

LEGISLATIVE ADVISORY: SB 425 (Hill) Chapter 849, Statutes of 2019 - Health Care Practitioners: Licensee's File: Probationary Physician's and Surgeon's Certificate: Unprofessional Conduct.

OPERATIVE DATE OF LEGISLATION: JANUARY 1, 2020

Attention Board of Psychology (Board) stakeholders:

Senate Bill (SB) 425 (Hill, Chapter 849, Statutes of 2019) was signed by Governor Gavin Newsom on October 12, 2019, and became operative January 1, 2020. This legislation requires a health care facility or other entity like a postsecondary educational institution that makes arrangements where healing arts licensees, such as Psychologists, Registered Psychologists, or Psychological Assistants, are allowed to practice or provide care for patients in their facility, to report any written allegation of sexual abuse or sexual misconduct involving a patient to the Board of Psychology ("Board") within 15 days of receiving the written allegation. [Note: this bill applies to all healing arts licensees; this advisory, however, is limited to licensees under the Board of Psychology.]

SUMMARY OF CHANGES:

Required Sexual Abuse and Sexual Misconduct Allegation Reporting Requirement Under SB 425

SB 425 creates a new reporting requirement for health care facilities and postsecondary educational institutions regarding allegations of sexual abuse or sexual misconduct against a patient by a Psychologist, Registered Psychologist, or Psychological Assistant allowed to practice in their facility. This new reporting requirement is in Business and Professions Code (BPC) Section 805.8. Full text of the requirement is available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=805.8.

Specifically, any health care facility or postsecondary educational institution that makes "any arrangement under which a healing arts licensee is allowed to practice or provide care for patients" within their facility is now required to report any written allegation of sexual abuse or sexual misconduct made by a patient, or the patient's representative, to the healing arts licensee's relevant State licensing agency. Under SB 425, Psychologists, Registered Psychologists, and Psychological Assistants, are defined as a "healing arts licensee", and therefore would require a health care facility or postsecondary educational institution to report the sexual abuse or sexual misconduct allegation to the Board of Psychology. This BPC Section 805.8 required report ("BPC 805.8 Report") must be filed with the Board within 15 days of the health facility or postsecondary educational institution receiving the written allegation.

NOTE: A patient who has experienced sexual abuse or sexual misconduct by a Psychologist, registered Psychologist, or Psychological Assistant, can also file a complaint directly with the Board of Psychology. For additional information on other healing arts license types and their licensing entity, please see the Department of Consumer Affairs publication titled [Consumer's Guide to Healthcare Providers](#).

Arrangements under which a Psychologist, Registered Psychologist, or Psychological Assistant, is allowed to practice or provide care for patients under SB 425 include, but are not limited to, the following:

- 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.

BPC 805.8 Reports filed by health care facilities and postsecondary educational institutions under SB 425 must be kept confidential and are not subject to discovery, except that the information may be reviewed by the licensee or representative pursuant to BPC Section 800(c), and the BPC 805.8 Report may be disclosed in any subsequent disciplinary hearing brought by the Board. This means that these BPC 805.8 Reports are not public unless the Board takes disciplinary action against a Psychologist, Registered Psychologist, or Psychological Assistant, or a very limited number of exceptions are met pursuant to BPC Section 800(c).

Entities Required to File Reports Under SB 425

Entities required to file reports under SB 425 are health care facilities and postsecondary educational institutions (called other entities in the bill text) as shown below.

Health Care Facilities include clinics or health facilities licensed or exempt from licensure pursuant to Health and Safety Code Sections 1200 et seq., including, but not limited to, the following:

- Clinics licensed pursuant to Health and Safety Code Sections 1200-1245, including physician and surgeon owned clinics and surgical clinics exempt from licensure under Health and Safety Code.
- Health Facilities licensed pursuant to Health and Safety Code Section 1250-1339.59, including the following:
 - General Acute Care Hospital
 - Acute Psychiatric Hospital
 - Skilled Nursing Facility
 - Intermediate Care Facility
 - Intermediate Care Facility/Developmentally Disabled Habilitative
 - Special Hospital
 - Intermediate Care Facility/Developmentally Disabled
 - Intermediate Care Facility/Developmentally Disabled-Nursing
 - Congregate Living Health Facility
 - Correctional Treatment Center
 - Nursing Facility
 - Intermediate Care Facility/Developmentally Disabled-Continuous Nursing
 - Hospice Facility
 - Psychiatric Health Facility
 - Chemical Dependency Recovery Hospital
 - Small House Skilled Nursing Facility
- Adult Day Health Care Facility
- Pediatric Day Health and Respite Care Facility
- Home Health Agency

Postsecondary Educational Institutions (called “other entity” in the bill text) includes institutions of higher education as defined by Education Code Section 66261.5, including, but not limited to, the following:

- Public or Private institutions of vocational, professional, or postsecondary education (public and private colleges and vocational/professional schools)
- California Community Colleges and their governing boards
- University of California Campuses and the Regents of the University of California
- California State University Campuses and the Trustees of the California State University

Penalties for Failure to Report Allegations of Sexual Abuse or Sexual Misconduct

Health facilities and postsecondary educational institutions that fail to report a written allegation of sexual abuse or sexual misconduct by a Psychologist, Registered Psychologist, or Psychological Assistant, to the Board of Psychology within 15 days may be liable for civil or administrative fines as described below.

Failure to file a BPC 805.8 Report to the Board of Psychology within 15 days may result in a civil or administrative fine not to exceed \$50,000 per violation and paid for by the health care facility or postsecondary educational institution. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of the Board of Psychology. The amount of the fine imposed shall be proportional to the severity of the failure to report and should be based upon written findings, including the following:

- 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;
- Whether there has been a prior failure to file a report required under this section; and whether a report was filed with another state agency or law enforcement.

The amount of the fine imposed may also be adjusted based on whether a health care facility is a small or rural hospital, as defined in Health and Safety Code Section 124840.

A willful failure to file a BPC 805.8 Report to the Board of Psychology within 15 days may result in a civil or administrative fine not to exceed \$100,000 per violation and paid for by the health care facility or postsecondary educational institution. Under SB 425, “willful” means a “voluntary and intentional violation of a known legal duty”. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of the Board of Psychology.

If the Board of Psychology collects any such civil or administrative fines, it will not be able to expend the collected fines without those funds being appropriated by the Legislature.

Civil and Criminal Liability Protection for Reporters

Under SB 425, any person, whether an employee or individual contracted or subcontracted to provide health care services, a health care facility, or a postsecondary educational institution cannot be held civilly and criminally liable as a result of making a BPC 805.8 Report to the Board of Psychology.

IMPLEMENTATION:

The Board of Psychology is in the process of developing a reporting form to aid reporting entities when filing a BPC 805.8 Report of written allegations of sexual abuse or sexual misconduct against a Psychologist, Registered Psychologist, or Psychological Assistant in accordance with the BPC Section 805.8 reporting requirement. Upon completion of the form, the Board of Psychology will notify all stakeholders of the availability of the form on the Board's website.

Until the new reporting form is available, health care facilities and postsecondary educational institutions can file a BPC 805.8 Report with the Board of Psychology in one of the following ways:

- By email to bopenforcement@dca.ca.gov, or
- By mail to 1625 North Market Boulevard, Suite N-215, Sacramento, CA 95834.