings. Note: The Board May Not Discuss or Take Action on Any Matter Raised During This Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code Sections 11125 and 11125.7(a)]**

No Board or public comments were made regarding specific agenda items for future board meetings.

1517  
1518 Meeting adjourned at 4:15 p.m.

1519  
1520  
1521

1522 President

---

Date

1523

DRAFT

**Department of Consumer Affairs**  
**Board of Psychology**

April 24-26, 2019 Board Meeting  
Los Angeles, CA

**Hand-Carry**  
**Agenda Item**

- Agenda Item 14 – Budget Report

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019                                     |
| <b>TO</b>      | Board of Psychology                               |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator |
| <b>SUBJECT</b> | Agenda Item #15(a): Website Update                |

### **Website Background:**

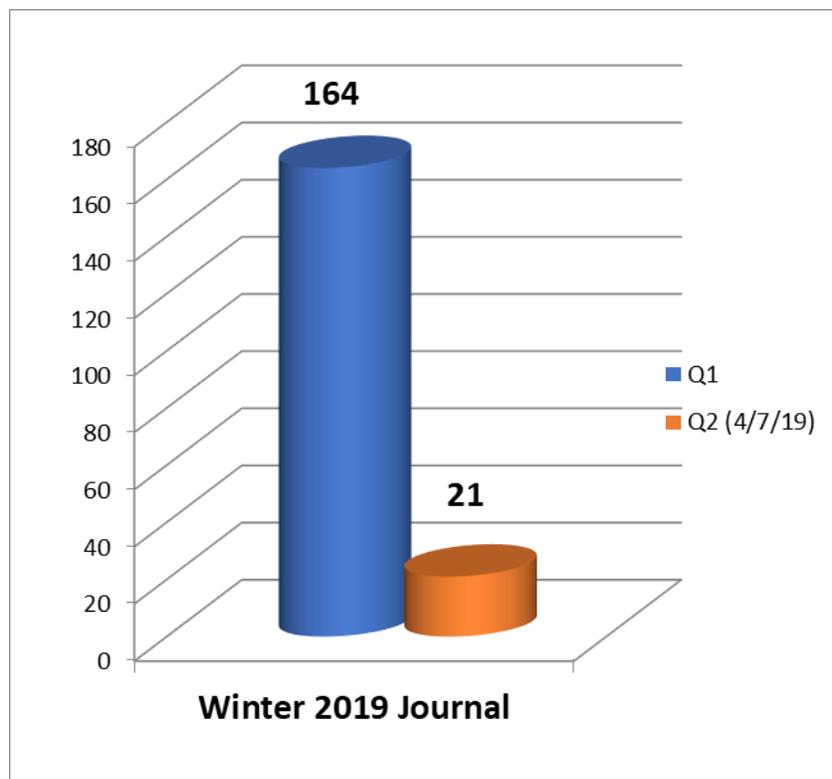
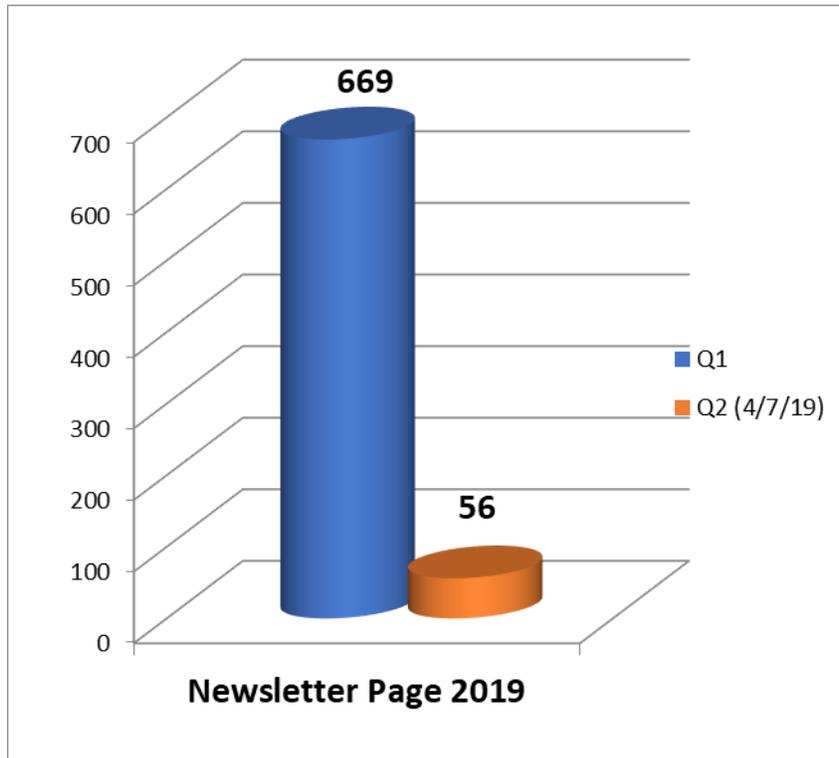
Website: [www.psychology.ca.gov](http://www.psychology.ca.gov)

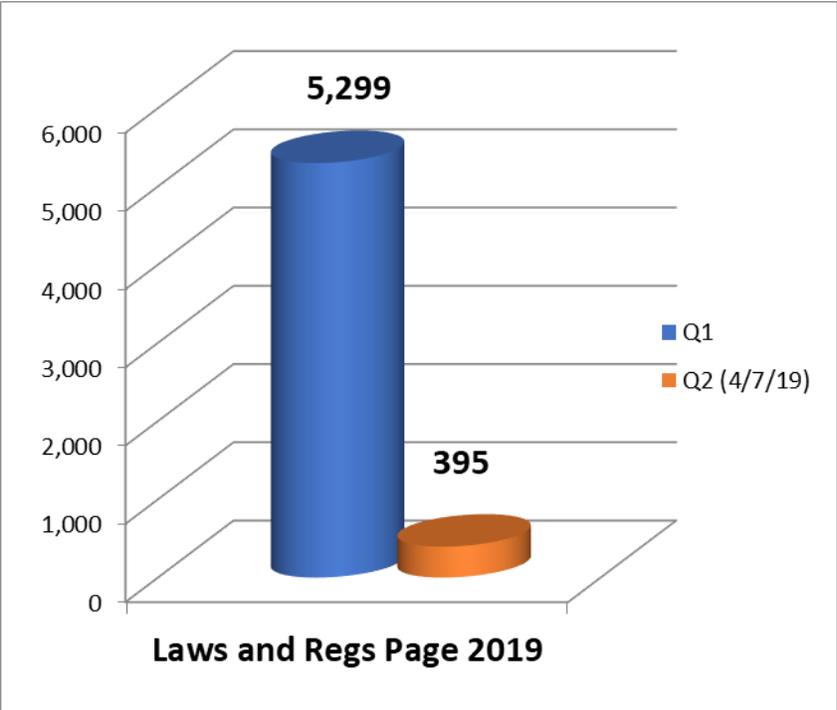
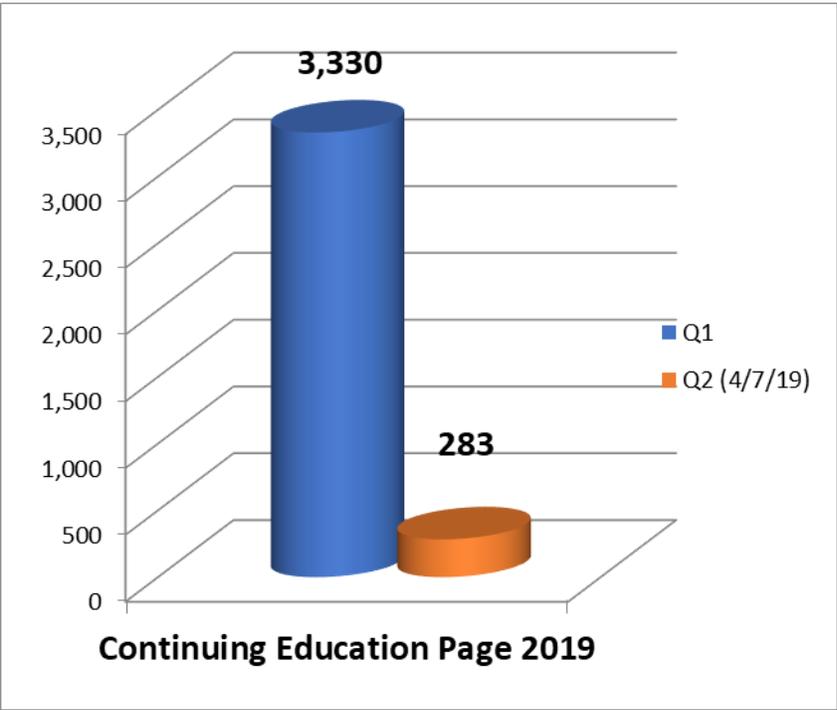
Below and on the following pages please find the top five web pages viewed between January 18, 2019 and April 7, 2019.

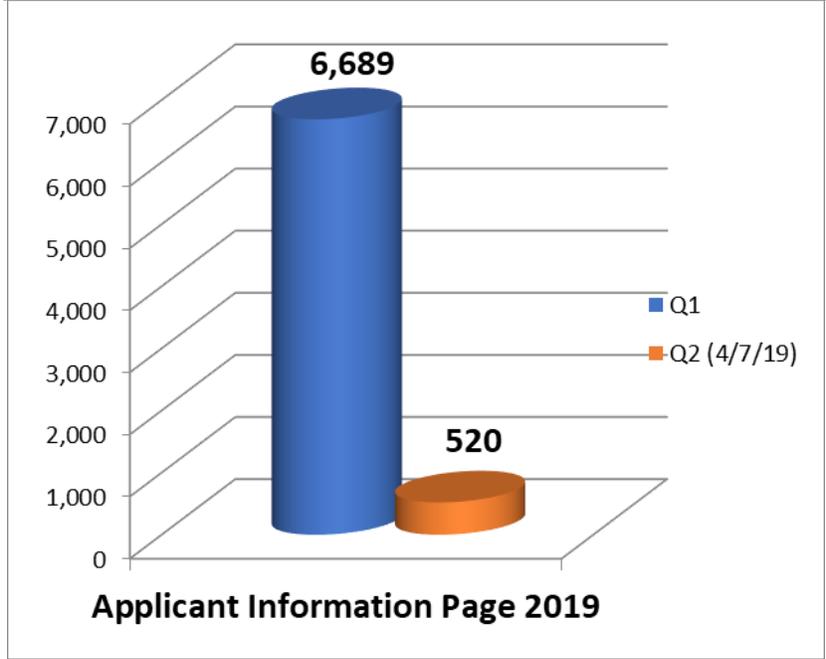
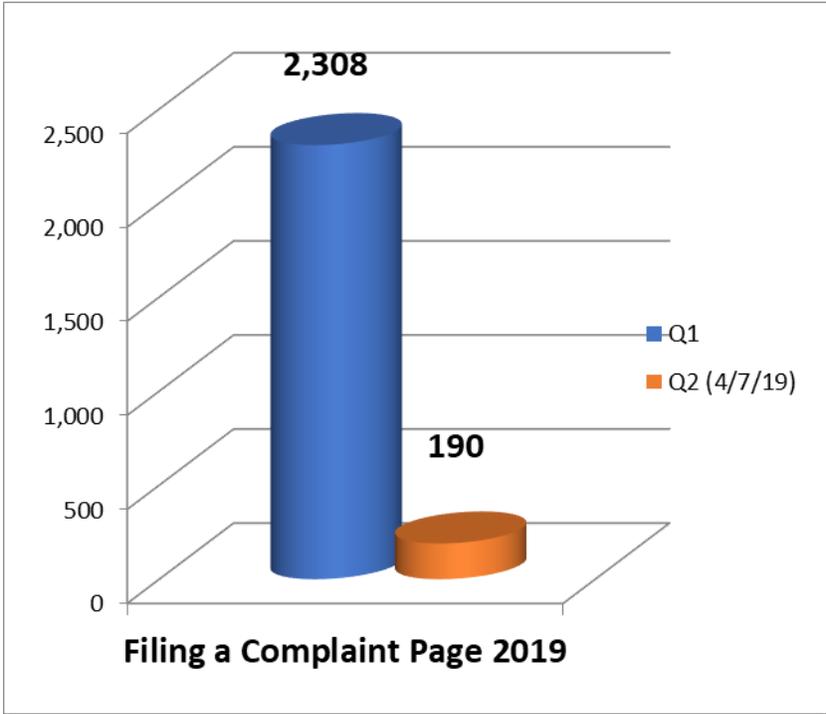
| TOP FIVE PAGES                 | # OF VIEWS | CONTENT   |
|--------------------------------|------------|---|
| /licensees/index.shtml         | 9,170      | Licensee and Registrant Information Page              |
| /applicants/psychologist.shtml | 8,301      | Psychologist Applicant Page                           |
| /about_us/breeze.shtml         | 7,105      | BreEZe Online Services – First Time User Instructions |
| /applicants/index.shtml        | 5,910      | Applicant Information Page                            |
| /applicants/license.shtml      | 5,690      | Qualifications for Licensure as a Psychologist        |

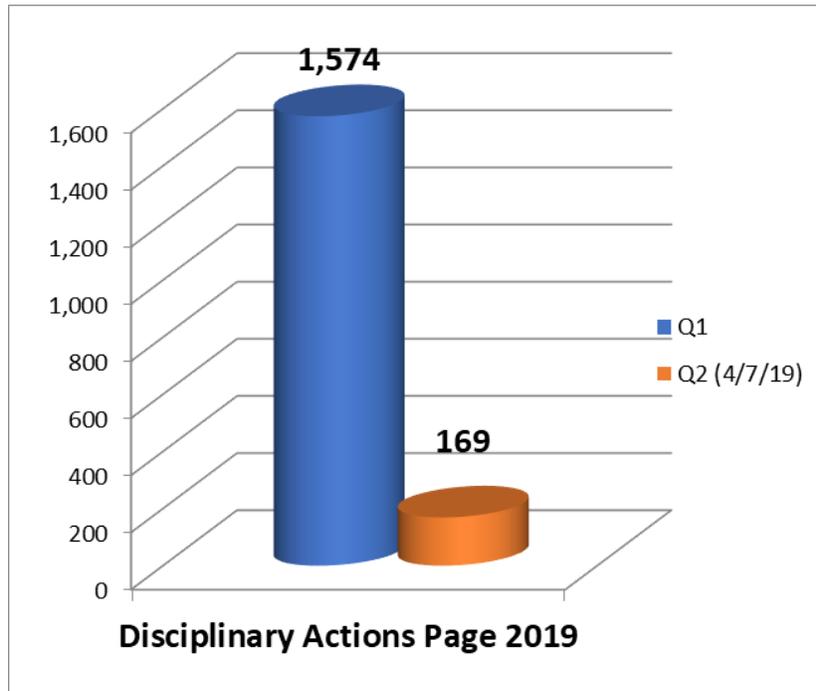
Below please find the 2018 viewings for the following pages by quarter:

- Newsletter page
- Most Recent Newsletter
- Continuing Education Page
- Laws and Regulations Page
- Filing a Complaint Page
- Applicant Information Page
- Disciplinary Actions Page









**Regulatory and Legislative Advisories**

**Views to Date**

|  |        |
|--|--------|
| AB 282 (Jones-Sawyer) – Aiding, Advising, or Encouraging Suicide | 34     |
| AB 2138 (Chiu) – Licensing Boards: Denial of Application         | 27     |
| AB 2968 (Levine) – Psychotherapist-Client Relationship           | 48     |
| AB 89 (Levine) – Psychologists: Suicide Prevention Training      | 10,291 |
| SB 547 (HILL) – Omnibus (Delinquent Fee Change)                  | 3,677  |
| Verification of Experience Regulation                            | 18,565 |

**Website User-Friendliness Review**

In coordination with SOLID, staff held two website focus group meetings on February 25, 2019 in Los Angeles and on March 11, 2019 in Sacramento. A variety of stakeholders participated in these focus group meetings, including licensees, applicants/students, graduate school program representatives, and mental health organizations. There were rich discussions by the participants regarding the organization, content, and look of the Board’s website and a number of suggestions for improvement were provided to the Board. SOLID has summarized these recommendations into a report to Board Staff. Board Staff will be discussing the report with the Outreach and Education Committee at its next meeting.

**Action Requested:**

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

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019                                     |
| <b>TO</b>      | Board of Psychology                               |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator |
| <b>SUBJECT</b> | Agenda Item #15(b): Social Media Update           |

### **Background:**

- a) Facebook: <https://www.facebook.com/BoardofPsychology>

Total “Likes”: 585 (For “Likes” over time, please see attached chart)

Most popular post since the last Board meeting:

2/12/2019 – To learn about three laws that went into effect in 2019 related to (applications, therapy never includes sex brochure, and End of Life Option Act changes), check out the 2018 legislative advisories – 288 views, 25 “Post Clicks”, 8 “Likes”.

- b) Twitter: <https://twitter.com/CABDofPsych>

Followers: 334 (For Followers over time, please see attached chart)

Following: 531

Total Tweets: 816

- c) Board/Committee Meeting Webcast:

### **2019**

February 7<sup>th</sup> – 70 Views

February 8<sup>th</sup> – 102 Views

### **2018**

November 15<sup>th</sup> – 107 Views

November 16<sup>th</sup> – 136 Views

August 16<sup>th</sup> – 172 Views

August 17<sup>th</sup> – 208 Views

June 29<sup>th</sup> – 62 Views (EPPP2)

May 10<sup>th</sup> – 141 Views

May 11<sup>th</sup> – 135 Views

April 24<sup>th</sup> – 192 Views (Licensing)

April 5<sup>th</sup> – 90 Views (EPPP2)

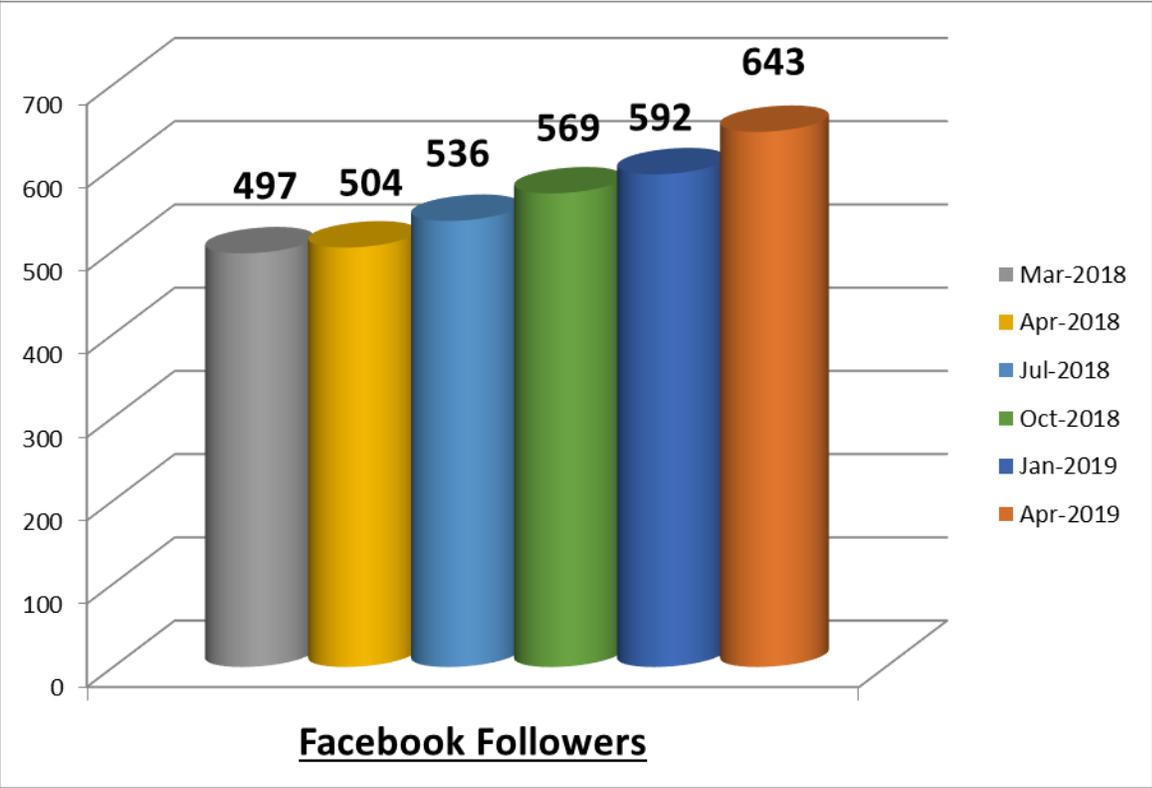
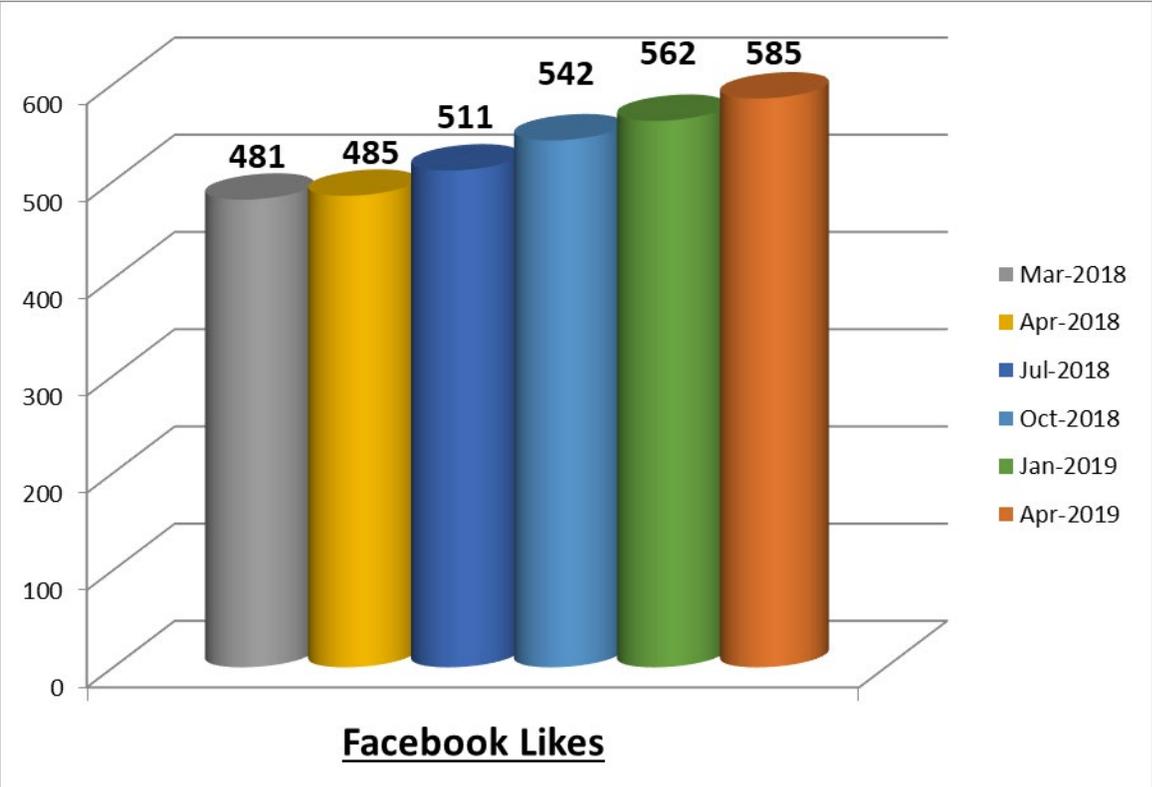
d) YouTube:

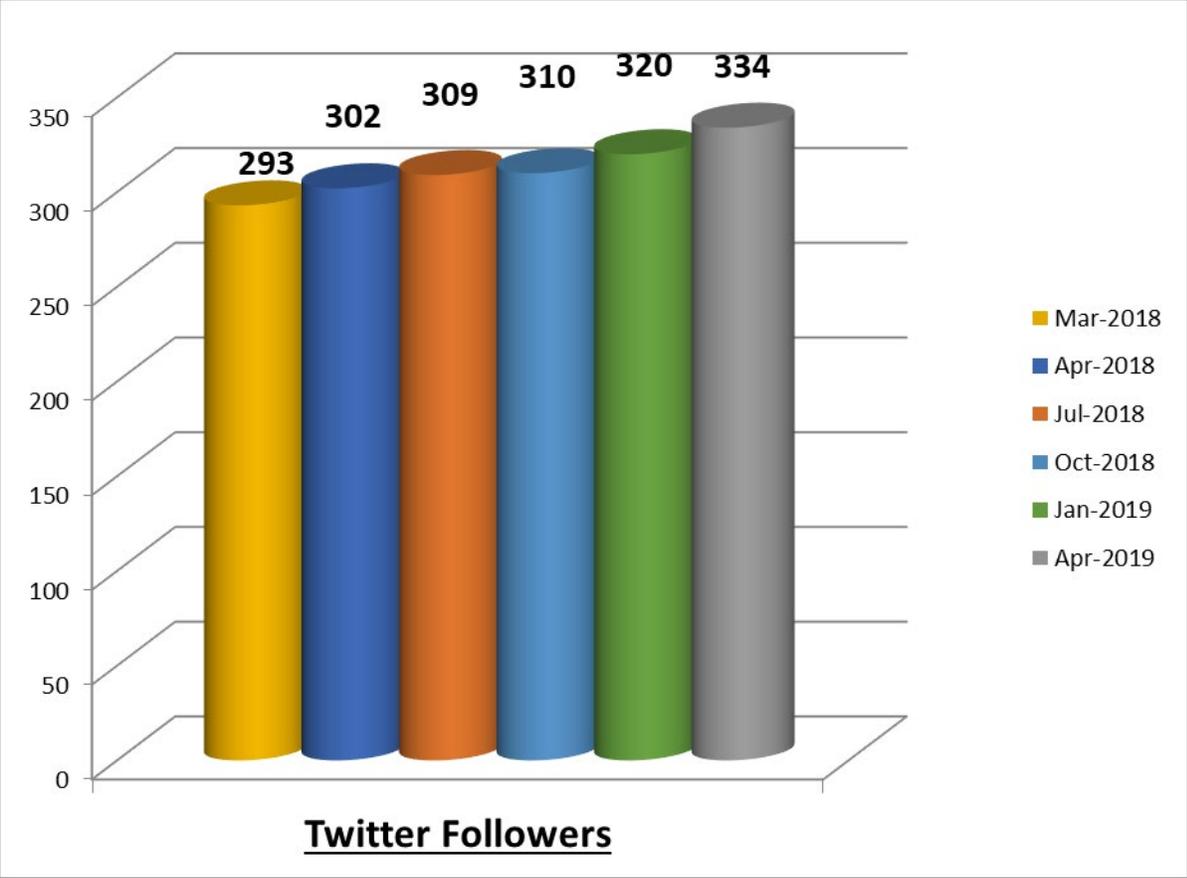
All videos have been removed from the website due to changes in the application process made by the passage of the Board's sunset extension bill (SB 1193).

The Board is working with DCA's Office of Public Affairs to update the videos and re-post as soon as possible.

**Action Requested:**

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





## MEMORANDUM

|                |                                      |
|----------------|--------------------------------------|
| <b>DATE</b>    | March 25, 2019                       |
| <b>TO</b>      | Psychology Board Members             |
| <b>FROM</b>    | Antonette Sorrick, Executive Officer |
| <b>SUBJECT</b> | Agenda Item 15(c): Newsletter        |

**Background:**

Attached is the Board's *Spring Journal*. The *Summer Journal* will go out in July 2019.

**Action Requested:**

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

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 22, 2019                         |
| <b>TO</b>      | Psychology Board Members               |
| <b>FROM</b>    | Antonette Sorrick, Executive Officer   |
| <b>SUBJECT</b> | Agenda Item 15(d): Outreach Activities |

### Stakeholder Meetings FY 2018-19

#### **BOARD OR DCA APPROVED OUTREACH**

- 8/13/18 – Dr. Stephen Phillips, Mr. Seyron Foo and Mrs. Antonette Sorrick attended the ASPPB Board of Director’s luncheon meeting in San Francisco, CA. The EPPP Part 2 Examination will be discussed at the meeting.
- 9/21/18 – Stakeholder meeting regarding child custody with child custody advocates, Board of Behavioral Sciences, Department of Consumer Affairs, Senate and Assembly Judiciary and Committee staff, and Senate and Assembly Business and Professions Committee staff.
- 10/27/18 – Dr. Phillips attended the LACPA Convention in Los Angeles.
- 2/6/19 – Board Members Casuga, Tate, Phillips, Foo, Harb Sheets and Board staff participated in legislative visits with Senate and Assembly Business and Professions Committee Chairs, Vice Chairs, and new membership. Issues discussed included a recap on 2018 legislation and newly proposed legislation from the Board.
- 2/25/19 - Ms. Bernal, Mrs. Sorrick and Mrs. Burns attended a website focus group with stakeholders in Los Angeles.
- 3/11/19 - Mrs. Sorrick and Mrs. Burns attended a website focus group with stakeholders in Sacramento.
- Ms. Mai Xiong participated in and give introductory remarks at “*Recent Insights into Competency-Based Assessment & Evaluation: Advancing Clinical Supervision*” CPA Division II meeting in Los Angeles on Saturday, March 16.
- Dr. Phillips and Mrs. Sorrick were approved to attend the Mid-Year Meeting for the Association of State and Provincial Psychology Boards (ASPPB) in Santa Fe, NM. Dr. Phillips spoke about the roles of board members vs. guild members and Mrs. Sorrick spoke about onboarding for new board members.

**OTHER OUTREACH**

- 10/17-21/18 - Dr. Jacqueline Horn attended the Annual Meeting for the ASPPB in Salt Lake City, Utah

**REQUESTS**

- None

**FUTURE REQUESTS**

- None

**Action Requested:**

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

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | March 25, 2019   |
| <b>TO</b>      | Psychology Board Members   |
| <b>FROM</b>    | Antonette Sorrick, Executive Officer   |
| <b>SUBJECT</b> | Agenda Item 15(e): DCA Brochure "Professional Therapy Never Includes Sexual Behavior" – Update |

### **Background:**

In 2011, the Department of Consumer Affairs (DCA) made some minor edits to the publication "Professional Therapy Never Includes Sex." With the proliferation of technology and social media, staff recommends the brochure be reviewed for necessary updates. The Outreach and Education Committee recommended staff proceed with working with the Medical Board of California (MBC) and the Board of Behavioral Sciences (BBS) to update the title and content of this brochure. The project was separated into five phases:

- 1) Staff at all three boards will review the content and include suggested amendments - completed
- 2) Licensees (experts) from all three boards will review the suggested amendments and make final edits to the publication – completed
- 3) Medical Board, Osteopathic Medical Board, Board of Behavioral Sciences Board all to share draft brochure with their respective boards and provide feedback to Department of Consumer Affairs' (DCA) Publication Unit
- 4) Publication Unit to send draft back to all four boards
- 5) Boards provide final feedback to DCA

At the February 2018 Board Meeting, the Board provided edits to the draft document. After, staff forwarded the updated draft to Osteopathic Medical Board. No additional edits were made. On April 26, Dr. Casuga notified staff that an edit was missing from the draft brochure. On September 26, Governor Brown signed AB 2698 which addressed changes to B&P Code sections 337 and 728. At the November Board Meeting, the Board made some technical non-substantive changes to the brochure. All three boards reviewed the draft and a final draft has been sent to DCA for design and publication.

### **Action Requested:**

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

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 4, 2019                             |
| <b>TO</b>      | Board Members                             |
| <b>FROM</b>    | Stephanie Cheung<br>Licensing Manager     |
| <b>SUBJECT</b> | <b>Agenda Item 19</b><br>Licensing Report |

### Outreach:

The Board's Licensing and BreZE Coordinator, Ms. Mai Xiong, attended the California Psychological Association (CPA) Division II Conference for directors and clinical supervisors of psychology trainees on March 16, 2019. Ms. Xiong provided an update relating to the Licensing Committee's plan in developing and seeking stakeholders' input on informational videos on regulations, FAQs, and best practices for supervision. She emphasized the importance of completing the Supervision Agreement prior to the beginning of supervised professional experience and its submission procedure. She also shared the Board's decision on the Examination for Professional Practice in Psychology Part 2 at the February 2019 Board meeting, and provided copies of the new Strategic Plan (2019-2023) booklet to attendees.

### License/Registration Data by Fiscal Year:

| License & Registration         | 10/11  | 11/12  | 12/13  | 13/14 | 14/15  | 15/16  | 16/17  | 17/18  | 18/19** |
|--------------------------------|--------|--------|--------|-------|--------|--------|--------|--------|---------|
| <b>Psychologist*</b>           | 21,527 | 22,020 | 22,688 | ***   | 20,575 | 20,024 | 20,580 | 21,116 | 21,482  |
| <b>Psychological Assistant</b> | 1,507  | 1,635  | 1,727  | ***   | 1,701  | 1,466  | 1,446  | 1,361  | 1,412   |
| <b>Registered Psychologist</b> | 312    | 320    | 349    | ***   | 280    | 278    | 250    | 179    | 147     |

\*Current and Current Inactive

\*\*As of April 4, 2019

\*\*\*Statistics unavailable

Please refer to the Licensing Population Report (Attachment A) for statistics on the different license statuses across the three types of license and registration.

### Application Workload Reports:

The attached reports provide statistics on the application status by month for each of the license and registration types (see Attachment B). The Board has included data for the past six months in order to show the dynamic nature of the application process. On each report, the type of transaction is indicated on the x-axis of the graphs. The different

types of transactions and the meaning of the transaction status are explained below for the Committee's reference.

### Psychologist Application Workload Report

"Exam Eligible for EPPP" (Examination for Professional Practice in Psychology) is the first step towards licensure. In this step, an applicant has applied to take the EPPP. An application with an "open" status means it is deficient or pending initial review.

"Exam Eligible for CPLEE" (California Psychology Law and Ethics Exam) is the second step towards licensure. In this step, the applicant has successfully passed the EPPP and has applied to take the CPLEE. An application with an "open" status means it is deficient, pending review, or it is an applicant that is waiting for approval to re-take the examination when the new form becomes available in the next quarter.

"CPLEE Retake Transaction" is a process for applicants who hold special credentials, like a Certification of Professional Qualification (CPQ), credentialed as a Health Service Provider in Psychology by the National Register of Health Service Providers in Psychology (NRHSPP), or certified by the American Board of Professional Psychology (ABPP), and are required to re-take the CPLEE. This process is also created for licensees who are required to take the CPLEE due to probation. An "open" status application has the same meaning as that in the transaction for "Exam Eligible for CPLEE"

"Initial App for Psychology Licensure" is the last step of licensure. This transaction captures the number of licenses that are issued if the status is "approved" or pending additional information when it has an "open" status.

### Psychological Assistant Application Workload Report

Psychological Assistant registration application is a single-step process. The "Initial Application" transaction provides information regarding the number of registrations issued as indicated by an "approved" status, and any pending application that is deficient or pending initial review is indicated by an "open" status.

Since all psychological assistants hold a single registration number, an additional mechanism, the "Change of Supervisor" transaction, is created to facilitate the process for psychological assistants who wishes to practice with more than one primary supervisor or to change primary supervisors. A change is processed when all information is received, thus there is no open status for this transaction type.

### Registered Psychologist Application Workload Report

Registered Psychologist registration application is also a single-step process. The "Initial Application" transaction provides information regarding the number of

registrations issued as indicated by an “approved” status, and any pending application that is deficient or pending initial review is indicated by an “open” status.

**Attachments:**

- A. Licensing Population Report as of April 4, 2019
- B. Application Workload Reports as of March 31, 2019
- C. Applications Received April 2018 – March 2019 as of April 3, 2019
- D. Examination Statistics March 2018 – February 2019

**Action:**

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



STATE DEPARTMENT OF CONSUMER AFFAIRS  
BREEZE SYSTEM

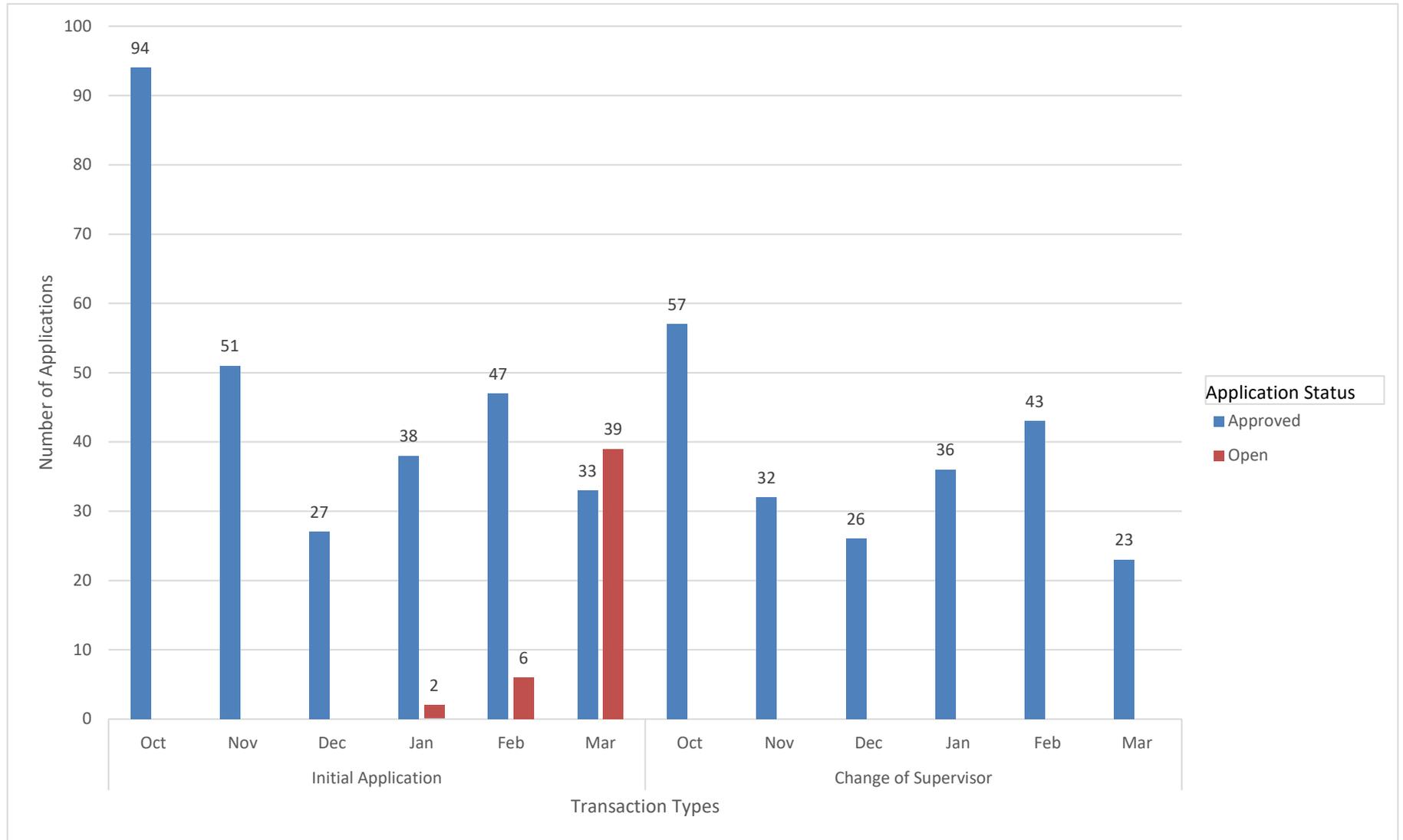


LICENSING POPULATION REPORT  
BOARD OF PSYCHOLOGY  
AS OF 4/4/2019

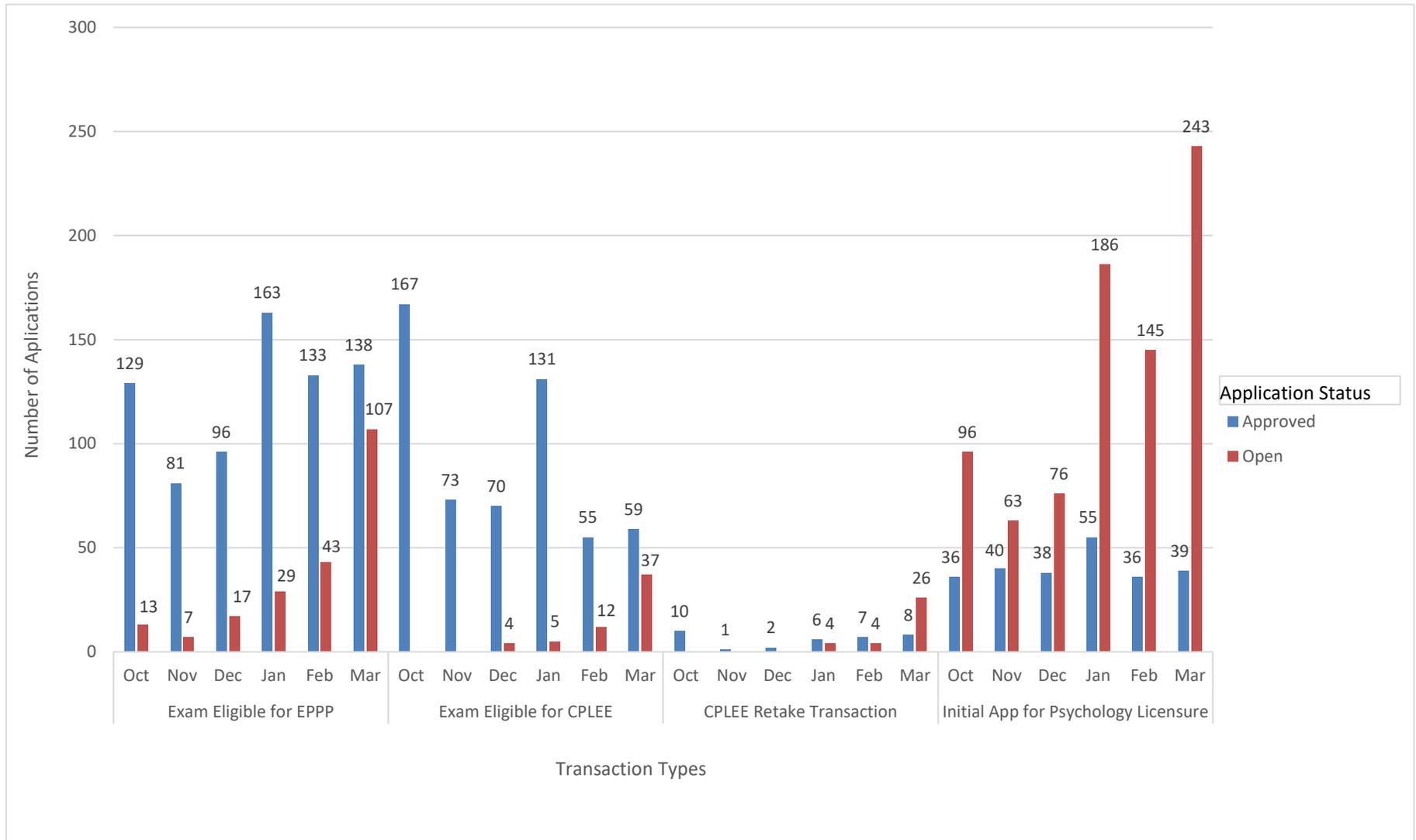
| License Type            | STATUS CODES  |              |              |               |            |             |            |            | Total         |
|-------------------------|---------------|--------------|--------------|---------------|------------|-------------|------------|------------|---------------|
|                         | Licensing     |              |              |               |            | Enforcement |            |            |               |
|                         | 20            | 21           | 45           | 50            | 85         | 48          | 63         | 65         |               |
| Psychologist            | 18,583        | 2,899        | 1,181        | 6,097         | 990        | 0           | 217        | 146        | 30,113        |
| Psychological Assistant | 1,412         | 0            | 61           | 21,083        | 8          | 0           | 8          | 7          | 22,579        |
| Registered Psychologist | 147           | 0            | 0            | 4,466         | 1          | 0           | 0          | 0          | 4,614         |
| <b>Total</b>            | <b>20,142</b> | <b>2,899</b> | <b>1,242</b> | <b>31,646</b> | <b>999</b> | <b>0</b>    | <b>225</b> | <b>153</b> | <b>57,306</b> |

|                    |             |                |
|--------------------|-------------|----------------|
| 20 Current         | 85 Deceased | 48 Suspension  |
| 21 CurrentInactive |             | 63 Surrendered |
| 45 Delinquent      |             | 65 Revoked     |
| 50 Cancelled       |             |                |

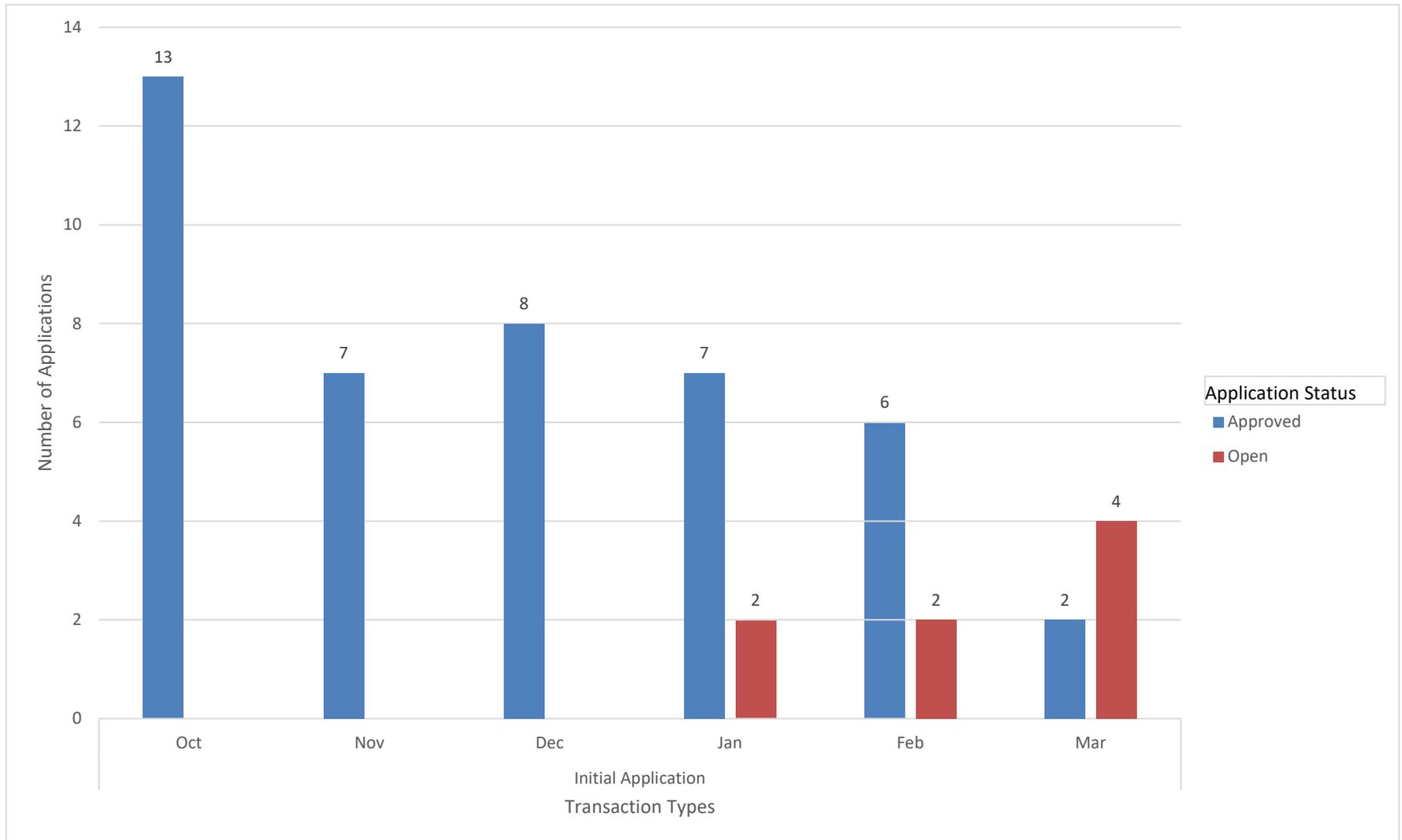
## Psychological Assistant Application Workload Report October 1, 2018 to March 31, 2019



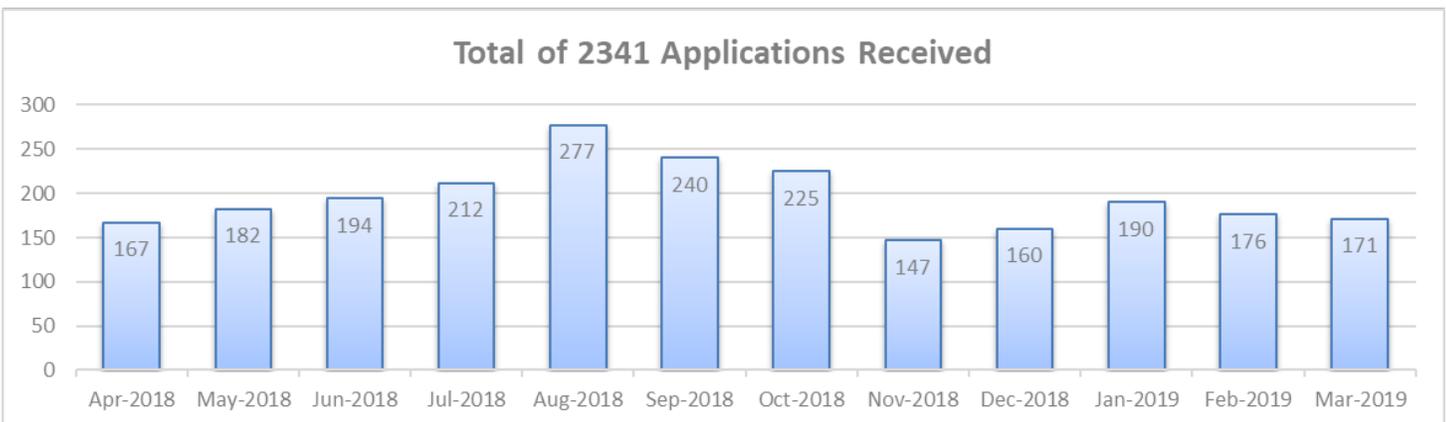
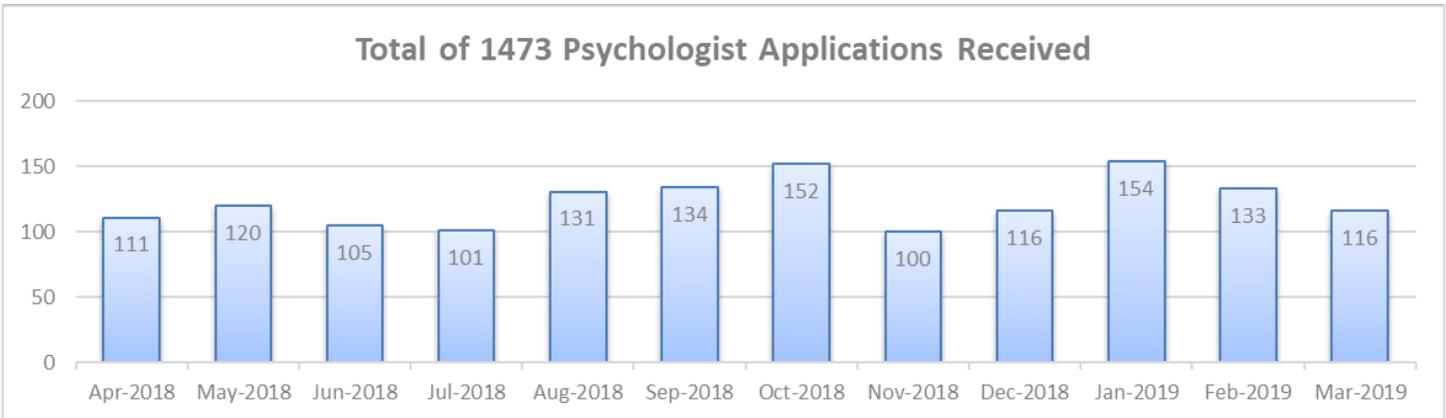
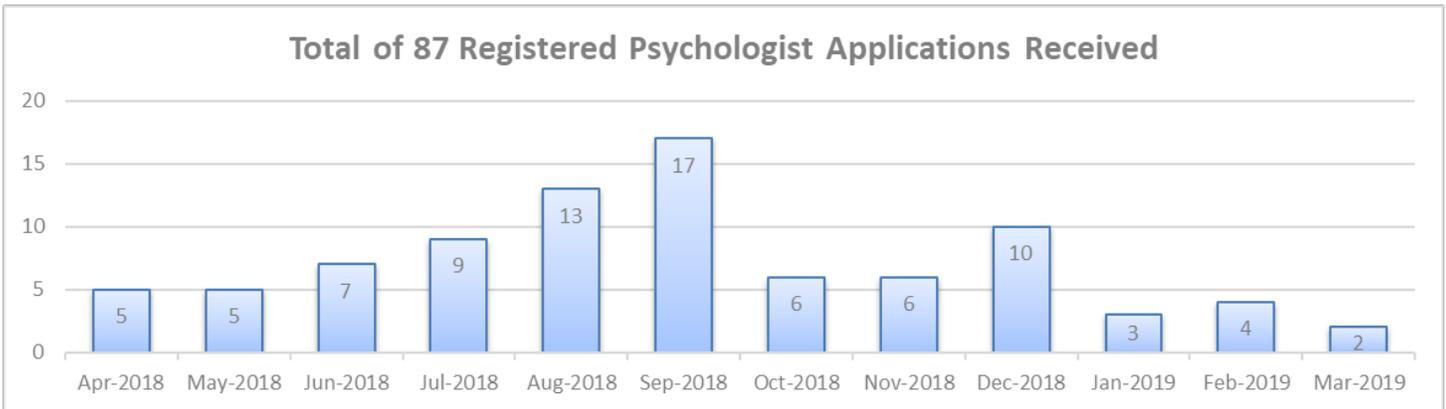
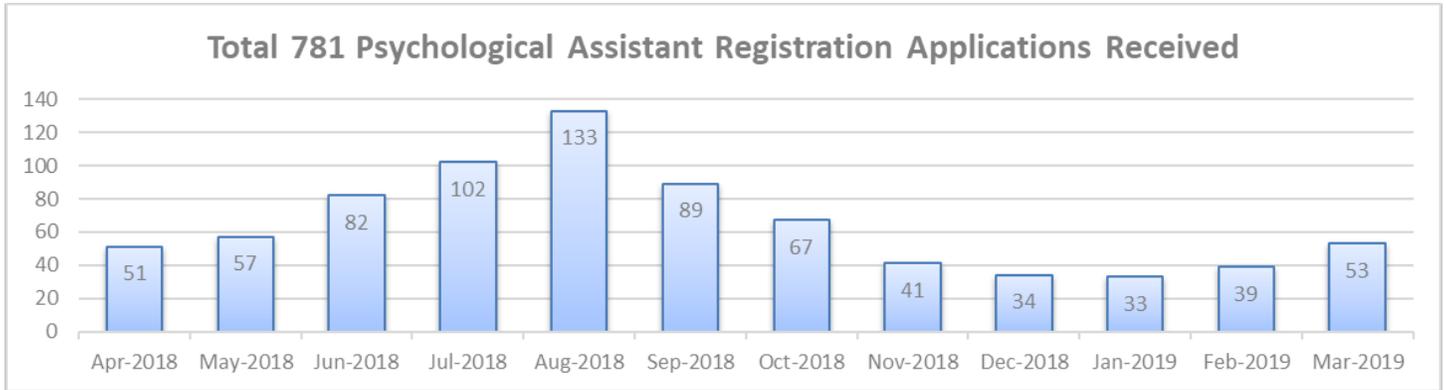
## Psychologist Application Workload Report October 1, 2018 to March 31, 2019



## Registered Psychologist Application Workload Report October 1, 2018 to March 31, 2019



Applications Received April 2018 to March 2019  
As of April 4, 2019



**Examination Statistics March 2018 - February 2019  
As of April 4, 2019**

**2018/2019 Monthly EPPP Examination Statistics**

| <b>Month</b>   | <b># of Candidates</b> | <b># Passed</b> | <b>% Passed</b> | <b>Total First Timers</b> | <b>First Time Passed</b> | <b>% First Time Passed</b> |
|----------------|------------------------|-----------------|-----------------|---------------------------|--------------------------|----------------------------|
| March 2018     | 147                    | 75              | 51.02           | 86                        | 53                       | 61.63                      |
| April 2018     | 154                    | 87              | 56.49           | 88                        | 65                       | 73.86                      |
| May 2018       | 152                    | 78              | 51.32           | 93                        | 66                       | 70.97                      |
| June 2018      | 162                    | 87              | 53.7            | 96                        | 69                       | 71.88                      |
| July 2018      | 173                    | 90              | 52.02           | 103                       | 71                       | 68.93                      |
| August 2018    | 137                    | 66              | 48.18           | 74                        | 50                       | 67.57                      |
| September 2018 | 83                     | 38              | 45.78           | 41                        | 26                       | 63.41                      |
| October 2018   | 147                    | 78              | 53.06           | 66                        | 47                       | 71.21                      |
| November 2018  | 107                    | 53              | 49.53           | 56                        | 35                       | 62.5                       |
| December 2018  | 126                    | 61              | 48.41           | 63                        | 42                       | 66.67                      |
| January 2019   | 56                     | 25              | 44.64           | 31                        | 20                       | 64.52                      |
| February 2019  | 110                    | 59              | 53.64           | 62                        | 41                       | 66.13                      |
| <b>Total</b>   | <b>1554</b>            | <b>797</b>      | <b>50.65</b>    | <b>859</b>                | <b>585</b>               | <b>67.44</b>               |

**2018/2019 Monthly CPLEE Examination Statistics**

| <b>Month</b>   | <b># of Candidates</b> | <b># Passed</b> | <b>% Passed</b> | <b>Total First Timers</b> | <b>First Time Passed</b> | <b>% First Time Passed</b> |
|----------------|------------------------|-----------------|-----------------|---------------------------|--------------------------|----------------------------|
| March 2018     | 112                    | 90              | 80.36           | 87                        | 71                       | 81.61                      |
| April 2018     | 65                     | 39              | 60              | 46                        | 28                       | 60.87                      |
| May 2018       | 88                     | 69              | 78.41           | 65                        | 53                       | 81.54                      |
| June 2018      | 105                    | 83              | 79.05           | 90                        | 74                       | 82.22                      |
| July 2018      | 89                     | 51              | 57.3            | 64                        | 42                       | 65.63                      |
| August 2018    | 137                    | 92              | 67.15           | 117                       | 78                       | 66.67                      |
| September 2018 | 132                    | 76              | 57.58           | 115                       | 69                       | 60                         |
| October 2018   | 134                    | 105             | 78.36           | 72                        | 53                       | 73.61                      |
| November 2018  | 106                    | 86              | 81.13           | 70                        | 56                       | 80                         |
| December 2018  | 126                    | 61              | 48.41           | 63                        | 42                       | 66.67                      |
| January 2019   | 86                     | 60              | 69.77           | 50                        | 35                       | 70                         |
| February 2019  | 83                     | 60              | 72.29           | 62                        | 43                       | 69.35                      |
| <b>Total</b>   | <b>1263</b>            | <b>872</b>      | <b>69.15</b>    | <b>901</b>                | <b>644</b>               | <b>71.51</b>               |

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Liezel McCockran<br>Continuing Education and Renewals Coordinator |
| <b>SUBJECT</b> | Agenda Item #21 – Continuing Education/Renewals Report            |

Attached please find the following Continuing Education (CE) Audit/Renewals statistics for Psychologists and Psychological Assistants:

- A. CE Audit
- B. Psychologist and Psychological Assistant Renewal Applications Processed:  
January 2019 – April 2019
- C. Online vs. Mailed In Renewals Processed

CE audits were completed for January 2017 through June 2017. The deadline to receive audit documentation was April 2, 2019. To date, the pass rate is 63 percent with 36 percent of audits are still pending review. Once these audits have all been processed, Staff will provide updated data on pass rates and reasons for failing the CE audit.

For January 2019 through April 2019, an average of 685 renewal applications were processed per month, with an average of 542 Psychologists renewing as Active and 94 renewing as Inactive. Approximately 685 Psychologists and Psychological Assistants renewed their license online per month and an average of 463 Psychologists and Psychological Assistants mailed in their renewals.

The Continuing Professional Development (CPD) goal from the Strategic Plan 2019-2023 to implement licensed board member CPD audits each license renewal cycle for transparency purposes will begin with the January 1, 2019 audit cycle.

**Action Requested:**

These items are for information purposes only. No action requested.

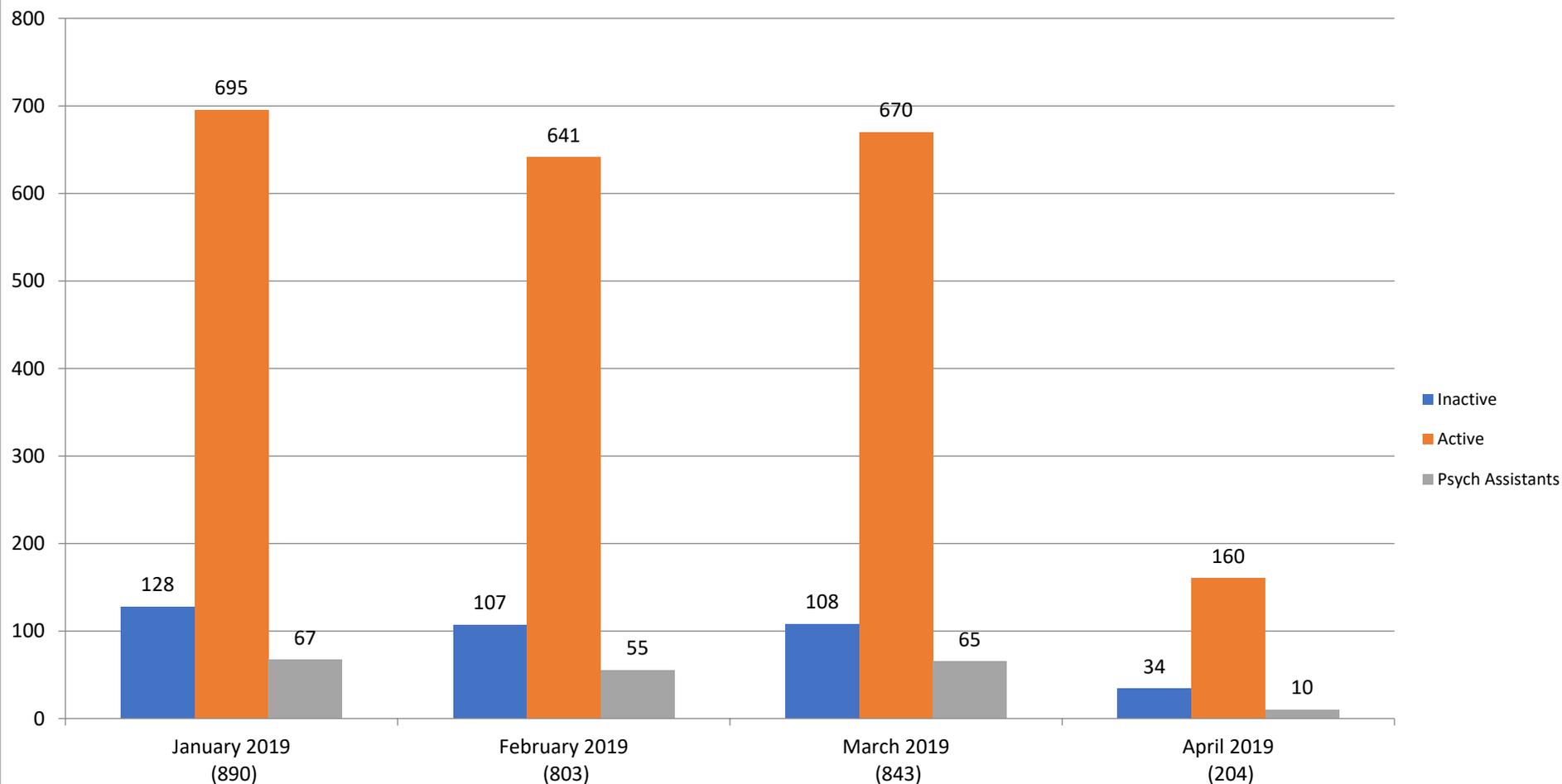
## Continuing Education Audits

### January 2017 - June 2017

| Month          | Total # of Licensees Selected for Audit: | # Passed:  | % Passed:  | # Pending: | % Pending: | # Failed:<br>(Referred to Citation & Fine Program) | % Failed: |
|----------------|--|------------|------------|------------|------------|--|-----------|
| January        | 34                                       | 27         | 79%        | 6          | 18%        | 1  | 3%        |
| February       | 29                                       | 25         | 86%        | 3          | 10%        | 1  | 3%        |
| March          | 35                                       | 20         | 57%        | 15         | 43%        |  | 0%        |
| April          | 28                                       | 20         | 71%        | 8          | 29%        |  | 0%        |
| May            | 31                                       | 17         | 55%        | 14         | 45%        |  | 0%        |
| June           | 33                                       | 10         | 30%        | 23         | 70%        |  | 0%        |
| <b>Totals:</b> | <b>190</b>                               | <b>119</b> | <b>63%</b> | <b>69</b>  | <b>36%</b> | <b>2</b>   | <b>1%</b> |

| Total Audited | Total Passed | Total Failed | Total Pending | Total Upheld |
|---------------|--------------|--------------|---------------|--------------|
| 190           | 119          | 2            | 69            | 0            |
|               | 63%          | 1%           | 36%           | 0%           |

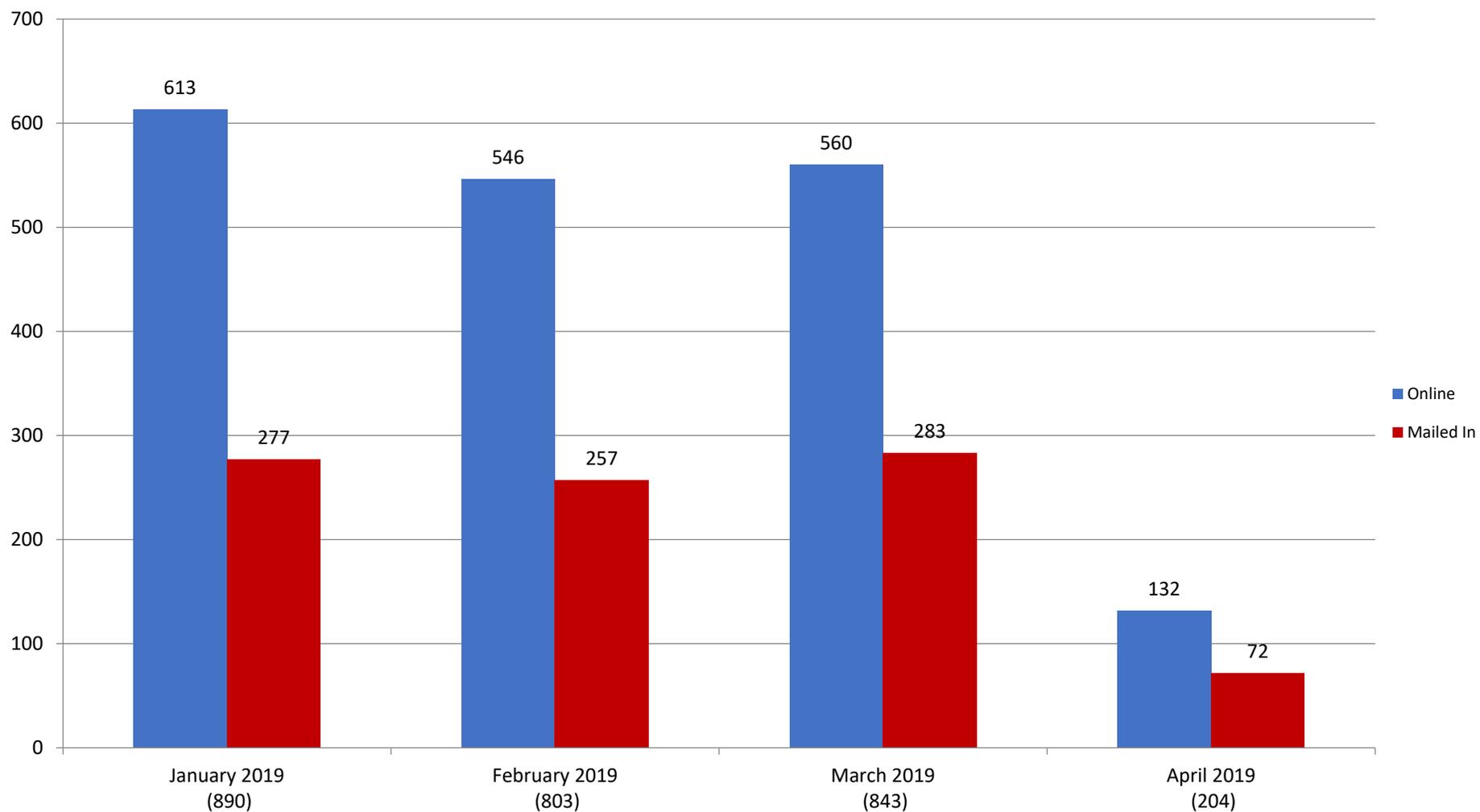
### Psychologist and Psychological Assistant Renewal Applications Processed January 2019 - April 2019



An average of 685 renewal applications were processed each month, with an average of 542 Psychologists renewing as Active, and an average of 94 Psychologists renewing as Inactive. Additionally, an average of 49 Psychological Assistant renewal applications were processed each month.

As of April 8, 2019

### Online vs. Mailed In Renewals Processed January 2019 - April 2019



On average, 685 Psychologists and Psychological Assistants renewed online per month and an average of 463 renewals were renewed online using BreZE.

As of April 8, 2019

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Cherise Burns<br>Central Services Manager   |
| <b>SUBJECT</b> | Agenda Item #22(a) – Review and Consideration of Revisions to the Goal of the Policy and Advocacy Committee |

### **Background:**

Considering the recent Strategic Planning process completed by the Board of Psychology (Board), each Board committee will be reviewing their committee's Goal and recommending any changes to their Goal to the full Board at its next Board Meeting.

At its March 18, 2019 Policy and Advocacy Committee (Committee) Meeting the Committee reviewed the current Goal and recommends the revised Committee Name and Goal shown below be adopted by the Board so that both the Committee Name and Goal will more accurately reflect what the Committee does.

Revised Committee Name: ~~Policy and Advocacy~~ Legislative and Regulatory Affairs Committee

Revised Goal:

The goal of this committee is to ~~advocate and promote~~ for legislation and develop regulations that provide for the ~~advances the ethical and competent practice of psychology in order to~~ protection of consumers health and safety of psychological services. The committee reviews, monitors and ~~tracks~~ recommends positions on legislation and regulations that affect the Board, consumers, and the profession of psychology. The committee also, and recommends ~~positions on legislation for consideration by~~ and informs the Board on regulations and the status of regulatory packages.

### **Action Requested:**

Review and adopt the revised Policy and Advocacy Committee Name and Goal into the Board's Administrative Procedure Manual.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Cherise Burns<br>Central Services Manager   |
| <b>SUBJECT</b> | Agenda Item #22(b)(1) – SB 275 (Pan) – Amendments 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) proposed 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. 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 Board Legal Counsel 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 add language 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.

At the Board's February meeting, the Board approved the language and for staff to seek an author. The week after the Board meeting, Senator Richard Pan agreed to author the bill for the Board, which became SB 275 (Pan).

On April 1, 2019, the Senate Committee on Business, Professions and Economic Development heard SB 275. Board President Stephen Phillips, JD, PsyD, testified on the Board's behalf. SB 275 received unanimous support from the committee and will head to the Senate Committee on Appropriations next.

**Location:** 4/1/2019 Senate Committee on Appropriations

**Status:** 4/5/2019 Set for hearing April 22, 2019.

**Votes:** 4/1/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)

**Action Requested:**

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

Attachment A: SB 275 (Pan) Senate Business, Professions and Economic Development Analysis

Attachment B: SB 275 (Pan) Board Support Letter to Senate Business, Professions and Economic Development

Attachment C: SB 275 (Pan) Bill Text



termination of therapy, contain an order of revocation. The revocation shall not be stayed by the administrative law judge (ALJ). (BPC § 2960.1)

- 7) Requires the BOP, in reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (APA), to consider and apply the “Disciplinary Guidelines and Uniform Standards related to Substance Abusing Licensees.” (Title 16, California Code of Regulations (CCR) § 1395.2 (a))
- 8) Authorizes the BOP to deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing held pursuant to the APA. (BPC § 2961)
- 9) Authorizes the BOP to, within 100 days of receipt of an ALJ’s decision:
  - a) Adopt the proposed decision in its entirety.
  - b) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
  - c) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
  - d) Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence.
  - e) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. (Government Code (GOV) § 11517)

**This bill:**

- 1) Changes references from “patient” to “client.”
- 2) Adds “sexual behavior” with a client or former client, as specified, to the violations that trigger an order for license revocation, upon an ALJ’s finding of fact.
- 3) States that the order for a license revocation due to a finding of sexual contact or sexual behavior may be stayed by the BOP.
- 4) Defines “sexual behavior” as 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.

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

**COMMENTS:**

1. **Purpose.** This bill is sponsored by the BOP. According to the Author's office, "The [BOP] believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

"The [BOP] would like to add 'sexual behavior' to Section 2960.1 of the [BPC] due to the [BOP's] experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of sexual contact. These cases left the [BOP] hamstrung in achieving appropriate discipline for sexual behavior antithetical to the psychotherapist-client relationship, making it exceedingly difficult for the [BOP] to achieve disciplinary terms that matched the egregiousness of the acts. Through SB 275, the [BOP] wants to ensure that sexual behavior with a client, even if it has not resulted in intercourse or sexual contact, is an egregious ethical violation that merits the highest level of discipline."

2. **BOP Background.** California recognized psychology as a vocation with the Certification Act of 1958, which provided only title protection to psychologists. In 1967, the Legislature statutorily defined the profession of psychology and required licensure to practice. BOP regulates licensed psychologists, registered psychological assistants, and registered psychologists. It is funded by license, application, and examination fees, and receives no revenue from California's General Fund. BOP consists of nine members (five licensed psychologists and four public members) who are appointed to four-year terms.
3. **Comments.** DCA produces a consumer brochure entitled *Professional Therapy Never Includes Sex*, which the law requires a psychotherapist to provide to and discuss with a client if the psychotherapist learns of inappropriate contact between the client and a previous psychotherapist. This brochure was updated last year (AB 2968, Levine (Chapter 778, Statutes of 2018)), to define and include "sexual behavior" between a client and a previous psychotherapist. The present bill, SB 275, uses a slightly different definition of "sexual behavior," adding that such behavior must be made by the psychotherapist "for the purpose of sexual arousal, gratification, exploitation, or abuse." BOP indicates the reason for greater specificity is that the brochure's definition is to instigate a discussion, while SB 275 establishes the basis for discipline.

This bill further adds that if an ALJ makes a finding of fact that a licensee engaged in any act of sexual behavior, the BOP may stay the order for a license revocation. This restates BOP's existing authority under the APA to reject an ALJ's determination with or without additional evidence. Current law does not authorize an ALJ to recommend license revocation for sexual behavior under the BOP's enforcement parameters. However, the BOP is authorized to deviate from the disciplinary guidelines when the BOP determines, "in its sole discretion" that the facts of the particular case warrant such a deviation.

BOP indicates that this bill is necessary because it is otherwise "hamstrung" absent explicit authority to revoke licenses for lesser offenses. However, this is not entirely

accurate; the BOP could have revoked licenses for sexual behavior prior to this bill's enactment as long as the BOP acted pursuant to the APA.

This bill reinforces the BOP's commitment to consumer protection and formally declares that an ALJ's finding of fact that sexual behavior occurred between a psychotherapist and client shall trigger an ALJ's order for license revocation.

4. **Prior Related Legislation.** AB 2968 (Levine, Chapter 778, Statutes of 2018) updated the informational brochure "Professional Therapy Never Includes Sex" to include sexual behavior and requires a psychotherapist (or their employer) who becomes aware that a patient had alleged sexual behavior with a previous psychotherapist to provide and discuss with the client the above described informational brochure.
5. **Arguments in Support.** The BOP writes, "The [BOP] sponsored SB 275 due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of sexual contact and therefore did not require the ALJ to recommend revoking the license. Examples of sexual behaviors that the [BOP] has seen in disciplinary cases that did not reach the level of sexual contact 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.

"These cases left the [BOP] hamstrung in achieving appropriate discipline for sexual behavior antithetical to the psychotherapist-client relationship, making it exceedingly difficult for the [BOP] to achieve disciplinary terms that matched the egregiousness of the acts. By way of SB 275, the [BOP] seeks to ensure that sexual behavior with a client, even if it has not resulted in intercourse or sexual contact, is considered a violation that merits the highest level of discipline."

## **SUPPORT AND OPPOSITION:**

### Support:

Board of Psychology (Sponsor)

### Opposition:

None on file.

-- END --

March 25, 2019

The Honorable Steven Glazer  
Chair, Senate Committee on Business Professions and Economic Development  
State Capitol, Room 5108  
Sacramento, CA 95814

**RE: SB 275 (Pan) – Psychologist: prohibition against sexual behavior – SPONSOR**

Dear Senator Glazer:

The Board of Psychology (Board) is pleased to **SPONSOR** SB 275 (Pan). This bill would add sexual behavior with a client (patient or client) or former client to the violations that would require an Administrative Law Judge's (ALJ's) proposed decision to include an order of revocation. SB 275 (Pan) would define sexual behavior as "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."

Pursuant to Business and Professions Code (BPC) Section 2960.1, when an investigation finds that a psychologist had sexual contact with a patient or former patient within two years of termination of therapy, the proposed decision (discipline) that the ALJ recommends to the Board for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, which would remain unchanged by SB 275, but current law ensures that in instances of sexual intercourse and sexual contact (sexual misconduct) revocation must be the discipline recommended by an ALJ. Under BPC Section 728, sexual contact means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse. Additionally, Penal Code Section 243.4 defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female". Current law narrowly defines sexual misconduct to sexual intercourse or touching of an intimate part, and therefore also narrowly limits the mandatory discipline recommended to the Board by an ALJ.

The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board sponsored SB 275 due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of sexual contact and therefore did not require the ALJ to recommend revoking the license. Examples of sexual behaviors that the Board has seen in disciplinary cases that did not reach the level of sexual contact 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.

Page 2

**SB 275 (Pan): SPONSOR**

March 25, 2019

These cases left the Board hamstrung in achieving appropriate discipline for sexual behavior antithetical to the psychotherapist-client relationship, making it exceedingly difficult for the Board to achieve disciplinary terms that matched the egregiousness of the acts. By way of SB 275, the Board seeks to ensure that sexual behavior with a client, even if it has not resulted in intercourse or sexual contact, is considered a violation that merits the highest level of discipline.

While the Board has discussed this issue with the Office of the Attorney General to address the prosecutorial role, the Board believes that inappropriate sexual behavior with a client beyond sexual contact is sexual misconduct and should be prosecuted and adjudicated as such. SB 275 would make this clear under the law that these sexual behaviors with a client are sexual misconduct.

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 SB 275.

The Board believes that inappropriate sexual behavior with a client is sexual misconduct and should be prosecuted and adjudicated as such. SB 275 (Pan) would close a loophole in current law and treat sexual behavior between a psychologist and client as the sexual misconduct it is.

For these reasons, the Board asks for your support of SB 275 (Pan) when it is heard in the Senate Committee on Business, Professions and Economic Development. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Cherise Burns, at (916) 574-7227. Thank you.

Sincerely,

**[Original signature on file]**

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

cc: Senator Ling Ling Chang (Vice Chair)  
Members of the Senate Committee on Business, Professions and Economic Development  
Senator Richard Pan, MD  
Sarah Huchel, Consultant, Senate Committee on Business Professions and Economic Development  
Kayla Williams, Consultant, Senate Republican Caucus

SB 275 - (I) Amends the Law

SECTION 1.

Section 2960.1 of the Business and Professions Code is amended to read:

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 subdivision (b)*, when that act is with a ~~patient, client~~, or with a former ~~patient client~~ within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law ~~judge~~. *judge, but may be stayed by the board.*

*(b) For purposes of this section, "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.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Cherise Burns<br>Central Services Manager  |
| <b>SUBJECT</b> | Agenda Item #22(b)(2) – Update on Amendments to Sections 2912, 2940-2944 of the Business and Professions Code Regarding Examinations, and New Section to the Business and Professions Code Regarding Voluntary Surrender |

### **Background:**

The Board of Psychology (Board) has submitted its legislative proposals to revise Business and Professions Code (BPC) Sections 2940-2944 regarding Examinations and the addition of a new section of the BPC regarding Voluntary Surrender to the Senate Committee on Business, Professions and Economic Development (Committee) for inclusion in their 2019 Committee Bill. For the 2019 Committee Bill, the Committee will review legislative proposals from DCA boards and bureaus that make technical, non-substantive, and/or non-controversial changes to the BPC that clarify, update and/or strengthen current law related to health professions. These proposals were due to the Committee by January 18, 2019.

Board staff submitted the Board's proposals prior to the deadline and Board staff will update the Board on the Committee's decision on inclusion of our Examination and Voluntary Surrender provisions in the Committee Bill at the April Board Meeting.

At its August 2018 Board Meeting, the Board approved statutory clean-up provisions related to examinations that were recommended by the EPPP2 Task Force. These provisions remove outdated requirements and make the remaining provisions consolidated, more concise, and more easily understood by consumers and applicants. Additionally, the substantive requirements relating to examinations are encompassed in regulations, making these proposed changes non-substantive.

At its November 2018 Board Meeting, the Board approved newly proposed language to add a section to the BPC relating to the voluntary surrender of a license for licensees who are suffering from a physical or neurological illness but who do not have any pending complaints involving client harm. These provisions clarify the implicit statutory authority provided in BPC Section 118(b) for the Board to accept a surrender of a license by a licensee. In clarifying this, the Board specifies the reinstatement rights a licensee would have if they were to use the voluntary surrender option since the reinstatement process specified in BPC Section 2962 applies only to formal discipline when the Board is accepting the surrender of a license in lieu of formal revocation proceedings. These provisions clarify and place in the Board's Practice Act the authority to accept a non-disciplinary surrender of a license and clearly identify that a licensee

who voluntarily surrenders their license outside of the formal discipline process has the option to petition the Board for reinstatement of that license after a period of not less than one (1) year after the effective date of the Board's acceptance of the voluntary surrender. This ensures that those licensees whose cognitive impairments can be treated through medical intervention have an effective mechanism for re-entry to the profession that is not unnecessarily burdensome. This non-disciplinary voluntary surrender option would not be allowed for licensees with current consumer complaints of patient harm or subsequent arrests for criminal convictions, so this non-disciplinary voluntary surrender is not a diversionary option for licensees and is truly clarifying in nature.

At its February 2019 Board Meeting, the Board approved language to clarify the temporary practice provisions in BPC Section 2912. These amendments would clarify that temporary practice is allowed for 30 days in a calendar year which do not need to be consecutive, and that practice for any portion of a day counts for a full day.

After the February Board meeting, staff approached the Senate BPED to see if these provisions could be added to our proposal for the Committee Bill. Staff is still waiting to hear back from Senate BPED on inclusion of Section 2912 in our proposal and for the Committee's decision on the Examination and Voluntary Surrender amendments.

Staff reached out to Senate BPED staff for an update on our proposal and was told by Senate BPED staff that we should have an update before the Board Meeting, which staff will convey verbally at the meeting.

**Action Requested:**

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

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Manager   |
| <b>SUBJECT</b> | Agenda Item #22(c)(1)(A) – AB 544 (Brough) Professions and vocations: inactive license fees and accrued and unpaid renewal fees |

**Background:**

This bill would prohibit boards under the Department of Consumer Affairs (DCA) from requiring payment of accrued and unpaid renewal fees as a condition of renewing an expired license or registration. It would also limit the maximum renewal fee for an inactive licensed to no more than 50 percent of the renewal fee for an active license.

The Author's office has clarified that they are currently working on amendments to this bill and that it is only intended for those individuals that leave the practice of psychology for reasons such as illness or pregnancy, and then return to the profession with the intention of practicing.

This bill would not affect the Board's Enforcement Program but would affect the Board's Central Services Unit and Renewal processing. Staff has identified "Items for Consideration" within the bill analysis for the Board's discussion of the bill.

**Location:** 3/21/2019 Assembly Committee on Business and Professions

**Status:** 3/25/2019 Re-referred to Assembly Committee on Business and Professions

**Action Requested:**

Staff recommend the Board discuss AB 544 and consider taking a position on the bill.

Attachment A: AB 544 (Brough) Analysis

Attachment B: AB 544 (Brough) Bill Text

## 2019 Bill Analysis

|   |                                      |                       |
|---|--------------------------------------|-----------------------|
| <b>Author:</b><br>Brough  | <b>Bill Number:</b><br>AB 544        | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>Author   | <b>Version:</b><br>Amended 3/21/2019 |                       |
| <b>Subject:</b><br>Professions and vocations: inactive license fees and accrued and unpaid renewal fees |                                      |                       |

### SUMMARY

This bill would prohibit boards under the Department of Consumer Affairs (DCA) from requiring payment of accrued and unpaid renewal fees as a condition of renewing an expired license or registration. It would also limit the maximum renewal fee for an inactive licensed to no more than 50 percent of the renewal fee for an active license.

### RECOMMENDATION

**FOR DISCUSSION** – Staff recommend the Board discuss AB 544 and consider taking a position on the bill.

### REASON FOR THE BILL

Per the Author, according to a report by the Little Hoover Commission, one in five Californians must receive permission from the government to work. For lower-income licensed occupations in California, applicants, on average, pay \$300 in licensing fees, spend 549 days in education and training, and pass one exam.

The purpose of occupational licensing is consumer protection; however, there are certain regulations in place that have erected barriers to entry or reentry into occupations.

|   |  |
|---|--|
| <b>Other Boards/Departments that may be affected: Multiple Boards and Bureaus</b>   |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes   |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

The California Department of Consumer Affairs' licensing boards have varying provisions related to placing licenses on inactive status and/or for reinstating a license that has been allowed to lapse/expire.

For someone who might have decided to let his/her license lapse for a period of time in order to focus on raising children, dealing with personal or family illness, etc., it does not seem fair to require them to pay several years of accrued renewal fees to reinstate the license and start working again.

To reduce the barrier of reentry for someone with an inactive or expired license, this bill would limit the maximum fee for the renewal of a license in an inactive status to no more than 50% of the renewal fee for an active license. The bill would also prohibit a board from requiring payment of accrued and unpaid renewal fees as a condition of reinstating an expired license or registration.

### **ANALYSIS**

This bill would affect multiple sections of the Business and Professions Code (BPC). Specifically related to the Board of Psychology, this bill would affect BPC sections 462 and 2984.

BPC Section 462 currently allows the Board to charge the same fee for an active renewal and an inactive renewal, unless a lesser charge for an inactive renewal is stated. This bill would modify BPC 462 to limit the fee of an inactive renewal to no more than 50% of an active renewal. The Board currently sets the inactive fee for psychologists at \$40, therefore this section would not impact the Board.

BPC section 2984 currently allows the Board to collect all unpaid renewal fees at the time a licensee is renewing their license. This bill would modify BPC 2984, removing the language which allows the Board to charge "all accrued and unpaid" renewal fees. This change would limit the Board to only charging one renewal fee regardless of the length of time between expiration and renewal.

### Conversation with the Author's Office

After a conversation with the Authors office, staff are aware that the Author is working with the Assembly Business and Professions Committee to clarify that this bill is not intended to affect boards in the following situations:

- a. If a licensee has been practicing and does not renew.
- b. If a licensee is intending to have an inactive license and chooses not to renew the license, and then comes back to renew inactive again.

The Author's office has clarified that this bill is intended for those individuals that leave the practice of psychology for reasons such as illness or pregnancy, and then return to the profession with the intention of practicing.

### Example

Based on the Author's intent, here is an example of how this would affect the Board:

A license expires on July 1, 2019 and the licensee does not renew the license due to a situation such as illness or pregnancy. The renewal fee is \$400.00 (plus the Mental Health Practitioners Education Fund (MHPEF) fee and Continuing Education (CE) Audit fee). This renewal fee remains unchanged (with the addition of a late fee), for about two years. The way BreEZe operates, around late April 2021, BreEZe opens up a second renewal for this license, and adds an additional \$400.00 charge.

If the licensee attempts to renew the license after the second renewal transaction is opened, but prior to its cancelation (statutorily three (3) years after its expiration if not renewed), then the licensee is required to pay \$800.00 in renewal fees (plus the additional \$150 late fee and the MHPEF and CE Audit fees).

Based on the Authors intent, the Board would only be able to charge one renewal fee of \$400 (plus the additional \$150 late fee and the MHPEF and CE Audit fees).

#### Current Practice

Although the example above does lay out the way in which BreEZe reacts to two open renewal cycles, staff at the Board handle these transactions differently. If a staff member is alerted to the above example, they would process the first renewal period as Inactive (so long as no practice took place during that two-year period), and the second period as Active, thus adequately reflecting the licensee's practice history.

#### Items for Consideration

Regardless of whether or not the licensee renews their license, until the cancelation of a license the Board has ongoing costs. There are costs related to maintaining the fingerprint record of the licensee with the Department of Justice for subsequent arrest notification purposes, costs related to staff time to ensure that deficiency letters are being sent to the licensee, and costs related to any printed notifications they may receive.

Additionally, it can be argued that it is the responsibility of the licensee to maintain their license, which means renewing that license and paying the applicable renewal fees every two years. Otherwise, there is little purpose to having a current inactive status and the ability to renew inactive if all the licensee has to do is make sure to renew active before cancelation of their expired license (after three (3) years in expired status).

#### Effect on Enforcement

After a discussion with enforcement, this bill would not affect the Board's ability to issue a citation and fine against any licensee that is found to be practicing without an active license.

### **LEGISLATIVE HISTORY**

AB 1659 (Low, 2018) Authorizes healing arts licensing boards to establish lower renewal fees for inactive licenses than for active licenses, and prohibits an inactive license holder from representing that he/she has an active license.

**OTHER STATES' INFORMATION**

Not applicable

**PROGRAM BACKGROUND**

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

This bill would have a minor and absorbable impact on the Board of Psychology.

**FISCAL IMPACT**

Although the data is not able to be validated, staff believe that they receive no more than 50 renewals every year where a person is renewing two cycles at once. If this number is accurate, and every psychologist was renewing active, that would be a revenue loss of \$20,000, which is a loss of less than 1% of the Board's budget.

**ECONOMIC IMPACT**

Not applicable

**LEGAL IMPACT**

Not applicable

**APPOINTMENTS**

Not applicable

**SUPPORT/OPPOSITION**

**Support:** Unknown at this time.

**Opposition:** Unknown at this time.

**ARGUMENTS**

**Proponents:** Unknown at this time.

**Opponents:** Unknown at this time.

AB 544 - (A) Amends the Law

*SECTION 1.*

*Section 121.5 of the Business and Professions Code is amended to read:*

121.5.

(a) Except as otherwise provided in this code, the application of delinquency fees ~~or accrued and unpaid renewal fees~~ for the renewal of expired licenses or registrations shall not apply to licenses or registrations that have lawfully been designated as inactive or retired.

*(b) Notwithstanding any other law, a board shall not require a person to pay accrued and unpaid renewal fees as a condition of reinstating an expired license or registration.*

*SEC. 2.*

*Section 462 of the Business and Professions Code is amended to read:*

462.

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions:

(1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.

(3) The renewal fee for a license in an ~~active status shall apply also for a renewal of a~~ *inactive status shall be no more than 50 percent of the renewal fee for a* license in an ~~inactive status, unless a lesser renewal fee is specified by the board.~~ *active status.*

(4) In order for the holder of an inactive license issued pursuant to this section to restore ~~his or her~~ *the* license to an active status, the holder of an inactive license shall comply with all the following:

(A) Pay the renewal fee.

(B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701.

**SEC. 3.**

*Section 703 of the Business and Professions Code is amended to read:*

703.

(a) An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

(b) ~~The~~ *Notwithstanding any other law, the* renewal fee for a license or certificate in an ~~active status shall apply also for renewal of a license or certificate in an inactive status, unless a lower fee has been established by the issuing board.~~ *inactive status shall be no more than 50 percent of the renewal fee for a license in an active status.*

**SEC. 4.**

*Section 1006.5 of the Business and Professions Code is amended to read:*

1006.5.

Notwithstanding any other law, the amount of regulatory fees necessary to carry out the responsibilities required by the Chiropractic Initiative Act and this chapter are fixed in the following schedule:

(a) Fee to apply for a license to practice chiropractic: three hundred seventy-one dollars (\$371).

(b) Fee for initial license to practice chiropractic: one hundred eighty-six dollars (\$186).

(c) Fee to renew an active ~~or inactive~~ license to practice chiropractic: three hundred thirteen dollars (\$313).

*(d) Fee to renew an inactive license to practice chiropractic: no more than 50 percent of the renewal fee for an active license.*

~~(d)~~ (e) Fee to apply for approval as a continuing education provider: eighty-four dollars (\$84).

- ~~(e)~~ (f) Biennial continuing education provider renewal fee: fifty-six dollars (\$56).
- ~~(f)~~ (g) Fee to apply for approval of a continuing education course: fifty-six dollars (\$56) per course.
- ~~(g)~~ (h) Fee to apply for a satellite office certificate: sixty-two dollars (\$62).
- ~~(h)~~ (i) Fee to renew a satellite office certificate: thirty-one dollars (\$31).
- ~~(i)~~ (j) Fee to apply for a license to practice chiropractic pursuant to Section 9 of the Chiropractic Initiative Act: three hundred seventy-one dollars (\$371).
- ~~(j)~~ (k) Fee to apply for a certificate of registration of a chiropractic corporation: one hundred eighty-six dollars (\$186).
- ~~(k)~~ (l) Fee to renew a certificate of registration of a chiropractic corporation: thirty-one dollars (\$31).
- ~~(l)~~ (m) Fee to file a chiropractic corporation special report: thirty-one dollars (\$31).
- ~~(m)~~ (n) Fee to apply for approval as a referral service: five hundred fifty-seven dollars (\$557).
- ~~(n)~~ (o) Fee for an endorsed verification of licensure: one hundred twenty-four dollars (\$124).
- ~~(o)~~ (p) Fee for replacement of a lost or destroyed license: fifty dollars (\$50).
- ~~(p)~~ (q) Fee for replacement of a satellite office certificate: fifty dollars (\$50).
- ~~(q)~~ (r) Fee for replacement of a certificate of registration of a chiropractic corporation: fifty dollars (\$50).
- ~~(r)~~ (s) Fee to restore a forfeited or canceled license to practice chiropractic: double the annual renewal fee specified in subdivision (c).
- ~~(s)~~ (t) Fee to apply for approval to serve as a preceptor: thirty-one dollars (\$31).
- ~~(t)~~ (u) Fee to petition for reinstatement of a revoked license: three hundred seventy-one dollars (\$371).
- ~~(u)~~ (v) Fee to petition for early termination of probation: three hundred seventy-one dollars (\$371).
- ~~(v)~~ (w) Fee to petition for reduction of penalty: three hundred seventy-one dollars (\$371).

**SEC. 5.**

*Section 1718 of the Business and Professions Code is amended to read:*

1718.

Except as otherwise provided in this chapter, an expired license may be renewed at any time within five years after its expiration on filing of application for renewal on a form prescribed by the board, and payment of ~~all accrued~~ *the* renewal and delinquency fees. If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 1715 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 6.*

*Section 1718.3 of the Business and Professions Code is amended to read:*

1718.3.

(a) A license which is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the holder of the license may apply for and obtain a new license if the following requirements are satisfied:

(1) No fact, circumstance, or condition exists which would justify denial of licensure under Section 480.

(2) ~~He or she~~ *The person* pays all of the fees which would be required ~~of him or her if he or she were then~~ *if the person were* applying for the license for the first time and ~~all the~~ renewal and delinquency ~~fees which have accrued since the date on which he or she last renewed his or her license.~~ *fees.*

(3) ~~He or she~~ *The person* takes and passes the examination, if any, which would be required ~~of him or her if he or she were then~~ *if the person were* applying for the license for the first time, or otherwise establishes to the satisfaction of the board that with due regard for the public interest, ~~he or she~~ *the person* is qualified to practice the profession or activity in which ~~he or she again~~ *the person* seeks to be licensed.

(b) The board may impose conditions on any license issued pursuant to this section, as it deems necessary.

(c) The board may by regulation provide for the waiver or refund of all or any part of the examination fee in those cases in which a license is issued without an examination under this section.

*SEC. 7.*

*Section 1936 of the Business and Professions Code is amended to read:*

1936.

Except as otherwise provided in this article, an expired license may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the hygiene board and payment of ~~all accrued~~ *the* renewal and delinquency fees. If the license is renewed after its expiration, the licensee, as a condition precedent of renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect until the expiration date provided in Section 1935 that next occurs after the effective date of the renewal.

*SEC. 8.*

*Section 2427 of the Business and Professions Code is amended to read:*

2427.

(a) Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the licensing authority and payment of ~~all accrued~~ *the* renewal ~~fees~~ *fee* and any other fees required by Section 2424. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Except as provided in Section 2424, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee ~~or accrued renewal fees~~ *are* ~~is~~ paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2422 or 2423 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

(b) Notwithstanding subdivision (a), the license of a doctor of podiatric medicine which has expired may be renewed at any time within three years after its expiration on filing an application for renewal on a form prescribed by the licensing authority and payment of ~~all accrued~~ *the* renewal ~~fees~~ *fee* and any other fees required by Section 2424. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Except as provided in Section 2424, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee ~~or accrued~~

~~renewal fees are~~ *is* paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2422 or 2423 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

*SEC. 9.*

*Section 2456.3 of the Business and Professions Code is amended to read:*

2456.3.

Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board and payment of ~~all accrued~~ *the* renewal ~~fees~~ *fee* and any other fees required by Section 2455. Except as provided in Section 2456.2, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee ~~or accrued renewal fees are~~ *is* paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2456.1 which next occurs after the effective date of the renewal.

*SEC. 10.*

*Section 2535.2 of the Business and Professions Code is amended to read:*

2535.2.

Except as provided in Section 2535.3, a license that has expired may be renewed at any time within five years after its expiration upon filing of an application for renewal on a form prescribed by the board and payment of ~~all accrued and unpaid renewal fees~~ *the renewal fee*. If the license is not renewed on or before its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all~~ *the* renewal ~~fees are~~ *fee is* paid, or on the date on which the delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2535, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

*SEC. 11.*

*Section 2538.54 of the Business and Professions Code is amended to read:*

2538.54.

Except as otherwise provided in this article, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2538.53 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 12.*

*Section 2646 of the Business and Professions Code is amended to read:*

2646.

A license that has expired may be renewed at any time within five years after its expiration by applying for renewal as set forth in Section 2644. Renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee ~~or accrued renewal fees are~~ *is* paid, or on the date on which the delinquency fee and penalty fee, if any, are paid, whichever last occurs. A renewed license shall continue in effect through the expiration date set forth in Section 2644 that next occurs after the effective date of the renewal, at which time it shall expire and become invalid if it is not so renewed.

*SEC. 13.*

*Section 2734 of the Business and Professions Code is amended to read:*

2734.

Upon application in writing to the board and payment of *a fee not to exceed 50 percent of* the biennial renewal fee, a licensee may have ~~his~~ *their* license placed in an inactive status for an indefinite period of time. A licensee whose license is in an inactive status may not practice nursing. However, such a licensee does not have to comply with the continuing education standards of Section 2811.5.

*SEC. 14.*

*Section 2892.1 of the Business and Professions Code is amended to read:*

## 2892.1.

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of ~~all accrued and unpaid renewal fees, the renewal fee,~~ and payment of any fees due pursuant to Section 2895.1.

If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the renewal fees are~~ ~~fee is~~ paid, or on the date on which the delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2892 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 15.*

*Section 2984 of the Business and Professions Code is amended to read:*

## 2984.

Except as provided in Section 2985, a license that has expired may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board and payment of ~~all accrued and unpaid renewal fees. the renewal fee.~~ If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the renewal fees are~~ ~~fee is~~ paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

*SEC. 16.*

*Section 3147 of the Business and Professions Code is amended to read:*

## 3147.

(a) Except as otherwise provided by Section 114, an expired optometrist license may be renewed at any time within three years after its expiration, and a retired license issued for less than three years may be reactivated to active status, by filing an

application for renewal or reactivation on a form prescribed by the board, paying ~~all accrued and unpaid renewal fees~~ *the renewal fee* or reactivation ~~fees~~ *fee* determined by the board, paying any delinquency fees prescribed by the board, and submitting proof of completion of the required number of hours of continuing education for the last two years, as prescribed by the board pursuant to Section 3059. Renewal or reactivation to active status under this section shall be effective on the date on which all of those requirements are satisfied. If so renewed or reactivated to active status, the license shall continue as provided in Sections 3146 and 3147.5.

(b) Expired statements of licensure, branch office licenses, and fictitious name permits issued pursuant to Sections 3070, 3077, and 3078, respectively, may be renewed at any time by filing an application for renewal, paying ~~all accrued and unpaid renewal fees,~~ *the renewal fee*, and paying any delinquency fees prescribed by the board.

#### *SEC. 17.*

*Section 3147.7 of the Business and Professions Code is amended to read:*

#### 3147.7.

The provisions of Section 3147.6 shall not apply to a person holding a license that has not been renewed within three years of expiration, if the person provides satisfactory proof that ~~he or she~~ *the person* holds an active license from another state and meets all of the following conditions:

- (a) Is not subject to denial of a license under Section 480.
- (b) Applies in writing for restoration of the license on a form prescribed by the board.
- (c) Pays ~~all accrued and unpaid renewal fees~~ *the renewal fee* and any delinquency fees prescribed by the board.
- (d) Submits proof of completion of the required number of hours of continuing education for the last two years.
- (e) Takes and satisfactorily passes the board's jurisprudence examination.

#### *SEC. 18.*

*Section 3524 of the Business and Professions Code is amended to read:*

#### 3524.

A license or approval that has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board or Medical Board of California, as the case may be, and payment of ~~all accrued and~~

~~unpaid renewal fees.~~ *the renewal fee.* If the license or approval is not renewed within 30 days after its expiration, the licensed physician assistant and approved supervising physician, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the~~ renewal ~~fees are~~ *fee is* paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 3522 or 3523 which next occurs after the effective date of the renewal, when it shall expire, if it is not again renewed.

*SEC. 19.*

*Section 3774 of the Business and Professions Code is amended to read:*

3774.

On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Sections 3719 and 3773 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of ~~all accrued and unpaid renewal fees-~~ *the renewal* and penalty fees required by this chapter. The board may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

*SEC. 20.*

*Section 3775.5 of the Business and Professions Code is amended to read:*

3775.5.

The fee for an inactive license shall be ~~the same as the-~~ *no more than 50 percent of the* renewal fee for *an active license for* the practice of respiratory care as specified in Section 3775.

*SEC. 21.*

*Section 4545 of the Business and Professions Code is amended to read:*

4545.

Except as provided in Section 4545.2, a license that has expired may be renewed at any time within four years after its expiration on filing an application for renewal on a form prescribed by the board, payment of ~~all accrued and unpaid renewal fees, the renewal fee,~~ and payment of all fees required by this chapter. If the license is renewed more than 30 days after its expiration, the holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 4544 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

A certificate which was forfeited for failure to renew under the law in effect before October 1, 1961, shall, for the purposes of this article, be considered to have expired on the date that it became forfeited.

*SEC. 22.*

*Section 4843.5 of the Business and Professions Code is amended to read:*

4843.5.

Except as otherwise provided in this article, an expired certificate of registration may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of ~~all accrued and unpaid renewal fees- the renewal fee.~~ If the certificate of registration is renewed more than 30 days after its expiration, the registrant, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date ~~all the renewal fees are fee is~~ paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last.

*SEC. 23.*

*Section 4901 of the Business and Professions Code is amended to read:*

4901.

Except as otherwise provided in this chapter, an expired license or registration may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of ~~all accrued and unpaid~~

~~renewal fees.~~ *the renewal fee.* If the license or registration is renewed more than 30 days after its expiration, the licensee or registrant, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the~~ renewal ~~fees are~~ *fee is* paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or registration shall continue in effect through the expiration date provided in Section 4900 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 24.*

*Section 4966 of the Business and Professions Code is amended to read:*

4966.

Except as provided in Section 4969, a license that has expired may be renewed at any time within three years after its expiration by filing of an application for renewal on a form provided by the board, paying ~~all accrued and unpaid renewal fees,~~ *the renewal fee,* and providing proof of completing continuing education requirements. If the license is not renewed prior to its expiration, the acupuncturist, as a condition precedent to renewal, shall also pay the prescribed delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date the delinquency fee is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 4965, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

*SEC. 25.*

*Section 4989.36 of the Business and Professions Code is amended to read:*

4989.36.

A licensee may renew a license that has expired at any time within three years after its expiration date by taking all of the actions described in Section 4989.32 and by paying ~~all unpaid prior renewal fees and delinquency fees.~~ *the delinquency fee.*

*SEC. 26.*

*Section 4999.104 of the Business and Professions Code is amended to read:*

4999.104.

Licenses issued under this chapter that have expired may be renewed at any time within three years of expiration. To renew an expired license described in this section, the licensee shall do all of the following:

- (a) File an application for renewal on a form prescribed by the board.
- (b) Pay ~~all fees that would have been paid if the license had not become delinquent.~~ *the delinquency fee.*
- ~~(c) Pay all delinquency fees.~~
- ~~(d)~~ (c) Certify compliance with the continuing education requirements set forth in Section 4999.76.
- ~~(e)~~ (d) Notify the board whether ~~he or she~~ *the licensee* has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

#### *SEC. 27.*

*Section 5070.6 of the Business and Professions Code is amended to read:*

#### 5070.6.

Except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration upon the filing of an application for renewal on a form prescribed by the board, payment of ~~all accrued and unpaid renewal fees~~ *the renewal fee*, and providing evidence satisfactory to the board of compliance as required by Section 5070.5. If the permit is renewed after its expiration, its holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the ~~accrued~~ renewal ~~fees are~~ *fee is* paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the permit shall continue in effect through the date provided in Section 5070.5 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

#### *SEC. 28.*

*Section 5600.2 of the Business and Professions Code is amended to read:*

#### 5600.2.

Except as otherwise provided in this chapter, a license which has expired may be renewed at any time within five years after its expiration on filing of application for

renewal on a form prescribed by the board, and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If a license is renewed more than 30 days after its expiration, the licenseholder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in this chapter which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 29.*

*Section 5680.1 of the Business and Professions Code is amended to read:*

5680.1.

Except as otherwise provided in this chapter, a license that has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the license is renewed more than 30 days after its expiration, the licenseholder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the~~ *renewal fees are fee is* paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 5680 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 30.*

*Section 6796 of the Business and Professions Code is amended to read:*

6796.

Except as otherwise provided in this article, certificates of registration as a professional engineer and certificates of authority may be renewed at any time within five years after expiration on filing of application for renewal on a form prescribed by the board and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the certificate is renewed more than 60 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs.

The expiration date of a certificate renewed pursuant to this section shall be determined pursuant to Section 6795.

*SEC. 31.*

*Section 6980.28 of the Business and Professions Code is amended to read:*

6980.28.

A locksmith license not renewed within three years following its expiration may not be renewed thereafter. Renewal of the license within three years, or issuance of an original license thereafter, shall be subject to payment of any ~~and all fines-~~ *fine* assessed by the chief or the director ~~which are~~ *that is* not pending appeal and all other applicable fees.

*SEC. 32.*

*Section 7076.5 of the Business and Professions Code is amended to read:*

7076.5.

(a) A contractor may inactivate ~~his or her-~~ *their* license by submitting a form prescribed by the registrar accompanied by the current active license certificate. When the current license certificate has been lost, the licensee shall pay the fee prescribed by law to replace the license certificate. Upon receipt of an acceptable application to inactivate, the registrar shall issue an inactive license certificate to the contractor. The holder of an inactive license shall not be entitled to practice as a contractor until ~~his or her-~~ *their* license is reactivated.

(b) Any licensed contractor who is not engaged in work or activities which require a contractor's license may apply for an inactive license.

(c) Inactive licenses shall be valid for a period of four years from their due date.

(d) During the period that an existing license is inactive, no bonding requirement pursuant to Section 7071.6, 7071.8 or 7071.9 or qualifier requirement pursuant to Section 7068 shall apply. An applicant for license having met the qualifications for issuance may request that the license be issued inactive unless the applicant is subject to the provisions of Section 7071.8.

(e) The board shall not refund any of the renewal fee which a licensee may have paid prior to the inactivation of ~~his or her-~~ *the* license.

(f) An inactive license shall be renewed on each established renewal date by submitting the renewal application and paying the inactive renewal fee.

(g) An inactive license may be reactivated by submitting an application acceptable to the registrar, by paying ~~the full-~~ *a fee no more than 50 percent of the* renewal fee for an active ~~license~~ *license*, and by fulfilling all other requirements of this chapter. No examination shall be required to reactivate an inactive license.

(h) The inactive status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes stated in this chapter.

**SEC. 33.**

*Section 7417 of the Business and Professions Code is amended to read:*

7417.

Except as otherwise provided in this article, a license that has expired for failure of the licensee to renew within the time fixed by this article may be renewed at any time within five years following its expiration upon application and payment of ~~all accrued and unpaid renewal fees-~~ *the renewal* and delinquency fees. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee and meet current continuing education requirements, if applicable, prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, or on the date on which the ~~accrued-~~ renewal ~~fees are fee~~ *is* paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in this article which next occurs following the effective date of the renewal, when it shall expire if it is not again renewed.

**SEC. 34.**

*Section 7672.8 of the Business and Professions Code is amended to read:*

7672.8.

All cremated remains disposer registrations shall expire at midnight on September 30 of each year. A person desiring to renew ~~his or her-~~ *their* registration shall file an application for renewal on a form prescribed by the bureau accompanied by the required fee. A registration that has expired may be renewed within five years of its expiration upon payment of ~~all accrued and unpaid renewal fees-~~ *the renewal fee*. The bureau shall not renew the registration of any person who has not filed the required annual report until ~~he or she-~~ *the person* has filed a complete annual report with the department.

**SEC. 35.**

*Section 7725.2 of the Business and Professions Code is amended to read:*

## 7725.2.

Except as otherwise provided in this chapter, a license that has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the bureau and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the license is not renewed within 30 days after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which ~~all the~~ *renewal fees are* ~~fee is~~ paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 7725 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within one year following its expiration, the bureau may require as a condition of renewal that the holder of the license pass an examination on the appropriate subjects provided by this chapter.

*SEC. 36.*

*Section 7729.1 of the Business and Professions Code is amended to read:*

## 7729.1.

The amount of fees prescribed for a license or certificate of authority under this act is that fixed by the following provisions of this article. Any license or certificate of authority provided under this act that has expired may be renewed within five years of its expiration upon payment of ~~all accrued and unpaid renewal and regulatory fees.~~ *the renewal fee.*

*SEC. 37.*

*Section 7881 of the Business and Professions Code is amended to read:*

## 7881.

Except as otherwise provided in this article, certificates of registration as a geologist or as a geophysicist, or certified specialty certificates, may be renewed at any time within five years after expiration on filing an application for renewal on a form prescribed by the board and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the

application is filed, on the date on which ~~all the~~ renewal ~~fees are~~ ~~fee is~~ paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 7880 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 38.*

*Section 7883 of the Business and Professions Code is amended to read:*

7883.

A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular date before the date on which it is ~~reinstated,~~ ~~plus all accrued and unpaid renewal fees and~~ ~~reinstated and~~ the delinquency fee, if any, accrued at the time of its revocation.

*SEC. 39.*

*Section 8024.7 of the Business and Professions Code is amended to read:*

8024.7.

The board shall establish an inactive category of licensure for persons who are not actively engaged in the practice of shorthand reporting.

(a) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(b) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license is exempt from any continuing education requirement for renewal of an active license.

(c) The renewal fee for a license in an active status shall ~~apply also for a renewal of~~ ~~a~~ ~~be no more than 50 percent of the renewal fee for a~~ license in an ~~inactive status,~~ ~~unless a lesser renewal fee is specified by the board.~~ ~~active status.~~

(d) In order for the holder of an inactive license issued pursuant to this section to restore ~~his or her~~ ~~their~~ license to an active status, the holder of an inactive license shall comply with both of the following:

(1) Pay the renewal fee.

(2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

*SEC. 40.*

*Section 8802 of the Business and Professions Code is amended to read:*

8802.

Except as otherwise provided in this article, licenses issued under this chapter may be renewed at any time within five years after expiration on filing of application for renewal on a form prescribed by the board and payment of ~~all accrued and unpaid renewal fees.~~ *the renewal fee.* If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 8801 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

*SEC. 41.*

*Section 9832 of the Business and Professions Code is amended to read:*

9832.

(a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service dealer shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service dealer shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay ~~all accrued and unpaid delinquency and renewal fees.~~ *the delinquency fee.*

(d) Renewal is effective on the date that the application is ~~filed,~~ *filed and* the renewal ~~fee is paid, and all~~ *and* delinquency fees are paid.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend by not more than six months, the date fixed by law for renewal of a registration, except that in that event any renewal fee that

may be involved shall be prorated in a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

**SEC. 42.**

*Section 9832.5 of the Business and Professions Code is amended to read:*

9832.5.

(a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service contractor shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service contractor shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay ~~all accrued and unpaid~~ *the* delinquency and renewal fees.

(d) Renewal is effective on the date that the application is ~~filed,~~ *filed and* the renewal ~~fee is paid, and all~~ *and* delinquency fees are paid.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend, by not more than six months, the date fixed by law for renewal of a registration, except that, in that event, any renewal fee that may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

(f) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

**SEC. 43.**

*Section 9884.5 of the Business and Professions Code is amended to read:*

9884.5.

A registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.

An automotive repair dealer whose registration has been canceled by operation of this section shall obtain a new registration only if ~~he or she~~ *the automotive repair dealer* again meets the requirements set forth in this chapter relating to registration, is not subject to denial under Section 480, and pays the applicable fees.

An expired registration may be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the bureau and the payment of ~~all accrued~~ *the* renewal and delinquency fees. Renewal under this section shall be effective on the date on which the application is filed and ~~all~~ *the* renewal and delinquency fees are paid. If so renewed, the registration shall continue in effect through the expiration date of the current registration year as provided in Section 9884.3, at which time the registration shall be subject to renewal.

*SEC. 44.*

*Section 19170.5 of the Business and Professions Code is amended to read:*

19170.5.

(a) Except as provided in Section 19170.3, licenses issued under this chapter expire two years from the date of issuance. To renew ~~his or her~~ *a* license, a licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the chief, and pay the fees prescribed by Sections 19170 and 19213.1. If a licensee fails to renew ~~his or her~~ *their* license before its expiration, a delinquency fee of 20 percent, but not more than one hundred dollars (\$100), notwithstanding the provisions of Section 163.5, shall be added to the renewal fee. If the renewal fee and delinquency fee are not paid within 90 days after expiration of a license, the licensee shall be assessed an additional penalty fee of 30 percent of the renewal fee.

(b) Except as otherwise provided in this chapter, a licensee may renew an expired license within six years after expiration of the license by filing an application for renewal on a form prescribed by the bureau, and paying ~~all accrued~~ *the* renewal, ~~delinquent,~~ *delinquency,* and penalty fees.

(c) A license that is not renewed within six years of its expiration shall not be renewed, restored, reinstated, or reissued, but the holder of the license may apply for and obtain a new license if both of the following requirements are satisfied:

(1) No fact, circumstance, or condition exists which would justify denial of licensure under Section 480.

(2) The licensee pays ~~all~~ *the* renewal, delinquency, and penalty ~~fees that have accrued since the date on which the license was last renewed.~~ *fees.*

(d) The bureau may impose conditions on any license issued pursuant to subdivision (c).

*SEC. 45.*

*Section 19290 of the Business and Professions Code is amended to read:*

19290.

(a) Permits issued under this chapter expire two years from the date of issuance. To renew a permit, a permittee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the chief, and continue to pay the fees prescribed in Sections 19288 and 19288.1. Notwithstanding Section 163.5, if a permittee fails to renew the permit before its expiration, a delinquency fee of 20 percent of the most recent fee paid to the bureau pursuant to Sections 19288 and 19288.1 shall be added to the amount due to the bureau at the next fee interval. If the renewal fee and delinquency fee are not paid within 90 days after expiration of a permit, the permittee shall be assessed an additional fee of 30 percent of the most recent fee paid to the bureau pursuant to Sections 19288 and 19288.1.

(b) Except as otherwise provided in this chapter, a permittee may renew an expired permit within two years after expiration of the permit by filing an application for renewal on a form prescribed by the bureau, and paying all ~~accrued~~ fees.

(c) A permit that is not renewed within two years of its expiration shall not be renewed, restored, reinstated, or reissued, but the holder of the expired permit may apply for and obtain a new permit as provided in this chapter, upon payment of all fees that accrued since the date the permit was last renewed.

(d) The bureau may impose conditions on any permit issued pursuant to subdivision (c).

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 5, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(1)(B) – AB 1145 (Garcia, Christina) Child abuse:<br>reportable conduct |

**Background:**

For the purposes of the Child Abuse Neglect Reporting Act (CANRA), this bill revises the definition of sexual assault to no longer include any acts under Penal Code Sections 286 (sodomy), 287 or former Section 288a (oral copulation), and Section 289 (sexual penetration), if committed voluntarily and if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

This bill provides for equal treatment of consenting minors under the law regardless of the type of consensual sexual activities they engage in and provides clarity on the requirements of mandatory reporters under CANRA in these situations.

**Location:** Assembly Committee on Appropriations

**Status:** 4/02/2019 From committee: Do pass and re-refer to Assembly Committee on Appropriations (Ayes 5. Noes 2.)

**Votes:** 3/12/2019 Assembly Public Safety (5-2-1)

**Action Requested:**

Staff recommend the Board take a Support position on AB 1145 (Atkins).

Attachment A: AB 1145 (Garcia, Christina) Analysis

Attachment B: AB 1145 (Garcia, Christina) Assembly Public Safety Analysis

Attachment C: AB 1145 (Garcia, Christina) Bill Text

## 2019 Bill Analysis

|  |   |                       |
|--|---|-----------------------|
| <b>Author:</b><br>Cristina Garcia                  | <b>Bill Number:</b><br>AB 1145          | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>Unknown                         | <b>Version:</b><br>Introduced 2/21/2019 |                       |
| <b>Subject:</b><br>Child abuse: reportable conduct |   |                       |

### SUMMARY

For the purposes of the Child Abuse Neglect Reporting Act (CANRA), this bill revises the definition of sexual assault to no longer include any acts under Penal Code Sections 286 (sodomy), 287 or former Section 288a (oral copulation), and Section 289 (sexual penetration), if committed voluntarily and if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

### RECOMMENDATION

**Support** – Staff recommends the Board support AB 1145 (Garcia, Christina), as this bill provides for equal treatment of consenting minors under the law regardless of the type of consensual desired sexual activities they engage in and provides clarity on the requirements of mandatory reporters under CANRA in these situations.

### REASON FOR THE BILL

According to the author, adults who interact with minors as part of their job are considered mandated reporters. As a mandated reporter, they are required by law to report cases of abuse. While the law has a good and necessary intent, the current law includes a reliance on a legal distinction based on the type of sexual activity that is outdated and discriminatory.

|   |  |
|---|--|
| Other Boards/Departments that may be affected: Multiple Boards and Bureaus  |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes   |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

Under current law, a mandated reporter does not have to report two people having vaginal intercourse unless the conduct is between someone over 21 years of age with someone under 16 years of age. The same law requires that a mandated reporter does have to report incidents of oral sex, anal sex, and sexual penetration in any instance where one person is under the age of 18 years. As a result, a therapist, healthcare worker, or teacher would have to report two teens engaging in activities that generally lead up to vaginal intercourse, but not vaginal intercourse itself. Crucially, it means that LGBTQ teens will always be reported. Even if the two minors were both 17 years of age, one teenager would have to be reported as a sex offender and one as a victim.

According to the author, this reporting requirement puts teens at risk. Therapists and healthcare workers disclose the limits of confidentiality. This means teenagers who are engaging in oral or anal sex are less likely to get advice addressing their mental and health care concerns than two teens engaging in vaginal intercourse. It also puts the mandated reporters at risk of losing their licenses and their jobs if they help these teenagers as trusted adults and not report said behavior.

AB 1145 does not change the criminality of the acts in any of the sections referenced for mandated reporters. It does not change the fact that a mandated report is required to report any case where abuse is suspected or there is coercive behavior.

AB 1145 simply makes sure that when it comes to reporting voluntary acts of sexual conduct that all types of sexual conduct get the same treatment. Clearing up the contradictions and inconsistencies will allow mandated reporters to better protect teens and better identify cases where there is non-voluntary behavior.

## **ANALYSIS**

### Current Law Under the Child Abuse Neglect Reporting Act

Current law related to CANRA requires anyone defined as a mandated reporter under 11165.7 of the Penal Code, which includes a Psychologist, Psychological Assistant, or Registered Psychologist, to make a report to an agency specified in Section 11165.9 of the Penal Code, whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

Current law defines sexual abuse to include sexual assault, which includes sodomy, oral copulation, and sexual penetration. While the author states that a mandated reporter does not have to report two people having vaginal intercourse unless the conduct is between someone over 21 years of age with someone under 16 years of age, this exemption is not clearly stated in statute and comes from interpretations of prior case law regarding CANRA.

### The Proposed Change

As written, the changes proposed in AB 1145 redefines sexual assault for the purposes of CANRA to not include sodomy, oral copulation, or sexual penetration, if committed voluntarily and if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

The changes in AB 1145 allow for equal treatment of consenting minors under the law regardless of the type of consensual sexual activities they engage in and provides clarity on the requirements of mandatory reporters under CANRA in these situations.

In 2015, the Board took a Support position on AB 832, the predecessor to AB 1145, after the author accepted the Board's requested amendment to clarify that the change only applied to situations "where there are no indicators of abuse".

### **LEGISLATIVE HISTORY**

AB 832 (C. Garcia), of 2015-2016 Legislative Session, would have provided that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse Neglect and Reporting Act (CANRA) does not include voluntary acts of sodomy, oral copulation, or sexual penetration, unless it involves a person who is 21 years of age or older engaging in these acts with a minor who is under 16 years of age. AB 832 failed passage on the Assembly Floor. The Board took a Support position on AB 832.

AB 1505 (C. Garcia), of the 2013-2014 Legislative Session, would have excluded from the definition of reportable "sexual assault" under the Child Abuse Neglect Reporting Act (CANRA) acts of sodomy or oral copulation, unless the act involves either a person over 21 years of age or a minor under 16 years of age. AB 1505 was never heard in the Assembly Appropriations Committee. The Board took an Oppose Unless Amended position due to concerns with specific provisions in the bill at that time.

### **OTHER STATES' INFORMATION**

No Applicable

### **PROGRAM BACKGROUND**

The Board protect consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

By clarifying these CANRA provisions, this bill would have a positive impact on the Board's ability to educate licensees regarding CANRA requirements and more effectively enforce complaints related to mandated reporting.

### **FISCAL IMPACT**

Not Applicable

### **ECONOMIC IMPACT**

Not Applicable

### **LEGAL IMPACT**

Not Applicable

**APPOINTMENTS**

Not Applicable

**SUPPORT/OPPOSITION****Support:**

California Psychological Association  
California Public Defenders Association

**Opposition:**

None

**ARGUMENTS****Proponents:**

According to California Psychological Association, "Currently, CANRA requires a psychologist, among other mandated reporters, to report whenever they (in their professional capacity or within the scope of his or her employment) has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, including sexual abuse. Further, under existing law, sexual abuse is reportable if it involves unlawful sexual intercourse between a person 21 years of age or older with a minor who is under 16 years of age. Existing law also makes sexual abuse reportable if any person participates in an act of sodomy or oral copulation with a person who is under 18 years of age.

"This bill would instead make instances of sodomy or oral copulation reportable as sexual abuse only if any person over 21 years of age engages in a sexual act with a person who is under 16 years of age. For years, professionals in the field have felt that the current statute discriminated against LGBT youths, and could put practitioners at risk of professional and legal discipline for not reporting what they did not deem to be child abuse, but that a strict interpretation of the statute deemed to be child abuse. Several years ago, the Department of Consumer Affairs issued a legal opinion which clarifies that oral or anal copulation between two minors does not need to be report if the professional deems it is not abuse; much like non-abusive consensual intercourse is not reported as child abuse. However, the statute remains intact, and could be interpreted by practitioners, attorneys, and future department heads in a different manner."

**Opponents:**

None

Date of Hearing: April 2, 2019  
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1145 (Cristina Garcia) – As Introduced February 21, 2019

**SUMMARY:** Eliminates the requirement that mandated reporters under the Child Abuse Neglect and Reporting Act (CANRA) report specified consensual sexual conduct involving minors by redefining the scope of “sexual assault.” Specifically, **this bill:**

- 1) Specifies that “sexual assault” shall not include specified consensual sexual conduct for purposes of mandated reporting of child abuse under CANRA.
- 2) States that “sexual assault” for the purposes of CANRA does not include voluntary conduct for sodomy, oral copulation, or sexual penetration with a foreign object, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

**EXISTING LAW:**

- 1) Provides that 46 different categories of persons, including but not limited to teachers, coaches, youth camp counselors, doctors, peace officers, and firefighters, are deemed mandated reporters of child abuse. (Pen. Code, § 11165.7.)
- 2) Provides that reports of suspected child abuse or neglect shall be made by mandated reporters, to any police department or sheriff’s department, county probation department, or the county welfare department. (Pen. Code, § 11165.9.)
- 3) States that a mandated reporter shall make a report whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any non-privileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166.)
- 4) States that the term “abuse or neglect in out-of-home care” includes sexual abuse upon a child, where the person responsible for the child’s welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. (Pen. Code, § 11165.5.)
- 5) States that the term “child abuse or neglect” includes sexual abuse. (Pen. Code, § 11165.6.)

- 6) States that “sexual abuse” means sexual assault or sexual exploitation, as specified. (Pen. Code, § 11165.1.)
- 7) Defines “Sexual assault” as conduct in violation of one or more of the following: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation). (Pen. Code, § 11165.1, subd. (a).)
- 8) States that conduct described as “sexual assault” includes, but is not limited to, all of the following: sexual penetration, however slight; sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person; intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purposes; the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose, and; the intentional masturbation of the perpetrator’s genitals in the presence of a child. (Pen. Code, § 11165.1, subd. (b).)
- 9) Provides that a mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months in a county jail or by a fine of \$1,000, or both. (Pen. Code, § 11166 subd. (c).)
- 10) States that any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. (Pen. Code, § 286, subd. (b)(1).)
- 11) Provides that any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony. (Pen. Code, § 286, subd. (b)(2).)
- 12) States that any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or as misdemeanor, by imprisonment in a county jail for a period of not more than one year. (Pen. Code, § 289, subd. (h).)
- 13) States that any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony. (Pen. Code, § 289, subd. (i).)
- 14) States that any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished as a felony, by imprisonment in the state prison, or as misdemeanor, by imprisonment in a county jail for a period of not more than one year. (Pen. Code, § 287, subd. (b)(1).)

- 15) Specifies that any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony. (Pen. Code, § 287, subd. (b)(2).)
- 16) States that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. (Pen. Code, §261.5, subd. (a).)
- 17) Provides that any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor. (Pen. Code, § 261.5, subd. (b).)
- 18) Specifies that any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished as a misdemeanor, by imprisonment in a county jail not exceeding one year, or as a felony, by imprisonment in county jail not exceeding three years. (Pen. Code, § 261.5, subd.(c).)
- 19) States that any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished as a misdemeanor, by imprisonment in a county jail not exceeding one year, or as a felony, in county jail not exceeding three years. (Pen. Code, § 261.5, subd. (d).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Adults who interact with minors as part of their job are considered mandated reporters. As a mandated reporter, they are required by law to report cases of abuse. While the law has a good and necessary intent, the current law includes a reliance on a legal distinction based on the type of sexual activity that is outdated and discriminatory.

“Under current law, a mandated reporter does not have to report two people having vaginal intercourse unless the conduct is between someone over 21 years of age with someone under 16 years of age. The same law requires that a mandated reporter does have to report incidents of oral sex, anal sex, and sexual penetration in any instance where one person is under the age of 18 years. As a result, a therapist, healthcare worker, or teacher would have to report two teens engaging in activities that generally lead up to vaginal intercourse, but not vaginal intercourse itself. Crucially, it means that LGBT teens will always be reported. Even if the two minors were both 17 years of age, one teenager would have to be reported as a sex offender and one as a victim.

“This puts teens at risk. Therapists and healthcare workers disclose the limits of confidentiality. This means teenagers who are engaging in oral or anal sex are less likely to get advice addressing their mental and health care concerns than two teens engaging in vaginal intercourse. It also puts the mandated reporters at risk of losing their licenses and their jobs if they help these teenagers as trusted adults.

“AB 1145 does not change the criminality of the acts in any of the sections referenced for mandated reporters. It does not change the fact that a mandated report is required to report any case where abuse is suspected or there is coercive behavior.

“AB 1145 simply makes sure that when it comes to reporting voluntary acts of sexual conduct that all types of sexual conduct get the same treatment. Clearing up the contradictions and inconsistencies will allow mandated reporters to better protect teens and better identify cases where there is non-voluntary behavior.”

- 2) **CANRA:** CANRA was established in 1981 for the purpose of protecting children from abuse and neglect. The law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. This list of mandated reporters has grown over the years and currently includes professions such as teachers and school administrators, physicians, athletic coaches, clergy members, and a variety of first responders and counselors.

Whenever a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of, or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, the duty to report is triggered. A mandated reporter must report an incident of child abuse by telephone to a police or sheriff's department or a county probation or welfare department immediately or as soon as practically possible, and then prepare and submit a written follow up report within 36 hours of receiving the information concerning the incident. A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor.

- 3) **The Current CANRA Language Defining “Sexual Assault” is Inconsistent for Similar Sexual Contact:** Under CANRA, “child abuse” includes “sexual abuse”, and “sexual abuse” consists of “sexual assault” or “sexual exploitation.” The definition of sexual assault includes specific crimes involving sexual contact.

Under the current language, CANRA does not include within the definition of “sexual assault” situations where a minor engages in voluntary intercourse, unless it is with a person 21 years of age or older and the minor is under 16 years of age. Statutorily, consensual intercourse that involves a minor 16 years of age or older and a person that is 21 years of age or younger does not trigger a mandatory reporting requirement. The statutory language does include within the definition of “sexual assault” situations where a minor engages in voluntary sexual acts consisting of oral copulation, sodomy, or penetration by a foreign object, and the minor is 16 years or older and the partner is under 21. Those forms of conduct trigger mandatory reporting under the statute, regardless of the age of the participants. The fact that similar acts are not currently treated consistently in the statutory language can result in disparate reporting for different sex acts between consensual partners. There is increased likelihood of disparate reporting for consensual same sex partners that engage in sexual contact other than intercourse. This bill would bring consistency in terms of the language regarding mandated reporting when voluntary sex acts take place between minors and partners aged 21 and younger. This bill specifies that if the mandated reporter sees indicators of abuse, reporting would still be required even if sexual contact for oral copulation, sodomy, and penetration by a foreign object were otherwise voluntary and within

the age range addressed by this bill.

In 2013, the Department of Consumer Affairs (DCA) evaluated the issue of whether CANRA requires practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation. Relying on case law and the legislative intent behind CANRA, DCA concluded that mandated reporters are not required to report consensual sex between minors of like age for any of the conduct listed as sexual assault unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of child abuse. Because sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated the same as all other conduct listed in the section (i.e. Penal Code Section 288), only instances involving acts that are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there are indicators of abuse. (See DCA, Memorandum on the Evaluation of CANRA Reform Proposal Related to Reporting Consensual Sex Between Minors (Apr. 11, 2013).) This bill would conform the statutory language regarding the definition of “sexual assault” to the practice described by DCA .

The conduct addressed by this bill (oral copulation, sodomy, sexual penetration with a foreign object with a minor 16 years or older and a partner 21 years or younger) still constitutes criminal conduct which can be charged alternately as a felony or misdemeanor (wobbler).

- 4) **Argument in Support:** According to *California Psychological Association*, “Currently, CANRA requires a psychologist, among other mandated reporters, to report whenever they (in their professional capacity or within the scope of his or her employment) has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, including sexual abuse. Further, under existing law, sexual abuse is reportable if it involves unlawful sexual intercourse between a person 21 years of age or older with a minor who is under 16 years of age. Existing law also makes sexual abuse reportable if any person participates in an act of sodomy or oral copulation with a person who is under 18 years of age.

“This bill would instead make instances of sodomy or oral copulation reportable as sexual abuse only if any person over 21 years of age engages in a sexual act with a person who is under 16 years of age. For years, professionals in the field have felt that the current statute discriminated against LGBT youths, and could put practitioners at risk of professional and legal discipline for not reporting what they did not deem to be child abuse, but that a strict interpretation of the statute deemed to be child abuse. Several years ago, the Department of Consumer Affairs issued a legal opinion which clarifies that oral or anal copulation between two minors does not need to be report if the professional deems it is not abuse; much like non-abusive consensual intercourse is not reported as child abuse. However, the statute remains intact, and could be interpreted by practitioners, attorneys, and future department heads in a different manner.”

5) **Prior Legislation:**

- a) AB 832 (C. Garcia), of 2015-2016 Legislative Session, would have provided that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse Neglect and Reporting Act (CANRA) does not include voluntary acts of sodomy, oral copulation, or

sexual penetration, unless it involves a person who is 21 years of age or older engaging in these acts with a minor who is under 16 years of age. AB 832 failed passage on the Assembly Floor

- b) AB 1505 (C. Garcia), of the 2013-2014 Legislative Session, would have excluded from the definition of reportable "sexual assault" under the Child Abuse Neglect Reporting Act (CANRA) acts of sodomy or oral copulation, unless the act involves either a person over 21 years of age or a minor under 16 years of age. AB 1505 was never heard in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Psychological Association  
California Public Defenders Association

**Opposition**

None

**Analysis Prepared by:** David Billingsley / PUB. S. / (916) 319-3744

## AB 1145 - (I) Amends the Law

## SECTION 1.

Section 11165.1 of the Penal Code is amended to read:

## 11165.1.

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), Section 287 or former Section 288a (oral copulation), subdivision (a) or ~~(b)~~, (b) of, or paragraph (1) of subdivision (c) ~~of of~~, Section 288 (lewd or lascivious acts upon a child), Section 289 (sexual penetration), or Section 647.6 (child molestation). *"Sexual assault" for the purposes of this article does not include voluntary conduct in violation of Section 286, 287, or 289, or former Section 288a, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.*

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(d) "Commercial sexual exploitation" refers to either of the following:

(1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.

(2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 5, 2019  |
| <b>TO</b>      | Board of Psychology                                    |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator      |
| <b>SUBJECT</b> | Agenda Item #22(c)(1)(C) – SB 53 (Wilks) Open meetings |

**Background:**

This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by funds provided by the state body.

Staff recommends the Board oppose SB 53 (Wilk). All items that are created or modified during two-member advisory committees are brought to the Board in an open meeting for discussion and approval. The Board of Psychology only utilizes a two-person committee structure when necessary due to concerns for employee safety and the necessity for a collaborative discussion of confidential information which could not be discussed in depth during a public meeting.

**Location:** Senate Committee on Appropriations

**Status:** 3/29/2019 Set for hearing April 8.

**Votes:** 3/12/2019 Sen Governmental Organization (14-0-2)

**Action Requested:**

Staff recommend the Board take an **Oppose** position on SB 53 (Wilks).

Attachment A: SB 53 (Wilks) Analysis

Attachment B: SB 53 (Wilks) Senate Governmental Organization Analysis

Attachment C: SB 53 (Wilks) Bill Text

## 2019 Bill Analysis

|                                  |                                     |                       |
|----------------------------------|-------------------------------------|-----------------------|
| <b>Author:</b><br>Wilk           | <b>Bill Number:</b><br>SB 53        | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>Author        | <b>Version:</b><br>Amended 3/5/2019 |                       |
| <b>Subject:</b><br>Open meetings |                                     |                       |

### SUMMARY

This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by funds provided by the state body.

### RECOMMENDATION

**Oppose** – Staff recommends the Board oppose SB 53 (Wilk). All items that are created or modified during two-member advisory committees are brought to the Board in an open meeting for discussion and approval. The Board of Psychology only utilizes a two-person committee structure when necessary due to concerns for employee safety and the necessity for a collaborative discussion of confidential information which could not be discussed in depth during a public meeting.

### REASON FOR THE BILL

According to the author, current law requires all standing committees of a local government entity or of the Legislature to hold meetings that are open to the public whether or not the standing committee takes action. However, the author believes existing law is slightly ambiguous for state bodies, resulting in some state agencies using this as a loophole. The author states that multiple state agencies have used this

|   |  |
|---|--|
| Other Boards/Departments that may be affected:  |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes   |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

misinterpretation to mean that standing committees can hold closed-door meetings as long as they contain two rather than three members and do not vote to take action on items. These agencies purposefully limit their standing committees to two members for the explicit purpose of avoiding open meeting requirements.

The Government Code contains two parallel open meeting statutes: the Ralph M. Brown Act for legislative bodies of local governments and the Bagley-Keene Open Meeting Act for state board and commissions. Prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act regarding standing committees. However, in the 1990s, after a local government entity attempted to claim a loophole existed for two-member standing committees, the legislature promptly removed any ambiguity on the matter from the Brown Act [SB 1140 (Calderon) (Chapter 1138, Statutes of 1993)]. A conforming change was not made, however, to the Bagley-Keene Act, as no change was thought necessary at the time.

According to the author, this leaves ambiguity in the Bagley-Keene Act, allowing state bodies to continue to deliberate and direct staff behind closed doors. These state agencies are allowing standing committees to interpret the language of the Bagley-Keene Act in a manner that is contrary to the intent of the Legislature and the public – that the government at all levels must conduct its business in a visible and transparent manner.

## **ANALYSIS**

The Board of Psychology currently utilizes the two-member committee format for its Enforcement, Telepsychology, and Sunset Review Committees. This change will have varied effects on these committees.

### Enforcement Committee

The Board of Psychology utilizes the two-member committee structure for the Enforcement Committee as this committee frequently reviews enforcement processes and policies with the Enforcement Unit staff. Due to prior threats made against enforcement analysts by complainants and respondents, the Board protects the identities of its enforcement analysts and does not identify these analysts by name to the public over the phone, or in written communications with complainants and respondents. The ability of enforcement analysts to meaningfully participate in Enforcement Committee work relating to enforcement processes and policies would be eliminated if the meetings were to be made public.

### Sunset Review Committee

The Board of Psychology utilizes the two-member committee structure for the Sunset Review Committee as this committee works frequently with staff in a collaborative environment while staff is creating the Board's Sunset Review Report. It is not possible to know before the drafting of the report how many meetings will be necessary and how they should be spaced. Additionally, due to the nature of the Sunset Review process and Board Meeting timelines, the turnaround time for necessary input can be short, making it imperative that staff be able to collaborate with the Sunset Review Committee

freely rather than waiting 10 days due to the necessity to notice a meeting. After staff completes the draft report with the Committee's input, the report is submitted to the Board for their review and approval in a public meeting.

#### Telepsychology Committee

The Board of Psychology utilizes this two-member committee structure for the Telepsychology Committee as this committee is purely an advisory committee and does not have authority to act on its own and must present any findings and recommendations to the full Board during a public meeting for formal action.

#### Other Effects

In addition, SB 53 would also appear to prohibit two Board members meeting together with Legislators in support of any important consumer protection issues relating to the practice of Psychology as it would be impractical, if not impossible, to publicly notice such visits. Lastly, this bill may prevent the Board of Psychology from conducting certain outreach and communications activities that include more than one member present, as that may constitute a meeting, and therefore be subject to the Open Meeting Act.

### **LEGISLATIVE HISTORY**

AB 2958 (Quirk, Chapter 881, Statutes of 2018) provided specified exemptions from Bagley-Keene for advisory state bodies that conduct meetings via teleconference.

SB 984 (Skinner, 2018) would have required the composition of each appointed state board and commission to have a specified number of women directors, and would have required the office of the governor to collect and release aggregated demographic data provided by state board and commission applicants, nominees, and appointees. (Held in the Assembly Appropriations Committee)

AB 85 (Wilk, 2015) was substantially similar to SB 53, and would have modified Bagley-Keene to require two-member advisory committees of a "state body" to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds. (Vetoed by Governor Brown)

Veto Message: I am returning Assembly Bill 85 without my signature. This bill expands the Bagley-Keene Open Meeting Act to include state advisory bodies, regardless of their size. My thinking on this matter has not changed from last year when I vetoed a similar measure, AB 2058. I believe strongly in transparency and openness but the more informal deliberation of advisory bodies is best left to current law. Sincerely,  
Edmund G. Brown Jr.

AB 1976 (Irwin, Chapter 451, Statutes of 2016) created an exemption from the teleconference meeting requirements in Bagley-Keene for agricultural state bodies.

AB 2058 (Wilk, 2014) would have modified the definition of “state body,” under Bagley-Keene, to exclude an advisory body with less than three individuals, except for certain standing committees. (Vetoed by Governor Brown)

Veto message: I am returning Assembly Bill 2058 without my signature. This bill expands the definition of a state body, under the Bagley-Keene Open Meeting Act, to standing advisory committees with one or two members. Any meeting involving formal action by a state body should be open to the public. An advisory committee, however, does not have authority to act on its own and must present any findings and recommendations to a larger body in a public setting for formal action. That should be sufficient. Sincerely, Edmund G. Brown Jr.

AB 2720 (Ting, Chapter 510, Statutes of 2014) required a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

SB 962 (Liu, Chapter 482, Statutes of 2010) allowed the use of videoconferencing and teleconferencing at the court's discretion and subject to availability for prisoners to participate in court proceedings for the termination of their parental rights or the court ordered dependency petition of their child.

AB 495 (Bagley, Chapter 1656, Statutes of 1967) created what would become known as the Bagley-Keene, establishing that it is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed, among other things.

#### **OTHER STATES' INFORMATION**

Not applicable.

#### **PROGRAM BACKGROUND**

The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

This bill would affect the Board's use of the two-person committee structure and the staff processes for meeting preparations for two-person committees, including the 10-day deadline for public notice of meetings and publicly posting meeting materials. This would also impact the ability of Enforcement Analysts to participate in Enforcement Committee Meetings.

#### **FISCAL IMPACT**

This bill will not have a fiscal impact on the Board, as all two-person committees are either held telephonically, or at the Department of Consumer Affairs. The change to this bill will not affect the Board's ability to hold these meetings, only changing the requirement that these meetings are noticed and held publicly.

**ECONOMIC IMPACT**

Not Applicable

**LEGAL IMPACT**

Not Applicable

**APPOINTMENTS**

Not Applicable

**SUPPORT/OPPOSITION****Support:**

CalAware

California Association of Licensed Investigators

California Newspaper Publishers Association

**Opposition:**

California Board of Accountancy

**ARGUMENTS****Proponents:**

In support of the bill, the California News Publishers Association writes that, “[o]ne of the purposes of the Bagley-Keene Act is to ensure that deliberations of state agencies be conducted openly. See Government Code § 11120. Unfortunately, ambiguity in the law is allowing state agencies to deliberate behind closed doors by limiting standing committees to fewer than three members. What this means is that decisions about policy development are being made without the public having a seat at the table. When two-member advisory committees are allowed to meet outside of public view, the public only gets the benefit of an abbreviated version of the deliberations that underlie actions taken by the state body.”

**Opponents:**

In opposition to the bill, the California Board of Accountancy (CBA) writes that, “[t]his bill would prevent the CBA, and its committees, from asking two members to review a document, draft a letter, provide expert analysis, or advise CBA staff on other matters without giving public notice. SB 53 may prevent the CBA from conducting certain outreach and communications activities that include more than one member present, as that may constitute a meeting, and therefore be subject to the Open Meeting Act. This bill would also appear to prohibit two board members meeting together with Legislators in support of any important consumer protection issues relating to the practice of public accountancy as it would be impractical, if not impossible, to publically [sic] notice such visits.”

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**SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION**  
**Senator Bill Dodd**  
**Chair**  
**2019 - 2020 Regular**

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**Bill No:** SB 53 **Hearing Date:** 3/12/2019  
**Author:** Wilk, et al.  
**Version:** 3/5/2019 Amended  
**Urgency:** Yes **Fiscal:** Yes  
**Consultant:** Brian Duke

**SUBJECT:** Open meetings

**DIGEST:** This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds.

**ANALYSIS:**

Existing law:

- 1) Bagley-Keene requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.
- 2) Defines a state body, for purposes of Bagley-Keene, to mean each of the following:
  - a. Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings, and every commission created by executive order.
  - b. A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
  - c. An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
  - d. A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in

- his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- e. The State Bar of California, as specified.

This bill:

- 1) Clarifies that, under Bagley-Keene, a two-member advisory board, commission, committee, subcommittee, or similar multimember advisory body of a state body, is defined as a “state body” if a member of that larger state body sits on the advisory board, commission, committee, subcommittee, or similar multimember advisory body and the advisory board, commission, committee, subcommittee, or similar multimember advisory body is supported, in whole or in part, by funds provided by the state body.
- 2) Contains an urgency clause to take effect immediately.

## **Background**

*Purpose of the bill.* According to the author, “SB 53 provides much-needed transparency to state government. The Bagley-Keene Act, which sets open meeting requirements for state government, is ambiguous in its definition of which state bodies must comply with Bagley-Keene.”

Further, the author states that “the ambiguity of Bagley-Keene has for years provided a loophole for state agencies that create two-member committees and claim they are exempt from open meeting requirements so long as they do not take action on anything. SB 53 clarifies Bagley-Keene to state in definite terms that any multimember body that is funded by a state body, created by formal action, or served by a state official is defined as a state body and falls under the scope of the Bagley-Keene.”

The author has provided the committee with examples of two-member advisory committees that have been created utilizing what the author argues is a loophole in current law, thereby exempting these two-member advisory committees from the open meeting requirements of Bagley-Keene. Most prominently, during budget negotiations in 2015, the University of California (UC) Board of Regents endorsed forming a committee consisting of two members, Governor Jerry Brown and UC President Janet Napolitano. The author of the bill argues that this two-member committee was in fact a “state body,” and the exemption of this two-member advisory committee defies the original legislative intent of Bagley-Keene.

*The Bagley-Keene Open Meeting Act.* Bagley-Keene covers all state boards and commissions and generally requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by Bagley-Keene to meet in closed session.

When the Legislature enacted Bagley-Keene it essentially said that when a state body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public's role in the decision-making process would be negated. Therefore, absent a specific reason to keep the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

For the purposes of Bagley-Keene, existing law defines an advisory board, commission, committee, subcommittee, or similar multimember advisory board of a state body that is created by a formal action of the body or by any member of the state body as a "state body" if it is comprised of three or more persons. This generally requires state agencies, boards, and commissions to publicly notice meetings, prepare formal agendas, accept public testimony, and conduct meetings in public, unless specifically authorized to meet in closed session.

This bill would change the definition of a "state body," for the purposes of Bagley-Keene, to include any advisory board, commission, committee, subcommittee, or similar multimember advisory body comprised of two (not three) or more persons, if one member of the larger state body serves in their official capacity as a representative of the state body, and if the advisory board is funded by the state. This change would therefore require all meetings of an advisory body, regardless of their size, be open to the public, and subject to the requirements set forth in Bagley-Keene.

*Previous attempts.* In 2014 and in 2015, Governor Jerry Brown vetoed similar measures. In the veto message of AB 2058 (Wilk, 2014), Governor Brown wrote, "[a]ny meeting involving formal action by a state body should be open to the public. An advisory committee, however, does not have authority to act on its own and must present any findings and recommendations to a larger body in a public setting for formal action. That should be sufficient."

The following year Governor Brown vetoed AB 85 (Wilk, 2015), writing "[t]his bill expands the Bagley-Keene Open Meeting Act to include advisory bodies, regardless of their size. My thinking on this matter has not changed from last year when I vetoed a similar measure, AB 2058. I believe strongly in transparency and

openness but the more informal deliberation of advisory bodies is best left to current law.”

### **Prior/Related Legislation**

AB 2958 (Quirk, Chapter 881, Statutes of 2018) provided specified exemptions from Bagley-Keene for advisory state bodies that conduct meetings via teleconference.

SB 984 (Skinner, 2018) would have required the composition of each appointed state board and commission to have a specified number of women directors, and would have required the office of the governor to collect and release aggregated demographic data provided by state board and commission applicants, nominees, and appointees. (Held in the Assembly Appropriations Committee)

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AB 1976 (Irwin, Chapter 451, Statutes of 2016) created an exemption from the teleconference meeting requirements in Bagley-Keene for agricultural state bodies.

AB 2058 (Wilk, 2014) would have modified the definition of “state body,” under Bagley-Keene, to exclude an advisory body with less than three individuals, except for certain standing committees. (Vetoed by Governor Brown)

AB 2720 (Ting, Chapter 510, Statutes of 2014) required a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

SB 962 (Liu, Chapter 482, Statutes of 2010) allowed the use of videoconferencing and teleconferencing at the court's discretion and subject to availability for prisoners to participate in court proceedings for the termination of their parental rights or the court ordered dependency petition of their child.

AB 495 (Bagley, Chapter 1656, Statutes of 1967) created what would become known as the Bagley-Keene, establishing that it is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed, among other things.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:**

CalAware  
California Association of Licensed Investigators  
California Newspaper Publishers Association

**OPPOSITION:**

California Board of Accountancy

**ARGUMENTS IN SUPPORT:** In support of the bill, the California News Publishers Association writes that, “[o]ne of the purposes of the Bagley-Keene Act is to ensure that deliberations of state agencies be conducted openly. See Government Code § 11120. Unfortunately, ambiguity in the law is allowing state agencies to deliberate behind closed doors by limiting standing committees to fewer than three members. What this means is that decisions about policy development are being made without the public having a seat at the table. When two-member advisory committees are allowed to meet outside of public view, the public only gets the benefit of an abbreviated version of the deliberations that underlie actions taken by the state body.”

**ARGUMENTS IN OPPOSITION:** In opposition to the bill, the California Board of Accountancy (CBA) writes that, “[t]his bill would prevent the CBA, and its committees, from asking two members to review a document, draft a letter, provide expert analysis, or advise CBA staff on other matters without giving public notice. SB 53 may prevent the CBA from conducting certain outreach and communications activities that include more than one member present, as that may constitute a meeting, and therefore be subject to the Open Meeting Act. This bill would also appear to prohibit two board members meeting together with Legislators in support of any important consumer protection issues relating to the practice of public accountancy as it would be impractical, if not impossible, to publically notice such visits.”

## SB 53 - (A) Amends the Law

## SECTION 1.

Section 11121 of the Government Code is amended to read:

11121.

As used in this article, "state body" means each of the following:

- (a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
- (b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
- (c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more ~~persons~~. *persons, except as provided in subdivision (d).*
- (d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- (e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

*SEC. 2.*

*This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to avoid unnecessary litigation and ensure the people's right to access the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that this act take effect immediately.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 5, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(1)(D) – SB 66 (Atkins) Medi-Cal: federally qualified health center and rural health clinic services |

**Background:**

This bill would allow Medi-Cal reimbursement for a patient receiving both medical and mental health services at a federally qualified health center (FQHC) or rural health clinic (RHC) on the same day.

**Location:** Senate Appropriations Committee

**Status:** 3/29/2019 Set for hearing April 8.

**Votes:** 3/12/2019 Senate Health (8-0-1)

**Action Requested:**

The Policy and Advocacy Committee recommend the Board take a Support position on SB 66 (Atkins).

Attachment A: SB 66 (Atkins) Analysis

Attachment B: SB 66 (Atkins) Senate Health Analysis

Attachment C: SB 66 (Atkins) Bill Text

## 2019 Bill Analysis

|  |                                      |                       |
|--|--------------------------------------|-----------------------|
| <b>Author:</b><br>Atkins and McGuire   | <b>Bill Number:</b><br>SB 66         | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>California Health+ Advocates (cosponsors)<br>Steinberg Institute (cosponsors)<br>California Association of Public Hospitals and Health Systems (cosponsors)<br>Local Health Plans of California (cosponsor) | <b>Version:</b><br>Amended 3/21/2019 |                       |
| <b>Subject:</b><br>Medi-Cal: federally qualified health center and rural health clinic services.   |                                      |                       |

### SUMMARY

This bill would allow Medi-Cal reimbursement for a patient receiving both medical and mental health services at a federally qualified health center (FQHC) or rural health clinic (RHC) on the same day.

### RECOMMENDATION

**SUPPORT** – This bill would allow Medi-Cal patients receiving services at FQHCs and RHCs to receive mental health services on the same day as they get other health care services, which would increase access to mental health care for these consumers. For this reason, staff recommends the Policy and Advocacy Committee take a Support position on SB 66 (Atkins).

### REASON FOR THE BILL

According to the author, in California, if a patient receives treatment through Medi-Cal at a community health center from both a medical provider and a mental health specialist on the same day, the State Department of Health Care Services will only reimburse the center for one “visit”, meaning both providers can’t be adequately reimbursed for their

|   |  |
|---|--|
| Other Boards/Departments that may be affected:  |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes   |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input checked="" type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: <u>03/18/2019</u><br>Vote: <u>3-0-0</u> | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

time and expertise. A patient must seek mental health treatment on a subsequent day in order for that treatment to be reimbursed as a second “visit.”

This statute creates an undue financial barrier for community centers, known as Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs), preventing them from treating their patients in a comprehensive manner in the same day.

The author notes that this barrier doesn’t exist for similar health services. The federal Medicare program allows for same-day billing of behavioral health and medical services and California allows FQHC and RHCs to bill for two separate Medi-Cal “visits” if a patient sees both a primary care provider and a dental provider on the same day. In addition, the federal government encourages states to allow FQHCs and RHCs to bill for care provided by a primary care specialist and mental health specialist in the same day as two separate visits in recognition of the value comprehensive care generates.

The author believes it is inexplicable that California has refused to change its Medi-Cal billing statute to align with federal policy and its own state policy regarding dental care. Emergency rooms are too often a costly point of entry for mental health services, and we see the fallout of untreated mental illness on our streets, our jails, and our communities.

## **ANALYSIS**

### Access to care

Currently, a patient of an FQHC or RHC can only see one healthcare practitioner (aside from a dentist) in a day. This creates unnecessary barriers to treatment for these low-income patients that have work, families, sometimes have to take public transportation, and have to travel long distances for services.

This bill will allow an FQHC or RHC to be reimbursed by Medi-Cal if a patient has a “medical visit” (a face-to-face encounter between a patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, or a comprehensive perinatal practitioner, as defined in Title 22 of the California Code of Regulations (CCR) Section 51179.7, or providing comprehensive perinatal services) and “another health visit” (face-to-face encounter between a patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, or a comprehensive perinatal practitioner, as defined in 22 CCR 51179.7, or providing comprehensive perinatal services) in the same day. A maximum of two visits in one day can be reimbursed. Currently, only dental visits and medical visits can be completed in the same day.

Allowing patients of FQHC’s and RHC’s to see a mental health provider and a medical provider on the same day, will increase the likelihood that patients can start or continue receiving mental health services at these clinics.

## **LEGISLATIVE HISTORY**

SB 1125 (Atkins of 2018) would have allowed FQHCs and RHCs to bill separately for same day medical and mental health visits. SB 1125 was vetoed by Governor.

SB 323 (Mitchell, Chapter 540, Statutes of 2017) authorizes FQHCs and RHCs to provide Drug Medi-Cal services pursuant to the terms of a mutually agreed upon contract entered into between the FQHC or RHC and the county or county designee, or DHCS, as specified, and would set forth the reimbursement requirements for these services. Authorizes an FQHC or RHC to provide specialty mental health services to Medi-Cal beneficiaries as part of a mental health plan's provider network pursuant to the terms of a mutually agreed upon contract entered into between the FQHC or RHC and one or more mental health plans. Prohibits the costs associated with providing Drug Medi-Cal services or specialty mental health services from being included in the FQHC's or RHC's per-visit PPS rate, and would require the costs associated with providing Drug Medi-Cal services or specialty mental health services to be adjusted out of the FQHC's or RHC's clinic base PPS rate as a scope-of-service change if the costs associated with providing Drug Medi-Cal services or specialty mental health services are within the FQHC's or RHC's clinic base PPS rate, as specified.

SB 1150 (Hueso and Correa of 2014) would have required Medi-Cal reimbursement to FQHC and RHCs for two visits taking place on the same day at a single location when the patient suffers illness or injury requiring additional diagnosis or treatment after the first visit, or when the patient has a medical visit and another health visit with a mental health provider or dental provider. SB 1150 was held on the Senate Appropriations suspense file.

AB 1445 (Chesbro of 2010) was substantially similar to SB 1150. AB 1445 was held on the Senate Appropriations suspense file.

SB 260 (Steinberg of 2007) would have allowed FQHCs and RHCs to bill separately for same day medical and mental health visits. SB 260 was vetoed by Governor Schwarzenegger. In his veto message, Governor Schwarzenegger stated that SB 260 would increase General Fund pressure at a time of continuing budget challenges, and that allowing separate billing for mental health services would lead to increased costs that our state could not afford.

#### **OTHER STATES' INFORMATION**

Not Applicable

#### **PROGRAM BACKGROUND**

The Board protect consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

This bill would have no impact on the Board of Psychology's operations or programs, but could potentially benefit its licensees and recipients of psychological services.

**FISCAL IMPACT**

Not Applicable

**ECONOMIC IMPACT**

This bill could result in additional funding for FQHC's and RHC's which could create additional opportunities for mental health providers to serve these communities.

**LEGAL IMPACT**

Not Applicable

**APPOINTMENTS**

Not Applicable

**SUPPORT/OPPOSITION****Support:**

California Association of Public Hospitals and Health Systems (co-sponsor)  
CaliforniaHealth+ Advocates (co-sponsor)  
Local Health Plans of California (co-sponsor)  
ACCESS California  
Alameda Health Consortium  
Alameda Health System  
Alliance of Catholic Health Care  
AltaMed Health Services Corporation  
American Academy of Pediatrics, California  
American College of Obstetricians and Gynecologists  
APLA Health  
Arroyo Vista Family Health Center  
Asian Health Services  
Association of California Healthcare Districts  
Behavioral Health Services, Inc.  
Blue Shield of California  
California Alliance of Child and Family Services  
California Hospital Association California Pan - Ethnic Health Network  
California Podiatric Medical Association California Professional Firefighters  
California Psychiatric Association  
California Psychological Association California School-Based Health Alliance  
California School Employees Association, AFL-CIO California Society of Addiction  
Medicine  
California State Association of Counties  
Center for Family Health & Education  
Central City Community Health Center  
Clinica Romero Clinica Sierra Vista  
Coalition of Orange County Community Health Centers Coastal Health Alliance  
CommuniCare Health Centers

Community Clinic Association of Los Angeles County  
Community Clinic Consortium of Contra Costa and Solano Counties  
Community Health Alliance of Pasadena (ChapCare)  
Community Health Systems, Inc.  
Contra Costa County  
County Behavioral Health Directors Association of California  
County Health Executives Association of California  
County of Santa Clara  
Disability Rights California Desert AIDS Project  
El Dorado Community Health Centers  
Essential Access Health  
Golden Valley Health Centers  
Harbor Community Clinic  
HealthRIGHT 360  
Health Alliance of Northern California  
Health Center Partners of Southern California  
Kedren Community Health Center  
La Clinica de La Raza, Inc.  
Latino Coalition for a Healthy California LifeLong Medical Care  
Local Health Plans of California  
Los Angeles Christian Health Centers Marin Community Clinics  
Mendocino Community Health Clinics, Inc.  
National Union of Healthcare Workers  
Neighborhood Healthcare  
North Coast Clinics Network  
North East Medical Services  
Northeast Valley Health Corporation  
OLE Health Omni Family Health  
One Community Health  
Open Door Community Health Centers  
Peach Tree Health  
Planned Parenthood Affiliates of California  
QueensCare Health Centers  
Redwood Community Health Coalition  
Redwoods Rural Health Center  
Riverside County Board of Supervisors SAC Health System  
San Francisco Community Clinic Consortium  
San Fernando Community Health Center  
San Ysidro Health Santa Barbara Neighborhood Clinics  
Santa Rosa Community Health  
SEIU California  
Silicon Valley Leadership Group Southside Coalition of Community Health Centers  
Steinberg Institute  
The Children's Clinic  
The Children's Clinic, Serving Children & Their Families

T.H.E. Health and Wellness Centers  
UMMA Community Clinic  
Valley Community Healthcare  
Vista Community Clinic  
Western Center on Law and Poverty  
White Memorial Community Health Center

**Opposition:**

None on File

**ARGUMENTS****Proponents:**

This bill is co-sponsored by the California Association of Public Hospitals and Health Systems, Californiahealth+ Advocates, and the Steinberg Institute. Californiahealth+ Advocates state that patients qualify for Medi-Cal based on having low-income and often come from a background of economic hardship that makes getting to a health center difficult in the first place. They argue that by requiring a 24-hour gap in services between referral from primary care and being seen by a mental health provider, many of these patients are not able to follow through and receive care, resulting in costly visits down the line. The Steinberg Institute states the ability to seamlessly transition a consumer from primary care to an on-site mental health specialist on the same day is highly effective in ensuring that patients have timely access to services and follow through with treatment regimens. The California Association of Public Hospitals and Health Systems writes that the existing billing rules have historically limited the capacity of their clinics to provide behavioral health services on a co-located basis. They contend that the flexibility created by this bill would enable public health care systems and other clinic partners to expand mental health and other services, more effectively meeting the needs of their patient populations.

**Opponents:** None on File

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## SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

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**BILL NO:** SB 66  
**AUTHOR:** Atkins  
**VERSION:** January 8, 2019  
**HEARING DATE:** March 20, 2019  
**CONSULTANT:** Kimberly Chen

**SUBJECT:** Medi-Cal: federally qualified health center and rural health clinic services

**SUMMARY:** Requires a federally qualified health center and a rural health center to receive Medi-Cal reimbursement for two visits on the same day at the same location if after the first visit the patient suffers from illness or injury that requires additional treatment and diagnosis, or if the patient has a medical visit and a mental health or dental visit in the same day.

**Existing federal law:** Establishes the definition of services of a federally qualified health center (FQHC) and the services of a rural health clinic (RHC). [42 U.S. Code §1396d]

**Existing state law:**

- 1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low-income individuals are eligible for medical coverage. [WIC §14000 et seq.]
- 2) Requires FQHC and RHC services to be covered benefits under the Medi-Cal program and these services be reimbursed on a per-visit basis, as defined. [WIC §14132.100]
- 3) Defines “visit” as a face-to-face encounter between a patient of an FQHC or RHC and a specified health care professional, including a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse, podiatrist, dentist, optometrist, chiropractor, comprehensive perinatal services practitioner providing comprehensive perinatal services, a dental hygienist, a dental hygienist in alternative practice, or a marriage and family therapist, a four-hour day of attendance at an Adult Day Health Care Center; and, any other provider identified in the state plan’s definition of an FQHC or RHC visit. [WIC §14132.100]
- 4) Requires FQHC and RHC per-visit rates to be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in federal law. [WIC §14132.100]
- 5) Authorizes an FQHC or RHC to apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Requires rate changes based on a change in the scope of services provided by an FQHC or RHC to be evaluated in accordance with Medicare reasonable cost principles. [WIC §14132.100]
- 6) Authorizes an FQHC or RHC that currently includes the cost of services of a dental hygienist in alternative practice, or a marriage and family therapist in establishing its FQHC or RHC rates to bill those services as separate services. Requires an FQHC or RHC seeking to bill those services as separate visits to apply and receive approval by DHCS for an adjustment to its per-visit rate. [WIC §14132.100]

**This bill:**

- 1) Requires a maximum of two visits taking place on the same day at a single location to be reimbursed if one or both of the following conditions are met:
  - a) After the first visit, the patient suffers illness or injury that requires additional diagnosis or treatment; and,
  - b) In addition to a medical visit, the patient has a mental health or a dental visit.
- 2) Authorizes an FQHC or RHC that currently includes the cost of services of a medical visit and mental health visit as a single visit in establishing its FQHC or RHC rates to bill those services as separate visits. Requires an FQHC or RHC seeking to bill a medical visit and a mental health visit as separate visits to apply for an adjustment to its per-visit rate and receive approval by DHCS in order to receive reimbursement for those services as two visits.
- 3) Defines “mental health visit,” “dental visit,” and “medical visit” for purposes of this bill.
- 4) Requires DHCS to develop and adjust all appropriate forms to determine which FQHCs or RHCs rates are adjusted, and to facilitate the calculation of the adjusted rates.
- 5) Prohibits an FQHC or RHC application for, or DHCS’ approval of, a rate adjustment from constituting a change in scope of service within the meaning of existing law.
- 6) Authorizes an FQHC or RHC that applies for a rate adjustment under this bill to continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment has been approved.
- 7) Requires DHCS, by July 1, 2020, to submit a state plan amendment (SPA) to the federal Centers for Medicare and Medicaid Services reflecting the changes described in this bill.
- 8) Codifies the addition of licensed acupuncturists to the list of health care providers who are billable on a face-to-face per visit basis by FQHCs and RHCs.

**FISCAL EFFECT:** This bill has not been analyzed by a fiscal committee.

**COMMENTS:**

- 1) *Author’s statement.* According to the author, community health centers are an essential component of our Medi-Cal primary care network. Sixty percent of their revenue comes from the Medi-Cal program. The author states that according to the California Future Health Workforce Commission Report, February 2019, approximately 25% of all people seen in primary care have diagnosable mental disorders and the prevalence varies by income with much higher rates at lower income levels for both children and adults. The report points out that primary care providers generally receive limited formal psychiatric education or experience during their training, but are often the first point of contact for detection and treatment. This bill will facilitate the ability to seamlessly transition patients from primary care to an onsite mental health specialist on the same day, a proven way to ensure that a patient receives needed care and follows through with treatment. An efficient transition is even more important for disadvantaged patients for whom taking time off work and arranging transportation to and from a health center can be extraordinarily difficult. Right now, California is one of only a handful of states that does not allow health centers to provide and bill for mental and physical health visits on the same day.

- 2) *Background.* FQHCs and RHCs are clinics that meet federally defined qualifications and furnish federally specified services. FQHCs provide preventive and primary health care services to medically underserved populations. RHCs also provide outpatient primary care services and must be located within a designated medically underserved area. There are 1,040 FQHCs and 283 RHCs in California. The number of FQHCs has grown significantly— from 476 FQHCs in 2006 to 1,007 in 2015.
- 3) *Prospective Payment System.* Payment rules for FQHCs and RHCs differ from those for other providers. State and federal law requires that FQHCs and RHCs are paid for each patient visit, a cost-based per-visit rate known as the prospective payment system (PPS). Medi-Cal managed care plans, which must make FQHCs and RHCs available to their members, makes its payment to the FQHC and RHC. DHCS also makes a “wrap around” payment that makes up the difference between the managed care plan payment and the FQHC or RHC’s full per-visit PPS rate.

The PPS is composed of a base rate, which includes a combination of allowable capital costs and allowable operating costs per visit, and a cost-of-living adjustment determined by the Medicare Economic Index (MEI). The adjustments based on the MEI are mandated under state and federal law. FQHCs and RHCs may opt to forgo a base rate established based on projected costs and elect for a rate that is comparable to clinics providing similar services in the same geographic area with similar caseloads. An FQHC and RHC may also request an adjustment to its PPS rate based on a scope of its services, which may include the addition of new services, an increase in service intensity attributed to patients served, changes in operating costs or other changes defined in state law. DHCS is required to evaluate the request in accordance with federal regulations, which may result in increase or decrease in the PPS rate.

- 4) *DHCS policy on qualifying visits.* Federal law offers states flexibility in defining which services are included in a visit and establishing limits on the number of visits an FQHC can bill per member per day. According to the Medicaid and CHIP Payment and Access Commission, Hawaii allows FQHCs to bill for one medical or optometry visit, one behavioral health visit and one dental visit per day, while Oklahoma allows for more than one visit per day within the same category of service as long as it is for an unrelated diagnosis.

DHCS specifies that encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. The exception is that two visits may be billed in the following instances:

- a) When a patient, after the first visit, suffers illness or injury that requires another health diagnosis or treatment; and,
  - b) When a patient is seen by a health professional or a perinatal practitioner and also receives dental services on the same day.
- 5) *Medi-Cal acupuncture benefit codification.* In January 2018, DHCS announced outpatient acupuncture services for FQHCs and RHCs were restored as benefits provided to Medi-Cal recipients, effective retroactively for dates of service on or after July 1, 2016. This bill codifies acupuncture visits to an FQHC or RHC as billable under the PPS rate system.

- 6) *Related legislation.* AB 769 (Smith) requires licensed professional clinical counselors to be included as an eligible billable provider within the definition of a “visit,” which establishes when an FQHC or RHC may be reimbursed for services under the PPS rate. *AB 769 is pending the Assembly Health Committee.*

AB 770 (E. Garcia) requires exclusions to the adjusted PPS rate methodology, authorizes an FQHC or RHC to apply for a scope of service change when updating or implementing a certified electronic health record system, expands the definition of “visit” to include services rendered outside the facility location, as specified, and extends the time frame for which an FQHC or RHC may request a scope of service rate change. *AB 770 is pending the Assembly Health Committee.*

- 7) *Prior legislation.* SB 1125 (Atkins of 2018) is substantially similar to this bill. *SB 1125 was vetoed by the Governor Brown, who stated the bill required “significant, ongoing general fund commitments” and “should be considered as part of the budget process.”*

SB 323 (Mitchell, Chapter 540, Statutes of 2017) authorized FQHCs and RHCs to provide Drug Medi-Cal services pursuant to the terms of a mutually agreed upon contract entered into between the FQHC or RHC and the county or county designee, or DHCS, as specified, and would set forth the reimbursement requirements for these services.

SB 1150 (Hueso and Correa of 2014) would have required Medi-Cal reimbursement to FQHC and RHCs for two visits taking place on the same day at a single location when the patient suffers illness or injury requiring additional diagnosis or treatment after the first visit, or when the patient has a medical visit and another health visit with a mental health provider or dental provider. *SB 1150 was held on the Senate Appropriations suspense file.*

AB 1445 (Chesbro of 2010) was substantially similar to SB 1150. *AB 1445 was held on the Senate Appropriations suspense file.*

SB 260 (Steinberg of 2007) would have authorized FQHCs and RHCs to bill separately for same day medical and mental health visits. *SB 260 was vetoed by Governor Schwarzenegger.*

- 8) *Support.* This bill is co-sponsored by the California Association of Public Hospitals and Health Systems, Californiahealth+ Advocates, and the Steinberg Institute. Californiahealth+ Advocates state that patients qualify for Medi-Cal based on having low-income and often come from a background of economic hardship that makes getting to a health center difficult in the first place. They argue that by requiring a 24 hour gap in services between referral from primary care and being seen by a mental health provider, many of these patients are not able to follow through and receive care, resulting in costly visits down the line. The Steinberg Institute states the ability to seamlessly transition a consumer from primary care to an on-site mental health specialist on the same day is highly effective in ensuring that patients have timely access to services and follow through with treatment regimens. The California Association of Public Hospitals and Health Systems writes that the existing billing rules have historically limited the capacity of their clinics to provide behavioral health services on a co-located basis. They contend that the flexibility created by this bill would enable public health care systems and other clinic partners to expand mental health and other services, more effectively meeting the needs of their patient populations.

- 9) *Technical amendments.* The author proposes technical amendments to move “licensed acupuncturist” to the appropriate subparagraph and to add co-authors.

**SUPPORT AND OPPOSITION:**

**Support:** California Association of Public Hospitals and Health Systems (co-sponsor)  
 CaliforniaHealth+ Advocates (co-sponsor)  
 Local Health Plans of California (co-sponsor)  
 ACCESS California  
 Alameda Health Consortium  
 Alameda Health System  
 Alliance of Catholic Health Care  
 AltaMed Health Services Corporation  
 American Academy of Pediatrics, California  
 American College of Obstetricians and Gynecologists  
 APLA Health  
 Arroyo Vista Family Health Center  
 Asian Health Services  
 Association of California Healthcare Districts  
 Behavioral Health Services, Inc.  
 Blue Shield of California  
 California Alliance of Child and Family Services  
 California Hospital Association  
 California Pan - Ethnic Health Network  
 California Podiatric Medical Association  
 California Professional Firefighters  
 California Psychiatric Association  
 California Psychological Association  
 California School-Based Health Alliance  
 California School Employees Association, AFL-CIO  
 California Society of Addiction Medicine  
 California State Association of Counties  
 Center for Family Health & Education  
 Central City Community Health Center  
 Clinica Romero  
 Clinica Sierra Vista  
 Coalition of Orange County Community Health Centers  
 Coastal Health Alliance  
 CommuniCare Health Centers  
 Community Clinic Association of Los Angeles County  
 Community Clinic Consortium of Contra Costa and Solano Counties  
 Community Health Alliance of Pasadena (ChapCare)  
 Community Health Systems, Inc.  
 Contra Costa County  
 County Behavioral Health Directors Association of California  
 County Health Executives Association of California  
 County of Santa Clara  
 Disability Rights California  
 Desert AIDS Project  
 El Dorado Community Health Centers  
 Essential Access Health

Golden Valley Health Centers  
Harbor Community Clinic  
HealthRIGHT 360  
Health Alliance of Northern California  
Health Center Partners of Southern California  
Kedren Community Health Center  
La Clinica de La Raza, Inc.  
Latino Coalition for a Healthy California  
LifeLong Medical Care  
Local Health Plans of California  
Los Angeles Christian Health Centers  
Marin Community Clinics  
Mendocino Community Health Clinics, Inc.  
National Union of Healthcare Workers  
Neighborhood Healthcare  
North Coast Clinics Network  
North East Medical Services  
Northeast Valley Health Corporation  
OLE Health  
Omni Family Health  
One Community Health  
Open Door Community Health Centers  
Peach Tree Health  
Planned Parenthood Affiliates of California  
QueensCare Health Centers  
Redwood Community Health Coalition  
Redwoods Rural Health Center  
Riverside County Board of Supervisors  
SAC Health System  
San Francisco Community Clinic Consortium  
San Fernando Community Health Center  
San Ysidro Health  
Santa Barbara Neighborhood Clinics  
Santa Rosa Community Health  
SEIU California  
Silicon Valley Leadership Group  
Southside Coalition of Community Health Centers  
Steinberg Institute  
The Children's Clinic  
The Children's Clinic, Serving Children & Their Families  
T.H.E. Health and Wellness Centers  
UMMA Community Clinic  
Valley Community Healthcare  
Vista Community Clinic  
Western Center on Law and Poverty  
White Memorial Community Health Center

**Oppose:** None received

## SB 66 - (A) Amends the Law

## SECTION 1.

Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100.

(a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic services described in Section 1396d(a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accordance with the definition of "visit" set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1 thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of **services service** provided by the FQHC or RHC. Rate changes based on a change in the scope of **services service** provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or rules.

(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Services Administration (HRSA).

(3) ~~A No~~ change in costs ~~is not, shall~~, in and of itself, ~~a scope of service change, be~~ *considered a scope of service change* unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of ~~services~~ *service* defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of ~~services~~ *service* is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a ~~scope of service~~ *scope of service* change. "Net change" means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for ~~scope of service~~ *scope of service* changes once per fiscal year, only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a ~~scope of service~~ *scope of service* rate change request within 90 days of the beginning of any FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the

FQHC or RHC experienced a decrease in the scope of ~~services~~ *service* provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a ~~scope-of-service~~ *scope of service* rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, "significantly lower" means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved ~~scope-of-service~~ *scope of service* change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a ~~scope-of-service~~ *scope of service* change, the adjusted reimbursement rate for that ~~scope-of-service~~ *scope of service* change shall be made retroactive to the date the ~~scope-of-service~~ *scope of service* change was initially implemented. ~~Scope-of-service~~ *Scope of service* changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to "fiscal year" shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (l). These supplemental payments shall be determined separately from the ~~scope-of-service~~ *scope of service* adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances

for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include both of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars (\$200,000) or 1 percent of a facility's total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) (1) An FQHC or RHC "visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, "physician" shall be interpreted in a manner consistent with the federal Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a ~~physician and surgeon,~~ *medical doctor*, osteopath, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal practitioner, as defined in Section 51179.7 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit.

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, ~~or~~ a marriage and family ~~therapist.~~ *therapist, or a licensed acupuncturist.*

(B) Notwithstanding subdivision (e), if an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice, or a marriage and family therapist for the purposes of establishing its FQHC or RHC rate chooses to bill these services as a separate visit, the FQHC or RHC shall apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals or marriage and family therapists that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to

determine which FQHC's or RHC's rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this subparagraph shall not constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, or a marriage and family therapist has been approved. Any approved increase or decrease in the provider's rate shall be made within six months after the date of receipt of the department's rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist, dental hygienist in alternative practice, or marriage and family therapist services, and later elects to add these services and bill these services as a separate visit, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(3) Notwithstanding any other provision of this section, ~~no later than~~ by July 1, 2018, a visit shall include a marriage and family therapist.

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity, as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code, the Medicare Program, or the Child Health and Disability Prevention (CHDP) Program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) Provided that the following entities are not operating as intermittent clinics, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, each entity shall have its reimbursement rate established in accordance with one of the methods outlined in paragraph (2) or (3), as selected by the FQHC or RHC:

(A) An entity that first qualifies as an FQHC or RHC in 2001 or later.

(B) A newly licensed facility at a new location added to an existing FQHC or RHC.

(C) An entity that is an existing FQHC or RHC that is relocated to a new site.

(2) (A) An FQHC or RHC that adds a new licensed location to its existing primary care license under paragraph (1) of subdivision (b) of Section 1212 of the Health and Safety Code may elect to have the reimbursement rate for the new location established in accordance with paragraph (3), or notwithstanding subdivision (e), an FQHC or RHC may choose to have one PPS rate for all locations that appear on its primary care

license determined by submitting a change in scope of service request if both of the following requirements are met:

(i) The change in scope of service request includes the costs and visits for those locations for the first full fiscal year immediately following the date the new location is added to the FQHC's or RHC's existing licensee.

(ii) The FQHC or RHC submits the change in scope of service request within 90 days after the FQHC's or RHC's first full fiscal year.

(B) The FQHC's or RHC's single PPS rate for those locations shall be calculated based on the total costs and total visits of those locations and shall be determined based on the following:

(i) An audit in accordance with Section 14170.

(ii) Rate changes based on a change in scope of service request shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successors.

(iii) Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(C) Except as specified in subdivision (j), this paragraph does not apply to a location that was added to an existing primary care clinic license by the State Department of Public Health, whether by a regional district office or the centralized application unit, prior to January 1, 2017.

(3) If an FQHC or RHC does not elect to have the PPS rate determined by a change in scope of service request, the FQHC or RHC shall have the reimbursement rate established for any of the entities identified in paragraph (1) or (2) in accordance with one of the following methods at the election of the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health ~~care~~, *care* and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the

projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for newly qualified FQHCs or RHCs as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(4) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. FQHCs or RHCs that have experienced changes in their services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. FQHCs or RHCs that have not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable FQHCs or RHCs to the department, but shall be required to identify the comparable FQHCs or RHCs.

(5) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis under its existing provider number until it is informed of its *new FQHC or RHC enrollment approval, provider number*, and the department shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) (1) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, or at the election of the FQHC or RHC and subject to paragraph (2), a location added to an existing primary care clinic license by the State Department of Public Health prior to January 1, 2017, shall be billed by and reimbursed at the same rate as the FQHC or RHC that either established the intermittent clinic site or mobile unit, or that held the clinic license to which the location was added prior to January 1, 2017.

(2) If an FQHC or RHC with at least one additional location on its primary care clinic license that was added by the State Department of Public Health prior to January 1,

2017, applies for an adjustment to its per-visit rate based on a change in the scope of ~~services~~ *service* provided by the FQHC or RHC as described in subdivision (e), all locations on the FQHC or RHC's primary care clinic license shall be subject to a ~~scope-of-service~~ *scope of service* adjustment in accordance with either paragraph (2) or (3) of subdivision (i), as selected by the FQHC or RHC.

(3) Nothing in this subdivision precludes or otherwise limits the right of the FQHC or RHC to request a ~~scope-of-service~~ *scope of service* adjustment to the rate.

(k) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as ~~scope-of-service~~ *scope of service* changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable ~~scope-of-service~~ *scope of service* adjustments as provided in subdivision (e).

*(l) (1) For purposes of this subdivision, the following definitions apply:*

*(A) A "mental health visit" means a face-to-face encounter between an FQHC or RHC patient and a psychiatrist, clinical psychologist, licensed clinical social worker, or marriage and family therapist.*

*(B) A "dental visit" means a face-to-face encounter between an FQHC or RHC patient and a dentist, dental hygienist, or registered dental hygienist in alternative practice.*

*(C) "Medical visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, or a comprehensive perinatal practitioner, as defined in Section 51179.7 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services.*

*(2) A maximum of two visits, as defined in subdivision (g), taking place on the same day at a single location shall be reimbursed when one or both of the following conditions exists:*

*(A) After the first visit the patient suffers illness or injury requiring additional diagnosis or treatment.*

*(B) The patient has a medical visit and a mental health visit or a dental visit.*

*(3) (A) Notwithstanding subdivision (e), an FQHC or RHC that currently includes the cost of a medical visit and a mental health visit that take place on the same day at a single location as constituting a single visit for purposes of establishing its FQHC or RHC rate may elect to apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, the FQHC or RHC shall bill a medical visit and a mental health visit that take place on the same day at a single location as separate visits.*

*(B) The department shall develop and adjust all appropriate forms to determine which FQHC's or RHC's rates shall be adjusted and to facilitate the calculation of the adjusted rates.*

*(C) An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this paragraph shall not constitute a change in scope of service within the meaning of subdivision (e).*

*(D) An FQHC or RHC that applies for an adjustment to its rate pursuant to this paragraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment has been approved.*

*(4) The department, by July 1, 2020, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services reflecting the changes described in this subdivision.*

**(H) (m)** Reimbursement for Drug Medi-Cal services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC may elect to have Drug Medi-Cal services reimbursed directly from a county or the department under contract with the FQHC or RHC pursuant to paragraph (4).

(2) (A) For an FQHC or RHC to receive reimbursement for Drug Medi-Cal services directly from the county or the department under contract with the FQHC or RHC pursuant to paragraph (4), costs associated with providing Drug Medi-Cal services shall not be included in the FQHC's or RHC's per-visit PPS rate. For purposes of this subdivision, the costs associated with providing Drug Medi-Cal services shall not be considered to be within the FQHC's or RHC's clinic base PPS rate if in delivering Drug Medi-Cal services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver Drug Medi-Cal services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering Drug Medi-Cal services, including costs related to utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing Drug Medi-Cal services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the Drug Medi-Cal services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering Drug Medi-Cal services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request

shall include a full fiscal year of activity that does not include Drug Medi-Cal services costs.

(B) An FQHC or RHC may submit requests for ~~scope-of-service~~ *scope of service* change under this subdivision only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that Drug Medi-Cal services were rendered and reimbursement for Drug Medi-Cal services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for Drug Medi-Cal services outside of the PPS rate when the FQHC or RHC obtains approval as a Drug Medi-Cal provider and enters into a contract with a county or the department to provide these services pursuant to paragraph (4).

(D) Within 90 days of receipt of the request for a ~~scope-of-service~~ *scope of service* change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(F) For purposes of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing federally qualified health center services or rural health center services and Drug Medi-Cal services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate and the FQHC or RHC is approved as a Drug Medi-Cal provider, an FQHC or RHC shall not bill the PPS rate for any Drug Medi-Cal services provided pursuant to a contract entered into with a county or the department pursuant to paragraph (4).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable ~~scope-of-service~~ *scope of service* adjustments as provided for in subdivision (e).

(4) Reimbursement for Drug Medi-Cal services shall be determined according to subparagraph (A) or (B), depending on whether the services are provided in a county that participates in the Drug Medi-Cal organized delivery system (DMC-ODS).

(A) In a county that participates in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county or county designee and the FQHC or RHC. If the county or county designee refuses to contract with the FQHC or RHC, the FQHC or RHC may follow the contract denial process set forth in the Special Terms and Conditions.

(B) In a county that does not participate in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county and the FQHC or RHC. If the county refuses to contract with the FQHC or RHC, the FQHC or RHC may request to contract directly with the department and shall be reimbursed for those services at the Drug Medi-Cal fee-for-service rate.

(5) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments for Drug Medi-Cal services made pursuant to this subdivision.

(6) For purposes of this subdivision, the following definitions shall apply:

(A) “Drug Medi-Cal organized delivery system” or “DMC-ODS” means the Drug Medi-Cal organized delivery system authorized under the California Medi-Cal 2020 Demonstration, Number 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services and described in the Special Terms and Conditions.

(B) “Special Terms and Conditions” shall have the same meaning as set forth in subdivision (o) of Section 14184.10.

~~(m)~~ (n) Reimbursement for specialty mental health services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC and one or more mental health plans that contract with the department pursuant to Section 14712 may mutually elect to enter into a contract to have the FQHC or RHC provide specialty mental health services to Medi-Cal beneficiaries as part of the mental health plan’s network.

(2) (A) For an FQHC or RHC to receive reimbursement for specialty mental health services pursuant to a contract entered into with the mental health plan under paragraph (1), the costs associated with providing specialty mental health services shall not be included in the FQHC’s or RHC’s per-visit PPS rate. For purposes of this subdivision, the costs associated with providing specialty mental health services shall not be considered to be within the FQHC’s or RHC’s clinic base PPS rate if in delivering specialty mental health services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver specialty mental health services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering specialty mental health services, including costs

related to utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing specialty mental health services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the specialty mental health services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering specialty mental health services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request shall include a full fiscal year of activity that does not include specialty mental health costs.

(B) An FQHC or RHC may submit requests for a ~~scope-of-service~~ *scope of service* change under this subdivision only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that specialty mental health services were rendered and reimbursement for specialty mental health services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for specialty mental health services outside of the PPS rate when the FQHC or RHC contracts with a mental health plan to provide these services pursuant to paragraph (1).

(D) Within 90 days of receipt of the request for a ~~scope-in-service~~ *scope of service* change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(F) For the purpose of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing federally qualified health center services or rural health center services and specialty mental health services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate, an FQHC or RHC shall not bill the PPS rate for any specialty mental health services that are provided pursuant to a contract entered into with a mental health plan pursuant to paragraph (1).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable ~~scope-of-service~~ *scope of service* adjustments as provided for in subdivision (e).

(4) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments made for specialty mental health services under this subdivision.

~~(n)~~ (o) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, ~~scope-of-service~~ *scope of service* changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

~~(e)~~ (p) The department shall promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

~~(p)~~ (q) The department shall implement this section only to the extent that federal financial participation is available.

~~(q)~~ (r) Notwithstanding any other law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific subdivisions ~~(j)~~ (m) and ~~(m)~~ (n) by means of a provider bulletin or similar instruction. The department shall notify and consult with interested parties and appropriate stakeholders in implementing, interpreting, or making specific the provisions of subdivisions ~~(j)~~ (m) and ~~(m)~~ (n), including all of the following:

(1) Notifying provider representatives in writing of the proposed action or change. The notice shall occur, and the applicable draft provider bulletin or similar instruction, shall be made available at least 10 business days prior to the meeting described in paragraph (2).

(2) Scheduling at least one meeting with interested parties and appropriate stakeholders to discuss the proposed action or change.

(3) Allowing for written input regarding the proposed action or change, to which the department shall provide summary written responses in conjunction with the issuance of the applicable final written provider bulletin or similar instruction.

(4) Providing at least 60 days advance notice of the effective date of the proposed action or change.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Cherise Burns<br>Central Services Manager   |
| <b>SUBJECT</b> | Agenda Item #22(c)(1)(E) – SB 425 (Hill) Health care practitioners:<br>licensee’s file: probationary physician’s and surgeon’s certificate:<br>unprofessional conduct |

**Background:**

SB 425 would require hospitals, clinics and other health facilities or peer review bodies to report allegations of patient sexual abuse and other sexual misconduct by healing arts professionals to the appropriate state licensing authorities within 15 days. This reporting requirement would also extend to healing arts licensees working in those health facilities and/or peer review bodies. This bill would also make changes to Medical Board of California (MBC) licensee records and the information in these records that are made public for a specified time, and the ability of MBC to temporarily suspend a licensee during investigations involving allegations of sexual misconduct by the licensee against a patient.

SB 425 adds a critical reporting tool to ensure that when allegations of sexual misconduct with a patient are made against a licensee at a licensed health facility it is also reported to the Board for investigation and potential discipline. This new reporting requirement is similar to reports currently required under Business and Professions Code Section 805, but with the added safeguard that adverse action against the healing arts licensee’s privileges does not have to occur before the health facility/peer review body reports the allegations to the Board. Staff believes that the additional sexual misconduct reporting requirements for health facilities/peer review bodies and licensees working in these facilities/peer review bodies is not only warranted but is long overdue.

**Location:** Senate Committee on Business, Professions and Economic Development

**Status:** 4/08/2019 From committee: Do pass and refer to Senate Committee on Judiciary (Ayes 9. Noes 0.)

**Votes:** 4/08/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)

**Action Requested:**

Staff recommends the Board take a **Support** position on SB 425 (Hill).

Attachment A: SB 425 (Hill) Analysis

Attachment B: SB 425 (Hill) Senate Business, Professions and Economic Development  
Analysis

Attachment C: SB 425 (Hill) Bill Text

## 2019 Bill Analysis

|  |   |                       |
|--|---|-----------------------|
| <b>Author:</b><br>Hill   | <b>Bill Number:</b><br>SB 425           | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>Author  | <b>Version:</b><br>Introduced 2/29/2019 |                       |
| <b>Subject:</b><br>Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct. |   |                       |

### SUMMARY

SB 425 would require hospitals, clinics and other health facilities to report allegations of patient sexual abuse and other sexual misconduct by healing arts professionals to the appropriate state licensing authorities within 15 days. This bill would also make changes to Medical Board of California (MBC) licensee records and the information in these records that are made public for a specified time, and the ability of MBC to temporarily suspend a licensee during investigations involving allegations of sexual misconduct by the licensee against a patient.

### RECOMMENDATION

**SUPPORT** – Staff recommends the Board Support SB 425 as it adds a critical reporting tool to ensure that when egregious sexual misconduct by licensees occurs at a licensed health facility it is reported to the Board for investigation and potential discipline against the licensee. This new reporting requirement provides the Board of Psychology with similar reports as currently required under Business and Professions Code (BPC) 805, but with the added safeguard that the facilities employee does not have to be disciplined before the reporting occurs.

|   |  |
|---|--|
| Other Boards/Departments that may be affected: Healing Arts Boards  |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input checked="" type="checkbox"/> Affects Enforcement Processes  |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

**REASON FOR THE BILL**

According to the author, SB 425 closes legal loopholes that can allow a subject of repeated sexual abuse and misconduct complaints to work at a health facility for years because the relevant regulatory board is not notified by the facility of the allegations against a licensee.

In May 2018, a news investigation by the Los Angeles Times disclosed multiple unresolved complaints of alleged sexual misconduct involving University of Southern California's former gynecologist, who worked at the university for almost 30 years – examining or treating thousands of women – before resigning in 2017. None of the prior complaints were reported to the Medical Board of California.

In response to the Los Angeles Times article, the author and then-chair of the Senate Business, Professions and Economic Development Committee decided to conduct a hearing on sexual misconduct reporting in the medical profession. The differing reporting standards for various health facilities were among the issues raised in the hearing. Some health facilities, because of their size or type, have no requirement to report allegations of patient sexual abuse or sexual misconduct involving medical professionals to any licensing board. Other health facilities have in-house peer review groups that decide whether a complaint should be forwarded to the appropriate licensing board. Existing law also enables physicians and surgeons to prolong their licensing board's inquiry into allegations by repeatedly failing to show up for investigative interviews.

The author believes that allegations of sexual abuse or misconduct by doctors and other health care professionals should be reported swiftly to the appropriate licensing board for review so that regulators can determine whether to conduct an independent, confidential investigation. The author notes that the bill would not change the confidentiality of the complaints that this reporting would create, as allegations remain private unless a regulatory board pursues the case through the filing of disciplinary charges through an accusation.

The author states that State regulatory boards cannot fulfill their responsibilities to protect patients and other consumers, if they are not notified of these serious allegations involving their licensees. The failure to do so shields bad actors while exposing patients to greater risks.

**ANALYSIS**

SB 425 makes other changes related to MBC licensee records and the information that should be made public regarding past discipline and the ability of the MBC to temporarily suspend a licensee during investigations involving allegations of sexual misconduct by the licensee against a patient. This analysis will not cover these issues as they do not impact the Board or its Enforcement Program.

Current Reporting Requirements under BPC Section 805:

Under current law, BPC Section 805 requires specified peer review bodies to report specified peer review actions to the relevant licensing bodies (shown below). Note that BPC 805 Reports to the appropriate licensing board are only required once the peer review body has taken an adverse action against the licensee's privileges or a licensee has resigned, taken a leave of absence, or withdrawal or abandoned their application for privileges due to an investigation.

Peer review bodies under BPC Section 805 include:

- A State licensed health care facility or clinic or a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.
- A health care service plan or a disability insurer that contracts with licentiates.
- A not for profit professional society having as members at least 25% of the eligible licentiates in the area in which it functions.
- A committee organized by any entity consisting of or employing more than 25 licentiates of the same class (these are typically at the health facility) reviews the quality of care provided by members or facility employees.

A BPC 805 Report must be filed if one of the following occurs:

- A peer review body takes any of the following actions:
  - Denies or rejects a licensee's applications for staff privileges/membership for a medical disciplinary cause or reason;
  - Revokes a licensee's staff privileges/membership/employment for a medical disciplinary cause or reason;
  - Imposes restrictions, or voluntarily restrictions are accepted, on staff privileges/membership/employment for 30 days or more within any 12-month period for medical disciplinary reasons; or
  - Imposes a summary suspension of staff privileges/membership/employment for a period in excess of 14 days; or
- If a licensee resigns, takes a leave of absence, or withdrawals/abandons their application (initial or renewal) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason.

SB 425's New Peer Review Entity Reporting Requirements (BPC Section 805.5(b)):

This bill would add to the current BPC Section 805 requirements, by additionally requiring these entities to report to the appropriate board any allegation of sexual abuse or sexual misconduct made against a healing arts licensee within 15 days of receiving such allegations. This would mean that in those facilities, instead of only reporting the allegations if they resulted in an adverse action on the licensee's staff privileges or the licensee resigned or withdrew their application for staff privileges due to the investigation of the sexual abuse or misconduct, all allegations of sexual abuse or sexual misconduct would be reported to the Board immediately.

SB 425's New Licensee Reporting Requirements (BPC Section 805.5(c)):

Subdivision (c) of the bill would additionally create an 805-like reporting requirement for employees and healing arts licensees that work in licensed health care facilities and

peer review entities. Specifically, SB 425 would require any employee or healing arts licensee that works for an entity required to file the BPC 805.5 Report in subdivision (b), to also file a report with the appropriate regulatory agency if they have “knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee”.

The bill’s requirement for an individual healing arts licensee working in these facilities to also report these allegations to the appropriate licensing board is not a current requirement for BPC 805 Reports. This individual reporting requirement is new and broadens the pool of potential complainants for these incidents, but the individual licensee reporting mechanism would serve as a sort of whistleblower option in cases where a facility has willfully failed to report allegations of sexual abuse or misconduct. This type of licensee reporting of incidents of alleged sexual misconduct is limited to the settings specified in the bill, and therefore does not apply to all of the Board’s licensees but would add greater consumer protection against patient sexual abuse and misconduct in these settings.

Staff believes that the additional sexual misconduct reporting requirements for peer review bodies and licensees working in health facilities is not only warranted but is long overdue. For peer review bodies to wait to report sexual misconduct allegations until their investigation is completed and action is taken against the licensee’s privileges infringes on the Board’s responsibility to protect California consumers of psychological services and maintains current loopholes that have allowed seriously egregious behavior by a small number of bad actors to go unreported to their respective licensing boards.

### **LEGISLATIVE HISTORY**

AB 1030 (Calderon and Petrie-Norris) requires the Medical Board of California, on or before July 1, 2020, in coordination with the American College of Obstetricians and Gynecologists, to develop an informational pamphlet for patients undergoing gynecological examinations. This bill is pending in the Assembly Committee on Health.

SB 1448 (Hill, Chapter 570, Statutes of 2018), called the Patient’s Right to Know Act, requires doctors and other medical professionals to notify patients if they were placed on probation for sexual misconduct and other serious misconduct involving patient harm.

### **OTHER STATES' INFORMATION**

Not Applicable

### **PROGRAM BACKGROUND**

The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. The Board licenses and regulates psychologists, psychological assistants, and registered psychologists.

The Board's enforcement process begins with the filing of a complaint. Complaints can be submitted by the public, generated internally by board staff, or based on information a licensing board receives from various entities through mandatory reports like BPC Section 805 Reports. Complaints remain confidential unless an accusation is filed against a licensee.

Complaints involving allegations of sexual misconduct are investigated using the Division of Investigations, and the findings of the investigation are reviewed by a Board Subject Matter Expert (a licensee who reviews investigative materials on behalf of the Board) to determine if there was a departure from the standard of care. If there are findings of sexual misconduct and thus a departure from the standard of care, a Deputy Attorney General (DAG) in the Office of the Attorney General drafts formal charges, known as an "Accusation", on behalf of the Board. In cases of sexual misconduct, the Accusation would be pleading sexual misconduct and would be seeking revocation of the license. Next, a hearing before an Administrative Law Judge (ALJ) would be scheduled, at which time the ALJ would hear the evidence collected and the SME's opinion. Under BPC Section 2960.1, when an investigation finds that a psychologist had sexual contact with a patient or former patient within two years of termination of therapy, the proposed decision (discipline) that the ALJ recommends to the Board for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances of sexual intercourse or sexual contact with a patient, revocation must be the discipline recommended by an ALJ. The Board then has 100 days to vote to adopt the proposed decision or write their own decision.

This bill could potentially cause an increase in the number of sexual misconduct complaints that the Board receives and investigates. Note that if two identical complaints were received against the same licensee over the same incident, this would be investigated as one complaint.

### **FISCAL IMPACT**

The fiscal impact of this bill is unknown and unquantifiable at this time. The Board receives few reports under the current BPC Section 805, and it is impossible to know if the new provisions in this bill to report all accusations of sexual abuse or misconduct would create a significant increase in the number of reports and subsequent complaints against Board licensees.

### **ECONOMIC IMPACT**

Not Applicable

### **LEGAL IMPACT**

Not Applicable

### **APPOINTMENTS**

Not Applicable

**SUPPORT/OPPOSITION**

**Support:** Consumer Attorneys of California; Medical Board of California (Sections 1, 3 and 5)

**Opposition:** California Chapter of the American College of Cardiology; California Medical Association; California Society of Plastic Surgeons

**ARGUMENTS**

**Proponents:** Consumer Attorneys of California state that “The bill aims to close legal loopholes that can allow a subject of repeated sexual abuse and misconduct complaints to work at a health facility for years because the relevant regulatory board is not notified by the facility of the allegations against a licensee.

Delays in reporting a physician’s sexual misconduct endangers countless other patients. SB 425 gives hospitals, clinics and other health facilities 15 days from the time they receive an allegation of patient sexual abuse or sexual misconduct involving medical professionals who work on their premises to report the allegation to the appropriate state licensing board.

The MBC states that the provisions in Sections 1, 3 and 5 will “help prevent delays in the Board’s enforcement process, which negatively impact the Board’s enforcement timelines, and increase transparency to consumers by providing access to information that is public, but not available on the Board’s website after the probationary period is completed. The Board will be reviewing this bill and taking a position on the other provisions at its next Board Meeting in May.”

**Opponents:** Opponents of the state that this bill completely bypasses the peer review process put in place for hospitals by requiring every healing arts licensee working within a hospital to report any complaint of sexual misconduct or allegation of sexual misconduct to the appropriate licensing board within 15 days, and are asking that this provision to be deleted from the bill. According to the opponents, “While we appreciate the procedural steps that the Medical Board must take to file a complaint, and the need to remove dangerous licensees from practice expediently, we do not believe this large jump from 30 to 180 days is warranted”, in reference to the provisions of the bill authorizing an MBC license to be suspended for 180 days before MBC files a formal accusation. Opponents are also concerned about unprofessional conduct being levied against MBC licensees for “repeated failures” to respond to a request for interview and note that repeated needs to be defined.



their counsel or representative, have the right to inspect and have copies made of the licensee's complete file, other than provisions that could potentially disclose the identity of an information source. In order to protect an information source, a board may either redact the source's identifying information or provide a comprehensive summary of the material. (BPC § 800)

- 5) Beginning July 1, 2019, requires certain licensed health care professionals (physicians and surgeons, osteopathic physicians and surgeons, podiatrists, acupuncturists, chiropractors, and naturopathic doctors) to notify patients of their probationary status.
- 6) For physicians and surgeons licensed by the MBC and Osteopathic Medical Board (OMBC), requires that probationary status be disclosed if there is a final adjudication by MBC or OMBC following an administrative hearing, or admitted findings or prima facie showing in a stipulated settlement establishing certain violations of the law, including the commission of any act of sexual abuse, misconduct or relations with a patient or client. (BPC § 2228.1)
- 7) Requires an accusation to be filed against a licensee within three years after MBC discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first, as specified. (BPC § 2230.5)
- 8) Requires MBC to automatically revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the related conviction has been appealed. Authorizes the licensee to request a hearing, conducted in accordance with the Administrative Procedure Act (APA), within 30 days of the revocation. (BPC § 2232)
- 9) Authorizes an interim order suspending (ISO) a license for MBC licensees if the affidavits show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. ISOs shall be issued only after a hearing, unless it appears from the facts in the affidavit that serious public injury would be a result of waiting for the hearing. (Government Code § 11529)
- 10) Provides that when an ISO is issued, and an accusation or petition to revoke probation is not filed and served within 30 days, the ISO is dissolved. Provides a licensee with certain rights and privileges when the licensee is served with an accusation or petition to revoke probation, including: a hearing within 30 days of the request, unless the licensee stipulates to a later hearing and; a decision within 15 days of the date MBC receives a decision from an Administrative Law Judge (ALJ) on the matter. If MBC does not issue a decision in this timeframe, the ISO is nullified, unless MBC can show good cause for a delay. (*Id.*)

**This bill:**

- 1) Requires a health facility or clinic, the administrator or chief executive officer of a health care service plan, or other entity that makes any arrangement under which a licensed health care professional is allowed to practice in or provide care for patients (including but not limited to a private postsecondary educational institution), to file a report of any allegation of sexual abuse or sexual misconduct made against a licensed health care professional to the licensee's licensing board within 15 days of receiving the allegation of sexual abuse or sexual misconduct. Specifies that an arrangement under which a licensee is allowed to practice in or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.
- 2) Requires an employee or a licensed health care professional that works in any health facility or clinic, health care service plan, or other entity, who has knowledge of any allegation of sexual abuse or sexual misconduct by a licensed health care professional, to file a report with both the licensee's licensing board and the administration of the health facility or clinic, health care service plan, or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct. Specifies that failure of an employee or licensed health care professional to file the report of alleged sexual abuse or sexual misconduct may constitute unprofessional conduct
- 3) Specifies that any failure to file the report of alleged sexual abuse or sexual misconduct is punishable by a fine of up to \$50,000 per violation. Specifies that the amount of the fine shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required to file the report exercised due diligence despite the failure to file; or whether the person knew or should have known that a report required would not be filed; and whether there has been a prior failure to file a report. Specifies that a willful failure (a voluntary and intentional violation of a known legal duty) to file the report of alleged sexual abuse or sexual misconduct is punishable by a fine of up to \$100,000 per violation.
- 4) States that a person is immune from any civil or criminal liability for reporting the alleged sexual abuse or sexual misconduct.
- 5) Authorizes MBC, upon receipt of information that the public health, safety, or welfare requires emergency action, to place a physician's and surgeon's license on suspension pending formal proceedings. Specifies that this emergency order of suspension shall be issued to the licensee informing the licensee of the facts or conduct warranting the emergency suspension, pending an investigation. Authorizes a licensee whose license has been suspended on emergency order to request a hearing for an ISO, which must be held within 180 days licensee's request.

- 6) When issuing a probationary license, requires the record relating to that probationary license to remain on MBC's website for 10 years.
- 7) Specifies that failure of a licensee (as opposed to repeated failure under current law), absent good cause, to attend and participate in an interview by MBC is unprofessional conduct.

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

**COMMENTS:**

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author,

“SB 425 closes legal loopholes that can allow a subject of repeated sexual abuse and misconduct complaints to work at a health facility for years because the relevant regulatory board is not notified by the facility of the allegations against a licensee.

Allegations of sexual abuse or misconduct by doctors and other medical professionals must be reported swiftly to the appropriate licensing board for review so that regulators can determine whether to conduct an independent, confidential investigation.

State regulatory boards cannot fulfill their responsibilities to protect patients and other consumers, if they are not notified of these serious allegations involving their licensees. The failure to do so shields bad actors while exposing patients to greater risks.”

The Author notes that in May 2018, a news investigation by the *Los Angeles Times* disclosed multiple unresolved complaints of alleged sexual misconduct involving a gynecologist who worked at the University of Southern California's student health center for almost 30 years. The Author states that “none of the prior complaints were reported to the Medical Board of California.”

According to the Author, this prompted him, as then-chair of this Committee, to conduct a hearing on sexual misconduct reporting in the medical profession. The Author states that:

“The differing reporting standards for various health facilities were among the issues raised in the hearing. Some health facilities, because of their size or type, have no requirement to report allegations of patient sexual abuse or sexual misconduct involving medical professionals to any licensing board. Other health facilities have in-house peer review groups that decide whether a complaint should be forwarded to the appropriate licensing board. Existing law also enables physicians and surgeons to prolong their licensing board's inquiry into allegations by repeatedly failing to show up for investigative interviews.

Lucy Chi, a 2014 graduate of USC's Masters of Health Administration program, testified during the hearing about the need to toughen the requirements for

hospitals and clinics to report allegations of patient sexual abuse and sexual misconduct by doctors. Ms. Chi, one of hundreds of women who have sued USC for its handling of complaints involving its former gynecologist, also offered a statement in support of SB 425.

‘As a victim of Dr. George Tyndall and a current health administrative professional, I believe any delays in reporting physician sexual misconduct would endanger countless patients,’ said Ms. Chi. ‘If USC had reported Dr. Tyndall’s sexual misconduct, I, along with countless other victims, would have been spared sexual abuse by our physician. It’s truly disheartening that due to legal loopholes, a predator was allowed to sexually abuse his patients for almost 30 years. I wholeheartedly support Senator Hill’s proposed amendments to existing law.’

2. **Mandatory Reporting of Health Practitioner Settlements, Indictments, Convictions, and Discipline.** There are a number of reporting requirements designed to inform licensing boards about possible matters for investigation, including:

- *BPC Section 801.01* requires the MBC, Osteopathic Medical Board of California (OMBC), California Board of Podiatric Medicine (BPM) and Physician Assistant Board (PAB) to receive reports of settlements over \$30,000 or arbitration awards or civil judgments of any amount. The report must be filed within 30 days by either the insurer providing professional liability insurance to the licensee, the state or governmental agency that self-insures the licensee, the employer of the licensee if the award is against or paid for by the licensee or the licensee if not covered by professional liability insurance.
- *BPC Section 802.1* requires a licensees of MBC, OMBC, BPM and PAB to report indictments charging a felony and/or any convictions of any felony or misdemeanor, including a guilty verdict or plea of no contest to their licensing board.
- *BPC Section 802.5* requires a coroner who receives information, based on findings reached by a pathologist that indicates that a death may be the result of a physician and surgeon, podiatrists or physician assistant’s gross negligence or incompetence, to submit a report to MBC, OMBC, BPM and PAB, as appropriate. The coroner must provide relevant information, including the name of the decedent and attending licensee as well as the final report and autopsy.
- *BPC Sections 803, 803.5 and 803.6* require the clerk of a court that renders a judgment that a licensee has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by the licensee’s negligence, error or omission in practice, or his or her rendering of unauthorized professional services, to report that judgment to the appropriate healing arts licensing agency within 10 days after the judgment is entered. In addition, the court clerk is responsible for reporting criminal convictions to some licensing agencies (MBC, OMBC, BPM, Board of Chiropractic

Examiners, PAB or other appropriate allied health board) and transmitting any felony preliminary hearing transcripts concerning a licensee to those boards.

- *BPC Section 805* is one of the most important reporting requirements that allows boards to learn key information about licensees. Section 805 requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility to file a report when a licensee's application for staff privileges or membership is denied, or the licensee's staff privileges or employment are terminated or revoked for a medical disciplinary cause. Licensees include physicians and surgeons, doctors of podiatric medicine, clinical psychologists, marriage and family therapists, clinical social workers, professional clinical counselors, dentists, licensed midwives or physician assistants. The reporting entities are also required to file a report when restrictions are imposed or voluntarily accepted on the licensee's staff privileges for a cumulative total of 30 days or more for any 12-month period. The report must be filed within 15 days after the effective date of the action taken by a health facility peer review body.
- *BPC Section 805.01* is a similarly extremely important requirement. The law requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility to file a report within 15 days after the peer review body makes a final decision or recommendation to take disciplinary action which must be reported pursuant to section 805. This reporting requirement became effective January 2011 and is only required if the recommended action is taken for the following reasons:
  - Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients in such a manner as to be dangerous or injurious to any person or the public.
  - The use of, or prescribing for or administering to him/herself, any controlled substance; or the use of any dangerous drug, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or any other persons, or the public, or to the extent that such use impairs the ability of the licensee to practice safely.
  - Repeated acts of clearly excessive prescribing, furnishing or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor.
  - Sexual misconduct with one or more patients during a course of treatment or an examination.

The purpose of 805 reports is to provide licensing boards with early information about these serious charges so that they may investigate and take appropriate action to further consumer protection at the earliest possible moment. Accordingly, for any allegations listed above, the Legislature determined that an

805.01 report must be filed once a formal investigation has been completed, and a final decision or recommendation regarding the disciplinary action to be taken against a licensee has been determined by the peer review body, even when the licensee has not yet been afforded a hearing to contest those findings.

3. **Peer Review.** In peer review, health care practitioners evaluate their colleagues' work to determine compliance with the standard of care. Peer reviews are intended to detect incompetent or unprofessional practitioners early and terminate, suspend, or limit their practice if necessary. Peer review is triggered by a wide variety of events including patient injury, disruptive conduct, substance abuse, or other medical staff complaints. A peer review committee investigates the allegation, comes to a decision regarding the licensee's conduct, and takes appropriate remedial actions. There has historically been some reluctance among licensees to serve on peer review committees due to the risk of involvement in related future litigation, including medical malpractice lawsuits against a licensee under review. There are also concerns about "sham peer review" which uses the peer review system to discredit, harass, discipline, or otherwise negatively affect a practitioner's ability to practice or exercise professional judgment for a non-medical or reason unrelated to patient safety. Other criticisms of peer review include over legalization of the process, lack of transparency in the system, and the burdensome human and financial toll peer review brings not only to the hospital but also to a licensee under review.

In 1989, several due process provisions for physicians subject to an 805 report were adopted and codified under Section 809 et. seq. of the Business and Professions Code. Any physician, for whom an 805 report may be required to be filed, is entitled to specified due process rights, including notice of the proposed action, an opportunity for a hearing with full procedural rights (including discovery, examination of witnesses, formal record of the proceedings and written findings). Furthermore, a physician may seek a judicial review in the Superior Court pursuant to Code of Civil Procedure Section 1094.5 (writ of mandate). The due process requirements do not apply to peer review proceedings conducted in state or county hospitals, to the University of California hospitals or to other teaching hospitals as defined.

Recognizing that peer review is necessary to maintain and improve quality medical care, Congress, in 1986, enacted the Health Care Quality Improvement Act (HCQIA). HCQIA established standards for hospital peer review committees, provided immunity for those who participate in peer review, and created the National Practitioner Databank (NPDB). The NPDB is a confidential repository of information related to the professional competence and conduct of health care practitioners. Credentialing bodies are required to check the NPDB database before granting privileges or reappointing privileges to licensees. Entities such as hospitals, professional societies, state boards, and plaintiffs' attorneys are given access to the NPDB. In enacting the NPDB, Congress intended to improve the quality of health care by encouraging state licensing boards, hospitals, and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior and to restrict the ability of incompetent health care practitioners who attempt to move from state to state without disclosure or discovery of previous medical malpractice payment and adverse action history. The

NPDB is a central repository of information about: (1) malpractice payments made for the benefit of health care practitioners; (2) licensure actions taken by state licensing boards; (3) professional review actions taken against licensees by hospitals and other health care entities, including health maintenance organizations, group practices, and professional societies; (4) actions taken by the Drug Enforcement Administration, and (5) Medicare/Medicaid Exclusions.

Private standard setting is also common in peer review. Organizations like the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations), which accredits hospitals, health care providers and other health care settings across the country have established peer review standards for the entities it accredits. In order to receive Joint Commission accreditation, hospitals must have peer review and other quality assurance measures. Eligibility for federal funds such as Medicare and Medicaid often depends on accreditation.

A 2008 California study on peer review found variation and inconsistency in entity peer review policies and standards, including on the definition, procedures, commencement, practice and subject of peer review. Peer review means different activities to different entities, and can be triggered by a number of ways but is mostly part of the quality/safety/risk process of an entity. In addition, risk management/peer review issues are combined with mundane issues related to the “business” of an entity. All medical entities set their own standards for peer review, some more rigorous than others, and some adhere to them more meticulously than others. Additionally, each entity creates its own peer review policies, which can vary substantially. If a licensee is found to have provided substandard care, that individual may leave or be forced to leave the entity but can practice elsewhere, potentially endangering other patients. The peer review process is often lengthy and can take months or even years. There are also variations in the name of the peer review body, the number of members, and the length of time a member serves on a committee. It usually takes years before a peer review action is taken.

The study also identified poor tracking of peer review events and highlighted confusion on 805 reporting. According to the study, few cases lead to actual 805 reporting because of (a) disagreement or legal interpretation on whether 809 due process is required before every 805 report is submitted, and, (b) 809 due process leads to a substantial delay in the process (often 2 to 5 years). In addition, although entities make a sincere effort to conduct peer review, it rarely leads to actual 805 or 809 actions, perhaps due to the confusion over when to file a report. The study found that in addition, entities have devised other methods to correct a physician behavior before filing an 805 report. The most common cases referred to a high level peer review are: disruptive licensee behavior/impairment, substandard technical skills, substance abuse, and failure to document/record patient treatment. It is also possible that some licensees would never be subject to peer review because they have practices that are not subject to any peer review requirements. The study also demonstrated a lack of coordination among state agencies and licensing agencies, noting that there is no systematic communication or coordination among various boards and agencies that would coordinate patient quality and safety issues. There is much complexity on the complaint process, enforcement process, and public disclosure rules.

In 2009, the California Supreme Court issued an opinion relating to peer review in *Mileikowsky v. West Hills Hospital Medical Center* in which the Court discussed the importance of the peer review process and pointed out the following: “The primary purpose of the peer review process is to protect the health and welfare of the people of California by excluding through the peer review mechanism those healing arts practitioners who provide substandard care or who engage in professional misconduct. This purpose also serves the interest of California's acute care facilities by providing a means of removing incompetent physicians from a hospital's staff to reduce exposure to possible malpractice liability. Another purpose, if not equally important, is to protect competent practitioners from being barred from practice for arbitrary or discriminatory reasons.”

In California, there are additional types of peer review bodies than committees in hospitals. Specifically, peer review can be undertaken by: medical or professional staffs of properly licensed free clinics and ambulatory surgical centers; health care service plans; any medical, psychological, marriage and family therapy, social work, dental or podiatric professional society having as members at least 25 percent of the eligible licensees in the area in which the society functions; and committees organized by any entity consisting of or employing more than 25 licensees of the same class, including practice groups, which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

- 4. Recent Events and Allegations of Misconduct.** The Legislature has a long history of interest in, and focus on, statutory reporting requirements that are designed to inform health professional licensing boards about their licensees. In 2018, the Senate Committee on Business, Professions and Economic Development held a hearing, *Sexual Misconduct Reporting in the Medical Profession: Missed Opportunities to Protect Patients*, to explore whether licensed health professionals who fail to meet established standards are discovered, reviewed and disciplined, if necessary, in a timely manner.

Discussion at the hearing centered on recent events at the University of Southern California (USC) where a physician employed by USC's student health clinic was accused of sexual misconduct. According to information provided by USC, In June 2016, their Office of Equity and Diversity received a complaint from a student health center staff member about Dr. George Tyndall, a gynecologist at the health center. Dr. Tyndall was placed on administrative leave while an investigation was conducted. During that investigation, outside medical reviewers concluded that the manner in which Dr. Tyndall performed physical exams did not meet current practice standards and that he made inappropriate remarks to patients, in some cases during the examination process. The investigation also brought to light complaints about Dr. Tyndall that had been received in prior years but were managed independently by the director of the student health center. USC filed a complaint with MBC about Dr. Tyndall in 2017.

At the time, the student health center was organized under USC's university operations, rather than as an extension of its hospitals and medical schools. Complaints against Dr. Tyndall were treated as employment matters and followed an investigation process that did not include peer review, given that the student health center did not have a peer review body. In turn, MBC was not made aware

of action taken against Dr. Tyndall by USC through one of the mandatory reporting requirements contained in BPC Sections 805 or 805.01.

5. **Healing Arts Board Enforcement.** The enforcement process begins with a complaint. Complaints can be submitted by the public, generated internally by licensing board staff, or based on information a licensing board receives from various entities through mandatory reports outlined above. Complaints are confidential. For complaints that are subsequently investigated and meet the necessary legal prerequisites, a Deputy Attorney General (DAG) in the Office of the Attorney General drafts formal charges, known as an “Accusation”. A hearing before an Administrative Law Judge (ALJ) is subsequently scheduled, at which point settlement negotiations take place between the DAG, licensee (and the licensee’s attorney) and licensing board staff. Often times these result in a stipulated settlement, similar to a plea bargain in criminal court, where a licensee admits to have violated charges set forth in the accusation and accepts penalties for those violations. If a licensee contests charges, the case is heard before an ALJ who subsequently drafts a proposed decision. The licensing board then adopts the decision, or makes changes to the decision before final action.

Licensing boards within DCA rely on disciplinary guidelines to ensure consistency in disciplinary penalties for similar offenses on a statewide basis and create uniform guidelines for violations of a particular practice act. Guidelines are used by ALJs, attorneys, licensees and others involved in a regulatory program’s disciplinary process.

6. **Medical Board Enforcement Enhancement Provisions Contained In This Measure.** The sexual abuse and sexual misconduct allegation reporting requirements in this bill apply broadly to health care professionals licensed by a number of boards within the DCA. However, the measure also contains provisions specific to enforcement by MBC against physicians and surgeons.

Four specific provisions are aimed at increasing the ability of MBC to take timely enforcement action, three of which, highlighted below, MBC approved as legislative proposals at a 2018 board meeting.

- Striking the qualifier “comprehensive” for the summary MBC provides a licensee or the licensee’s counsel of materials provided by a confidential information source is designed to speed up the investigation process. MBC may receive a request for this comprehensive summary, provides what they determine to be a comprehensive summary, and the licensee may argue that it isn’t comprehensive enough and may even refuse to set up an interview with MBC until they receive a more “comprehensive” summary.
- Striking the qualifier “repeated” for failure by a licensee, in absence of good cause, to attend and participate in an interview by MBC is designed to address delays in MBC’s enforcement process.
- Requiring probationary license information to remain on MBC’s website for 10 years, after probation is completed, is modeled after current requirements for licensee probation history to remain on MBC’s website and designed to

increase the public availability of information. Probationary licenses may be issued for a variety of reasons, including, substance abuse issues, criminal conviction history, and disciplinary action taken by another state, to name a few. While the information remains publicly available and MBC provides it upon request, it is not required to be posted online and is taken down once the probationary period ends.

The fourth provision specific to MBC, related to issuance of an emergency order, was not approved by MBC. Currently, MBC can issue ISOs, pursuant to Government Code provisions outlined above and also temporary restraining orders, or other restrictions pursuant to Penal Code § 23 issued as part of a criminal hearing process, as a condition of bail. Restrictions are also imposed via a stipulated agreement to not practice or a stipulated agreement to a restriction. The MBC can also require physicians to cease practice if they fail to comply with a term or condition of their probation.

An ISO is considered extraordinary relief and a standard of proof must be met in order for an ISO to be granted. This action allows MBC to stop a licensee from practicing prior to formal disciplinary action being taken. An ISO might completely restrict a license, or might impose restrictions, such as restrictions on prescribing, on the license. Before an ISO can be requested, there are a number of steps that MBC must take (gathering medical records, obtaining patient consent, medical consultant review, etc.) in order to prove that a licensee's continued practice presents an immediate danger to public health, safety, or welfare. Once the investigation progresses and the case is reviewed by a DAG, a determination is made as to whether there is enough evidence to warrant requesting an ISO, which must still be granted by an ALJ. Even after the ISO is requested, if an ALJ determines there is insufficient evidence, the ISO request can be denied.

After the issuance of an ISO, existing law gives MBC 30 days to file a formal accusation against a licensee (SB 304, Lieu, Chapter 515, Statutes of 2013 extended the timeframe from 15 to 30 days). This means that investigations should be nearly complete prior to petitioning for an ISO. MBC may be delayed in filing the initial ISO if evidence is still being gathered for the clear and convincing threshold to be met for the filing of an accusation.

This bill provides MBC authority to issue an emergency order of license suspension pending formal proceedings, and requires a hearing on an ISO to be held, if requested by the licensee, within 180 days.

7. **Related Legislation This Year.** AB 1030 (Calderon and Petrie-Norris) requires MBC, on or before July 1, 2020, in coordination with the American College of Obstetricians and Gynecologists, to develop an informational pamphlet for patients undergoing gynecological examinations. (Status: *The measure is pending in the Assembly Committee on Health.*)
8. **Arguments in Support.** The Medical Board of California supports three provisions in the bill related to MBC enforcement which it believes will help to prevent delays in the Board's enforcement process, which "negatively impact the Board's enforcement timelines" and which will increase transparency by providing access to

information that is public, but not available on MBC's website after a probationary period is complete. MBC's position does not reference provisions related to receiving reports about sexual abuse and misconduct allegations involving a MBC licensee, nor does MBC have a position on provisions related to ISOs.

Consumer Attorneys of California (CAOC) and Consumer Watchdog cite the USC case referenced above in their support of this measure. According to CAOC references the Author's SB 1448 when noting that this bill will "continue the important work of protecting vulnerable populations from individuals who abuse positions of trust." Consumer Watchdog cites cases at other universities involving physicians and sexual misconduct, stating that "in each of these cases, the failure to investigate multiple, credible allegations of sexual misconduct placed thousands of additional patients in harm's way...SB 425 will help ensure patient complaints are treated seriously and investigated with the alacrity they deserve."

9. **Arguments in Opposition.** Opponents state that this bill completely bypasses the peer review process put in place for hospitals by requiring every healing arts licensee working within a hospital to report any complaint of sexual misconduct or allegation of sexual misconduct to the appropriate licensing board within 15 days, and are asking that this provision to be deleted from the bill. According to the opponents, "While we appreciate the procedural steps that the Medical Board must take to file a complaint, and the need to remove dangerous licensees from practice expediently, we do not believe this large jump from 30 to 180 days is warranted", in reference to the provisions of the bill authorizing an MBC license to be suspended for 180 days before MBC files a formal accusation. Opponents are also concerned about unprofessional conduct being levied against MBC licensees for "repeated failures" to respond to a request for interview and note that repeated needs to be defined.

#### 10. **Policy Questions.**

- a) *Is due process impacted?* A peer review process, for the health care professionals subject to that, and in the facilities where peer review exists, allows other health care professionals to consider whether standard of care provisions were followed or violated. Peer review proceedings and records are confidential and they are not subject to discovery – they will remain that way under this bill, as it does not impact those laws and protections that remain important. While the bill does establish a new mechanism for boards to initiate efforts to determine whether practice act violations have taken place, it does not eliminate peer review, nor does it ensure that a licensing board will even take swift action, given the significant delays in enforcement by health care licensing boards that are routinely brought to the Legislature's attention. This parallel track of standard of care consideration may take place today, as both peer review work and health care professional licensing board investigations are confidential; a health care licensing board may receive an anonymous complaint about an individual who is subsequently under peer review. The filing of a report outlined in this bill begins a licensing board's efforts, as the report is just the first step in a very lengthy process conducted in accordance with the APA, and offering due process for licensees. However, a health care professional's livelihood depends on the

status of their license and as such, care needs to be exercised to guarantee fairness in each process.

- b) *How will health care facility employees and health care professional licensees know that they could face a fine of up to \$50,000 for failing to report allegations to a licensing board? Do colleagues always know who a particular health care professional is licensed by and how to make that board aware of allegations?* Ensuring that licensing boards are made aware of serious allegations like sexual abuse and sexual misconduct is key to patient and public safety protection. The inability of health care professional licensing boards to be proactive is frequently raised in discussions about legislation, in oversight hearings, and in media reports. While steps aimed at providing boards key information about their licensees, particularly for information about the types of allegations this bill focuses on, is important, it is also important that licensees are made aware of the new obligation for reporting outlined in this bill. The Author may wish to clarify that health facilities, health care service plans, other entities authorizing a licensed health care professional to provide care for patients (such as postsecondary educational institutions) properly inform employees of their reporting responsibility. The Author may wish to clarify that health care professional licensing boards provide information to licensees about this requirement.
- c) *What is the appropriate amount of time MBC should have, upon issuing an emergency order for license suspension, before a licensee is able to have an ISO hearing before an ALJ?* Many factors in MBC enforcement action may not necessarily be within MBC's control, such as the length of time an investigation takes, the evidence a DAG believes is necessary to include in an accusation, or the ability to come before an ALJ, to name a few.

MBC currently has 30 days to prepare the necessary materials for an ISO hearing. This bill would provide MBC up to 180 days before a licensee receives an ISO hearing, if their license is suspended on emergency order. The timeframe for the ISO hearing needs to be discussed further with stakeholders, including the Office of the Attorney General and Office of Administrative Hearings, to determine exactly how long MBC would need, after receiving credible and troubling information about licensee actions that warrant an emergency suspension in the first place, before everything is in place for the licensee to receive an ISO hearing before an ALJ. Consideration as to the types of information MBC receives demonstrating "that the public health, safety, or welfare requires emergency action" should also be given, balancing the need for timely enforcement action with due process afforded licensees.

**NOTE: *Double-referral to Senate Judiciary Committee, second.***

#### **SUPPORT AND OPPOSITION:**

##### Support:

Consumer Attorneys of California

Consumer Watchdog  
Medical Board of California

Opposition:

California Chapter of the American College of Cardiology  
California Medical Association  
California Society of Plastic Surgeons

**-- END --**

## SB 425 - (I) Amends the Law

## SECTION 1.

Section 800 of the Business and Professions Code is amended to read:

800.

(a) The Medical Board of California, the ~~California- Podiatric Medical~~ Board of ~~Pediatric Medicine-~~ *California*, the Board of Psychology, the Dental Board of California, the Dental Hygiene Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or ~~his or her~~ *the licensee's* insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licensee pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

(2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or ~~his or her~~ *the licensee's* counsel or representative, ~~shall have the right to~~ *may* inspect and have copies made of ~~his or her~~ *the licensee's* complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a ~~comprehensive~~ summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

(2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

(3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

(4) These disclosures shall effect no change in the confidential status of these records.

## *SEC. 2.*

*Section 805.8 is added to the Business and Professions Code, to read:*

### *805.8.*

*(a) As used in this section, the following terms shall have the following meanings:*

(1) "Agency" means the relevant state licensing agency with regulatory jurisdiction over a healing arts licensee listed in paragraph (3).

(2) "Health care service plan" means a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(3) "Healing arts licensee" or "licensee" means a licensee licensed under Division 2 (commencing with Section 500) or any initiative act referred to in that division. "Healing arts licensee" or "licensee" also includes a person authorized to practice medicine pursuant to Sections 2064.5, 2113, and 2168.

(4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.

(b) A health facility or clinic, the administrator or chief executive officer of a health care service plan, or other entity that makes any arrangement under which a healing arts licensee is allowed to practice in or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee to the agency within 15 days of receiving the allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice in or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(c) An employee or a healing arts licensee that works in any health facility or clinic, health care service plan, or other entity that subdivision (b) applies to who has knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee shall file a report with the agency that has regulatory jurisdiction over the healing arts licensee and the administration of the health facility or clinic, health care service plan, or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct.

(d) A willful failure to file the report described in subdivision (b) shall be punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licensee. A person who is alleged to have

*violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.*

*(e) Except as provided in subdivision (d), any failure to file the report described in subdivision (b) shall be punishable by a fine not to exceed fifty thousand dollars (\$50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; and whether there has been a prior failure to file a report required under this section. The amount of the fine imposed may also differ based on whether a health care facility or clinic is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.*

*(f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health facility or clinic, a health care service plan, or other entity shall not incur any civil or criminal liability as a result of making a report required by this section.*

*(g) The agency shall investigate the circumstances underlying a report received pursuant to this section.*

### SEC. 3.

Section 2221 of the Business and Professions Code is amended to read:

#### 2221.

(a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of ~~his or her~~ *their* license. The ~~board~~ *board*, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.
  - (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
  - (3) Continuing medical or psychiatric treatment.
  - (4) Ongoing participation in a specified rehabilitation program.
  - (5) Enrollment and successful completion of a clinical training program.
  - (6) Abstention from the use of alcohol or drugs.
  - (7) Restrictions against engaging in certain types of medical practice.
  - (8) Compliance with all provisions of this chapter.
  - (9) Payment of the cost of probation monitoring.
- (b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.
- (c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.
- (d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of ~~his or her~~ *their* application, except that the ~~board may,~~ *board*, in its discretion and for good cause demonstrated, *may* permit reapplication after not less than one year has elapsed from the effective date of the denial.
- (e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.*

#### *SEC. 4.*

*Section 2232.5 is added to the Business and Professions Code, to read:*

#### *2232.5.*

*(a) Notwithstanding any other law, the board or its designee, upon receipt of information that the public health, safety, or welfare requires emergency action, may place a physician's and surgeon's certificate on suspension pending formal proceedings in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). An emergency order of suspension shall be issued to the licensee informing the licensee of the facts or conduct warranting the emergency suspension, pending an investigation. A reference to the emergency order of suspension shall be posted on the board's internet website.*

*(b) Upon placement of the physician's and surgeon's certificate on emergency suspension pursuant to this section, the holder of the certificate may request a hearing for an interim suspension order, which shall be held within 180 days of the certificate holder's request. The hearing shall be conducted in accordance with Section 11529 of the Government Code.*

#### SEC. 5.

Section 2234 of the Business and Professions Code is amended to read:

#### 2234.

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
- (b) Gross negligence.
- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
  - (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
  - (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
- (d) Incompetence.

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

~~(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.~~

~~(h)~~ (g) The ~~repeated~~ failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                               |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(A) – AB 8 (Chu) Pupil health: mental health professionals |

### **Background:**

AB 8 (Chu) would require, on or before December 31, 2022, each school of a school district, county office of education, or charter school to have at least one mental health professional, as defined, for every 400 pupils generally accessible to pupils on campus during school hours. The bill would require, on or before December 31, 2022, a school of a school district or county office of education and a charter school with fewer than 400 pupils to have at least one mental health professional generally accessible to pupils on campus during school hours, to employ at least one mental health professional to serve multiple schools, or to enter into a memorandum of understanding with a county agency or community-based organization for at least one mental health professional employed by the agency or organization to provide services to pupils.

This bill would define mental health professionals for the purposes of this bill to include:

- Individuals with a services credential with a specialization in pupil personnel services performing school counseling, school psychology, or school social work
- Individuals with a services credential with a specialization in health for a school nurse
- The following licensed professionals: psychologists, marriage and family therapists, and clinical counselors
- The following Intern and trainee categories: marriage and family therapist intern, marriage and family therapist trainee, clinical counselor intern, clinical counselor trainee.

**Location:** 3/20/2019 Assembly Committee on Health

**Status:** 4/2/2019 In committee: Set, first hearing. Hearing canceled at the request of author

**Votes:** 3/13/2019 Assembly Committee on Education (5-0-1)

### **Action Requested:**

The Policy and Advocacy Committee would like the Board to discuss Section 2 of the bill, Education Code Section 49429.5, subdivision (c), to determine if the provisions requiring a licensed psychologist to be “under the supervision of an individual who holds a services credential” merits sending the author a letter of concern that requiring a

doctoral level licensed psychologists to work under the supervision of a services credentialed individual is unnecessary and burdensome.

Attachment: AB 8 (Chu) Bill Text

## AB 8 - (A) Amends the Law

**SECTION 1.**

*The Legislature finds and declares all of the following:*

- (a) In 2014, an estimated 22.5 million Americans 12 years of age or older reported needing treatment for a substance use disorder, and 11.8 million adults reported needing mental health treatment.*
- (b) Mental health disorders and substance use disorders share some underlying causes, including changes in brain composition, genetic vulnerabilities, and early exposure to stress or trauma.*
- (c) Fifty-seven percent of Californian children have experienced trauma.*
- (d) Research shows that people with mental health issues are at a higher risk of a substance use disorder.*
- (e) Early intervention and prevention of mental health and substance use disorders are critical to Californians' behavioral and physical health.*
- (f) Three hundred thousand Californian children 4 to 11 years of age, inclusive, have mental health needs, but over 70 percent never receive treatment.*
- (g) For youth in poverty or with non-English-speaking parents, over 80 percent never receive treatment for their mental health needs.*
- (h) Both mental health issues and substance use disorders in pupils can lead to absenteeism, suspensions, and dropping out of school at an early age.*
- (i) Schools have been identified as the optimal place to provide mental health services and improve access to mental health services for pupils, especially pupils of color and pupils in historically underserved communities.*
- (j) Reflecting on incidents of violence on school campuses, national educator and school professional organizations recommend in published best practices for creating safe and successful schools improving access to school-based mental health supports by ensuring adequate staffing levels of school-employed mental health professionals.*
- (k) The State of California ranks last or near last in the country for pupil access to mental health care at school. Currently, California has one school nurse for every 2,240 pupils, ranking 39th in the country, and one school counselor for every 792 pupils, ranking last in the country. Additionally, the state has only one school psychologist for every 1,265 pupils and one school social worker for every 12,870 pupils.*

**SEC. 2.**

*Section 49429.5 is added to the Education Code, to read:*

## 49429.5.

*(a) On or before December 31, 2022, a school of a school district or county office of education and a charter school shall have at least one mental health professional for every 400 pupils generally accessible to pupils on campus during school hours. On or before December 31, 2022, a school of a school district or county office of education and a charter school with fewer than 400 pupils shall do one of the following:*

*(1) Have at least one mental health professional generally accessible to pupils on campus during school hours.*

*(2) Employ at least one mental health professional to provide services to pupils at multiple schools.*

*(3) Enter into a memorandum of understanding with a county agency or community-based organization for at least one mental health professional employed by the agency or organization to provide services to pupils.*

*(b) The role of a mental health professional required pursuant to this section shall include, but is not limited to, all of the following:*

*(1) Providing individual and small group counseling supports to individual pupils and pupil groups to address social-emotional and mental health concerns.*

*(2) Facilitating collaboration and coordination between school and community providers to support pupils and their families by assisting families in identifying and accessing additional mental health services within the community as needed.*

*(3) Promoting school climate and culture through evidence-informed strategies and programs by collaborating with school staff to develop best practices for behavioral health management and classroom climate.*

*(4) Providing professional development to staff in diverse areas, including, but not limited to, behavior management strategies, mental health support training, trauma-informed practices, and professional self-care.*

*(c) A mental health professional required pursuant to this section who does not hold a services credential with a specialization in pupil personnel services as described in Section 44266 or a services credential with a specialization in health for a school nurse as described in Section 44267.5 shall work with pupils only under the supervision of an individual who holds a services credential with a specialization in pupil personnel services as described in Section 44266 or a services credential with a specialization in administrative services as described in Section 44270.2.*

*(d) A school of a school district or county office of education and a charter school may employ community mental health workers, cultural brokers, or peer providers to supplement the services provided by mental health professionals if they have a current*

*certificate of clearance from the Commission on Teacher Credentialing and are supervised in their school-based activities by an individual who holds a services credential with a specialization in pupil personnel services as described in Section 44266 or a services credential with a specialization in administrative services as described in Section 44270.2.*

*(e) A school of a school district or county office of education and a charter school with pupils who are eligible to receive Medi-Cal benefits is encouraged to do both of the following:*

*(1) Seek reimbursement, to the extent applicable, through the Local Educational Agency Medi-Cal Billing Option for services provided pursuant to this section.*

*(2) Seek reimbursement, to the extent applicable, through the School-Based Medi-Cal Administrative Activities program for administrative costs related to providing services pursuant to this section.*

*(f) (1) This section does not alter the scope of practice for any mental health professional in a manner that is not authorized pursuant to existing law.*

*(2) This section does not authorize the delivery of mental health services in a setting or in a manner that is not authorized pursuant to existing law.*

*(g) For purposes of this section, the following terms have the following meanings:*

*(1) "Community mental health worker" or "cultural broker" means a frontline public health worker with behavioral health training who works for pay or as a volunteer in association with the local health care systems and usually shares ethnicity, language, socioeconomic status, or life experiences with the pupils served. A community mental health worker sometimes offers interpretation and translation services and culturally appropriate health education and information, assists pupils and family members in receiving the care they need, and gives, to the extent permitted by law, informal counseling and guidance.*

*(2) "Mental health professional" includes any of the following:*

*(A) An individual who holds a services credential with a specialization in pupil personnel services as described in Section 44266 that authorizes the individual to perform school counseling, school psychology, or school social work.*

*(B) An individual who holds a services credential with a specialization in health for a school nurse as described in Section 44267.5.*

*(C) A professional licensed by the State of California to provide mental health services, including, but not limited to, psychologists, marriage and family therapists, and clinical counselors.*

*(D) A marriage and family therapist intern as described in subdivision (b) of Section 4980.03 of the Business and Professions Code.*

*(E) A marriage and family therapist trainee as described in subdivision (c) of Section 4980.03 of the Business and Professions Code.*

*(F) A clinical counselor intern as described in subdivision (f) of Section 4999.12 of the Business and Professions Code.*

*(G) A clinical counselor trainee as described in subdivision (g) of Section 4999.12 of the Business and Professions Code.*

*(3) "Peer provider" means a person who draws on lived experience with mental illness or a substance use disorder and recovery, bolstered by specialized training, to deliver valuable support services in a mental health setting. Peer providers may include people who have lived experience as clients, family members, or caretakers of individuals living with mental illness. Peer providers offer culturally competent services that promote engagement, socialization, recovery, self-sufficiency, self-advocacy, development of natural supports, identification of strengths, and maintenance of skills learned in other support services. Services provided by peer providers include, but are not limited to, support, coaching, facilitation, or education that is individualized to the pupil.*

### *SEC. 3.*

*If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(B) – SB 163 (Portantino) Healthcare coverage:<br>pervasive developmental disorder or autism |

### **Background:**

Under current law, the Lanterman Developmental Disabilities Services Act requires the State Department of Developmental Services to contract with regional centers to provide services and support to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes to include, among other things, autism. SB 163 (Portantino) would revise the definition of behavioral health treatment to require the services and treatment programs provided to be based on behavioral, developmental, behavior-based, or other evidence-based models. The bill would also remove the exception for health care service plans and health insurance policies in the Medi-Cal program, consistent with the Mental Health Parity and Addiction Equity Act of 2008.

For the purposes of the Board of Psychology (Board), staff had concerns with the bill's provisions allowing Psychological Assistants and Registered Psychologists who have obtained at least 500 hours of experience in designing or implementing behavioral health treatment to supervise qualified autism service paraprofessionals (QASPs). Board staff is unaware of the prevalence of Psychological Assistants and Registered Psychologists serving as supervisors for QASPs in the field and has concerns about registrants as trainees who are not allowed to practice independently supervising entry-level individuals implementing behavior health treatment plans in consumers' homes. Further, supervision is not defined and the qualifications and responsibilities as a supervisor remain unclear.

**Location:** 4/8/2019 Senate Committee on Human Services

**Status:** 4/8/2019 Do pass as amended and re-refer to Committee on Human Services

**Votes:** 4/3/2019 Senate Committee on Health (8-0-1)

### **Action Requested:**

Staff recommends the Board watch SB 163 (Portantino). The Policy and Advocacy Committee noted that the Board may want to specifically discuss the provisions related to Psychological Assistants and Registered Psychologists supervising QASPs as mentioned in the staff analysis (Attachment A).

Attachment A: SB 163 (Portantino) Bill Analysis  
Attachment B: SB 163 (Portantino) Text

## 2019 Bill Analysis

|   |   |                       |
|---|---|-----------------------|
| <b>Author:</b><br>Portantino  | <b>Bill Number:</b><br>SB 163           | <b>Related Bills:</b> |
| <b>Sponsor:</b><br>DIR/Floortime Coalition of California                            | <b>Version:</b><br>Introduced 1/24/2019 |                       |
| <b>Subject:</b><br>Healthcare coverage: pervasive developmental disorder or autism. |   |                       |

### SUMMARY

Under current law, the Lanterman Developmental Disabilities Services Act requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes to include, among other things, autism. SB 163 (Portantino) would revise the definition of behavioral health treatment (BHT) to require the services and treatment programs provided to be based on behavioral, developmental, behavior-based, or other evidence-based models. The bill would also remove the exception for health care service plans and health insurance policies in the Medi-Cal program, consistent with the Mental Health Parity and Addiction Equity Act of 2008. Lastly, this bill would authorize Psychological Assistants and Registered Psychologists with specified training requirements to supervise qualified autism service paraprofessionals (QASPs).

### RECOMMENDATION

**DISCUSSION** – Board of Psychology (Board) staff has concerns with the bill’s provisions that would allow Psychological Assistants and Registered Psychologists who have obtained at least 500 hours of experience in designing or implementing BHT to supervise QASPs. Staff would like the Committee to discuss these provisions to determine whether a position should be taken on SB 163.

|   |  |
|---|--|
| Other Boards/Departments that may be affected: Board of Behavioral Sciences   |  |
| <input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes   |  |
| <input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required  |  |
| <b>Policy &amp; Advocacy Committee Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ | <b>Full Board Position:</b><br><input type="checkbox"/> Support <input type="checkbox"/> Support if Amended<br><input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended<br><input type="checkbox"/> Neutral <input type="checkbox"/> Watch<br>Date: _____<br>Vote: _____ |

**REASON FOR THE BILL**

According to the author, Californians with Autism Spectrum Disorder (ASD) are being denied coverage for physician and psychologist prescribed evidence-based BHT. Current law requires health insurance companies to cover all physician or psychologist prescribed medically necessary, evidence-based BHT for ASD. However, health insurance companies are finding loopholes in the law, giving them the ability to deny coverage for the medically necessary treatment. In some cases, coverage is only being offered for one form of BHT (applied behavior analysis (ABA)). According to the author, there is a shortage of network providers that has created six to twelve-month wait lists for BHT services. The author believes that changes to the existing law are needed in order to ensure that Californians with ASD will receive the needed health coverage for all prescribed BHT.

The author claims that all BHT providers (ABA and non-ABA) are constrained by other statutory provisions that serve to allow insurance denials. These include the requirement for parental participation and restraints on the location. Children of working parents can be denied coverage for medically necessary treatment simply because their parent has to work and cannot attend every treatment session. Similarly, if a child must receive treatment at an after-school daycare location (non-special education), they can be denied coverage simply because the setting is at a school even though the child cannot travel to a clinical setting.

Additionally, the author believes that the current minimum education requirement in Title 17 for a paraprofessional of a high school diploma and 30 hours of training is too low and needs to be increased for non-ABA paraprofessionals.

The author states that SB 163 will eliminate the existing statutory obstacles and require health insurance coverage for all forms of medically necessary, evidence-based BHT for Californians with ASD without diminishing consumer protections. According to the author, the bill would also expand the number of qualified professionals by authorizing State certified professionals to administer BHT within their professional competence thereby reducing or eliminating the waiting list for BHT services.

**ANALYSIS**

This bill makes a number of changes to statutory provisions regarding coverage of BHTs for individuals with ASD. Board staff does not have concerns with the provisions that would increase consumer access to a wider variety of BHTs, therefore this analysis focuses solely on the provisions relating to the Board's registrants and their authorization to supervise QASPs.

Current law establishes three (3) tiers for individuals providing Qualified Autism Services:

- Providers are the highest education and experience level tier and they design, supervise, or provide treatments;
- Professionals are the middle education and experience level tier and they provide behavioral health treatment, and may also provide clinical case

management and case supervision under the direction and supervision provider;  
and

- Paraprofessionals are the lowest education and experience level tier and they provide treatment and implement services pursuant to a treatment plan developed and approved by the qualified autism service provider and must be supervised by a provider or professional at a level of clinical supervision that meets professionally recognized standards of practice.

Current law authorizes individuals who meet specified educational, training, and other requirements and who are supervised and employed by a qualified autism service provider to serve as a Qualified Autism Service Professional. The current requirements for Qualified Autism Service Professionals are as follows:

(A) Provides behavioral health treatment, which may include clinical case management and case supervision under the direction and supervision of a qualified autism service provider.

(B) Is supervised by a qualified autism service provider.

(C) Provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider.

(D) Is a behavioral service provider who meets the education and experience qualifications described in Section 54342 of Title 17 of the California Code of Regulations for an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program.

(E) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(F) Is employed by the qualified autism service provider or an entity or group that employs qualified autism service providers responsible for the autism treatment plan.

SB 163 would still allow for the use of current education and experience qualifications in Section 54342 of Title 17 but would, with specified training requirements, also authorize individuals registered with the Board to serve as Qualified Autism Service Professionals supervising QASPs. SB 163 would allow Psychological Assistants and Registered Psychologists who have obtained at least 500 hours of experience in designing or implementing behavioral health treatment to supervise QASPs.

Staff is unaware of the prevalence of Psychological Assistants and Registered Psychologists serving as supervisors for QASPs in the field currently but has concerns about registrants who are not allowed to practice independently supervising entry level individuals implementing BHT plans in consumers' homes. Further, SB 163 does not define what must be included in the 500 hours of training that would qualify them to supervise, therefore it is unclear if the 500 hours is only in experience designing or implementing BHTs or must also include adequate supervision training so that these individuals are prepared to properly supervise QASPs who will be implementing the

BHTs with consumers. Additionally, the qualifications and responsibilities of their role as a QASP supervisor are not clearly spelled out or held to a specified standard of accountability.

Additional programmatic concerns that Board staff has regarding Psychological Assistants and Registered Psychologists serving as supervisors for QASPs include the following:

- Would the 500 hours of training required to supervise in SB 163 count towards a registrant's supervised professional experience requirements for the purposes of licensure as a psychologist?
- What would be the supervisory requirements for these individuals look like, e.g. would there be a face-to-face supervision requirement? Must they keep supervision logs? How frequent would they be meeting with QASPs?
- Would the Board need to verify or track when a Psychological Assistants and Registered Psychologists has obtained the 500 hours of training?
- What standards would the Board hold Psychological Assistants and Registered Psychologists to for their supervision of QASPs or does all accountability go straight to the licensed psychologist serving as the Qualified Autism Services Provider?

The Committee should discuss these provisions regarding Psychological Assistants and Registered Psychologists supervising QASPs to determine whether a position should be taken on SB 163.

### **LEGISLATIVE HISTORY**

SB 399 (Portantino, 2018) is similar to AB 163 and would have revised existing requirements on health care service plans (health plans) and health insurers to cover BHT for pervasive developmental disorder (PDD) or ASD, such as allowing the substitution of specified current education, work experience, and training qualifications to meet the criteria of a qualified autism service professional or paraprofessional. This bill would have also prohibited a health plan and health insurer from denying or reducing medically necessary BHT based on a lack of parent or caregiver participation if a hardship exists, or on the setting, location, or time of treatment, as specified. This bill was vetoed by the Governor stating that "This bill would revise qualification standards for providers of behavioral health treatment for individuals with autism. Standards for autism providers were updated last year. I'm not inclined to revise them again".

AB 1074 (Maienschein, Chapter 385, Statutes of 2017) permits a qualified autism service paraprofessional to be supervised by a qualified autism service professional; indicates that behavioral health treatment may include clinical case management and case supervision under the direction and supervision of a qualified autism service provider, deletes a requirement that a behavioral service provider is approved as a vendor by a Regional Center based on provider definitions in specified regulations; and instead requires a behavioral service provider to meet the education and experience qualifications described in the specified regulations; and, makes other technical changes.

AB 796 (Nazarian, Chapter 493, Statutes of 2016) eliminates the sunset date on the health insurance mandate to cover behavioral health treatment for pervasive developmental disorder or autism.

SB 1034 (Mitchell of 2016) would have eliminated the sunset date on the health insurance mandate to cover behavioral health treatment for pervasive developmental disorder or autism and made other revisions to the law such as prohibiting denials for medically necessary behavioral health treatment based on the setting, location or time of the treatment. SB 1034 was held on the Assembly Committee on Appropriations Suspense File.

AB 1715 (Holden of 2016) would have established the Behavior Analyst Act (Act), which provides for the licensure, registration, and regulation of behavior analysts and assistant behavior analysts, and requires the California Board of Psychology, until January 1, 2022, to administer and enforce the Act. Hearing canceled at the request of the author in the Senate Committee on Business, Professions and Economic Development Committee.

SB 479 (Bates of 2015) would have established the Behavior Analyst Act, which provided for the licensure, registration, and regulation of behavior analysts and assistant behavior analysts, and required the California Board of Psychology, until January 1, 2021, to administer and enforce the Act. SB 479 was held on the Assembly Committee on Appropriations Suspense File.

AB 2041 (Jones of 2014) would have required that a regional center classify a vendor as a behavior management consultant or behavior management assistant if the vendor designs or implements evidence-based behavioral health treatment, has a specified amount of experience in designing or implementing that treatment, and meets other licensure and education requirements. AB 2041 would have required the Department of Developmental Services to amend its regulations as necessary to implement the provisions of the bill. AB 2041 was held on the Senate Committee on Appropriations Suspense File.

SB 126 (Steinberg, Chapter 680, Statutes of 2013) extended, until January 1, 2017, the sunset date of an existing state health benefit mandate that requires health plans and health insurance policies to cover behavioral health treatment for pervasive developmental disorder or autism and requires plans and insurers to maintain adequate networks of these service providers.

SB 946 (Steinberg, Chapter 650, Statutes of 2011) requires health plans and health insurance policies to cover behavioral health treatment for pervasive developmental disorder or autism, requires health plans and insurers to maintain adequate networks of autism service providers, establishes a task force in DMHC, sunsets the autism mandate provisions on July 1, 2014, and makes other technical changes to existing law regarding HIV reporting and mental health services payments.

SB 770 (Steinberg of 2010) would have required health plans and insurance policies to provide coverage for behavioral health treatment. SB 770 was held on the Assembly Committee on Appropriations Suspense File.

SB 166 (Steinberg of 2011) would have required health care service plans licensed by DMHC and health insurers licensed by CDI to provide coverage for behavioral health treatment for autism. Hearing was canceled at the request of the author in the Senate Committee on Health.

AB 1205 (Bill Berryhill of 2011) would have required the Board of Behavioral Sciences to license behavioral analysts and assistant behavioral analysts, on and after January 1, 2015, and included standards for licensure such as specified higher education and training, fieldwork, passage of relevant examinations, and national board accreditation. AB 1205 was held on the Assembly Committee on Appropriations Suspense File.

#### **OTHER STATES' INFORMATION**

Not Applicable

#### **PROGRAM BACKGROUND**

The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

The impact of this bill on the Board of Psychology's operations or programs is unclear at this time as Board staff are uncertain what if any requirements the Board might need to implement regarding Psychological Assistants and Registered Psychologists who perform supervisory functions.

#### **FISCAL IMPACT**

Not Applicable

#### **ECONOMIC IMPACT**

Not Applicable

#### **LEGAL IMPACT**

Not Applicable

#### **APPOINTMENTS**

Not Applicable

#### **SUPPORT/OPPOSITION**

**Support:** DIR/Floortime Coalition of California (sponsor); Cherry Crisp Entertainment and Production; Golden Steps Pediatric Therapy; Greenhouse Therapy Center; Newton Center for Affect Regulation

**Opposition:** None on File

**ARGUMENTS**

**Proponents:** None on File

**Opponents:** None on File

AB 1271 - (I) Amends the Law

*SECTION 1.*

*The intent of the Legislature in enacting this act is to seek opportunities to reduce barriers to professional licensing by eliminating licensing examinations that are found largely to duplicate already required formal education and training.*

*SEC. 2.*

*On or before January 1, 2021, the Department of Consumer Affairs shall provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains the following summary information for each licensed profession and vocation under its jurisdiction:*

*(a) Whether licensure requires completion of a board-approved education or training program.*

*(b) Whether licensure requires passage of a written or clinical licensing examination.*

*(c) Whether an examination fee is required in addition to any other initial licensure or application fees and, if so, the amount of the examination fee.*

*(d) To the extent feasible, information on the average length of time between submitting a licensure application and taking the licensing examination.*

*(e) Information on average passage rates for the licensing examination and, to the extent feasible, information on the percentage of yearly applicants who ultimately never receive a license due to one or more examination failures.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(C) – SB 201 (Wiener) Medical procedures:<br>treatment or intervention: sex characteristics of a minor |

### **Background:**

Under current law, the Medical Practice Act makes it unprofessional conduct for a physician and surgeon to fail to comply with prescribed informed consent requirements relating to various medical procedures, including sterilization procedures, the removal of sperm or ova from a patient under specified circumstances, and the treatment of breast cancer.

This bill would, absent a medical necessity, prohibit a physician and surgeon from performing any treatment or intervention on the sex characteristics of an intersex minor without the informed consent of the intersex minor, as described. The bill would, among other things, require a physician and surgeon, prior to performing the treatment or intervention, to provide a written and oral disclosure and to obtain the informed consent of the intersex minor to the treatment or intervention, as specified. The bill would authorize a physician and surgeon to perform the medical procedure without the minor's consent if it is medically necessary and the physician and surgeon provides the written and oral disclosure to the parent or guardian and obtains their informed consent, as specified. The bill would authorize the Medical Board of California to develop and adopt medical guidelines to implement these requirements. Any violation of these provisions would be subject to disciplinary action by the board, but not criminal prosecution.

**Location:** 2/13/2019 Senate Committee on Business, Professions and Economic Development

**Status:** 4/1/2019 set for first hearing. Testimony taken

### **Action Requested:**

Staff recommends the Board watch SB 201 for potential issues regarding psychological evaluations or referrals being incorporated into these guidelines.

Attachment A: SB 201 (Wiener) Senate Committee on Business, Professions and Economic Development Analysis

Attachment B: SB 201 (Wiener) Bill Text



life-altering surgeries and other treatments or interventions on their physical sexual characteristics; that the enactment of legislation is necessary to ensure intersex people participate in decisions about surgery and treatments or interventions on their physical sex characteristics and; that intersex is an umbrella term used to describe a wide range of natural bodily variations.

- 2) Prohibits a physician and surgeon from performing any treatment or intervention (including a number of named medical procedures), other than one which is medically necessary, on the sex characteristics of an intersex minor, if that treatment or intervention may be deferred until the intersex minor can provide informed consent.
- 3) Defines “intersex” as an individual born with sex characteristics, including genitals, gonads, and chromosome patterns, that do not fit typical binary notions of male or female bodies, including differences in sex development resulting from androgen insensitivity syndrome (AIS), congenital adrenal hyperplasia (CAH), and hypospadias.
- 4) States that a treatment or intervention is “medically necessary” or a “medical necessity” when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain. Specifies that a medically necessary treatment or intervention includes, but is not limited to: a procedure to repair the bladder or cloacal exstrophy; a gonadectomy to address a risk of cancer that is significantly elevated above the risk to the general population; a hypospadias repair, including chordee release, intended to alleviate severe pain; or a procedure intended to allow urine to exit the body absent a urethral opening. States that a treatment or intervention is not medically necessary if it may be safely deferred until the intersex minor can provide informed consent. Specifies that psychological factors do not constitute medical necessity for a treatment or intervention on the sex characteristics of an intersex minor.
- 5) Defines “informed consent” as a person knowingly and intelligently, without duress or coercion, and clearly and explicitly manifesting their consent to the proposed treatment or intervention to the attending physician and surgeon, after receiving certain specific written and oral disclosures.
- 6) Requires a physician or surgeon to provide oral and written disclosures about the treatment or intervention, including any necessary healthcare management or long-term follow-up care; a description of expected discomfort and risks; benefits the patient can reasonably expect following the treatment or intervention; appropriate alternative procedures, drugs, or devices, including delay of the procedure, that might be advantageous to the patient, and their relative risks and benefits and; an offer to answer any inquiries concerning the treatment or intervention involved.
- 7) After providing disclosures outlined in 5) above, requires a physician and surgeon to obtain informed consent in writing, signed by the minor and by the physician and surgeon who performs the medical procedure. The informed consent must contain a notification to the minor that it is an important document that should be retained with other vital records. Outlines requirements for keeping the informed consent in the minor’s medical records and for providing copies to the minor and hospital.

- 8) Authorizes a physician and surgeon to perform a treatment or intervention on the sex characteristics of a minor without the minor's consent if it is medically necessary and the physician or surgeon provides disclosures outlined in 5) above to the parent or guardian, and the parent or guardian provides informed consent.
- 9) Authorizes MBC to develop and adopt medical guidelines to implement the requirements of this bill.
- 10) Specifies that a violation of the bill's provisions constitute unprofessional conduct.

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

**COMMENTS:**

1. **Purpose.** This bill is sponsored by the American Civil Liberties Union (ACLU) of California, Equality California, and interACT Advocates for Intersex Youth.

According to the Author, "approximately 1-2% of people are born with variations in their biological sex characteristics, sometimes referred to as intersex traits. Some of these variations are recognized at birth, while others may go unnoticed until later in life, if at all. About 1 in every 2,000 people is born with intersex traits that noticeably do not correspond to what is generally considered to be typically male or female genitalia. Although a small percentage of intersex infants may require immediate medical attention – for example, a small number are born with a dangerous cloacal exstrophy or without the ability to pass urine – the vast majority are born perfectly healthy and able to live rich, fulfilling lives without any modification to their genitals."

The Author notes that "Beginning in the mid-twentieth century, however, American medical practitioners, led by Johns Hopkins psychologist John Money, began performing sex assignment and genital modification procedures on intersex infants. These surgeries, hormonal treatments, and the like have included infant vaginoplasties, clitoral reductions, and removal of gonadal tissues, and may result in extreme scarring, chronic pain, incontinence, loss of sexual sensation, post-traumatic stress disorder, and incorrect gender assignment. While a subset of doctors performs these surgeries in infancy based on the theory that it will help intersex people be more 'normal', no research definitively proves that claim, and all major intersex groups condemn the practice when performed without the consent of the individual involved. Meanwhile, parents who expressed reluctance about medical intervention were (and continue to be) mistakenly assured by doctors that the potential benefits far outweigh the risks."

According to the Author, "such procedures remain legal in every state in the U.S., even though other related interventions are not allowed. Some are de facto prohibited – for example, parents could probably not find a doctor to give their child an elective rhinoplasty in infancy because they are worried they would be bullied later in life (even though that is the same rationale used to justify much more invasive intersex infant procedures). Many, however, are prohibited from being performed on infants in statute, including female genital mutilation (Penal Code § 273.4), LGBT conversion therapy (Business & Professions Code §865), sterilization

(various code sections), psychosurgery (Welfare & Institutions Code §5326.6), and electroconvulsive therapy (Welfare & Institutions Code §5326.8). The reason is simple: these are dangerous medical procedures with, in many cases, largely psychosocial benefits that cannot be considered in the context of an infant, who has yet to develop their sex or gender identity.”

2. **Intersex Definitions and Conditions.** According to the National Institutes of Health (NIH), people usually have 46 chromosomes in each cell. Two of the 46 chromosomes, X and Y, are called sex chromosomes because they help determine whether a person will develop male or female sex characteristics. Females typically have two X chromosomes and males usually have one X chromosome and one Y chromosome.

During gestation, male and female embryos develop sex-neutral gonadal tissues, which later usually become male or female sex organs, based on hormonal and genetic influences. A specific gene, SRY, on a Y chromosome influences the formation of testes, which in turn produce androgen hormones that result in male sexual differentiation. Typically, without the SRY gene, ovaries are formed, female sexual differentiation occurs, and the fetus develops as a female.

Intersex conditions may arise through a disruption along this developmental pathway to sexual differentiation. Intersex traits may include incomplete or unusual development of internal reproductive organs; inconsistency between external genitals and internal reproductive organs; atypical development of testes or ovaries and; an inability for the body to respond normally to sex-related hormones. Statistics on the number of intersex births vary.

There is no single, authoritative definition for intersex.

- The NIH U.S. National Library of Medicine Medical Encyclopedia defines intersex as a group of conditions where there is a discrepancy between the external genitals and the internal genitals, and outlines four categories of intersex:
  - *46, XX intersex* – an individual has female chromosomes and ovaries but external genitals that are more typical for a male, most often the result of a female fetus having been exposed to excess male hormones in utero. In most cases, this person has a normal uterus and fallopian tubes. The most common cause of 46, XX intersex is CAH, although causes may include a mother taking androgens (like testosterone) during pregnancy or other androgen exposure to the fetus, male-hormone producing tumors in the mother, or an enzyme deficiency that leads to hormones being converted abnormally.
  - *46, XY intersex* – an individual has the chromosomes of a male, but external genitals are incompletely formed, ambiguous, or clearly female. Internally, testes may be normal, malformed, or absent. The most common cause is AIS (discussed further below) but may also include problems with how testes produce male hormones, enzyme deficiencies

that result in inadequate testosterone, or enzyme deficiencies that do not allow testosterone to be converted properly.

- *True gonadal intersex* – the individual has both ovarian and testicular tissue. This may be in the same gonad, or the person might have 1 ovary and 1 testis. The person may have XX chromosomes, XY chromosomes, or both. The external genitals may be ambiguous or may appear to be female or male.
- *Complex or undetermined intersex* – the individual has a chromosomal configuration other than 46, XX or 46, XY. Configurations may include 45, XO (only one X chromosome), and 47, XXY, 47, XXX, cases with an extra sex chromosome. While these situations do not result in discrepancy between internal and external genitalia, there may be issues with sex hormone levels, overall sexual development, and altered numbers of sex chromosomes.
- The 2006 “Consensus Statement on Management of Intersex Disorders” (Chicago Consensus) published in *Pediatrics* (stemming from a 2005 meeting in Chicago, the follow-up to a 2002 the Lawson Wilkins Pediatric Endocrine Society European Society for Pediatric Endocrinology meeting to develop a consensus statement to serve as a guideline for the treatment of the most common forms of CAH) recommended a new classification of intersex variations, “disorders of sex development” (DSD) defined as:

**congenital conditions in which development of chromosomal, gonadal, or anatomic sex is atypical**

DSD is the term used by the medical community.

- A fact sheet published by the United Nations Human Rights Campaign as part of their “Free and Equal” Campaign from the Office of the High Commission for Human Rights defines intersex as:

**an umbrella term used to describe a wide range of natural bodily variations**

This same language is included in the findings and declarations section of this bill.

According to the fact sheet, “Being Intersex is about someone’s biological sex characteristics. This includes genitals, gonads, hormone levels and chromosome patterns. It is different from sexual orientation or gender identity – an intersex person could be straight, gay, lesbian, bisexual or asexual, and they might be a woman, a man, both or neither.”

- The findings and declarations contained in SB 179 (Atkins, Chapter 853, Statutes of 2017) define intersex as:

**an umbrella term used to describe natural bodily variations, which can include external genitalia, internal sex organs, chromosomes, or hormonal differences that transcend typical ideas of male and female**

- SCR 110 (Wiener, Resolution Chapter 225, Statutes of 2018) states that “individuals born with variations in their physical sex characteristics may present with differences in genital anatomy, internal reproductive structures, chromosomes, or hormonal variations” and that “intersex refers to the variety of different physical indicators that create these differences.”

This bill establishes a definition in California for intersex as:

**an individual born with sex characteristics, including genitals, gonads, and chromosome patterns, that do not fit typical binary notions of male or female bodies, including differences in sex development resulting from AIS, CAH, and hypospadias**

Uniquely, this definition references three named conditions which may lead to an intersex conclusion.

According to the NIH U.S. National Library of Medicine, AIS is a condition that affects sexual development before birth and during puberty. People with this condition are genetically male, with one X chromosome and one Y chromosome in each cell. Because their bodies are unable to respond to androgens, they may have mostly female external sex characteristics or signs of both male and female sexual development. Complete AIS occurs when the body cannot use androgens at all. People with this form of the condition have the external sex characteristics of females, but do not have a uterus and therefore do not menstruate and are unable to conceive a child. They are typically raised as females and have a female gender identity. Affected individuals have testes that are undescended, which means they are abnormally located in the pelvis or abdomen. Undescended testes have a small chance of becoming cancerous later in life if they are not surgically removed. The partial and mild forms of AIS result when the body's tissues are partially sensitive to the effects of androgens. People with partial AIS can have genitalia that look typically female, genitalia that have both male and female characteristics, or genitalia that look typically male. They may be raised as males or as females and may have a male or a female gender identity. People with mild AIS are born with male sex characteristics, but they are often infertile and tend to experience breast enlargement at puberty.

According to the NIH National Institute of Child Health and Human Development, CAH refers to a group of genetic disorders that affect the adrenal glands (which sit on top of the kidneys and release hormones the body needs to function). Classic CAH exposes individuals to high concentrations of androgens, including testosterone, in utero. Most commonly, CAH causes virilization, male-like characteristics, and puberty to occur too early in children. Individuals with CAH may be born with genitalia that do not look like typical female genitalia, including an enlarged and/or visible and external clitoris. In some cases, the variations associated with CAH are more pronounced and create serious medical complications. For example, while the male urethra runs the length of the penis and

carries both urine and sperm, the female's urethra is designed to carry only urine and is usually separated from the vaginal canal, situated between the clitoris and vaginal opening. In some CAH females, the urethra and vaginal canal are fused. In other cases the urethral opening (the point where urine exits the urethra) may be situated higher up in the vaginal canal, as opposed to near the opening, creating a potentially dangerous possibility of urine entering the uterus.

Hypospadias a congenital condition where the urethral opening forms on the underside of the penis or scrotum, rather than on the tip. Hypospadias is estimated to occur in 1 in 250 individuals and is classified based on the location of the opening. There does not appear to be consensus among medical experts as to the cause of hypospadias, although genetic predisposition, inadequate hormonal stimulation prior to birth, maternal placental factors, and environmental influences play a role. According to a 2017 article published in the *European Journal of Pediatrics*, "Hypospadias, all there is to know", hypospadias is a common condition that varies in terms of presentation and severity. In about 70 percent of situations, the opening is located distally, a mild form, while the remaining 30 percent are proximal and often more complex, likely requiring additional endocrinological evaluation of genes and hormones. As with all surgeries, hypospadias surgeries may result in complications and adverse outcomes, the degree of risk for each is not certain and depends on factors such as the patient's anatomy, the conditions under which surgery is performed, the surgical technique used and the surgeon's experience.

### 3. **Consensus Efforts, Treatment, and Calls for Delayed Intervention.**

According to the Chicago Consensus, "optimal clinical management...should comprise the following: (1) gender assignment must be avoided before expert evaluation in newborns; (2) evaluation and long-term management must be performed at a center with an experienced multidisciplinary team; (3) all individuals should receive a gender assignment; (4) open communication with patients and families is essential, and participation in decision-making is encouraged; and (5) patient and family concerns should be respected and addressed in strict confidence."

The Consensus advises that surgery for individuals with CAH should only be considered in cases of severe virilization and that surgery on the clitoris should only be used if the technique preserves the erectile function and innervation of the clitoris. According to the Consensus, surgery should look to "functional outcome rather than a strictly cosmetic appearance." CAH females are sometimes born without a vaginal opening, either because the opening did not develop or because of labial fusion (the small inner labia around the entrance to the vagina fuse together). In some cases, the labia separate naturally and surgery is not necessary. Other cases may require surgery, either because the labia will not separate on its own, or because the fused labia are positioned in a way that interferes with urine exiting the urethra. The Chicago Consensus references early separation of the vagina and urethra in CAH patients, but recommends that vaginal dilation be delayed until puberty and that more extensive vaginoplasty (which creates a vaginal canal) should not be performed until adolescence when the patient "is psychologically motivated and a full partner in the procedure."

In July 2017, interACT and Human Rights Watch issued “I Want to Be Like Nature Made Me: Medically Unnecessary Surgeries on Intersex Children in the US” (Human Rights Watch Report), a report based on in-depth interviews with intersex adults and children, parents of intersex children, and health care practitioners, and mental health providers who work with intersex people. The report defines “medically unnecessary intersex surgeries” as “all surgical procedures that seek to alter the gonads, genitals, or internal sex organs of children with atypical sex characteristics too young to participate in the decision, when those procedures both carry a meaningful risk of harm and can be safely deferred.” The report also states that many practitioners described the information they shared with parents as based on hypotheticals about what it would be like to raise an intact child, rather than on data on medical outcomes, as there is limited research and no standard guidelines for the medical community to follow. Parents and intersex individuals who were interviewed by Human Rights Watch told of medical staff pressuring them to undertake irreversible procedures, and were made to feel they were being unreasonable when they resisted or asked questions. These interventions can lead to medical conditions like scarring, incontinence, sterilization, loss of sexual function, psychological trauma, and post-traumatic stress disorder.

In June 2017, the Palm Center published “Re-Thinking Genital Surgeries on Intersex Infants” in which three former U.S. Surgeons General wrote that “while there is little evidence that cosmetic infant genitoplasty is necessary to reduce psychological damage, evidence does show that the surgery itself can cause severe and irreversible physical harm and emotional distress.” The paper notes that “When an individual is born with atypical genitalia that pose no physical risk, treatment should focus not on surgical intervention but on psychosocial and educational support for the family and child. Cosmetic genitoplasty should be deferred until children are old enough to voice their own view about whether to undergo the surgery.

A 2005 report issued by the San Francisco Human Rights Commission (Commission) following a public hearing, “A Human Rights Investigation into the Medical ‘Normalization’ of Intersex People” which concluded that infant genital surgeries and sex hormone treatments not performed to address medical emergencies are unnecessary. The Commission also found that interventions were typically performed to alleviate parents’ social discomfort, as well as the discomfort of doctors, relatives, and anyone other than the consenting patient. The Commission’s report also found that many parents made decisions to intervene based on misinformation and/or coercion from doctors. The report recommends that interventions should not occur in infancy or childhood, and that any procedures that are not medically necessary should not be performed unless the patient gives legal consent.

A 2014 study published in the *Journal of Urology* “Primary and Reoperative Hypospadias Repair in Adults – Are Results Different than in Children” found similar complication rates for hypospadias surgery in adults and children and noted findings that indicate “that adults can undergo repair using techniques similar to those in children and with the same goal...” A 2016 study in the *Journal of Sex Research*, “Should Surgery for Hypospadias Be Performed An Age of Consent”, advises that

“...most childhood surgeries for hypospadias are performed for anticipated future problems concerning function and cosmetics, rather than extant physical and/or psychosocial problems that are adversely affecting the child’s well-being...the surgery can be safely performed after an age of consent without increasing the absolute risk of surgical complications to an ethically meaningful degree...surgery for hypospadias should be performed only if requested by the affected individual, under conditions of informed consent.”

4. **Prior Related Legislation.** SCR 110 (Wiener, Resolution Chapter 225, Statutes of 2018) called upon stakeholders calls upon stakeholders in the health professions to foster the well-being of children born with variations of sex characteristics, and the adults they will become, through the enactment of policies and procedures that ensure individualized, multidisciplinary care that respects the rights of the patient to participate in decisions, defers medical or surgical intervention, as warranted, until the child is able to participate in decision making.

SB 179 (Atkins, Chapter 853, Statutes of 2017) enacted the Gender Recognition Act, which improves the procedures that allow transgender and nonbinary individuals to change their name and/or gender marker to conform with their gender identity in several identity documents including a birth certificate and driver's license. The measure defined intersex in findings and declarations as an umbrella term used to describe natural bodily variations, which can include external genitalia, internal sex organs, chromosomes, or hormonal differences that transcend typical ideas of male and female.

5. **Arguments in Support.** Supporters believe that children born with intersex conditions should not be denied the fundamental right to make life-altering decisions about their bodies when these decisions are safe to delay. Supporters state that this bill is necessary because procedures are continuing at major hospitals across the state, even after the passage of SCR 110 last year. According to supporters, this bill would regulate invasive, high-risk interventions and ensure that children are cared for ethically, compassionately, and on the basis of evidence rather than stereotypes or assumptions. Equality California calls this a critical human rights bill.

ACLU states that this bill signals to intersex individuals and their families that their state sees them and acknowledges their autonomy and that the measure does not seek to restrict the provision of legitimate healthcare, but rather to center medical decisions on the consent of patients with intersex conditions who will live with these decisions and repercussions.

Amnesty International writes that while the negative impacts of medically unnecessary surgeries have been well documented, there are significant gaps in research on the wellbeing of intersex people, or the relative merits of intervention or non-intervention. The organization also states that the physical risks and poor outcomes of these childhood surgeries are well documented and the group has found equally dire and long-term psychological impacts of procedures.

interACT: Advocates for Intersex Youth, “the largest and oldest organization in the country exclusively dedicated to advocacy on behalf of children born with variations in their sex characteristics”, state that “Aside from a very small number of cases in

which immediate surgery is medically necessary – such as when a child is born without a urinary opening – there are no proven medical benefits related to performing these procedures prematurely on infants or young children, while the risks of acting too soon are documented and numerous.”

According to the Trevor Project, “At the bottom line, having their bodies medically erased before they can even discover themselves sends a powerful message to intersex children – that they are not healthy and capable of being loved the way they are.” The organization cites the American Academy of Pediatrics affirmation over 20 years ago regarding the importance of protecting children’s developing autonomy and notes that this bill holds up this pledge for intersex children.

6. **Arguments in Opposition.** Organizations representing urologists, the American Association of Clinical Urologists, American Urological Association, California Urological Association, and Societies for Pediatric Urology, believe this bill is an overreaching effort to limit patient and parental rights by inserting staggering government limitations into the sanctity of the patient-parent-physician relationship and the practice of medicine. The groups believe that, among other impacts, this bill will force surgeries, when consented to be performed, to occur at older ages which have been documented to yield inferior results and to be associated with greater pain. They state that this bill sets a “dangerous precedent of inserting government into clinics, operating rooms, and hospitals by legislating what surgeries can and cannot be performed, including those which carry cancer risk”. The groups object to the “limitation of access to medical information and medical options that are not based on scientific information.”

The American Medical Association believes it would be inappropriate and harmful for the state of California to legislatively dictate that early intervention is never appropriate and to limit the range of options physicians, patients, and families may consider when making difficult decisions for pediatric patients.

According to the California Medical Association, “there is no discernable set of circumstances under which early surgical intervention is never (or always, for that matter) appropriate. Based on the available data, neither total postponement of surgery to the age of consent nor performing surgery early is free of risk, and clinical evidence for the methods of risk assessment at this stage are still inconclusive to allow for legislating of the practice of medicine between the options.”

The CARES Foundation, which represents nearly 10,000 individuals and families affected by CAH, is “deeply concerned about SB 201, which seeks to limit medical care for this life-threatening endocrine disorder.” The organization states that this bill was written without any input from the largest CAH community in the country and note that “surgical intervention in female CAH patients born with atypical genitalia is not a decision that is taken lightly...and are made in consultation with a multidisciplinary team of experts....” CARES foundation writes that the definitions claims in this bill are an oversimplification of extremely complex medical conditions, which require many years of post-medical school subspecialty training and extensive clinical experience treating patients with these rare disorders to fully understand the impact of providing or foregoing certain medical interventions.”

7. **Technical Amendments.** SB 201 contains provisions that appear to be drafting errors.

- a) Language throughout the measure consistently refers to “sex characteristics” but one sentence refers to “sexual characteristics”.

*On page 2, in line 15, strike “sexual” and replace with “sex”*

- b) The measure includes a definition for “psychosocial” as an individual’s psychological status in relation to their social and physical environment, but then goes on to state that “psychological” factors do not constitute medical necessity for a treatment or intervention on the sex characteristics of an intersex minor.

*On page 3, in line 30, strike “Psychological” and replace with “Psychosocial”*

8. **Staff Comments and Policy Questions.**

- a) *Is the definition of intersex too broad?*

Under this bill, differences in sex development resulting from three specific conditions, AIS, CAH, and hypospadias, are contained in the definition of intersex. While certain conditions and symptoms, including those referenced in this bill, *may* lead to an intersex determination, there is no one trait to point to that clearly determines an individual is intersex. While this may not have historically been the case, an intersex conclusion is made for a patient based on a number of factors such as examination and imaging, consultation, genetic and hormonal testing, medical literature review, and multiple other steps taken by interdisciplinary teams of providers, including pediatric, endocrinological, and urological specialists.

The Author believes that CAH and hypospadias are intersex traits and conditions, providing information that advises “many people with CAH identify as intersex, although many others do not...a not-insignificant portion of young people with CAH and XX chromosomes whom doctors initially identify as female end up self-identifying as male, gender non-binary, or intersex.”

Information provided by the Author justifying the inclusion of hypospadias in the definition notes that “Although there is unfortunately not a ton of credible research on this topic, given the small size of the population and the fact that almost everyone receives surgery (so there’s not really a control group), what scientific and anecdotal evidence we do have would seem to indicate that a disproportionate number of people with XY chromosomes and hypospadias grow up identifying as something other than male, as compared with the general population...hypospadias surgeries are usually performed to help make the person more ‘normal’ and conform to stereotypical gender roles....”

The Sponsors of this bill also recognize CAH and hypospadias as intersex. According to interACT the term intersex covers “any traits that cause sex characteristics, which include genitals, gonads, chromosomes, and hormone levels, to be considered atypical for the sex assigned.” The Author and Sponsors

justify the inclusion of intersex in the definition contained in this bill by referencing a higher likelihood of an individual born with CAH to be dissatisfied with their assigned gender, specifically referencing a 2015 study in the *Archives of Sexual Behavior*, “Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia” in their statement that there is a disproportionate rate of gender dysphoria among CAH patients. Is gender dysphoria, a psychosocial experience, enough to establish that all CAH patients are intersex, given the significantly different variables present in these very complex situations?

interACT states that “Not all individuals with hypospadias consider themselves to have an intersex trait/DSD, but many do and have been active in intersex communities and organizations. interACT cites the websites of a number of DSD clinics throughout the nation in stating that “Although physicians may differ as to whether to classify hypospadias as an intersex variation/DSD, hypospadias is often listed as a condition on hospitals’ clinic websites.” The Sponsors state that “especially in proximal hypospadias, the genital appearance may be sufficiently different...that [they] may be considered ‘ambiguous’ at birth....Hypospadias patients therefore share with others in the intersex community the experience of being subjected to elective surgeries to cause their genitals to appear or function in ways considered more typical for their assigned sex.” There are clearly varying degrees of hypospadias, yet there are no clear guidelines or agreement within the medical community as to whether every hypospadias alone means the patient is intersex.

Sex is a biological determination. SCR 110, which this bill is an extension of (as stated in the findings and declarations of SB 201), specifically references “physical sex characteristics” and “physical indicators” for an intersex determination. Yet part of the rationale for the definitions contained in this bill provided by the Author and Sponsors are not only physical, biological factors but social and emotional components. Should the Legislature include patients who self-identify as intersex to be defined as such, given the psychosocial factors that contribute to self-identification? Absent consensus and clarity in medical literature, studies, guidelines, and among medical specialists, and given the complexity and seriousness of an intersex determination, is the Legislature in a position to appropriately define intersex?

- b) *Is it appropriate to prohibit all treatment? Does the definition of medically necessary provide enough flexibility for clinical judgment? Who determines the safety of deferring treatment?*

The prohibition or deferral of unnecessary surgery for an intersex minor patient is very different than the prohibition of “any treatment or intervention” for that patient, as this bill establishes. Multiple reports and position statements provided as justification for this bill focus on surgical interventions. SCR 110 resolved efforts related to surgery. Laudable efforts undertaken throughout the world are focused on surgical procedures. Under this bill, all of the examples of treatment or interventions listed as “medically necessary” are surgical procedures.

However, treatment does not only include surgery. Treatment might include medication for hormonal adjustment, or psychosocial care, among many other options under the broad umbrella of “treatment”. According to the NIH National Child Development Center, the most common type of CAH can be life-threatening if it is left undiagnosed and untreated in newborns. Most patients with CAH must take daily medications to treat the symptoms.

There is considerable nuance in each patient, within the multitude of conditions that may lead to an intersex determination, and in each intersex situation. Is the threshold established in this bill as “medically necessary” potentially too high and will it have the unintended consequence of preventing non-surgical but potentially necessary treatment for an intersex patient?

It is unclear how the safety of deferring a treatment or intervention for an intersex patient would be determined. It seems impossible to establish an appropriate timeframe for delay statutorily, given the distinctive factors in each case. Similarly, there does not appear to be a clear medical determination for what constitutes “safe”, hence the need for a multidisciplinary approach, relying on specialists working together with families to make a final determination.

- c) *Is terminology in the definition of “medically necessary” and “medical necessity” too limiting?*

Under this bill, if a physician and surgeon performs a treatment or intervention for an intersex person without the patient’s informed consent, it must be “medically necessary” or a “medical necessity”, defined as “reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.”

Is significant illness or significant disability a clear enough standard? By using qualifiers like significant, does this have the unintended consequence of preventing care to patients to prevent illness or disability that may still impact their health, welfare, and quality of life? Should the Legislature limit this option to only situations of “severe pain”, even if a patient experiences pain that could potentially be relieved by treatment or intervention? How can a provider determine that an infant is experiencing severe pain versus pain? Given that standard of care guidelines are still evolving and every intersex patient presents a different case for providers, does this definition actually limit potentially necessary care?

- d) *Is it appropriate to model the informed consent provisions and procedures for disclosures on statute governing the use of DMSO?*

Current law requires a physician, prior to treating a patient with DMSO to take certain action, including providing disclosures and receiving informed consent. DMSO is a clear odorless liquid, a by-product of the paper making process, approved by the FDA to treat interstitial cystitis, a bladder health issue. DMSO has been the source of research for a number of years and may provide benefit to patients experiencing other medical conditions.

However, DMSO is not reported to have the same impacts on people as the Author and Sponsors believe unnecessary surgery on an intersex minor can have, including the potential medical complications outlined above. Disclosures by physicians and informed consent by patients for the use of one product may not be an ideal source for the very extensive disclosures, complex discussions, and consultation that would occur when treating and intersex patient.

e) *What does this mean for parental rights?*

This bill would impact the rights of parents to make decisions about their children's health. The issue of the parental rights was similarly raised during discussions on SCR 110.

According to the Assembly Committee on Judiciary analysis for SCR 110, "If this resolution were to ever take the form of legislation, it would raise serious questions about parental rights. The due process clause of the Fourteenth Amendment to the U.S. Constitution prohibits a state or local government from depriving any person of life, liberty, or property without due process of law. The courts have held repeatedly that 'liberty' protected by the Fourteenth Amendment includes the right of a parent to direct the upbringing of children and that parents, and not the government, are entitled make decisions about the best interests of their children...The Court had also held that this fundamental liberty includes a parent's right to make decisions about medical treatment of infants. (See e.g. *Parham v. J.R.* (1979) 442 U.S. 584, 602- 604.) On the other hand, a parent's right is not absolute. For example, the U.S. Supreme Court has upheld government authority to regulate the treatment of children, holding that parental authority may be restricted if doing is necessary to protect the child. (*Prince v. Massachusetts* (1944) 321 U.S. 158.)...Indeed, both the California Legislature and the courts have affirmed the rights of parents to make medical decisions on behalf of infant children, even where, as in this resolution, the merits of those medical procedures are hotly debated by medical researchers, health care professionals, parents and patients."

Opponents of this measure, including a number of individuals born with CAH who underwent surgery at a young age, believe that their parents made the right choice and express happiness that they had surgery early.

f) *Is there a simpler approach?*

Medically unnecessary surgery on intersex patients, aimed at supporting a sex assignment or conforming to certain gender norms, appears to really be at the heart of the Author and Sponsors' concerns. It certainly makes sense for individuals presenting some of the very complex conditions that lead to an intersex determination to be a part of the decision to undergo life-altering surgery, especially if that surgery does not need to take place when the patient is an infant in order to save their life. However, establishing definitions, like intersex, for situations where the meaning relies on a number of extremely hard to define factors, adds layers of complexity to the broader goal of allowing individuals to take part in a decision about their body which will have impacts on their entire life.

Should the bill take a simpler approach of prohibiting a physician and surgeon from initiating any sex assignment surgery on a minor when surgery can be deferred without threatening the minor's health, safety, and welfare until the minor can provide informed consent?

**NOTE: *Double-referral to Senate Committee on Judiciary, second.***

**SUPPORT AND OPPOSITION:**

Support:

American Civil Liberties Union (ACLU) (Co-sponsor)  
Equality California (Co-sponsor)  
interACT: Advocates for Intersex Youth (Co-sponsor)  
AIS-DSD Support Group  
Amnesty International  
Gender Health Center  
GLAAD  
GLMA: Health Professionals Advancing LGBTQ Equality  
Human Rights Watch  
Lambda Legal  
Medical Advisory Committee of interACT: Advocates for Intersex Youth  
National Center for Lesbian Rights  
Palm Center  
Physicians for Human Rights  
Steinberg Institute  
The Trevor Project  
2 individuals

Opposition:

American Association of Clinical Urologists  
American Medical Association  
American Urological Association  
California Medical Association  
California Society of Plastic Surgeons  
California Urological Association  
CARES Foundation  
Children's Specialty Care Coalition  
Osteopathic Physicians and Surgeons of California  
Pediatric Endocrine Society  
Societies for Pediatric Urology  
68 individuals, including a number of CAH patients and family members of CAH patients  
and 22 pediatric endocrinologists

## SB 201 - (A) Amends the Law

*SECTION 1.*

*Section 2295 is added to the Business and Professions Code, to read:*

*2295.*

*(a) Consistent with Senate Concurrent Resolution 110 of the 2017–18 Regular Session (Resolution Chapter 225 of the Statutes of 2018), the Legislature hereby finds and declares all of the following:*

*(1) The Legislature opposes all forms of prejudice, bias, or discrimination and affirms its commitment to the dignity and autonomy of all people, including those born with variations in their physical sex characteristics.*

*(2) Intersex people are a part of the fabric of our state’s diversity to be celebrated, rather than an aberration to be corrected.*

*(3) Intersex people should be free to choose whether to undergo life-altering surgeries and other treatments or interventions on their physical sexual characteristics that irreversibly, and sometimes irreparably, cause harm.*

*(4) The enactment of legislation is necessary to ensure the ability of intersex people to participate in decisions about surgery and other medical treatments or interventions on their physical sex characteristics.*

*(5) Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth, while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all.*

*(b) The following definitions apply for purposes of this section:*

*(1) “Intersex” means an individual born with sex characteristics, including genitals, gonads, and chromosome patterns, that do not fit typical binary notions of male or female bodies, including differences in sex development resulting from androgen insensitivity syndrome, congenital adrenal hyperplasia, and hypospadias.*

*(2) (A) A treatment or intervention on the sex characteristics of an intersex minor is “medically necessary” or a “medical necessity” when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.*

*(B) A medically necessary treatment or intervention on the sex characteristics of an intersex minor includes, but is not limited to, a procedure to repair the bladder or cloacal exstrophy, a gonadectomy to address a risk of cancer that is significantly elevated above the risk to the general population, a hypospadias repair, including chordee*

*release, intended to alleviate severe pain, or a procedure intended to allow urine to exit the body absent a urethral opening.*

*(C) A treatment or intervention is not medically necessary if the treatment or intervention may be safely deferred until the intersex minor can provide informed consent. Psychological factors do not constitute medical necessity for a treatment or intervention on the sex characteristics of an intersex minor.*

*(3) "Parent or guardian" has the same meaning as used in Section 6903 of the Family Code.*

*(4) "Psychosocial" means an individual's psychological status in relation to their social and physical environment.*

*(5) For purposes of this section, "informed consent" means that a person knowingly and intelligently, without duress or coercion, and clearly and explicitly manifests their consent to the proposed treatment or intervention to the attending physician and surgeon, following receipt of the written and oral disclosures described in subdivision (e).*

*(c) (1) Absent a medical necessity, a physician and surgeon shall not perform any treatment or intervention on the sex characteristics of an intersex minor without the informed consent of the intersex minor, as described in subdivision (f).*

*(2) A treatment or intervention subject to the requirements of this section includes, but is not limited to, the following procedures:*

*(A) Clitorectomy, clitoroplasty, clitoral reduction, and clitoral recession, including corporal-sparing procedures.*

*(B) Gonadectomy, including of testes, ovaries, ovotestes, and streak gonads.*

*(C) Hypospadias surgery, relocation of the urethral meatus, and chordee release.*

*(D) Labiaplasty and labial reduction.*

*(E) Phalloplasty.*

*(F) Vaginoplasty, introitoplasty, vaginal exteriorization, and partial or total urogenital sinus mobilization.*

*(d) Prior to performing a treatment or intervention on the sex characteristics of an intersex minor, a physician and surgeon shall provide to the intersex minor written and oral disclosure, as described in subdivision (e), and shall obtain the informed consent of the intersex minor, as described in subdivision (f).*

*(e) The written and oral disclosure required by subdivision (d) shall include, in nontechnical terms, all of the following:*

*(1) A description of the treatment or intervention to be performed, including any necessary healthcare management or long-term follow-up care to be expected following the treatment or intervention.*

*(2) A description of any attendant discomfort and risks to the patient in the short term and long term, which may reasonably be expected following the treatment or intervention.*

*(3) An explanation of any benefits that the patient can reasonably expect following the treatment or intervention.*

*(4) An explanation of any appropriate alternative procedures, drugs, or devices, including delay of the procedure, that might be advantageous to the patient, and their relative risks and benefits.*

*(5) An offer to answer any inquiries concerning the treatment or intervention involved.*

*(f) (1) The informed consent to the treatment or intervention required by subdivision (d) shall be obtained from the intersex minor after providing the disclosure described in subdivision (e) and shall meet all of the following requirements:*

*(A) The consent shall be in writing and shall contain the following statement: I (name of minor) do hereby consent to (description of medical procedure) to be performed by (name of physician and surgeon) on (date that the medical procedure is performed on the minor).*

*(B) The consent shall be signed by the minor and by the physician and surgeon who performs the medical procedure.*

*(C) The consent shall contain a notification to the minor that the written consent is an important document that should be retained with other vital records.*

*(2) The physician and surgeon shall retain the original consent in the medical record of the minor and give a copy of the consent to the minor.*

*(3) If the treatment or intervention is performed in a hospital, the physician and surgeon shall provide a copy of the consent to the hospital.*

*(g) If it is medically necessary to perform a treatment or intervention on the sex characteristics of an intersex minor without the consent of the intersex minor, a physician and surgeon may perform the medical procedure only if the physician and surgeon provides the written and oral disclosure, as described in subdivision (e), to the parent or guardian, and the parent or guardian provides informed consent, as described in subdivision (f).*

*(h) The board may develop and adopt medical guidelines to implement this subdivision.*

*(i) A violation of this section constitutes unprofessional conduct. Section 2314 shall not apply to a violation of this section.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(D) – AB 71 (Melendez) Employment standards: independent contractors and employees |

**Background:**

Current case law establishes a three-part test, known as the “ABC” test, for determining whether a worker is considered an independent contractor for purposes of specified wage orders. Under this test, a worker is properly considered an independent contractor only if the hiring entity establishes; 1) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for performance of the work and in fact; 2) that the worker performs work outside the usual course of the hiring entity’s business; and 3) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

AB 71 (Melendez) would, instead, require a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors.

**Location:** 1/17/2019 Assembly Committee on Labor and Employment

**Status:** 2/26/2019 Re-referred to Assembly Committee on Labor and Employment

**Action Requested:**

Staff recommends the Board watch AB 71 for potential impacts on the employment relationship the bill could have on Psychologists and their Psychological Assistants.

Attachment: AB 71 (Melendez) Bill Text

## AB 71 - (A) Amends the Law

## SECTION 1.

Section 2750.5 of the Labor Code is amended to read:

## 2750.5.

There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or who is performing ~~such~~ *those* services for a person who is required to obtain such a license is an employee rather than an independent contractor. ~~Proof of independent contractor status includes satisfactory proof of these factors:~~

~~(a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.~~

~~(b) That the individual is customarily engaged in an independently established business.~~

~~(c) That the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.~~

In addition to the factors contained in ~~subdivisions (a), (b), and (c),~~ *Section 2750.7*, any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status.

For purposes of workers' compensation law, this presumption is a supplement to the existing statutory definitions of employee and independent contractor, and is not intended to lessen the coverage of employees under Division 4 and Division 5.

*SEC. 2.*

*Section 2750.7 is added to the Labor Code, to read:*

*2750.7.*

*(a) Notwithstanding any other law, a determination of whether a person is an employee or an independent contractor for the purposes of this division shall be based on the multifactor test set forth in S.G. Borello & Sons, Inc. v. Department of Industrial Relations.*

*(b) These factors include, but are not limited to, the following:*

*(1) Whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, which is the principal factor.*

*(2) Whether the one performing services is engaged in a distinct occupation or business.*

*(3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision.*

*(4) The skill required in the particular occupation.*

*(5) Whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work.*

*(6) The length of time for which the services are to be performed.*

*(7) The method of payment, whether by the time or by the job.*

*(8) The right to discharge at will, without cause.*

*(9) Whether or not the work is part of the regular business of the principal.*

*(10) Whether or not the parties believe they are creating the relationship of employer-employee.*

*(c) The individual factors set forth in subdivision (b) above shall not be applied mechanically as separate tests, but shall be intertwined.*

*(d) The test set forth in this section shall apply to any determinations before an administrative agency or court.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(E) – AB 166 (Gabriel) Medi-Cal: violence preventive services. |

### **Background:**

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services (DHCS) and under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes a schedule of benefits under the Medi-Cal program, including various mental health services. Existing federal law authorizes, at the option of the state, preventive services, as defined, that are recommended by a physician or other licensed practitioner of the healing arts.

This bill would, no later than July 1, 2020, make violence preventive services provided by a qualified violence prevention professional, as defined, a covered benefit under the Medi-Cal program, subject to utilization controls. The bill would make the benefit available to a Medi-Cal beneficiary who has received medical treatment for a violent injury and for whom a licensed health care provider has determined that the beneficiary is at elevated risk of reinjury or retaliation and has referred the beneficiary to participate in a violence preventive services program.

The bill would require the DHCS to approve at least one governmental or nongovernmental accrediting body with expertise in violence preventive services to review and approve training and certification programs. The bill would require an entity that employs or contracts with a qualified violence prevention professional to maintain specified documentation on, and to ensure compliance by, that professional.

**Location:** 3/07/2019 Assembly Committee on Health

**Status:** 3/11/2019 Re-referred to Committee on Health

### **Action Requested:**

No action is required at this time. Due to the amendments made to this bill, staff will no longer be watching AB 166 (Gabriel).

Attachment: AB 166 (Gabriel) Bill Text

## AB 166 - (A) Amends the Law

*SECTION 1.*

*Section 14134.3 is added to the Welfare and Institutions Code, immediately following Section 14134.25, to read:*

*14134.3.*

*(a) It is the intent of the Legislature that the State Department of Health Care Services develop and implement services targeted at reducing injury recidivism among violently injured Medi-Cal beneficiaries, and provide direct reimbursement to qualified violence prevention professionals for violence preventive services in accordance with this section.*

*(b) No later than July 1, 2020, violence preventive services provided by a qualified violence prevention professional are a covered benefit, subject to utilization controls, for a Medi-Cal beneficiary who meets both of the following conditions:*

*(1) The beneficiary has received medical treatment for a violent injury, including, but not limited to, a gunshot wound, stabbing injury, or any other form of violent injury.*

*(2) A licensed health care provider has determined that the beneficiary is at elevated risk of violent reinjury or retaliation and has referred the beneficiary to participate in a violence preventive services program.*

*(c) For the purposes of this section, the following definitions apply:*

*(1) "Prevention professional" has the same meaning as defined by the National Uniform Claim Committee (NUCC) under NUCC Code Number 405300000X or its successor.*

*(2) "Qualified violence prevention professional" means a prevention professional who meets all of the following conditions:*

*(A) Possesses at least six months of full-time equivalent experience in providing violence preventive services through employment, volunteer work, or as part of an internship experience.*

*(B) Has successfully completed an accredited training and certification program for violence prevention professionals, in accordance with subdivision (d), or has been certified as a violence prevention professional by the National Network of Hospital-Based Violence Intervention Programs prior to the effective date of this section.*

*(C) Successfully completes at least four hours of continuing education annually in the field of violence preventive services.*

*(D) Satisfies any other requirements necessary to maintain certification as a violence prevention professional.*

*(3) "Violence preventive services" means evidence-based, trauma-informed, supportive, and nonpsychotherapeutic services provided by a prevention professional for the purpose of promoting improved health outcomes and positive behavioral change, preventing injury recidivism, and reducing the likelihood that violently injured individuals will commit or promote violence themselves. Those services may be provided within or outside of a clinical setting and may include the provision of peer support and counseling, mentorship, conflict mediation, crisis intervention, targeted case management, referrals, patient education, or screening services to victims of interpersonal violence.*

*(d) The department shall approve at least one governmental or nongovernmental accrediting body with expertise in violence preventive services to review and approve training and certification programs for violence prevention professionals, if that accrediting body elects to do so. The accrediting body shall approve programs that prepare individuals to provide violence preventive services to victims of interpersonal violence, and that include at least 35 hours of training, collectively addressing all of the following:*

*(1) The profound effects of trauma and violence and the basics of trauma-informed care.*

*(2) Violence prevention strategies, including, but not limited to, conflict mediation and retaliation prevention related to interpersonal violence.*

*(3) Case management and advocacy practices.*

*(4) Patient privacy and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).*

*(e) An entity that employs or contracts with a qualified violence prevention professional to provide violence preventive services shall do both of the following:*

*(1) Maintain documentation that the qualified violence prevention professional has met all of the conditions described in paragraph (2) of subdivision (c).*

*(2) Ensure that the qualified violence prevention professional is providing violence preventive services consistent with paragraph (3) of subdivision (c).*

*(f) The department shall seek any federal approvals necessary to implement this section, including, but not limited to, any state plan amendments or federal waivers by the federal Centers for Medicare and Medicaid Services.*

*(g) This section shall be implemented only to the extent that federal financial participation is available and not otherwise jeopardized, and any necessary federal approvals have been obtained.*

*(h) This section does not alter the scope of practice for any health care professional and does not authorize the delivery of health care services in a setting or in a manner that is*

*not authorized under any provision of the Business and Professions Code or the Health and Safety Code.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(F) – AB 184 (Mathis) Board of Behavioral Sciences: registrants and licensees |

**Background:**

AB 184 (Mathis) would require the Board of Behavioral Sciences to offer every applicant for an initial registration number or license and every applicant for renewal of a registration number or license under the board's jurisdiction the option to elect to have the applicant's home address be kept confidential.

**Location:** 1/24/2019 Assembly Committee on Business and Professions

**Status:** 4/2/2019 In committee: Set, first hearing. Hearing canceled at the request of author.

**Action Requested:**

Staff recommends the Board watch AB 184 for potential impacts on the Board's ability to obtain similar authority in the future related to its applicants and licensees.

Attachment: AB 184 (Mathis) Bill Text

AB 184 - (I) Amends the Law

*SECTION 1.*

*Section 4990.11 is added to the Business and Professions Code, to read:*

*4990.11.*

*The board shall offer every applicant for an initial registration number or license and every applicant for renewal of a registration number or license under the board's jurisdiction the option to elect to have the applicant's home address be kept confidential.*

## MEMORANDUM

|                |  |
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| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(G) – AB 189 (Kamlager-Dove) Child abuse or neglect: mandated reporters: autism service personnel |

**Background:**

The Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. AB 189 (Kamlager-Dove) would add qualified autism service providers, qualified autism service professionals, and qualified autism service paraprofessionals, as defined, to the list of individuals who are mandated reporters.

**Location:** 3/28/2019 Senate Committee on Rules

**Status:** 3/28/2019 In Senate. Read first time. To Committee on Rules for assignment.

**Votes:** 2/26/2019 Assembly Committee on Public Safety (8-0-0)  
3/20/2019 Assembly Committee on Appropriations (13-0-5)  
3/28/2019 Assembly Floor (72-0-8)

**Action Requested:**

Staff recommends the Board watch AB 189 for potential impacts to licensees that supervise and/or employ qualified autism service professionals or qualified autism service paraprofessionals.

Attachment: AB 189 Bill Text

## AB 189 - (I) Amends the Law

## SECTION 1.

Section 11165.7 of the Penal Code is amended to read:

11165.7.

(a) As used in this article, "mandated reporter" is defined as any of the following:

- (1) A teacher.
- (2) An instructional aide.
- (3) A teacher's aide or teacher's assistant employed by a public or private school.
- (4) A classified employee of a public school.
- (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.
- (6) An administrator of a public or private day camp.
- (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
- (8) An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.
- (9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.
- (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
- (11) A Head Start program teacher.
- (12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.
- (13) A public assistance worker.
- (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- (15) A social worker, probation officer, or parole officer.
- (16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed associate marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, “child visitation monitor” means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) “Animal control officer” means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) “Humane society officer” means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, “clergy member” means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff’s department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an “alcohol and drug counselor” is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) An associate professional clinical counselor registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution’s premises or at an official activity of, or program conducted

by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43) (A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.

(45) An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.

(46) An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.

*(47) A qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional, as defined in Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.*

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the

identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Except as provided in subdivision (d), employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) Pursuant to Section 44691 of the Education Code, school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools shall annually train their employees and persons working on their behalf specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(e) (1) On and after January 1, 2018, pursuant to Section 1596.8662 of the Health and Safety Code, a child care licensee applicant shall take training in the duties of mandated reporters under the child abuse reporting laws as a condition of licensure, and a child care administrator or an employee of a licensed child day care facility shall take training in the duties of mandated reporters during the first 90 days when he or she is employed by the facility.

(2) A person specified in paragraph (1) who becomes a licensee, administrator, or employee of a licensed child day care facility shall take renewal mandated reporter training every two years following the date on which he or she completed the initial mandated reporter training. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(f) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(g) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

## **SEC. 2.**

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within*

*the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                       |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(H) – AB 193 (Patterson) Professions and vocations |

### **Background:**

This bill would require the department, beginning on January 1, 2021, to conduct a comprehensive review of all licensing requirements for each profession regulated by a board within the department and identify unnecessary licensing requirements, as defined by the bill. The bill would require the department to report to the Legislature on March 1, 2023, and every 2 years thereafter, on the department's progress in conducting its review, and would require the department to issue a final report to the Legislature no later than March 1, 2033. The bill would require the biennial reports to the Legislature to include the assessment information submitted by each board to the department, to identify the professions reviewed by the department, each unnecessary licensing requirement, and the department's recommendations to the Legislature on whether to keep, modify, or eliminate the unnecessary licensing requirement. The bill would require the department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as provided.

The bill, beginning February 1, 2021, and every 2 years thereafter, would require each board within the department to submit to the department an assessment on the board's progress in implementing policies to facilitate licensure portability for active duty service members, veterans, and military spouses that includes specified information.

**Location:** 2/4/2019 Assembly Committee on Business and Professions

**Status:** 3/21/2019 Re-referred to Assembly Committee on Business and Professions

### **Action Requested:**

Staff recommends the Board watch AB 193 for potential impacts on Board and Staff workload required for participation in such a DCA review of the Board's licensing requirements and workload required for biennial reporting to DCA on the Board's progress in implementing policies to facilitate licensure portability for active duty service members, veterans, and military spouses.

Attachment: AB 193 (Patterson) Bill Text

## AB 193 - (A) Amends the Law

*SECTION 1.*

*The Legislature finds and declares all of the following:*

*(a) Many entities, including the Federal Trade Commission, the United States Department of Labor, and the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, have acknowledged the unnecessary burdens that occupational licensing places on otherwise qualified workers.*

*(b) Unnecessary licensing increases costs for consumers and restricts opportunities for workers.*

*(c) Researchers show that occupational licensing restrictions can result in almost three million fewer jobs and a cost of over \$200,000,000,000 to consumers.*

*(d) The Institute for Justice estimates that burdensome licensing in California results in a loss of 195,917 jobs and \$22,000,000,000 in misallocated resources.*

*(e) California is the most broadly and onerously licensed state in the nation and has been identified as the nation's worst licensing environment for workers in lower-income occupations.*

*(f) Licensing is also believed to disproportionately affect minorities and exacerbate income inequality.*

*SEC. 2.*

*Section 101.5 is added to the Business and Professions Code, to read:*

*101.5.*

*(a) The department shall apply for federal funds that have been made available specifically for the purposes of reviewing, updating, and eliminating overly burdensome licensing requirements.*

*(b) Beginning on January 1, 2021, the department shall conduct a comprehensive review of all licensing requirements for each profession and shall identify unnecessary licensing requirements. The department shall conduct the review whether or not the state receives federal funds pursuant to subdivision (a).*

*(c) (1) Beginning on February 1, 2021, and every two years thereafter, each board identified in Section 101 shall submit to the department an assessment on the board's progress in implementing policies to facilitate licensure portability for active duty service members, veterans, and military spouses. The assessment shall include the following information:*

*(A) The number of active duty service members, veterans, and military spouses who applied for licensure for each of the previous two calendar years.*

*(B) The board's process for expediting applications for active duty service members, veterans, and military spouses, the average processing time for an expedited application, and the number of expedited application requests received in each of the previous two calendar years.*

*(C) The number of applications for waived renewal fees submitted by active duty service members in each of the previous two calendar years.*

*(D) If the board issues temporary licenses pursuant to Section 115.6, the duration of, and requirements for obtaining, the temporary license.*

*(E) Whether an applicant may apply, and the requirements, for licensure by endorsement.*

*(F) A list of the states with which the board maintains reciprocity agreements, if any.*

*(2) The department shall submit the information received pursuant to paragraph (1) as part of the report required to be submitted to the Legislature pursuant to subdivision (d).*

*(d) The department shall report to the Legislature on March 1, 2023, and every two years thereafter until the department has completed its review, on the department's progress in conducting the review. The department shall issue a final report to the Legislature no later than March 1, 2033. Each biennial report shall be organized by board and shall include all of the following:*

*(1) The professions reviewed by the department in the preceding two years.*

*(2) Unnecessary licensing requirements identified by the department for each profession reviewed.*

*(3) For each unnecessary licensing requirement, the department's recommendation to the Legislature to keep, modify, or eliminate the unnecessary licensing requirement.*

*(4) For each unnecessary licensing requirement that the department recommends to keep, facts supporting the department's recommendation.*

*(5) The information submitted to the department pursuant to paragraph (2) of subdivision (c).*

*(e) The department may use national licensing standards, where applicable, as a baseline for evaluating the necessity of licensing requirements.*

*(f) For purposes of this section, the following definitions apply:*

*(1) "Military spouse" means a person who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.*

*(2) "Profession" means a profession or vocation regulated by a board identified in Section 101.*

*(3) "Unnecessary licensing requirement" means a licensing requirement that does not satisfy either of the following criteria:*

*(A) Protects the health and safety of the public or a licensee.*

*(B) Satisfies a national licensing or certification requirement.*

*(g) A report to be submitted pursuant to subdivision (d) shall be submitted in compliance with Section 9795 of the Government Code.*

*(h) Notwithstanding Section 10231.5 of the Government Code, this section is repealed on January 1, 2034.*

### SEC. 3.

Section 7316 of the Business and Professions Code is amended to read:

7316.

(a) The practice of barbering is all or any combination of the following practices:

(1) Shaving or trimming the beard or cutting the hair.

(2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.

(3) Singeing, ~~shampooing~~, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.

(4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

(5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

(b) The practice of cosmetology is all or any combination of the following practices:

(1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, ~~shampooing~~, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

(2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, ~~apparatus~~ *apparatus*, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.

(6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

(c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.

(1) Skin care is any one or more of the following practices:

(A) Giving facials, ~~applying makeup,~~ giving skin care, removing superfluous hair from the body of any person by the use of depilatories, ~~tweezers~~ *tweezers*, or waxing, or applying eyelashes to any person.

(B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(2) Nail care is the practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.

(d) The practice of barbering and the practice of cosmetology do not include any of the following:

(1) The mere sale, fitting, or styling of wigs or hairpieces.

(2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin and the incidental trimming of eyebrow hair.

*(4) Shampooing hair. However, before a person who does not hold a barbering or cosmetology license shampoos the hair of another person, the unlicensed person shall*

*disclose verbally or in writing to the other person that they do not hold a barbering or cosmetology license.*

*(5) Applying makeup. However, before a person who does not hold a barbering or cosmetology license applies makeup to another person, the unlicensed person shall disclose verbally or in writing to the other person that they do not hold a barbering or cosmetology license.*

(e) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.

(f) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.

“Electrolysis” as used in this chapter includes electrolysis or thermolysis.

#### SEC. 4.

Section 19010.1 of the Business and Professions Code is repealed.

#### ~~19010.1.~~

~~“Custom upholsterer” means a person who, either by himself or herself or through employees or agents, repairs, reupholsters, re-covers, restores, or renews upholstered furniture, or who makes to order and specification of the user any article of upholstered furniture, using either new materials or owner’s materials.~~

#### SEC. 5.

Section 19011 of the Business and Professions Code is amended to read:

#### 19011.

“Manufacturer” means a person who, either by **himself themselves** or **herself** ~~or~~ through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, ~~or who does the upholstery or covering of any unit thereof,~~ using either new or secondhand material. ~~“Manufacturer” does not, however, include a “custom upholsterer,” as defined in Section 19010.1.~~

#### SEC. 6.

Section 19017 of the Business and Professions Code is amended to read:

19017.

“Owner’s material” means any article or material belonging to a person for ~~his or her~~ *their* own, or *their* tenant’s use, that is sent to any ~~manufacturer, bedding renovator, or custom upholsterer to be repaired or renovated, or~~ *manufacturer or bedding renovator or* used in repairing or renovating.

SEC. 7.

Section 19051 of the Business and Professions Code is amended to read:

19051.

Every upholstered-furniture retailer, unless ~~he or she~~ *the person* holds an importer’s license, a furniture and bedding manufacturer’s license, a wholesale furniture and bedding dealer’s license, ~~a custom upholsterer’s license,~~ or a retail furniture and bedding dealer’s ~~license~~ *license*, shall hold a retail furniture dealer’s license.

(a) This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer. This section does not apply to a person who sells “used” and “antique” furniture as defined in Sections 19008.1 and 19008.2.

(b) This section does not apply to a person who is licensed as a home medical device retail facility by the State Department of Health Services, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer.

SEC. 8.

Section 19052 of the Business and Professions Code is repealed.

~~19052.~~

~~Every custom upholsterer, unless he or she holds a furniture and bedding manufacturer’s license, shall hold a custom upholsterer’s license.~~

SEC. 9.

Section 19059.5 of the Business and Professions Code is amended to read:

19059.5.

Every sanitizer shall hold a sanitizer’s license unless ~~he or she~~ *the person* is licensed as a home medical device retail facility by the State Department of Health Services or as an upholstered furniture and bedding manufacturer, retail furniture and bedding dealer, *or* retail bedding ~~dealer, or custom upholsterer.~~ *dealer.*

SEC. 10.

Section 19060.6 of the Business and Professions Code is amended to read:

19060.6.

~~(a) Every~~ *Except as provided in subdivision (b), every* person who, on ~~his or her~~ *their* own account, advertises, ~~solicits~~ *solicits*, or contracts to ~~manufacture, repair or renovate~~ *manufacture* upholstered furniture or bedding, and who either does the work ~~himself~~ *themselves* or ~~herself or~~ has others do ~~it for him or her,~~ *it*, shall obtain the particular license required by this chapter for the particular type of work that ~~he or she~~ *the person* solicits or advertises that ~~he or she~~ *the person* will do, regardless of whether ~~he or she~~ *the person* has a shop or factory.

~~(b) Every person who, on his or her own account, advertises, solicits or contracts to repair or renovate upholstered furniture and who does not do the work himself or herself nor have employees do it for him or her but does have the work done by a licensed custom upholsterer need not obtain a license as a custom upholsterer but shall obtain a license as a retail furniture dealer. However, nothing in this section shall exempt a retail furniture dealer from complying with Sections 19162 and 19163.~~

SEC. 11.

Section 19170 of the Business and Professions Code is amended to read:

19170.

(a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

|  | Maximum<br>fee | Minimum<br>fee |
|--|----------------|----------------|
| Importer’s license .....                                 | \$940          | \$120          |
| Furniture and bedding<br>manufacturer’s<br>license ..... | 940            | 120            |

|   |                 |                |
|---|-----------------|----------------|
| Wholesale furniture and bedding<br>dealer's license ..... | 675             | 120            |
| Supply dealer's license<br>.....                          | 675             | 120            |
| <del>Custom upholsterer's license<br/>.....</del>         | <del>-450</del> | <del>-80</del> |
| Sanitizer's license .....                                 | 450             | 80             |
| Retail furniture and bedding dealer's<br>license .....    | 300             | 40             |
| Retail furniture dealer's license<br>.....                | 150             | 20             |
| Retail bedding dealer's license<br>.....                  | 150             | 20             |

(b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.

(c) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).

(e) A person who has paid the required fee and who is licensed ~~either~~ as an upholstered furniture and bedding manufacturer ~~or a custom upholsterer~~ under this chapter shall not be required to additionally pay the fee for a sanitizer's license.

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(I) – AB 241 (Kamlager-Dove) Implicit bias:<br>continuing education: requirements |

**Background:**

Existing law, under the Medical Practice Act, the Nursing Practice Act, and Physician Assistant Practice Act, requires that physicians and surgeons, nurses, and physician assistants complete different continuing education and coursework requirements.

This bill, by January 1, 2022, would require the curriculum for continuing education for physicians and surgeons, nurses, and physician assistants to include specified instruction in the understanding of implicit bias in medical treatment.

**Location:** 3/18/2019 Assembly Committee on Business and Professions

**Status:** 4/9/2019 In committee: Hearing postponed by committee

**Action Requested:**

No action is required at this time. As this bill no longer impacts the Board or its licensees, staff will no longer be watching AB 241 (Kamlager-Dove).

Attachment: AB 241 (Kamlager-Dove) Bill Text

## AB 241 - (A) Amends the Law

**SECTION 1.**

*The Legislature finds and declares all of the following:*

- (a) Implicit bias, meaning the attitudes or internalized stereotypes that affect our perceptions, actions and decisions in an unconscious manner, exists, and often contributes to unequal treatment of people based on race, ethnicity, gender identity, sexual orientation, ability, and other characteristics.*
- (b) Implicit bias contributes to health disparities by affecting the behavior of physicians and surgeons, nurses, physician assistants, and other healing arts licensees.*
- (c) Evidence of racial and ethnic disparities in health care is remarkably consistent across a range of illnesses and health care services. Racial and ethnic disparities remain even after adjusting for socioeconomic differences, insurance status, and other factors influencing access to health care.*
- (d) African American women are three to four times more likely than white women to die from pregnancy-related causes nationwide. African American patients often are prescribed less pain medication than white patients who present the same complaints, and African American patients with signs of heart problems are not referred for advanced cardiovascular procedures as often as white patients with the same symptoms.*
- (e) Implicit gender bias also impacts treatment decisions and outcomes. Women are less likely to survive a heart attack when they are treated by a male physician and surgeon. LGBTQ and gender-nonconforming patients are less likely to seek timely medical care because they experience disrespect and discrimination from health care staff, with one out of five transgender patients nationwide reporting that they were outright denied medical care due to bias.*
- (f) The Legislature intends to provide specified healing arts licensees with strategies for understanding and reducing the impact of their biases in order to reduce disparate outcomes and ensure that all patients receive fair treatment and quality health care.*

**SECTION 1. SEC. 2.**

Section 2190.1 of the Business and Professions Code is amended to read:

## 2190.1.

- (a) The continuing medical education standards of Section 2190 may be met by educational activities that meet the standards of the ~~Division of Licensing board~~ and that serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or to improve the

quality of care provided to patients. These may include, but are not limited to, educational activities that meet any of the following criteria:

(1) Have a scientific or clinical content with a direct bearing on the quality or cost-effective provision of patient care, community or public health, or preventive medicine.

(2) Concern quality assurance or improvement, risk management, health facility standards, or the legal aspects of clinical medicine.

(3) Concern bioethics or professional ethics.

(4) Are designed to improve the physician-patient relationship.

(b) (1) On and after July 1, 2006, all continuing medical education courses shall contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(2) Notwithstanding the provisions of paragraph (1), a continuing medical education course dedicated solely to research or other issues that does not include a direct patient care component or a course offered by a continuing medical education provider that is not located in this state is not required to contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(3) Associations that accredit continuing medical education courses shall develop standards before July 1, 2006, for compliance with the requirements of paragraph (1). The associations may update these standards, as needed, in conjunction with an advisory group that has expertise in cultural and linguistic competency issues.

(4) A physician and surgeon who completes a continuing education course meeting the standards developed pursuant to paragraph (3) satisfies the continuing education requirement for cultural and linguistic competency.

(c) In order to satisfy the requirements of subdivision (b), continuing medical education courses shall address at least one or a combination of the following:

(1) Cultural competency. For the purposes of this section, "cultural competency" means a set of integrated attitudes, knowledge, and skills that enables a health care professional or organization to care effectively for patients from diverse cultures, groups, and communities. At a minimum, cultural competency is recommended to include the following:

(A) Applying linguistic skills to communicate effectively with the target population.

(B) Utilizing cultural information to establish therapeutic relationships.

(C) Eliciting and incorporating pertinent cultural data in diagnosis and treatment.

(D) Understanding and applying cultural and ethnic data to the process of clinical care, including, as appropriate, information pertinent to the appropriate treatment of, and provision of care to, the lesbian, gay, bisexual, transgender, and intersex communities.

(2) Linguistic competency. For the purposes of this section, “linguistic competency” means the ability of a physician and surgeon to provide patients who do not speak English or who have limited ability to speak English, direct communication in the patient’s primary language.

(3) A review and explanation of relevant federal and state laws and regulations regarding linguistic access, including, but not limited to, the federal Civil Rights Act (42 U.S.C. Sec. 1981, et seq.), Executive Order 13166 of August 11, 2000, of the President of the United States, and the Dymally-Alatorre Bilingual Services Act (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code).

*(d) On and after January 1, 2022, all continuing medical education courses shall contain curriculum that includes the understanding of implicit bias and the promotion of bias-reducing strategies to address how unintended biases in decisionmaking may contribute to health care disparities by shaping behavior and producing differences in medical treatment along lines of race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics. A physician and surgeon shall meet the requirements of this subdivision by the physician and surgeon’s next license renewal date and each subsequent renewal date thereafter.*

~~(d)~~ (e) Notwithstanding subdivision (a), educational activities that are not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing shall not be deemed to meet the continuing medical education standards for licensed physicians and surgeons.

~~(e)~~ (f) Educational activities that meet the content standards set forth in this section and are accredited by the California Medical Association or the Accreditation Council for Continuing Medical Education may be deemed by the Division of Licensing to meet its continuing medical education standards.

### SEC. 3.

*Section 2736.5 is added to the Business and Professions Code, to read:*

#### 2736.5.

*The board shall adopt regulations to require that, on and after January 1, 2022, the continuing education curriculum for all licensees under this chapter includes the understanding of implicit bias and the promotion of bias-reducing strategies to address how unintended biases in decisionmaking may contribute to health care disparities by shaping behavior and producing differences in treatment along lines of race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics. A licensee shall meet the requirements of this section by the licensee’s next license renewal date and each subsequent renewal date thereafter.*

~~SEC. 3.~~ SEC. 4.

Section 3524.5 of the Business and Professions Code is amended to read:

3524.5.

*(a)* The board may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The board shall not require more than 50 hours of continuing education every two years. The board shall, as it deems appropriate, accept certification by the National Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the board, as evidence of compliance with continuing education requirements.

*(b)* *The board shall adopt regulations to require that, on and after January 1, 2022, the continuing education curriculum for all licensees under this chapter includes the understanding of implicit bias and the promotion of bias-reducing strategies to address how unintended biases in decisionmaking may contribute to health care disparities by shaping behavior and producing differences in treatment along lines of race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics. A licensee shall meet the requirements of this subdivision by the licensee's next license renewal date and each subsequent renewal date thereafter.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(J) – AB 312 (Cooley) State government:<br>administrative regulations: review |

**Background:**

AB 312 (Cooley) would require each state agency to, on or before January 1, 2022, review its regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, revise those identified regulations, as provided, and report its findings and actions taken to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2023.

**Location:** 3/27/2019 Assembly Committee on Appropriations

**Status:** 4/3/2019 In committee: set, first hearing. Referred to Appropriations suspense file.

**Votes:** 3/27/2019 Assembly Committee on Accountability and Administrative Review (7-0-0)

**Action Requested:**

Staff recommends the Board watch AB 312 for potential impacts on Board operations and staff workload.

Attachment: AB 312 Bill Text

## AB 312 - (I) Amends the Law

### SECTION 1.

*Chapter 3.6 (commencing with Section 11366) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:*

#### *CHAPTER 3.6. Regulatory Reform*

##### *Article 1. Findings and Declarations*

###### *11366.*

*The Legislature finds and declares all of the following:*

*(a) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)) requires agencies and the Office of Administrative Law to review regulations to ensure their consistency with law and to consider impacts on the state's economy and businesses, including small businesses.*

*(b) However, the act does not require agencies to individually review their regulations to identify overlapping, inconsistent, duplicative, or out-of-date regulations that may exist.*

*(c) At a time when the state's economy is slowly recovering, unemployment and underemployment continue to affect all Californians, especially older workers and younger workers who received college degrees in recent years but are still awaiting their first great job, and with state government improving but in need of continued fiscal discipline, it is important that state agencies systematically undertake to identify, publicly review, and eliminate overlapping, inconsistent, duplicative, or out-of-date regulations, both to ensure they more efficiently implement and enforce laws and to reduce unnecessary and outdated rules and regulations.*

##### *Article 2. Definitions*

###### *11366.1.*

*For the purposes of this chapter, the following definitions shall apply:*

*(a) "State agency" means a state agency, as defined in Section 11000, except those state agencies or activities described in Section 11340.9.*

*(b) "Regulation" has the same meaning as provided in Section 11342.600.*

##### *Article 3. State Agency Duties*

###### *11366.2.*

*On or before January 1, 2022, each state agency shall do all of the following:*

- (a) Review all provisions of the California Code of Regulations adopted by that state agency.*
- (b) Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.*
- (c) Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date provisions, and shall comply with the process specified in Article 5 (commencing with Section 11346) of Chapter 3.5, unless the addition, revision, or deletion is without regulatory effect and may be done pursuant to Section 100 of Title 1 of the California Code of Regulations.*
- (d) Hold at least one noticed public hearing, which shall be noticed on the internet website of the state agency, for the purposes of accepting public comment on proposed revisions to its regulations.*
- (e) Notify the appropriate policy and fiscal committees of each house of the Legislature of the revisions to regulations that the state agency proposes to make at least 30 days prior to initiating the process under Article 5 (commencing with Section 11346) of Chapter 3.5 or Section 100 of Title 1 of the California Code of Regulations.*
- (g) (1) Report to the Governor and the Legislature on the state agency's compliance with this chapter, including the number and content of regulations the state agency identifies as duplicative, overlapping, inconsistent, or out of date, and the state agency's actions to address those regulations.*
- (2) The report shall be submitted in compliance with Section 9795 of the Government Code.*

*11366.3.*

*(a) On or before January 1, 2022, each agency listed in Section 12800 shall notify a department, board, or other unit within that agency of any existing regulations adopted by that department, board, or other unit that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another department, board, or other unit within that agency.*

*(b) A department, board, or other unit within an agency shall notify that agency of revisions to regulations that it proposes to make at least 90 days prior to a noticed public hearing pursuant to subdivision (d) of Section 11366.2 and at least 90 days prior to adoption, amendment, or repeal of the regulations pursuant to subdivision (c) of Section 11366.2. The agency shall review the proposed regulations and make recommendations to the department, board, or other unit within 30 days of receiving the notification regarding any duplicative, overlapping, or inconsistent regulation of another department, board, or other unit within the agency.*

*11366.4.*

*An agency listed in Section 12800 shall notify a state agency of any existing regulations adopted by that agency that may duplicate, overlap, or be inconsistent with the state agency's regulations.*

11366.45.

*This chapter shall not be construed to weaken or undermine in any manner any human health, public or worker rights, public welfare, environmental, or other protection established under statute. This chapter shall not be construed to affect the authority or requirement for an agency to adopt regulations as provided by statute. Rather, it is the intent of the Legislature to ensure that state agencies focus more efficiently and directly on their duties as prescribed by law so as to use scarce public dollars more efficiently to implement the law, while achieving equal or improved economic and public benefits.*

*Article 4. Repeal*

11366.5.

*This chapter shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(K) – AB 396 (Eggman) School employees:<br>School Social Worker Pilot Program |

**Background:**

AB 396 (Eggman) would, subject to an appropriation of funds by the Legislature, establish the School Social Worker Pilot Program, under the administration of the State Department of Education, to provide a multiyear grant award to one school district or the governing body of a charter school in each of the Counties of Alameda, Riverside, San Benito, San Joaquin, and Shasta to fund a social worker at each eligible school, as defined, within the school district or charter school, as applicable, for the 2021–22 fiscal year to the 2025–26 fiscal year, inclusive. The bill would require the Department of Education to develop an application process and criteria for determining grant recipients on a competitive basis, as provided.

**Location:** 3/19/2019 Assembly Committee on Appropriations

**Status:** 4/3/2019 In committee: set first hearing. Referred to Appropriations suspense file.

**Votes:** 3/13/2019 Assembly Committee on Education (5-0-1)

**Action Requested:**

Staff recommends the Board watch AB 396 for its potential impact on access to mental health services for students and potential for future programs that include Board licensees.

Attachment: AB 396 (Eggman) Bill Text

## AB 396 - (A) Amends the Law

**SECTION 1.**

*Article 14 (commencing with Section 33480) is added to Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code, to read:*

*Article 14. School Social Worker Pilot Program**33480.*

*(a) Subject to moneys appropriated by the Legislature for purposes of this section, the department shall administer the School Social Worker Pilot Program. Under the pilot program, the department shall provide a multiyear grant award to one school district or the governing body of a charter school in each of the Counties of Alameda, Riverside, San Benito, San Joaquin, and Shasta to fund a social worker at each eligible school within the school district or charter school, as applicable, for the 2021–22 fiscal year to the 2025–26 fiscal year, inclusive.*

*(b) A school district or the governing body of a charter school within the Counties of Alameda, Riverside, San Benito, San Joaquin, and Shasta may apply for the grant pursuant to subdivision (c).*

*(c) The department shall develop an application process and criteria for determining grant recipients on a competitive basis, including that priority should be given to school districts and charter schools with higher pupil dropout and absenteeism rates and a higher percentage of unduplicated pupils.*

*(d) For purposes of this section, the following terms have the following meanings:*

*(1) “Eligible school” means a school offering instruction in kindergarten or any of grades 1 to 8, inclusive, that meets both of the following:*

*(A) The school has higher pupil dropout and absenteeism rates than the state average, as determined by the department.*

*(B) The school has a higher percentage of unduplicated pupils than the state average, as determined by the department.*

*(2) “Social worker” means a person holding a services credential with a specialization in pupil personnel services specializing in social work, as defined by the Commission on Teacher Credentialing pursuant to Section 44266, or a state-licensed social worker supervised in their school-based activities by an individual holding a services credential with a specialization in pupil personnel services or a professional services credential with a specialization in administrative services.*

*(3) “Unduplicated pupil” has the same meaning as defined in paragraph (1) of subdivision (b) of Section 42238.02.*

*(e) Each governing board of a school district and governing body of a charter school receiving a grant award under this section shall report to the department, and, on or before January 1, 2027, the department shall report to the Legislature, consistent with Section 9795 of the Government Code, changes in pupil outcomes at the schools participating in the pilot program, including, but not limited to, all of the following:*

*(1) Changes in chronic absenteeism.*

*(2) Changes in rates of suspension and expulsion.*

*(3) One or more measures of academic outcomes, as determined by the Superintendent.*

*33481.*

*This article shall become inoperative on July 1, 2027, and, as of January 1, 2028, is repealed.*

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## MEMORANDUM

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|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(L) – AB 469 (Petrie-Norris) State records management: records management coordinator |

**Background:**

The State Records Management Act requires the Secretary of State to establish and administer a records management program that will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records. The act requires the Secretary of State, as part of those duties, to obtain from agencies the reports required for administration of the records management program. AB 469 (Petrie-Norris) would require the Secretary of State to obtain those reports from agencies on a biennial basis, and would require the Secretary of State to report statewide compliance with the act to the Department of Finance on an annual basis.

**Location:** 4/3/2019 Assembly Floor

**Status:** 4/4/2019 Read second time. Ordered to third reading.

**Votes:** 3/27/2019 Assembly Committee on Accountability and Administrative Review (7-0-0)  
4/3/2019 Assembly Committee on Appropriations (17-0-1)

**Action Requested:**

Staff recommends the Board watch AB 469 for potential impacts on Board operations and staff workload.

Attachment: AB 469 (Petrie-Norris) Bill Text

## AB 469 - (I) Amends the Law

## SECTION 1.

Section 12272 of the Government Code is amended to read:

## 12272.

(a) The Secretary of State shall establish and administer a records management program that will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records.

(b) The duties of the Secretary of State shall include, but shall not be limited to:

(1) Establishing standards, procedures, and techniques for effective management of records.

(2) Obtaining from agencies *biennial* reports required for the administration of the program.

*(3) Reporting statewide compliance with this article to the Department of Finance on an annual basis.*

## SEC. 2.

Section 12274 of the Government Code is amended to read:

## 12274.

The head of a state agency shall do all of the following:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records and information collection practices of the agency. The program shall ensure that the information needed by the agency may be obtained with a minimum burden upon individuals and businesses, especially small business enterprises and others required to furnish the information. Unnecessary duplication of efforts in obtaining information shall be eliminated as rapidly as practical. Information collected by the agency shall, as far as is expedient, be collected and tabulated in a manner that maximizes the usefulness of the information to other state agencies and the public.

(b) Determine, with the concurrence of the Secretary of State, records essential to the functioning of state government in the event of a major disaster.

(c) When requested by the Secretary of State, provide a written justification for storage or extension of scheduled retention of a record in the State Records Center for a period of 50 years or more. The Secretary of State shall review and approve any scheduled

retention of a record in the State Records Center for a period of 50 years or more. A record deemed to have archival value shall be transferred to the State Archives. *Upon transfer of a record of archival value to the State Archives, the head of the state agency shall notify the Secretary of State if the record contains information that is not subject to public disclosure or is restricted from disclosure for a period of time pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), or other applicable federal or state law.*

(d) Comply with the rules, regulations, standards, and procedures issued by the Secretary of State.

*(e) Appoint a representative from the agency to serve as the Records Management Coordinator and notify the Secretary of State's California Records and Information Management Program within 30 days of such appointment.*

*(f) Notify the Secretary of State when records are stored with a third-party vendor or digitized by a third-party vendor.*

### SEC. 3.

*Section 12274.5 is added to the Government Code, to read:*

#### *12274.5.*

*A Records Management Coordinator of an agency shall do all of the following:*

*(a) (1) Upon initial appointment as a Records Management Coordinator, attend a minimum of 12 hours of records management training classes offered by the Secretary of State within 12 months of appointment.*

*(2) After the initial 12 months, attend a minimum of 4 hours of biannual records management training offered by the Secretary of State.*

*(b) Coordinate the agency's records management program.*

*(c) Act as liaison between the agency and the California Records and Information Management Program (CalRIM), State Records Center (SRC), and the State Records Appraisal Program (SRAP) within the State Archives Division of the Secretary of State.*

*(d) Respond to questions from CalRIM, SRC, and SRAP.*

*(e) Schedule CalRIM and SRAP training for agency staff who have records management duties.*

*(f) Review and approve agency records retention schedules before submission to CalRIM.*

- (g) Review and approve records retention schedules before submission to CalRIM.*
- (h) Review and approve agency destruction of records stored at the SRC.*
- (i) Facilitate annual disposition of agency records not stored at the SRC, including transfer of records to the SRC as well as destruction of records at the Document Destruction Center.*
- (j) Review and approve purchase or rental of filing equipment or shredders.*
- (k) Provide all requested reports, written justifications, requests for offsite storage approval, or any other retention schedule documentation to CalRIM or SRAP.*
- (l) Distribute announcements of records management activities.*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(M) – AB 476 (Rubio, Blanca) Department of Consumer Affairs: task force: foreign-trained professionals |

**Background:**

AB 476 (Rubio, Blanca), known as the California Opportunity Act of 2019, would require the Department of Consumer Affairs to create a task force, as specified, to study and write a report of its findings and recommendations regarding the licensing of foreign-trained professionals with the goal of integrating foreign-trained professionals into the state's workforce, as specified. The bill would authorize the task force to hold hearings and invite testimony from experts and the public to gather information. The bill would require the task force to submit the report to the Legislature no later than January 1, 2021, as specified.

**Location:** 3/26/2019 Assembly Committee on Appropriations

**Status:** 4/3/2019 In committee: set first hearing. Referred to Appropriations suspense file.

**Votes:** 3/26/2019 Assembly Committee on Business and Professions (17-3-0)

**Action Requested:**

Staff recommends the Board watch AB 476 for potential impacts on Board and Staff workload required for participation in such a DCA review of the Board's licensing requirements related to foreign-trained professionals.

Attachment: AB 476 (Rubio, Blanca) Bill Text

AB 476 - (I) Amends the Law

*SECTION 1.*

*This act shall be known as the California Opportunity Act of 2019.*

*SEC. 2.*

*Section 110.5 is added to the Business and Professions Code, to read:*

*110.5.*

*(a) The Department of Consumer Affairs shall create a task force to study, and write the report described in subdivision (c) regarding, the licensing of foreign-trained professionals with the goal of integrating foreign-trained professionals into the state's workforce.*

*(b) The task force shall consist of the following 15 members:*

*(1) The Director of Consumer Affairs, or the director's designee, who shall serve as the chair of the task force.*

*(2) One member appointed by the Governor.*

*(3) One member appointed by the President pro Tempore of the Senate.*

*(4) One member appointed by the Speaker of the Assembly.*

*(5) One member of the Regents of the University of California.*

*(6) One member of the Trustees of the California State University.*

*(7) One member of the Board of Governors of the California Community Colleges.*

*(8) Four members appointed by the Governor who are representatives of the private sector from diverse regions in the state.*

*(9) Four members appointed by the Governor who are representatives of nonprofit organizations that serve the immigrant community from diverse regions in the state.*

*(c) (1) The task force shall write a report of its findings and recommendations regarding the licensing of foreign-trained professionals, that include, but are not limited to, the following:*

*(A) Strategies to integrate foreign-trained professionals and methods of implementing those strategies, including those recommended by the Little Hoover Commission in its October 2016 report entitled Jobs for Californians: Strategies to Ease Occupational Licensing Barriers (Report #234).*

*(B) Identification of state and national licensing regulations that potentially pose unnecessary barriers to practice for foreign-trained professionals, corresponding changes to state licensing requirements, and opportunities to advocate for corresponding changes to national licensing requirements.*

*(C) Identification of best practices learned from similar efforts to integrate foreign-trained professionals into the workforce in other states.*

*(2) The task force may include in the report guidelines for full licensure and conditional licensing of foreign-trained professionals.*

*(3) The task force may hold hearings and invite testimony from experts and the public to gather information.*

*(d) The task force shall submit the report described in subdivision (c) to the Legislature no later than January 1, 2021, and in compliance with Section 9795 of the Government Code.*

*(e) The following shall also apply:*

*(1) The task force shall meet at least once each calendar quarter. The task force shall meet at least once in northern California, once in central California, and once in southern California to facilitate participation by the public.*

*(2) A majority of the appointed task force shall constitute a quorum. Task force meetings shall be held in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).*

*(3) (A) Each member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.*

*(B) Notwithstanding any other law, a public officer or employee shall not receive per diem salary compensation for serving on the task force on any day when the officer or employee also received compensation for their regular public employment.*

*(4) The task force shall solicit input from a variety of government agencies, stakeholders, and the public, including, but not limited to, the following:*

*(A) The Little Hoover Commission.*

*(B) The California Workforce Development Board.*

*(C) The Department of Industrial Relations.*

*(D) In- and out-of-state licensing entities.*

*(E) Professional associations.*

*(F) Labor and workforce organizations.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(N) – AB 496 (Low) Business and professions |

**Background:**

Under current law, the Department of Consumer Affairs, which is under the control of the Director of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. AB 496 (Low) would replace gendered terms with nongendered terms and make various other nonsubstantive changes.

**Location:** 4/4/2019 Assembly Floor

**Status:** 4/4/2019 Ordered to third reading

**Votes:** 4/2/2019 Assembly Committee on Business and Professions (20-0-0)

**Action Requested:**

Staff recommends the Board watch AB 496 for potential impacts on Board operations and future Board statutory and regulatory revisions.

Attachment: AB 496 (Low) Bill Text

## AB 496 - (I) Amends the Law

## SECTION 1.

Section 23.8 of the Business and Professions Code is amended to read:

## 23.8.

~~“Licentiate”~~ *“Licensee”* means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

*Any reference to licentiate in this code shall be deemed to refer to licensee.*

## SEC. 2.

Section 23.9 of the Business and Professions Code is amended to read:

## 23.9.

Notwithstanding any other provision of this code, any individual who, while imprisoned in a state prison or other correctional institution, is trained, in the course of a rehabilitation program approved by the particular licensing agency concerned and provided by the prison or other correctional institution, in a particular skill, occupation, or profession for which a state license, certificate, or other evidence of proficiency is required by this code shall not, when released from the prison or institution, be denied the right to take the next regularly scheduled state examination or any examination thereafter required to obtain the license, certificate, or other evidence of proficiency and shall not be denied such license, certificate, or other evidence of proficiency, because of ~~his- that individual’s~~ imprisonment or the conviction from which the imprisonment resulted, or because ~~he obtained his- the individual obtained the individual’s~~ training in prison or in the correctional institution, if the licensing agency, upon recommendation of the Adult Authority or the Department of the Youth Authority, as the case may be, finds that ~~he- the individual~~ is a fit person to be licensed.

## SEC. 3.

Section 25 of the Business and Professions Code is amended to read:

## 25.

Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed professional clinical

counselor shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that ~~he or she has~~ *they have* completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt from the requirements of this section any persons whose field of practice is such that they are not likely to have use for this training.

“Human sexuality” as used in this section means the study of a human being as a sexual being and how ~~he or she~~ *a human being* functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

If a licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies that have established or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

#### SEC. 4.

Section 27 of the Business and Professions Code is amended to read:

#### 27.

(a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee’s address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address,

instead of ~~his or her~~ *the licensee's* home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as ~~his or her~~ *the licensee's* address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Household Goods and Services shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, ~~and~~ service contract ~~administrators.~~ *administrators, and household movers.*

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

~~(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.~~

~~(13)~~ (12) The Acupuncture Board shall disclose information on its licensees.

~~(14)~~ (13) The Board of Behavioral Sciences shall disclose information on its licensees and registrants.

~~(15)~~ (14) The Dental Board of California shall disclose information on its licensees.

~~(16)~~ (15) The State Board of Optometry shall disclose information on its licensees and registrants.

~~(17)~~ (16) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

~~(18)~~ (17) The Veterinary Medical Board shall disclose information on its licensees, registrants, and permitholders.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Cannabis Control shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

## SEC. 5.

Section 28 of the Business and Professions Code is amended to read:

## 28.

(a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse that will

ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

(b) The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal.

(c) All persons applying for initial licensure or renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting that meets the requirements of this section, including detailed knowledge of the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The training shall meet all of the following requirements:

(1) Be obtained from one of the following sources:

(A) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, 4996.18, and 4999.12, including extension courses offered by those institutions.

(B) A continuing education provider as specified by the responsible board by regulation.

(C) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved or accepted by the responsible board.

(2) Have a minimum of seven contact hours.

(3) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(4) An applicant shall provide the appropriate board with documentation of completion of the required child abuse training.

(d) The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption from this section and who shows to the satisfaction of the board that there would be no need for the training in ~~his or her~~ *the applicant's* practice because of the nature of that practice.

(e) It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist have minimal but appropriate training in the areas of child, elder, and dependent adult abuse assessment and reporting. It is not intended that, by solely complying with this section, a practitioner is fully trained in the subject of treatment of child, elder, and dependent adult abuse victims and abusers.

(f) The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.

## SEC. 6.

*Section 30 of the Business and Professions Code is amended to read:*

### 30.

*(a) (1) Notwithstanding any other law, any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall, at the time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.*

*(2) (A) In accordance with Section 135.5, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for a license or certificate, as defined in subparagraph (2) of subdivision (e), and for purposes of this subdivision.*

*(B) In implementing the requirements of subparagraph (A), a licensing board shall not require an individual to disclose either citizenship status or immigration status for purposes of licensure.*

*(C) A licensing board shall not deny licensure to an otherwise qualified and eligible individual based solely on his or her citizenship status or immigration status.*

*(D) The Legislature finds and declares that the requirements of this subdivision are consistent with subsection (d) of Section 1621 of Title 8 of the United States Code.*

*(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee shall be subject to the penalty*

*provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.*

*(c) In addition to the penalty specified in subdivision (b), a licensing board shall not process an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer identification number or social security number where requested on the application.*

*(d) A licensing board shall, upon request of the Franchise Tax Board or the Employment Development Department, furnish to the board or the department, as applicable, the following information with respect to every licensee:*

*(1) Name.*

*(2) Address or addresses of record.*

*(3) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.*

*(4) Type of license.*

*(5) Effective date of license or a renewal.*

*(6) Expiration date of license.*

*(7) Whether license is active or inactive, if known.*

*(8) Whether license is new or a renewal.*

*(e) For the purposes of this section:*

*(1) "Licensee" means a person or entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.*

*(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.*

*(3) "Licensing board" means any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate.*

*(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board or the Employment Development Department, as applicable.*

*(g) Licensing boards shall provide to the Franchise Tax Board or the Employment Development Department the information required by this section at a time that the board or the department, as applicable, may require.*

*(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, a federal employer identification number, individual taxpayer identification number, or social security number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.*

*(i) A deputy, agent, clerk, officer, or employee of a licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of their employment or duty, has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided pursuant to this section, to the Franchise Tax Board, the Employment Development Department, the Office of the Chancellor of the California Community Colleges, a collections agency contracted to collect funds owed to the State Bar by licensees pursuant to Sections 6086.10 and 6140.5, or as provided in subdivisions (j) and (k).*

*(j) It is the intent of the Legislature in enacting this section to utilize the federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws, for purposes of compliance with Section 17520 of the Family Code, for purposes of measuring employment outcomes of students who participate in career technical education programs offered by the California Community Colleges, and for purposes of collecting funds owed to the State Bar by licensees pursuant to Section 6086.10 and Section 6140.5 and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.*

*(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release an individual taxpayer identification number or social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.*

*(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other law, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the individual taxpayer identification number or social security number of each individual listed on the license and any person who qualifies for the license. For the purposes of this subdivision, "licensee" means an entity that is issued a license by any board, as defined in Section 22, the State Bar of California, the Department of Real Estate, and the Department of Motor Vehicles.*

*(m) The department shall, upon request by the Office of the Chancellor of the California Community Colleges, furnish to the chancellor's office, as applicable, the following information with respect to every licensee:*

*(1) Name.*

*(2) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.*

*(3) Date of birth.*

*(4) Type of license.*

*(5) Effective date of license or a renewal.*

*(6) Expiration date of license.*

*(n) The department shall make available information pursuant to subdivision (m) only to allow the chancellor's office to measure employment outcomes of students who participate in career technical education programs offered by the California Community Colleges and recommend how these programs may be improved. Licensure information made available by the department pursuant to this section shall not be used for any other purpose.*

*(o) The department may make available information pursuant to subdivision (m) only to the extent that making the information available complies with state and federal privacy laws.*

*(p) The department may, by agreement, condition or limit the availability of licensure information pursuant to subdivision (m) in order to ensure the security of the information and to protect the privacy rights of the individuals to whom the information pertains.*

*(q) All of the following apply to the licensure information made available pursuant to subdivision (m):*

*(1) It shall be limited to only the information necessary to accomplish the purpose authorized in subdivision (n).*

*(2) It shall not be used in a manner that permits third parties to personally identify the individual or individuals to whom the information pertains.*

*(3) Except as provided in subdivision (n), it shall not be shared with or transmitted to any other party or entity without the consent of the individual or individuals to whom the information pertains.*

*(4) It shall be protected by reasonable security procedures and practices appropriate to the nature of the information to protect that information from unauthorized access, destruction, use, modification, or disclosure.*

*(5) It shall be immediately and securely destroyed when no longer needed for the purpose authorized in subdivision (n).*

*(r) The department or the chancellor's office may share licensure information with a third party who contracts to perform the function described in subdivision (n), if the third party is required by contract to follow the requirements of this section.*

## SEC. 7.

Section 31 of the Business and Professions Code is amended to read:

### 31.

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the ~~Bureau~~ *Department* of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

(d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.

(e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the ~~State Board~~ *California Department* of ~~Equalization and Tax and Fee Administration and~~ the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay ~~his or her~~ *the licensee's* state tax obligation and that ~~his or her~~ *the licensee's* license may be suspended if the state tax obligation is not paid.

(f) For purposes of this section, "tax obligation" means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

## SEC. 8.

Section 101 of the Business and Professions Code is amended to read:

### 101.

The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The State Board of Barbering and Cosmetology.
- (i) The Board for Professional Engineers, Land Surveyors, and Geologists.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Household Goods and Services.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The Bureau of Security and Investigative Services.
- (r) The Court Reporters Board of California.
- (s) The Board of Vocational Nursing and Psychiatric Technicians.
- (t) The Landscape Architects Technical Committee.
- (u) The Division of Investigation.
- (v) The Bureau of Automotive Repair.
- (w) The Respiratory Care Board of California.
- (x) The Acupuncture Board.
- (y) The Board of Psychology.
- (z) The ~~California- Podiatric Medical~~ Board of ~~Podiatric Medicine- California~~.
- (aa) The Physical Therapy Board of California.

- (ab) The Arbitration Review Program.
- (ac) The Physician Assistant Board.
- (ad) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (ae) The California Board of Occupational Therapy.
- (af) The Osteopathic Medical Board of California.
- (ag) The Naturopathic Medicine Committee.
- (ah) The Dental Hygiene Board of California.
- (ai) The Professional Fiduciaries Bureau.
- (aj) The State Board of Chiropractic Examiners.
- (ak) The Bureau of Real Estate Appraisers.
- (al) The Structural Pest Control Board.
- (am) The Bureau of Cannabis Control.
- (an) Any other boards, offices, or officers subject to its jurisdiction by law.
- (ao) This section shall become operative on July 1, 2018.

#### SEC. 9.

Section 101.7 of the Business and Professions Code is amended to read:

#### 101.7.

- (a) Notwithstanding any other provision of law, boards shall meet at least ~~two~~ *three* times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its licensees.
- (b) The director at ~~his or her~~ *the director's* discretion may exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least ~~two~~ *three* times in a calendar year.
- (c) The director may call for a special meeting of the board when a board is not fulfilling its duties.
- (d) An agency within the department that is required to provide a written notice pursuant to subdivision (a) of Section 11125 of the Government Code, may provide that notice by regular mail, email, or by both regular mail and email. An agency shall give a person who requests a notice the option of receiving the notice by regular mail, email, or by

both regular mail and email. The agency shall comply with the requester's chosen form or forms of notice.

(e) An agency that plans to Web cast a meeting shall include in the meeting notice required pursuant to subdivision (a) of Section 11125 of the Government Code a statement of the board's intent to Web cast the meeting. An agency may Web cast a meeting even if the agency fails to include that statement of intent in the notice.

## SEC. 10.

Section 102.3 of the Business and Professions Code is amended to read:

### 102.3.

(a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board, as defined in Section 477, which became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.

(b) (1) Where, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.

(2) Where the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.

(3) The entity shall not delegate to a technical committee its authority to discipline a ~~licentiate~~ licensee who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.

(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until such time as the licensing program administered by the technical committee has undergone a review by the ~~Joint Assembly~~ Committee on ~~Boards, Commissions, and Consumer Protection~~ *Business and Professions and the Senate Committee on Business, Professions and Economic Development* to evaluate and determine whether the licensing program has demonstrated a public need for its continued existence. Thereafter, at the director's discretion, the interagency agreement may be renewed.

## SEC. 11.

Section 103 of the Business and Professions Code is amended to read:

## 103.

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, ~~committees, or the Consumer Advisory Council~~ or committees on any day when the officer or employee also received compensation for ~~his~~ the officer or ~~her~~ employee's regular public employment.

## SEC. 12.

Section 105.5 of the Business and Professions Code is amended to read:

## 105.5.

Notwithstanding any other provision of this code, each member of a board, commission, examining committee, or other similarly constituted agency within the department shall hold office until the appointment and qualification of ~~his~~ that member's successor or until one year shall have elapsed since the expiration of the term for which ~~he~~ the member was appointed, whichever first occurs.

## SEC. 13.

Section 106 of the Business and Professions Code is amended to read:

## 106.

The Governor has power to remove from office at any time, any member of any board appointed by ~~him~~ the Governor for continued neglect of duties required by law, or for

incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on ~~him~~ *the Governor* by any other provision of law, to remove any member of any board.

SEC. 14.

Section 107 of the Business and Professions Code is amended to read:

107.

Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix ~~his or her~~ *that person's* salary, with the approval of the Department of Human Resources pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

SEC. 15.

Section 108.5 of the Business and Professions Code is amended to read:

108.5.

In any investigation, proceeding or hearing which any board, commission or officer in the department is empowered to institute, conduct, or hold, any witness appearing at such investigation, proceeding or hearing whether upon a subpoena or voluntarily, may be paid the sum of twelve dollars (\$12) per day for every day in actual attendance at such investigation, proceeding or hearing and for ~~his~~ *the witness's* actual, necessary and reasonable expenses and such sums shall be a legal charge against the funds of the respective board, commission or officer; provided further, that no witness appearing other than at the instance of the board, commission or officer may be compensated out of such fund.

The board, ~~commission~~ *commission*, or officer will determine the sums due any such witness and enter the amount on its minutes.

SEC. 16.

Section 111 of the Business and Professions Code is amended to read:

111.

Unless otherwise expressly provided, any board may, with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners

on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board but ~~he~~ shall have the same qualifications as one and shall be subject to the same rules.

## SEC. 17.

Section 114 of the Business and Professions Code is amended to read:

### 114.

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate ~~his or~~ ~~her~~ ~~their~~ license or registration without examination or penalty, provided that all of the following requirements are satisfied:

(1) ~~His~~ ~~The licensee~~ or ~~her~~ ~~registrant's~~ license or registration was valid at the time ~~he~~ ~~or she~~ ~~they~~ entered the California National Guard or the United States Armed Forces.

(2) The application for reinstatement is made while serving in the California National Guard or the United States Armed Forces, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) If application for reinstatement is filed and the licensing agency determines that the applicant has not actively engaged in the practice of ~~his or her~~ ~~the~~ ~~applicant's~~ profession while on active duty, then the licensing agency may require the applicant to pass an examination.

(d) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this state the profession or vocation for which ~~he~~ ~~the licensee~~ or ~~she~~ ~~registrant~~ is licensed or registered shall be required to maintain ~~his or her~~ ~~their~~ license in good standing even though ~~he~~ ~~the licensee~~ or ~~she~~ ~~registrant~~ is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which ~~he or she~~ ~~the licensee~~ is prevented from practicing ~~his or her~~ ~~the licensee's~~ profession or vocation shall be excluded from said period of one year.

## SEC. 18.

Section 114.3 of the Business and Professions Code is amended to read:

## 114.3.

(a) Notwithstanding any other ~~provision of~~ law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

(1) The licensee or registrant possessed a current and valid license with the board at the time ~~he- the licensee~~ or ~~she registrant~~ was called to active duty.

(2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.

(3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

(b) (1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.

(2) If the licensee or registrant will provide services for which ~~he- the licensee~~ or ~~she registrant~~ is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.

(c) In order to engage in any activities for which ~~he- the licensee~~ or ~~she registrant~~ is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.

(d) After a licensee or registrant receives notice of ~~his- the licensee~~ or ~~her registrant's~~ discharge date, the licensee or registrant shall notify the board of ~~his-or her- their~~ discharge from active duty within 60 days of receiving ~~his-or-her- their~~ notice of discharge.

(e) A board may adopt regulations to carry out the provisions of this section.

(f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

## SEC. 19.

Section 115.5 of the Business and Professions Code is amended to read:

## 115.5.

(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which ~~he or she~~ *the applicant* seeks a license from the board.

(b) A board may adopt regulations necessary to administer this section.

## SEC. 20.

Section 115.6 of the Business and Professions Code is amended to read:

## 115.6.

(a) A board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if ~~he or she~~ *the applicant* meets the requirements set forth in subdivision (c):

(1) Registered nurse license by the Board of Registered Nursing.

(2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(6) Veterinarian license issued by the Veterinary Medical Board.

(7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.

(8) All licenses issued by the Medical Board of California.

(9) All licenses issued by the ~~California- Podiatric Medical~~ Board of ~~Pediatric Medicine- California~~.

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

(1) The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) The applicant shall hold a current, active, and unrestricted license that confers upon ~~him or her the~~ *the applicant the* authority to practice, in another state, district, or territory of the United States, the profession or vocation for which ~~he or she the~~ *the applicant* seeks a temporary license from the board.

(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that ~~he or she the~~ *the applicant* meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of ~~his or her the~~ *the applicant's* knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A board may adopt regulations necessary to administer this section.

(e) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect his or her eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary licenseholder to immediately cease the practice of the licensed profession upon receipt.

(f) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist, certified engineering geologist, or certified hydrogeologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.

(g) A temporary license issued pursuant to this section shall expire 12 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board, whichever occurs first.

#### SEC. 21.

Section 116 of the Business and Professions Code is amended to read:

#### 116.

(a) The director may audit and review, upon ~~his or her~~ *the director's* own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the ~~California- Podiatric Medical~~ Board of ~~Podiatric Medicine-~~ *California*. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate ~~Business and Professions-~~ *Business, Professions and Economic Development* Committee and the Assembly ~~Health-~~ *Business and Professions* Committee annually, commencing March 1, 1995, regarding ~~his or her~~ *the director's* findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

#### SEC. 22.

Section 119 of the Business and Professions Code is amended to read:

#### 119.

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in ~~his or her~~ *the person's* possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends ~~his or her~~ *the person's* license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to ~~him or her~~ *the person* as being ~~his or her~~ *the person's* license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to ~~him or her~~ *the person*.

(f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in ~~his or her~~ *the person's* possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

#### SEC. 23.

Section 120 of the Business and Professions Code is amended to read:

#### 120.

(a) Subdivision (a) of Section 119 shall not apply to a surviving spouse having in ~~his or her~~ *the surviving spouse's* possession or displaying a deceased spouse's canceled certified public accountant certificate or canceled public accountant certificate that has been canceled by official action of the California Board of Accountancy.

(b) Notwithstanding Section 119, any person who has received a certificate of certified public accountant or a certificate of public accountant from the board may possess and may display the certificate received unless the person's certificate, permit, or registration has been suspended or revoked.

#### SEC. 24.

Section 121 of the Business and Professions Code is amended to read:

121.

No licensee who has complied with the provisions of this code relating to the renewal of ~~his or her~~ *the licensee's* license prior to expiration of such license shall be deemed to be engaged illegally in the practice of ~~his or her~~ *the licensee's* business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

SEC. 25.

Section 124 of the Business and Professions Code is amended to read:

124.

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the ~~licentiate licensee~~ or by personal service, at the option of the board.

SEC. 26.

Section 125 of the Business and Professions Code is amended to read:

125.

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to ~~him or her,~~ *them*, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

- (a) Allows ~~his or her~~ *their* license to be used by that person.
- (b) Acts as ~~his or her~~ *their* agent or partner.

## SEC. 27.

Section 125.3 of the Business and Professions Code is amended to read:

## 125.3.

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a ~~licentiate~~ licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined ~~licentiate~~ licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any ~~licentiate~~ licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any ~~licentiate~~ licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any ~~licentiate~~ licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the ~~licentiate~~. *licensee*. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

## SEC. 28.

Section 125.6 of the Business and Professions Code is amended to read:

### 125.6.

(a) (1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, ~~he or she~~ *the person* refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, ~~he or she makes~~ *the person make s* any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b) (1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c) (1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

#### SEC. 29.

Section 125.9 of the Business and Professions Code is amended to read:

#### 125.9.

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the ~~board created by the Chiropractic Initiative Act,~~ *State Board of Chiropractic Examiners*, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

## SEC. 30.

Section 127 of the Business and Professions Code is amended to read:

### 127.

Notwithstanding any other provision of this code, the director may require such reports from any board, commission, examining committee, or other similarly constituted agency within the department as ~~he~~ *the director* deems reasonably necessary on any phase of their operations.

## SEC. 31.

Section 129 of the Business and Professions Code is amended to read:

## 129.

- (a) As used in this section, "board" means every board, bureau, commission, committee, and similarly constituted agency in the department that issues licenses.
- (b) Each board shall, upon receipt of any complaint respecting an individual licensed by the board, notify the complainant of the initial administrative action taken on ~~his or her~~ *the complainant's* complaint within 10 days of receipt. Each board shall notify the complainant of the final action taken on ~~his or her~~ *the complainant's* complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of this action and of any other means that may be available to the complainant to secure relief.
- (c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licensee in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licensee.
- (d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to those patterns of complaints to the director and to the Legislature at least once per year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once per year the statutory changes it deems necessary to implement the board's functions and responsibilities under this section.
- (e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.
- (f) Notwithstanding any other law, upon receipt of a child custody evaluation report submitted to a court pursuant to Chapter 6 (commencing with Section 3110) of Part 2 of Division 8 of the Family Code, the board shall notify the noncomplaining party in the underlying custody dispute, who is a subject of that report, of the pending investigation.

## SEC. 32.

Section 130 of the Business and Professions Code is amended to read:

130.

(a) Notwithstanding any other law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

(1) The Medical Board of California.

(2) The ~~California- Podiatric Medical~~ Board of ~~Podiatric Medicine- California~~.

(3) The Physical Therapy Board of California.

(4) The Board of Registered Nursing, except as provided in subdivision (c) of Section 2703.

(5) The Board of Vocational Nursing and Psychiatric Technicians.

(6) The State Board of Optometry.

(7) The California State Board of Pharmacy.

(8) The Veterinary Medical Board.

(9) The California Architects Board.

(10) The Landscape Architect Technical Committee.

(11) The Board for Professional Engineers and Land Surveyors.

(12) The Contractors' State License Board.

(13) The ~~State~~ Board of ~~Guide Dogs for the Blind~~. *Behavioral Sciences*.

~~(14) The Board of Behavioral Sciences.~~

~~(15)~~ (14) The Court Reporters Board of California.

~~(16)~~ (15) The State Athletic Commission.

~~(17)~~ (16) The Osteopathic Medical Board of California.

~~(18)~~ (17) The Respiratory Care Board of California.

~~(19)~~ (18) The Acupuncture Board.

~~(20)~~ (19) The Board of Psychology.

~~(21)~~ (20) The Structural Pest Control Board.

SEC. 33.

Section 132 of the Business and Professions Code is amended to read:

132.

No board, commission, examining committee, or any other agency within the department may institute or join any legal action against any other agency within the state or federal government without the permission of the director.

Prior to instituting or joining in a legal action against an agency of the state or federal government, a board, commission, examining committee, or any other agency within the department shall present a written request to the director to do so.

Within 30 days of receipt of the request, the director shall communicate ~~his or her~~ *the director's* approval or denial of the request and ~~his or her~~ *the director's* reasons for approval or denial to the requesting agency in writing. If the director does not act within 30 days, the request shall be deemed approved.

A requesting agency within the department may override the director's denial of its request to institute or join a legal action against a state or federal agency by a two-thirds vote of the members of the board, commission, examining committee, or other agency, which vote shall include the vote of at least one public member of that board, commission, examining committee, or other agency.

SEC. 34.

Section 136 of the Business and Professions Code is amended to read:

136.

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in ~~his or her~~ *the person's* mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a ~~licentiate licensee~~ to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

SEC. 35.

Section 137 of the Business and Professions Code is amended to read:

137.

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided ~~to him~~ by the licensee or for failure to communicate such number if none is provided ~~to him~~ by the licensee.

SEC. 36.

Section 138 of the Business and Professions Code is amended to read:

138.

Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its ~~licentiates~~, *licensees*, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

SEC. 37.

Section 144 of the Business and Professions Code is amended to read:

144.

(a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- ~~(5) State Board of Guide Dogs for the Blind.~~
- ~~(6)~~ (5) California State Board of Pharmacy.
- ~~(7)~~ (6) Board of Registered Nursing.
- ~~(8)~~ (7) Veterinary Medical Board.
- ~~(9)~~ (8) Board of Vocational Nursing and Psychiatric Technicians.
- ~~(10)~~ (9) Respiratory Care Board of California.
- ~~(11)~~ (10) Physical Therapy Board of California.
- ~~(12)~~ (11) Physician Assistant ~~Committee of the Medical Board of California.~~ *Committee.*
- ~~(13)~~ (12) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- ~~(14)~~ (13) Medical Board of California.
- ~~(15)~~ (14) State Board of Optometry.
- ~~(16)~~ (15) Acupuncture Board.
- ~~(17)~~ (16) Cemetery and Funeral Bureau.
- ~~(18)~~ (17) Bureau of Security and Investigative Services.
- ~~(19)~~ (18) Division of Investigation.
- ~~(20)~~ (19) Board of Psychology.
- ~~(21)~~ (20) California Board of Occupational Therapy.
- ~~(22)~~ (21) Structural Pest Control Board.
- ~~(23)~~ (22) Contractors' State License Board.
- ~~(24)~~ (23) Naturopathic Medicine Committee.
- ~~(25)~~ (24) Professional Fiduciaries Bureau.
- ~~(26)~~ (25) Board for Professional Engineers, Land Surveyors, and Geologists.
- ~~(27)~~ (26) Bureau of Cannabis Control.
- ~~(28)~~ (27) ~~California- Podiatric Medical~~ Board of ~~Podiatric Medicine.~~ *California.*
- ~~(29)~~ (28) Osteopathic Medical Board of California.

(c) For purposes of paragraph ~~(26)~~ (25) of subdivision (b), the term “applicant” shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(O) – AB 512 (Ting) Medi-Cal: specialty mental health services |

**Background:**

Current law requires the State Department of Health Care Services to implement managed mental healthcare for Medi-Cal beneficiaries through contracts with mental health plans and requires mental health plans to be governed by various guidelines, including a requirement that a mental health plan assess the cultural competency needs of the program. AB 512 (Ting) would require each mental health plan to prepare a cultural competency assessment plan to address, among other things, disparities in access, utilization, and outcomes by race, ethnicity, language, sexual orientation, gender identity, and immigration status.

**Location:** 4/1/2019 Assembly Committee on Appropriations

**Status:** 4/3/2019 Re-referred to Committee on Appropriations

**Votes:** 3/26/2019 Assembly Committee on Health (15-0-0)

**Action Requested:**

Staff recommends the Board watch AB 512 for potential impacts on consumer access to culturally competent mental health services through their health insurance plans.

Attachment: AB 512 (Ting) Bill Text

## AB 512 - (A) Amends the Law

**SECTION 1.**

*The Legislature finds and declares all of the following:*

- (a) Mental health is a vital aspect of an individual's overall well-being.*
- (b) Disparities in access to mental health services vary across demographic groups, including race, age, gender, income level, and immigration status.*
- (c) Immigrant communities across California have experienced heightened levels of stress and anxiety in light of today's political climate, which has resulted in reduced utilization of state administered assistance programs and reduced incidence of crime reporting by communities of color.*
- (d) Disparities in mental health services can be reduced or eliminated by addressing barriers to the mental health care system and improving outreach strategies.*
- (e) Investing in mental health services that are culturally and linguistically appropriate are crucial in identifying, preventing, and alleviating mental health conditions for historically disenfranchised groups, such as communities of color, the lesbian, gay, bisexual, and transgender community, and the undocumented.*
- (f) Early detection and intervention for mental health conditions among vulnerable communities is inherent to overall community wellness and safety.*

**SEC. 2.**

Section 14684 of the Welfare and Institutions Code is amended to read:

14684.

~~(a)~~ -Notwithstanding any other ~~provision of~~ state law, and to the extent permitted by federal law, ~~a~~ mental health ~~plans; plan~~, whether administered by public or private entities, shall be governed by the following guidelines:

~~(1)~~ ~~(a)~~ State and federal Medi-Cal funds identified for the diagnosis and treatment of mental illness shall be used solely for those purposes. Administrative costs incurred by ~~counties~~ ~~a county~~ for activities necessary for the administration of the mental health plan shall be clearly identified and ~~shall be~~ reimbursed in a manner consistent with federal Medicaid requirements and the approved Medicaid state plan and waivers. Administrative requirements shall be based on and limited to federal Medicaid requirements and the approved Medicaid state plan and waivers, and shall not impose costs exceeding funds available for that purpose.

~~(2)~~ (b) The development of ~~the a~~ mental health plan shall include a public planning process that includes a significant role for Medi-Cal beneficiaries, family members, mental health advocates, providers, and public and private contract agencies.

~~(3)~~ (c) ~~The A~~ mental health plan shall include appropriate standards relating to quality, access, and coordination of services within a managed system of care, and costs established under the plan, and shall provide opportunities for existing Medi-Cal providers to continue to provide services under the mental health plan, as long as the providers meet those standards.

~~(4)~~ (d) Continuity of care for current recipients of services shall be ensured in the transition to managed mental health care.

~~(5)~~ (e) Medi-Cal covered specialty mental health services shall be provided in the beneficiary's home community, or as close as possible to the beneficiary's home community. Pursuant to the objectives of the rehabilitation option described in subdivision (a) of Section 14021.4, mental health services may be provided in a facility, a home, or other community-based site.

~~(6)~~ (f) Medi-Cal beneficiaries whose mental or emotional condition results or has resulted in functional impairment, as defined by the department, shall be eligible for covered specialty mental health services. Emphasis shall be placed on adults with serious and persistent mental illness and children with serious emotional disturbances, as defined by the department.

~~(7)~~ (g) ~~Mental-~~ *A mental* health ~~plans plan~~ shall provide specialty mental health services to eligible Medi-Cal beneficiaries, including both adults and children. Specialty mental health services include Early and Periodic Screening, Diagnosis, and Treatment Services to eligible Medi-Cal beneficiaries under ~~the age 21 years~~ of *24 age* pursuant to ~~42 U.S.C. Section 1396d(a)(4)(B)~~ *1396d(a)(4)* of Title 42 of the United States Code.

~~(8)~~ (h) ~~Each~~ *A* mental health plan shall include a mechanism for monitoring the effectiveness of, and evaluating accessibility and quality of, services available. The plan shall utilize and be based upon state-adopted performance outcome measures and shall include review of individual service plan procedures and practices, a beneficiary satisfaction component, and a grievance system for beneficiaries and providers.

~~(9)~~ (i) ~~Each~~ *A* mental health plan shall provide for culturally competent and age-appropriate services, to the extent feasible. ~~The~~ *A* mental health plan shall assess the cultural competency needs of the ~~program.~~ *The program, and prepare a cultural competency assessment plan, as specified in this subdivision.* *A* mental health plan shall include, as part of the quality assurance program required by Section 14725, a process to accommodate the significant needs with reasonable timeliness. The department shall provide demographic data and technical assistance. Performance

outcome measures shall include a reliable method of measuring and reporting the extent to which services are culturally competent and age-appropriate.

*(1) (A) The cultural competency assessment plan shall address, but not be limited to, all of the following:*

*(i) Disparities in access, utilization, and outcomes by race, ethnicity, language, sexual orientation, gender identity, age, disability status, and immigration status, to the extent data is available.*

*(ii) Annual statewide performance targets for reducing disparities in access, utilization, and outcomes, as determined by the department pursuant to subparagraph (C) of paragraph (6). A mental health plan may include additional performance targets, as appropriate.*

*(iii) Designated strategies for reaching performance targets, including the mental health plan's rationale for each strategy.*

*(iv) The mental health plan's performance on prior performance targets.*

*(v) The mental health plan's strategies for addressing trauma and developing trauma-informing services.*

*(vi) The process for community input, including a list of community entities participating.*

*(B) (i) For purposes of developing the cultural competency assessment plan, a mental health plan shall utilize available data and may solicit information from Medi-Cal beneficiaries who receive specialty mental health services from the mental health plan and recipients of other county mental health services.*

~~*(b) (ii) This section shall become operative on July 1, 2012. Data reported pursuant to this section shall be collected, maintained, and kept confidential in a manner consistent with Sections 14100.2 and 17852, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the federal Health Insurance Portability and Accountability Act of 1996.*~~

*(2) A mental health plan shall convene a committee, through open invitation to relevant stakeholders, including, but not limited to, agency and department representatives, consumer advocates, consumers, disparities reduction experts, and providers, for the purpose of reviewing and approving the cultural competency assessment plan. The committee shall convene monthly either in person or through electronic means, and meetings shall be open and accessible to the public.*

*(3) (A) A mental health plan shall annually update its cultural competency assessment plan, in coordination with the committee, to reflect population changes, and shall include in the annual update a report on its progress toward achieving performance targets.*

*(B) A mental health plan shall post the material described in subparagraph (A) on its internet website.*

*(4) A mental health plan shall submit the cultural competency assessment plan to the department every three years for technical assistance and implementation feedback. The department, within 30 days of its receipt of this material, shall post the cultural competency assessment plan submitted by each plan to its internet website.*

*(5) (A) The department shall consult with the Office of Health Equity and the office of the state Surgeon General for purposes of reviewing county assessments and statewide performance on disparities reduction.*

*(B) The review specified in subparagraph (A) shall include an assessment about the extent to which strategies utilize both evidence-based and community-defined best practices, and shall address documented disparities, including progress in meeting performance targets.*

*(6) (A) The department shall direct an external quality review organization, as described in Section 14717.5, to develop and implement a protocol for monitoring performance on established disparities reduction targets for each mental health plan.*

*(B) In developing and implementing this protocol, the department shall consult with consumer advocates, consumers, experts in disparities reduction, and providers.*

*(C) The department shall develop, in consultation with stakeholders and the Office of Health Equity, at least eight statewide disparities reduction targets and require each mental health plan to meet the specified disparities reduction targets every three years. The disparities reduction targets shall include access and outcomes targets, and shall consider, at a minimum, metrics addressing disparities on the basis of race, ethnicity, language, sexual orientation, gender identity, age, disability status, and immigration status.*

### SEC. 3.

Section 14717.5 of the Welfare and Institutions Code is amended to read:

#### 14717.5.

(a) A mental health plan review shall be conducted annually by an external quality review organization (EQRO) pursuant to ~~federal regulations at 42 C.F.R. 438.350 et seq.~~ *Section 438.350 et seq. of Title 42 of the Code of Federal Regulations.* Commencing July 1, 2018, the review shall include specific data for Medi-Cal eligible minor and nonminor dependents in foster care, including all of the following:

(1) The number of Medi-Cal eligible minor and nonminor dependents in foster care served each year.

(2) Details on the types of mental health services provided to children, including prevention and treatment services. ~~These~~ *The* types of services may include, but are not limited to, screenings, assessments, home-based mental health services, outpatient

services, day treatment services or inpatient services, psychiatric hospitalizations, crisis interventions, case management, and psychotropic medication support services.

(3) Access to, and timeliness of, mental health services, as described in Sections 1300.67.2, 1300.67.2.1, and 1300.67.2.2 of Title 28 of the California Code of Regulations and consistent with Section 438.206 of Title 42 of the Code of Federal Regulations, available to Medi-Cal eligible minor and nonminor dependents in foster care.

(4) Quality of mental health services available to Medi-Cal eligible minor and nonminor dependents in foster care.

(5) Translation and interpretation services, consistent with Section 438.10(c)(4) and (5) of Title 42 of the Code of Federal Regulations and Section 1810.410 of Title 9 of the California Code of Regulations, available to Medi-Cal eligible minor and nonminor dependents in foster care.

(6) Performance data for Medi-Cal eligible minor and nonminor dependents in foster care.

(7) Utilization data for Medi-Cal eligible minor and nonminor dependents in foster care.

(8) Medication monitoring consistent with the child welfare psychotropic medication measures developed by the State Department of Social Services and any Healthcare Effectiveness Data and Information Set (HEDIS) measures related to psychotropic medications, including, but not limited to, the following:

(A) Follow-Up Care for Children Prescribed Attention Deficit Hyperactivity Disorder Medication (HEDIS ADD).

(B) Use of Multiple Concurrent Antipsychotics in Children and Adolescents (HEDIS APC).

(C) Use of First-Line Psychosocial Care for Children and Adolescents on Antipsychotics (HEDIS APP).

(D) Metabolic Monitoring for Children and Adolescents on Antipsychotics (HEDIS APM).

(b) (1) The department shall post the EQRO data disaggregated by Medi-Cal eligible minor and nonminor dependents in foster care on the department's ~~Internet Web site~~ [internet website](#) in a manner that is publicly accessible.

(2) The department shall review the EQRO data for Medi-Cal eligible minor and nonminor dependents in foster care.

(3) If the EQRO identifies deficiencies in a mental health plan's ability to serve Medi-Cal eligible minor and nonminor dependents in foster care, the department shall notify the mental health plan in writing of identified deficiencies.

(4) The mental health plan shall provide a written corrective action plan to the department within 60 days of receiving the notice required pursuant to paragraph (3). The department shall notify the mental health plan of approval of the corrective action plan or shall request changes, if necessary, within 30 days after receipt of the corrective action plan. Final corrective action plans shall be made publicly available by, at minimum, posting on the department's ~~Internet Web site.~~ *internet website.*

(c) To the extent possible, the department shall, in connection with its duty to implement Section 14707.5, share with county boards of supervisors data ~~that will to~~ assist in the development of mental health service plans, such as data described in ~~federal regulations at 42 C.F.R. 438.350 et seq., in Section 438.350 et seq. of Title 42 of the Code of Federal Regulations,~~ subdivision (c) of Section ~~16501.4 of this code, and in 16501.4, and~~ paragraph (1) of subdivision (a) of Section 1538.8 of the Health and Safety Code.

(d) The department shall annually share performance outcome system data with county boards of supervisors for the purpose of informing mental health service plans. Performance outcome system data shared with county boards of supervisors shall include, but not be limited to, the following disaggregated data for Medi-Cal eligible minor and nonminor dependents in foster care:

- (1) The number of youth receiving specialty mental health services.
- (2) The racial distribution of youth receiving specialty mental health services.
- (3) The gender distribution of youth receiving specialty mental health services.
- (4) The number of youth, by race, with one or more specialty mental health service visits.
- (5) The number of youth, by race, with five or more specialty mental health service visits.
- (6) Utilization data for intensive home services, intensive care coordination, case management, therapeutic behavioral services, medication support services, crisis intervention, crisis stabilization, full-day intensive treatment, full-day treatment, full-day rehabilitation, and hospital inpatient days.
- (7) A unique count of youth receiving specialty mental health services who are arriving, exiting, and continuing with services.

(e) The department shall ensure that the performance outcome system data metrics include disaggregated data for Medi-Cal eligible minor and nonminor dependents in foster ~~care. These~~ *care, and the* data shall be in a format that can be analyzed.

*(f) (1) Commencing January 1, 2020, the EQRO shall ensure that the annual review that it performs of each mental health plan, as specified in subdivision (a), includes a report*

*on progress related to the statewide disparities reduction targets established pursuant to subparagraph (C) of paragraph (6) of subdivision (i) of Section 14684.*

*(2) The EQRO shall publish statewide progress related to the statewide disparities reduction targets in the annual detailed technical report as required by Section 438.364 of Title 42 of the Code of Federal Regulations.*

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## MEMORANDUM

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| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(P) – AB 536 (Frazier) Developmental services |

**Background:**

Under current law, the Lanterman Developmental Disabilities Services Act defines a “developmental disability” as a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. AB 536 (Frazier) would modify that definition to mean a disability that originates before an individual attains 22 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. The bill would also make various technical and nonsubstantive changes.

**Location:** 2/25/2019 Assembly Committee on Human Services

**Status:** 3/26/2019 In committee: set first hearing. Hearing canceled at the request of author.

**Action Requested:**

Staff recommends the Board watch AB 536 for potential changes to the definition of “developmental disability” and any impact that might have on assessments performed or determinations made by Board licensees.

Attachment: AB 536 (Frazier) Bill Text

## AB 536 - (I) Amends the Law

## SECTION 1.

Section 4512 of the Welfare and Institutions Code is amended to read:

4512.

As used in this division:

(a) "Developmental disability" means a disability that originates before an individual attains ~~18~~ 22 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of ~~his or her~~ *the individual's* family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-

term out-of-home care, social skills training, specialized medical and dental care, telehealth services and supports, as ~~defined~~ *described* in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. ~~Nothing in this subdivision is intended to~~ *This subdivision does not* expand or authorize a new or different service or support for any consumer unless that service or support is contained in ~~his or her~~ *the consumer's* individual program plan.

(c) Notwithstanding subdivisions (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, as amended, “developmental disability” and “services for persons with developmental disabilities” mean the terms as defined in the federal act to the extent required by federal law.

(d) “Consumer” means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) “Natural supports” means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

(f) “Circle of support” means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) “Facilitation” means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that affect ~~his or her~~ *the individual's* life.

(h) “Family support services” means services and supports that are provided to a child with developmental disabilities or ~~his or her~~ *the child's* family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose ~~his or her own~~ a *particular* service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision ~~(d)~~ (a) of Section ~~4548~~ 4541 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision ~~(d)~~ (a) of Section ~~4548~~ 4541 and subdivision (e) of Section 4705, and including a minor's, dependent's, or ward's court-appointed developmental services decisionmaker appointed pursuant to Section 319, 361, or 726.

(k) "Stakeholder organizations" means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

~~(h)~~ (l) (1) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

(2) A reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

(m) "Native language" means the language normally used or the preferred language identified by the individual and, when appropriate, ~~his or her~~ *the individual's* parent, legal guardian or conservator, or authorized representative.

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(Q) – AB 565 (Maienschein) Public health workforce planning: loan forgiveness, loan repayment, and scholarship programs |

### **Background:**

Current law establishes the Steven M. Thompson Physician Corps Loan Repayment Program (program) in the California Physician Corps Program within the Health Professions Education Foundation. This program provides financial incentives, including repayment of educational loans, to a physician and surgeon who practices in a medically underserved area, as defined. Existing law establishes the Medically Underserved Account for Physicians, a continuously appropriated account, within the Health Professions Education Fund, to primarily provide funding for the ongoing operations of the program. Current law defines “practice setting” for these purposes. AB 565 (Maienschein) would define “practice setting” to include a program or facility operated by, or contracted to, a county mental health plan.

Existing law establishes the Steven M. Thompson Medical School Scholarship Program within the Health Professions Education Foundation to promote the education of medical doctors and doctors of osteopathy who agree to serve in a medically underserved area. Existing law authorizes the selection committee, as defined, to award up to 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary specialty. This bill would instead require the selection committee to award 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary specialty if there are enough qualified applicants to meet the 20 percent threshold.

**Location:** 3/27/2019 Assembly Committee on Appropriations

**Status:** 4/1/2019 Re-Referred to Assembly Committee on Appropriations

**Votes:** 3/26/2019 Assembly Committee on Health (15-0-0)

### **Action Requested:**

Staff recommends the Board watch AB 565 for potential impacts on consumer access to mental health services and future opportunities to enhance the loan repayment program that the Board’s licensees participate in.

Attachment: AB 565 (Maienschein) Bill Text

## AB 565 - (A) Amends the Law

~~SEC. 2.~~ SECTION 1.

Section 128552 of the Health and Safety Code is amended to read:

128552.

For purposes of this article, the following definitions shall apply:

(a) "Account" means the Medically Underserved Account for Physicians established within the Health Professions Education Fund pursuant to this article.

(b) "Foundation" means the Health Professions Education Foundation.

(c) "Fund" means the Health Professions Education Fund.

(d) "Medi-Cal threshold languages" means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(e) "Medically underserved area" means an area defined as a health professional shortage area in Part 5 of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

(f) "Medically underserved population" means the Medi-Cal program, Healthy Families Program, and uninsured populations.

(g) "Office" means the Office of Statewide Health Planning and Development (OSHPD).

(h) "Physician Volunteer Program" means the Physician Volunteer Registry Program established by the Medical Board of California.

(i) "Practice setting," for the purposes of this article only, means ~~either~~ *any* of the following:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A physician owned and operated medical practice setting that provides primary care located in a medically underserved area and has a minimum of 50 percent of patients who are uninsured, Medi-Cal beneficiaries, or beneficiaries of another publicly funded program that serves patients who earn less than 250 percent of the federal poverty level.

*(3) A program or facility operated by, or contracted to, a county mental health plan.*

(j) "Primary specialty" means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(k) "Program" means the Steven M. Thompson Physician Corps Loan Repayment Program.

(l) "Selection committee" means a minimum three-member committee of the board, that includes a member that was appointed by the Medical Board of California.

## *SEC. 2.*

*Section 128575 of the Health and Safety Code is amended to read:*

128575.

(a) The selection committee shall use guidelines developed by the office that meet all of the following criteria to select scholarship recipients:

(1) Provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have experience working in medically underserved areas or with medically underserved populations.

(2) Give preference to applicants who have committed to practicing in a primary specialty.

(3) Give preference to applicants who will serve in a practice setting in a super-medically underserved area.

(4) Include a factor ensuring geographic distribution of placements.

(b) The selection committee ~~may shall~~ award ~~up to~~ 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary ~~specialty~~. *speciality if there are enough qualified applicants to meet the 20 percent threshold.*

(c) The foundation, in consultation with the selection committee, shall develop a process for outreach to potentially eligible applicants.

(d) The office shall develop the guidelines described in subdivision (a) only upon receipt of donations sufficient to cover the costs of developing the guidelines.

### SEC. 3.

Section 5822 of the Welfare and Institutions Code is amended to read:

#### 5822.

The Office of Statewide Health Planning and Development shall include in the five-year plan:

(a) Expansion plans for the capacity of postsecondary education to meet the needs of identified mental health occupational shortages.

*(b) Expansion plans for loan forgiveness and scholarship programs offered in return for a commitment to employment in California's public mental health system.*

~~(b)~~ (c) Expansion plans for ~~the forgiveness and scholarship programs offered in return for a commitment to employment in California's public mental health system and~~ ~~make~~ *making* loan forgiveness programs available to current employees of the mental health system who want to obtain Associate of Arts, Bachelor of Arts, master's degrees, or doctoral degrees.

~~(e)~~ (d) Creation of a stipend program modeled after the federal Title IV-E program for persons enrolled in academic institutions who want to be employed in the mental health system.

~~(d)~~ (e) Establishment of regional partnerships between the mental health system and the educational system to expand outreach to multicultural communities, increase the diversity of the mental health workforce, ~~to~~ reduce the stigma associated with mental illness, and ~~to~~ promote the use of *internet* web-based ~~technologies,~~ *technologies* and distance learning techniques.

~~(e)~~ (f) Strategies to recruit high school students for mental health occupations, increasing the prevalence of mental health occupations in high school career development programs such as health science academies, adult schools, and regional occupation centers and programs, and increasing the number of human service academies.

~~(f)~~ (g) Curriculum to train and retrain staff to provide services in accordance with the provisions and principles of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section ~~5850) of this division.~~ *5850*).

~~(g)~~ (h) Promotion of the employment of mental health consumers and family members in the mental health system.

~~(h)~~ (i) Promotion of the meaningful inclusion of mental health consumers and family members and incorporating their viewpoint and experiences in the training and education programs in subdivisions (a) through ~~(f)~~ (g).

~~(i)~~ (j) Promotion of meaningful inclusion of diverse, racial, and ethnic community members who are underrepresented in the mental health provider network.

~~(j)~~ (k) Promotion of the inclusion of cultural competency in the training and education programs in subdivisions (a) through ~~(f)~~ (g).

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## MEMORANDUM

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|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                           |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(R) – AB 577 (Eggman) Medi-Cal: maternal mental health |

**Background:**

AB 577 (Eggman) would extend Medi-Cal eligibility for a pregnant individual who is receiving health care coverage under the Medi-Cal program, or another specified program, and who has been diagnosed with a maternal mental health condition, for a period of one year following the last day of the individual's pregnancy if the individual complies with certain requirements. The bill would define "maternal mental health condition" for purposes of the bill.

**Location:** 3/25/2019 Assembly Committee on Appropriations

**Status:** 3/27/2019 Re-referred to Assembly Committee on Appropriations

**Votes:** 3/19/2019 Assembly Committee on Health (15-0-0)

**Action Requested:**

Staff recommends the Board watch AB 577 for potential impacts on consumer access to perinatal mental health services.

Attachment: AB 577 (Eggman) Bill Text

## AB 577 - (A) Amends the Law

## SECTION 1.

Section 14005.18 of the Welfare and Institutions Code is amended to read:

14005.18.

*A (a) (1) ~~woman~~ An individual is eligible, to the extent required by federal law, as though ~~she were~~ the individual was pregnant, for all pregnancy-related and postpartum services for a 60-day period beginning on the last day of pregnancy.*

*(2) For purposes of ~~this section~~, paragraph (1), “postpartum services” means those services provided after childbirth, child delivery, or miscarriage.*

*(b) (1) Notwithstanding subdivision (a), Section 15840, the income eligibility requirements specified in Section 15832, and the annual redetermination requirements described in Section 14005.37, a pregnant individual who is receiving health care coverage under a program identified in subdivision (d) and who is diagnosed with a maternal mental health condition shall remain eligible for the Medi-Cal program for a period of one year following the last day of the individual’s pregnancy if the individual complies with the requirements specified in subdivision (c) and is otherwise eligible for the Medi-Cal program.*

*(2) For purposes of this section, “maternal mental health condition” means a mental health condition that occurs during pregnancy or during the postpartum period and, includes, but is not limited to, postpartum depression.*

*(c) (1) An individual, or a designee of the individual, who seeks to extend Medi-Cal program coverage pursuant to this section shall submit to a county eligibility worker a note from that individual’s treating health care provider stating that the health care provider has diagnosed the individual with a maternal mental health condition within 60 days following the last day of the individual’s pregnancy.*

*(2) Notwithstanding paragraph (1), an individual who has had Medi-Cal program coverage terminated within the 60-day period beginning on the last day of pregnancy, but who is diagnosed with a maternal mental health condition more than 60 days following the last day of pregnancy, may seek redetermination of eligibility pursuant to subdivision (i) of Section 14005.37 by submitting a note, as described in paragraph (1), from the individual’s treating health care provider within the time frame described in that subdivision and after the 60-day period beginning the last day of pregnancy.*

*(d) For purposes of this section, “Medi-Cal program” refers to any of the following programs:*

*(1) The Medi-Cal Access Program, as described in Chapter 2 (commencing with Section 15810) of Part 3.3.*

*(2) The Medi-Cal program, as described in this article.*

*(3) The Perinatal Services Program, as described in Article 4.7 (commencing with Section 14148).*

*(e) This section does not limit the ability of a qualified individual to apply for and purchase a qualified health plan in Covered California pursuant to Title 22 (commencing with Section 100500) of the Government Code if the qualified individual is otherwise eligible for coverage pursuant to that title.*

## MEMORANDUM

|                |   |
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| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                     |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(S) – AB 613 (Low) Professions and vocations:<br>regulatory fees |

**Background:**

AB 613 (Low) would authorize each board within the Department of Consumer Affairs to increase every four (4) years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding four (4) years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

**Location:** 4/2/2019 Assembly Committee on Appropriations

**Status:** 4/2/2019 From committee: Do pass and re-refer to Committee on Appropriations (Ayes 12. Noes 6.)

**Votes:** 4/2/2019 Assembly Committee on Business and Professions (12-6-2)

**Action Requested:**

Staff recommends the Board watch AB 613 for its potential to create new authority for the Board to seek minor increases in the fees it charges applicants and licensees.

Attachment: AB 613 (Low) Bill Text

AB 613 - (I) Amends the Law

**SECTION 1.**

*Section 101.1 is added to the Business and Professions Code, to read:*

**101.1.**

*(a) Notwithstanding any other law, no more than once every four years, any board listed in Section 101 may increase any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding four years in accordance with the following:*

*(1) The board shall provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director and the director shall approve the fee increase unless any of the following apply:*

*(A) The board has unencumbered funds in an amount that is equal to more than the board's operating budget for the next two fiscal years.*

*(B) The fee would exceed the reasonable regulatory costs to the board in administering the provisions for which the fee is authorized.*

*(C) The director determines that the fee increase would be injurious to the public health, safety, or welfare.*

*(2) The adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) of the Government Code.*

*(b) For purposes of this section, "fee" includes any fees authorized to be imposed by a board for regulatory costs. "Fee" does not include administrative fines, civil penalties, or criminal penalties.*

## MEMORANDUM

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|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(T) – AB 630 (Arambula) Board of Behavioral Sciences: marriage and family therapists: clinical social workers: educational psychologists: professional clinical counselors: required notice |

### **Background:**

Under current law, Board of Behavioral Sciences licensees and registrants, prior to initiating specified services, must provide a client with a specified written notice that the board receives and responds to complaints regarding services within the scope of the licensed practice and that the client may contact the board. Current law exempts specified employees and volunteers in certain settings from providing this notification.

AB 630 (Arambula), starting July 1, 2020, would require unlicensed employees or volunteers in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable to provide a client prior to initiating psychotherapy services, a notice written in at least 12-point font that notifies the client where they can file a complaint regarding the unlicensed or unregistered counselor providing services.

**Location:** 4/2/2019 Assembly Committee on Appropriations

**Status:** 4/2/2019 From committee: Do pass and re-refer to Committee on Appropriations with recommendation: To Consent Calendar.

**Votes:** 4/2/2019 Assembly Committee on Business and Professions (20-0-0)

### **Action Requested:**

Staff recommends the Board watch AB 630 for potential impacts on the Board's ability to obtain similar authority in the future related to unlicensed individuals employed in exempt settings.

Attachment: AB 630 (Arambula) Bill Text

## AB 630 - (A) Amends the Law

## SECTION 1.

Section 4980.01 of the Business and Professions Code is amended to read:

## 4980.01.

(a) This chapter shall not be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of ~~his or her~~ *their* pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of ~~his or her~~ *their* professional practice.

(c) ~~(1)~~ -This chapter shall not apply to an employee ~~working in any of the following settings if his or her work is performed solely under the supervision of the employer: or~~ *volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if:*

~~(A) (1) A governmental~~ *The work of the employee or volunteer is performed solely under the supervision of the* entity.

~~(B) (2) A school, college, or university.~~ *On and after July 1, 2020, the employee or volunteer, if not licensed or registered with the board, provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:*

~~(C) NOTICE -An institution that is both nonprofit and charitable.~~ *TO CLIENTS*

~~(2) The~~ *This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution. (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).*

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care

provider subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

## SEC. 2.

*Section 4980.32 is added to the Business and Professions Code, to read:*

### 4980.32.

*On and after July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point type prior to initiating psychotherapy services that reads as follows:*

#### NOTICE TO CLIENTS

*The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of marriage and family therapists. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.*

## SEC. 3.

*Section 4989.17 is added to the Business and Professions Code, to read:*

### 4989.17.

*On and after July 1, 2020, a licensee shall provide a client with a notice written in at least 12-point type prior to initiating psychological services that reads as follows:*

#### NOTICE TO CLIENTS

*The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of licensed educational psychologists. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.*

## SEC. 4.

Section 4996.14 of the Business and Professions Code is amended to read:

4996.14.

(a) This chapter shall not apply to an employee ~~who is working in any of the following settings if his or her work is performed solely under the supervision of the employer:~~ or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable if:

(1) ~~A governmental~~ The work of the employee or volunteer is performed solely under the supervision of the entity.

(2) ~~A school, college, or university.~~ On and after July 1, 2020, the employee or volunteer, if not licensed or registered with the board, provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:

~~(3) NOTICE -An institution that is both nonprofit and charitable.~~ TO CLIENTS

~~(b) The~~ This chapter shall not apply to a volunteer who is working in any of the settings described in subdivision (a) if his or her work is performed solely under the supervision of the entity, school, college, university, or institution. (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).

~~(e)~~ (b) This chapter shall not apply to a person using hypnotic techniques by referral from any of the following persons if ~~his or her~~ their practice is performed solely under the supervision of the employer:

(1) A person licensed to practice medicine.

(2) A person licensed to practice dentistry.

(3) A person licensed to practice psychology.

~~(d)~~ (c) This chapter shall not apply to a person using hypnotic techniques that offer vocational self-improvement, and the person is not performing therapy for emotional or mental disorders.

SEC. 5.

Section 4996.15 of the Business and Professions Code is amended to read:

4996.15.

(a) Nothing in this article shall restrict or prevent activities of a psychosocial nature on the part of persons employed by accredited academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or social work interns pursuing the course of study leading to a master's degree in social work in an accredited college or university, ~~or working in a recognized training program,~~ provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by such titles as social work interns, social work trainees, or other titles clearly indicating the training status appropriate to their level of training. The term "social work intern," however, shall be reserved for persons enrolled in a master's or doctoral training program in social work in an accredited school or department of social work.

*(b) Notwithstanding subdivision (a), a graduate student shall not perform clinical social work in a private practice.*

SEC. 6.

*Section 4996.75 is added to the Business and Professions Code, to read:*

4996.75.

*On and after July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point type prior to initiating psychotherapy services that reads as follows:*

#### *NOTICE TO CLIENTS*

*The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of clinical social workers. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.*

SEC. 7.

Section 4999.22 of the Business and Professions Code is amended to read:

4999.22.

(a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the

public by any title or description of services incorporating the words “licensed professional clinical counselor” and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.

(b) Nothing in this chapter shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Licensed Marriage and Family Therapist Act.

(c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of ~~his or her~~ *their* pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of ~~his or her~~ *their* professional practice.

(d) This chapter shall not apply to an employee ~~of~~ *or volunteer working in* a governmental entity or a school, college, or university, or ~~of~~ an institution *that is* both nonprofit and charitable, ~~if his or her practice is performed solely under the supervision of the entity, school, college, university, or institution by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed. if:~~

*(1) The work of the employee or volunteer is performed solely under the supervision of the entity.*

*(2) On and after July 1, 2020, the employee or volunteer, if not licensed or registered with the board, provides a client, prior to initiating psychotherapy services, a notice written in at least 12-point type that is in substantially the following form:*

#### *NOTICE TO CLIENTS*

*The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).*

(e) All persons registered as associates or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

#### *SEC. 8.*

*Section 4999.71 is added to the Business and Professions Code, to read:*

*4999.71.*

*Effective July 1, 2020, a licensee or registrant shall provide a client with a notice written in at least 12-point font prior to initiating psychotherapy services that reads as follows:*

#### **NOTICE TO CLIENTS**

*The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of professional clinical counselors. You may contact the board online at [www.bbs.ca.gov](http://www.bbs.ca.gov), or by calling (916) 574-7830.*

#### **SEC. 9.**

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                |
| <b>SUBJECT</b> | Agenda Item #22(b)(2)(U) – AB 744 (Aguiar-Curry) Healthcare coverage: telehealth |

**Background:**

Under current law, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teleophthalmology, teledermatology, and teledentistry by store and forward. Current law requires a Medi-Cal patient receiving teleophthalmology, teledermatology, or teledentistry by store and forward to be notified of the right to receive interactive communication with a distant specialist physician, optometrist, or dentist, and authorizes a patient to request that interactive communication. AB 744 (Aguiar-Curry) would delete those interactive communication provisions.

**Location:** 2/28/2019 Assembly Committee on Health.

**Status:** 2/28/2019 Referred to Assembly Committee on Health.

**Action Requested:**

Staff recommends the Board watch AB 744 due to its effect on Business and Professions Code Section 2290.5 which allows Board licensees to utilize telehealth as a mode of delivery for psychological services.

Attachment A: AB 744 (Aguiar-Curry) Bill Text

## AB 744 - (I) Amends the Law

## SECTION 1.

Section 2290.5 of the Business and Professions Code is amended to read:

## 2290.5.

(a) For purposes of this division, the following definitions shall apply:

~~(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.~~

~~(2)~~ (1) "Distant site" means a site where a ~~health care~~ *healthcare* provider who provides ~~health care~~ *healthcare* services is located while providing these services via a telecommunications system.

~~(3)~~ (2) "~~Health care~~ *Healthcare* provider" means either of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

~~(4)~~ (3) "Originating site" means a site where a patient is located at the time ~~health care~~ *healthcare* services are provided via a telecommunications system or where the ~~asynchronous~~ store and forward service originates.

~~(4)~~ *"Store and forward" means the transmission of a patient's medical information from an originating site to the healthcare provider at a distant site.*

(5) "Synchronous interaction" means a real-time interaction between a patient and a ~~health care~~ *healthcare* provider located at a distant site.

(6) "Telehealth" means the mode of delivering ~~health care~~ *healthcare* services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's ~~health care while the patient is at the originating site and the health care provider is at a distant site.~~ *healthcare*. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) ~~Prior to~~ *Before* the delivery of ~~health care~~ *healthcare* via telehealth, the ~~health care~~ *healthcare* provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering ~~health care~~ *healthcare* services and public health. The consent shall be documented.

- (c) ~~Nothing in this section shall~~ *This section does not* preclude a patient from receiving in-person ~~health care- healthcare~~ delivery services during a specified course of ~~health care- healthcare~~ and treatment after agreeing to receive services via telehealth.
- (d) The failure of a ~~health care- healthcare~~ provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.
- (e) This section shall not be construed to alter the scope of practice of ~~any health care- a healthcare~~ provider or authorize the delivery of ~~health care- healthcare~~ services in a setting, or in a manner, not otherwise authorized by law.
- (f) All laws regarding the confidentiality of ~~health care- healthcare~~ information and a patient's rights to ~~his or her- the patient's~~ medical information shall apply to telehealth interactions.
- (g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.
- (h) (1) Notwithstanding any other ~~provision of~~ law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.
- (2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).
- (3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

## *SEC. 2.*

*Section 1341.46 is added to the Health and Safety Code, to read:*

### *1341.46.*

*(a) There is hereby created the Managed Care Penalty Account within the Managed Care Administrative Fines and Penalties Fund.*

*(b) Moneys in the Managed Care Penalty Account shall be subject to appropriation by the Legislature.*

*(c) Notwithstanding Section 1341.45, fines and administrative penalties collected pursuant to this chapter shall be deposited into the Managed Care Penalty Account.*

## SEC. 3.

Section 1374.13 of the Health and Safety Code is amended to read:

## 1374.13.

(a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code ~~shall~~ apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive ~~health-care- healthcare~~ services from a ~~health-care- healthcare~~ provider without in-person contact with the ~~health care- healthcare~~ provider.

(c) ~~No A~~ health care service plan shall *not* require that in-person contact occur between a ~~health-care- healthcare~~ provider and a patient before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider ~~groups- groups, and pursuant to Section 1374.14.~~

(d) ~~No A~~ health care service plan shall *not* limit the type of setting where services are provided for the patient or by the ~~health-care- healthcare~~ provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider ~~groups- groups, and pursuant to Section 1374.14.~~

(e) ~~The requirements of this-~~ *This* section shall also apply to health care service plan and Medi-Cal managed care plan contracts with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(f) Notwithstanding any other ~~provision, law,~~ this section ~~shall not be interpreted to- does not~~ authorize a health care service plan to require the use of telehealth ~~when if~~ the ~~health-care- healthcare~~ provider has determined that it is not appropriate.

## SEC. 4.

*Section 1374.14 is added to the Health and Safety Code, to read:*

## 1374.14.

*(a) A contract issued, amended, or renewed on or after January 1, 2020, between a health care service plan and a healthcare provider for the provision of healthcare*

*services to an enrollee or subscriber shall specify that the health care service plan shall reimburse the treating or consulting healthcare provider for the diagnosis, consultation, or treatment of an enrollee or subscriber delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.*

*(b) (1) A health care service plan contract issued, amended, or renewed on or after January 1, 2020, shall specify that the health care service plan shall provide coverage for the cost of healthcare services delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.*

*(2) A health care service plan contract issued, amended, or renewed on or after January 1, 2020, shall not exclude coverage for a healthcare service solely because the service is delivered through telehealth services and not through in-person consultation or contact between a physician and a patient, if the service is appropriately delivered through telehealth services.*

*(c) A health care service plan may offer a contract containing a deductible, copayment, or coinsurance requirement for a healthcare service delivered through telehealth services, provided that the deductible, copayment, or coinsurance does not exceed the deductible, copayment, or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment.*

*(d) (1) A health care service plan contract issued, amended, or renewed on or after January 1, 2020, shall not impose an annual or lifetime dollar maximum for telehealth services, other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the contract.*

*(2) A health care service plan contract issued, amended, or renewed on or after January 1, 2020, shall not impose a deductible, copayment, or coinsurance, or a plan year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed on all terms and services covered under the contract.*

*(e) (1) The director shall, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), assess an administrative penalty by order if the director determines that a health care service plan has failed to comply with this section.*

*(2) Notwithstanding Section 1341.45, an administrative penalty collected pursuant to paragraph (1) shall be deposited into the Managed Care Penalty Account.*

*(f) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.*

SEC. 5.

Section 10123.85 of the Insurance Code is amended to read:

10123.85.

(a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code ~~shall~~ apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive ~~health-care~~ *healthcare* services from a ~~health-care~~ *healthcare* provider without in-person contact with the ~~health care~~ *healthcare* provider.

(c) ~~No~~ *A* health insurer shall *not* require that in-person contact occur between a ~~health care~~ *healthcare* provider and a patient before payment is made for the services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer, and between the insurer and its participating providers or provider ~~groups~~ *groups, and pursuant to Section 10123.855.*

(d) ~~No~~ *A* health insurer shall *not* limit the type of setting where services are provided for the patient or by the ~~health-care~~ *healthcare* provider before payment is made for the covered services appropriately provided by telehealth, subject to the terms and conditions of the contract between the policyholder or contract holder and the insurer, and between the insurer and its participating providers or provider ~~groups~~ *groups, and pursuant to Section 10123.855.*

(e) Notwithstanding any other ~~provision, law~~, this section ~~shall not be interpreted to~~ *does not* authorize a health insurer to require the use of telehealth ~~when if~~ the ~~health-care~~ *healthcare* provider has determined that it is not appropriate.

SEC. 6.

*Section 10123.855 is added to the Insurance Code, to read:*

*10123.855.*

*(a) A contract issued, amended, or renewed on or after January 1, 2020, between a health insurer and a healthcare provider for an alternative rate of payment pursuant to Section 10133 shall specify that the health insurer shall reimburse the treating or consulting healthcare provider for the diagnosis, consultation, or treatment of an insured or policyholder delivered through telehealth services on the same basis and to the same*

*extent that the health insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.*

*(b) (1) A policy of health insurance issued, amended, or renewed on or after January 1, 2020, that provides benefits through contracts with providers at alternative rates of payment shall specify that the health insurer shall provide coverage for the cost of healthcare services delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.*

*(2) A policy of health insurance issued, amended, or renewed on or after January 1, 2020, that provides benefits through contracts with providers at alternative rates of payment shall not exclude coverage for a healthcare service solely because the service is delivered through telehealth services and not through in-person consultation or contact between a physician and a patient, if the service is appropriately delivered through telehealth services.*

*(c) A health insurer may offer a policy containing a deductible, copayment, or coinsurance requirement for a healthcare service delivered through telehealth services, provided that the deductible, copayment, or coinsurance does not exceed the deductible, copayment, or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment.*

*(d) (1) A policy of health insurance issued, amended, or renewed on or after January 1, 2020, shall not impose an annual or lifetime dollar maximum for telehealth services, other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy.*

*(2) A policy of health insurance issued, amended, or renewed on or after January 1, 2020, shall not impose a deductible, copayment, or coinsurance, or a policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed on all terms and services covered under the policy.*

*(e) (1) The commissioner shall, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), assess an administrative penalty by order if the commissioner determines that a health insurer has failed to comply with this section.*

*(2) An administrative penalty collected pursuant to paragraph (1) shall be deposited into the Insurance Fund.*

*(f) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.*

SEC. 7.

Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725.

(a) To the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teleophthalmology, teledermatology, and teledentistry by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, “teleophthalmology, teledermatology, and teledentistry by store and forward” means ~~an asynchronous~~ transmission of medical or dental information to be reviewed ~~at a later time~~ by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, or a dentist, where the physician, optometrist, or dentist at the distant site reviews the medical or dental ~~information without the patient being present in real time. A patient receiving teleophthalmology, teledermatology, or teledentistry by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician, optometrist, or dentist and shall receive an interactive communication with the distant specialist physician, optometrist, or dentist, upon request. If requested, communication with the distant specialist physician, optometrist, or dentist may occur either at the time of the consultation, or within 30 days of the patient’s notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.~~ *information.*

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

#### *SEC. 8.*

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                    |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(V) – AB 768 (Brough) Professions and vocations |

**Background:**

AB 768 (Brough) would authorize the Department of Consumer Affairs and each board in the department to charge a fee not to exceed \$2 for the certification of a copy of any record, document, or paper in its custody. The bill would also require that the delinquency, penalty, or late fee for any licensee within the department to be 50 percent of the renewal fee for that license, but not to exceed \$150.

**Location:** 2/28/2019 Assembly Committee on Business and Professions

**Status:** 2/28/2019 Referred to Assembly Committee on Business and Professions

**Action Requested:**

Staff recommends the Board watch AB 768 (Brough) for potential impacts to Board operations relating to licensee File Transfers to other jurisdictions.

Attachment: AB 768 (Brough) Bill Text

## AB 768 - (I) Amends the Law

## SECTION 1.

Section 163 of the Business and Professions Code is amended to read:

## 163.

Except as otherwise expressly provided by law, the department and each board in the department ~~shall~~ *may* charge a fee ~~of~~ *not to exceed* two dollars (\$2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, ~~document~~ *document*, or paper.

## SEC. 2.

Section 163.5 of the Business and Professions Code is amended to read:

## 163.5.

Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for ~~such~~ *that* license in effect on the date of the renewal of the license, but ~~not less than twenty-five dollars (\$25) nor more than~~ *shall not exceed* one hundred fifty dollars (\$150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

In the event a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars (\$25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars (\$25), the fee so fixed shall be charged.

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Manager   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(W) – AB 770 (Garcia, Eduardo) Medi-Cal:<br>federally qualified health clinics: rural health clinics |

**Background:**

Current law provides that federally qualified health center (FQHC) services and rural health clinic (RHC) services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, in accordance with Medicare reasonable cost principles, and to the extent that federal financial participation is obtained, to providers on a per-visit basis that is unique to each facility. Current law prescribes the reimbursement rate methodology for both establishing and adjusting the per-visit rate. AB 770 (Garcia, Eduardo) would require the methodology of the adjusted per-visit rate to exclude, among other things, a per-visit payment limitation, and a provider productivity standard.

**Location:** 4/9/2019 Assembly Committee on Appropriations

**Status:** 4/9/2019 Do pass as amended and be re-referred to the Committee on Appropriations

**Votes:** 4/9/2019 Assembly Committee on Health

**Action Requested:**

Staff recommends the Board watch AB 770 for potential impacts on consumer access to mental health services.

Attachment: AB 770 (Garcia, Eduardo) Bill Text

## AB 770 - (I) Amends the Law

## SECTION 1.

Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100.

(a) The federally qualified health center (*FQHC*) services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic (*RHC*) services described in Section 1396d(a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) ~~Federally qualified health center services and rural health clinic~~ *FQHC and RHC* services shall be reimbursed on a per-visit basis in accordance with the definition of "visit" set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1 thereafter, until no longer required by federal law, ~~federally qualified health center (FQHC) and rural health clinic (RHC)~~ *FQHC and RHC* per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of ~~services~~ *service* provided by the FQHC or RHC. Rate changes based on a change in the scope of ~~services~~ *service* provided by an FQHC or RHC shall be evaluated in accordance with ~~Medicare federal~~ *reasonable cost reimbursement* principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 ~~of~~ *and Part 75 (commencing with Section 400) of Title 45 of* the Code of Federal Regulations, or ~~its successor~~ *any successor. To the extent there is a conflict between the federal reasonable cost principles, the terms of Part 75 (commencing with Section 400) of Title 45 shall control. To the extent required under federal law, the adjusted per-visit rate shall include direct costs, administrative costs, and costs related to FQHC and RHC services rendered outside of the respective facility, consistent with guidance issued by the federal Centers for Medicare and Medicaid Services and the federal Health Resources and Services Administration. The methodology of the adjusted per-visit rate shall exclude a per-visit payment limitation, provider productivity standard, or any other method that applies cost limitations in the calculation of the per-visit rate that are not based on the reasonable cost of the FQHC or RHC as determined under applicable federal reasonable cost principles.*

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or ~~rules~~ *rules, or a change related to a Medi-Cal managed care plan contracting under this chapter or Chapter 8 (commencing with Section 14200) that either directly or indirectly impacts and FQHC or RHC.*

(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the ~~center~~ *FQHC* or ~~clinic~~ *RHC.*

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, *adults*, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical ~~practices at the center or clinic~~ *practices, including the adoption, implementation, or upgrade of a certified electronic health record system, at the FQHC or RHC.*

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Services ~~Administration (HRSA)~~ *Administration, including FQHC or RHC services rendered outside of the respective facility.*

(3) ~~A~~ *No* change in costs ~~is not, shall,~~ in and of itself, ~~a scope of service be~~ *considered a scope of service* change, unless all of the following apply:

(A) The increase or decrease in ~~cost~~ *cost, including administrative costs,* is attributable to *a change in the FQHC or RHC scope of service, such as* an increase or decrease in ~~the scope of services defined in subdivisions (a) and (b), as applicable. these services.~~ *For purposes of this section, "scope of service" means the type, intensity, duration, or amount of services during an average FQHC or RHC visit as defined in subdivision (g). "Change in the scope of service" and "scope of service change" means any change, such as an increase or decrease, in the type, intensity, duration, or amount of services,*

*or any combination thereof taking place in an average FQHC or RHC visit as defined in subdivision (g).*

(B) The cost is allowable under ~~Medicare federal~~ reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 ~~of and Part 75 (commencing with Section 400) of Title 45 of~~ the Code of Federal Regulations, or its successor.

~~(C) The change in the scope of services is a change in the type, intensity, duration, or amount of services, or any combination thereof.~~

~~(D)~~ (C) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For ~~FQHCs an FQHC~~ and ~~RHCs RHC~~ that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a ~~scope-of-service~~ *scope of service* change. "Net change" means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for ~~scope-of-service changes~~ *a scope of service change* once per fiscal year, ~~only within 90 days and at any time~~ following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a ~~scope-of-service~~ *scope of service* rate change request ~~within 90 days of the beginning of any~~ *at any time during the* FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the FQHC or RHC experienced a decrease in the scope of ~~services~~ *service* provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a ~~scope-of-service~~ *scope of service* rate change request ~~within 90 days of the beginning of the following fiscal year~~ *at any time during the following fiscal year that the FQHC or RHC discontinued providing the service*. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, "significantly lower" means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved ~~scope-of-service~~ *scope of service* change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a scope-of-service *scope of service* change, the adjusted reimbursement rate for that ~~scope-of-service~~ *scope of service* change shall be made retroactive to the date the ~~scope-of-service~~ *scope of service* change was initially implemented. ~~Scope-of-service changes~~ *A scope of*

*service change* under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to "fiscal year" shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision ~~(H)~~ (m). These supplemental payments shall be determined separately from the ~~scope-of-service~~ *scope of service* adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include both of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars (\$200,000) or 1 percent of a facility's total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) (1) An FQHC or RHC "visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, "physician" shall be interpreted in a manner consistent with the federal Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a physician and surgeon, osteopath, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal practitioner, as defined in Section 51179.7 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit. *FQHC and RHC services rendered to a Medi-Cal beneficiary at a premise such as a temporary shelter, a beneficiary's residence, a location of another provider, or any location other than the location identified on the primary care clinic license or in the provider master file, shall be billed by the FQHC or RHC and reimbursed at the contracted rate when either of the following apply:*

*(A) The location where the services are provided is approved by the federal Health Resources and Services Administration as part of the FQHC's or RHC's application for its grant under Section 330 of the Public Health Service Act.*

*(B) The services are provided at a location requiring payment under Title XIX of the Social Security Act.*

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, or a marriage and family therapist.

(B) Notwithstanding subdivision (e), if an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice, or a marriage and family therapist for the purposes of establishing its FQHC or RHC rate chooses to bill these services as a separate visit, the FQHC or RHC shall apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals or marriage and family therapists that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to determine which FQHC's or RHC's rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this subparagraph shall not

constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, or a marriage and family therapist has been approved. Any approved increase or decrease in the provider's rate shall be made within six months after the date of receipt of the department's rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist, dental hygienist in alternative practice, or marriage and family therapist services, and later elects to add these services and bill these services as a separate visit, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(3) Notwithstanding any other provision of this section, no later than July 1, 2018, a visit shall include a marriage and family therapist.

(h) (1) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity, as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code, the Medicare Program, or the Child Health and Disability Prevention (CHDP) Program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or ~~programs on a contract-by-contract basis and not in the aggregate, and may not include programs,~~ *and managed care financial incentive payments that are required by federal law to be excluded from the calculation. Financial incentive payments shall include, but are not limited to, monetary payments to an FQHC or RHC by a third-party payor for superior contract performance, such as improving health outcomes, reducing overall cost of care, or increasing the quality of care.*

*(2) In the case of services furnished by an FQHC or RHC pursuant to a contract between the FQHC or RHC and the managed care entity, the department shall reimburse the FQHC or RHC in accordance with paragraph (1) and Section 1396a(bb)(5) of Title 42 of the United States Code.*

(i) (1) Provided that the following entities are not operating as intermittent clinics, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, each entity shall have its reimbursement rate established in accordance with one of the methods outlined in paragraph (2) or (3), as selected by the FQHC or RHC:

(A) An entity that first qualifies as an FQHC or RHC in 2001 or later.

(B) A newly licensed facility at a new location added to an existing FQHC or RHC.

(C) An entity that is an existing FQHC or RHC that is relocated to a new site.

(2) (A) An FQHC or RHC that adds a new licensed location to its existing primary care license under paragraph (1) of subdivision (b) of Section 1212 of the Health and Safety Code may elect to have the reimbursement rate for the new location established in accordance with paragraph (3), or notwithstanding subdivision (e), an FQHC or RHC may choose to have one PPS rate for all locations that appear on its primary care license determined by submitting a change in scope of service request if both of the following requirements are met:

(i) The change in scope of service request includes the costs and visits for those locations for the first full fiscal year immediately following the date the new location is added to the FQHC's or RHC's existing licensee.

(ii) The FQHC or RHC submits the change in scope of service request ~~within 90 days after~~ *at any time during* the FQHC's or RHC's first full fiscal year.

(B) The FQHC's or RHC's single PPS rate for those locations shall be calculated based on the total costs and total visits of those locations and shall be determined based on the following:

(i) An audit in accordance with Section 14170.

(ii) Rate changes based on a change in scope of service request shall be evaluated in accordance with ~~Medicare federal~~ reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 ~~of~~ *and Part 75 (commencing with Section 400) of Title 45 of* the Code of Federal Regulations, or its successors.

(iii) Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(C) Except as specified in subdivision (j), this paragraph does not apply to a location that was added to an existing primary care clinic license by the State Department of Public Health, whether by a regional district office or the centralized application unit, prior to January 1, 2017.

(3) If an FQHC or RHC does not elect to have the PPS rate determined by a change in scope of service request, the FQHC or RHC shall have the reimbursement rate established for any of the entities identified in paragraph (1) or (2) in accordance with one of the following methods at the election of the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC sites* located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC sites* with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC sites* located in the same or an adjacent service area, or in a reasonably

similar geographic area with respect to relevant social, health care, and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for *a* newly qualified ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC* as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(4) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. ~~FQHCs~~ *An FQHC* or ~~RHCs~~ *RHC* that ~~have~~ *has* experienced changes in ~~their~~ *its* services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. ~~FQHCs~~ *An FQHC* or ~~RHCs~~ *RHC* that ~~have~~ *has* not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC sites* to the department, but shall be required to identify the comparable ~~FQHCs~~ *FQHC* or ~~RHCs~~ *RHC sites*.

(5) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis under its existing provider number until it is informed of its FQHC or RHC enrollment approval, and the department shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) (1) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, or at the election of the FQHC or RHC and subject to paragraph (2), a location added to an existing primary care clinic license by the State Department of

Public Health prior to January 1, 2017, shall be billed by and reimbursed at the same rate as the FQHC or RHC that either established the intermittent clinic site or mobile unit, or that held the clinic license to which the location was added prior to January 1, 2017.

(2) If an FQHC or RHC with at least one additional location on its primary care clinic license that was added by the State Department of Public Health prior to January 1, 2017, applies for an adjustment to its per-visit rate based on a change in the scope of ~~services~~ *service* provided by the FQHC or RHC as described in subdivision (e), all locations on the FQHC or RHC's primary care clinic license shall be subject to a ~~scope-of-service-~~ *scope of service* adjustment in accordance with either paragraph (2) or (3) of subdivision (i), as selected by the FQHC or RHC.

(3) Nothing in this subdivision precludes or otherwise limits the right of the FQHC or RHC to request a ~~scope-of-service-~~ *scope of service* adjustment to the rate.

(k) An FQHC or RHC may elect to have ~~pharmacy or~~ dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as ~~scope-of-service-changes-~~ *a scope of service change*. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable ~~scope-of-service-~~ *scope of service* adjustments as provided in subdivision (e).

*(l) An FQHC or RHC may elect to have pharmacy services reimbursed on a fee-for-service basis as provided in subdivision (k).*

~~(m)~~ *(m)* Reimbursement for Drug Medi-Cal services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC may elect to have Drug Medi-Cal services reimbursed directly from a county or the department under contract with the FQHC or RHC pursuant to paragraph (4).

(2) (A) For an FQHC or RHC to receive reimbursement for Drug Medi-Cal services directly from the county or the department under contract with the FQHC or RHC pursuant to paragraph (4), costs associated with providing Drug Medi-Cal services shall not be included in the FQHC's or RHC's per-visit PPS rate. For purposes of this subdivision, the costs associated with providing Drug Medi-Cal services shall not be considered to be within the FQHC's or RHC's clinic base PPS rate if in delivering Drug Medi-Cal services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver Drug Medi-Cal services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering Drug Medi-Cal services, including costs related to

utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing Drug Medi-Cal services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the Drug Medi-Cal services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering Drug Medi-Cal services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request shall include a full fiscal year of activity that does not include Drug Medi-Cal services costs.

(B) An FQHC or RHC may submit requests for ~~scope-of-service~~ *scope of service* change under this subdivision ~~only within 90 days following the beginning of the~~ *at any time during the* FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that Drug Medi-Cal services were rendered and reimbursement for Drug Medi-Cal services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for Drug Medi-Cal services outside of the PPS rate when the FQHC or RHC obtains approval as a Drug Medi-Cal provider and enters into a contract with a county or the department to provide these services pursuant to paragraph (4).

(D) Within 90 days of receipt of the request for a ~~scope-of-service~~ *scope of service* change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with ~~Medicare federal~~ *Medicare federal* reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 ~~of and Part 75 (commencing with Section 400) of Title 45~~ *of* the Code of Federal Regulations, or its successor.

(F) For purposes of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing ~~federally-qualified health center services or rural health center~~ *FQHC or RHC* services and Drug Medi-Cal services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate and the FQHC or RHC is approved as a Drug Medi-Cal provider, an FQHC or

RHC shall not bill the PPS rate for any Drug Medi-Cal services provided pursuant to a contract entered into with a county or the department pursuant to paragraph (4).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable ~~scope-of-service~~ *scope of service* adjustments as provided for in subdivision (e).

(4) Reimbursement for Drug Medi-Cal services shall be determined according to subparagraph (A) or (B), depending on whether the services are provided in a county that participates in the Drug Medi-Cal organized delivery system (DMC-ODS).

(A) In a county that participates in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county or county designee and the FQHC or RHC. If the county or county designee refuses to contract with the FQHC or RHC, the FQHC or RHC may follow the contract denial process set forth in the Special Terms and Conditions.

(B) In a county that does not participate in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county and the FQHC or RHC. If the county refuses to contract with the FQHC or RHC, the FQHC or RHC may request to contract directly with the department and shall be reimbursed for those services at the Drug Medi-Cal fee-for-service rate.

(5) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments for Drug Medi-Cal services made pursuant to this subdivision.

(6) For purposes of this subdivision, the following definitions shall apply:

(A) "Drug Medi-Cal organized delivery system" or "DMC-ODS" means the Drug Medi-Cal organized delivery system authorized under the California Medi-Cal 2020 Demonstration, Number 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services and described in the Special Terms and Conditions.

(B) "Special Terms and Conditions" shall have the same meaning as set forth in subdivision (o) of Section 14184.10.

~~(m)~~ (n) Reimbursement for specialty mental health services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC and one or more mental health plans that contract with the department pursuant to Section 14712 may mutually elect to enter into a contract to have the FQHC or RHC provide specialty mental health services to Medi-Cal beneficiaries as part of the mental health plan's network.

(2) (A) For an FQHC or RHC to receive reimbursement for specialty mental health services pursuant to a contract entered into with the mental health plan under paragraph (1), the costs associated with providing specialty mental health services shall not be included in the FQHC's or RHC's per-visit PPS rate. For purposes of this subdivision, the costs associated with providing specialty mental health services shall not be considered to be within the FQHC's or RHC's clinic base PPS rate if in delivering specialty mental health services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver specialty mental health services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering specialty mental health services, including costs related to utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing specialty mental health services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the specialty mental health services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering specialty mental health services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request shall include a full fiscal year of activity that does not include specialty mental health costs.

(B) An FQHC or RHC may submit requests for a ~~scope-of-service~~ *scope of service* change under this subdivision ~~only within 90 days following the beginning of the~~ *at any time during the* FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that specialty mental health services were rendered and reimbursement for specialty mental health services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for specialty mental health services outside of the PPS rate when the FQHC or RHC contracts with a mental health plan to provide these services pursuant to paragraph (1).

(D) Within 90 days of receipt of the request for a scope-in-service change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with ~~Medicare federal~~ reasonable cost *reimbursement* principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 ~~of and Part 75 (commencing with Section 400) of Title 45 of~~ the Code of Federal Regulations, or its successor.

(F) For the purpose of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing ~~federally qualified health center services or rural health center services-~~ *FQHC and RHC services* and specialty mental health services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate, an FQHC or RHC shall not bill the PPS rate for any specialty mental health services that are provided pursuant to a contract entered into with a mental health plan pursuant to paragraph (1).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable scope-of-service *scope of service* adjustments as provided for in subdivision (e).

(4) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments made for specialty mental health services under this subdivision.

~~(n) (o) FQHCs and RHCs may-~~ *Notwithstanding Section 14104.5 or any other law, an FQHC or RHC may elect to* appeal a grievance or complaint concerning ratesetting, ~~scope-of-service changes,~~ *a scope of service change,* and settlement of cost report audits, in the manner prescribed by Section ~~14171-~~ *14171 or file a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure in the superior court.* The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

~~(e) (p)~~ (p) The department shall promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

*(q) The department shall ensure that departmental staff conducting audits, pursuant to Article 5.3 of Chapter 7 of Division 9 of this code, of FQHC or RHC services receive appropriate training on FQHC and RHC program policies and procedures within the Medi-Cal program, including the federal and state legislative history on statutory and regulatory provisions governing the program, and the grant parameters set forth under Section 330 of the federal Public Health Service Act. This training shall be incorporated*

*into existing training opportunities available under the department's current budget for the purpose of improving the quality and integrity of the department's audit process related to the FQHC and RHC provider. Nothing in this subdivision shall be construed to increase departmental obligations.*

~~(p)~~ (r) The department shall implement this section only to the extent that federal financial participation is available.

~~(q)~~ (s) Notwithstanding any other law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific subdivisions

~~(t)~~ (m) and ~~(m)~~ (n) by means of a provider bulletin or similar instruction. The department shall notify and consult with interested parties and appropriate stakeholders in implementing, interpreting, or making specific the provisions of subdivisions ~~(t)~~ (m) and ~~(m)~~ (n), including all of the following:

(1) Notifying provider representatives in writing of the proposed action or change. The notice shall occur, and the applicable draft provider bulletin or similar instruction, shall be made available at least 10 business days prior to the meeting described in paragraph (2).

(2) Scheduling at least one meeting with interested parties and appropriate stakeholders to discuss the proposed action or change.

(3) Allowing for written input regarding the proposed action or change, to which the department shall provide summary written responses in conjunction with the issuance of the applicable final written provider bulletin or similar instruction.

(4) Providing at least 60 days advance notice of the effective date of the proposed action or change.

## SEC. 2.

Section 14132.101 of the Welfare and Institutions Code is repealed.

### ~~14132.101.~~

~~(a) Notwithstanding paragraphs (4) and (5) of subdivision (e) of Section 14132.100, a scope of service change request, whether mandatory or permissive, shall be timely when filed within 150 days following the beginning of the federally qualified health center's or rural health clinic's fiscal year following the year in which the change occurred.~~

~~(b) Notwithstanding subdivision (a), and notwithstanding subdivision (e) of Section 14132.100, a federally qualified health center described in Section 14132.102 shall be deemed to have filed a scope of service change in a timely manner upon compliance with the requirements set forth in subdivision (c) of Section 14132.102.~~

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                       |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(X) – AB 895 (Muratsuchi) Pupil Mental Health Services Program Act |

### **Background:**

The School-Based Early Mental Health Intervention and Prevention Services for Children Act of 1991 authorizes the Director of Health Care Services, in consultation with the Superintendent of Public Instruction, to provide matching grants to local educational agencies to pay the state share of the costs of providing school-based early mental health intervention and prevention services to eligible pupils at school sites of eligible pupils, subject to the availability of funding each year.

This bill would enact a similar program to be known as the Pupil Mental Health Services Program Act. The act would authorize the State Department of Education, in consultation with the Superintendent, beginning with grants for the 2020–21 school year and subject to the availability of funding each year, to award matching grants to local educational agencies, as defined, throughout the state for programs that provide supportive services, defined to mean services that enhance the mental health and social-emotional development of pupils, to eligible pupils at school sites. The act would award matching grants for a period of not more than 3 years and would prohibit a single school site from being awarded more than one grant. For these purposes, an eligible pupil would be defined as a pupil who attends kindergarten, including transitional kindergarten, or any of grades 1 to 12, inclusive, at a local educational agency. The bill would prescribe the procedure for a local educational agency to apply for a matching grant. The bill would also prohibit more than 10 percent of the moneys allocated to the department for these purposes from being used for program administration and evaluation.

**Location:** 3/4/2019 Assembly Committee on Education

**Status:** 4/9/2019 Re-referred to Assembly Committee on Education

### **Action Requested:**

Staff recommends the Board watch AB 895 (Muratsuchi) for potential impacts on access to mental health services for students.

Attachment: AB 895 (Muratsuchi) Bill Text

## AB 895 - (A) Amends the Law

**SECTION 1.**

*The Legislature finds and declares all of the following:*

*(a) Pupils from all backgrounds and circumstances in California deserve adequate behavioral and academic support to achieve their full potential.*

*(b) Pupils in California face relational and environmental stressors that diminish their ability to achieve their full potential. Among these complex challenges may be poverty, frequent exposure to violence, placement in the foster care system, and other negative experiences that result in chronic stress and trauma. Nearly 700,000 pupils in California receive special education services, and nearly one in four youth are living in poverty. Nearly 60,000 youth are currently placed in foster care, and as many as 20 percent of youth are in need of mental health interventions.*

*(c) In 2014, an estimated 22.5 million Americans 12 years of age or older reported needing treatment for a substance use disorder.*

*(d) Mental health disorders and substance use disorders share some underlying causes, including changes in brain composition, genetic vulnerabilities, and early exposure to stress or trauma.*

*(e) Fifty-seven percent of Californian children have experienced trauma.*

*(f) Early intervention and prevention of mental health and substance use disorders are critical to Californians' behavioral and physical health.*

*(g) Pupils with these stressors are frequently failed by the current policies and systems in place, as measured by indicators for academic outcomes, social inclusion, emotional development, mental health support, and general pupil well-being.*

*(h) In California, more than 20 percent of special education pupils spend less than 40 percent of their day within their regular classroom, an indicator of inclusion, compared to 14 percent of special education pupils nationally and a federal target of less than 9 percent.*

*(i) Only 59 percent of special education pupils graduated from high school within four years in the 2010–11 fiscal year compared to 76 percent of all pupils.*

*(j) Statewide, a recent study found only 58 percent of foster youth in grade 12 graduated compared to 85 percent of all youth, with nearly 14 percent of foster youth in grade 12 dropping out of school.*

*(k) Far too often, youth with mental health challenges do not receive the services they need. For instance, one study found that nearly two-thirds of adolescents who experienced a major depressive disorder in the last year did not receive treatment.*

*(l) Even by grade 3, low-income pupils perform substantially below their higher income peers in areas of social and emotional skills, social and emotional development, engagement in school, and physical well-being.*

*(m) Delivery of comprehensive community-based support and resources requires a high level of collaboration among schools, school districts, and county mental health agencies.*

## *SEC. 2.*

*Article 3 (commencing with Section 49440) is added to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, to read:*

### *Article 3. Pupil Mental Health Services Program Act*

#### *49440.*

*This article shall be known, and may be cited, as the Pupil Mental Health Services Program Act.*

#### *49440.1.*

*For purposes of this article, the following definitions apply:*

*(a) "Eligible pupil" means a pupil who attends kindergarten, including transitional kindergarten, or any of grades 1 to 12, inclusive, at a local educational agency.*

*(b) "Local educational agency" means a school district, county office of education, state special school, or charter school.*

*(c) "Supportive services" means services that enhance the mental health and social-emotional development of eligible pupils.*

#### *49440.2.*

*Beginning with grants for the 2020–21 school year and subject to the availability of funding each year, the department may, in consultation with the Superintendent, award matching grants to local educational agencies for programs that provide supportive services to eligible pupils at schoolsites, as follows:*

*(a) The department shall award matching grants pursuant to this article to local educational agencies throughout the state.*

*(b) Matching grants awarded under this article shall be awarded for a period of not more than three years and a single schoolsite shall not be awarded more than one grant.*

*(c) The department shall pay to each local educational agency awarded a grant the state share of the cost of the activities described in the application if the department approves the application pursuant to this article.*

*(d) Eligible supportive services may include the following:*

*(1) The ability of the local educational agency to provide direct services, including, but not limited to, increasing staff-to-pupil ratios and providing individual and group mental health intervention and prevention services.*

*(2) Providing individual and small group counseling supports to individual pupils, and to pupil groups, to address social-emotional and mental health concerns.*

*(3) The ability of the local educational agency to partner with the county to establish direct linkages for pupils to community-based mental health services.*

*(4) The ability to participate in evidence-based and community-defined best practices for mental health services improvements.*

*(5) Referral to outside resources when eligible pupils require additional services.*

*(6) Any other service or activity that will improve the mental health of eligible pupils, particularly evidence-based interventions and promising practices intended to mitigate the consequences of childhood adversity and cultivate resilience and protective factors.*

*(e) Before participation by an eligible pupil in either individual or group supportive services, the local educational agency shall obtain the consent of the pupil's parent or guardian.*

49440.3.

*(a) A local educational agency seeking a matching grant pursuant to this article shall submit an application to the department at the time, in a manner as, and accompanied by any information the department may reasonably require.*

*(b) A matching grant application submitted shall include all of the following:*

*(1) Documentation of need for the supportive services.*

*(2) A description of the supportive services expected to be provided at the schoolsite.*

*(3) A statement of program goals.*

*(4) A detailed budget and budget narrative.*

*(5) A description of the population anticipated to be served, including number of pupils to be served and socioeconomic indicators of schoolsites to receive funds.*

*(6) A plan describing how the proposed school-based mental health intervention and prevention services program will be continued after the matching grant has expired.*

*(7) Assurance that matching grants will supplement and not supplant existing local resources provided for mental health intervention and prevention services.*

*(8) A description of an evaluation plan that includes quantitative and qualitative measures of school and pupil characteristics, and a comparison of pupils' adjustment to school after receiving the supportive services.*

*49440.4.*

*(a) Matching grants awarded pursuant to this article may be used for salaries of staff to implement the supportive services program, equipment and supplies, training, and insurance.*

*(b) Salaries of administrative staff and other administrative costs associated with providing services shall be limited to 5 percent of the state share of assistance provided under this article.*

*(c) No more than 10 percent of the moneys allocated to the department pursuant to this article may be used for program administration and evaluation.*

*49440.5.*

*Implementation of this article is contingent upon an appropriation in the annual Budget Act for purposes of this article from the administrative portion of the Mental Health Services Fund created by Section 5890 of the Welfare and Institutions Code.*

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                               |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(Y) – AB 1055 (Levine) Publicly funded technology projects |

**Background:**

This bill would require a public agency undertaking a publicly funded major technology project that is estimated to cost \$100,000,000 or more to form an oversight committee subject to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable, and to develop and use risk management plans throughout the course of the project. The bill would require the oversight committee to be composed of specified members selected by the public agency undertaking the project. The bill would require the oversight committee to act as the authority for critical decisions regarding the project and to have sufficient staff to support decision making. By imposing new duties on local public agencies, the bill would create a state-mandated local program.

**Location:** 3/7/2019 Assembly Committee on Health

**Status:** 4/4/2019 Re-referred to Committee on Health

**Action Requested:**

No action is required at this time. Due to the amendments made to this bill, staff will no longer be watching AB 1055 (Levine).

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(Z) – AB 1058 (Salas) Medi-Cal: specialty mental health services and substance use disorder treatment |

**Background:**

This bill would establish the County Behavioral Health Integration Pilot Program to integrate the administration and financing of the Drug Medi-Cal Treatment Program and the Medi-Cal Specialty Mental Health Services program in 9 counties that meet specified criteria, including that the county has implemented the Drug Medi-Cal organized delivery system, and which are selected by a selection committee consisting of representatives from the Department of Health Care Services (DHCS) and the County Behavioral Health Directors Association, for purposes of administering a county pilot project for a 4-year period. The bill would require a county that has been selected to administer a pilot project to perform specified tasks, such as developing a county-specific pilot implementation plan, and satisfying quality assurance and quality improvement requirements as established in state-county contracts for the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program. The bill would require DHCS to perform specified tasks related to the pilot program, including approving each county's pilot implementation plan, posting these plans on DHCS's internet website, and preparing an annual and final pilot project evaluation report for the Legislature. The bill would authorize the DHCS to implement these requirements by various instructions, including plan letters, to enter into contracts for procuring qualified consultant services, and to seek funding from federal agencies, foundations, or other nongovernmental sources.

**Location:** 3/18/2019 Assembly Committee on Health

**Status:** 3/19/2019 Re-referred to Com. on Health

**Action Requested:**

Staff recommends the Board watch AB 1058 for potential impacts to consumer access to mental health services.

Attachment: AB 1058 (Salas) Bill Text

## Word Cloud

**AB 1058 - (A) Amends the Law****SECTION 1.**

*The Legislature hereby finds and declares all of the following:*

*(a) Eight and one-half percent of Californians over 12 years of age have a substance use disorder, and more than 15 percent of adults have a mental health condition.*

*(b) More than 30 percent of the population that receives mental health services for severe and persistent mental illness through the Medi-Cal Specialty Mental Health Services program in California have co-occurring substance use disorders.*

*(c) Substance use disorders and mental health conditions that are untreated may lead to chronic physical health problems, increased rates of emergency room visits, higher risk for homelessness, unemployment, and justice-system involvement, and trauma, suicide, or premature death.*

*(d) Nearly every California county has merged the administration of publicly funded substance use disorder treatment and specialty mental health services into integrated behavioral health systems. Care for both conditions is now typically managed using the same administrative infrastructure within the county and an overlapping workforce.*

*(e) Nonetheless, reimbursement, county contracts with the state, documentation and reporting, oversight and other administrative requirements for the Drug Medi-Cal Treatment Program and the Medi-Cal Specialty Mental Health Services program remain bifurcated under state law.*

*(f) The rigidly separate benefit structures for these two closely-related Medi-Cal programs produce inefficiencies and create administrative barriers to the provision of integrated substance use disorder treatment and mental health services for Californians with co-occurring conditions and who receive health care through the Medi-Cal program.*

*(g) It is in the interest of Californians in need of behavioral health services, and of the state as a whole, to develop integrated behavioral health programs that can effectively meet the needs of individuals with co-occurring substance use disorders and mental health conditions.*

**SEC. 2.**

*Article 3.3 (commencing with Section 14124.30) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:*

**Article 3.3. County Behavioral Health Integration Pilot Program Act of 2019**

**14124.30.**

*(a) This act shall be known, and may be cited, as the County Behavioral Health Integration Pilot Program Act of 2019.*

*(b) It is the intent of the Legislature to establish the County Behavioral Health Integration Pilot Program to identify and test strategies for integrating the administration and financing of the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services program in nine county-administered pilot projects in the state.*

**14124.31.**

*(a) The goals of the County Behavioral Health Integration Pilot Program shall be to:*

*(1) Develop, test, and evaluate new models for providing integrated behavioral health services to Medi-Cal beneficiaries with co-occurring substance use disorders and mental health conditions.*

*(2) Provide high-quality, integrated behavioral health services that meet the unique needs of Medi-Cal beneficiaries with co-occurring substance use disorders and mental health conditions in a clinically appropriate manner.*

*(3) Utilize a formal evaluation process and specific performance outcome measures to demonstrate evidence of all of the following:*

*(A) Access to treatment for substance use disorder treatment and specialty mental health services at rates that are comparable to or higher than those in nonpilot counties.*

*(B) Increased quality of care.*

*(C) Program costs that are no higher on average than those for comparable services provided by the Drug Medi-Cal Treatment Program and the Medi-Cal Specialty Mental Health Services program and that are delivered in nonpilot project counties.*

*(4) Identify any necessary changes to the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services program that would be required to facilitate the provision of integrated services and to expand the pilot program statewide.*

*(b) The County Behavioral Health Integration Pilot Program shall be implemented over a five-year period, with at least four years of active implementation and service delivery.*

*(c) No later than one year from the date that this article is effective, selected pilot counties shall implement their programs by commencing the pilot activities specified in their county implementation plan, as described in subdivision (c) of Section 14124.33. In the year prior to program implementation, counties willing to commit to the pilot shall elect to participate in the pilot, the department and the County Behavioral Health*

*Directors Association shall select pilot participants, and the department shall approve county implementation plans.*

*(d) Each pilot program shall conclude four years from its original implementation date.*

**14124.32.**

*(a) An eligible pilot participant shall include any county behavioral health program that has implemented the Drug Medi-Cal organized delivery system, as authorized in the California Medi-Cal 2020 Demonstration pursuant to Article 5.5 (commencing with Section 14184) or a successor demonstration or waiver, as applicable, prior to its County Behavioral Health Integration Pilot implementation date.*

*(b) (1) A selection committee, which shall consist of an equal number of representatives from the department and the County Behavioral Health Directors Association, shall select the pilot participants. The selection committee shall select nine counties as follows:*

*(A) Three counties shall have a population in excess of 1,000,000 residents.*

*(B) Three counties shall have a population between 200,000 and 1,000,000 residents.*

*(C) Three counties shall have a population less than 200,000 residents.*

*(2) If less than two counties in one of these three population-based categories is willing to commit to the pilot program, the department and the County Behavioral Health Directors Association may select additional participants from another population category to ensure that nine county-administered pilot projects are established.*

*(3) Selection criteria shall include, at a minimum, all of the following:*

*(A) Geographic distribution of pilot counties.*

*(B) County readiness to provide integrated behavioral health services, as demonstrated by the presence of existing programs specifically targeted to Medi-Cal beneficiaries with co-occurring substance use and mental health conditions.*

*(c) This article does not prohibit the department, in consultation with the County Behavioral Health Directors Association, from establishing a two-stage selection process by which local pilot project sites are selected on a preliminary basis and final selection of local pilot project sites are contingent upon the county completion of, and departmental approval of, a county implementation plan, as described in subdivision (c) of Section 14124.33.*

**14124.33.**

*A county that administers a pilot project pursuant to this article shall be responsible, at a minimum, for all of the following:*

*(a) Guaranteeing that substance use disorder treatment and mental health services provided pursuant to the pilot program are equivalent to benefits available under the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program. Any modifications to medical necessity or service eligibility criteria proposed under the pilot program shall be approved by the department and shall not hinder an individual's access to covered services.*

*(b) Continuing to meet quality assurance and quality improvement requirements equivalent to those outlined in existing state-county contracts for the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program.*

*(c) (1) Developing, preparing, and submitting to the department an implementation plan that describes the integrated service delivery strategies that the county intends to test and the actions the county will take during the course of the pilot period.*

*(2) An implementation plan may address a phased-in implementation of pilot activities, with a timeline that accounts for the phased-in development of specific strategies to mitigate administrative barriers to integrated service delivery, in partnership with the department as described in Section 14124.34.*

*(d) (1) Implementing the pilot project by providing integrated substance use disorder treatment and specialty mental health services that are funded by the Medi-Cal program at a minimum of one service site located within the borders of the county.*

*(2) A county may, but is not required to, select to implement integrated services either at multiple sites or systemwide, as to include every site and provider within the county's behavioral health delivery system.*

*(e) Submitting required reports on pilot activities and performance outcomes data specified in the evaluation plan developed by the department pursuant to subdivision (e) of Section 14124.34.*

**14124.34.**

*For purposes of administering the County Behavioral Health Integration Pilot Program, the department shall be responsible, at a minimum, for all of the following:*

*(a) Reviewing and approving each county's pilot implementation plan, and posting these plans on the department's internet website.*

*(b) Working with pilot counties and representatives of the County Behavioral Health Directors Association to identify and address administrative barriers to integrated service delivery under the current, bifurcated administrative structure of the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program. By the first day of the fourth year of the five-year pilot period, the department shall authorize counties to implement programmatic changes to the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services program to address all of the following:*

*(1) Integrating or providing dual Medi-Cal program certifications for sites that provide substance use disorder treatment and mental health services under the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program, respectively.*

*(2) Billing and claiming requirements of the programs to allow more flexible reimbursement for the Medi-Cal benefits related to substance use disorder treatment and specialty mental health services that are provided to Medi-Cal beneficiaries with dual diagnoses.*

*(3) Streamlining and integrating quality assurance, quality improvement, and data reporting requirements for substance use disorder treatment and mental health services provided pursuant to the Medi-Cal program.*

*(4) Combining state and county contracts for the Drug Medi-Cal organized delivery system and the Medi-Cal Specialty Mental Health Services program.*

*(5) Promoting best practices for obtaining client consent to share personal health information within an integrated behavioral health program for treatment purposes.*

*(c) Seeking any changes to state law or regulation, as may be necessary, for full implementation of the pilot program.*

*(d) Seeking necessary federal approval, including a Medicaid waiver, for implementation of the pilot program.*

*(e) Collaborating with pilot counties and the County Behavioral Health Directors Association to develop a program evaluation plan and a set of performance outcomes measures for purposes of evaluating the pilot program.*

*(f) Collecting data and reports from pilot counties as specified in the evaluation plan.*

*(g) Delivering an annual evaluation report to the Legislature on the results of the pilot program.*

*(h) (1) Submitting to the Legislature, no more than six months after the last pilot project concludes, a final pilot evaluation report that includes recommendations for statewide implementation of specific integration strategies and any policy changes that are needed to meet the goals of the pilot program throughout the state as a statewide expansion effort.*

*(2) A report to be submitted pursuant to subdivision (g) and paragraph (1) and shall be submitted in compliance with Section 9795 of the Government Code.*

**14124.35.**

*(a) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the*

*department may implement, interpret, or make specific this article by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions.*

*(b) The department may contract with qualified consultants to provide technical assistance to pilot counties, to carry out the departmental responsibilities specified in Section 14124.34, or for any other purpose that furthers the goals of the County Behavioral Health Integration Pilot Program.*

*(c) Contracts entered into pursuant to this article shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.*

**14124.36.**

*(a) For purposes of implementing the County Behavioral Health Integration Pilot Program, the department may seek funding from federal agencies, foundations, or other nongovernmental sources.*

*(b) Costs related to the implementation of the County Behavioral Health Integration Pilot Program shall be limited to administrative costs incurred by the department to implement requirements pursuant to this article.*

*(c) Each county that administers a pilot project shall continue to utilize current behavioral health funding sources, including, but not limited to, the Behavioral Health Subaccount of the Local Revenue Fund 2011 and Medi-Cal funds, such as federal financial participation, to fund substance use disorder treatment and specialty mental health services for Medi-Cal beneficiaries who access integrated behavioral health services under the terms of this pilot program.*

**14124.37.**

*This article shall remain in effect only until January 1, 2026, and as of that date is repealed.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                            |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(AA) – AB 1271 (Diep) Licensing examinations:<br>report |

### **Background:**

Current law provides for the licensure and regulation of professions and vocations by various boards that comprise the Department of Consumer Affairs. AB 1271 (Diep) would require the department, on or before January 1, 2021, to provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains specified information relating to licensing examinations for each licensed profession and vocation under the department's jurisdiction. This bill would require the report to contain the following information:

- Whether licensure requires completion of a board-approved education or training program.
- Whether licensure requires passage of a written or clinical licensing examination.
- Whether an examination fee is required in addition to any other initial licensure or application fees and, if so, the amount of the examination fee.
- To the extent feasible, information on the average length of time between submitting a licensure application and taking the licensing examination.
- Information on average passage rates for the licensing examination and, to the extent feasible, information on the percentage of yearly applicants who ultimately never receive a license due to one or more examination failures.

**Location:** 3/11/2019 Assembly Committee on Business and Professions

**Status:** 3/11/2019 Referred to Committee on Business and Professions

### **Action Requested:**

Staff recommends the Board watch AB 1271 for potential impacts on Board operations and staff workload related to the bill's mandated data collection and reporting.

Attachment: AB 1271 (Diep) Bill Text

AB 1271 - (I) Amends the Law

*SECTION 1.*

*The intent of the Legislature in enacting this act is to seek opportunities to reduce barriers to professional licensing by eliminating licensing examinations that are found largely to duplicate already required formal education and training.*

*SEC. 2.*

*On or before January 1, 2021, the Department of Consumer Affairs shall provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains the following summary information for each licensed profession and vocation under its jurisdiction:*

*(a) Whether licensure requires completion of a board-approved education or training program.*

*(b) Whether licensure requires passage of a written or clinical licensing examination.*

*(c) Whether an examination fee is required in addition to any other initial licensure or application fees and, if so, the amount of the examination fee.*

*(d) To the extent feasible, information on the average length of time between submitting a licensure application and taking the licensing examination.*

*(e) Information on average passage rates for the licensing examination and, to the extent feasible, information on the percentage of yearly applicants who ultimately never receive a license due to one or more examination failures.*

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(BB) – AB 1601 (Ramos) Office of Emergency Services: behavioral health response |

**Background:**

AB 1601 (Ramos) would establish a behavioral health deputy director within the Office of Emergency Services to ensure individuals have access to necessary mental and behavioral health services and supports in the aftermath of a natural disaster or declaration of a state of emergency and would require the deputy director to collaborate with the Director of Health Care Services to coordinate the delivery of trauma-related support to individuals affected by a natural disaster or state of emergency.

**Location:** 4/9/2019 Assembly Committee on Appropriations

**Status:** 4/9/2019 Do pass and be re-referred to the Committee on Appropriations with recommendation: To Consent Calendar

**Votes:** 4/3/2019 Assembly Committee on Governmental Organization (20-0-1)  
4/9/2019 Assembly Committee on Health (15-0-0)

**Action Requested:**

Staff recommends the Board watch AB 1601 (Ramos) for potential impacts on access to mental health services during and after a natural disaster.

Attachment: AB 1601 (Ramos) Bill Text

AB 1601 - (I) Amends the Law

*SECTION 1.*

*Section 8587.14 is added to the Government Code, to read:*

*8587.14.*

*(a) The office shall establish a behavioral health deputy director to ensure individuals have access to necessary mental and behavioral health services and supports in the aftermath of a natural disaster or declaration of a state of emergency.*

*(b) The deputy director shall collaborate with the Director of Health Care Services to coordinate the delivery of trauma-related support to individuals affected by a natural disaster or state of emergency. The deputy director's responsibilities may include, but shall not be limited to, both of the following:*

*(1) Coordinating local behavioral health professionals to provide access to behavioral health services in the aftermath of a natural disaster or declaration of a state of emergency, including ensuring those behavioral health professionals are properly licensed.*

*(2) Ensuring the availability of trauma specialists to train the appropriate local emergency response staff in the aftermath of a natural disaster or declaration of a state of emergency.*

*SEC. 2.*

*Section 8587.15 is added to the Government Code, to read:*

*8587.15.*

*The Director of Health Care Services, in coordination with the office, shall immediately request necessary*

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                   |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(CC) – SB 331 (Hurtado) Suicide-prevention:<br>strategic plans |

**Background:**

Current law, the California Suicide Prevention Act of 2000, authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper training program to reduce the severity, duration, and incidence of suicidal behaviors.

This bill would require counties to create and implement, and update as necessary, a suicide-prevention strategic plan that places particular emphasis on preventing suicide in children who are less than 19 years of age and includes specified components, including long-term suicide prevention goals and the selection or development of interventions to be used to prevent suicide. The bill would require counties, as part of the planning process to, among other things, provide recommendations to individuals and organizations working with youth on early intervention, implementation of crisis management systems, and addressing suicide risk for vulnerable populations. The bill would make these provisions inapplicable to a county that had a suicide-prevention strategic plan on January 1, 2020, that meets these requirements.

**Location:** 4/4/2019 Senate Committee on Appropriations

**Status:** 4/05/2019 Set for hearing April 22.

**Votes:** 4/3/2019 Senate Committee on Health (8-0-1)

**Action Requested:**

Staff recommends the Board watch SB 331 for potential impacts on consumer access to mental health services as part of each counties suicide-prevention strategic plan.

Attachment: SB 331 (Hurtado) Bill Text

## SB 331 - (A) Amends the Law

*SECTION 1.*

*(a) The Legislature finds and declares all of the following:*

*(1) The federal Centers for Disease Control and Prevention reports that suicides are increasing across the United States.*

*(2) Over the 10-year period between 2007 and 2016, California has experienced a constant rise in deaths by suicide, with the exception of one year, 2012, in which there was a slight decrease in deaths by suicide. Over the same 10-year period, almost 40,000 Californians died by suicide.*

*(3) Since 2009, only seven counties in California, the Counties of Contra Costa, Fresno, San Diego, San Mateo, Santa Clara, Solano, and Tuolumne, have adopted a suicide-prevention strategic plan, with two additional counties, the Counties of Marin and Santa Cruz, recently convening work groups to develop a suicide-prevention strategic plan.*

*(4) As part the early intervention component included in the Mental Health Services Act, counties are required to emphasize strategies that reduce suicides.*

*(5) The County of Santa Clara, which has had a concerted suicide-prevention effort since 2010, and has implemented a suicide-prevention strategic plan, has seen an 11 to 14 percent decrease in suicide deaths, while the overall suicide rate in California is increasing.*

*(b) It is the intent of the Legislature in enacting this act to require counties to implement suicide-prevention strategic plans and reduce the suicide rate in California.*

*SEC. 2.*

*Section 4098.6 is added to the Welfare and Institutions Code, to read:*

*4098.6.*

*(a) Counties shall create and implement a suicide-prevention strategic plan. The strategic plan shall place particular emphasis on preventing suicide in children who are less than 19 years of age and shall include, at a minimum, all of the following:*

*(1) A description of the scope of the problem in the county.*

*(2) Long-term suicide-prevention goals.*

*(3) Key risks of, preventive factors for, and protective factors of suicide prevention.*

*(4) Selection or development of interventions to be used to prevent suicide.*

*(5) A plan to evaluate the success of the strategic plan.*

*(b) In developing a suicide-prevention strategic plan, counties shall consult with stakeholders including, but not limited to, schools, health care organizations, youth justice organizations, and other multi-sector teams with the goal of reducing suicides in the counties in which they operate.*

*(c) As part of the strategic-planning process, counties shall provide recommendations to individuals and organizations working with youth on early intervention, implementation of crisis management systems, and addressing suicide risk for vulnerable populations; collect and analyze data; engage in strategic communications; and educate individuals and organizations working with youth on suicide-prevention strategies and local suicide-prevention needs.*

*(d) Counties shall update the suicide-prevention strategic plan as needed to reflect innovations and developments in the field of suicide-prevention.*

*(e) This section does not apply to a county that had a suicide-prevention strategic plan on January 1, 2020, that meets the requirements of this section.*

*(f) A county may, to the extent it is consistent with and authorized by the Mental Health Services Act, use Mental Health Services Act funds to implement this section.*

### **SEC. 3.**

*If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 10, 2019   |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                    |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(DD) – SB 601 (Morrell) State agencies:<br>licenses: fee waiver |

**Background:**

Current law requires various licenses to be obtained by a person before engaging in certain professions or vocations or business activities, including licensure as a healing arts professional by various boards within the Department of Consumer Affairs.

SB 601 (Morrell) would authorize any state agency that issues any business license to reduce or waive any required fees for licensure, renewal of licensure, or the replacement of a physical license for display if a person or business establishes to the satisfaction of the state agency that the person or business has been displaced by a declared federal emergency or proclaimed state emergency. For the purposes of this bill, business license is defined as follows: ““license” includes, but is not limited to, a certificate, registration, or other required document to engage in business.”

**Location:** 4/9/2019 Senate Committee on Business Professions and Economic Development

**Status:** 4/9/2019 From committee: Do pass and re-refer to Committee on Business Professions and Economic Development

**Votes:** 4/9/2019 Senate Committee on Governmental Organization (16-0-0)

**Action Requested:**

Staff recommends the Board watch SB 601 (Morrell) for potential impacts on the Board’s authority to reduce or waive fees required for applications for initial licensure or renewal of a license, and for replacement licenses.

Attachment: SB 601 (Morrell) Bill Text

SB 601 - (A) Amends the Law

*SECTION 1.*

*Section 11009.5 is added to the Government Code, to read:*

*11009.5.*

*(a) Notwithstanding any other law, a state agency that issues any business license may, within one year of the proclamation of an emergency as defined in Section 8558 or a declared federal emergency, reduce or waive any required fees for licensure, renewal of licensure, or the replacement of a physical license for display if a person or business establishes to the satisfaction of the state agency that the person or business has been displaced or affected by the proclaimed or declared emergency.*

*(b) For purposes of this section, "license" includes, but is not limited to, a certificate, registration, or other required document to engage in business.*

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 10, 2019  |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                 |
| <b>SUBJECT</b> | Agenda Item #22(c)(2)(EE) – SB 639 (Mitchell) Medical services:<br>credit or loan |

**Background:**

Current law prohibits a healing arts licensee, or an employee or agent of that licensee from charging treatment or costs to an open-end credit or loan extended by a 3rd party that is arranged for or established in the licensee's office without first providing a specified written treatment plan, a specified written or electronic notice, and a specified list of which treatment and services are being charged. Current law also provides that a person who willfully violates these provisions is subject to specified civil liability.

SB 639 (Mitchell) would also prohibit a licensee or employee or agent of that licensee from charging treatment or costs to an open-end credit or loan that is extended by a third party and that is arranged for, or established in, that licensee's office without providing that plan or list.

**Location:** 4/1/2019 Senate Committee on Judiciary

**Status:** 4/3/2019 Set for hearing April 9.

**Votes:** 4/1/2019 Senate Committee on Business Professions and Economic Development (9-0-0)

**Action Requested:**

Staff recommends the Board watch SB 639 for potential impacts on billing requirements that could affect Board licensees.

Attachment: SB 639 (Mitchell) Bill Text

## SB 639 - (I) Amends the Law

## SECTION 1.

Section 654.3 of the Business and Professions Code is amended to read:

## 654.3.

(a) For purposes of this section, the following definitions shall apply:

*(1) "Deferred interest provision" means a contractual provision that allows for interest to be charged on portions of the original balance that have already been paid off.*

~~(1)~~ (2) "Licensee" means an individual, firm, partnership, association, corporation, limited liability company, or cooperative association licensed under this division or under any initiative act or division referred to in this division.

~~(2)~~ (3) "Licensee's office" means either of the following:

(A) An office of a licensee in solo practice.

(B) An office in which services or goods are personally provided by the licensee or by employees in that office, or personally by independent contractors in that office, in accordance with law. Employees and independent contractors shall be licensed or certified when licensure or certification is required by law.

~~(3)~~ (4) "Open-end credit" means credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

~~(4)~~ (5) "Patient" includes, but is not limited to, the patient's parent or other legal representative.

*(b) It is unlawful for a licensee, or employee or agent of that licensee, to offer an open-end credit or loan that contains a deferred interest provision.*

~~(b)~~ (c) It is unlawful for a licensee, or employee or agent of that licensee, to charge treatment or costs to an open-end credit or loan, that is extended by a third party and that is arranged for, or established in, that licensee's office, before the date upon which the treatment is rendered or costs are ~~incurred,~~ incurred. *It is also unlawful for a licensee, or employee or agent of that licensee, to charge treatment or costs to an open-end credit or loan, that is extended by a third party and that is arranged for, or established in, that licensee's office,* without first providing the patient with a treatment plan, as required by subdivision ~~(e)~~ (f) and a list of which treatment and services are being charged in advance of rendering or incurring of costs.

~~(c)~~ (d) A licensee shall, within 15 business days of a patient's request, refund to the lender any payment received through credit or a loan extended by a third party that is arranged for, or established in, that licensee's office for treatment that has not been rendered or costs that have not been incurred.

(d) (e) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan extended by a third party for a patient without first providing the following written or electronic notice, on one page or screen, respectively, in at least 14-point type, and obtaining a signature from the patient:

"Credit or Loan for Health Care Services

The attached application and information is for a credit ~~card/line of credit~~ *card* or loan to help you ~~finance~~ *pay for* your health care treatment. You should know that:

You are applying for a ~~credit card/line of credit~~ *credit card* or a ~~loan~~ *loan* for \$\_\_\_\_\_.

You do not have to apply for the credit ~~card/line of credit or~~ *card or the* loan. You may pay your health care provider for treatment in another manner.

This credit ~~card/line of credit~~ *card* or loan is not a payment plan with the provider's ~~office; it~~ *office. It* is credit with, or a loan made by, [name of company issuing the credit ~~card/line of credit~~ *card* or loan]. Your health care provider does not work for this company.

Before applying for this credit ~~card/line of credit~~ *card* or loan, you have the right to a written treatment plan from your health care ~~provider that includes the~~ *anticipated provider. This plan must include the expected* treatment to be provided and the estimated costs of each service.

~~If you are approved for a credit card/line of credit or loan, your~~ *Your* health care provider ~~can only charge treatment and laboratory costs to that credit card/line of credit or loan when you get the treatment or the health care provider incurs costs unless your health care provider has first given you a list of treatments that you are paying for in advance and the cost for each treatment or service.~~ *cannot charge your credit card or loan account before you get treatment.*

~~You~~ *If you do not get treatment, you* have the right to ~~receive a credit to~~ *have* your credit ~~card/line of credit~~ *card* or loan account refunded for any costs charged ~~to the credit card/line of credit or loan for treatment that has not been rendered or costs that your health care provider has not incurred.~~ *for that treatment.* Your health care provider must refund the amount of the charges to the lender within 15 business days of your ~~request, after which the lender will credit your account.~~ *request. The lender must take refunded charges off your account. Your health care provider may still charge costs spent preparing for your treatment if you change your mind.*

Please read carefully the terms and conditions of this credit ~~card/line of credit or loan,~~  
~~including any promotional offers.~~ *card or loan.*

You may be required to pay interest rates on the amount charged to the credit ~~card/line~~  
~~of credit~~ *card* or the amount of the loan. If you ~~miss a payment or do not pay on~~  
~~time,~~ *pay late*, you may have to pay a penalty ~~on the entire cost of your procedure~~ and  
a higher interest rate.

You may use this credit ~~card/line of credit~~ *card* or loan ~~for payments toward~~  
~~subsequent to pay for future~~ health care services.

If you do not pay the money that you owe ~~the company that provides you with a credit~~  
~~card/line of credit~~ *on the credit card* or loan, your missed payments can ~~appear on your~~  
~~credit report~~ *be reported* and could hurt your credit rating. You could also be sued.

[Patient's Signature]"

~~(e)~~ *(f)* Prior to arranging for or establishing credit or a loan extended by a third party, a licensee shall give a patient a written treatment plan. The treatment plan shall include each anticipated service to be provided and the estimated cost of each service. If a patient is covered by a private or government medical benefit plan or medical insurance, from which the licensee takes assignment of benefits, the treatment plan shall indicate the patient's private or government-estimated share of cost for each service. If the licensee *accepts Medi-Cal, the treatment plan shall indicate if Medi-Cal would cover an alternate, medically appropriate service. If the licensee* does not take assignment of benefits from a patient's medical benefit plan or insurance, the treatment plan shall indicate that the treatment may or may not be covered by a patient's medical benefit or insurance plan, and that the patient has the right to confirm medical benefit or insurance information from the patient's plan, insurer, or employer before beginning treatment.

~~(f)~~ *(g)* A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan extended by a third party for a patient with whom the licensee, or an employee or agent of that licensee, communicates primarily in a language other than English that is one of the Medi-Cal threshold languages, unless the written notice information required by subdivision ~~(d)~~ *(e)* is also provided in that language.

~~(g)~~ *(h)* A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide.

~~(h)~~ *(i)* A patient who suffers any damage as a result of the use or employment by any person of a method, act, or practice that willfully violates this section may seek the relief provided by Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4 of Division 3 of the Civil Code.

(j) The rights, remedies, and penalties established by this article are cumulative, and shall not supersede the rights, remedies, or penalties established under other laws.

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                    |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(A) – AB 5 (Gonzalez) Worker status:<br>independent contractors |

**Background:**

Current law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee. Current law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is independent contractor.

AB 5 (Gonzalez) would state the intent of the Legislature to include provisions within this bill that would codify the decision in the *Dynamex* case and clarify its application.

The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code, unless another definition or specification of “employee” is provided. The bill would codify existing exemptions for specified professions that are not subject to wage orders of the Industrial Welfare Commission or the ruling in the *Dynamex* case. The bill would state that its provisions do not constitute a change in, but are declaratory of, existing law.

**Location:** 4/04/2019 Assembly Committee on Appropriations

**Status:** 4/04/2019 Do pass and re-refer to Committee on Appropriations

**Votes:** 4/04/2019 Assembly Labor and Employment Committee (5-0-2)

**Action Requested:**

Staff recommends the Board watch AB 5 for potential impacts on the employment relationship the bill could have on Psychologists and their Psychological Assistants.

Attachment: AB 5 (Gonzalez) Bill Text

## AB 5 - (A) Amends the Law

**SECTION 1.**

*The Legislature finds and declares all of the following:*

- (a) On April 30, 2018, the California Supreme Court issued a unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903.*
- (b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers compensation, Social Security, unemployment, and disability insurance.*
- (c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.*
- (d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903, and would clarify the decision's application in state law.*

**SEC. 2.**

*Section 2750.3 is added to the Labor Code, to read:*

**2750.3.**

*(a) For purposes of the provisions of this code, where another definition or specification for the term "employee" is not otherwise provided, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee unless the hiring entity demonstrates that all of the following conditions are satisfied:*

- (1) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.*
- (2) The person performs work that is outside the usual course of the hiring entity's business.*
- (3) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.*

*(b) This section and the holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903, do not apply to the following occupations as defined below, and instead, for these occupations only, the employment relationship shall be governed by the test adopted by the California Supreme Court in the case of *S. G. Borello & Sons, Inc. v Department of Industrial Relations* (1989) 48 Cal.3d 341.:*

- (1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), and Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.*
- (2) A physician and surgeon licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an*

*entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code.*

*(3) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.*

*(4) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.*

*(c) The addition of Section 2750.3 to the Labor Code made by this act does not constitute a change in, but is declaratory of, existing law.*

*SEC. 3.*

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(B) – AB 289 (Fong) California Public Records Act Ombudsman |

**Background:**

This bill would establish, within the California State Auditor's Office, the California Public Records Act Ombudsman. The bill would require the California State Auditor to appoint the ombudsman subject to certain requirements. The bill would require the ombudsman to receive requests for review from members of the public who believe that a state agency improperly denied a public records request made by that member of the public pursuant to the California Public Records Act. The bill would require the ombudsman to create a process to that effect, and would authorize a member of the public to submit a request for review to the ombudsman consistent with that process. The bill would require the ombudsman to make a determination on a request for review within 30 business days, and would authorize the ombudsman to require the state agency to disclose the record if the ombudsman determines that it was improperly denied.

The bill would require the ombudsman to report to the Legislature, on or before January 1, 2021, and annually thereafter, on, among other things, the number of requests for review the ombudsman has received in the prior year.

**Location:** Assembly Committee on Accountability and Administrative Review

**Status:** 3/25/2019 Re-referred to Committee on Accountability and Administrative Review

**Votes:** None

**Action Requested:**

Staff recommends the Board watch AB 289 for potential impacts on the requirements of the Public Records Act and on Board processes related to requests made under the Public Records Act.

Attachment: AB 289 (Fong) Bill Text

## AB 289 - (A) Amends the Law

**SECTION 1.**

*Article 5 (commencing with Section 8549) is added to Chapter 6.5 of Division 1 of Title 2 of the Government Code, to read:*

*Article 5. California Public Records Act Ombudsman  
8549.*

*For purposes of this article, the following terms have the following meanings:*

*(a) "California Public Records Act" means the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).*

*(b) "Member of the public" has the same meaning as defined in Section 6252.*

*(c) "Ombudsman" means the California Public Records Act Ombudsman created pursuant to this article.*

*(d) "State agency" has the same meaning as defined in Section 6252.  
8549.1.*

*(a) There is, within the California State Auditor's Office, a California Public Records Act Ombudsman. The ombudsman shall receive requests for review from members of the public who believe that a state agency improperly denied a request made by that member of the public pursuant to the California Public Records Act.*

*(b) (1) (A) The ombudsman shall be appointed by the California State Auditor. The appointee shall have expertise in the California Public Records Act.*

*(B) In the event of a vacancy or if the ombudsman is unable to fulfil the duties of the ombudsman for a period of 30 days, the California State Auditor shall appoint a new ombudsman within 30 days.*

*(2) The California State Auditor shall provide necessary staff to the ombudsman to perform the functions and carry out the objectives of the ombudsman.*

*(c) (1) The ombudsman shall create a process that allows members of the public to request a review of a denial of a public records request by a state agency pursuant to the California Public Records Act.*

*(2) A member of the public who believes that a state agency improperly denied a public records request made by that member of the public may, in the form and manner prescribed by the ombudsman pursuant to paragraph (1), submit a request for the ombudsman to review that denial.*

*(3) (A) The ombudsman shall respond to a request to review a denial within 30 business days.*

*(B) If the ombudsman determines that the state agency improperly denied disclosure of the public record or records, the office of the ombudsman may require the state agency to provide the requesting member of the public the public record or records.*

*(4) A state agency that is the subject of a request to review shall provide the ombudsman access to all relevant information, documents, and other records that the ombudsman requires to make a determination on the request to review a denial.*

*(5) The ombudsman shall not disclose any records that are exempt from disclosure pursuant to the California Public Records Act.*

*(d) (1) On or before January 1, 2021, and every year thereafter, the ombudsman shall provide a report to the Legislature on all of the following:*

*(A) The activities of the ombudsman in the prior year.*

*(B) The number of requests to review that were submitted to the ombudsman in the prior year.*

*(C) Any proposals, both legislative and administratively, that would allow the ombudsman to function more independently and provide more transparency to state agencies, departments, offices and other entities.*

*(2) The report shall comply with Section 9795.*

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                               |
| <b>SUBJECT</b> | Agenda Item #22(b)(3)(C) – AB 862 (Kiley) Department of Motor Vehicles: offices |

### **Background:**

Previously, this bill would have removed boards' abilities to revoke or suspend a license because the licensee is delinquent, or has defaulted, on a student loan.

On April 4, 2019, this bill was amended and is now a bill about the Department of Motor Vehicles.

**Location:** 4/04/2019 Assembly Committee on Business and Professions

**Status:** 4/04/2019 From committee chair, with author's amendments: Amend, and re-refer to Committee on Business and Professions

### **Action Requested:**

No action is required at this time. Staff will no longer be watching AB 862.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                             |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(D) – AB 994 (Mathis) Business license fees:<br>veterans |

### **Background:**

Existing law exempts every soldier, sailor, or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from the payment of any license tax or fee imposed by any county or the state for hawking, peddling, or vending any goods, wares, or merchandise owned by that soldier, sailor, or marine, except as specified, and requires the county board of supervisors to issue, without cost, to the soldier, sailor, or marine, a license therefor.

This bill would revise that provision to exempt any veteran who has served in any branch of the United States Armed Forces and has been honorably discharged from active service and who owns a business by at least 51 percent from the payment of any license tax or fee imposed by any county or the state, and would require the county board of supervisors to issue a license to the veteran without cost.

**Location:** 3/25/2019 Assembly Committee on Local Government

**Status:** 3/25/2019 Re-referred to Committee on Local Government

### **Action Requested:**

No action is required at this time. Now that AB 994 relates to business licenses and their fees, staff will no longer be watching this bill.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(E) – AB 1132 (Gabriel) Telecommunications:<br>caller identification fraud |

**Background:**

This bill would prohibit a caller from entering, or causing to be entered, false government information into a caller identification system with the intent to mislead, cause harm, deceive, or defraud the recipient of the call. The bill would prohibit a person or entity from making a call knowing that false government information was entered into the caller identification system with the intent to mislead, cause harm, deceive, or defraud the recipient of the call. The bill would make the violation of these prohibitions subject to a civil penalty of up to \$10,000 for each violation. The bill would authorize a city attorney, district attorney, or the Attorney General to bring an action to enforce the bill's prohibitions and, if in investigating a complaint over the unlawful use of an automatic dialing announcing device the commission determines that a violation of these prohibitions may have occurred, the bill would require the commission to give notice of the potential violation to the district attorney for the county in which the call was received and to the Attorney General. The bill would provide that its requirements and remedies are in addition to any other applicable law prohibiting the same or similar activity.

**Location:** 3/26/2019 Assembly Committee on Communications and Conveyance

**Status:** 3/26/2019 Re-referred to the Assembly Committee on Communications and Conveyance.

**Action Requested:**

No action is required at this time. As the bill no longer relates to the Information Practices Act or impacts the Board, staff will no longer watch AB 1132 (Gabriel).

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(F) – AB 1184 (Gloria) Public records: writing transmitted by electronic mail: retention. |

**Background:**

Current law under the California Public Records Act (PRA) requires a public agency, defined to mean any state or local agency, to make public records available for inspection, subject to certain exceptions. The act requires any agency that has any information that constitutes a public record not exempt from disclosure, to make that public record available in accordance with certain procedures. Existing law authorizes cities, counties, and special districts to destroy or to dispose of duplicate records that are less than two years old when they are no longer required by the city, county, or special district, as specified.

This bill would, notwithstanding any law, require public agencies to retain and preserve energy writing transmitted by electronic mail for a period of at least 2 years.

**Location:** 3/26/2019 Assembly Committee on Judiciary

**Status:** 3/26/2019 Re-referred to Committee on Judiciary

**Votes:** None

**Action Requested:**

No action is required at this time. Staff will continue to watch AB 1184 for potential impacts on Board requirements, policies and procedures relating to requests made under the PRA.

Attachment: AB 1184 (Gloria) Bill Text

AB 1184 - (A) Amends the Law

*SECTION 1.*

*Section 6253.32 is added to the Government Code, immediately following Section 6253.31, to read:*

*6253.32.*

*Notwithstanding any other law, a public agency shall, for the purpose of this chapter retain and preserve, for at least 2 years, every writing transmitted by electronic mail.*

*SEC. 2.*

*The Legislature finds and declares that Section 1 of this act, which adds Section 6253.32 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

*This act furthers the right of public access to the writings of local public officials and local agencies by requiring that public agencies preserve for at least 2 years every writing transmitted by electronic mail.*

*SEC. 3.*

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.*

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## MEMORANDUM

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|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                         |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(G) – AB 1201 (Boerner Horvath) Unfair Practices Act |

**Background:**

Current law defines unfair competition to mean and include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public and provides that any person who engages, has engaged, or proposes to engage in unfair competition is liable for a civil penalty. Current law requires that one-half of a penalty collected as the result of an action brought by the Attorney General be paid to the treasurer of the county in which the judgment was entered and the other half to the General Fund. AB 1201 (Boerner Horvath) would make a nonsubstantive change to that provision.

**Location:** 2/21/2019 Assembly

**Status:** 2/22/2019 From printer. May be heard in committee March 24.

**Action Requested:**

Staff recommends the Board watch AB 1201 for potential impacts to the laws governing the Board's enforcement of the Unfair Practices Act.

Attachment: AB 1201 (Boerner Horvath) Bill Text

## AB 1201 - (I) Amends the Law

## SECTION 1.

Section 17206 of the Business and Professions Code is amended to read:

## 17206.

## Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was ~~entered~~, *entered* and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3. Notwithstanding Section 13340 of the Government Code, any civil penalties deposited in the fund pursuant to the National Mortgage Settlement, as provided in Section 12531 of the Government Code, are

continuously appropriated to the Department of Justice for the purpose of offsetting General Fund costs incurred by the Department of Justice.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(H) – AB 1264 (Petrie-Norris) Healing arts licensees: self-administered hormonal contraceptives |

### **Background:**

Existing law authorizes certain healing arts licensees to use a self-screening tool that will identify patient risk factors for the use of self-administered hormonal contraceptives by a patient, and, after appropriate prior examination, to prescribe, furnish, or dispense self-administered hormonal contraceptives to a patient.

This bill would specify that “appropriate prior examination” for purposes of those provisions does not require a real-time interaction between the patient and the healing arts license.

**Location:** 3/27/2019 Assembly Committee on Business and Professions

**Status:** 3/27/2019 Re-referred to Committee on Business and Professions

### **Action Requested:**

No action is required at this time. As this bill no longer impacts the Department of Consumer Affairs generally or the Board, staff will no longer be watching AB 1264 (Petrie-Norris).

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(I) – AB 1474 (Wicks) Community mental health services: vocational rehabilitation systems |

### **Background:**

Existing law states the intent of the Legislature to encourage the establishment in each county of a system of community vocational rehabilitation and employment services for persons with serious psychiatric disabilities and authorizes counties to implement the community vocational rehabilitation system with existing county allocations and funds available from the Department of Rehabilitation and other state and federal agencies. Existing law sets forth the principles that should guide the development of community vocational rehabilitation systems, including that staffing patterns at all levels should reflect the cultural, linguistic, ethnic, racial, disability, sexual, and other social characteristics of the community the program serves.

This bill would revise the principles regarding staffing patterns to also state that they should reflect the age and other demographic or social characteristics of the community the program serves.

**Location:** 4/1/2019 Assembly Committee on Human Services

**Status:** 4/1/2019 Re-referred to Committee on Human Services

### **Action Requested:**

No action is required at this time. Due to the amendments made to the bill, staff will no longer be watching AB 1474 (Wicks).

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(J) – AB 1752 (Kalra) Political Reform Act of 1974: committees: statement of organization. |

### **Background:**

The Political Reform Act of 1974 requires the Secretary of State to charge each committee that is required to file a specified statement of organization an annual fee of \$50 until the committee is terminated. The act subjects a committee that fails to timely pay that fee to a penalty equal to three times the amount of the fee. The act requires the Fair Political Practices Commission to enforce these provisions.

This bill would prohibit the Commission from administering any penalty other than that described above for a committee's failure to timely pay the annual fee.

**Location:** 3/25/2019 Assembly Committee on Elections and Redistricting

**Status:** 3/25/2019 Re-referred to Committee on Elections and Redistricting

### **Action Requested:**

No action is required at this time. Due to the amendments made to the bill, staff will no longer be watching AB 1752 (Kalra).

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator          |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(K) – SB 144 (Mitchell) Criminal fees |

**Background:**

Current law imposes various fees contingent upon a criminal arrest, prosecution, or conviction for the cost of administering the criminal justice system, including administering probation and diversion programs, collecting restitution orders, processing arrests and citations, administering drug testing, incarcerating inmates, facilitating medical visits, and sealing or expunging criminal records.

SB 144 (Mitchell) would enact legislation to eliminate the range of administrative fees that courts are authorized to impose to fund elements of the criminal legal system, and to eliminate all outstanding debt incurred because of the imposition of administrative fees.

**Location:** 4/3/2019 Senate Committee on Public Safety

**Status:** 4/4/2019 Set for hearing April 23, 2019.

**Action Requested:**

No action is required at this time. Due to the amendments made to the bill, staff will no longer be watching SB 144 (Mitchell).

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 8, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(L) – SB 180 (Chang) Gene therapy kits:<br>advisory notice and labels |

### **Background:**

Existing law governs various business practices in this state, including certain laws relating to health and safety, such as a prohibition against the use by a business establishment of polyethylene plastic bags large enough to fit over a child's head as a container for products, as specified.

This bill would prohibit a person from selling in this state a gene therapy kit, as defined, unless the seller includes a notice on the seller's internet website that is displayed to the consumer prior to the point of sale, and on a label on the package, stating that the kit is not for self-administration. The bill would also include legislative findings and declarations.

**Location:** 4/3/2019 Senate Committee on Judiciary.

**Status:** 4/5/2019 Set for hearing April 30, 2019

### **Action Requested:**

No action is required at this time. Due to the amendments made to this bill, staff will no longer be watching SB 180 (Chang).

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator             |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(M) – SB 181 (Chang) Healing arts boards |

**Background:**

Current law creates various regulatory boards within the Department of Consumer Affairs. Current law authorizes health-related boards to adopt regulations requiring licensees to display their licenses in the locality in which they are treating patients and to make specified disclosures to patients. SB 181 (Chang) would make nonsubstantive changes to that license display and disclosure provision.

**Location:** 2/6/2019 Senate Committee on Rules.

**Status:** 2/6/2019 Referred to Senate Committee on Rules.

**Action Requested:**

Staff recommends the Policy and Advocacy Committee watch SB 181 for potential impacts on the Board's authority to require licensees to post specified information in their primary practice location.

Attachment: SB 181 (Chang) Bill Text

## SB 181 - (I) Amends the Law

## SECTION 1.

Section 104 of the Business and Professions Code is amended to read:

104.

All boards or other regulatory entities within the department's jurisdiction that the department determines to be health-related may adopt regulations to require licensees to display their licenses or registrations in the locality in which they are treating patients, and to inform patients as to the identity of the regulatory agency ~~they~~ *the patients* may contact if they have any questions or complaints regarding the licensee. In complying with this requirement, those boards may take into consideration the particular settings in which licensees practice, or other circumstances ~~which~~ *that* may make the displaying or providing of information to the consumer extremely difficult for the licensee in their particular type of practice.

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator                                    |
| <b>SUBJECT</b> | Agenda Item #7(c)(3)(N) – SB 342 (Hertzberg) Unfair Competition Law: ticket websites |

**Background:**

This bill would prohibit, as a violation of the Unfair Competition Law (UCL), a ticket website operator, as defined, from using specified elements, including the name of a specific team, league, or venue where live entertainment events are held, in the uniform resource locator (URL) of a ticket website, as defined. Under the bill, the prohibitions would not apply to a person who acts on behalf of, and with the consent of, the venue, event, artist, or sports team for which the ticket website is created. The bill would prohibit a ticket website from similarly using a trademark that it does not own and would create a private civil right of action for a violation of these provisions.

**Location:** 4/3/2019 Senate Committee on Judiciary

**Status:** 4/5//2019 Set for hearing April 30.

**Action Requested:**

No action is required at this time. Due to the amendments made to this bill, staff will no longer be watching SB 342 (Hertzberg).

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## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator             |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(O) – SB 546 (Hueso) Unlicensed activity |

**Background:**

Current law establishes the Department of Consumer Affairs and requires boards within the department to license and regulate various professions and vocations. Under current law, the Legislature finds and declares that unlicensed activity in the professions and vocations regulated by the department is a threat to the health, welfare, and safety of the people of the State of California. SB 546 (Hueso) would make a nonsubstantive change to that provision.

**Location:** 3/7/2019 Senate Committee on Rules

**Status:** 3/7/2019 Referred to Committee on Rules

**Action Requested:**

Staff recommends the Board watch SB 546 (Hueso) for potential impacts on the Board's enforcement program.

Attachment: SB 546 (Hueso) Bill Text

SB 546 - (I) Amends the Law

SECTION 1.

Section 145 of the Business and Professions Code is amended to read:

145.

The Legislature finds and declares that:

(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of ~~the State of California.~~ *this state.*

(b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.

(c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 9, 2019   |
| <b>TO</b>      | Board of Psychology   |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator   |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(P) – SB 700 (Roth) Business and professions:<br>noncompliance with support orders and tax delinquencies |

**Background:**

Under current law, each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by specified entities, who is not in compliance with a judgment or order for child or family support, is subject to support collection and enforcement proceedings by the local child support agency. Existing law also makes each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies subject to suspension or revocation of the license or renewal by a state governmental licensing entity, as specified. SB 700 (Roth) would make nonsubstantive changes to those provisions.

**Location:** 3/14/2019 Senate Committee on Rules

**Status:** 3/14/2019 Referred to Committee on Rules.

**Action Requested:**

Staff recommends the Board watch SB 700 for potential impacts of the bill on license renewal processes, including those changes to how the Department of Consumer Affairs' Family Support Unit handles these delinquencies and the holds they place on renewal applications.

Attachment: SB 700 (Roth) Bill Text

## SB 700 - (I) Amends the Law

## SECTION 1.

Section 31 of the Business and Professions Code is amended to read:

## 31.

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the ~~Bureau~~ *Department* of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

(d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.

(e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay ~~his or her~~ *the licensee's* state tax obligation and that ~~his or her~~ *the* license may be suspended if the state tax obligation is not paid.

(f) For purposes of this section, "tax obligation" means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

## MEMORANDUM

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| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator  |
| <b>SUBJECT</b> | Agenda Item #22(c)(3)(Q) – SB 749 (Durazo) California Public Records Act: trade secrets: reverse public records actions. |

### **Background:**

Under existing law, a person may seek injunctive or declaratory relief or a writ of mandate to enforce their right to inspect or receive a copy of a public record, as specified. Under existing case law, an agency's decision to release a public record pursuant to the California Public Records Act is reviewable by a petition for a writ of mandate on the basis that the public record was confidential, which is known as a reverse public records action.

This bill would require the requester, as defined, to be named as a real party in interest in a reverse public records action, and would require a court to allow the requester to participate fully on the merits of the reverse public records action. The bill would require the person who initiated the reverse public records action to pay the requester's court costs and reasonable attorney's fees if the court denies the petition seeking to prevent the public agency from disclosing the record at issue. The bill would require a public agency to pay court costs and reasonable attorney's fees to the requester under specified circumstances.

**Location:** 4/3/2019 Senate Committee on Judiciary

**Status:** 4/5/2019 Set for hearing April 23

### **Action Requested:**

No action is required at this time. Due to the amendments made to this bill, staff will no longer be watching SB 749 (Durazo).

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## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 9, 2019  |
| <b>TO</b>      | Board of Psychology  |
| <b>FROM</b>    | Cherise Burns<br>Central Services Manager  |
| <b>SUBJECT</b> | Agenda Item #22(d) – Update on California Psychological Association<br>Legislative Proposal Regarding New Registration Category for<br>Psychological Testing Technicians |

### **Background:**

At its March 18, 2019 Policy and Advocacy Committee (Committee) Meeting, the Committee received a written update from California Psychological Association (CPA) on their legislative proposal regarding a new registration category for psychological testing technicians.

The Committee discussed the update on CPA's proposal and thought the discussion of this issue was very valuable. There was a general consensus amongst Committee members regarding the merit of oversight over these professionals, but the Committee would want to see language before recommending a formal position to the full Board. The Committee could not provide any further support for the concept without knowing the technical details of the proposal regarding licensure of this new category and the operational and fiscal impacts of those provisions. The Committee directed staff to continue to provide technical assistance to CPA on this issue as they develop their sunrise application.

### **Action Requested:**

This is for Informational purposes only. No action is required at this time.

Attachment: CPA Letter Regarding Psychological Testing Technicians



March 11, 2019

California Board of Psychology  
1625 North Market Blvd., Suite N-215  
Sacramento, CA 95834

**Re: Psychological and Neuropsychological Testing Technicians**

Dear Board Members:

At your February 2019 meeting, CPA requested that you consider the issue of psychological and neuropsychological testing technicians at a future Board of Psychology meeting. We appreciate that you agreed to consider this topic and that it has been placed on the agenda for your Policy and Advocacy Committee meeting on March 18 and for the full Board of Psychology meeting on April 24-26. We also appreciate the efforts of the Board staff to facilitate discussion of this topic.

Issue:

The use of testing technicians to administer and score psychological and neuropsychological tests under the supervision of a licensed psychologist is within well-established standards of practice and is an effective, efficient way to expand the availability of testing services. Testing technicians are recognized by many states' laws and by the following entities: The National Association of Neuropsychologists;<sup>i</sup> the American Academy of Neuropsychology;<sup>ii</sup> the American Psychological Association Division 40 Society for Clinical Neuropsychology;<sup>iii</sup> and the Centers for Medicare and Medicaid Services.<sup>iv v</sup>

California law currently makes no specific reference to psychological or neuropsychological testing technicians. Psychological test administration is included within psychology's scope of practice<sup>vi</sup> and there is no clear authorization for the use of testing technicians to provide such services.

CPA was recently contacted by the leaders of its Neuropsychology Division (Division 8) with a request to address this problem. Division 8 recommended seeking changes to California law to define and allow the use of testing technicians. They emphasized that such legislation would benefit the public by substantially increasing access to needed services.

Proposed solution:

CPA is seeking to sponsor legislation that would specifically allow the use of supervised testing technicians with appropriate credentials to administer and score psychological and neuropsychological tests. Initial meetings with legislative offices indicated that the most promising approach would be to create a registration system for testing technicians under the Board of Psychology in order to enhance

consumer protections while increasing access to testing services. These meetings also made it clear that gaining the support of the Board of Psychology would be crucial to moving such legislation forward.

Request for Committee and Board support:

CPA respectfully requests that you consider the issue of testing technicians and support our proposed solution, which is to develop legislation to implement a registration system under the Board of Psychology. We anticipate that any registration system will include the following minimum requirements for technicians: bachelor's degree in psychology; training in ethics; training in test administration and scoring; and a background check (fingerprinting). The legislation would specifically permit properly registered technicians to provide administration and scoring of psychological and neuropsychological tests under the direct supervision of a licensed psychologist.

CPA regrets being unable to send a representative to your March 18 meeting because of our annual lobby day. However, both CPA staff and expert neuropsychologists are planning to attend the full Board meeting next month. In the meantime, any feedback you may be able to provide would be greatly appreciated. Also, please let us know if you would like additional information.

Sincerely,



Elizabeth Winkelman, JD, PhD  
Director, Professional Affairs

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<sup>i</sup> The Use of Neuropsychology Test Technicians in Clinical Practice: Official Statement of the National Academy of Neuropsychology <https://www.nanonline.org/docs/PAIC/PDFs/NANPositionTechs.pdf>

<sup>ii</sup> American Academy of Clinical Neuropsychology Policy on the Use of Non-Doctoral-Level Personnel in Conducting Clinical Neuropsychological Evaluations <https://www.tandfonline.com/doi/abs/10.1076/1385-4046%28199911%2913%3A04%3B1-Y%3BFT385>

<sup>iii</sup> Report of the APA Division 40 Task Force on Education, Accreditation and Credentialing: Guidelines Regarding the Use of Nondoctoral Personnel in Clinical Neuropsychological Assessment <https://www.apaservices.org/practice/reimbursement/billing/cpt/2006-toolkit-div40.pdf>

<sup>iv</sup> Psychological and Neuropsychological Testing CPT® Codes & Descriptions <https://www.apaservices.org/practice/reimbursement/health-codes/testing/codes-descriptions.pdf>

<sup>v</sup> Up-to-Code: Understanding the new testing codes 2019 <https://www.apaservices.org/practice/reimbursement/health-codes/testing/examining-testing-codes>

<sup>vi</sup> Bus. & Prof. Code §2903 [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=2903](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=2903).

## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | April 8, 2019                                     |
| <b>TO</b>      | Board of Psychology                               |
| <b>FROM</b>    | Jason Glasspiegel<br>Central Services Coordinator |
| <b>SUBJECT</b> | Agenda Item #24 – Regulatory Update               |

The following is a list of the Board's regulatory packages, and their status in the regulatory process:

a) **Update on 16 CCR Sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

This package is in the Initial Review Stage. Staff incorporated the feedback provided by Legal Counsel's review and resubmitted the package to Board Legal Counsel on January 8, 2019. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA's Division of Legislative and Regulatory Review, and DCA Chief Counsel.

b) **Update on 16 CCR Section 1396.8 – Standards of Practice for Telehealth**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

This package was provided to the Department of Consumer Affairs (DCA) on March 15, 2019 and is now in the Initial Departmental Review Stage. This stage involves a review by DCA's legal, budget, and executive offices, and the State's Business Consumer Services and Housing Agency (Agency). Upon approval by DCA and Agency, staff will notice this package for a 45-day comment period and subsequent hearing.

c) **Update on 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

This package is in the Initial Review Stage. Staff received feedback from Legal Counsel on March 8, 2019, and are working to incorporate the recommended changes prior to submitting the package back to legal. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA's Division of Legislative and Regulatory Review, and DCA Chief Counsel.

d) **Update on 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

This package is in the Initial Review Stage. Staff incorporated the feedback provided by Legal Counsel's review and resubmitted the package to Board Legal Counsel on March 8, 2019. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA's Division of Legislative and Regulatory Review, and DCA Chief Counsel.

e) **Update on 16 CCR Sections 1395.2 – Disciplinary Guidelines Related to Substance Abusing Licensees**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

This package has been placed on hold due to the necessity to incorporate the changes by DCA to the Uniform Standards for Substance Abusing Licensees and incorporate AB 2138 related changes to the Disciplinary Guidelines prior to submission.

f) **Update on 16 CCR Sections 1394, 1395, 1395.1, 1392 – Substantial Relationship Criteria, Rehabilitation Criteria for Denials and Reinstatements, Rehabilitation Criteria for Suspensions and Revocations**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

Staff is currently preparing this regulatory package, and will submit it to Board Legal Counsel by the end of April 2019.

g) **Addition to 16 CCR Sections 1391.13, and 1391.14 – Inactive Psychological Assistant Registration and Reactivating A Psychological Assistant Registration**

|                              |                             |                             |                                     |                                    |                           |                              |                                       |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|
| Preparing Regulatory Package | Initial Departmental Review | Notice with OAL and Hearing | Notice of Modified Text and Hearing | Preparation of Final Documentation | Final Departmental Review | Submission to OAL for Review | OAL Approval and Board Implementation |
|------------------------------|-----------------------------|-----------------------------|-------------------------------------|------------------------------------|---------------------------|------------------------------|---------------------------------------|

Staff is currently preparing this regulatory package, and will submit it to Board Legal Counsel upon completion.

**Action Requested:**

These items are for informational purposes only. No action is required at this time.

## MEMORANDUM

|                |  |
|----------------|--|
| <b>DATE</b>    | April 4, 2019  |
| <b>TO</b>      | Board Members  |
| <b>FROM</b>    | Sandra Monterrubio, Enforcement Program Manager<br>Board of Psychology |
| <b>SUBJECT</b> | Enforcement Report, Agenda Item 25                                     |

Please find attached the Overview of Enforcement Activity conveying complaint, investigation, and discipline statistics to date for the current fiscal year.

The Board has hired two new Enforcement Analysts. The Enforcement Analysts are responsible for analyzing consumer complaints, performing desk investigations, referring cases for formal investigation, reviewing Accusations and negotiating Stipulated Settlements with the Office of the Attorney General. Currently, the Enforcement Unit is fully staffed.

### Complaint Program

Since July 1, 2018, the Board has received 715 complaints. All complaints received are opened within eight (8) days and assigned an enforcement analyst.

### Citation Program

Since July 1, 2018, the Board has issued 22 enforcement citations. Citation and fines are issued for minor violations.

### Discipline Program

Since July 1, 2018, the Board has referred 38 cases to the Office of the Attorney General for formal discipline.

### Probation Program

Enforcement staff is currently monitoring 42 active probationers and 22 tolled probationers. Of the 42 probationers, two have been referred to the Office of the Attorney General for additional discipline.

At the Enforcement Committee Meeting in February Deputy Attorney General and Board Liaison, Joshua Templet, and Department of Consumer Affairs Legal Counsel, Norine Marks, discussed whether the Board should consider making certain decisions

precedential to provide guidance in prosecuting cases. Under the Administrative Procedure Act (APA) the Board is authorized to designate their decisions, or portions of the decisions, as precedents so that they can be relied upon in future cases with similar facts.

Pursuant to Government Code § 11425.60. Precedent; designation; index

(a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340).

An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

Board staff recommends the Board discuss if they want a policy on when and how to designate certain decisions as precedential. Attached is a sample of policy language.

#### Attachments

Statistical Update-Overview of Enforcement Activity and Legend  
Precedent Decision Procedure  
Designation As Precedential Decision

#### Action Requested

Determine if Board would like to establish a policy for precedential decisions.

**BOARD OF PSYCHOLOGY**  
**Overview of Enforcement Activity**

| <b>License &amp; Registration</b>    | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
|--------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|
| Psychologist                         | 20,307       | 21,019       | 21,527       | 22,020       | 22,688       | ****         | 20,575       | 20,024       | 20,596       | 20,977       | 21,482        |
| Registered Psychologist              | 324          | 320          | 312          | 320          | 349          | ****         | 280          | 278          | 249          | 188          | 147           |
| Psychological Assistant              | 1,397        | 1,429        | 1,507        | 1,635        | 1,727        | ****         | 1,701        | 1,466        | 1,442        | 1,350        | 1,412         |
| <b>Cases Opened</b>                  | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Complaints Received                  | 786          | 712          | 785          | 747          | 707          | 643          | 900          | 798          | 1,042        | 1,097        | 715           |
| Arrest Reports**                     | 72           | 54           | 48           | 70           | 42           | 133          | 72           | 50           | 39           | 53           | 31            |
| Investigations Opened                | 88           | 79           | 83           | 107          | 73           | 505          | 736          | 602          | 771          | 805          | 512           |
| Cases referred to DA                 | 2            | 3            | 3            | 5            | 6            | 0            | 0            | 0            | 0            | 0            | 0             |
| Cases referred to AG                 | 23           | 38           | 37           | 34           | 38           | 41           | 46           | 33           | 45           | 70           | 38            |
| <b>Filings</b>                       | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Accusations                          | 8            | 23           | 21           | 27           | 31           | 27           | 30           | 23           | 27           | 15           | 25            |
| Statement of Issues                  | 9            | 8            | 4            | 4            | 2            | 4            | 10           | 5            | 7            | 6            | 5             |
| Petition to Revoke Probation         | 0            | 0            | 0            | 3            | 1            | 2            | 2            | 3            | 1            | 6            | 1             |
| Petitions to Compel Psych. Exam      | 0            | 0            | 1            | 1            | 0            | 1            | 0            | 1            | 0            | 0            | 0             |
| Petitions for Penalty Relief         | 3            | 1            | 0            | 1            | 1            | 2            | 0            | 0            | 3            | 6            | 5             |
| Petition for Reinstatement           | 1            | 1            | 0            | 2            | 1            | 1            | 0            | 0            | 2            | 1            | 5             |
| Petitions for Reconsideration        | 0            | 1            | 0            | 0            | 2            | 0            | 0            | 0            | 0            | 2            | 0             |
| <b>Filing Withdrawals/Dismissals</b> | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Accusations Withdrawn                | 0            | 0            | 2            | 0            | 0            | 2            | 0            | 5            | 0            | 0            | 0             |
| Accusations Dismissed                | 0            | 1            | 0            | 1            | 1            | 0            | 1            | 4            | 1            | 0            | 0             |
| Statement of Issues Withdrawn        | 5            | 0            | 2            | 1            | 0            | 0            | 0            | 0            | 1            | 3            | 0             |
| <b>Citations</b>                     | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Citations Ordered                    | 5            | 10           | 9            | 18           | 10           | 6            | 11           | 27           | 32           | 46           | 22            |
| <b>Disciplinary Decisions</b>        | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Revocations                          | 1            | 3            | 2            | 4            | 2            | 4            | 2            | 4            | 2            | 9            | 1             |
| Revocation, Stayed, Probation        | 7            | 9            | 12           | 11           | 11           | 11           | 12           | 24           | 16           | 7            | 11            |
| Revoked, Stayed, Probation, Susp.    | 3            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0             |
| Surrender                            | 8            | 3            | 2            | 11           | 10           | 10           | 9            | 12           | 26           | 11           | 5             |
| Reprovals                            | 0            | 0            | 1            | 2            | 0            | 2            | 1            | 3            | 3            | 4            | 3             |
| ISO/TRO/PC23 Ordered                 | 3            | 4            | 1            | 4            | 3            | 2            | 2            | 2            | 1            | 2            | 0             |
| Statement of Issues-License Denied   | 1            | 1            | 0            | 1            | 1            | 0            | 2            | 0            | 0            | 0            | 0             |
| <b>Total Disciplinary Decisions</b>  | <b>23</b>    | <b>20</b>    | <b>18</b>    | <b>33</b>    | <b>27</b>    | <b>29</b>    | <b>28</b>    | <b>45</b>    | <b>48</b>    | <b>33</b>    | <b>20</b>     |
| <b>Other Decisions</b>               | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Statement of Issues-License Granted  | 4            | 5            | 4            | 3            | 6            | 3            | 1            | 1            | 0            | 0            | 3             |
| Petitions for Penalty Relief Denied  | 1            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 2            | 4            | 6             |
| Petitions for Penalty Relief Granted | 3            | 1            | 1            | 1            | 1            | 1            | 0            | 0            | 1            | 2            | 2             |
| Petition for Reinstatement Granted   | 1            | 0            | 0            | 0            | 1            | 0            | 0            | 0            | 0            | 0            | 1             |
| Petition for Reinstatement Denied    | 0            | 0            | 1            | 1            | 1            | 0            | 0            | 0            | 2            | 1            | 1             |
| Reconsiderations Denied              | 0            | 0            | 1            | 0            | 1            | 0            | 0            | 1            | 0            | 2            | 0             |
| Reconsiderations Granted             | 0            | 1            | 0            | 0            | 1            | 0            | 0            | 0            | 0            | 0            | 0             |
| Orders Compelling Psych. Evaluation  | 0            | 0            | 0            | 1            | 0            | 1            | 0            | 0            | 0            | 3            | 0             |
| <b>Total Other Decisions</b>         | <b>9</b>     | <b>7</b>     | <b>7</b>     | <b>6</b>     | <b>11</b>    | <b>5</b>     | <b>1</b>     | <b>2</b>     | <b>5</b>     | <b>12</b>    | <b>13</b>     |
| <b>Violation Types</b>               | <b>08/09</b> | <b>09/10</b> | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> | <b>13/14</b> | <b>14/15</b> | <b>15/16</b> | <b>16/17</b> | <b>17/18</b> | <b>*18/19</b> |
| Gross Negligence/Incompetence        | 5            | 4            | 4            | 3            | 5            | 9            | 7            | 23           | 29           | 20           | 18            |
| Improper Supervision                 | 0            | 0            | 1            | 0            | 0            | 1            | 0            | 1            | 0            | 1            | 0             |
| Repeated Negligent Acts              | 0            | 0            | 0            | 1            | 0            | 6            | 6            | 22           | 31           | 21           | 11            |
| Self Abuse of Drugs or Alcohol       | 2            | 3            | 3            | 12           | 1            | 8            | 3            | 7            | 15           | 7            | 3             |
| Dishonest/Corrupt/Fraudulent Act     | 0            | 3            | 0            | 2            | 2            | 3            | 3            | 6            | 8            | 9            | 5             |
| Mental Illness                       | 1            | 0            | 0            | 0            | 2            | 1            | 0            | 4            | 5            | 2            | 1             |
| Aiding Unlicensed Practice           |              |              | 0            | 0            | 0            | 1            | 0            | 1            | 0            | 0            | 0             |
| General Unprofessional Conduct       | 1            | 1            | 1            | 0            | 2            | 14           | 2            | 5            | 2            | 13           | 6             |
| Probation Violation                  | 1            | 0            | 0            | 2            | 1            | 2            | 0            | 3            | 26           | 29           | 10            |
| Sexual Misconduct                    | 6            | 1            | 2            | 6            | 9            | 1            | 1            | 6            | 14           | 2            | 3             |
| Conviction of a Crime                | 7            | 9            | 8            | 5            | 5            | 11           | 12           | 18           | 23           | 1            | 5             |
| Discipline by Another State Board    | 1            | 0            | 1            | 1            | 0            | 0            | 0            | 5            | 5            | 2            | 0             |
| Misrepresentation of License Status  |              |              |              |              |              | 1            | 1            | 1            | 1            | 1            | 0             |

| Professional Standards - Findings  |  |  |  |  |  | 13/14 | 14/15 | 15/16 | 16/17 | 17/18 | *18/19 |
|------------------------------------|--|--|--|--|--|-------|-------|-------|-------|-------|--------|
| Abandonment                        |  |  |  |  |  | 1     | 0     | 0     | 0     | 0     | 0      |
| Confidentiality                    |  |  |  |  |  | 1     | 1     | 1     | 4     | 0     | 1      |
| Failure to provide medical records |  |  |  |  |  | 0     | 2     | 1     | 2     | 1     | 0      |
| Outside of area of competence      |  |  |  |  |  | 1     | 0     | 3     | 5     | 5     | 1      |

\*Statistics through October 28, 2018 \*\*\*\*Statistics unavailable \*\*Previously "Criminal Conviction Reports Received"

## **Cases Opened**

### **Complaints Received:**

Complaints are received at the Board of Psychology through many different forms of submission, the most common being via the BreEZe online system and through regular mail. There is no fee to file a complaint.

### **Arrest Reports (Previously “Criminal Conviction Reports Received”):**

Department of Justice (DOJ) is required to notify the Board any time a Board licensee is arrested. When the Board receives a notice of arrest from DOJ, the Board opens a complaint and begins an investigation into the circumstances surrounding the arrest.

### **Investigations Opened:**

Most, but not all, complaints submitted to the Board are assigned to an Enforcement Analyst and fall under this category. Cases that are closed immediately upon intake are not included in this number. Cases that may be closed immediately upon intake would typically be cases where the Board has no jurisdiction, such as a complaint involving the licensee of another board or bureau.

### **Cases referred to DA:**

When the Board directly refers a complaint to the Office of the District Attorney (DA), that referral would be counted here. However, most referrals to the DA are made by the Office of the Attorney General (AG) or by the investigation unit conducting the field investigation. If the Board reports ‘zero’ referrals to the DA, this only refers to action on the Board’s part and not what another agency may have done independently as part of their law enforcement duties.

### **Cases referred to AG:**

When a case is determined to contain one or more egregious violations of the laws relating to the practice of psychology in California, the case may be referred to the AG. This number reports how many cases were transmitted to the AG by the Board requesting that an Accusation be filed against the licensee.

## **Filings**

### **Accusations:**

If the AG accepts the case that the Board transmitted, the AG will draft an Accusation, which is the charging document to be used to determine the allegations arising from the complaint. An Accusation can only be filed against a licensee of the Board and is administrative in nature, not criminal or civil.

### **Statement of Issues:**

A Statement of Issues is issued when an applicant for Board licensure appeals the Board's decision to deny that applicant licensure. The due process under a Statement of Issues closely mirrors the Accusation process with one key distinction – that the Statement of Issues is only used for unlicensed individuals who are applying for licensure.

### **Petition to Revoke Probation:**

When a licensee whose license is currently on probation with the Board violates probation or is subjected to a new Accusation arising from a new complaint, the Board may, at its discretion, request that the AG draft an Accusation and Petition to Revoke Probation. Probation occurs when a licensee has their license revoked, but that revocation is stayed for as long as the licensee complies with the terms of their probation, including to obey all laws. A licensee on probation having their probation revoked via this Petition to Revoke Probation suffers the loss of their license entirely and can no longer practice.

### **Filing Withdrawals / Dismissals:**

When an Accusation or Statement of Issues is withdrawn by the Board or dismissed, there is no discipline imposed.

## **Disciplinary Decisions:**

### **Revocation**

When the Board prevails against a licensee who has violated the laws relating to the practice of psychology in California to an egregious degree, the most extreme administrative penalty the Board may impose is revocation of that license. A licensee who has their license revoked is not permitted to practice psychology.

### **Revocation, Stayed, Probation:**

When the Board revokes a license, the Board has the option of staying that revocation and imposing probation instead. For the entire duration of the probation period, the probationer must comply with all standard and optional terms of probation, including to obey all laws, administrative, civil or criminal. Failure to comply with all terms and conditions may result in probation being revoked and the revocation that was stayed being reimposed, with the result being that the licensee will lose their license and be unable to practice psychology.

### **Surrender:**

By stipulated agreement between the Board and the licensee who is the subject of an Accusation, the Board may accept the surrender of the license as an alternative to pursuing revocation. The end result in either case is that the licensee loses their ability to practice psychology in California.

### **Reprovals:**

In cases where an extreme departure from the standard of care has occurred, but where other mitigating factors reduce the severity of the allegations, especially when there was little or no patient harm, the Board may impose the administrative discipline of a Public Letter of Reproval through the AG. This Reproval becomes a permanent part of a licensee's enforcement file and has some of the same conditions imposed through it as though the licensee were on probation.

## **Disciplinary Decisions (continued):**

### **ISO/TRO/PC23 Ordered:**

An Interim Suspension Order (ISO) is issued by an Administrative Law Judge to immediately and temporarily suspend the practice of a licensee when there is clear harm or threat of harm to the public if the practice continues. The ISO may be imposed to allow the OAG time to file an Accusation and seek further administrative holds on the licensee's practice.

A Temporary Restraining Order (TRO) is issued by a Superior Court Judge on the presumption that a continued violation of the type committed by the licensee will result in irreparable damage.

Penal Code section 23 (PC23) allows the Board to seek an injunction against a licensee or participate in the cause of justice when a licensee has been arrested, convicted, or incarcerated for a crime that relates substantially to the qualifications, functions or duties of a licensee.

## **25(b) Precedent Decision Procedure**

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to [BOPEenforcement@dca.ca.gov](mailto:BOPEenforcement@dca.ca.gov).

**BEFORE THE  
BOARD OF PSYCHOLOGY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the [Accusation]  
Against:

JOHN DOE, Ph.D.,

PSY No. XXXX

OAH No. 2019XXXX

Case No. 602-2019-XXXX

PRECEDENTIAL DECISION  
No. BOP

**DESIGNATION AS PRECEDENTIAL DECISION**

Pursuant to Government Code Section 11425.60, the California Board of Psychology hereby designates as precedential [that portion of] the decision listed below in the Matter of the [Accusation] against John Doe, Ph.D.:

*Factual Findings 2 – 32, and  
Legal Conclusions 1-21.*

This precedential designation shall be effective [DATE], 2019.

\_\_\_\_\_  
STEPHEN PHILLIPS, JD, PsyD.  
PRESIDENT  
BOARD OF PSYCHOLOGY



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## Child Custody Meeting

The Board of Psychology (BOP) and the Board of Behavioral Sciences (BBS), hosted a stakeholder meeting pertaining to the Center for Judicial Excellence's (Center) concerns regarding child custody matters on September 21, 2018 in Sacramento, CA.

Over the past two years, the Center has expressed its apprehension in relation to the handling of child custody complaints to the BOP and more recently, the BBS and the Department of Consumer Affairs (DCA). In response, the enforcement processes from both boards were provided to the Center to cultivate an understanding regarding current complaint procedures. The Center has communicated that it continues to have unresolved concerns.

Subsequently, the boards hosted the stakeholder meeting with the purpose of:

1. Providing an overview of both the BOP and BBS enforcement processes
2. Discussing the Center's concerns and proposed solutions to be submitted prior to the stakeholder meeting via an online survey
3. Discussing any additional public input

In preparation for the stakeholder meeting, an online survey notification was sent out as an opportunity for the Center, as well as other stakeholders, to articulate current child custody concerns and ensure a focused and informed meeting. In addition, the Center submitted a proposal with a list of possible solutions for consideration at the meeting.

Due to space limitations, attendance was limited. The meeting was facilitated by DCA SOLID Planning at DCA Headquarters II, 1747 N. Market Blvd., Ruby Room, Sacramento, CA 95834, from 9:00 a.m. to 12:00 p.m.

## Attendees

| Attendee                       | Organization Represented   |
|--------------------------------|--|
| 1. Andi Liebenbaum             | Judicial Council of California – Family Law                      |
| 2. Connie                      | CA Protective Parents  |
| 3. Gloria Castro               | California Department of Justice, Office of the Attorney General |
| 4. Josh Tosney                 | Senate Judiciary Committee                                       |
| 5. Kathleen Russell            | Center for Judicial Excellence                                   |
| 6. Robby Sumner                | Assembly Business and Professions Committee                      |
| 7. Robin                       | Law Office   |
| 8. Sarah Huchel                | Senate Business, Professions and Economic Development Committee  |
| 9. Antonette Sorrick           | California Board of Psychology                                   |
| 10. Ashley Castleberry         | California Board of Psychology                                   |
| 11. Lucille Acquaye-Baddoo     | California Board of Psychology                                   |
| 12. Nicole Walker              | California Board of Psychology                                   |
| 13. Sandra Monterrubio         | California Board of Psychology                                   |
| 14. Stephen Phillips, JD, PsyD | California Board of Psychology                                   |
| 15. Mark Marson                | California Board of Behavioral Sciences                          |
| 16. Marlon McManus             | California Board of Behavioral Sciences                          |
| 17. Tracy Montez               | Department of Consumer Affairs (DCA) Executive Office            |
| 18. Karen Nelson               | DCA Board and Bureau Services                                    |
| 19. Norine Marks               | DCA Legal Affairs  |
| 20. Sabina Knight              | DCA Legal Affairs  |
| 21. Dennis Cuevas-Romero       | DCA Legislation  |
| 22. Stephanie Whitley          | DCA Division of Investigation                                    |

## Acronyms

| Acronym | Definition                                |
|---------|---|
| BBS     | Board of Behavioral Sciences              |
| BOP     | Board of Psychology                       |
| CASA    | Court Appointed Special Advocate          |
| CFCC    | Court for Families and Children in Courts |
| DCA     | Department of Consumer Affairs            |
| DOI     | Division of Investigation                 |
| DOJ     | Department of Justice                     |
| MBC     | Medical Board of California               |
| OAG     | Office of the Attorney General            |
| OAH     | Office of Administrative Hearings         |

## Evaluators Oversight

During the meeting, attendees discussed evaluator types and the organizations that may have oversight or jurisdiction over evaluators.

| Evaluator                               | Jurisdiction        | Notes  |
|---|---------------------|--|
| Psychologists                           | BOP                 |  |
| Psychologist Assistants                 | BOP                 |  |
| Clinical Social Workers                 | BBS                 |  |
| Marriage and Family Therapists          | BBS                 |  |
| Professional Clinical Counselors        | BBS                 |  |
| Psychiatrists                           | MBC                 |  |
| Supervised visitation monitors          |                     | No oversight identified  |
| Parenting coordinators                  |                     | No oversight identified  |
| Transporters                            |                     | No oversight identified  |
| Special masters                         |                     | No oversight identified  |
| Mediators (series with different names) |                     | No oversight identified  |
| Child Protective Services (CPS)         | Counties and/or BBS | Gap between counties and BBS. A county may not require licensing, for example Santa Clara and Los Angeles. |

## Concerns Summarized

### I. Summary based on Center for Judicial Excellence's letter disseminated prior and during the meeting:

1. Screen Child Custody Subject Matter Experts (SMEs)
2. Mandate child abuse/domestic violence for SMEs
3. Annual reporting to legislature
4. Mandate detailed dispositions be included at close of investigations
5. Fines for licensees' poor record-keeping/refusal to cooperate
6. All county CPS workers be licensed
7. Conduct regular state audits of BOP and BBS
8. Grant no immunity for court-appointed evaluators/experts
9. Eliminate consent form
10. Vertical enforcement for urgent child custody cases involving public harm
11. Create a public protection taskforce
12. Conduct stakeholder meetings 4x a year
13. Educate public on clear and convincing evidence

### II. Summary based on the responses from survey disseminated to invitees:

1. 24-hour hotline to register a complaint
2. Outline child custody complaint process and make it public
3. Establish a citizen's board
4. Domestic violence
5. Personality disorders
6. High-conflict divorce cases
7. Parent alienation
8. Narcissistic parent
9. Manipulative parents
10. Trauma
11. Cluster B personality disorders
12. Listening to child
13. Properly assessing child
14. Identify abuse in litigation
15. Ethics training
16. Properly assess, diagnose, and treat mental health issues
17. Qualified professionals who spend time with children in all areas of play and art to validate abuse
18. Judge speak to plaintiff and defendant alone, then kids
19. Record everything
20. Teach providers to maintain transparency, integrity, dignity and respect
21. Use battered woman assessment tool
22. Dr. Childress assessment protocol
23. Neutral parent board to assign expert witnesses
24. Check list for abused person(s) under stress to report abuse
25. Hire third parties without involvement to review complaints
26. Stop the stigma

## Jurisdiction + Priority Triage

Attendees discussed concerns on page 7 and the responsible organizations. Non-DCA attendees individually triaged concerns, “A” being highest priority and “D” being lowest priority, on a handout provided to them. The following charts demonstrate concerns in prioritized list based on triaging. Numbers under the triage columns represent the number of attendees that assigned it that priority. Triage notes represent notes left by attendees when triaging concerns.

| Center for Judicial Excellence Letter |  | Jurisdiction  | Discussion Notes  | A | B | C | D | Triage Notes                       |
|---------------------------------------|--|---|---|---|---|---|---|------------------------------------|
| A                                     | Mandate child abuse/domestic violence for SMEs           | BOP and/or BBS  |   | 6 | 2 |   |   | Figure out gold standard providers |
| B                                     | All county CPS workers be licensed                       | Legislature and/or political/labor unions                       |   | 6 | 1 |   | 1 |                                    |
| C                                     | Eliminate consent form                                   | Judicial Council, BOP and/or BBS                                | Determine if consent exists in law for investigation to initiate. Explore patient privilege law.  | 5 | 1 | 1 | 1 |                                    |
| D                                     | Screen Child Custody SMEs                                | BOP and/or BBS  |   | 4 | 3 | 1 |   |                                    |
| E                                     | Conduct stakeholder meetings 4x a year                   | BOP, BBS and/or DCA   | Provide public education regarding BOP and BBS complaint process.   | 4 | 3 | 1 |   | Besides regular meeting?           |
| F                                     | Grant no immunity for court-appointed evaluators/experts | Legislature, Judicial Council/Courts                            | Explore gap of how PhDs in court cases fall through the cracks for BOP/BBS licensees, and judicial council/court interpretation of Civil Code 47 and relation to BOP/BBS. | 4 | 1 | 1 | 2 |                                    |
| G                                     | Conduct regular state audits of BOP and BBS              | Legislature and/or bureau of state audits/Sunset review process |   | 4 |   | 3 | 1 |                                    |

|   | Center for Judicial Excellence Letter                                     | Jurisdiction                                     | Discussion Notes   | A | B | C | D | Triage Notes                          |
|---|---|--|--|---|---|---|---|---------------------------------------|
| H | Fines for licensees' poor record-keeping/refusal to cooperate             | BOP and/or BBS                                   |  | 3 | 3 | 2 |   | Already available                     |
| I | Mandate detailed dispositions be included at close of investigations      | DCA, BOP, and/or BBS                             |  | 3 | 3 | 1 | 1 | Subject to all/privilege/not feasible |
| J | Vertical enforcement for urgent child custody cases involving public harm | BOP, BBS, AGO and/or DOI                         |  | 3 | 2 | 3 |   |                                       |
| K | Create a public protection task force                                     | Legislature, BOP, BBS and/or DOJ                 | Refer to Legislature's work with State Bar.  | 2 | 4 | 1 | 1 | Within boards?                        |
| L | Annual reporting to legislature   | BOP, BBS, and/or DCA                             |  | 2 | 3 | 2 | 1 | Already happens                       |
| M | Educate public on clear and convincing evidence                           | OAG, OAH, Judicial Council/CFCC, BOP, and/or BBS | Explore evidentiary burden. Clarify contradiction between section 2920.1 and case law around property right by licensee. | 1 | 2 | 3 | 1 |                                       |

**Notes left in the meeting survey:**

1. Bifurcate licensing agency + oversight agency create a form so evaluators can follow existing excellent laws/rules court pay for all appointed professionals + have fees capped.

| Survey Concerns |                             | Jurisdiction                        | Discussion Notes   | A | B | C | D | Triage Notes  |
|-----------------|-----------------------------|-------------------------------------|--|---|---|---|---|---|
| A               | Listening to child          | Judicial Council and/or Legislature | Legislature can provide child with a direct path to court.   | 5 | 1 |   |   |   |
| B               | Domestic violence           | Legislature and/or Judicial Council | Explore education/training evaluators have in domestic violence. Refer to Rule 5.230. Standardize training and set standards for providers.                                      | 5 |   |   |   | <ul style="list-style-type: none"> <li>- Combine 4 – 11 from part II of page 7.</li> <li>- 5 - 12 need from part I of page 7 needs accreditation or other standards that can be uniform.</li> <li>- 4 - 15 from part II of page 7 are about training expertise, professional judgement/conduct of evaluators/SMEs. All "A"s refers to licensing and disciplinary training, professional development and independent expertise of evaluators b-c take-away is that that is the major concern/issue.</li> </ul> |
| C               | High-conflict divorce cases | Judicial Council                    | Cases are usually domestic violence and child sex abuse. Refer to 7, 8, 9 and 10 in part II of page 7.   | 5 |   |   |   | DV, CSA   |
| D               | Parent alienation           | Judicial Council                    | Explore computer printouts for the domestic/parent alienation/child sexual abuse concepts and the quality/validity of objective data that psychologists are providing to courts. | 5 |   |   |   | Prohibit doctrine   |
| E               | Trauma                      |                                     | Refer to 6 in part II of page 7.   | 5 |   |   |   |   |
| F               | Record everything           | Legislature and/or Judicial Council | Court reporters/transcription/video.   | 4 | 2 |   |   | Court reporters   |
| G               | Narcissistic parent         |                                     | Refer to 6 in part II of page 7.   | 4 | 1 |   |   |   |

|   | Survey Concerns   | Jurisdiction                                       | Discussion Notes  | A | B | C | D | Triage Notes   |
|---|---|--|---|---|---|---|---|--|
| H | Cluster B personality disorders   | Judicial Council                                   | Refer to 6 in part II of page 7.  | 4 | 1 |   |   |  |
| I | Properly assessing child  | Judicial Council                                   | Refer to 6 in part II of page 7.  | 4 | 1 |   |   |  |
| J | Manipulative parents  |  | Refer to 6 in part II of page 7.  | 4 |   | 1 |   |  |
| K | Use battered woman assessment tool  | Judicial Council, Courts, BBS, BOP                 | Explore other assessment tools for example Campbell lethality assessment.           | 4 |   |   | 1 | Part of evaluation training, etc.                                      |
| L | Identify abuse in litigation  | Judicial Council                                   | Refer to 6 in part II of page 7.  | 3 | 1 |   |   |  |
| M | Judge speak to plaintiff and defendant alone, then kids   |  |   | 3 |   |   | 2 | - In a mediator capacity not, trial judge.<br>- Parents = D, Child = A |
| N | Personality disorders   | Judicial Council                                   | Explore education/training oversight and enforcement/follow-up. Refer to Rule 5.220 | 2 | 3 |   |   |  |
| O | Qualified professionals who spend time with children in all areas of play and art to validate abuse | Legislature, CASA, and/or family law/child welfare |   | 2 | 1 | 1 |   | Have all advocate for child  |
| P | Outline child custody complaint process and make it public  | DCA, BOP and/or BBS                                |   | 2 |   |   | 5 |  |

|   | Survey Concerns  | Jurisdiction                  | Discussion Notes  | A | B | C | D | Triage Notes  |
|---|--|-------------------------------|---|---|---|---|---|---|
| Q | Ethics training  | Respective governing agencies | Ethics training for evaluators  | 1 | 3 | 1 |   | Already done  |
| R | Properly assess, diagnose, and treat mental health issues                | Licensing boards              |   | 1 | 2 | 2 |   |   |
| S | Teach providers to maintain transparency, integrity, dignity and respect |                               | Refer to 15 in part II of page 7.   | 1 | 2 | 2 |   |   |
| T | Hire third parties without involvement to review complaints              |                               | Refer to Legislature involvement with State Bar. Explore the creation of a firewall between licensing and enforcement agencies. | 1 | 2 | 1 |   | Refer to number 3 in part II of page 7. Not feasible/privileges |
| U | Neutral parent board to assign expert witnesses                          | Court                         |   | 1 |   | 1 |   |   |
| V | Dr. Childress assessment protocol  |                               |   | 1 |   |   | 3 |   |
| W | Establish a citizen's board  | DCA and/or Legislature        |   |   | 4 |   | 2 | Boars are supposed to represent public interest.                |
| X | Check list for abused person(s) under stress to report abuse             |                               |   |   | 1 | 1 | 1 |   |
| Y | 24-hour hotline to register a complaint                                  | DCA, BOP and/or BBS           | Educate public on web access and create 24-hour hotline.  |   |   | 2 | 5 | Already done  |
| Z | Stop the stigma  |                               |   |   |   | 1 | 1 |   |

## Attendee Questions

Attendees were encouraged to write down questions for the presenters during the meeting on an index card and submit them to be addressed in this report.

### BBS Complaint Process

1. How are subject matter experts trained?  
With the assistance of the Board's Deputy Attorney General Liaison, the BBS provides training to its Subject Matter Experts (SME). SME's are trained on the enforcement process, expert review/opinion, effective testifying basics, confidentiality of investigative materials, etc.
2. What happens if your licensee is uncooperative returning over records?  
The BBS could take administrative or disciplinary action against the licensee for violation of California Code of Regulations section 1823(a).
3. Does the board send mediator complaints to the court or the mediator's employer?  
Frequently, the BBS is notified by the Complainant to not send their complaint to any other person or entity. The BBS does advise the Complainant to direct their concerns to Family Court Services.

### BOP Complaint Process

1. Why is the non-complaining parent contacted?  
In accordance with Business and Professions Code, section 129 (f), the board is mandated to notify the non-complaining party.
2. How does the complaint history inform the process of investigation? Do you investigate a first complaint different from the third?  
Reviewing a licensee's complaint history informs the analyst of any trends or reoccurring allegations with the Subject of the complaint. The complaint history also shows whether any prior complaints were found to have merit and if the board took action against the licensee, which could strengthen the board's case if the allegations/violations are similar. Reviewing the complaint history will also alert the analyst of any active investigations against the licensee, and the analyst can then determine if the open cases should be investigated in tandem. If a licensee's complaint history does not reveal reoccurring violations that were determined to have merit, the investigation process will not change.

### BBS and BOP Complaint Process

1. Has there been any consideration of managerial review of a random sample of dismissed cases to make sure they were dismissed correctly?  
The BOP Enforcement Manager reviews all staff recommendations before a case is referred to an Expert, DOI, OAG, or closed.

2. Does the consent form exist in standardized procedures for investigations? If so, change it. If not, why are they using it?

The consent form (Release form) is a standard requirement for every complaint that involves the rendering of professional services due to doctor-patient/client confidentiality. The BOP feels it cannot change the requirement for a Release form because mental health records are extremely confidential, even in the performance of psychological evaluations. The only way would be for legislative/congressional member to drive a change of the state and federal laws that require providers to only disclose records/information when the patient/client gives permission.

### **Center for Judicial Excellence**

1. Any thought given to legislature change to outlaw or limit reunification camps?  
Please see the attached document (Keeping Teens Safe Act) and proposed language that we worked on last year but did not introduce.

We would love to work with other stakeholders on such a bill in the coming session, if we could come up with language that all could agree on.

I am also attaching an unpublished appellate decision (Reunification Case Law) which essentially implores the Legislature to clarify Family Code Section 3026 as to which reunification services should be prohibited in family law proceedings, which you can see in the highlighted section on page 14 of the decision.



**Procedure for the review, organization, and distribution of proposed exhibits to Board members in advance of hearings on petitions for reinstatement/modification/early termination**

1. Board staff serves the petitioner and the Attorney General's Office with notice of the hearing and arranges for an ALJ, court reporter, and other hearing logistics.
2. Board staff transmit petition case file, including original documents to HQE.
3. DAG organizes and Bates-stamps documents. DAG is encouraged to include a table of contents, identifying each included document by title and Bates-stamp range.
4. DAG is responsible for ensuring that confidential information, offered by either party, is either redacted or sealed. DAG creates two sets of Bates-stamped documents to be offered at hearing: (i) an unredacted set (for distribution to Board members); and (ii) a redacted (if any redactions) set from which materials to be sealed have been removed (which will be made available for public viewing during the hearing).
5. Three weeks in advance of hearing, DAG provides Board staff with both the unredacted and redacted sets of Bates-stamped documents to be offered at hearing. DAG retains originals, to be offered into evidence at hearing.
6. DAG produces discovery/proposed exhibits to Petitioner.
7. Board staff duplicate unredacted exhibits and distribute them to Board members in advance of the hearing. Also, Board staff ensure that the ALJ and Board members are provided with unredacted copies at the hearing.
8. DAG attends hearing and offers original documents into evidence (or a redacted version of the original, if there are any redactions). DAG requests sealing order to protect any confidential information that has not been redacted. Of course, DAG may choose to make objections to any of the offered documents as she sees fit. DAG may offer additional evidence not previously distributed to Board members, but DAG will be responsible for providing copies of the additional evidence for each Board member, as well as the ALJ and Petitioner.
9. If witnesses will be called, DAG and opposing counsel/Petitioner are responsible for providing copies to the witness of any materials that the witness will be asked about.
10. The Board asks that the DAG (as well as Petitioner) please limit her case to 40 minutes (including opening statement, introduction of exhibits, any witness testimony, cross-examination of Petitioner, and closing argument). The DAG should notify Board staff in advance of the hearing if she anticipates needing more time.
11. The Board encourages the DAG to recommend whether to grant or deny the petition, particularly in petition for reinstatement cases.

**Typical materials included in petition case file and submitted at hearing:**

- Petition and any supporting documentation submitted by the petitioner (often includes a psychological evaluation, which should be sealed)
- Probation report(s)
- Investigation report and related materials, such as a transcript of petitioner interview
- Accusation in previous case
- Decision and Order (stipulated settlement)

**26(c) Consideration of Designation of the Decision in the Matter of the Citation and Fine against Shari Lorraine Schreiber (Case No. 2017090162) as a Precedential Decision**

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to [BOPEnforcement@dca.ca.gov](mailto:BOPEnforcement@dca.ca.gov).

## **25(b) Precedent Decision Procedure**

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to [BOPEenforcement@dca.ca.gov](mailto:BOPEenforcement@dca.ca.gov).