California Board of PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

# NOTICE OF BOARD MEETING

The Wright Institute
2728 Durant Avenue, Room 109/110
Berkeley, CA 94704
(510) 841-9230

**August 15-16, 2019**

**Board Members**
Stephen Phillips, JD, PsyD, President
Seyron Foo, Vice-President
Alita Bernal
Sheryll Casuga, PsyD
Marisela Cervantes
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
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 Manager
Liezel 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. August 15, 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, prior to the meeting date, Thursday, August 15, 2019.

Thursday, August 15, 2019

## AGENDA

### 9:30 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 at 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. 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)]

4. President's Report (S. Phillips)
   a) 2019 Meeting Calendar and Locations
   b) 2020 Meeting Calendar Draft
   c) Committee Updates
   d) Roles and Responsibilities of Board President and Vice-President

5. Executive Officer's Report (A. Sorrick)
   a) Organizational Update
   b) Sunset Review Schedule

6. DCA Executive Office Update

7. Discussion and Possible Approval of the Board Meeting Minutes: April 24-26, 2019

8. Budget Report (C. Burns)

9. Licensing Report (S. Cheung)

10. Continuing Education and Renewals Report (L. McCockran)

**CLOSED SESSION**

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

**BREAK FOR LUNCH (TIME APPROXIMATE)**

**RETURN TO OPEN SESSION**

12. Outreach and Education Committee Report -- Consideration and Possible Approval of Committee Recommendations (Bernal – Chairperson, Tate)
   a) Review and Consideration of Revisions to the Name and Goal of the Outreach and Education Committee
   b) Discussion and Possible Action on Requesting the Association of State and Provincial Psychology Boards Develop Best Practices for Psychologists When Using Social Media
   c) Strategic Plan Action Plan Update

d) Review and Potential Action on User-Friendliness Website Focus Group Notes – Recommendations to the Board
e) Board's Social Media Update
f) Website Update
g) Update on Newsletter
h) DCA Brochure "Therapy Never Includes Sexual Behavior" – Update

13. Legislative and Regulatory Affairs Committee Report -- Consideration and Possible Approval of Committee Recommendations (Foo – Chairperson, Casuga, Phillips)

a) 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) SB 786 (Committee on Business, Professions and Economic Development) Healing Arts – Update on Amendments to Sections 2940-2944 of the Business and Professions Code Regarding Examinations

b) Review and Consideration of Proposed Legislation: Potential Action to Take Positions on Bills
   1) Review and Consideration of Proposed Legislation Not Previously Reviewed
      A. Potential Action on Recommendations to Take Active Positions
         i. AB 1076 (Ting) Criminal Records: automatic relief.
      B. Potential Action on Recommendation to Watch Bills
         ii. AB 798 (Cervantes) Maternal Mental Health.
         iii. SB 660 (Pan) Postsecondary education: mental health counselors.

   2) Review of Bills with Active Positions Taken by the Board
      A. AB 1145 (Garcia) Child abuse: reportable conduct.
      B. SB 53 (Wilk) Open meetings.
      C. SB 66 (Atkins) Medi-Cal: federally qualified health center and rural health clinic services.
      D. SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct.

   3) Review of Bills with Watch Status
      A. SB 163 (Portantino) Health care coverage: pervasive developmental disorder or autism.
      B. AB 5 (Gonzalez) Worker status: employees and independent contractors.
      C. AB 8 (Chu) Pupil health: mental health professionals.
      D. AB 166 (Gabriel) Medi-Cal: violence preventive services.

E. AB 189 (Kamlager-Dove) Child abuse or neglect: mandated reporters: autism service personnel.
F. AB 241 (Kamlager-Dove) Implicit bias: continuing education: requirements.
G. AB 289 (Fong) California Public Records Act Ombudsperson.
H. AB 469 (Petrie-Norris) State records management: records management coordinator.
I. AB 476 (Rubio, Blanca) Department of Consumer Affairs: task force: foreign-trained professionals.
J. AB 496 (Low) Business and professions.
K. AB 512 (Ting) Medi-Cal: specialty mental health services.
L. AB 565 (Maienschein) Public health workforce planning: loan forgiveness, loan repayment, and scholarship programs.
M. AB 577 (Eggman) Health care coverage: postpartum period.
N. AB 613 (Low) Professions and vocations: regulatory fees.
O. AB 630 (Arambula) Board of Behavioral Sciences: marriage and family therapists: clinical social workers: educational psychologists: professional clinical counselors: required notice.
P. AB 744 (Aguiar-Curry) Healthcare coverage: telehealth.
Q. AB 895 (Muratsuchi) Pupil Mental Health Services Program Act.
R. AB 1058 (Salas) Medi-Cal: specialty mental health services and substance use disorder treatment.
S. AB 1184 (Gloria) Public records: writing transmitted by electronic mail: retention.
T. SB 331 (Hurtado) Suicide-prevention: strategic plans.
U. SB 601 (Morrell) State agencies: licenses: fee waiver.
V. SB 639 (Mitchell) Medical services: credit or loan.

4) Review of Two-Year Bills with Watch Status
A. AB 71 (Melendez) Employment standards: independent contractors and employees.
B. AB 184 (Mathis) Board of Behavioral Sciences: registrants and licensees.
C. AB 193 (Patterson) Professions and vocations.
D. AB 312 (Cooley) State government: administrative regulations: review.
E. AB 396 (Eggman) School employees: School Social Worker Pilot Program.
F. AB 536 (Frazier) Developmental services.
G. AB 544 (Brough) Professions and vocations: inactive license fees and accrued and unpaid renewal fees
H. AB 768 (Brough) Professions and vocations.
I. AB 770 (Garcia, Eduardo) Medi-Cal: federally qualified health clinics: rural health clinics.
J. AB 1201 (Boerner Horvath) Unfair Practices Act.
K. AB 1271 (Diep) Licensing examinations: report.
L. AB 1601 (Ramos) Office of Emergency Services: behavioral health response.

M. SB 181 (Chang) Healing arts boards.
N. SB 201 (Wiener) Medical procedures: treatment or intervention: sex characteristics of a minor.
O. SB 546 (Hueso) Unlicensed activity.
P. SB 700 (Roth) Business and professions: noncompliance with support orders and tax delinquencies.

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

14. 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

15. 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 Sections 1391.13, and 1391.14 – Inactive Psychological Assistant Registration and Reactivating A Psychological Assistant Registration
c) 16 CCR Section 1396.8 – Standards of Practice for Telehealth
d) 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees
e) 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development
f) 16 CCR Section 1394 – Substantial Relationship Criteria; Section 1395 – Rehabilitation Criteria for Denials and Reinstatements; Section 1395.1 – Rehabilitation Criteria for Denials Suspensions or Revocations

## Friday, August 16, 2019

**9:30 a.m. – OPEN SESSION**

16. Call to Order/Roll Call/Establishment of a Quorum

17. 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)]

18. Enforcement Report (S. Monterrubio)

19. Discussion and Consideration of the Board's Policy for Holding Cases for Closed Session (S. Monterrubio)

20. Health Professions Education Foundation Presentation on Licensed Mental Health Services Provider Education Program (LMHSPEP) and Mental Health Loan Assumption Program (MHLAP) (N. Asprec)

21. Licensing Committee Report -- Consideration and Possible Approval of Committee Recommendations (Horn – Chairperson, Foo, Harb Sheets)
    a) Licensed Educational Psychologist (LEP): Report on Presentation by Board of Behavioral Sciences Regarding LEP Functions for Discussion
    b) Foreign Degree Evaluation Services: Review and Consideration of Amendments to Business and Professions Code Section 2914(c)
    c) Informational Video for Supervisors: Discussion and Recommendations for Content to be Included in the Video
        1) Laws and Regulations
        2) Frequently Asked Questions (FAQs)
    d) Discussion and Consideration for Grievance Process: How to Resolve a Discrepancy between Weekly Log and Verification of Experience
    e) Review and Consideration of Revisions to the Goal and Name of the Licensing Committee
    f) Consideration of Licensing Committee Recommendations Regarding Requests for an Extension of the 72-Month Registration Period Limitation for Registered Psychological Assistant Pursuant to 16 CCR Section 1391.1(b)
    g) Consideration of Licensing Committee Recommendations Regarding Request for Continuing Education (CE) Exception pursuant to 16 CCR Section 1397.62(b)

**BREAK FOR LUNCH (TIME APPROXIMATE)**

22. Consideration of Renaming Registered Psychological Assistant for Purposes of Changes to Pathways to Licensure

23. Opportunity for Board Members to Express an Interest in Being President or Vice President of the Board in 2020

24. 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, 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 Thursday may be held

over to Friday; items scheduled to be heard on Friday may be moved up to 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 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.*

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# 2019 Board Meeting/Event Calendar

## Board Meeting

| Event | Date | Location | Agenda/Materials | Minutes | Webcast |
|---|---|---|---|---|---|
| Board Meeting | February 7-8, 2019 | Sacramento, CA | Agenda | Minutes | Feb 7, Webcast Feb 8, Webcast |
| Board Meeting | March 29, 2019 | Teleconference | Agenda | | |
| Board Meeting | April 24-26, 2019 | Los Angeles, CA | Agenda Materials | | Apr 24 Webcast Apr 25 Webcast Apr 26 Webcast |
| Board Meeting | August 15-16, 2019 | Berkeley, CA | | | Webcast |
| Board Meeting | October 3-4, 2019 | San Diego, CA | | | Webcast |

## Legislative and Regulatory Affairs Committee

| Event | Date | Location | Agenda/Materials | Minutes | Webcast |
|---|---|---|---|---|---|
| Legislative and Regulatory Affairs Committee | July 8, 2019 | Sacramento, CA | Agenda Materials | | |

## Licensing Committee

| Event | Date | Location | Agenda/Materials | Minutes | Webcast |
|---|---|---|---|---|---|
| Licensing Committee Meeting | January 11, 2019 | Sacramento, CA | Agenda | Minutes | |
| Licensing Committee Meeting | June 13, 2019 | Sacramento, CA | Agenda Materials | | Webcast |
| Licensing Committee Meeting | September 12-13, 2019 | Sacramento, CA | | | Webcast |

## Outreach and Education Committee

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

## Outside Board Events

| Event | Date | Location | Agenda/Materials | Minutes | Webcast |
|---|---|---|---|---|---|

| 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 | | | |

## Policy and Advocacy Committee

| Event | Date | Location | Agenda/Materials | Minutes | Webcast |
|---|---|---|---|---|---|
| Policy and Advocacy Committee Meeting | March 18, 2019 | Sacramento, CA | Agenda<br>Materials | | |

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# 2020 Draft Quarterly Board Meeting Calendar

## Board Meeting

February 6-7, 2020
June 4-5, 2020
September 24-25, 2020
November 19-20, 2020

# Board of Psychology Committee Assignments 2019

| Committee | Chairperson | Members |
|---|---|---|
| **Standing Committees** | | |
| Licensing Committee | Jacqueline Horn, PhD | Mary Harb Sheets, PhD<br>Seyron Foo |
| Outreach and Education Committee | Lea Tate, PsyD | Alita Bernal<br>Jacqueline Horn, PhD |
| Legislative and Regulatory Affairs Committee | Seyron Foo | Sheryll Casuga, PsyD,<br>Stephen Phillips, JD/PsyD |
| **Ad hoc Committees** | | |
| Applied Behavior Analysis Task Force | Sheryll Casuga, PsyD<br>Board Member | Don Crowder, PhD, Association of State and Provincial Psychology Boards (ASPPB)<br>Elizabeth Winkelman, JD, PhD, California Psychological Association (CPA)<br>Jim Carr, PhD, Behavior Analyst Certification Board (BACB)<br>Gina Green, PhD, Association of Professional Behavior Analysts (APBA)<br>Daniel Shabani, PhD, California Association of Behavior Analysis (CalABA) |
| EPPP2 Task Force | Sheryll Casuga, PsyD<br>Board Member | Seyron Foo, Board Member<br>Amy Welch-Gandy, Representative of the Office of Professional Examination Services (OPES)<br>Paul Marcille, PhD, Representative of the California Psychological Association (CPA)<br>Crystal Faith Cajilog, Student Representative of the California Psychological Association of Graduate Students<br>Anushree Belur, Student Representative of the California Psychological Association of Graduate Students for The Chicago School of Professional Psychology<br>William Bloxham, Student Representative of JFK University 5th Year Student<br>Sherry Johnson, Director of Clinical Training, Representative of the University of California<br>Cindy Yee-Bradbury, PhD., Director of Clinical Training, (Alternate) Representative of the University of California<br>Rene Puliatti, Esq, Representative of the California Psychology Internship Council (CAPIC)<br>Andrew Harlem, PhD, Representative of the California Institute of Integral Studies<br>Gilbert Newman, PhD, Representative of The Wright Institute<br>Jay Finkelman, PhD, Representative of The Chicago School of Professional Psychology<br>Alejandra Ojeda-Beck, Student Representative of the California Psychological Association of Graduate Students, UC Berkeley<br>Sherri Sedler, Student Representative of the California Psychological Association of Graduate Students, California Southern University<br>Olga Belik, PhD, Representative of California the Psychological Association (CPA), Division II |
| Enforcement Committee | Stephen Phillips, JD/PsyD | Marisela Cervantes |

| Committee | Chairperson | Members |
| --- | --- | --- |
| Sunset Review Committee | Stephen Phillips, JD/PsyD | Seyron Foo |
| Telepsychology Committee | Stephen Phillips, JD/PsyD | Michael Erickson, PhD |

**Board President and Vice President Roles and Responsibilities (Sunset Year)**

**The President does at least the following:**

- Preside at open/closed session Board meetings and official regulation hearings.

- Meet with Board management and legal counsel in advance of each quarterly Board meeting to review the agenda book, any anticipated issues, and management/staff concerns as to the agenda items.

- Assure that agenda timeframes are followed and that meeting proceed in an orderly and effective fashion.

- Appoint chairpersons of all committees, define the responsibilities of the chairpersons, and make committee appointments.

- Assure that all Board Members adhere to all Board policies, including attendance at Board and committee meetings and voting on enforcement matters.

- Serve as delegate or alternate delegate to state and national associations or appoint another Board Member to serve in such capacity.

- Represent the Board in communications relating to Board actions or policy or designate another Board Member to represent him/her if necessary, including attending legislative hearings or meetings.

- Review, revise and sign correspondence to legislative officers and the Governor's office regarding Board decisions, bill positions taken by the Board, and upcoming Board activities.

- Approve or disapprove Board members' travel other than regularly scheduled Board or committee meetings.

- Make decisions respecting emergency or urgent matters between meetings of the Board.

- Sign decisions, orders and rulings of the Board and Board minutes after approval by the Board and making oneself readily available to review, sign and expeditiously transmit to Board staff.

- Serve as liaison between the Board and Department's Deputy Director of Board and Bureau Services.

- Serve as immediate supervisor of the Executive Officer. Approve time off requests, sign monthly time sheets, and approve travel expenses. Regular meetings and communications as to Board operations, the agendas for upcoming meetings, and external affairs. Lead the performance evaluation of the Executive Officer, including

soliciting comments from all Board members, preparing the evaluation, meeting with the Executive Officer to review the evaluation, and act as representative of Board in recommending salary adjustments.

- Chair the Sunset Review Committee which includes the Vice President and key staff. Meet with staff to review draft reports to the Senate and Assembly Business and Professions committees and testify before the legislature.

- Drafts quarterly column for the Board's Journal and reviews and provides comments as to the publication as a whole.

- Coordinate with and maintains regular communication with the Vice President as to issues relevant to Board meetings, Board policy, and operational concerns.

- Assume responsibilities usually vested in or customarily incident to the office of President and otherwise prescribed by law.

**The Vice President does at least the following:**

- If the President is temporarily unable or unwilling to perform assigned duties as President, the Vice President shall perform all of the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon, the President.

- Serve on the Sunset Review Committee with the Board President and key staff. Meet with staff to review draft reports to the Senate and Assembly Business and Professions committees and testify before the legislature.

- Coordinates with maintains regular communications with the President as to issues relevant to Board meetings, Board policy, and operational concerns.

- Aids and advises the President in preparing for and in the orderly conduct of quarterly Board meetings and issues as they present themselves throughout the year.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 18, 2019 |
| **TO** | Psychology Board Members |
| **FROM** | Antonette Sorrick, Executive Officer |
| **SUBJECT** | **Organizational Update: Agenda Item 5(a)** |

**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: 25.30
BL 12-03 (999 Blanket) Positions: 0.20
Temp Help: 4.00

| New Hires | |
|---|---|
| **Classification** | **Program** |
| Enforcement Analyst (SSA) – Limited Term | Enforcement |
| | |
| | |
| | |

| Promotions |
|---|
| None |

| Other |
|---|
| None |

| Vacancies |
|---|
| None |

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25 2019 |
| **TO** | Psychology Board Members |
| **FROM** | Antonette Sorrick, Executive Officer |
| **SUBJECT** | **Sunset Review Schedule – Agenda Item 5(b)** |

**Background:**
On July 22, 2019, the Board received the Sunset Review Oversight Form (Form). The Sunset Review process allows the Legislature to review the laws and regulations pertaining to each board and evaluate the board's programs and policies; determine whether the board operates and enforces its regulatory responsibilities and is carrying out its statutory duties; and examine fiscal management practices and financial relationships with other agencies. Through Sunset Review Oversight, boards are also evaluated on key performance measures and targets related to the timeliness of action, enforcement, and other necessary efforts to serve the needs of California consumers while promoting regulatory efficiency and effectiveness.

Board staff is currently working on the Form and will share a draft to the Sunset Review Committee (Dr. Stephen C. Phillips and Mr. Seyron Foo) on September 16, 2019. The Board will review and consider the draft Form at its October 2019 meeting.

**Attachment**
Department of Consumer Affairs Sunset Review timeline.

**Action Requested:**
This item is for informational purposes only. No action is required.

## 5(b) Sunset Review Chart

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 29, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Liezel McCockran<br>Continuing Education and Renewals Coordinator |
| **SUBJECT** | Agenda Item #7 – Discussion and Possible Approval of the Board Meeting Minutes: April 24-26, 2019 |

**Background:**

Attached are the draft minutes of the April 24-26, 2019 Board Meeting.

**Action Requested:**

Review and approve the minutes of the April 24-26, 2019 Board Meeting.

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# BOARD MEETING

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

**Wednesday, April 24, 2019**

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 9:06 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
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
Lea Tate, PsyD

## Members Absent

Sheryll Casuga, PsyD

## Others Present

Antonette Sorrick, Executive Officer
Norine Marks, DCA Legal Counsel
Cherise Burns, Central Services Manager
Sandra Monterrubio, Enforcement Program Manager
Curtis Gardner, Probation Monitor

## Agenda Item #2: President's 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.

## Agenda Item #3: Acknowledgement of Ms. Lucille Acquaye-Baddoo and Ms. Nicole J. Jones

On behalf of the Board, Dr. Phillips read and presented a Certificate of Appreciation to Board Member Ms. Lucille Acquaye-Baddoo, who completed her second full term on the

Board. Ms. Acquaye-Baddoo spoke about her experience being on the Board and how great it was to work with Board Members and staff.

**Agenda Item #3: Public Comment for Items not on the Agenda. 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 public comments were made regarding specific agenda items that are not on the agenda.

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

Dr. Phillips addressed the 2019 meeting calendar. He stated that committee changes will be made once new Board members are appointed.

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

Ms. Sorrick provided the Executive Officer's Report which included a staffing update.

**Agenda Item #13: Discussion and Possible Approval of the Board Meeting Minutes: February 7-8, 2019**

The Board provided their edits to staff and provided a summary at the meeting.

It was M(Acquaye-Baddoo)/S(Tate)/C to approve the minutes as amended with technical, non-substantive changes provided by Dr. Horn and Dr. Phillips.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Horn, Phillips, Harb Sheets, Tate), 0 no

**Agenda Item #14: Budget Report**

Ms. Burns provided the Board with the Budget update.

Dr. Phillips stated that there is a lot of red on the budget report, but the Board does not anticipate running into a deficit at the end of the fiscal year. Ms. Burns confirmed that the Board will not be running in the red at the end of the fiscal year, but will have a lower reversion to the Board's Fund due to unexpected personnel costs and future facilities costs the Board is saving money towards.

**Agenda Item #8: Petition for Reinstatement of License – Leslie Price, PsyD**

Administrative Law Judge Jennifer Russell presided. Deputy Attorney General Brian Bill was present and represented the People of the State of California. Leslie Price, PsyD, was present and represented herself.

**Agenda Item #9: Petition for Early Termination of Probation – Adriana Camargo-Fernandez, PhD**

Administrative Law Judge Jennifer Russell presided. Deputy Attorney General Brian Bill was present and represented the People of the State of California. Adriana Camargo-Fernandez, PhD, was present and was represented by John Dratz, Jr.

**Agenda Item #10: Closed Session**

The Board met in closed session pursuant to Government Code Section11126(c)(3) to discuss disciplinary matters including the above Petitions, Proposed Decisions, Stipulations, Petitions for Reconsideration, and Remands.

Meeting adjourned at 5:01 p.m.

**Thursday, April 25, 2019**

**Agenda Item #11: Call to Order/Roll Call/Establishment of a Quorum**

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 9:32 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
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
Lea Tate, PsyD

**Members Absent**
Sheryll Casuga, PsyD

**Others Present**
Antonette Sorrick, 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
Liezel McCockran, Continuing Education and Renewals Coordinator

**Agenda Item #12: Public Comment for Items not on the Agenda. 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 public comments were made regarding specific agenda items that are not on the agenda.

**Agenda Item #15: Outreach and Education Updates**

a) Website

Ms. Bernal provided the website update. She stated that, in coordination with Strategic Organization, Leadership & Individual Development (SOLID) staff, Board staff held two website focus group meetings. SOLID summarized the recommendations provided at the focus group meetings into a report for Board staff. Board staff will be discussing the report with the Outreach and Education Committee at its next meeting, after which it will be brought to the full Board.

b) Social Media

Ms. Bernal provided the social media update. Members of the Board asked that the You Tube videos be removed from the report until they have been updated.

c) Newsletter

Ms. Sorrick provided the Board with the *Spring Journal*. She stated the *Summer Journal* will be released in July 2019.

d) Outreach Activities

Dr. Phillips and Ms. Sorrick spoke about their experiences attending the ASPPB Mid-Year Meeting in Santa Fe, NM April 8-14, 2019. Ms. Cheung spoke about Ms. Mai Xiong's participation at the California Psychological Association (CPA) Convention held in Los Angeles April 4-7, 2019.

e) DCA Brochure "Professional Therapy Never Includes Sex" – Update

Ms. Bernal stated that the brochure has been approved by all Boards and sent to the Department of Consumer Affairs (DCA) for design and publication. Ms. Sorrick stated the brochure's name will change from "Professional Therapy Never Includes Sex" to "Therapy Never Includes Sexual Behavior". She anticipated publication within the next three months.

**Agenda Item #20: Licensing Report**

Ms. Cheung presented the Licensing report to the Board.

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

Ms. McCockran provided the Board with the Continuing Education and Renewals report. Dr. Harb Sheets asked what the pass rate is for the licensees under a 2nd audit and how many fall into the category of sending in their renewal before they have completed the 36 continuing education hours requirement. Ms. McCockran stated the pass rate for those who have been audited a 2nd time is around 80 to 90 percent. Ms. McCockran stated she has rarely seen cases where psychologists renew their license before completing the 36-hour continuing education requirement.

Dr. Phillips stated that licensees should be more careful in verifying that the courses they take are acceptable continuing education courses. Dr. Horn stated that the Board recognizes and accepts for continuing education credit courses that are provided by certain entities, which are listed on the Board's website.

**Agenda Item #24: Regulatory Update, Review, and Consideration of Additional Changes**

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

Mr. Foo provided the regulatory update.

**Agenda Item #22: Policy and Advocacy Report – Consideration and Possible Approval of Committee Recommendations**

(c)(2) (D) through (EE) Newly Introduced Bills – Potential Action to Recommend the Board Watch Bills

The Board did not have any "Watch" bills they wanted to discuss. Mr. Foo stated that the Policy and Advocacy Committee reviewed these bills in March and staff has recommended no change in action.

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

Ms. Burns defined the term 'spot bill', a non-substantive placeholder bill whose contents will be replaced with substantive provisions later.

Dr. Harb Sheets asked for the status of AB 5 (Gonzalez) Worker Status: independent contractors. Mr. Foo stated that the Board is currently watching the bill for potential impact relating to psychologists and psychological assistants. AB 5 is attempting to codify the test that was established by the Supreme Court into state law. Ms. Burns stated the bill is currently in Appropriations. She stated this bill has to do with the employment relationship between supervisors and supervisees.

Dr. Phillips stated that as a consumer protection Board, taxes and employee status are not a regulatory or consumer protection concern for the Board; therefore, a position is not warranted, but the bill should be watched so that the Board can be aware of what is going on in the profession. He stated that a professional association would be a group that may take a position on this type of bill.

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

SB 275 is a Board-sponsored bill. Ms. Burns provided the Board with a summary of the bill and its progression through the legislative process. Dr. Phillips stated that there was no opposition to the bill. Mr. Foo stated that some of the groundwork for this bill was made during the legislative meetings held in February. Dr. Harb Sheets spoke about her experience at the legislative meetings.

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

Mr. Foo provided an update to the Board. He stated the three provisions were provided to the Senate Committee on Business, Professions and Economic Development (Committee): 1) Clean-up language regarding the EPPP, 2) Language related to voluntary surrender, and 3) Language related to temporary practice. Mr. Foo stated that the provisions regarding voluntary surrender and temporary practice were determined to be substantive; therefore, could not be included in the bill at this time.

a) Review and Consideration of Revisions to the Goal of the Policy and Advocacy Committee

Mr. Foo explained that at the March 18, 2019, Policy and Advocacy Committee Meeting (Committee), the Committee reviewed the current goal and recommended a revised committee name and goal so that both the name and goal will more accurately reflect scope of the Committee's work.

Discussion ensued regarding the name change and revising the language of the goal.

Ms. Sorrick suggested brainstorming language and discussing this agenda item on Friday, April 26, 2019, to allow further discussion.

It was M(Harb Sheets)/S(Tate)/C to adopt the revised Policy and Advocacy Committee name change to Legislative and Regulatory Affairs Committee into the Board's Administrative Procedure Manual.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

**Agenda Item #16: Petition for Early Termination of Probation – Amy Reyes, PsyD**

Administrative Law Judge David Rosenman presided. Deputy Attorney General Brian Bill was present and represented the People of the State of California. Amy Reyes, PsyD, was present and represented herself.

**Agenda Item #17: Petition for Early Termination of Terms and Conditions – Chelsea Spitze, PhD**

Administrative Law Judge David Rosenman presided. Deputy Attorney Brian Bill was present and represented the People of the State of California. Chelsea Spitze, PhD, was present and represented herself.

**Agenda Item #18: Closed Session**

The Board met in closed session pursuant to Government Code Section11126(c)(3) to discuss disciplinary matters including the above Petitions, Proposed Decisions, Stipulations, Petitions for Reconsideration, and Remands.

Meeting adjourned at 4:12 p.m.

**Friday, April 26, 2019**

**Agenda Item #19: Call to Order/Roll Call/Establishment of a Quorum**

Stephen Phillips, JD, PsyD, Board President, called the open session meeting to order at 9:31 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
Mary Harb Sheets, PhD
Jacqueline Horn, PhD
Lea Tate, PsyD

**Members Absent**
Sheryll Casuga, PsyD

**Others Present**
Antonette Sorrick, 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
Liezel McCockran, Continuing Education and Renewals Coordinator

**Agenda Item #12: Public Comment for Items not on the Agenda. 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 public comments were made regarding specific agenda items that are not on the agenda.

**Agenda Item #3: Acknowledgement of Ms. Lucille Acquaye-Baddoo and Ms. Nicole J. Jones**

On behalf of the Board, Dr. Phillips read and presented a Certificate of Appreciation to former Board Member Ms. Nicole J. Jones recognizing her time and dedication to the Board during her two terms.

**Agenda Item #7: DCA Executive Update**

Christopher Castrillo, Deputy Director of the Office of Board and Bureau Services, provided the Board with the DCA Executive Update.

**Agenda Item #25: Enforcement Report**

a) Statistical Update

Ms. Monterrubio provided the Board with the Enforcement Report.

Dr. Jo Linder-Crow, Chief Executive Officer of CPA, asked the Board for guidance on an issue that has been raised from their members regarding a case in the Board of Psychology's *Journal* where the individual was found to have been guilty of gross negligence. She stated that the individual communicated with clients during or after therapy through email and text and this confused CPA members as they don't understand how communicating via text and email after the completion of therapy is considered gross negligence.

Ms. Sorrick stated that the topic is not on the agenda, but Ms. Monterrubio will speak with Dr. Linder-Crow and Dr. Winkelman privately regarding the matter.

Dr. Melodie Schaefer, CPA Division II and CAPIC, asked that the topic raised by Dr. Linder-Crow be put on a future agenda.

**Agenda Item #26: Enforcement Committee Report and Consideration of Committee Recommendations**

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

Ms. Acquaye-Baddoo and Ms. Monterrubio spoke about the Child Custody Stakeholder Meeting held in Sacramento on September 21, 2018. Stakeholders were invited to participate in the meeting to discuss concerns from the Center for Judicial Excellence (Center). The Center had a list of concerns which all the attendees triaged. The Enforcement Committee, Enforcement Unit staff, and management reviewed the prioritization list and recommend the following items be implemented.

1. Item A: Mandate child abuse/domestic violence training for subject matters experts (6 hours of each subject)
2. Item D: Screen child custody subject matters for their stance on parental alienation
3. Item M: Educate public on the "clear and convincing" evidence standard

Dr. Horn asked what it meant to screen for parental alienation. Dr. Phillips explained what is meant by screening for parental alienation, stating that the Enforcement Unit would screen for psychologists who are proponents of the Parental Alienation

Syndrome and who take an active advocacy position on the concept of parental alienation.

Ms. Bernal asked if a psychologist can practice while they are under investigation. Ms. Monterrubio stated that during the investigation, the psychologist is entitled to due process and may practice. She stated that restrictions on the psychologist's practice are warranted if disciplinary action is taken. Ms. Marks stated that there are special circumstances in which there can be an order that prohibits practice while the investigation and disciplinary process is continuing.

Mr. Foo confirmed with Ms. Monterrubio that of the 13 items listed in the Child Custody Summary Report, the three items presented to the Board were the only items that fall under the Board's jurisdiction.

Dr. Schaefer encouraged the Board to have regulations that would protect a psychologist from legal action by the client in a situation where a psychologist would be required to submit client records when the client does not authorize the release of their records.

It was M(Harb Sheets)/S(Horn)/C to accept the Committee's recommendation to implement Items A, D, and M from the Child Custody Summary Report, allow staff to work with the Office of the Attorney General on a possible statutory change regarding how mental health records can be obtained, and create and post a Fact Sheet on the Board's website.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

Ms. Monterrubio stated that Board Members have inquired whether the Office of the Attorney General (OAG) should make a recommendation to grant or deny a petition for every petition hearing. She stated that if the Board would like staff to request that the assigned Deputy Attorney General (DAG) make a recommendation at the hearing, Board staff will let the DAG know.

Discussion ensued regarding receiving a recommendation from the DAG. Board Members expressed that the DAG's recommendation would be taken under advisement in closed session discussions.

It was M(Foo)/S(Harb Sheets)/C to request that the DAG make a recommendation to grant or deny a petition at every hearing.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

The Board and Mr. Josh Templet, Deputy Attorney General, discussed whether the Board should consider making certain decisions precedential to provide guidance in prosecuting cases. The Board discussed Consideration of Designation of the *Decision in the Matter of the Citation and Fine Against Sharri Lorraine Schreiber* as a Precedential Decision. Mr. Templet stated he is not aware of a downside of making a decision precedential.

It was M(Foo)/S(Tate)/C to designate the Schreiber case as precedential.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

Kathleen Russell, Center for Judicial Excellence, thanked the Board for taking meaningful action in their decision to mandate child abuse and sexual violence training for experts. Ms. Russell asked the Board some questions regarding the required training. She also stated that there was a national NPR story on parental alienation and reunification camps and urged the Board to listen to the hour-long episode.

Dr. Phillips stated that Ms. Russell's questions regarding the child abuse and sexual violence trainings will be discussed at an Enforcement Committee Meeting and that Ms. Monterrubio will be able to provide the details thereafter.

**Agenda Item #22 – Policy and Advocacy Committee Report – Consideration and Possible Approval of Committee Recommendations**

a) Review and Consideration of Revisions to the Goal of the Policy and Advocacy Committee

The Board, Ms. Sorrick, and Ms. Marks discussed language for the Legislative and Regulatory Affairs Committee goal.

It was M(Harb-Sheets)/S(Acquaye-Baddoo)/C to adopt the revised goal.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

The revised goal reads as follows:

The goal of the Legislative and Regulatory Affairs Committee is to advocate for legislation and develop regulations that provide for the protection of consumer health and safety. The committee reviews, monitors and recommends positions on legislation that affects the Board, consumers, and the profession of psychology. The Committee also recommends regulatory changes and informs the Board about the status of regulatory packages.

b) 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

Ms. Burns provided the Board with an overview of the bill.

The Board discussed the provisions of the bill, the Board's current practices regarding renewal applications, and whether to take a position on the bill. The Board agreed that they would not be able to provide a position without seeing the amended language of the bill. They expressed concern with the way the bill is currently written. The Board decided that a letter of concern should be drafted and provided to the authors.

It was M(Tate)/S(Horn)/C to delegate to staff to draft a letter of concerns and to work with the Legislative and Regulatory Affairs Committee to draft the letter.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

B. AB 1145 (Garcia) Child abuse: reportable conduct

Ms. Burns provided an overview of the bill. The Board discussed taking a Support position.

Dr. Elizabeth Winkelman, CPA, thanked the Board for considering the bill. Dr. Winkelman stated that CPA supports this bill and she believes it brings clarity to child abuse reporting.

It was M(Harb Sheets)/S(Acquaye-Baddoo)/C to adopt a Support position on AB 1145 (Garcia).

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

C. SB 53 (Wilk) Open meetings

Ms. Burns provided an overview of the bill. She stated that Board staff's recommendation is to take an Oppose position. Ms. Burns stated the Board currently utilizes a two-person committee structure when necessary due to concerns for employee safety. There have been threats made towards enforcement analysts; therefore, enforcement analysts names are not made public for purposes of committee meetings.

Dr. Phillips stated that the bill would be problematic. He stated that this bill would eliminate the ability for staff to attend Enforcement Committee meetings. Dr. Phillips also stated that if he and another Board member attended the same conference and were in the same room, for example when he and Dr. Horn attended the ASPPB conference, then it would have to be publicly noticed.

Dr. Tate stated she opposed the bill due to the safety of Board staff.

Ms. Sorrick stated that if the Board would like to oppose the bill, Board staff can reiterate in the opposition letter that transparency is a value the Board identified in the strategic plan and it is a priority; however, in the limited circumstances this would not allow the Board to function efficiently.

It was M(Bernal)/S(Acquaye-Baddoo)/C to adopt an Oppose position on SB 53 (Wilk).

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

D. SB 66 (Atkins) Medi-Cal: federally qualified health center and rural clinic services

Ms. Burns provided an overview of the bill.

Dr. Winkelman, CPA, stated that CPA supports this bill. She stated that this bill is needed as it will increase access to care, especially for those with disabilities and other practical constraints.

It was M(Tate)/S(Horn)/C to adopt a Support position on SB 66 (Atkins).

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

E. SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct

Ms. Burns provided an overview of the bill and its new sexual misconduct reporting requirement.

It was M(Harb Sheets)/S(Horn)/C to adopt a Support position on SB 425 (Hill).

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

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

Mr. Foo stated that CPA provided the Legislative and Regulatory Affairs Committee a written update on their legislative proposal regarding a new registration category for psychological testing technicians.

Dr. Winkelman, CPA, provided the Board with a summary of her written update to the Legislative and Regulatory Affairs Committee. Dr. Winkelman stated that she understands the Board cannot take an official position at this time.

Dr. Phillips asked if CPA has found an author. Dr. Winkelman stated that CPA does not yet have an author, but they do have legislators who have shown interest. CPA wanted to see if the Board would be supportive before they moved forward.

Dr. Harb Sheets asked if CPA envisions some type of exam that would be required to receive a registration. Dr. Winkelman stated that is not currently part of the proposal.

Dr. Phillips asked if testing technicians are solely used by psychologists or if other professions use testing technicians. Dr. Winkelman stated that CPA's proposal would purely be for psychological and neuropsychological testing.

Dr. William McMullen, board certified neuropsychologist, provided the Board with a summary of the functions of a neuropsychologist. He stated that when a patient is referred to him, he interviews the patient and then neurological and psychological tests are administered. The administration, scoring, and interpretation of the tests can take about two to six hours. Dr. McMullen stated that the tests are designed to be reliable and do not require a person at the doctoral level to administer tests. He stated that he currently has a three-month waiting list and that regulating and clarifying how testing technicians can be used and trained would benefit access to care while maintaining quality, as the psychologist would still be responsible and liable for technicians, which is true in other states as well.

Ms. Bernal asked why this issue is coming to the forefront now. Dr. Winkelman stated that there has been a lack of clarity, and the psychological and neuropsychological testing codes and reimbursement regulations promulgated by the Center for Medicare and Medicaid Services were recently revised.

Dr. Tate asked how the psychologist assesses other issues regarding patient observation, such as seeing body agitation in the patient, when a technician is administering the tests.

Dr. McMullen stated that psychologists should always conduct the first interview to do behavioral observations of the patient and stated that there would be training of the testing technicians on basic behavioral observations, and when behaviors warrant the psychologist's intervention.

Dr. Diane Scheiner, neuropsychologist, stated she wanted to tell the Board how the use of testing technicians would benefit early career neuropsychologists. She stated that as a neuropsychologist, a majority of her time is spent in test administration and data collection. To train testing technicians would be beneficial in limiting the time spent testing, and in expanding the time spent providing interventional services. She stated that this would also provide more opportunities to educate and provide experience in neuropsychology and increase the number of people interested in the field.

Dr. Bob Tomaszewski, neuropsychologist, stated that a major issue from a clinical perspective is quality of care. He stated he has a three-month delay in seeing clients due to the time-consuming nature of the administration of tests. Dr. Tomaszewski stated that the delay in seeing patients affects clinical utility of the information gathered on the patient, minimizes effectiveness in providing clinical services, and is not cost effective. He stated that if a testing technician observes concerning behavior then they can notify the psychologist so that the psychologist may observe the patient.

Dr. Melodie Schaefer stated that, from her personal experience spanning over 10 years, patients who have cognitive deficits cannot receive an MRI unless there is psychological testing. This creates backlogs and affects patient access to care. She expressed her support for the creation of this bill and which would increase testing options for consumers.

Board Members expressed support for the creation of a bill that included a registration category for these testing technicians, required direct supervision by a psychologist, as well as, some level of training that included ethics and test administration.

Ms. Sorrick stated that board staff has been assisting CPA with technical guidance in pursuing a sunrise application. She stated that, although the Board is not ready to take a formal position, Board staff is willing to provide technical assistance to CPA.

Dr. Winkelman, CPA, expressed her appreciation to the Board for considering this item and to Board staff for their willingness to help with the technical issues.

1) Newly Introduced Bills – Potential Action to Recommend the Board Watch Bills
A. AB 8 (Chu) Pupil health: mental health professionals.

Ms. Burns provided an overview of the bill. The Board discussed writing a letter of concern to the author related to the technical provisions.

Dr. Melodie Schaefer stated that she believes that the bill brings up a consumer issue if you have someone who is unlicensed, supervising a mental health profession and possible directing psychological care. She also stated that she finds it questionable that the verbiage includes psychological interns.

Dr. Linder Crow stated that, at this time, CPA has this bill under review. The CPA Board will be discussing and providing a position at their next meeting.

Mr. Foo stated that this bill is requiring school districts to have a mental health professional on campus for every 400 pupils.

It was M(Tate)/S(Harb Sheets)/C to direct board staff to write a letter of concern to address what psychologists are permitted to do as well as to address the inappropriate supervision requirements, and to seek clarification regarding the inclusion of interns.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

B. SB 163 (Portantino) Healthcare coverage: pervasive developmental disorder or autism

Ms. Burns provided an overview of the bill. She reviewed the programmatic concerns of board staff regarding this bill, including the particulars of potential implementation.

Dr. Horn stated that in graduate training, it is not uncommon for those who are advanced in their training to supervise people who are at lower levels of training. Those who are supervising are being supervised by psychologists. Dr. Horn stated that it is important for licensees to be competent in supervision.

Board discussion ensued regarding as to whether the 500 hours discussed in the bill would or should be counted towards licensure requirements since the bill did not address this question.

Dr. Melodie Schaefer stated that she believes that the 500 hours can count towards licensure if the supervisor is a licensed psychologist. She suggested adding clarifying language to clarify that if a psychological assistant or a registered psychologist is hired, the registrant still needs to abide by the Board regulations regarding required supervision even if they are not counting these hours towards licensure.

Dr. Elizabeth Winkelman, CPA, stated that CPA supports this bill. She stated that the intent of this bill is to expand access to services.

It was M(Tate)/S(Bernal)/C to direct staff to draft a letter of concern with technical clarification that psychological assistants and registered psychologists still need to operate under the supervision requirements set forth in the Board's Practice Act.

Vote: 7 aye (Acquaye-Baddoo, Bernal, Foo, Harb Sheets, Horn, Phillips, Tate), 0 no

C. SB 201 (Wiener) Medical procedures: treatment or intervention: sex characteristics of a minor

Mr. Foo stated that this bill previously was a Watch bill. He stated that it is now a two-year bill and will be moving forward.

**Agenda Item #23 - Legislative Items for Future Meetings. 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**

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

**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.

Meeting adjourned at 2:43 p.m.

President Date

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 23, 2019 |
| **TO** | Board of Psychology Members |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #8 - Budget Report |

**Background:**

In the Governor's 2019-20 Budget, the Board has a budget of $5,231,000 and an estimated Fund Balance of $9,843,000 which includes a General Fund Loan Repayment of $3,700,000.

**Action Requested:**

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

Attachment A: Budget Report: FY 2019-2020 through Fiscal Month 12 (preliminary)
Attachment B: Explanation of Discretionary and Non-Discretionary Budget Items
Attachment C: Analysis of Fund Condition
Attachment D: Psychology Fund Balance/Expenditure Comparison Spreadsheet

# BOARD OF PSYCHOLOGY
# FY 2018-19 BUDGET REPORT

**Preliminary FM 12 based on 7/16 activity log**

| OBJECT DESCRIPTION | FY 2015-16 ACTUAL EXPENDITURES (Prelim FM12) | FY 2016-17 ACTUAL EXPENDITURES (Prelim FM12) | FY 2017-18 ACTUAL EXPENDITURES (Prelim FM12) | FY 2018-19 CY REVISED BUDGET 2018-19 | FY 2018-19 CURRENT YEAR EXPENDITURES (7/16 Activity Log) | FY 2018-19 PERCENT SPENT | FY 2018-19 PROJECTIONS TO YEAR END | FY 2018-19 UNENCUMBERED BALANCE |
|---|---|---|---|---|---|---|---|---|
| Salary & Wages (Staff) | 948,138 | 1,029,627 | 1,215,189 | **1,153,000** | 1,260,226 | 109% | **1,260,300** | (107,300) |
| Temp Help | 185,254 | 285,680 | 177,695 | **47,000** | 242,457 | 0% | **242,500** | (195,500) |
| Statutory Exempt (EO) | 88,547 | 91,023 | 97,272 | **90,000** | 101,160 | 112% | **101,200** | (11,200) |
| Board Member Per Diem | 24,300 | 14,400 | 14,400 | **12,000** | 19,100 | 159% | **20,000** | (8,000) |
| Overtime/Retirement Payout | 8,528 | 3,474 | 83,027 | **10,000** | 25,411 | 254% | **25,500** | (15,500) |
| Staff Benefits | 607,403 | 685,887 | 735,161 | **838,000** | 909,697 | 109% | **910,000** | (72,000) |
| ***TOTALS, PERSONNEL SVC*** | **1,862,170** | **2,110,091** | **2,322,744** | **2,150,000** | **2,558,051** | **119%** | **2,559,500** | (409,500) |
| **OPERATING EXPENSE AND EQUIPMENT** | | | | | | | | |
| General Expense | 98,284 | 92,523 | 92,644 | **290,000** | 68,164 | 24% | **70,000** | 220,000 |
| Printing | 66,404 | 67,340 | 60,622 | **95,000** | 58,152 | 61% | **60,000** | 35,000 |
| Communication | 5,863 | 6,544 | 3,499 | **41,000** | 3,758 | 9% | **4,000** | 37,000 |
| Postage | 18,134 | 14,858 | 29,221 | **25,000** | 10,017 | 40% | **11,000** | 14,000 |
| Insurance | - | 20 | 6,870 | **0** | 8,116 | 0% | **8,500** | (8,500) |
| Travel In State | 69,641 | 70,295 | 57,196 | **19,000** | 31,845 | 168% | **34,000** | (15,000) |
| Travel, Out-of-State | - | - | 1,233 | **0** | 1,669 | | **3,100** | (3,100) |
| Training | 1,143 | 620 | 840 | **15,000** | 5,260 | 35% | **5,260** | 9,740 |
| Facilities Operations | 147,630 | 164,677 | 162,553 | **139,000** | 231,559 | 167% | **261,559** | (122,559) |
| C & P Services - Interdept. | - | - | 759 | **263,000** | 99 | 0% | **100** | 262,900 |
| Attorney General | 843,411 | 706,587 | 664,375 | **755,000** | 619,304 | 82% | **620,000** | 135,000 |
| Office of Adminstrative Hearings | 127,825 | 118,786 | 162,690 | **116,000** | 161,910 | 140% | **162,000** | (46,000) |
| C & P Services - External | 309,722 | 281,030 | 374,164 | **427,000** | 422,439 | 99% | **423,000** | 4,000 |
| DCA Pro Rata | 779,648 | 769,952 | 857,000 | **939,000** | 939,000 | 100% | **939,000** | 0 |
| DOI - Investigation Services (HQIU) | 156,843 | 38,737 | 7,623 | **0** | 2,935 | | **3,000** | (3,000) |
| Interagency Services | - | - | 4,941 | **0** | 5,755 | | **6,000** | (6,000) |
| Interagency Services with OPES | 46,484 | 39,424 | 46,776 | **54,000** | 99,344 | 184% | **99,344** | (45,344) |
| Consolidated Data Center (OTECH) | 2 | 1 | 7,635 | **6,000** | - | 0% | **0** | 6,000 |
| Information Technology | 10,041 | 9,452 | 5,164 | **7,000** | 5,356 | 77% | **5,500** | 1,500 |
| Equipment | 23,631 | 26,244 | 47,023 | **0** | 7,518 | | **9,000** | (9,000) |
| ***TOTALS, OE&E*** | **2,930,240** | **2,663,276** | **2,830,796** | **3,191,000** | **2,996,154** | **94%** | **2,724,363** | **466,637** |
| ***TOTAL EXPENSE*** | **4,792,410** | **4,773,367** | **5,153,540** | **5,341,000** | **5,554,205** | **104%** | **5,283,863** | **57,137** |
| Sched. Reimb. - Fingerprints | (2,401) | (3,888) | (1,127) | **(47,000)** | (2,793) | 6% | **(47,000)** | 0 |
| Sched. Reimb. - Other | (2,115) | (2,115) | (1,175) | **(4,000)** | (705) | 18% | **(4,000)** | 0 |
| Unsched. Reimb. - Other | (130,221) | (182,200) | (184,480) | **0** | (145,416) | 0% | **0** | 0 |
| ***NET APPROPRIATION*** | **4,657,673** | **4,585,164** | **4,966,758** | **5,290,000** | **5,405,291** | **102%** | **5,232,863** | **57,137** |
| | | | | | | **SURPLUS/(DEFICIT):** | | **1.1%** |

| | C/P External | | | | | | | C/P Internal | | MOU w/ DOI |
|---|---|---|---|---|---|---|---|---|---|---|
| | AmEx | Elavon | PSI | Adaptive Lang | SME | CPS | Court Reporters | AG - billings | OAH - billings | $129/hr |
| July | $ - | $ - | $ - | | $ 300 | $ 625 | $ 738 | $ 36,331 | $ 12,050 | |
| August | $ 541 | $ 3,551 | $ - | | $ 27,988 | $ 325 | $ 1,500 | $ 36,165 | $ 17,770 | |
| September | $ 623 | $ 3,536 | $ - | | $ 29,723 | $ 375 | $ 984 | $ 36,165 | $ 14,270 | |
| October | $ 514 | $ 3,168 | $ 12,470 | | $ 39,097 | $ - | $ 988 | $ 39,898 | $ 2,310 | |
| November | $ 663 | $ 3,457 | $ 4,764 | | $ 23,913 | $ - | $ 1,255 | $ 42,733 | $ 9,090 | |
| December | $ 573 | $ 2,792 | $ 3,753 | | $ 16,826 | $ - | $ 1,754 | $ 32,285 | $ 1,470 | |
| January | $ 433 | $ 3,141 | $ 4,012 | | $ 40,270 | $ - | $ - | $ 71,658 | $ 6,930 | |
| February | $ 561 | $ 3,362 | $ 2,984 | | $ 11,312 | $ - | $ 1,754 | $ 49,404 | $ 31,120 | |
| March | $ 469 | $ 3,026 | $ 30,991 | | $ 23,637 | $ - | $ 1,744 | $ 69,920 | $ 24,410 | 1899.25 |
| April | $ 506 | $ 3,303 | $ 3,661 | | $ 23,607 | $ - | $ 494 | $ 66,031 | $ 13,860 | |
| May | $ 400 | $ 3,176 | $ 3,001 | | $ 43,672 | $ - | $ - | $ 68,665 | $ 9,900 | 2433.75 |
| June | $ 584 | $ 3,254 | $ - | $ 10,000 | $ 17,829 | $ - | $ 4,460 | $ 70,049 | $ 18,730 | |
| Total | $ 5,868 | $ 35,765 | $ 65,636 | $ 10,000 | $ 298,174 | $ 1,325 | $ 15,671 | $ 619,304 | $ 161,910 | $ 313,954 |
| Contract | $ 13,000 | $ 46,000 | $ 62,652 | $ 10,000 | | $ 1,325 | | $ 755,000 | $ 116,000 | |
| Difference | $ 7,132 | $ 10,235 | $ (2,984) | $ - | $ (298,174) | $ - | $ (15,671) | $ 135,696 | $ (45,910) | $ (313,954) |

| Board of Psychology Budget Items | | |
|---|---|---|
| **Non-Discretionary Budget** | | |
| Personal Services<br>*Permanent Staff, Per Diem, Benefits* | $ | 2,213,000 |
| Operating Expenses<br>*Facilities, Departmental Distributed, Statewide Prorata, Credit Card Processing, Examinations, Enforcement* | $ | 2,642,000 |
| **Discretionary Budget** | | |
| Personal Services<br>*Temporary Help, Overtime* | $ | 57,000 |
| Operating Expenses<br>*General Operating Expenses, Equipment, Travel, Maintenance Contracts, Printing, Postage* | $ | 370,000 |
| **Total Budget** | $ | 5,282,000 |

# 0310 - Psychology Fund Condition Analysis

Prepared 7.26.19

(Dollars in Thousands)

| 2019-20 Budget Act with Interfund Loan Interest | PY 2017-18 | PY 2018-19 | Budget Act CY 2019-20 | BY 2020-21 | BY +1 2021-22 | BY +2 2022-23 | BY +3 2023-24 | BY +4 2024-25 |
|---|---|---|---|---|---|---|---|---|
| **BEGINNING BALANCE** | $ 4,297 | $ 3,399 | $ 7,557 | $ 9,843 | $ 8,340 | $ 6,650 | $ 4,765 | $ 2,677 |
| Prior Year Adjustment | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Adjusted Beginning Balance | $ 4,297 | $ 3,399 | $ 7,557 | $ 9,843 | $ 8,340 | $ 6,650 | $ 4,765 | $ 2,677 |
| **REVENUES AND TRANSFERS** | | | | | | | | |
| Revenues: | | | | | | | | |
| Delinquent fees | $ 26 | $ 39 | $ 70 | $ 70 | $ 70 | $ 70 | $ 70 | $ 70 |
| Renewal fees | $ 3,393 | $ 3,521 | $ 3,358 | $ 3,358 | $ 3,358 | $ 3,358 | $ 3,358 | $ 3,358 |
| Other regulatory fees | $ 239 | $ 149 | $ 116 | $ 116 | $ 116 | $ 116 | $ 116 | $ 116 |
| Other regulatory licenses and permits | $ 625 | $ 623 | $ 618 | $ 618 | $ 618 | $ 618 | $ 618 | $ 618 |
| Sales of documents | $ 3 | $ 3 | $ - | $ - | $ - | $ - | $ - | $ - |
| Miscellaneous services to the public | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| Income from surplus money investments | $ 40 | $ 68 | $ 55 | $ 123 | $ 98 | $ 70 | $ 40 | $ 6 |
| Escheat of unclaimed checks and warrants | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 |
| Miscellaneous revenues | $ 1 | $ - | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 | $ 1 |
| Totals, Revenues | $ 4,328 | $ 4,404 | $ 4,219 | $ 4,287 | $ 4,262 | $ 4,234 | $ 4,204 | $ 4,170 |
| Transfers from Other Funds | | | | | | | | |
| GF Loan Repayment Per Item 1450-011-0310 BA of 2002 | $ - | $ 3,800 | $ 1,200 | $ - | $ - | $ - | $ - | $ - |
| GF Loan Repayment Per Item 1110-011-0310 BA of 2008 | $ - | $ - | $ 2,500 | $ - | $ - | $ - | $ - | $ - |
| Interest from Interfund loans | $ - | $ 1,605 | $ - | $ - | $ - | $ - | $ - | $ - |
| Totals, Revenues and Transfers | $ 4,328 | $ 9,809 | $ 7,919 | $ 4,287 | $ 4,262 | $ 4,234 | $ 4,204 | $ 4,170 |
| Totals, Resources | $ 8,625 | $ 13,208 | $ 15,476 | $ 14,130 | $ 12,602 | $ 10,884 | $ 8,969 | $ 6,847 |
| **EXPENDITURES** | | | | | | | | |
| Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations) | $ 4,919 | $ 5,290 | $ 5,231 | $ 5,388 | $ 5,550 | $ 5,717 | $ 5,889 | $ 6,066 |
| Financial Information System for California (State Operations) | $ 6 | $ 1 | $ -1 | $ -1 | $ -1 | $ -1 | $ -1 | $ -1 |
| Supplemental Pension Payments (State Operations) | $ - | $ 45 | $ 94 | $ 94 | $ 94 | $ 94 | $ 94 | $ 94 |
| Statewide General Administrative Expenditures (Pro Rata)(State Operations) | $ 301 | $ 315 | $ 309 | $ 309 | $ 309 | $ 309 | $ 309 | $ 309 |
| Total Disbursements | $ 5,226 | $ 5,651 | $ 5,633 | $ 5,790 | $ 5,952 | $ 6,119 | $ 6,292 | $ 6,471 |
| **FUND BALANCE** | | | | | | | | |
| Reserve for economic uncertainties | $ 3,399 | $ 7,557 | $ 9,843 | $ 8,340 | $ 6,650 | $ 4,765 | $ 2,677 | $ 376 |
| **Months in Reserve** | 7.2 | 16.1 | 20.4 | 16.8 | 13.0 | 9.1 | 5.0 | 0.7 |

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 3% PER YEAR IN BY+1 AND ON-GOING..

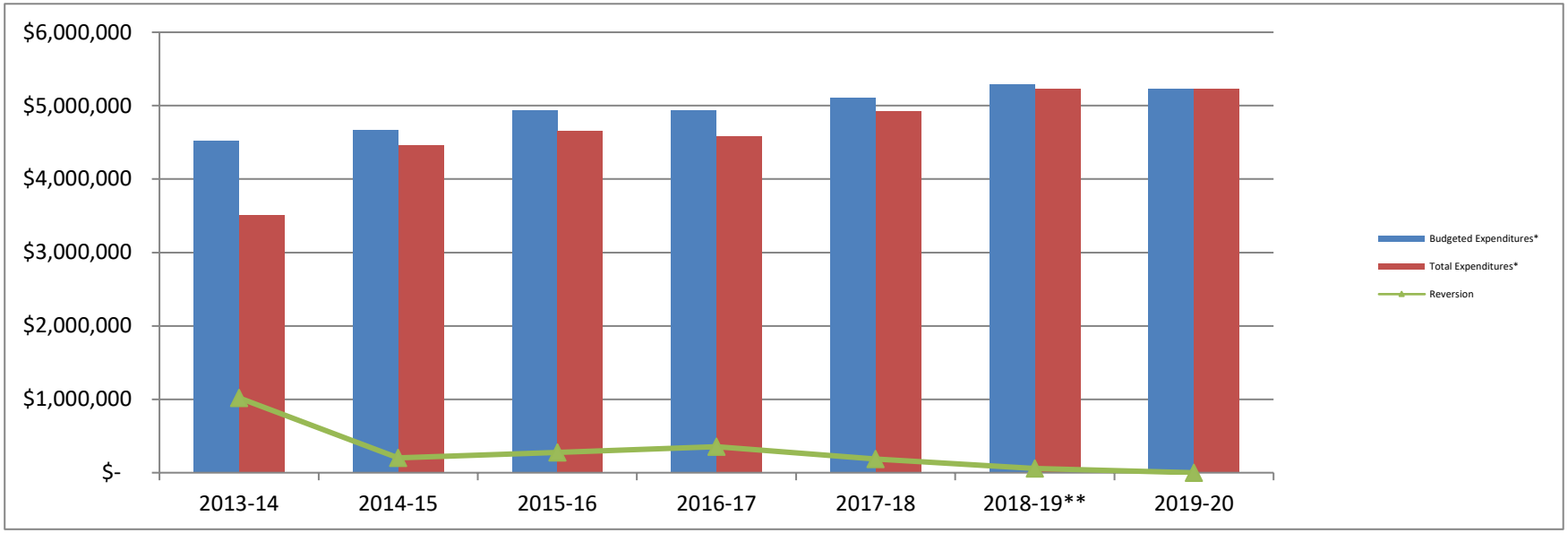
C. ASSUMES INTEREST RATE OF 1.5%

D. PROJECTED FY 2017-18 EXPENDITURES (NET) AND REVENUES

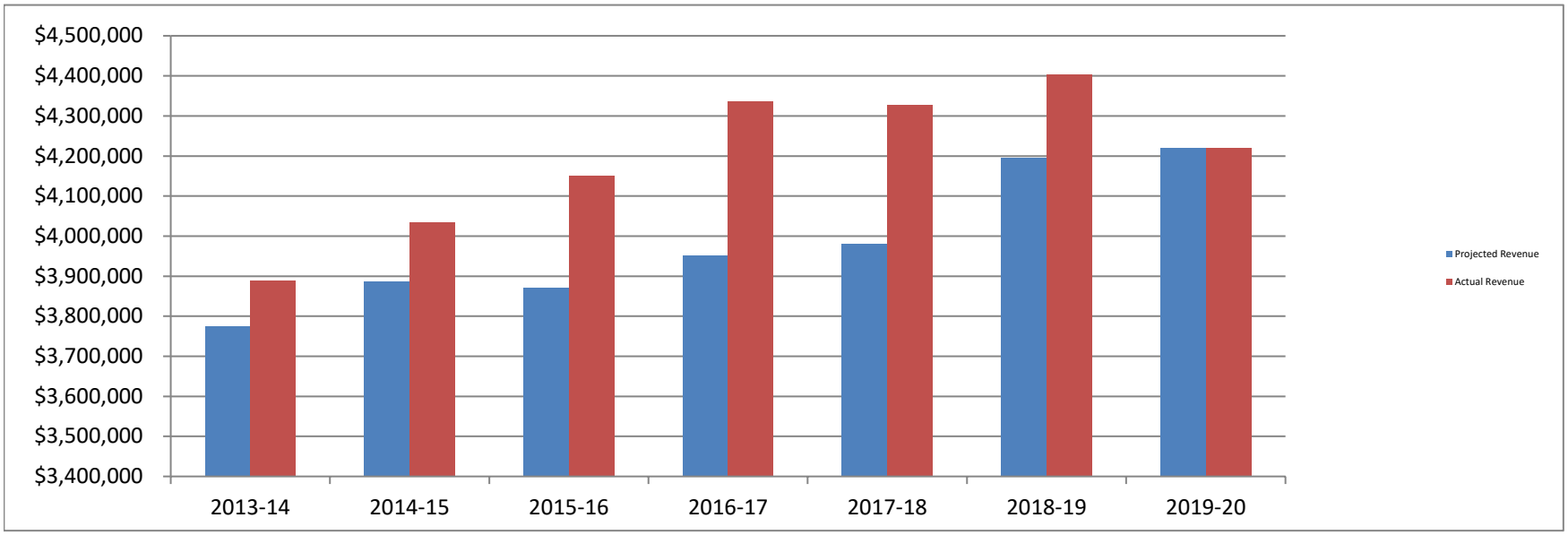
| Psychology Expenditure Comparison (Budgeted vs. Actual) | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19** | 2019-20 |
| Budgeted Expenditures* | $4,525,222 | $4,669,197 | $4,933,000 | $4,938,000 | $5,107,000 | $ 5,290,000 | $ 5,231,000 |
| Total Expenditures* | $3,506,000 | $4,468,000 | $4,658,000 | $4,585,000 | $4,919,000 | $ 5,232,000 | $ 5,231,000 |
| Reversion | $1,019,222 | $ 201,197 | $ 275,000 | $ 353,000 | $ 188,000 | $ 58,000 | $ - |

*Figures include reimbursements

** Total Expenditures are projected through Prelim FM 12.



| Psychology Revenue Comparison (Projected vs. Actual) | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
| Projected Revenue | $3,776,000 | $3,886,000 | $3,872,000 | $3,951,000 | $3,981,000 | $ 4,195,000 | $ 4,219,000 |
| Actual Revenue | $3,888,000 | $4,034,000 | $4,150,000 | $4,337,000 | $4,328,000 | $ 4,404,000 | $ 4,219,000 |
| Difference | $ (112,000) | $ (148,000) | $ (278,000) | $ (386,000) | $ (347,000) | $ (209,000) | $ - |



California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 11, 2019 |
| **TO** | Board Members |
| **FROM** | Mai Xiong<br>Licensing and BreEZe Coordinator |
| **SUBJECT** | **Agenda Item 9**<br>Licensing Report |

## 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 | 19/20** |
|---|---|---|---|---|---|---|---|---|---|---|
| **Psychologist*** | 21,527 | 22,020 | 22,688 | *** | 20,575 | 20,227 | 20,024 | 20,580 | 21,116 | 21,735 |
| **Psychological Assistant** | 1,507 | 1,635 | 1,727 | *** | 1,701 | 1,580 | 1,446 | 1,446 | 1,361 | 1,397 |
| **Registered Psychologist** | 312 | 320 | 349 | *** | 280 | 272 | 278 | 250 | 129 | 127 |

*Current and Current Inactive
**As of July 31, 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 Board'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 or pending review.

“CPLEE Retake Transaction” is a process for applicants who need to retake the CPLEE due to an unsuccessful attempt. This process is also created for licensees who are required to take the CPLEE due to probation. An application with an “open” status means it is deficient, pending review, or an applicant is waiting for approval to re-take the examination when the new form becomes available in the next quarter.

“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 July 11, 2019
B. Application Workload Reports as of July 11, 2019
C. Applications Received July 2018 – June 2019 as of July 11, 2019
D. Examination Statistics June 2018 – May 2019

## Action:

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

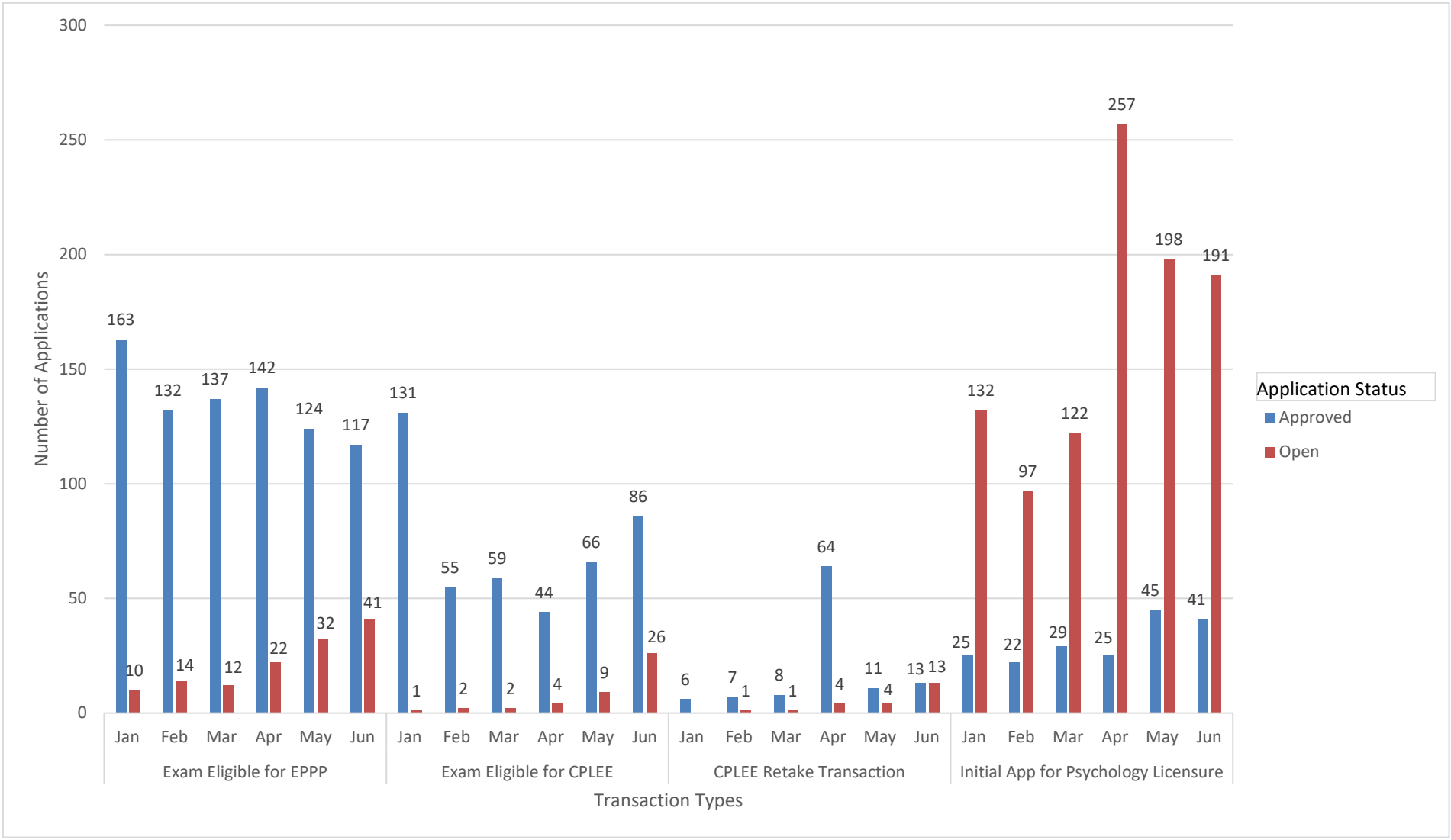
STATE DEPARTMENT OF CONSUMER AFFAIRS
BREEZE SYSTEM

LICENSING POPULATION REPORT
BOARD OF PSYCHOLOGY
AS OF 7/11/2019

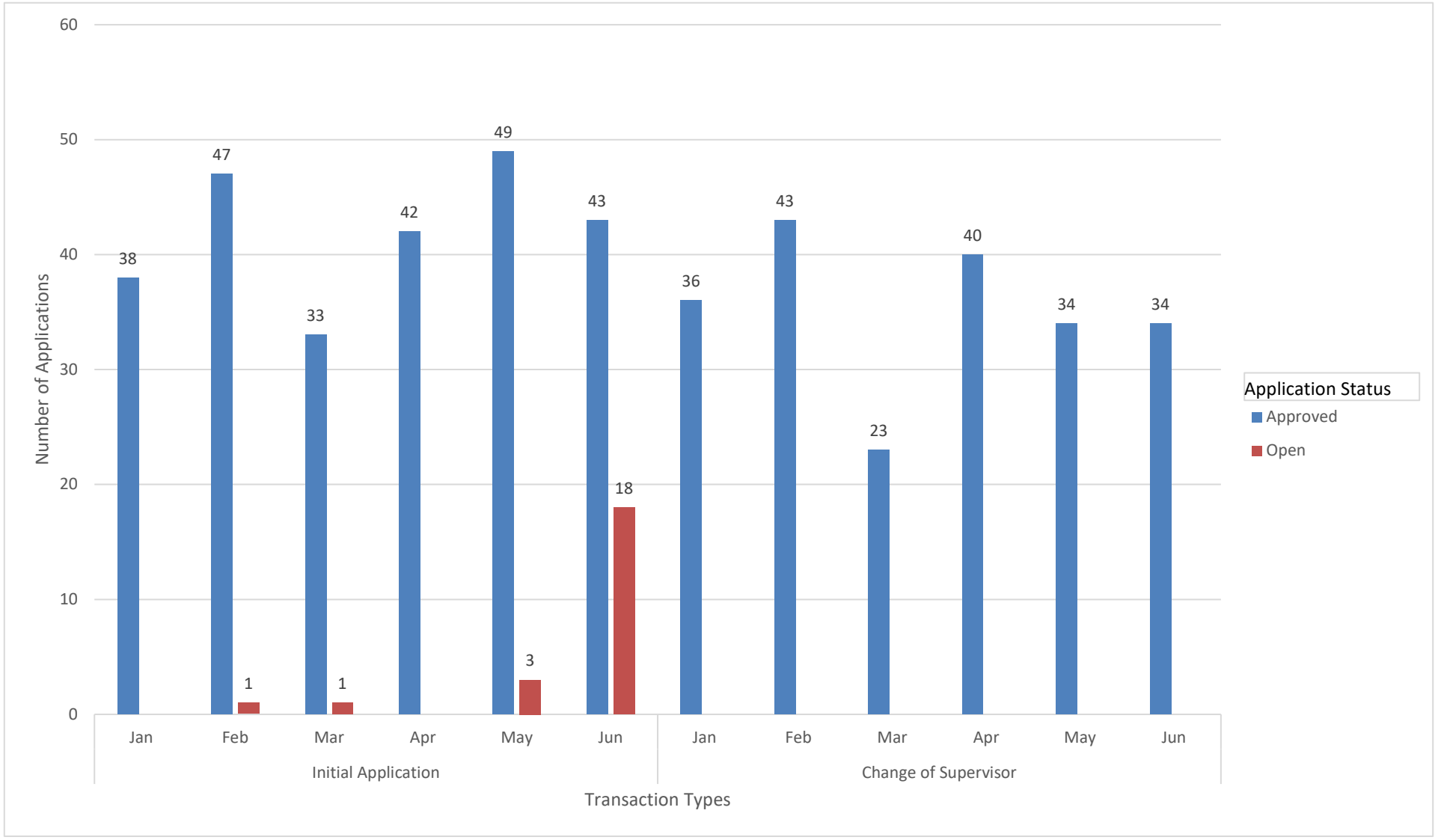
| License Type | STATUS CODES | | | | | | | | Total |
|---|---|---|---|---|---|---|---|---|---|
| | Licensing | | | | | Enforcement | | | |
| | 20 | 21 | 45 | 50 | 85 | 48 | 63 | 65 | |
| Psychologist | 18,719 | 2,924 | 1,146 | 6,175 | 994 | 0 | 218 | 146 | 30,322 |
| Psychological Assistant | 1,378 | 0 | 90 | 21,240 | 8 | 0 | 8 | 7 | 22,731 |
| Registered Psychologist | 129 | 0 | 0 | 4,495 | 1 | 0 | 0 | 0 | 4,625 |
| Total | 20,226 | 2,924 | 1,236 | 31,910 | 1,003 | 0 | 226 | 153 | 57,678 |

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

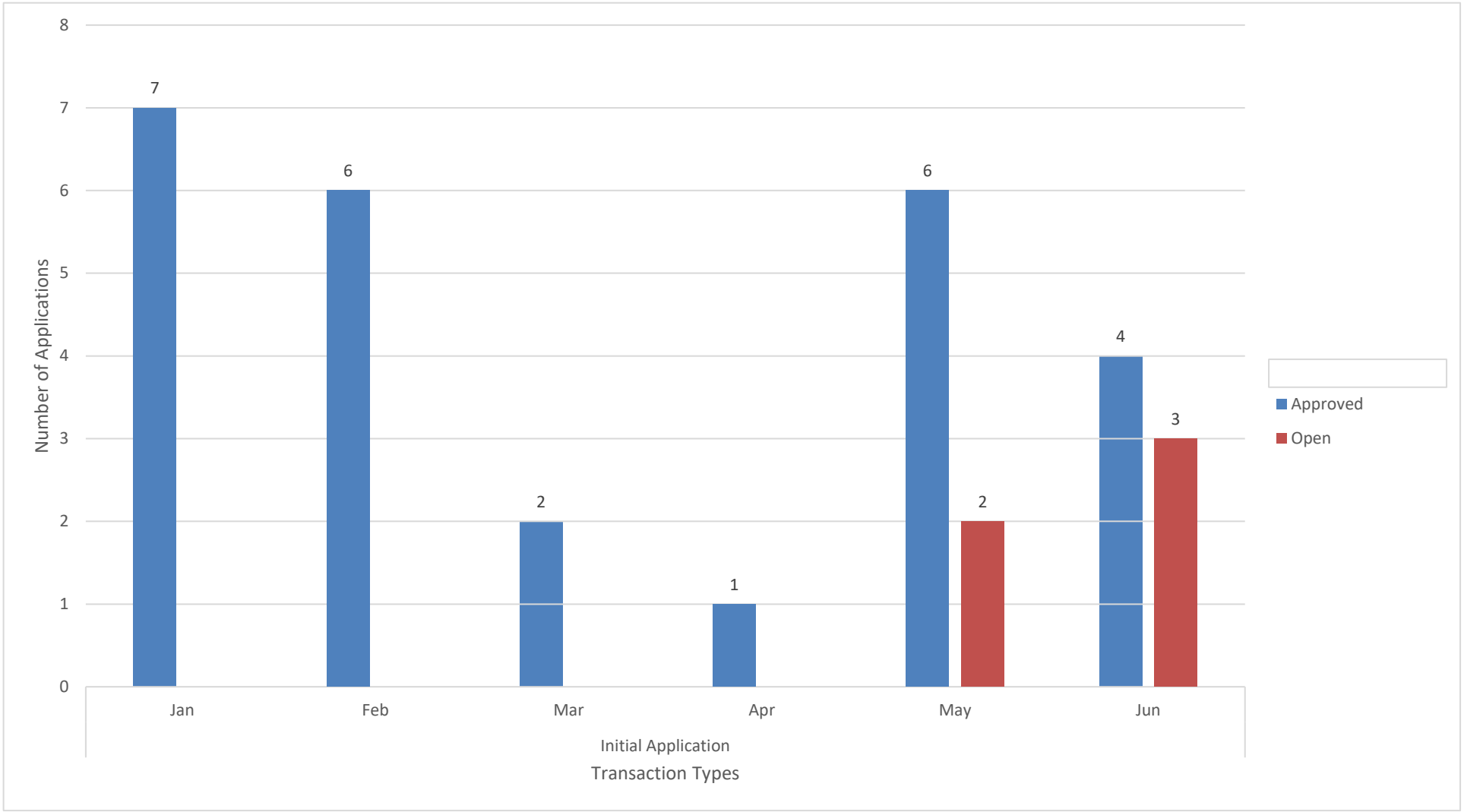
# Psychologist Application Workload Report
## January 1, 2019 to June 30, 2019



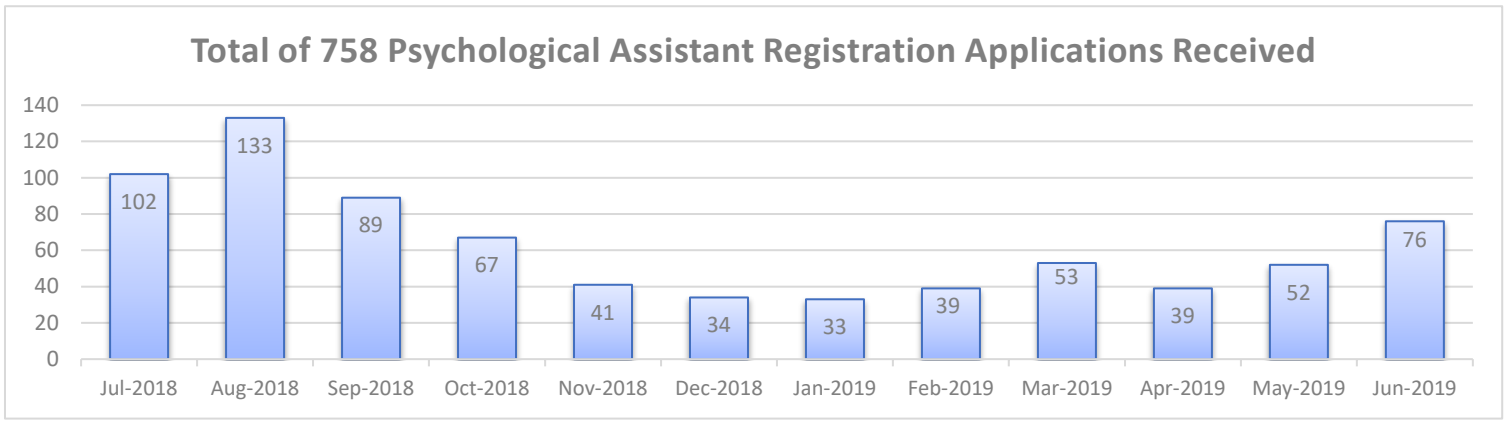
# Psychological Assistant Application Workload Report
## January 1, 2019 to June 30, 2019

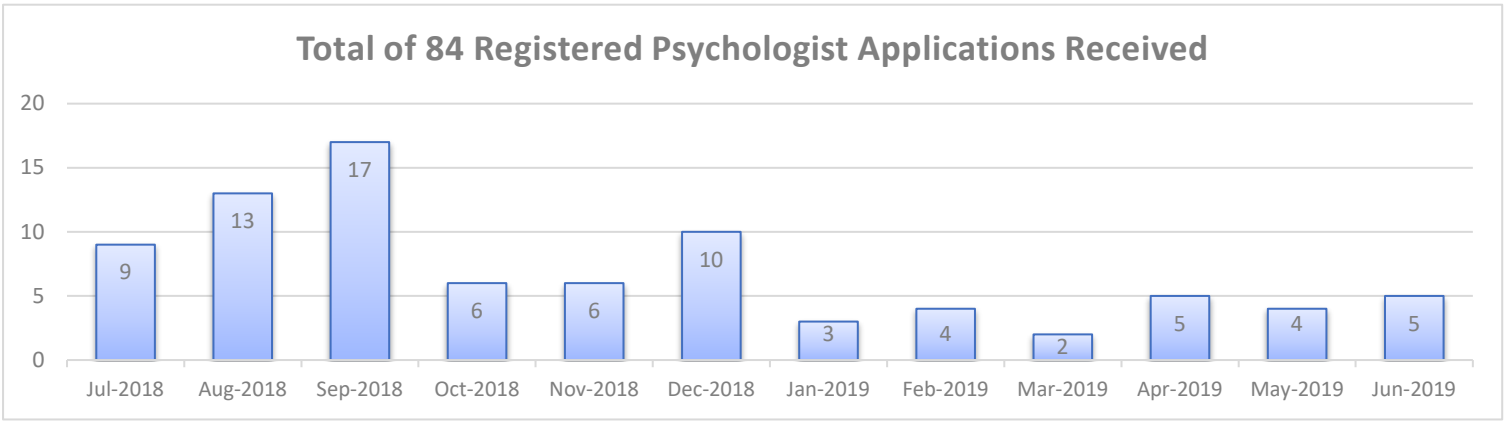


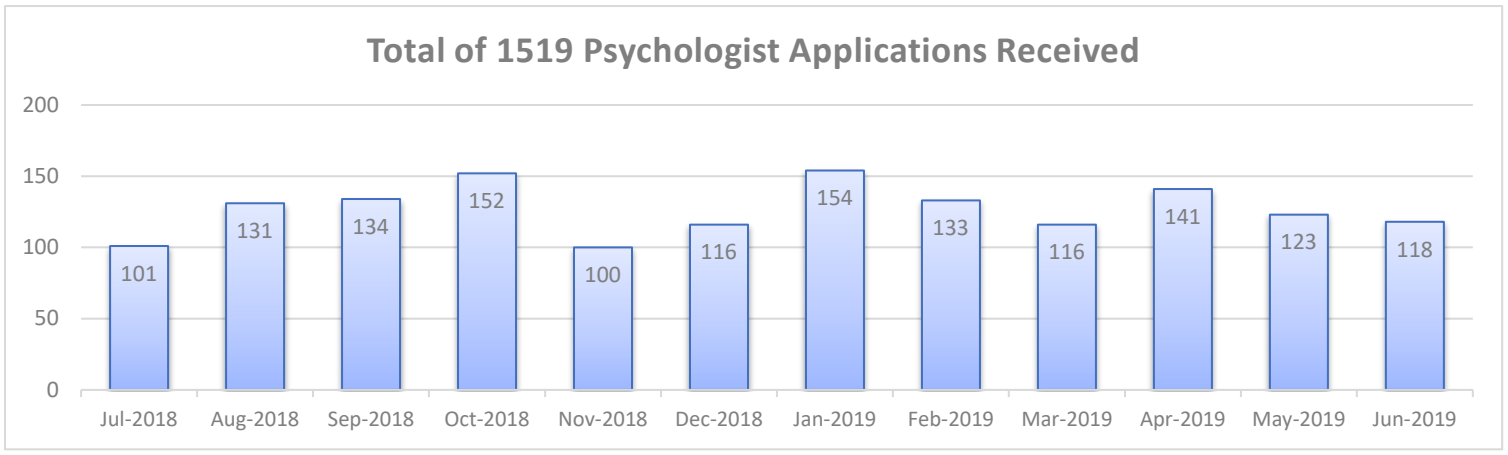
# Registered Psychologist Application Workload Report
## January 1, 2019 to June 30, 2019

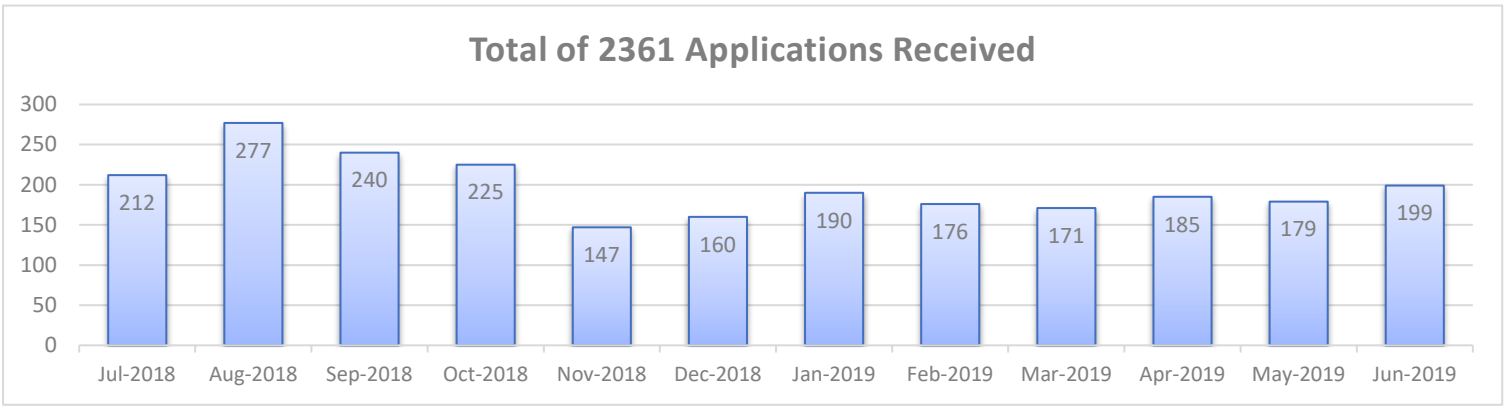


# Applications Received July 2018 to June 2019
As of July 11, 2019



# Applications Received July 2018 to June 2019
As of July 11, 2019

# Examination Statistics June 2018 - May 2019
# As of July 11, 2019

## 2018/2019 Monthly EPPP Examination Statistics

| Month | # of Candidates | # Passed | % Passed | Total First Timers | First Time Passed | % First Time Passed |
|---|---|---|---|---|---|---|
| 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 |
| March 2019 | 157 | 84 | 53.5 | 89 | 67 | 75.28 |
| April 2019 | 174 | 94 | 54.02 | 96 | 74 | 77.08 |
| May 2019 | 173 | 84 | 48.55 | 95 | 66 | 69.47 |
| Total | 1605 | 819 | 50.42 | 872 | 608 | 68.72 |

## 2018/2019 Monthly CPLEE Examination Statistics

| Month | # of Candidates | # Passed | % Passed | Total First Timers | First Time Passed | % First Time Passed |
|---|---|---|---|---|---|---|
| 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 | 112 | 88 | 78.57 | 89 | 70 | 78.65 |
| January 2019 | 86 | 60 | 69.77 | 50 | 35 | 70 |
| February 2019 | 83 | 60 | 72.29 | 62 | 43 | 69.35 |
| March 2019 | 105 | 75 | 71.43 | 87 | 68 | 78.16 |
| April 2019 | 89 | 59 | 66.29 | 47 | 32 | 68.09 |
| May 2019 | 79 | 60 | 75.95 | 53 | 38 | 71.7 |
| Total | 1257 | 895 | 71.24 | 916 | 658 | 72.01 |

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 31, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Liezel McCockran<br>Continuing Education and Renewals Coordinator |
| **SUBJECT** | Agenda Item #10 – Continuing Education/Renewals Report |

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

A. CE Audit
B. Reasons for Not Passing CE Audit
C. Psychologist and Psychological Assistant Renewal Applications Processed: January 2019 – July 2019
D. Online vs. Mailed In Renewals Processed
E. Pass and Fail Rate 2014-2017
F. Pass and Fail Rates for 2nd Audits

CE audits were completed for January 2017 through June 2017. Audits for June 2017 through December 2017 were recently sent out. The deadline to receive audit documentation is August 3, 2019. To date, the pass rate is 67 percent with 25 percent of audits still pending review. Audits for January, February and March of 2018 are currently being prepared and are anticipated to be sent out early August.

For January 2019 through July 2019, an average of 842 renewal applications were processed per month, with an average of 657 Psychologists renewing as Active and 115 renewing as Inactive. Approximately 842 Psychologists and Psychological Assistants renewed their license online per month and an average of 567 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.

Attachment A

# Continuing Education Audits

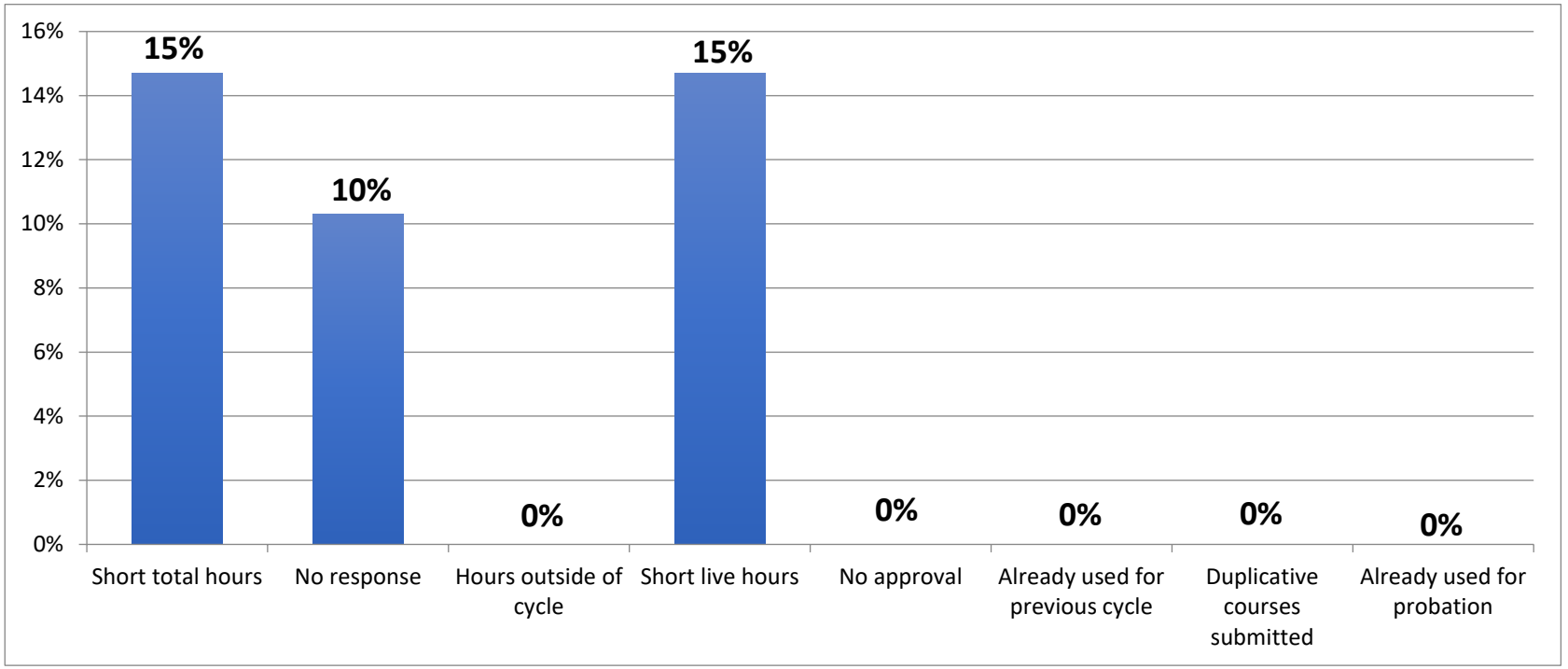
## January 2017 - December 2017

| Month | Total # of Licensees Selected for Audit: | # Passed: | % Passed: | # Pending: | % Pending: | # Failed: (Referred to Citation & Fine Program) | % Failed: |
|---|---|---|---|---|---|---|---|
| January | **33** | 31 | 94% | 0 | 0% | 2 | 6% |
| February | **29** | 25 | 86% | 0 | 0% | 4 | 14% |
| March | **35** | 26 | 74% | 2 | 6% | 7 | 20% |
| April | **28** | 26 | 93% | 0 | 0% | 2 | 7% |
| May | **30** | 25 | 83% | 1 | 3% | 4 | 13% |
| June | **32** | 23 | 72% | 0 | 0% | 8 | 25% |
| July | **30** | 17 | 57% | 13 | 43% | 0 | 0% |
| August | **36** | 18 | 50% | 18 | 50% | 0 | 0% |
| September | **34** | 19 | 56% | 13 | 38% | 2 | 6% |
| October | **28** | 15 | 54% | 13 | 46% | 0 | 0% |
| November | **32** | 16 | 50% | 16 | 50% | 0 | 0% |
| December | **32** | 13 | 41% | 19 | 59% | 0 | 0% |
| **Totals:** | **379** | **254** | **67%** | **95** | **25%** | **29** | **8%** |

| Total Audited | Total Passed | Total Failed | Total Pending | Total Upheld |
|---|---|---|---|---|
| 379 | 254 | 29 | 95 | 0 |
| | 67% | 8% | 25% | 0% |

## Reasons for Not Passing CE Audit

### January 2017 - June 2017



Attachment C

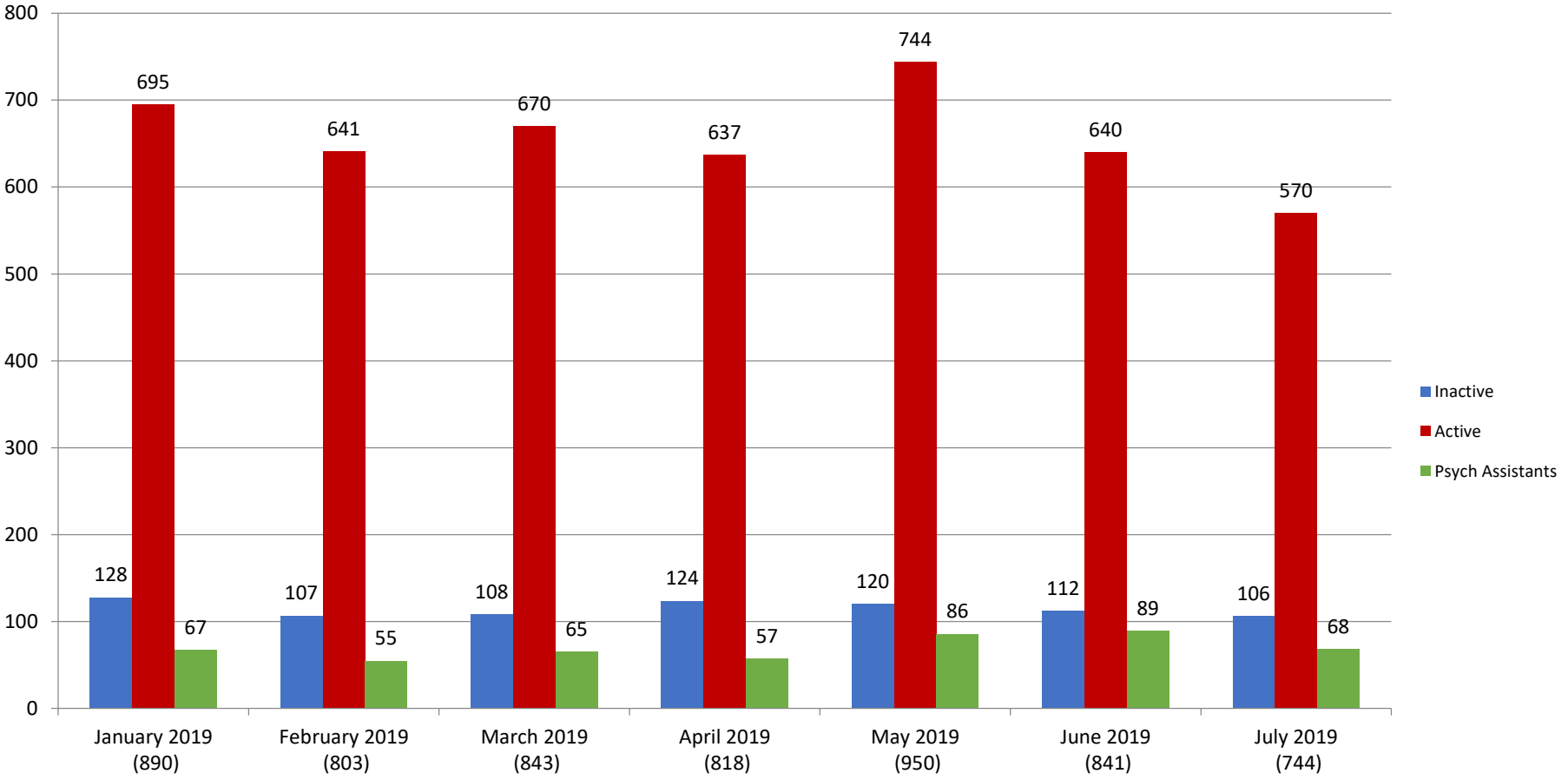
# Reasons for Not Passing the CE Audit:

## January 2017 - June 2017

| | January | February | March | April | May |
|---|---|---|---|---|---|
| Short total hours | 2 | 3 | 2 | 0 | 0 |
| No response | 0 | 1 | 2 | 0 | 2 |
| Hours outside of cycle | 0 | 0 | 0 | 0 | 0 |
| Short live hours | 0 | 0 | 3 | 2 | 2 |
| No approval | 0 | 0 | 0 | 0 | 0 |
| Already used for previous cycle | 0 | 0 | 0 | 0 | 0 |
| Duplicative courses submitted | 0 | 0 | 0 | 0 | 0 |
| Already used for probation | 0 | 0 | 0 | 0 | 0 |
| **TOTALS** | 2 | 4 | 7 | 2 | 4 |
| **TOTALS** | 37% | 26% | 26% | 7% | 15% |

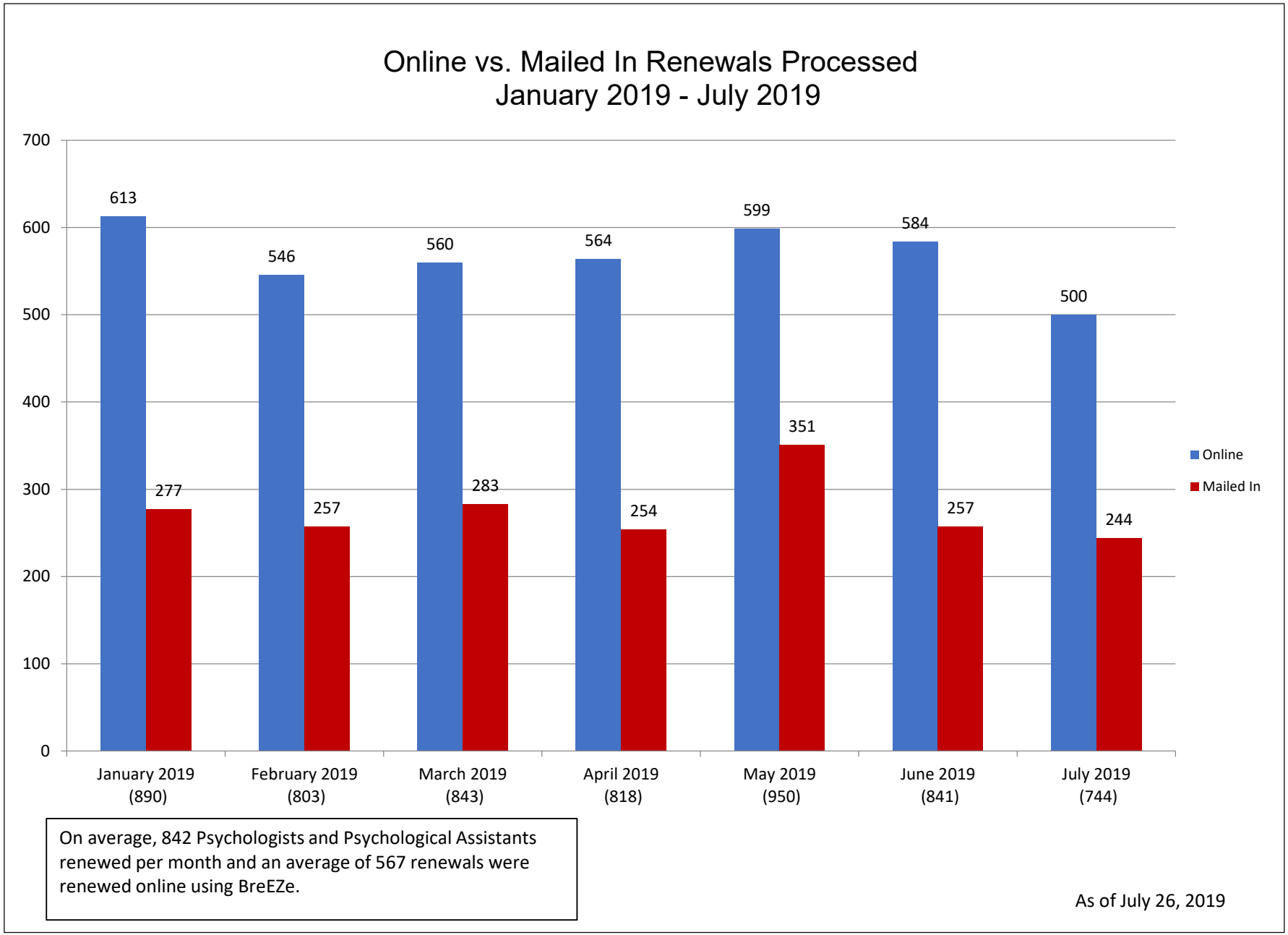
| June | TOTALS |
|---|---|
| 3 | 10 |
| 2 | 7 |
| 0 | 0 |
| 3 | 10 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 8 | 27 |
| 30% | |

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




An average of 842 renewal applications were processed each month, with an average of 657 Psychologists renewing as Active, and an average of 115 Psychologists renewing as Inactive. Additionally, an average of 70 Psychological Assistant renewal applications were processed each month.

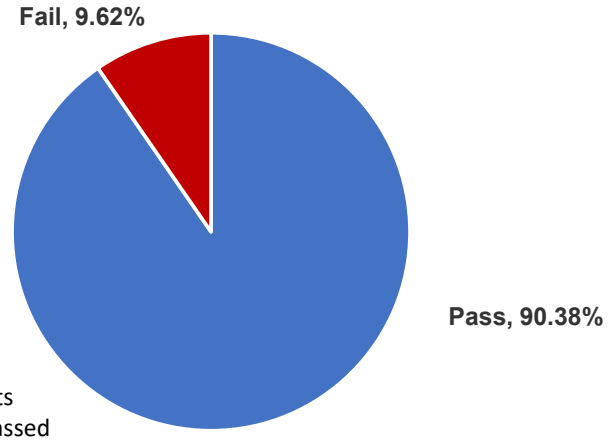
As of July 26, 2019


Online vs. Mailed In Renewals Processed
January 2019 - July 2019
700
600
500
400
300
200
100
0
613
277
546
257
560
283
564
254
599
351
584
257
500
244
Online
Mailed In
January 2019
(890)
February 2019
(803)
March 2019
(843)
April 2019
(818)
May 2019
(950)
June 2019
(841)
July 2019
(744)
On average, 842 Psychologists and Psychological Assistants renewed per month and an average of 567 renewals were renewed online using BreEZe.
As of July 26, 2019

# Pass and Fail Rate
# 2014 - 2017

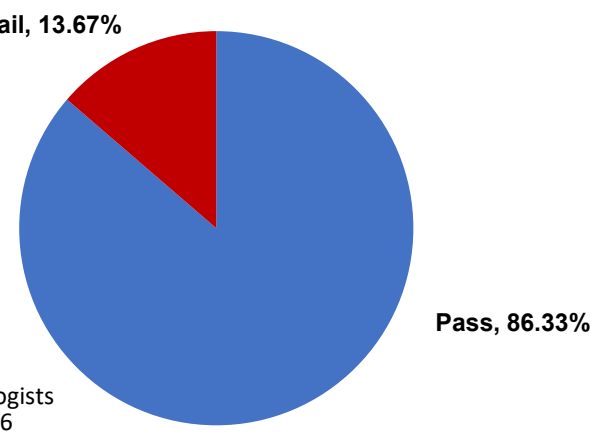
Attachment E

## 2014



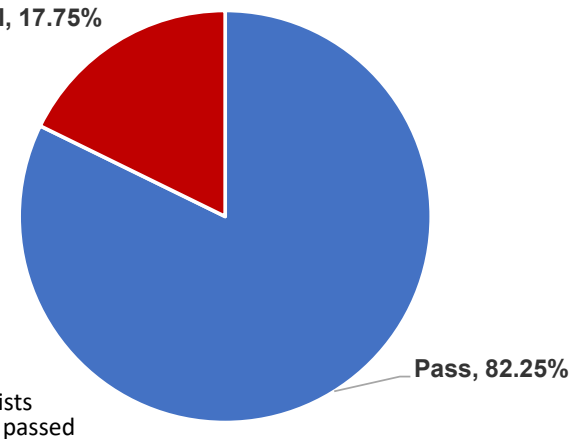

Of the 956 psychologists audited in 2014, 864 passed and 92 failed.

## 2015



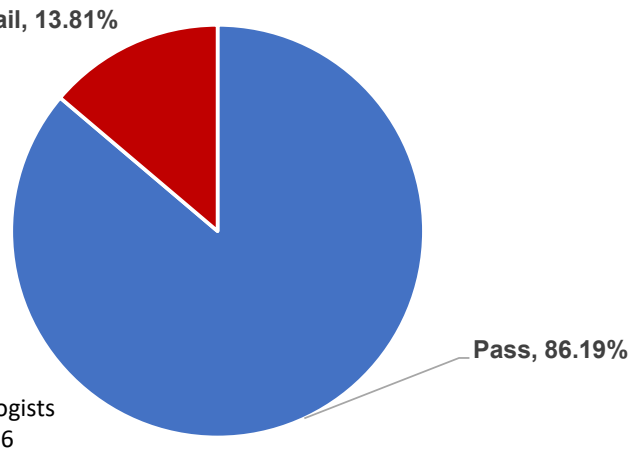

Of the 841 psychologists audited in 2015, 726 passed and 115 failed.

## 2016

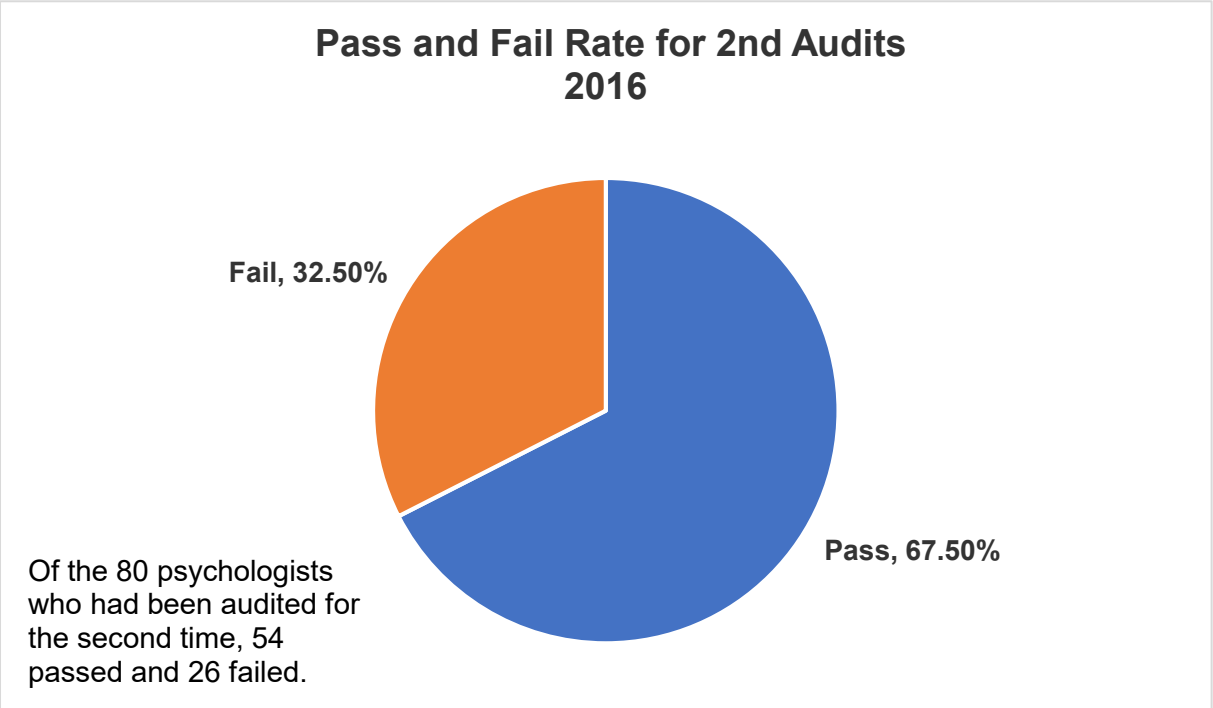


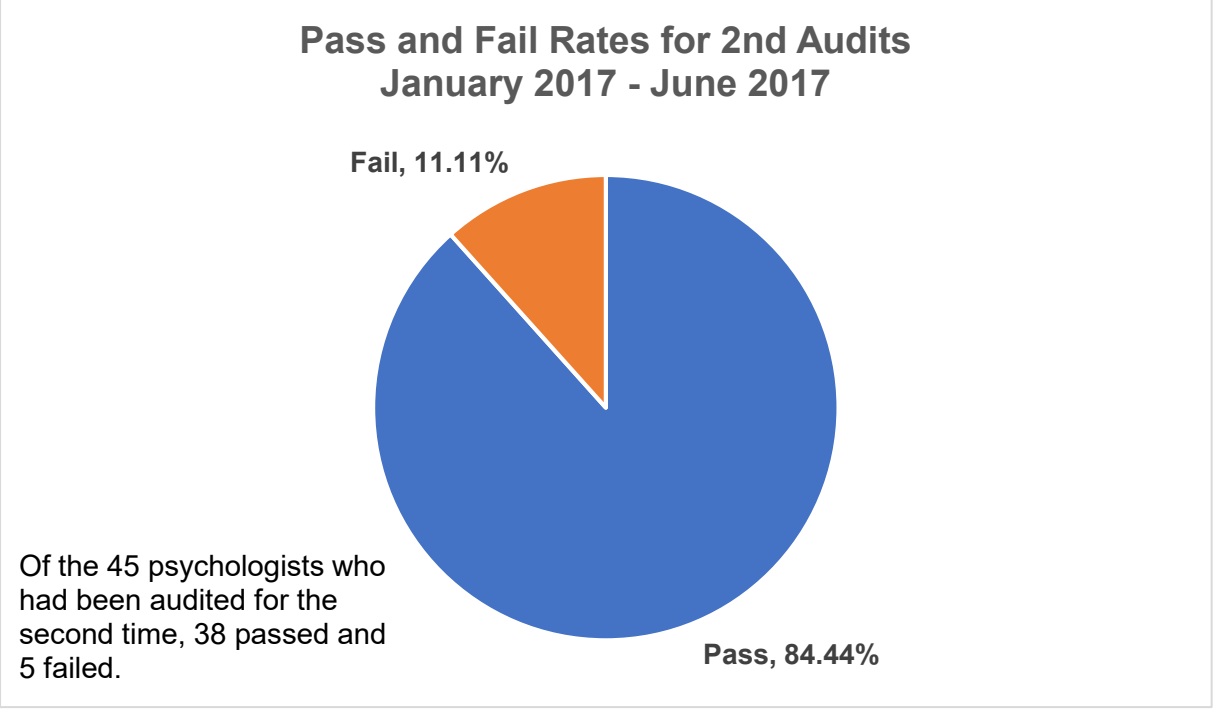

Of the 507 psychologists audited in 2016, 417 passed and 90 failed.

## January 2017 - June 2017




Of the 181 psychologists audited in 2017, 156 passed and 25 failed.


Pass and Fail Rate for 2nd Audits
2016
Fail, 32.50%
Pass, 67.50%
Of the 80 psychologists who had been audited for the second time, 54 passed and 26 failed.


Pass and Fail Rates for 2nd Audits
January 2017 - June 2017
Fail, 11.11%
Pass, 84.44%
Of the 45 psychologists who had been audited for the second time, 38 passed and 5 failed.

California Board of PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #12(a) – Review and Consideration of Revisions to the Name and Goal of the Outreach and Education 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 May 17, 2019 Outreach and Education 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: Outreach and ~~Education~~ Communications Committee

Revised Goal:

The goal of ~~this~~ the Outreach and Communications ~~c~~Committee is to ~~provide critical information to all Californians regarding the evolving practice of psychology, relevant and emerging issues in the field of psychology, and~~ engage, inform, and educate consumers, students, applicants, licensees, and other stakeholders regarding the evolving practice of psychology, the work of the Board, and their relevant laws and regulations.

**Action Requested:**

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

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | August 2, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #12(b) – Discussion and Possible Action on Requesting the Association of State and Provincial Psychology Boards Develop Best Practices for Psychologists When Using Social Media |

**Background:**

At its May 17, 2019 Outreach and Education Committee (Committee), the Committee discussed Board of Psychology (Board) staff and legal counsel's recommendation to request that the Association of State and Provincial Psychology Boards (ASPPB) develop guidance for psychologists on best practices for social media use. Board staff and legal counsel recommended this to avoid potential concerns with underground regulations or confusion for consumers that could arise if the Board itself created and issued guidelines, guidance or best practices for social media use. Due to the relevance and importance of the issue, the Committee agreed with staff that guidance would be beneficial if it were from a broader perspective, such as from ASPPB, which has been done in other professions like nursing.

While somewhat older, the National Council of State Boards of Nursing (NCSBN) provides publicly available guidance to licensed nurses on the use of social media in a manner that maintains patient privacy and confidentiality. NCSBN dedicates part of their professional boundaries page (available here https://www.ncsbn.org/professional-boundaries.htm) to social media, and provides guidance in both written and video formats on their website as shown below:

- "A Nurse's Guide to the Use of Social Media" brochure available here https://www.ncsbn.org/NCSBN_SocialMedia.pdf
- "Social Media Guidelines for Nurses" available here https://www.ncsbn.org/347.htm Video Description: Social media use is ubiquitous, but inappropriate posts by nurses have resulted in licensure and legal repercussions. NCSBN has developed guidelines for nurses and nursing students for using social media responsibly. Key points of these guidelines are summarized, along with dramatization of potential scenarios of inappropriate social media use.
- White Paper: A Nurse's Guide to the Use of Social Media" available here https://www.ncsbn.org/Social_Media.pdf.

**Action Requested:**

The Outreach and Education Committee recommends the Board approve sending a letter to ASPPB to recommend they create social media guidelines for psychologists.

Attachment: Draft Letter to ASPPB

California Board of PSYCHOLOGY

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August 19, 2019

Gerald O'Brien, PhD, Board President
Association of State and Provincial Psychology Boards
P.O. Box 849
Tyrone, GA 30290

RE: Recommendation Regarding the Development of Best Practices for Psychologists When Using Social Media

Dear Dr. O'Brien,

At its August 16, 2019 Board of Psychology (Board) Meeting, the Board voted to recommend to the Association of State and Provincial Psychology Boards (ASPPB) that it develop guidance for psychologists on best practices for social media use. The Board believes that due to the relevance and importance of this issue in relation to the Board's regulation of psychologists, that guidance in this area would be most beneficial if it were from a broader perspective, which has been done in other professions like nursing. For examples, the National Council of State Boards of Nursing (NCSBN) provides publicly available guidance to licensed nurses on the use of social media in a manner that maintains patient privacy and confidentiality (available here https://www.ncsbn.org/professional-boundaries.htm).

Topic areas that the Board believes are relevant social media usage guidance for psychologists include:

- Inadvertent breaches of patient information and posting pictures of patients/clients
- Friending/following patients/clients
- Acting unprofessionally
- Issues with posting and signing on to public letters, e.g. political posts and campaigns
- Issues with diagnosing public figures
- Posting YouTube videos (advertising/free lancing) and potential harm to patient/clients/general public

The creation of these social media usage guidelines would be a service to all ASPPB member boards and the psychologists they license.

The Board thanks you, the ASPPB Board of Directors, and ASPPB's staff in advance for considering the Board's recommendation.

For further information regarding this request, please contact the Board's Executive Officer Antonette Sorrick at (866) 503-3221 or antonette.sorrick@dca.ca.gov.

Sincerely,

STEPHEN PHILLIPS, JD, PsyD
President, Board of Psychology

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 19, 2019 |
| **TO** | Board of Psychology Members |
| **FROM** | Antonette Sorrick, Executive Officer |
| **SUBJECT** | **Strategic Plan Action Plan Update: Agenda Item 12(c)** |

**Background:**
The Board convened for Strategic Planning on December 3-4, 2018. The Board ratified the 2019-2023 Strategic Plan (Plan) at the February 2019 Board Meeting.

**Attachment:**
Strategic Plan Action Plan

**Action Requested:**
No action required.

# BOARD OF PSYCHOLOGY

## Action Plan 2019-2023

California Board of PSYCHOLOGY

# Table of Contents

## Board of Psychology of California Members

Stephen Phillips, JD, PsyD (President)

Seyron Foo, Public Member (Vice President)

Lucille Acquaye-Baddoo, Public Member

Alita Bernal, Public Member

Sheryll Casuga, PsyD

Jacqueline Horn, PhD

Nicole J. Jones, Public Member

Mary Harb Sheets, PhD

Lea Tate, PsyD

Gavin Newsom, Governor

Alexis Podesta, Secretary, Business, Consumer Services, and Housing Agency

Dean R. Grafilo, Director, Department of Consumer Affairs

Antonette Sorrick, Executive Officer

Jeffrey Thomas, Assistant Executive Officer

## About the Board

The California Board of Psychology dates back to 1958 when the first psychologists were certified in the state. The Board of Psychology is one of 30 regulatory entities which fall under the organizational structure of the Department of Consumer Affairs. Historically, the Board has been closely affiliated with the Medical Board of California.

The Board consists of nine members (five licensed psychologists and four public members) who are appointed to the Board for four-year terms. Each member may serve a maximum of two terms. The five licensed members and two public members are appointed by the Governor. One public member is appointed by the Senate Rules Committee, and one public member is appointed by the Speaker of the Assembly. Public members cannot be licensed by the Board of Psychology or by any other Department of Consumer Affairs healing arts board.

The Board's executive officer is appointed by the Board to ensure that the Board functions efficiently and serves solely in the interests of the consumers of psychological services in the State of California.

The Board of Psychology is funded totally through license, application, and examination fees. The Board receives absolutely no tax money from the general Revenue Fund of the State of California.

The Board of Psychology exists solely to serve the public by:

- Protecting the health, safety, and welfare of consumers of psychological services with integrity honesty, and efficiency;
- Advocating the highest principles of professional psychological practice;
- Empowering the consumer through education on licensee/registrant disciplinary actions and through providing the best available information on current trends in psychological service options.

## Who Does the Board Regulate?

- Licensed psychologists may practice independently in any private or public setting.
- Psychological assistants must possess a qualifying master's degree and are registered to a licensed psychologist or to a board-certified psychiatrist as employees who may provide limited psychological services to the public under the direct supervision of the psychologist or psychiatrist to whom they are registered.

- Registered psychologists must possess a doctoral degree which meets licensure requirements and possess at least 1,500 hours of qualifying supervised professional experience.
- Registered psychologists are registered to engage in psychological activities at nonprofit community agencies that receive a minimum of 25% of their funding
- from some governmental source. Registered psychologists may not engage in psychological activities outside the approved nonprofit community agency where they are registered.

## How Does the Board Accomplish Its Mission?

The Board accomplishes its mission by working to ensure that psychologists provide consumers appropriate and ethical psychological services and do not exploit consumers by abusing the power advantage inherent in any psychotherapeutic relationship. The Board also works to ensure that:

- Those entering the profession of psychology possess minimal competency to practice psychology independently and safely. This is achieved by requiring candidates for a license to possess an appropriate doctorate degree from an approved or accredited university and by requiring the completion of a minimum of 3,000 hours of supervised professional experience. Each license applicant must also pass a national written examination and a California examination. In addition, in order to renew a license, a psychologist must complete 36 hours of approved continuing education every two years.
- The Board's enforcement efforts are focused on protecting a vulnerable consumer population from exploitative, unscrupulous, and/or otherwise incompetent licensed psychologists.

# Mission, Vision, and Values

## Mission

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

## Vision

A healthy California where our diverse communities enjoy the benefits of the highest standard of psychological services.

## Values

Transparency

Integrity

Fairness

Responsiveness

Professionalism

## Strategic Goal Areas

### Goal 1: Licensing

*The Board of Psychology (Board) establishes pathways to obtain and maintain a license to provide psychological services in California.*

### Goal 2: Continuing Professional Development

*The Board ensures that licensees maintain competency to practice psychology in California.*

### Goal 3: Policy and Advocacy

*The Board advocates for statutes and develops regulations that provide for the protection of consumer health and safety.*

### Goal 4: Enforcement

*The Board investigates complaints and enforces the laws governing the practice of psychology in California.*

### Goal 5: Outreach and Education

*The Board engages, informs, and educates consumers, licensees, students, and other stakeholders about the practice of psychology and the laws that govern it.*

### Goal 6: Board Operations

*The Board Members and Staff work together to maintain the resources necessary to implement the Board's mission and meet its goals.*

## Acronyms

AEO – Assistant Executive Officer

CE – Continuing Education

CERC – Continuing Education and Renewals Coordinator

CPD – Continuing Professional Development

CSC – Central Services Coordinator

CSM – Central Services Manager

DCA – Department of Consumer Affairs

DOI – Department of Investigation

EO – Executive Officer

EPM – Enforcement Program Manager

LBC – Licensing and BreEZe coordinator

LM – Licensing Manager

OAG – Office of the Attorney General

OAH – Office of Administrative Hearings

OCM – Organizational Change Management

OEC – Outreach and Education Committee

# Goal 1: Licensing

1.1 Implement electronic submission of application and renewal processes to reduce paper and administrative costs.

| **Start Date: Q2 2019** | | **End Date: Q4 2023** | |
|---|---|---|---|
| **Success Measure:** Increase percentage of applications received online. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Conduct organizational change management process to review application and renewal procedures for paper lite in both Central Services and Licensing Units. | CSM and LM | Q2 2019 | Q4 2019 |
| Implement recommendations from OCM.* | LBC and CERC | Q2 2020 | Q4 2019 |
| Outreach and education regarding paper lite processes. | All Staff | Q2 2020 (ongoing) | Q4 2019 |

1.2 Examine reliability and accuracy of license application and renewal data to reduce unnecessary and duplicative requests to licensees.

| **Start Date: Q2 2019** | | **End Date: Q1 2021** | |
|---|---|---|---|
| **Success Measure:** Decrease unnecessary and duplicative requests. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Collaborate with OCM to address issue. | CSM and LM | Q2 2019 | Q4 2019 |
| Implement recommendations from OCM.* | BC and CERC | Q1 2021 | Q4 2019 |

*Implementation includes training

1.3 Implement the “Pathways to Licensure” as approved by the Board to reduce barriers to licensure, eliminate confusion, and streamline the process.

| **Start Date: Q4 2019** | **End Date: Q3 2023** | | |
|---|---|---|---|
| **Success Measure:** Decrease in phone calls and emails regarding the licensure process and processing times. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Draft legislative proposals<br>**1** Substantive changes<br>**2** Non-substantive changes | CSM | Q4 2019 | On Schedule |
| Create advisories to applicants, licensees and supervisors regarding statutory changes. | CSC and LBC | Q1 2021 | On Schedule |
| Implement statutory changes.* | CSC and LBC | Q1 2021 | On Schedule |
| Draft regulatory proposal. | LM and AEO | Q3 2021 | On Schedule |
| Create advisories to applicants, licensees and supervisors regarding regulatory changes. | CSC and LBC | Q3 2023 | On Schedule |
| Implement regulatory changes.* | CSC and LBC | Q3 2023 | On Schedule |

1.4 Create an online system to check application process for applicants to easily check their application or renewal status.

| **Start Date: Q1 2022** | **End Date: Q1 2023 (ongoing)** | | |
|---|---|---|---|
| **Success Measure:** Increase applicant and licensee autonomy regarding the application status. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Identify BreEZe enhancements. | LBC and CERC | Q1 2022 | On Schedule |
| Request BreEZe enhancements. | LBC and CERC | Q2 2022 | On Schedule |
| Educate licensees and applicants regarding new functionality. | Licensing and Central Services Staff | Q1 2023 (ongoing) | On Schedule |

1.5 Establish and implement a plan to improve responsiveness to address stakeholder concerns.

| **Start Date: Q2 2019** | **End Date: Q3 2023** | | |
|---|---|---|---|
| **Success Measure:** Improved accessibility to staff and customer service for stakeholders. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Process improvement through OCM, Pathways to Licensure, and BreEZe enhancements to make staff more accessible to stakeholders. | All Staff | Q3 2023 (ongoing) | On Schedule |

1.6 Implement retired status regulations and ensure Board staff and licensees are educated about the new requirements to provide licensees an additional option.

| **Start Date:Q2 2021** | **End Date:Q4 2021** | | |
|---|---|---|---|
| **Success Measure:** The number of licensees using the retired status option. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Identify and request BreEZe enhancements. | LBC and CSC | Q2 2021 | On Schedule |
| Implement retired status regulations.* | CSM | Q4 2021 | On Schedule |
| Train Central Services staff on new regulations. | CSM | Q4 2021 | On Schedule |
| Outreach and education to licensees regarding the new status. | Central Services Staff | Q4 2021 | On Schedule |

## Goal 2: Continuing Professional Development

2.1 Implement licensed Board member Continuing Professional Development (CPD) audits each license renewal cycle for transparency.

| **Start Date: Q1 2019** | | **End Date: Q4 2023** | |
|---|---|---|---|
| **Success Measure:** Increased transparency for Board member CPD compliance. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Conduct audits for Board members.* | CERC | Ongoing | On Schedule |

*Add this to New Board Member orientation

2.2 Create a media presentation for Continuing Education/Continuing Professional Development process to improve clarity, reduce confusion, and increase stakeholder satisfaction.

| **Start Date: Q4 2020** | | **End Date: Q1 2021** | |
|---|---|---|---|
| **Success Measure:** Number of YouTube views. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Create presentation. | CERC and AEO | Q4 2020 | On Schedule |
| Post presentation on YouTube. | CERC | Q1 2021 | On Schedule |

2.3 Create a web page that links to American Psychological Association, California Psychological Association, Accreditation Council for Continuing Medical Education, Association of Black Psychologists, and their approved providers to assist licensees in selecting available CE courses.

| **Start Date: Q2 2019** | | **End Date: Q2 2019** | |
|---|---|---|---|
| **Success Measure:** Links are accessible to licensees on Board's website. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Create and maintain web page. | CERC | Q2 2019 | Completed |
| Outreach and education to licensees regarding the new web page. | CERC | Q2 2019 (ongoing) | Q3 2019 |

2.4 Implement Continuing Professional Development regulations and ensure Board staff and licensees are educated about the new requirements to broaden licensees' opportunities to maintain professional competence.

| **Start Date: Q1 2020** | **End Date: Q1 2021** | | |
|---|---|---|---|
| **Success Measure:** Additional opportunities to maintain competence. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Identify and request BreEZe enhancements. | LBC and CERC | Q1 2020 | On Schedule |
| Implement CPD regulations. | CERC | Q1 2021 | On Schedule |
| Train Central Services staff on new regulations. | CERC | Q4 2020 | On Schedule |
| Outreach and education to licensees regarding the new CPD regulations. | Central Services Staff | Q4 2020 | On Schedule |

## Goal 3: Policy and Advocacy

3.1 Conduct landscape analysis of potential partners for legislative advocacy to implement the Board's mission and meet its goals.

| **Start Date: Q4 2021** | **End Date: Q1 2022** | | |
|---|---|---|---|
| **Success Measure:** More effective advocacy for legislative goals. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Conduct analysis to identify groups in various areas of interest. | EO and CSM | Q4 2021 | On Schedule |
| Utilize partnerships to assist the Board in meeting its legislative goals. | CSM and CSC | Q1 2022 | On Schedule |

3.2 Increase the effectiveness of communication regarding the Board's legislative efforts to help stakeholders understand the policy priorities of the Board.

| **Start Date: Q3 2022** | **End Date: Q1 2023** | | |
|---|---|---|---|
| **Success Measure:** Additional communication tools put in place. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current communication modalities. | EO and CSM | Q3 2022 | On Schedule |
| Identify more effective communication tools. | EO and CSM | Q4 2022 | On Schedule |
| Implement identified communication tools. | CSC | Q1 2023 | On Schedule |

3.3 Implement telepsychology regulations and ensure Board staff and licensees are educated about the new regulations to allow licensees to incorporate technology into their practices.

| **Start Date: Q2 2020** | **End Date: Q2 2020** | | |
|---|---|---|---|
| **Success Measure:** The availability of information on the new regulations to staff and licensees. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Train all staff on new regulations. | AEO | Q2 2020 | On Schedule |
| Outreach and education to licensees regarding the new regulations. | All Staff | Q2 2020 | On Schedule |
| Create advisory for licensees | CSC/CERC | Q2 2020 | On Schedule |

## Goal 4: Enforcement

4.1 Develop and implement effective communication process from open to close of a case to better inform complainants and respondents.

| **Start Date: Q2 2021** | **End Date: Q4 2021** | | |
|---|---|---|---|
| **Success Measure:** More effective communication. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current communication tools to complainants and respondents. | Enforcement Staff | Q2 2021 | On Schedule |
| Identify more effective communication tools. | Enforcement Staff | Q3 2021 | On Schedule |
| Implement identified communication tools.* | Enforcement Staff | Q4 2021 | On Schedule |

* Communication tools include acknowledgement, subject letter, and flow chart

4.2 Educate licensees and consumers about the enforcement process to clarify for stakeholders the roles and responsibilities in the decision-making process.

| **Start Date: Q1 2022** | **End Date: Q3 2022** | | |
|---|---|---|---|
| **Success Measure:** The availability of information on the enforcement process to stakeholders. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate the enforcement page on the Board's website. | Enforcement Staff | Q1 2022 | On Schedule |
| Identify areas for improvement. | EPM | Q2 2022 | On Schedule |
| Develop and publish a fact sheet regarding roles and responsibilities of the different government entities* involved in the decision-making process. | EPM | Q3 2022 | On Schedule |

*Government entities include the Board, DCA, DOI, OAG, and OAH

4.3 Support DCA's efforts to recruit and maintain investigative staff and resources to reduce investigative timeframes.

| **Start Date: Q1 2019** | **End Date: Q1 2019** | | |
|---|---|---|---|
| **Success Measure:** Additional investigative staff. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Advocate for additional investigative staff. | EO | Q1 2019 | Completed |

4.4 Complete review of the Board's existing and proposed enforcement statutes and regulations for clarity, cohesiveness, and effectiveness.

| **Start Date: Q4 2019** | **End Date: Q4 2023** | | |
|---|---|---|---|
| **Success Measure:** Enforcement laws are more clear, cohesive and effective. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate existing statutes and regulations. | Enforcement Staff | Q4 2019 | On Schedule |
| Identify amendments and additions to statues and regulations. | Enforcement Staff | Q2 2020 | On Schedule |
| Draft legislative proposal. | EPM and CSM | Q4 2020 | On Schedule |
| Create advisories to stakeholders regarding statutory changes. | CSC and EPM | Q1 2022 | On Schedule |
| Implement statutory changes. | Enforcement Staff | Q1 2022 | On Schedule |
| Draft regulatory proposal. | EPM | Q2 2022 | On Schedule |
| Create advisories to stakeholders regarding regulatory changes. | CSC and EPM | Q4 2023 | On Schedule |
| Implement regulatory changes. | Enforcement Staff | Q4 2023 | On Schedule |

4.5 Evaluate internal policies and procedures related to evolving enforcement issues, such as child custody evaluations, to ensure a fair and equitable process.

| **Start Date: Q3 2019** | **End Date: Q2 2021** | | |
|---|---|---|---|
| **Success Measure:** Enforcement processes evaluated. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Collaborate with OCM to evaluate current processes. | Enforcement Staff | Q3 2019 | Q1 2020 |
| Implement recommendations from OCM. | Enforcement Staff | Q2 2021 | Q1 2021 |

4.6 Increase pool of qualified enforcement subject matter experts to ensure effective and fair enforcement proceedings.

| **Start Date: Q3 2020** | **End Date: Q1 2021** | | |
|---|---|---|---|
| **Success Measure:** Larger pool of qualified experts. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate recruitment tools for subject matter experts. | EO and EPM | Q3 2020 | On Schedule |
| Identify more effective recruitment tools. | EO and EPM | Q4 2020 | On Schedule |
| Implement identified recruitment tools. | Enforcement Staff | Q1 2021 | On Schedule |

## Goal 5: Outreach and Education

5.1 Expand current communication plan and collaborate with entities that work with consumers to increase community outreach.

| **Start Date: Q2 2022** | **End Date: Q4 2023** | | |
|---|---|---|---|
| **Success Measure:** More effective communication plan. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current plan. | EO and CSM | Q2 2022 | On Schedule |
| Identify entities that work with consumers. | EO and CSM | Q3 2022 | On Schedule |
| Identify necessary amendments to plan. | EO and CSM | Q3 2023 | On Schedule |
| Implement new plan. | CSM | Q4 2023 | On Schedule |

5.2 Update instructional videos regarding licensing application to better inform stakeholders.

| **Start Date: Q1 2020** | **End Date: Q3 2021** | | |
|---|---|---|---|
| **Success Measure:** Availability of instructional videos. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current videos. | Licensing Staff | Q1 2020 | On Schedule |
| Identify need for updating existing videos. | Licensing Staff | Q1 2020 | On Schedule |
| Identify need for additional videos. | LM | Q2 2020 | On Schedule |
| Work with Office of Public Affairs to produce videos. | LM | Q4 2020 | On Schedule |
| Outreach and education regarding availability of videos. | Licensing Staff | Q3 2021 | On Schedule |

5.3 Increase Board engagement with schools, training programs, public events, and relevant professional organizations to raise awareness of the Board's activities.

| **Start Date: Q1 2019** | **End Date: Q4 2023 (ongoing)** | | |
|---|---|---|---|
| **Success Measure:** Increase in number of outreach events attended. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Identify opportunities for outreach and education. | EO, AEO, CSM, LM, EPM | Q1 2019 (ongoing) | On Schedule |
| Participate in outreach activities. | All Staff | Ongoing | On Schedule |

5.4 Analyze resources allocated to outreach and education to maximize outreach and education efforts.

| **Start Date: Q4 2019** | **End Date: Q4 2020** | | |
|---|---|---|---|
| **Success Measure:** Resource allocation analyzed. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Collaborate with OCM to address issue. | CSM | Q4 2019 | On Schedule |
| Implement recommendations from OCM. | CSM | Q4 2020 | On Schedule |

5.5 Improve communication of the Board's activities to interested parties list to expand understanding of the Board's actions.

| **Start Date: Q4 2021** | **End Date: Q1 2023** | | |
|---|---|---|---|
| **Success Measure:** More effective communication of Board activities. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current communication tools. | EO and CSM | Q4 2021 | On Schedule |
| Identify need for additional communication tools. | EO, AEO, CSM, and CSC | Q4 2022 | On Schedule |
| Implement necessary communication tools. | All Staff | Q1 2023 | On Schedule |

5.6 Review, update, and create informational publications to foster effective communication and reduce stakeholder confusion.

| **Start Date: Q1 2019** | **End Date: Q3 2023** | | |
|---|---|---|---|
| **Success Measure:** Relevant publications available to stakeholders. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Evaluate current publications. | All Staff | Q1 2019 (ongoing) | On Schedule |
| Identify need for updating existing publications. | All Staff | Q1 2022 | On Schedule |
| Identify need for additional publications. | All Staff | Q2 2022 | On Schedule |
| Work with Office of Publications, Design, & Editing to produce publications. | EO | Q3 2023 | On Schedule |
| Outreach and education regarding availability of publications. | All Staff | Q3 2023 | On Schedule |

5.7 Develop campaign(s) to communicate what the Board is and what it does to promote a better understanding to specific stakeholders of the purpose, activities, and processes of the Board.

| **Start Date: Q2 2022** | **End Date: Q2 2023** | | |
|---|---|---|---|
| **Success Measure:** Increased stakeholder awareness of the Board. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Develop a campaign plan with the Outreach and Education Committee (OEC). | EO, AEO, CSM, and OEC | Q2 2022 | On Schedule |
| Implement plan. | All Staff | Q2 2023 | On Schedule |

## Goal 6: Board Operations

6.1 Strengthen internal culture of customer service to respond to consumers, applicants, and licensees of the Board.

| **Start Date: Q3 2019** | **End Date: Q3 2020** | | |
|---|---|---|---|
| **Success Measure:** Improved customer service. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Conduct analysis. | AEO | Q3 2019 | On Schedule |
| Utilize SOLID to implement changes identified by analysis to improve customer service. | EO, AEO, CSM, LM, and EPM | Q3 2020 | On Schedule |

6.2 Collaborate with DCA to review internal processes and implement recommended improvements to better serve the stakeholders of the Board.

| **Start Date: Q1 2020** | **End Date: Q4 2023** | | |
|---|---|---|---|
| **Success Measure:** More effective and efficient internal processes. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Collaborate with OCM to review internal processes. | All Staff | Q1 2020 | On Schedule |
| Implement recommendations from OCM. | All Staff | Q4 2023 | On Schedule |

6.3 Advance transition to reduce the use of paper documents to promote environmental friendliness and reduce costs over time.

| **Start Date: Q1 2020** | **End Date: Q4 2023** | | |
|---|---|---|---|
| **Success Measure:** Reduction in the use of paper documents. | | | |
| **Major Tasks** | **Responsible Party** | **Completion Date** | **Status** |
| Collaborate with OCM to reduce paper processes. | All Staff | Q1 2020 | On Schedule |
| Implement recommendations from OCM.* | All Staff | Q4 2023 | On Schedule |

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# MEMORANDUM

| | |
|---|---|
| **DATE** | August 1, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #12(d) – Review and Potential Action on User-Friendliness Website Focus Group Notes – Recommendations to the Board |

**Background:**

At its October 2016 meeting, the Outreach and Education Committee (Committee) directed Board staff to work with the Department of Consumer Affairs' SOLID Training and Planning Solutions Unit (SOLID) to evaluate the user-friendliness of the Board's website through the use of website data and facilitated focus groups of licensees, applicants, and the public. Due to workload needs of the Board and SOLID, the user-friendliness website focus group had to be delayed until 2018.

In 2018, Board staff worked with SOLID to analyze the most frequented areas of the website by utilizing Google Analytics. After collecting and analyzing this preliminary information, SOLID worked with Board staff to plan two focus groups, one in northern/central California and one in southern California, that would discuss specifically the who, what, where, when and why of what stakeholders want to see on the Board's website. Board staff sent out email invitations to a broad array of stakeholders and received interest in participating from licensees, students, graduate school program representatives, other government agency representatives, and mental health organizations.

The two focus group meetings were scheduled in February and March of 2019. Both groups had commitments from 20 people each but, due to scheduling issues, ended up with five (5) participants at each meeting. Despite their small size, both meetings were extremely informative for both staff and the participants. Participants were highly engaged, provided excellent feedback about the website and the Board's customer service, and provided insight from a variety of perspectives. SOLID facilitated both focus groups and provided Board staff with the notes from the focus groups, which are provided for the Committee's review in the attachment.

Upon review of the focus group notes, staff believes the input received fall into the following categories:

1. Immediately implementable items (such as moving the search and translate buttons)
2. Items for implementation as part of larger 2020 restructuring of website
    a. Structural/Organizational changes to website (such as renaming, adding, or moving heading categories)
    b. Creation of new content and webpages (such as creating a supervision page, renewals page, and verifications and file transfer page)
    c. Enhancing current content and resources (such as adding expected timelines on licensing flowcharts or making the Publications page include all publications and forms in an indexed fashion)
    d. Aesthetic changes to website (such as more icons and buttons and reducing the amount of text). Note: these must be weighed against statutory ADA requirements for the Board's website.
    e. Creation of internal policies to make the website more user-friendly (such as ensuring all pages, documents, and forms have identified keywords to make them more easily searchable)
3. Design items that require DCA's Internet Team input on feasibility (i.e. creation of interactive flowcharts)

Throughout 2019, Board staff will be working to implement the immediately implementable items and will work with the appropriate staff to address the items for the larger 2020 restructuring.

**Action Requested:**

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

Attachment: Board of Psychology – Website Re-Design Focus Group Notes – February/March 2019

## 12(d) Psychology Website Focus Group Notes

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 22, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #12(e): Social Media Update |

**Background:**

a) Facebook: https://www.facebook.com/BoardofPsychology

Total "Likes": 614 **(For "Likes" over time, please see attached chart)**

Most popular post since the last Board meeting:

7/10/2019 – @CABDofPsych, @MedBoardOfCA, the Osteopathic Medical Board, and @BBS_California just updated Therapy Never Includes Sexual Behavior Brochure. Please feel free to post or re-tweet! – 185 views, 21 "Post Clicks", 2 "Likes".

b) Twitter: https://twitter.com/CABDofPsych

Followers: 352 **(For Followers over time, please see attached chart)**
Following: 576
Total Tweets: 862

c) Board Meeting Webcast:

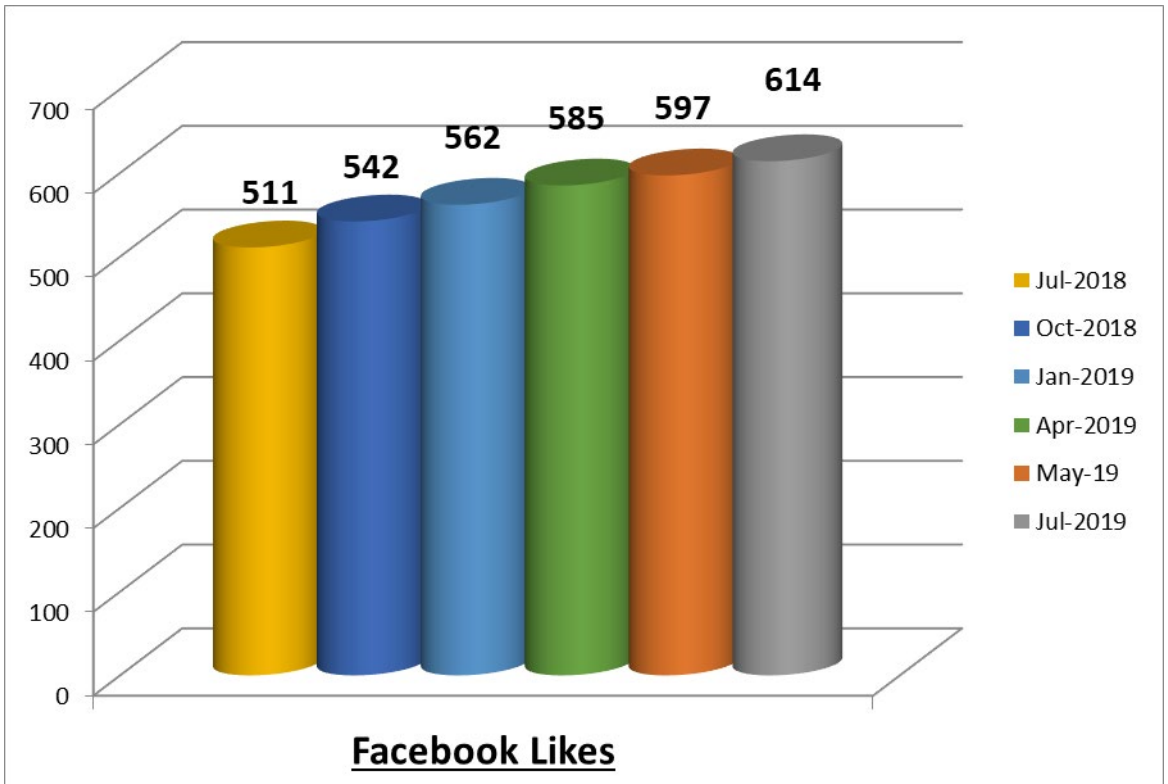
**2019**

April 24th – 89 views
April 25th – 72 Views
April 26th – 200 Views

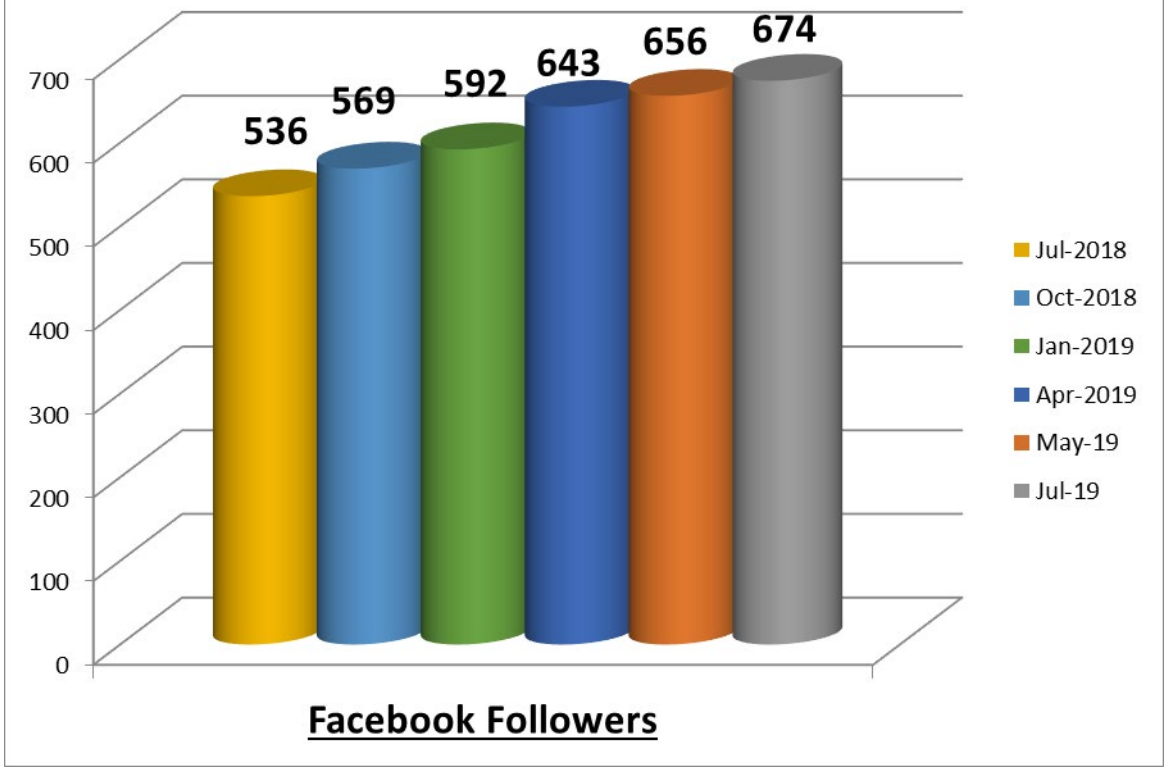
February 7th – 101 Views
February 8th – 125 Views

**Action Requested:**

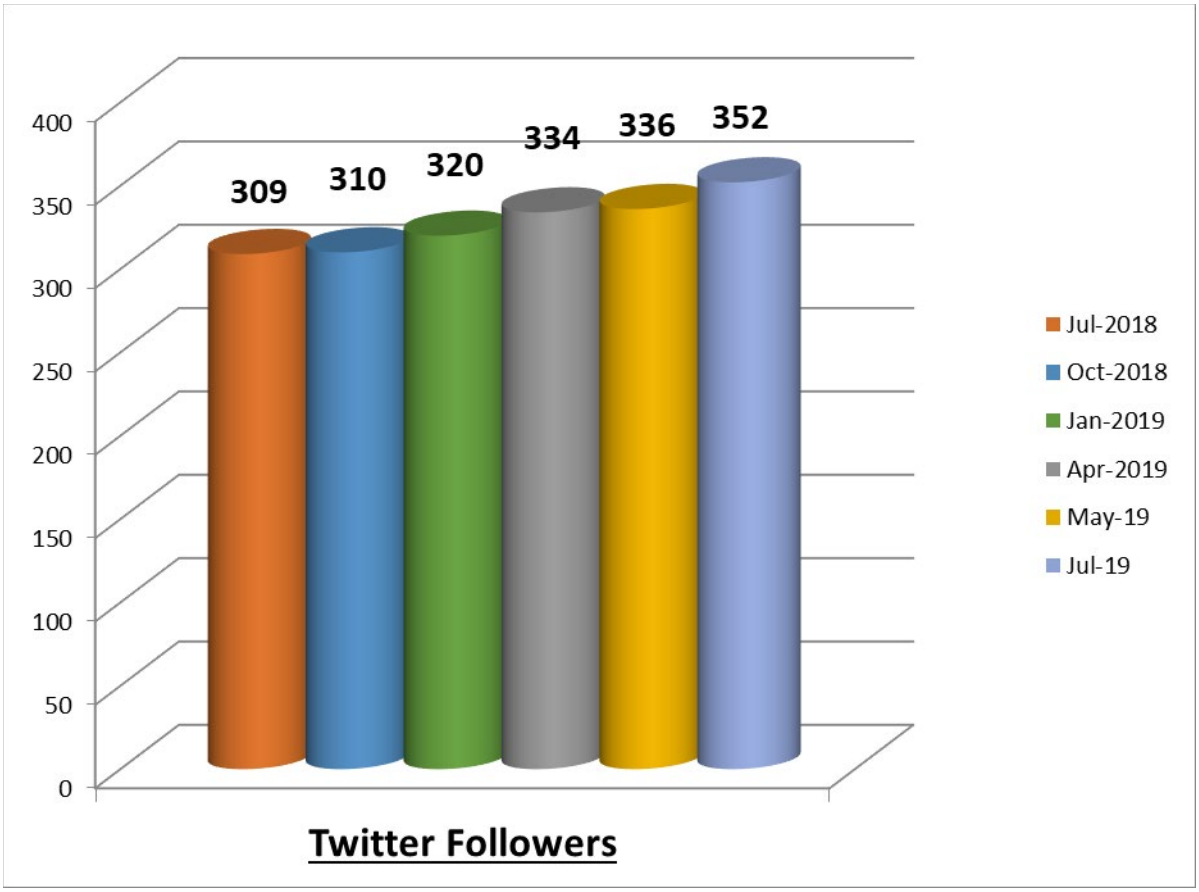
This item is for informational purposes only. No action is required.




**Facebook Likes**




**Facebook Followers**


400
350
300
250
200
150
100
50
0
309
310
320
334
336
352
Jul-2018
Oct-2018
Jan-2019
Apr-2019
May-19
Jul-19
Twitter Followers

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 22, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #12(f): Website Update |

**Website Background**:

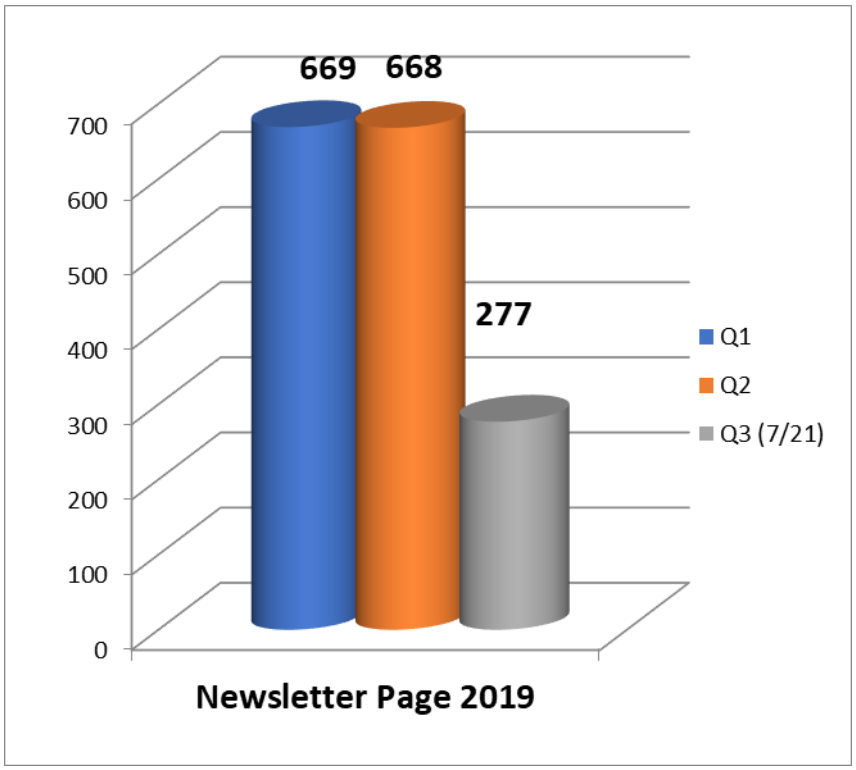
Website: www.psychology.ca.gov

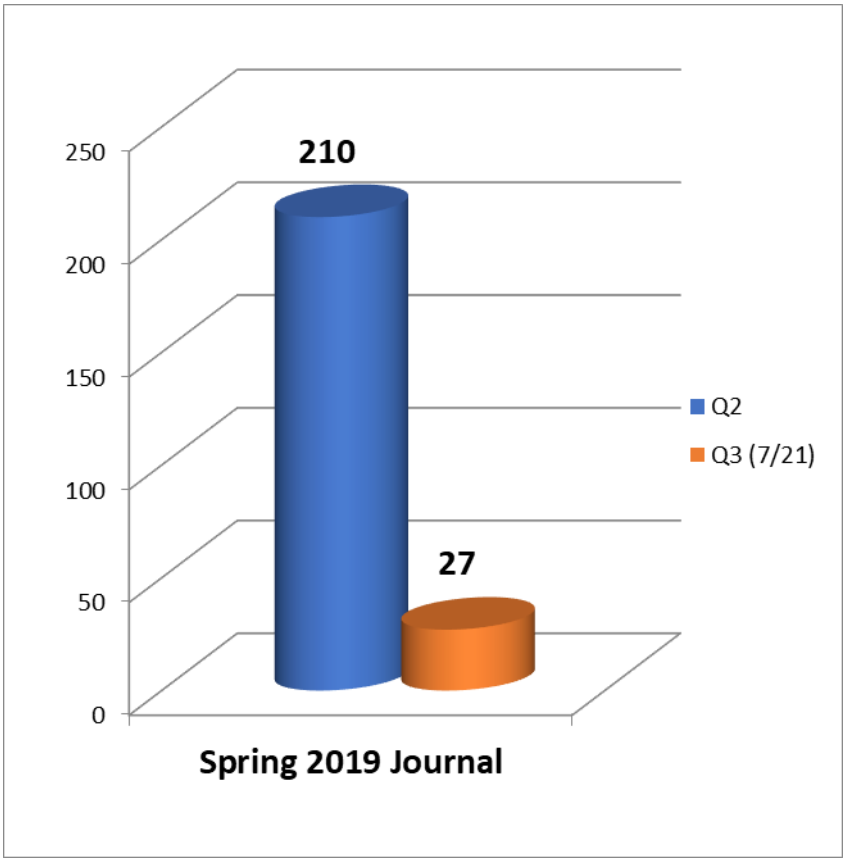
Below and on the following pages, please find the top five web pages viewed between April 8, 2019 and July 21, 2019.

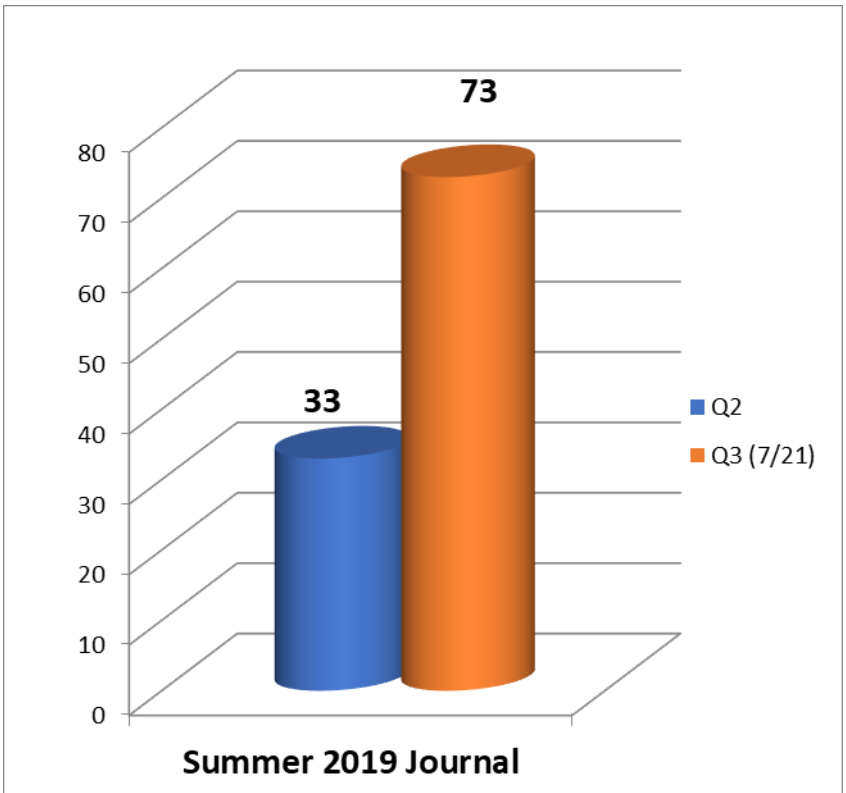
| TOP FIVE PAGES | # OF VIEWS | CONTENT |
|---|---|---|
| /applicants/psychologist.shtml | 11,096 | Psychologist Applicant Page |
| /licensees/index.shtml | 9,152 | Licensee and Registrant Information Page |
| /about_us/breeze.shtml | 9,074 | BreEZe Online Services – First Time User Instructions |
| /applicants/index.shtml | 7,870 | Applicant Information Page |
| /applicants/license.shtml | 7,227 | Qualifications for Licensure as a Psychologist |

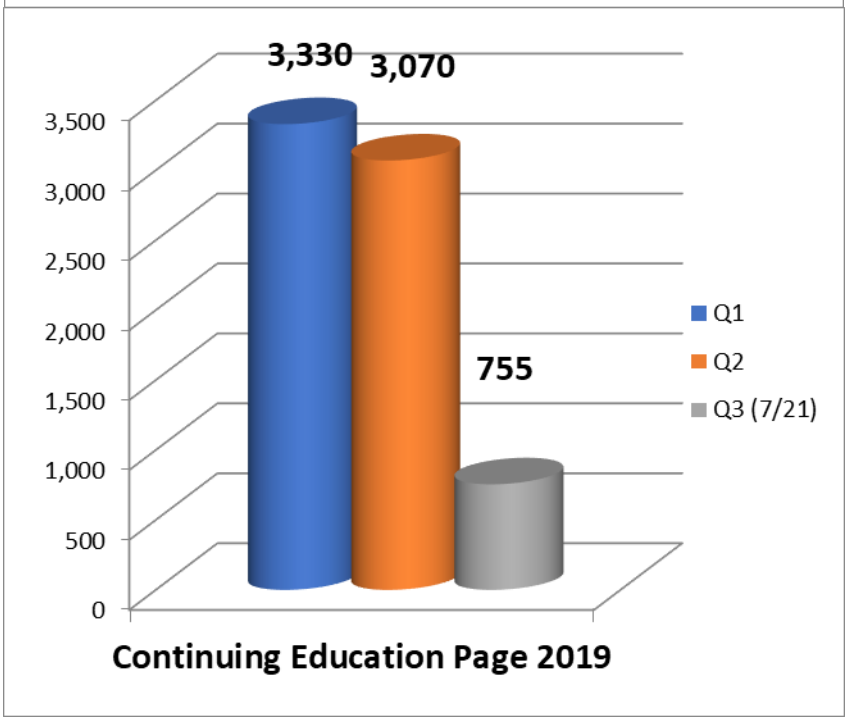
2019 viewings for the following pages by quarter:

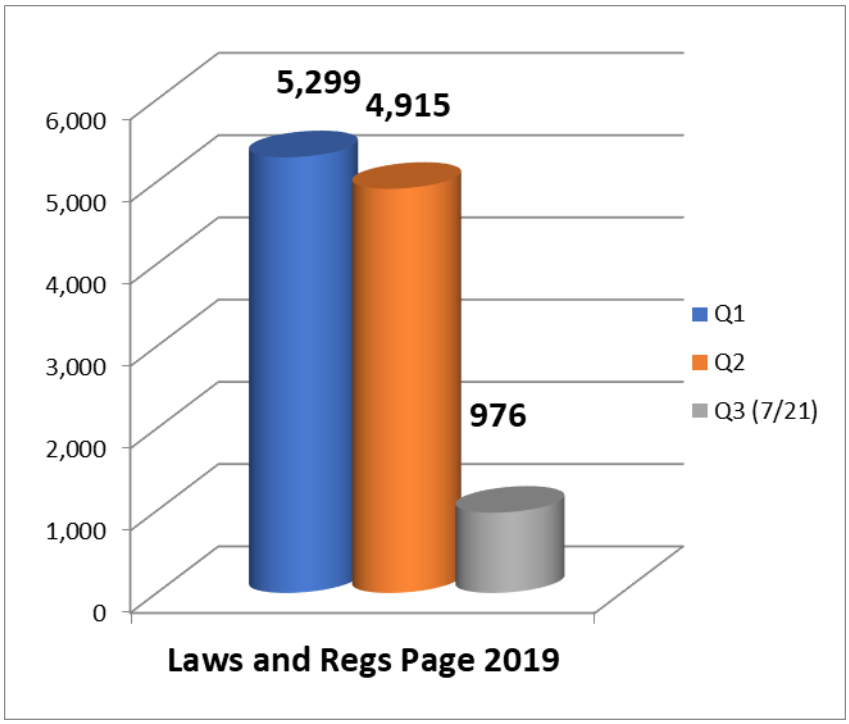
- Newsletter page
- Most Recent Newsletter
- Continuing Education Page
- Laws and Regulations Page
- Filing a Complaint Page
- Applicant Information Page
- Disciplinary Actions Page

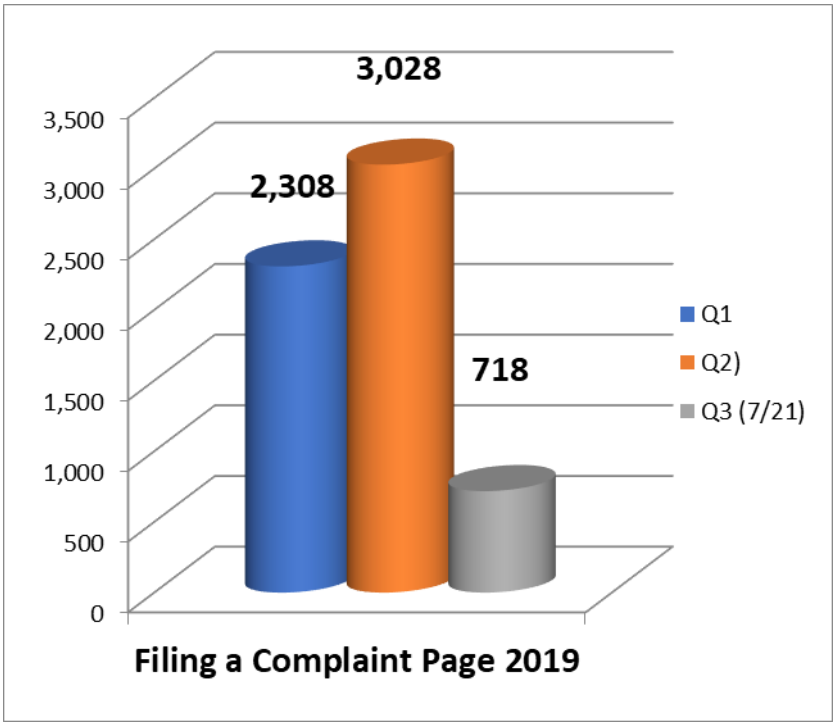

669
668
277
700
600
500
400
300
200
100
0
Q1
Q2
Q3 (7/21)
Newsletter Page 2019

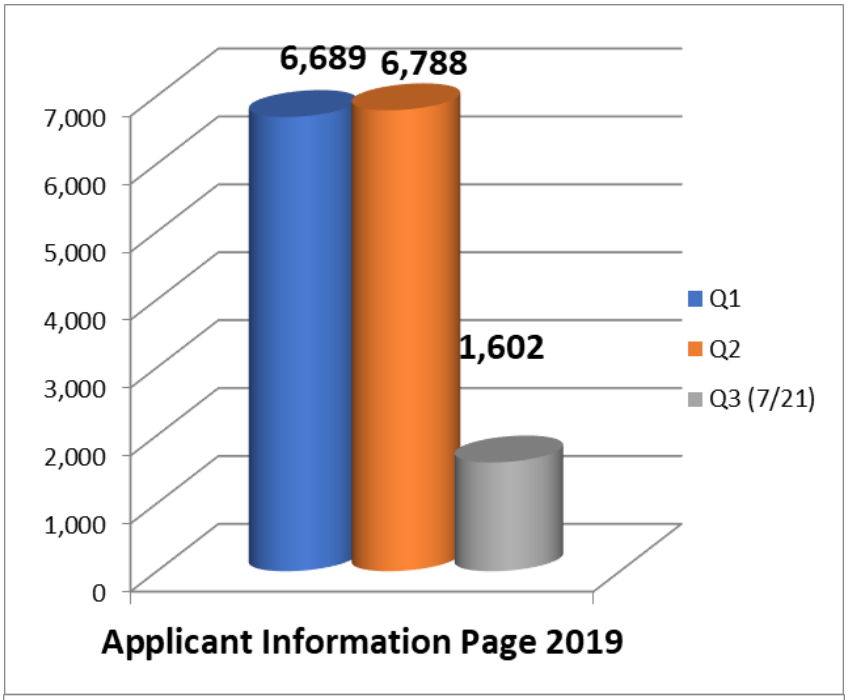

210
27
250
200
150
100
50
0
Q2
Q3 (7/21)
Spring 2019 Journal

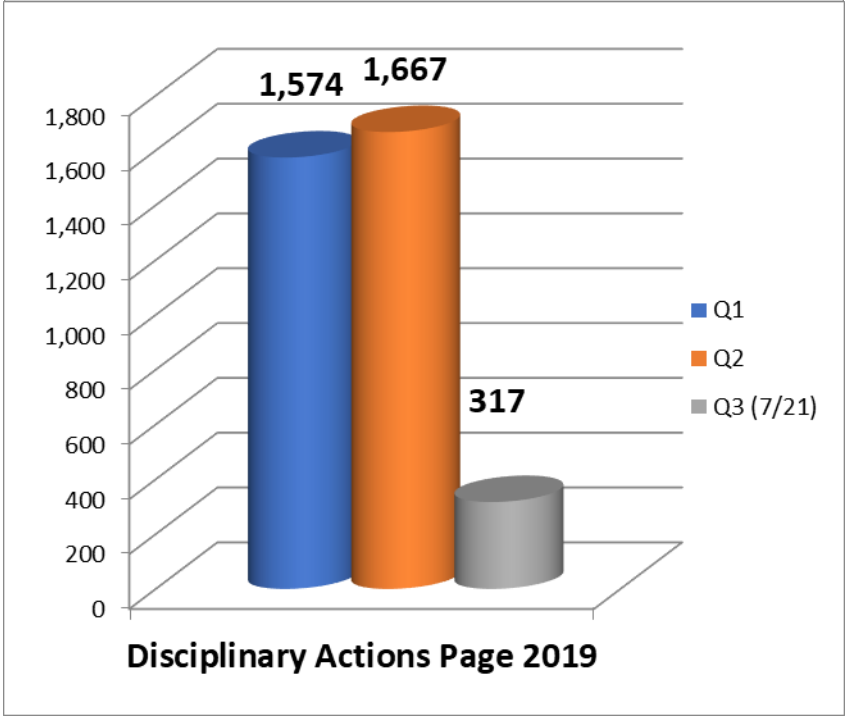

73
33
80
70
60
50
40
30
20
10
0
Q2
Q3 (7/21)
Summer 2019 Journal


3,330
3,070
755
3,500
3,000
2,500
2,000
1,500
1,000
500
0
Q1
Q2
Q3 (7/21)
Continuing Education Page 2019


5,299
4,915
976
6,000
5,000
4,000
3,000
2,000
1,000
0
Q1
Q2
Q3 (7/21)
Laws and Regs Page 2019


3,028
2,308
718
3,500
3,000
2,500
2,000
1,500
1,000
500
0
Q1
Q2)
Q3 (7/21)
Filing a Complaint Page 2019




| **Regulatory and Legislative Advisories** | **Views to Date** |
|---|---|
| AB 282 (Jones-Sawyer) – Aiding, Advising, or Encouraging Suicide | 57 |
| AB 2138 (Chiu) – Licensing Boards: Denial of Application | 58 |
| AB 2968 (Levine) – Psychotherapist-Client Relationship | 77 |
| AB 89 (Levine) – Psychologists: Suicide Prevention Training | 11,303 |
| SB 547 (HILL) – Omnibus (Delinquent Fee Change) | 3,793 |
| Verification of Experience Regulation | 19,975 |

**Action Requested:**

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

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 19, 2019 |
| **TO** | Psychology Board Members |
| **FROM** | Antonette Sorrick, Executive Officer |
| **SUBJECT** | Agenda Item#12(g): Update on Newsletter |

**Background:**
Attached is the Board's *Summer Journal*. The *Fall Journal* will go out in September 2019.

**Action Requested:**
This item is for informational purposes only. No action is required.

## 12(g) Summer Journal

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 19, 2019 |
| **TO** | Psychology Board Members |
| **FROM** | Antonette Sorrick, Executive Officer |
| **SUBJECT** | **"Therapy Never Includes Sexual Behavior" Brochure – Update – Agenda Item 12(h)** |

**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 was sent to DCA for design and publication.

**Attachment**

Revised "Therapy Never Includes Sexual Behavior" brochure

**Action Requested:**

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

## 12(h) Therapy Never Includes Sexual Behavior

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #13(a)(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. 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 passed through the Senate Floor on May 5, 2019.

On July 9, 2019 the Assembly Committee on Business and Professions (Assembly B&P) heard SB 275. At the hearing, Dr. Pan and Dr. Phillips gave strong testimony on the need for the bill and Ms. Burns provided additional statutory clarification to the committee, but Assembly B&P failed to move the bill or take a vote. Since the bill did not move out of Assembly B&P by the legislative deadline, the bill became a 2-year bill and can be acted on upon the start of the next session in January 2020. Board staff are in discussion with Assembly B&P staff about potential technical amendments that will facilitate moving the bill forward. These amendments will be brought to the Board for review and approval at the October Board Meeting.

**Location:** 7/9/2019 Assembly Committee on Business and Professions

**Status:** 7/9/2019 July 9 set for first hearing. Testimony taken.

**Votes:** 4/1/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)
5/2/2019 Senate Floor (38-0-0)

**Action Requested:**
This item is for informational purposes only. No action is required.

Attachment A: SB 275 (Pan) Assembly Business and Professions Analysis
Attachment B: SB 275 (Pan) Letter of Support Assembly Business and Professions
Attachment C: SB 275 (Pan) Bill Text

Date of Hearing:

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
SB 275 (Pan) – As Introduced February 13, 2019

**SENATE VOTE**: 38-0

**SUBJECT**: Psychologist: prohibition against sexual behavior

**SUMMARY**: Defines "sexual behavior" and states that an administrative law judge's finding of fact that sexual behavior occurred between a psychotherapist and client shall trigger an order for license revocation.

**EXISTING LAW**:

1) Establishes the Board of Psychology (BOP) within the Department of Consumer Affairs (DCA) to enforce and administer the Psychology Licensing Law. (Business and Professions Code (BPC) § 2920)

2) Requires that protection of the public to be the BOP's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2920.1)

3) Requires any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse, sexual behavior, or sexual contact with a previous psychotherapist during the course of a prior treatment to provide a brochure to the client that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Requires the psychotherapist or employer to discuss the brochure with the client. (BPC § 728 (a))

4) For purposes of the brochure, defines "sexual contact" as the touching of an intimate part of another person, and "sexual behavior" as inappropriate contact or communication of a sexual nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues. (BPC § 728 (c)(2))

5) Authorizes the BOP to suspend or revoke the registration or license of any registrant or licensee found guilty of unprofessional conduct, which includes any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist, psychological assistant, or registered psychologist. (BPC § 2960 (o))

6) Requires any proposed decision or decision issued under the Psychology Licensing Law that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact with a patient, or with a former patient within two years following 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**:

**Purpose**. This bill is sponsored by the *California Board of Psychology*. According to the Author, "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.

[This bill] would make this clear under the law that these sexual behaviors with a client are sexual misconduct."

**Background**. *Board of Psychology*. 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.

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.

**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.

**ARGUMENTS IN SUPPORT**:

The *Board of Psychology* writes in support, "The [BOP] sponsored [this bill] 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 [this bill], 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."

**POLICY ISSUES**:

Policy currently exists insofar as therapists are licensed by the State and are currently regulated not only by a series of ethical codes but by legal statutes contained within the Business and Professions Code as well as the Penal Code. Section 726 of the Business and Professions Code provides that the commission of any act of sexual abuse, misconduct, or relations with a patient constitutes unprofessional conduct and is grounds for disciplinary action against any licensed psychologist.

Business and Professions Code Section 729, subdivision (a), states that a psychotherapist who "engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client" is guilty of sexual exploitation which is a criminal offense. "Sexual contact" is defined as "sexual intercourse or the touching of an intimate part of the patient for the purpose of sexual arousal, gratification, or abuse." Section 729, subdivision (b) clearly states that "in no instance shall consent of the patient . . . be a defense."

The professional licensing board which governs psychotherapists is the California Board of Psychology, Department of Consumer Affairs. Business and Professions Code, Section 2960 empowers the Board to suspend, revoke, or place on probation, a licensed therapist for unprofessional conduct which includes any active sexual abuse, or sexual relations with a patient (or former patient within two years following termination of therapy) or other sexual misconduct which is substantially related to the qualifications or duties of a psychologist.

**REGISTERED SUPPORT**:

Board of Psychology (Sponsor)

**REGISTERED OPPOSITION**:

None on file.

Analysis Prepared by: Danielle Sires / B. & P. / (916) 319-3301

California Board of PSYCHOLOGY

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May 29, 2019

The Honorable Evan Low
Chair, Assembly Committee on Business and Professions
State Capitol, Room 4126
Sacramento, CA 95814

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

Dear Assembly Member Low:

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.

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 Assembly Committee on Business and Professions. 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,

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

cc: Assembly Member William P. Brough (Vice Chair)
Members of the Assembly Committee on Business and Professions
Senator Richard Pan, MD
Assembly Committee on Business and Professions
Assembly 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.*

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #13(a)(2) – SB 786 (Committee on Business Professions and Economic Development) Healing Arts – Update on Amendments to Sections 2940-2944 of the Business and Professions Code Regarding Examinations. |

**Background:**

The Board of Psychology (Board) submitted its legislative proposals to revise Business and Professions Code (BPC) Sections 2940-2944 regarding Examinations, BPC Section 2912 regarding temporary practice provisions, 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 reviewed 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.

The Board's proposal included the following provisions:

- Removal of outdated examination requirements and make the remaining provisions consolidated, more concise, and more easily understood by consumers and applicants.
- Clarification to the Board's temporary practice provisions that would have clarified 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.
- Addition of provisions that would have clarified the Board's authority to accept a non-disciplinary surrender of a license and clearly identified 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.

In April, the Committee advised the Board that they intend to include the Board's provisions related to the examination language. The Committee declined to include the language related to temporary practice or voluntary surrender.

On June 26, 2019, SB 786 was amended to include changes to 2940 and 2941 as requested by the Board.

At the July Legislative and Regulatory Affairs Committee meeting, the Committee voted to recommend the Board Support SB 786.

**Location:** 7/9/2019 Assembly Committee on Appropriations

**Status:** 7/9/2019 From committee: Do pass and re-refer to Committee on Appropriations.

**Votes:** 7/9/2019 Assembly Business and Professions (19-0-0)

**Action Requested:**
The Legislative and Regulatory Affairs Committee recommend the Board take a **Support** position on SB 786.

Attachment A: SB 786 Applicable Bill Text

# SB 786 - (A) Amends the Law

## *SEC. 59.*

*Section 2940 of the Business and Professions Code is repealed.*

~~2940.~~

~~Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.~~

~~The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the board.~~

## *SEC. 60.*

*Section 2940 is added to the Business and Professions Code, to read:*

***2940.***

*To obtain a license from the board, an applicant shall submit any applications and pay any applicable fees as prescribed in Section 2987. These fees shall not be refunded by the board.*

## *SEC. 61.*

*Section 2941 of the Business and Professions Code is repealed.*

~~2941.~~

~~Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.~~

## *SEC. 62.*

*Section 2941 is added to the Business and Professions Code, to read:*

***2941.***

*(a) Each applicant for licensure as a psychologist shall take and pass any examination required by the board. An applicant may be examined for knowledge in any theoretical or applied fields of psychology, as well as professional skills and judgment in the use of psychological techniques and methods and the ethical practice of psychology, as the board deems appropriate.*

*(b) Each applicant shall pay any applicable examination fees as prescribed in Section 2987. These fees shall not be refunded by the board.*

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #13(b)(1)(A) – AB 1076 (Ting) Criminal Records: automatic relief |

**Background:**

Current law allows an individual who has been arrested or convicted to petition the courts, under specified circumstances, to have certain arrest and criminal conviction information sealed. In addition to this option, this bill would require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. This bill would also prohibit DOJ from providing any licensing board under the Department of Consumer Affairs (DCA) with information on arrests or convictions that have been sealed. Additionally, this bill would prohibit the courts from disclosing any information concerning arrests that were granted relief pursuant to the bill's provisions or convictions that have been granted relief pursuant to multiple code sections, to any entity except for criminal justice agencies and California Department of Social Services (CDSS) licensing programs related to facilities and/or services for the elderly, chronically ill, or child day care.

Recent amendments also remove the Board's ability to deny an application for licensure based on a conviction, or the acts underlying the conviction, that has received relief under the provisions of AB 1076 by adding it to the other convictions that were provided relief that the Board cannot use pursuant to AB 2138 (Chapter 995, Statutes of 2018).

Examples of the kinds of misdemeanors and felonies that the Board currently sees and has access to records for, but would lose access to arrest and conviction information on due to AB 1076 include:

- Misdemeanors
  - Public Intoxication
  - Petty Theft
  - Simple Assault
  - Trespass
  - Reckless Driving
  - Prostitution
- Felonies
  - Assault
  - Grand Theft
  - Domestic Violence

AB 1076 (Ting) would restrict the Board of Psychology's (Board's) ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly diminish the Board's ability to carry out its mission of consumer protection.

**Location:** Senate Committee on Appropriations

**Status:** 07/11/19 Read second time and amended. Re-referred to Senate Committee on Appropriations.

**Votes:** 4/2/2019 Assembly Committee on Public Safety (6-2-0)
5/16/2019 Assembly Committee on Appropriations (12-5-1)
5/29/2019 Assembly Floor (52-21-7)
7/09/2019 Senate Committee on Public Safety

**Action Requested:**

The Legislative and Regulatory Affairs Committee recommends the Board take an **Oppose** position on AB 1076 (Ting), as this bill would significantly diminish the Board's ability to carry out its mission of consumer protection.

Attachment A: AB 1076 (Ting) Bill Analysis
Attachment B: AB 1076 (Ting) Senate Committee on Public Safety Analysis
Attachment C: AB 1076 (Ting) Bill Text

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# 2019 Bill Analysis

| Author: | Bill Number: | Related Bills: |
|---|---|---|
| Ting | AB 1076 | |
| **Sponsor:** | **Version:** | |
| Californians for Safety and Justice | Amended July 11, 2019 | |
| **Subject:** | | |
| Criminal records: automatic relief. | | |

**SUMMARY**

Current law allows an individual who has been arrested or convicted to petition the courts, under specified circumstances, to have certain arrest and criminal conviction information sealed. In addition to this option, this bill would require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. This bill would prohibit DOJ from providing any licensing board under the Department of Consumer Affairs (DCA) with information on convictions that have been sealed. Additionally, this bill would prohibit the courts from disclosing any information concerning arrests that were granted relief pursuant to the bill's provisions or convictions that have been granted relief pursuant to multiple code sections, to any entity except for criminal justice agencies and California Department of Social Services (CDSS) licensing programs related to facilities and/or services for the elderly, chronically ill, or child day care. Additionally, recent amendments remove all boards' and bureaus' ability to deny an application for licensure based on a conviction that receives relief under the bill.

**RECOMMENDATION**

**OPPOSE –** The Legislative and Regulatory Affairs Committee recommends the Board Oppose AB 1076 as it would restrict the Board's ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly diminish the Board's ability to carry out its mission of consumer protection.

**REASON FOR THE BILL**

According to the author, “Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals.”

**ANALYSIS**

Existing law requires the DOJ to maintain state summary criminal history information and specifies procedures and prohibitions on the disclosure and use of that information. Existing law defines “criminal offender record information” (CORI) as records and data compiled by agencies to identify offenders and a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Existing law also allows persons who are arrested, subject to specified circumstances, and has successfully completed a pretrial diversion program in lieu of entering a plea, or whose arrest did not result in a conviction, to petition the court to have these CORI records sealed. Existing law also allows persons who are convicted, subject to specified circumstances, who fulfill the conditions of their probation, who are discharged prior to the end of probation, or whose cases the court determines should be granted relief, to petition to withdraw the guilty plea and have those charges dismissed and be released from all penalties resulting from the offense and conviction. Note that in both circumstances, relief is granted when the individual takes action to petition the court and a judge determines if relief is warranted.

This bill, would instead create an automatic arrest and conviction relief process where DOJ would be required to review its databases on a weekly basis to identify persons who meet specified eligibility conditions and require DOJ to provide automatic arrest and conviction record relief. This relief would deem the arrests and convictions to not have occurred and provides that the individual in question may answer any questions regarding those arrests or convictions accordingly. Recent amendments to the bill also

| Other Boards/Departments that may be affected: All DCA Boards and Bureaus | |
|---|---|
| ☐ Change in Fee(s) ☐ Affects Licensing Processes ☒ Affects Enforcement Processes | |
| ☐ Urgency Clause ☐ Regulations Required ☐ Legislative Reporting ☐ New Appointment Required | |
| **Legislative & Regulatory Affairs Committee Position:** | **Full Board Position:** |
| ☐ Support ☐ Support if Amended | ☐ Support ☐ Support if Amended |
| ☒ Oppose ☐ Oppose Unless Amended | ☐ Oppose ☐ Oppose Unless Amended |
| ☐ Neutral ☐ Watch | ☐ Neutral ☐ Watch |
| Date: 7/8/2019 | Date: _____ |
| Vote: 3-0-0 | Vote: _____ |

restrict the Board's authority to deny an application for licensure based on conviction of a crime that has received relief pursuant to the bill's automatic relief process, thus further expanding the restrictions of AB 2138 (Chiu, Chapter 995, Statutes of 2018).

While this may be inconsequential for initial applicants due to AB 2138 (Chiu, Chapter 995, Statutes of 2018) and the bill's recent addition of these sealed convictions to Business and Professions Code Section 480, it would not be inconsequential for the purposes of reviewing the rehabilitation of individuals petitioning the Board for reinstatement of their license or for the Board's investigations of current licensees who get arrested. This arrest and conviction information would be unavailable to the Board through DOJ and the courts and would only be available if the petitioner/licensee voluntarily told the Board about the subsequent arrest and conviction, which according to AB 1076 they are not required to indicate.

While it does appear from the language that the DCA's Division of Investigation (DOI) will continue to have access to this arrest and conviction information, including court records, since they are defined as a "criminal justice agency", in order for the Board to utilize this information it would have to be a part of a complaint investigation by DOI. Currently, the Board does not utilize DOI for investigating petitions for reinstatements and instead uses its inhouse Special Investigator, which was done pursuant to DOI's instructions. Additionally, using DOI to investigate all petitions for reinstatements and subsequent arrest notifications would be a completely impractical option since DOI's current Complaint Prioritization and Referral Guidelines dictate that subsequent arrest notifications without an immediate public threat and arrest and conviction record complaints are to be investigated by the Board. Further, even if DOI were to revise their guidelines in order to investigate Board petitions for reinstatement and subsequent arrests for licensees, complaints generally take up to a year for DOI to investigate, where complaints involving sexual misconduct and consumer harm must be given first priority. Additionally, having DOI investigate these arrests and convictions would increase the Board's DOI costs, of which the Board would most likely be unable to recover. In effect, under AB 1076, the Board would be unable to ensure adequate review and consideration of subsequent arrest and conviction information for the purposes of determining the rehabilitation of individuals petitioning for reinstatement of a license and licensees who are subject to disciplinary action, pursuant to Title 16 California Code of Regulations sections 1395 and 1395.1.

**Arrest Relief and Removal of Board Access to Arrest Information**

The eligibility criteria for arrest record relief in the bill, for arrests that occurred on or after January 1, 1973, are as follows:

1) The arrest was for a misdemeanor offense and the charge was dismissed.
2) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.
3) The arrest was for a felony offense punishable by imprisonment for up to three years pursuant to Penal Code Section 1170(h)(1) or 1170(h)(2), there is no

indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising from, that arrest.

4) The person successfully completed any of the following diversion programs related to that arrest:
    - A prefiling diversion program, as defined in Penal Code Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.
    - A drug diversion program administered by a superior court pursuant to Penal Code Section 1000.5, or a deferred entry of judgment program pursuant to Penal Code Section 1000 or 1000.8.
    - A pretrial diversion program, pursuant to Penal Code Section 1000.4.
    - A diversion program, pursuant to Penal Code Section 1001.9.
    - Any diversion program under Title 6 of the Penal Code:
        - Chapter 2.8 (commencing with Penal Code Section 1001.20),
        - Chapter 2.8A (commencing with Penal Code Section 1001.35),
        - Chapter 2.81 (commencing with Penal Code Section 1001.40),
        - Chapter 2.9 (commencing with Penal Code Section 1001.50),
        - Chapter 2.9A (commencing with Penal Code Section 1001.60),
        - Chapter 2.9B (commencing with Penal Code Section 1001.70),
        - Chapter 2.9C (commencing with Penal Code Section 1001.80),
        - Chapter 2.9D (commencing with Penal Code Section 1001.81),
        - Chapter 2.92 (commencing with Penal Code Section 1001.85).

Examples of the kinds of misdemeanors and felonies that the Board currently sees and has access to records for, but would lose access to arrest and conviction information on due to AB 1076 include:

- Misdemeanors
    - Public Intoxication
    - Petty Theft
    - Simple Assault
    - Trespass
    - Reckless Driving
    - Prostitution
- Felonies
    - Assault
    - Grand Theft
    - Domestic Violence

In previous versions of the bill, eligibility criteria 2 and 3 above had an inherent loophole within these criteria, where the individual could have been arrested and has not been convicted within the eligibility timeframe (one or three years) because the individual has failed to appear in court, failed to fulfill the terms of bail, evaded a warrant, or has filed multiple continuances to delay a trial, or because the court system is so backlogged that the individual's case has not gone to trial yet. Recent amendments to the bill added the provision that "there is no indication that criminal proceedings have been initiated" in relation to the arrest. This amendment was intended to ensure that if a criminal case has been initiated in some form, the related arrest cannot be prematurely sealed, and the Board would continue to have access to this arrest information barring any issues

with subsequent arrest reporting. However, without better defining what “initiated” means in reference to criminal proceedings, Board staff have concerns that this vague language could still result in premature sealing of arrest information.

Another component of the arrest relief in AB 1076 is an outright prohibition on DOJ from disclosing any arrest information concerning those arrests that have been granted relief to DCA boards. While the explicit provision banning DOJ from disclosing this information has been removed from the bill, the ban was simply amended into a later section of the bill by amending Penal Code Section 11105(p)(2)(A). While criminal justice agencies and now CDSS licensing programs will continue to see this information, the bill deliberately removes this ability for all DCA boards. As referenced earlier, this loss of information would impede the Board’s ability to accurately assess the rehabilitation of a petitioner who petitions the Board for reinstatement of a revoked or surrendered license or a licensee who may be subject to disciplinary action.

Additionally, Board staff is concerned about the loss of this arrest information due to reliability and timeliness issues with subsequent arrest notifications through DOJ’s secure server. While it does not occur frequently, the Board has had multiple instances in the past five years where the Board was not notified at all regarding a licensee’s subsequent arrest (disclosure occurred on the licensee’s renewal application) or the Board was notified up to a year after the arrest. Under AB 1076’s arrest relief eligibility criteria, the subsequent arrest notifications that the Board received over a year after the arrest could have been automatically granted relief and barring self-disclosure by the licensee (which AB 1076 would say is unnecessary), the Board would have gotten no notification of the arrest at all. The Board’s Enforcement Program relies on subsequent arrest information from DOJ to protect the health and safety of the public. These subsequent arrest notifications alert the Board of arrests of its licensees where the crime may demonstrate an unfitness to independently practice psychology, where patient abuse is occurring (financial or elder abuse), or where danger to the public is imminent and merits an interim suspension order or order to cease practice pursuant to Penal Code Section 23 be placed on the licensee to bar practice.

Due to these factors, Board staff is seriously concerned with AB 1076’s removal of Board access to arrest information based on eligibility criteria that are based on arbitrary timelines and significant impede the Board’s ability to evaluate the rehabilitation of petitioners for reinstatement and licensees subject to disciplinary action.

**Conviction Relief and Removal of Board Access to Conviction Information**

The eligibility criteria for conviction record relief in the bill are as follows (note that the individual must meet all conditions):

1) The person is not required to register pursuant to the Sex Offender Registration Act.
2) The person does not have an active record of supervision (active probation or parole under local, state, or federal supervision) according to the Supervised Release File.

3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.
4) There is no indication that the conviction resulted in a sentence of incarceration in a state prison.
5) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:
    a. The defendant was sentenced to probation and has completed their term of probation without revocation.
    b. The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence or paid their fine, sentence, and at least one calendar year has elapsed since the date of judgment.
    c. The defendant was sentenced for a crime that is, on or after January 1, 2012, would have been eligible for sentencing pursuant to Penal Code Section 1170(h), and two years have elapsed following the defendant's completion of the sentence.

Similar to the arrest relief provisions, the bill also prohibits DOJ from disclosing to DCA boards any conviction information concerning convictions that have been granted relief and would prohibit the Board from receiving any court records regarding the conviction. While criminal justice agencies, law enforcement, and CDSS will continue to see this information, the bill deliberately removes the ability of all DCA boards to see this conviction information. Additionally, recent amendments removed the provision of the bill that would have required an individual who receives conviction relief to still disclose the conviction to any licensing agency in response to any direct question contained in a questionnaire or application. With the removal of that provision, a petitioner for license reinstatement would not have to disclose a subsequent conviction that had been granted relief and the Board would not have access to any arrest or conviction information on the petitioner.

The loss of conviction information in AB 1076 is even more concerning than the loss of arrest information as it directly impedes the Board's ability to accurately assess a petitioner's fitness to practice independently and the degree of rehabilitation achieved by the petitioner. In these instances, the petitioner's past violations were egregious enough to warrant formal discipline and probationary terms or was so egregious that the Board revoked their license (or the license was surrendered in lieu of revocation). To adequately protect consumers, it is paramount for the Board to have access to this conviction information for purposes of determining fitness to practice and rehabilitation.

Additionally, in relation to AB 2138 and the Board's associated regulations, AB 1076's removal of conviction information for certain felony convictions runs counter to the provisions of AB 2138 and the Board's associated regulations. AB 1076 would provide relief for felonies meeting certain criteria if they resulted in county jail for a specified period and two years have passed since completion of the sentence, such as financial felonies and elder abuse, and remove the Board's ability to access this conviction information. The Board recently developed regulations to comply with and implement

AB 2138 while continuing to uphold consumer protection. An integral part of that public protection is being able to review and evaluate those criminal convictions that occurred within the past seven (7) years, as allowed in AB 2138, that are substantially related to the practice of psychology and determining if those convictions bear on an applicant's fitness to practice without terms and conditions. AB 1076's conviction relief does not match the timeframes in AB 2138 and therefore further diminishes the Board's ability to assess fitness for licensure and thus protect vulnerable consumers.

Due to these factors, Board staff is extremely concerned with AB 1076's removal of Board access to conviction information that is necessary for the Board to use when evaluating fitness to practice and rehabilitation of a petitioner or applicant.

**LEGISLATIVE HISTORY**

AB 972 (Bonta) would establish a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 is pending in the Assembly Appropriations Committee.

AB 1372 (Grayson) would allow a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention that did not result in a conviction, information concerning a referral or participation in a diversion program, and information that has been judicially dismissed or ordered sealed.

AB 2138 (Chiu), Chapter 995, Statutes of 2018, amends various provisions of the Business and Professions Code relating to a board's ability to deny a license or take disciplinary action in relation to criminal convictions based on various factors related to the crime, and revises requirements related to the criteria of rehabilitation that boards must consider when evaluating the denial of an application, a petition for reinstatement, or a petition for early termination of probation.

AB 2599 (Holden), Chapter 653, Statutes of 2018, requires law enforcement agencies and probation departments to increase awareness and access to the arrest record sealing and expungement process.

AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held of the Assembly Appropriations Suspense File.

AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

AB 1008 (McCarty), Chapter 789, Statutes of 2017, directed employers to follow certain procedures if they wish to consider job applicants' criminal history as part of a hiring process.

AB 813 (Gonzalez Fletcher) Chapter 739, Statutes of 2016 created a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.

SB 124 (Lara), Chapter 789, Statutes of 2016, authorized a person who was sentenced to a term of one year prior to January 1, 2015, to submit an application to the trial court to have the term of the sentence reduced to the maximum term of 364 days.

**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.

This bill would have a large impact on the Board of Psychology's licensing and enforcement programs, and it would hinder the Board's ability to carry out its legislative mandate of consumer protection. Currently, the Board completes an enforcement review for every petitioner (reinstatement and early termination of probation) and every applicant with a criminal history, determines whether the crimes committed are substantially related to the duties of licensure, and then the Board determines if the convictions demonstrate a petitioner's lack of fitness for independent practice and rehabilitation or demonstrate cause for a denial of an initial application for licensure. This bill would significantly diminish the Board's ability to make these determinations without access to the necessary arrest and conviction information.

Additionally, if AB 1076 were to be signed into law, the Board would initiate discussions with DOI to reestablish these investigations as a priority that DOI would investigate in order to ensure conviction information on petitions for reinstatement are adequately reviewed. Reestablishing these investigations with DOI would increase the investigation timeframes and costs for all petitions for reinstatement.

**FISCAL IMPACT**
Currently, the Board's Enforcement Analyst (Staff Services Analyst) reviews the criminal history summaries of an average of 154 applicants per year, 93 percent of which are approved for licensure after a review of the criminal history. Due to current data restraints, it is not possible for the Board to estimate how many of these applicants would have had criminal history summaries under AB 1076's provisions and it is therefore impossible for the Board to estimate the decrease in the number of criminal history reviews that would be needed in the future.

Currently, the Board reviews and investigates an average of two (2) petitions for reinstatement per Fiscal Year (FY) over the past four FYs. Since the Board has not

used DOI to investigate petitions for reinstatement in many years, and the scope and extent of their investigation would depend on the criminal history of the petitioner, the Board is unable to estimate the potential increase in DOI investigative time and associated costs.

Due to the higher hourly rate of DOI investigatory staff time in comparison with the hourly rate of a Staff Services Analyst, the cost savings due to reductions in the review of criminal histories for initial applications could potentially be negligible due to the increased DOI costs for petitions for reinstatement.

**ECONOMIC IMPACT**
Not Applicable

**LEGAL IMPACT**
Not Applicable

**APPOINTMENTS**
Not Applicable

**SUPPORT/OPPOSITION**

**Support:** Californians for Safety and Justice (Sponsor); American Civil Liberties Union of California; California Public Defenders Association; Community Works; Feminists in Action; Indivisible Sausalito; Indivisible Stanislaus; Indivisible: San Diego Central; Initiate Justice; National Association of Social Workers, California Chapter; Showing Up for Racial Justice, Marin; Sister Warrior Freedom Coalition; Southern California Coalition; We The People - San Diego

**Opposition:** California District Attorneys Association; California Law Enforcement Association of Records Supervisors, Inc.; Contractors State Licensing Board

**ARGUMENTS**

**Proponents:** ***Californians for Safety and Justice*** states “Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California’s economy. Nationally, it has been estimated that the U.S. loses roughly $65 billion per year in terms of gross domestic product due to employment losses among people with convictions.”

**Opponents:** ***Contractors State Licensing Board*** states “Assembly Bill (AB) 1076 would preclude the Department of Justice from disclosing to the Board records of certain arrests, misdemeanors or felonies on the Criminal Offender Record Information (CORI) of licensed contractors and

applicants for contractor's licenses. Under AB 1076, an arrest for a misdemeanor offense would automatically be removed from the CORI if a calendar year elapsed without conviction. This precludes the Board from receiving notice of the arrest of a licensee or applicant who is subject to an active warrant, did not fulfill the terms of bail, or for any number of reasons was not prosecuted and convicted within a year from arrest.

The bill would also preclude the Board's receipt of felony convictions meeting certain criteria if they resulted in county jail for a specified period and two years have passed since completion of the sentence. And the Board would be precluded from using for licensing or enforcement purposes these types of convictions, which would include financial felonies, such as embezzlement or diversion of construction funds and elder abuse. In the last legislative session, the Board worked with the author of AB 2138 (Chiu, Ch. 995, Stats. 2018) to ensure these types of crimes would be excluded from any time restrictions and remain subject to consideration in the denial of license applications due to these types of convictions resulting in outstanding financial liabilities owed to consumers.

Business and Professions Code Section 7000.6 mandates that protection of the public shall be the highest priority of the Board. Current law authorizes the Board to review the CORI to determine whether the criminal information bears upon the offender's fitness to perform the functions of a contractor in a manner consistent with public health, safety, and welfare. By deleting the arrests of those who may have unlawfully evaded a warrant for over a year, or the convictions of a large range of felonies after some months or years, many of which include financial harm to consumers, the Board believes AB 1076 severely confounds its ability to serve its public protection purpose." Further, they assert that

***California District Attorneys Association*** states that while they "100% endorse the concept that the easier it is for persons who have been rehabilitated to obtain employment and housing, the greater the chances those persons will not engage in criminal behavior in the future. Even if there were no studies supporting this concept, it is just plain common sense. Our opposition to the bill is largely premised on a basic concern with avoiding future litigation and unintended consequences because of ambiguous language, failures to address potential problems, and erroneous assumptions." Further, they state that "We do not believe it is your intent to shorten the statute of limitations or prevent prosecutions." ... "Fortunately, this problem is easily fixed by adding language that affirms your intent, does nothing to undermine the goals of the legislation, clears up concerns that our ability to prosecute a case for which the statute of limitations has not run, and avoids future litigation."

***California Law Enforcement Association of Records Supervisors*** states that “AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant’s record eligible for dismissal.

# SENATE COMMITTEE ON PUBLIC SAFETY

**Senator Nancy Skinner, Chair**
**2019 - 2020 Regular**

| | | | |
|---|---|---|---|
| **Bill No:** | AB 1076 | **Hearing Date:** | July 9, 2019 |
| **Author:** | Ting | | |
| **Version:** | June 26, 2019 | | |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | SC | | |

**Subject:** ***Criminal Records: Automatic Relief***

## HISTORY

Source: Californians for Safety and Justice
San Francisco District Attorney's Office

Prior Legislation: AB 2438 (Ting), 2018, held in Assembly Appropriations
AB 2599 (Holden), Ch. 653, Stats. 2018
AB 1793 (Bonta), Ch. 993, Stats. 2018
AB 1008 (McCarty), Ch. 789, Stats. 2017
SB 393 (Lara), Ch. 680, Stats. 2017
SB 513 (Hancock), Ch. 798, Stats. 2013
SB 599 (Perata), Ch. 792, Stats. 2003

Support: American Civil Liberties Union of California; A New Way of Life Re-Entry Project; Building Opportunites for Self-Sufficiency; California Attorneys for Criminal Justice; California Public Defenders Association; Code for America; Communities in Schools; Community Works; Congregations United for Change; Council of California Goodwill Industries; Democratic Women's Club of San Diego; Ella Baker Center for Human Rights; Feminists in Action; Friends Committee on Legislation of California; Homeboy Industries; Indivisible: San Diego; Initiate Justice; Inland Congregations United for Change; Los Angeles County Board of Supervisors; MedMen; National Association of Social Workers – California Chapter; OneJustice; Pillars of the Community; Project Kinship; Root & Rebound; Safe Return Project; San Diego District Attorney's Office; Smart Justice; Southern California Coalition; Straight Talk Program, Inc.; Torrey Pines Democratic Club; United Domestic Workers of America – AFSCME Local 3930; We the People SD Democratic Club; University of California Student Association

Opposition: California District Attorneys Association; California Judges Association; California Law Enforcement Association of Records Supervisors; Contractors State License Board

Assembly Floor Vote: 52 - 21

**This Analysis Reflects the Bill as Proposed to be Amended**

## PURPOSE

***The purpose of this bill is to require the Department of Justice (DOJ), starting January 1, 2021, to review the records in the statewide criminal justice databases on a weekly basis and to identify persons who are eligible for relief by having their arrest records or criminal conviction records withheld from disclosure and to grant relief to an eligible person without requiring a petition or motion.***

*Existing law* states that in any case where a person is arrested and successfully completes a prefiling diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records pertaining to an arrest and the court may order those records sealed. (Pen. Code, § 851.87.)

*Existing law* states that in any case where a person is diverted pursuant to a drug diversion program administered by a superior court, as specified, or is admitted to a deferred entry of judgment program, as specified, and the person successfully completes the program, the judge may order those records pertaining to the arrest to be sealed, as specified, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case. (Pen. Code, § 851.90.)

*Existing law* states that a person who has suffered an arrest that did not result in a conviction, as specified, may petition the court to have his or her arrest and related records sealed. (Pen. Code, § 851.91, subd. (a).)

*Existing law* specifies that an arrest that did not result in a conviction has occurred if any of the following are true:

1) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney of the city or county that would have had jurisdiction over the offense or offenses upon which the arrest was based has not filed an accusatory pleading based on the arrest; or,

2) The prosecuting attorney filed an accusatory pleading based on the arrest, but, with respect to all charges, one or more of the following has occurred:

    a) No conviction occurred, the charge has been dismissed, and the charge may not be refiled;

    b) No conviction occurred and the arrestee has been acquitted of the charges; or,

    c) A conviction occurred, but has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be refiled. (Pen. Code, § 851.91, subd. (a).)

*Existing law* states that an eligible petitioner is entitled to have his or her arrest sealed as a matter of right unless the petitioner's record demonstrates a pattern of arrests for domestic violence, child abuse or elder abuse. If a pattern of such offenses is shown, the court may seal the

petitioner's arrest record only upon a showing that the sealing would serve the interests of justice. (Pen. Code, 851.91, subd. (c).)

*Existing law* specifies that a person is not eligible for relief in the form of sealing an arrest for which no conviction has occurred in a variety of circumstances, including when the arrest was for a crime that has no statute of limitations, such as murder, or when the person evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest occurred. (Pen. Code, § 851.91, subd. (a)(2).)

*Existing law* specifies procedures for filing a petition to seal an arrest record for an arrest that did not result in a conviction and allows a court to deny a petition to seal for failing to meet any of those procedural requirements. (Pen. Code, § 851.91, subds. (b) and (d).)

*Existing law* specifies procedures that a court must follow upon granting a petition to seal an arrest record for an arrest that did not result in a conviction. (Pen. Code, § 851.91, subd. (e).)

*Existing law* states that upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1000.4, subd. (a).)

*Existing law* establishes misdemeanor pretrial diversion as the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

*Existing law* states that upon successful completion of a misdemeanor pretrial diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1001.9.)

*Existing law* states that the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. (Pen. Code, § 1000.5, subd. (a)(1).)

*Existing law* states that if the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1000.5, subd. (b).)

*Existing law* states that in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted relief, the defendant shall be able to withdraw his or her guilty plea and have the charges dismissed. In cases in which the defendant was convicted

after a plea of not guilty, the court shall set aside the verdict of guilty and dismiss the charges. In either case, the defendant shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except the suspension or revocation of the person's driving privilege, as specified. (Pen. Code, § 1203.4, subd. (a)(1).)

*Existing law* specifies that a person is not eligible to withdraw their plea or have their plea set aside and have the charges dismissed if the defendant is serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a)(1).)

*Existing law* specifies circumstances in which a defendant who was convicted of a misdemeanor and not granted probation, or a defendant who was convicted of an infraction, is entitled to withdraw his or her guilty plea and have the charges dismissed or the court shall set aside the verdict of guilty and dismiss the charges. (Pen. Code, § 1203.4a, subd. (a).)

*Existing law* states that a defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction who does not meet the requirements to have his or her guilty plea withdrawn or verdict set aside and the charges dismissed may still be granted such relief in the interests of justice. (Pen. Code, § 1203.4a, subd. (b).)

*Existing law* specifies circumstances in which a court, in its discretion, may allow a defendant to withdraw his or her plea of guilty or set a guilty verdict and dismiss the charges when that defendant was convicted of a felony offense, as specified. (Pen. Code, § 1203.41.)

*Existing law* specifies circumstances in which a court may, in its discretion, allow a defendant to withdraw his or her guilty plea and have the charges dismissed or set aside the verdict of guilty and dismiss the charges for a person who was convicted of an offense prior to the 2011 Realignment Legislation for a crime for which he or she would otherwise have been eligible for sentencing, as specified. (Pen. Code, § 1203.42.)

*Existing law* specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for being a prohibited person in possession of a firearm, as specified. (Pen. Code, § 1203.4, subd. (a)(2).)

*Existing law* specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person prohibited from holding public office as a result of that conviction to hold public office. (Pen. Code, § 1203.4, subd. (a)(3).)

*Existing law* requires DOJ to maintain state summary criminal history information and specifies procedures and prohibitions on the disclosure and use of that information. (Pen. Code, § 11105.)

*Existing law* specifies that DOJ shall not disseminate convictions for which relief was granted pursuant to a statute that authorizing sealing of records for victims of human trafficking, except for the following entities and for specified purposes: peace officer employment and certification, criminal justice employment, cable companies, community care or foster family homes, financial institutions, and transportation companies. (Pen. Code, § 11105, subd. (p).

*Existing law* defines "criminal offender record information" (CORI) as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 11075, subd. (a).)

*Existing law* states that CORI shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. (Pen. Code, § 11075, subd. (b).)

*This bill* requires, starting January 1, 2021, DOJ to review the records in the statewide criminal justice databases on a weekly basis, and based on information in the state summary criminal history repository, identify persons with records of arrest that qualify for relief.

*This bill* specifies that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

1) The arrest was for a misdemeanor offense and the charge was dismissed;

2) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest;

3) The arrest is for a felony offense that is punishable by imprisonment in county jail, there is no indication that criminal proceedings have been initiated, and at least three calendar years have elapsed since the date of the arrest, and no conviction has occurred, or the arrestee has been acquitted of the charges; or,

4) The person successfully completed a diversion or deferred entry of judgment program related to the arrest as provided.

*This bill* requires DOJ to grant arrest record relief to an eligible person without requiring a petition or motion by a party for that relief if relevant information is present in DOJ's records.

*This bill* states that the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the DOJ granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

*This bill* states that except as otherwise provided below, an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

*This bill* requires, on a weekly basis, DOJ to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction for which arrest record relief was granted.

*This bill states* that, starting February 1, 2021, for any record retained by the court pursuant to existing law that governs retention of court records, the court shall not disclose information, except as provided, concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a "criminal justice agency," as defined in existing law.

*This bill* states that arrest record relief granted pursuant to the provisions of this bill is subject to the following conditions:

1) It does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined;

2) It has no effect on the ability of a criminal justice agency to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted;

3) It does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction for being a prohibited person in possession of a firearm, as specified, if the arrest would otherwise affect this authorization or susceptibility;

4) It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest; and,

5) It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulating community care facilities, residential care facilities, and child day care facilities.

*This bill's* provisions do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.

*This bill* requires DOJ to annually publish statistics for each county regarding the total number of arrests granted relief pursuant to the provisions of this bill and percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal.

*This bill* requires, starting January 1, 2021, DOJ to review its statewide criminal justice databases, and based upon information in the state summary criminal history repository and Supervised Release File, identify people who are eligible for automatic conviction record relief.

*This bill* states that a person is eligible for automatic conviction relief if they meet all of the following conditions:

1) The person is not required to register as a sex offender;

2) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges;

4) There is no indication that the conviction resulted in a sentence of incarceration in the state prison except if the defendant was sentenced prior to the implementation of the 2011 Realignment Act for a crime for which he or she would otherwise have been eligible for sentencing pursuant to Realignment; and,

5) The conviction occurred on or after January 1, 1973 and meets one of the following criteria:

   a) The defendant was sentenced to probation and has completed the term of probation without revocation;

   b) The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgment.

   c) The defendant was sentenced prior to the implementation of the 2011 Realignment Act for a felony for which he or she would otherwise have been eligible for sentencing pursuant to Realignment, as specified, and based on the disposition date and the sentence specified in DOJ's records, it appears that two years have elapsed following the defendant's completion of the sentence.

*This bill* states that except as specified, DOJ shall grant relief, including dismissal of a conviction, to an eligible person without requiring a petition or motion by a party for that relief if the relevant information is present in DOJ's records.

*This bill* provides that the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

*This bill* states that except as applied to any revocation or suspension of a person's driving privileges, a person granted conviction relief pursuant to the provisions of this bill shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

*This bill* requires DOJ, on a weekly basis, to submit a notice electronically to the superior court having jurisdiction over the criminal case, informing the court of all cases for which for which a complaint was filed in that jurisdiction and relief was granted pursuant to these provisions.

*This bill* states that, commencing February 1, 2021, the court shall not disclose information concerning a conviction granted relief pursuant to these provisions, except as specified, to any person or entity, except to the person whose conviction was granted relief or a "criminal justice agency," as defined in existing law.

*This bill* provides that automatic conviction relief granted pursuant to this bill is subject to the following conditions:

1) It does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined;

2) It does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission;

3) It has no effect on the ability of a criminal justice agency, as defined, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted;

4) It does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section;

5) It does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for being a prohibited person in possession of a firearm, as specified;

6) It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction;

7) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted;

8) It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulating community care facilities, residential care facilities, and child day care facilities; and,

9) It does not make eligible a person who is otherwise ineligible to provide or receive payment for providing in-home supportive services.

*This bill* specifies that these provisions shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law.

*This bill* requires that DOJ, on an annual basis, to publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief based on a prosecuting attorney or probation department's motion, on the OpenJustice Web portal.

*This bill* allows a prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief for convictions entered on or after January 1, 2018, to file a motion to prohibit DOJ from granting automatic conviction relief.

*This bill* provides that the court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed; if the court grants that motion, DOJ shall not grant automatic relief but the person may continue to be eligible for relief pursuant to other provisions of law, and if the court subsequently grants such a motion, the court shall report that outcome to DOJ and DOJ shall grant relief pursuant to the applicable section.

*This bill* provides that at the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

*This bill* makes conforming changes in existing code sections related to the dissemination of state summary criminal history information by DOJ and information provided to a licensing board.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

> Individuals with criminal records face barriers in gaining employment, making them more likely to reoffend. Current law allows individuals to clear arrests that did not result in a conviction, and to clear convictions that are eligible for dismissal by petitioning the court. This imposes a burden on affected individuals to be made aware of their eligibility and retain an attorney to proactively file the necessary petition. Additionally, under that current petition-based record clearance model, each record costs the system $3,757.
>
> AB 1076 would require the California Department of Justice (DOJ) to automate arrest and conviction relief by dismissing eligible convictions for individuals who have completed their probation and/or county jail sentence, arrests that did not result in a conviction for qualified misdemeanors one year after the arrest, and qualified non-serious, non-violent, non-sex felonies three years after arrest. This bill will not require any action from a petitioner, thereby reducing significant barriers to employment and housing opportunities for millions of Californians.

### 2. Effect of this Legislation

This bill would create an automatic process whereby DOJ would be required to seek out the records of persons who would be eligible for relief under the provisions of this bill. This bill would also require DOJ to electronically submit information of all cases for which for relief was granted to the court with jurisdiction over the case if a complaint was filed. The courts, starting February 1, 2021, are prohibited from releasing information concerning an arrest or conviction that has been granted relief, except to a criminal justice agency or the person who is the subject of the information. This bill contains two separate provisions for arrest record relief and conviction record relief.

**a. Automatic Arrest Record Relief**

This bill requires DOJ, on a weekly basis starting on January 1, 2021, to review the records in the statewide criminal justice databases and to identify people who are eligible for arrest record relief. If granted relief, the person's state summary history information would include, directly next to or below the entry or entries regarding the person's arrest record, a note stating, "arrest relief granted" pursuant to this bill's provisions. This notation shall be included in all statewide criminal databases with a record of the arrest.

DOJ's review of its records shall take place without a petition or motion by the person who would be granted the relief. However, the bill specifies that its provisions do not limit petitions, motions, or orders for arrest record relief as authorized by existing law.

This bill provides that a person is eligible for this type of relief if the arrest occurred on or after January 1, 1973 and any of the following conditions is met:

1) The arrest was for a misdemeanor offense and the charge was dismissed;

2) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of arrest, and no conviction occurred, or the arrestee was acquitted of the charges that arose form that arrest;

3) The arrest was for a realigned felony, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest and no conviction occurred, or the arrestee was acquitted of any charges arising from that arrest; or,

4) The person successfully completed a diversion or deferred entry of judgment program, as specified.

This bill states that a person who has been granted arrest record relief, subject to certain limitations such as possession of firearms and application for employment as a peace officer, entitles the person to be released from any penalties and disabilities resulting from the arrest, and to answer any question relating to the arrest accordingly.

This bill requires DOJ to electronically submit notice to the superior court of any arrest records granted this relief and also prohibits, starting February 1, 2021, the court from disclosing information regarding the arrest to any person or entity except the person whose arrest was granted or a criminal justice agency. Arrest record relief has no effect on the ability of a criminal justice agency to access and use an arrest record to the same extent that would have been permitted had the relief not been granted. This bill specifies that its provisions do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.

This bill also contains a reporting provision requiring DOJ to annually publish statistics for each county regarding the total number of arrests granted relief pursuant to the provisions of this bill and percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal.

**b. Automatic Conviction Record Relief**

This bill creates similar authority for automatic conviction record relief. Specifically, this bill requires DOJ, on a weekly basis starting on January 1, 2021, to review its records and identify persons with convictions eligible for conviction record relief. If granted this relief, the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted" listing the date that the department granted the relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

This bill states that persons that meet all of the following criteria are eligible for this relief:

1) The person is not required to register as a sex offender;

2) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges;

4) Except for a felony conviction that has been realigned to be a county jail-eligible felony, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

5) The conviction occurred on or after January 1, 1971 and meets one of the following criteria:

    a) The person was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation;

    b) The person was convicted of an infraction or misdemeanor, was not granted probation, and has completed their sentence, and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgement; or,

    c) The person was sentenced prior to January 1, 2012 to a felony that has since been realigned to a county jail-eligible felony and, based upon the disposition date and sentence specified in DOJ's records, it appears that two years have elapsed following the completion of the defendant's completion of the sentence.

This bill allows a prosecuting attorney or probation department to file a motion to prohibit automatic relief no later than 90 days before the date of a person's eligibility. (See note 3 below.) Similar to the arrest record relief, the conviction record relief created by this bill has specified limitations such as disclosure when applying for certain jobs or positions, and the ability for these convictions to be used in any subsequent conviction for purposes of charging and sentencing. At the time of sentencing, the court is required to advise the defendant of these limitations and the defendant's right, if any, to a petition for a certificate of rehabilitation and pardon. The court may still continue to hear motions or petitions for conviction relief under existing laws.

### 3. Motion to Prohibit Automatic Conviction Record Relief

This bill specifies for convictions entered on or after January 1, 2018, that a prosecuting attorney or probation department may file a motion to prohibit DOJ from granting automatic relief. The court is required to give notice to the defendant and conduct a hearing on the motion no later than 45 calendar days after the motion if filed. The court is required to report the outcome of the hearing to DOJ and DOJ is required to take appropriate action based on the ruling. A person who is denied automatic relief may still file a petition requesting relief under existing procedures.

This bill does not provide guidance on when a prosecuting attorney or probation department may file one of these motions. This may lead to some counties where these motions are filed in majority of cases regardless of the individual facts of the case or result in bias-motivated filings. Such motions should be dependent on the circumstances of the case, such as unusually egregious facts or multiple convictions or arrests that is indicative of a pattern or shows a threat to public safety. This bill does, however, provide a way for the frequency of these motions to be evaluated county by county through DOJ's annual report.

### 4. Existing Procedures for Dismissal of Arrests and Expungement of Convictions

Existing law provides for a number of procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her arrest/conviction information sealed or dismissed. When these procedures are successful, they generally treat the arrest or conviction as if it had never occurred. This allows persons formally arrested or convicted, to lawfully withhold information about their arrest or conviction when applying for jobs or housing, which is vitally important to successfully reentering the community and not returning to a life of crime. Typically, the procedure for sealing an arrest record, or dismissing a conviction is a court process. It requires the defendant to submit an application, or "petition" with the court, and the court makes a determination about whether the person is eligible for the relief he or she is seeking. This bill appears to be largely based on these existing laws except the process would be automatic and would be initiated by DOJ rather than self-petitioning through the courts.

#### a. Arrest Records

Penal Code section 851.91 authorizes a person who has suffered an arrest that did not result in a conviction to petition the court to have the arrest and related records sealed. A person is eligible for this relief if the statute of limitations has run on every offense upon which the arrest was based and criminal charges have not been filed, or a charges have been filed but not conviction occurred, the charge was dismissed and the charge may not be refiled or the arrestee was acquitted or a conviction occurred but has been vacated or reversed on appeal and the charge may not be refiled. A person is not eligible for relief if, among other reasons, the arrest is for an offense that does not have a statute of limitations, except if the person has been acquitted for found factually innocent, or if the person evaded law enforcement efforts to prosecuting the arrest. Petitions to seal a qualifying arrest may be granted as a matter of right but the court may also exercise discretion. Arrests for certain offenses such as domestic violence, child abuse and elder abuse where the petitioner's record demonstrates a pattern of like crimes, the court may only seal the arrest records if the sealing would serve the interests of justice. A "pattern" means

two or more convictions, or five or more arrests, within three years. This section also requires notice to the prosecuting attorney of at least 15 days prior to the hearing.

Arrest records may also be sealed after a person has completed a diversion or deferred entry of judgment program. In that instance, a person is charged and agrees to participate in a program, and follow other court ordered conditions, either following a plea or without entering a plea, and if the person successfully completes the program the court must generally dismiss the case. The arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the arrest records, with specified exemptions related to disclosure for certain jobs and ability of criminal justice agencies to access those records.

**b. Conviction Records**

Penal Code section 1203.4 requires a court to dismiss the case against a defendant who has been convicted of a crime and thereafter fulfilled the conditions of probation or has been discharged from probation early or in the interests of justice the court determines a defendant should be granted this relief. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition. The defendant shall be informed of the limitations of this relief which include among other things the ability to use the conviction as a prior for purposes of charging and sentencing and disclosure when applying for certain jobs or positions. Otherwise, the defendant is deemed to be released from all penalties and disabilities as provided.

Penal Code section 1203.4a contains similar authority as Penal Code section 1203.4 except as applied to misdemeanors and infractions. The court shall dismiss the charge and set aside the conviction for defendants convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction, after the lapse of one year from the date of judgment, if they have fully complied their sentence, is not then serving a sentence for any offense and is not charged with any crime, and has, since sentencing, conformed to and obeyed the laws. The court may also grant relief to a person who otherwise does not meet the requirements of that section in its discretion and in the interests of justice. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition. The defendant shall be informed of the limitations of this relief which include among other things the ability to use the conviction as a prior for purposes of charging and sentencing and disclosure when applying for certain jobs or positions. Otherwise, the defendant is deemed to be released from all penalties and disabilities as provided.

Penal Code section 1203.41 provides similar authority for a person who has been convicted of a realigned felony and a portion of the sentence was mandatory supervision. The court has discretion to, in the interests of justice, to set aside the plea or verdict of guilty and dismiss the case if the defendant is not under mandatory supervision, and is not serving a sentence for, on probation for, or charged with the commission of any offense. At minimum, a year must have elapsed after the completion of the sentence. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

Penal Code section 1203.42 provides similar authority for persons who were convicted of a felony prior to realignment and the offense has been reclassified as a county jail-eligible felony. Relief may be granted only if the defendant is not under supervised release, and is not serving a sentence for, on probation for, or charged with the commission of any offense, and after the lapse of two years following the defendant's completion of the sentence. The prosecuting attorney must be given 15 days' notice of the petition for relief and if the prosecuting attorney does not object or fails to appear, prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

**c. Automating the Process**

This bill would streamline the existing processes by making the relief automatic, rather than petition-based, but also leaves the ability of a person to petition for relief under the existing provisions. Self-petitioning the court may be an arduous task for the few that decide to go through the process, but the bigger issue is that many people may not know they are eligible for relief under existing statutes. Additionally, automating the process puts less pressure on courts who are currently responsible for hearing these motions even when the facts would require a dismissal.

However, DOJ is only responsible for determining who is eligible and not making any additional findings that under existing law could be determined by the court. Thus, their review is limited and can only consider facts that are readily verifiable, such as how much time has elapsed since the arrest or sentencing date or whether the person is currently under supervision. Accordingly, unlike Penal Code section 851.91, this bill does not require that the statutes of limitations has run on any charges that may stem from the arrest and instead requires at least one year to have elapsed since a misdemeanor arrest, and three years from a felony arrest to mirror the default statutes of limitations for misdemeanors and felonies, although there are several offenses that specify a statute of limitations that is longer than the default timeframes. This bill however, does not affect criminal justice agencies' access to this information and does not prohibit charges from being filed. Additionally, creating an automated system that takes into consideration all of the different statutes of limitations may not be feasible.

Along the same vein, existing Penal Code sections 1203.41 and 1203.42 do not require dismissal of charges, rather relief is in the court's discretion in the interests of justice. DOJ's automated process would not have the ability to make a determination based on the interests of justice, which is the standard used by courts where the facts of a petition do not otherwise require a dismissal.

**5. Barriers to Employment and Housing for People with Criminal Records**

Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

The refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have been involved in criminal activity seek to come clean and refocus their lives on productive, non-criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady income and excluded from the dignity and social inclusion that a job confers, people with criminal histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.

As for housing, it is estimated that four out of five landlords use criminal background checks to screen potential tenants. (David Thacher, *The Rise of Criminal Background Screening in Rental Housing* (2008) 33 L. & Soc. Inquiry 5, 12.) A criminal record combined with factors that stem from the inability to obtain employment such as lack of income history or a prior eviction make it extremely difficult for people with criminal records to find housing.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment and housing caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

**6. Criminal Record Relief Has a Positive Impact on Reducing Recidivism**

A recent study evaluated the benefits of expungement and any impacts on public safety. The study found that people who get their records expunged tend to have lower recidivism rates than the general population. The problem is that many people who are eligible do not apply for relief for a variety of reasons:

> The good news is that people who get expungements tend to do very well. We found that within a year, on average, their wages go up by more than 20 percent, after controlling for their employment history and changes in the Michigan economy. This gain is mostly driven by unemployed people finding work and minimally employed people finding steadier positions.
>
> This finding is especially encouraging because some skeptics have argued that expungement can't work in the age of Google — that the criminal-record genie can't be put back in the bottle. We have no doubt that this is sometimes true: People with expunged records may sometimes be haunted by online mug shots, for instance. Even so, many others do benefit.
>
> In addition, contrary to the fears of critics, people with expunged records break the law again at very low rates. Indeed, we found that their crime rates are considerably lower than those of Michigan's general adult population. That may be in part because expungement reduces recidivism.
>
> But another likely reason is that expungement recipients aren't high risk to begin with. Like most states, Michigan requires a waiting period before expungement (five years after a person's last interaction with law enforcement). Research in criminology indicates that people with records who go several years without another conviction are unlikely to offend again.

> To be sure, if expanded laws cut down waiting periods or otherwise loosened eligibility requirements, the broader pools of recipients might have a higher baseline crime risk. But even then, there's simply no reason to believe that expungement would increase those baseline crime risks. Again, if anything, access to jobs, housing and other benefits should reduce overall levels of crime.
>
> So here's the bad news: Hardly anyone gets expungements. According to information Michigan State Police provided to us, Michigan grants about 2,500 a year — but that's a drop in the bucket compared to the number of criminal convictions there each year. Precise numbers are hard to come by, but we estimate that there are hundreds of thousands annually.
>
> Relatively few people with records meet the legal requirements — but that's not the only problem. Even among those who do qualify, we found that only 6.5 percent received expungements within five years of becoming eligible. Michigan judges have discretion to reject applications, but that's not the big reason for this low rate. Rather, over 90 percent of those eligible don't even apply.
>
> Given the large potential benefits of expungement, why wouldn't someone apply? We interviewed expungement lawyers and advocates for people with records, whose insights pointed to a clear set of explanations. Most people don't know they can get an expungement, or don't know how to do it, and don't have lawyers to advise them. The process is long and complicated, requiring visits to police stations and courthouses. The fees and costs (which in Michigan usually total close to $100, not including transportation and time away from work) are a barrier for people in poverty. And people with records have often had painful experiences with the criminal justice system, making the prospect of returning to it for any reason daunting.
>
> The low rate of applications for expungement is consistent with broader findings about the difficulties that poor and middle-class Americans face in dealing with the legal system. When the state makes it too hard or costly for citizens to exercise a right or opportunity, it's not that different from denying that right or opportunity. Most people won't be able to jump through all those hoops.

(Prescott and Starr, *The Case for Expunging Criminal Records: A new study shows the benefits of giving people a clean slate*, New York Times (Mar. 20, 2019); Prescott et al. *Expungement of Criminal Convictions: An Empirical Study* (2019) Harv. L. Rev. 133.)

**7. Committee Amendments**

The author intends to amend the bill in committee to modify the arrest record relief provisions to require that there is no indication that criminal proceedings have been initiated and to make changes to the existing statute that governs the release of criminal summary history records by DOJ to authorized entities to include references to existing code sections that authorize a person to petition for dismissal of charges.

The author also intends to amend to bill to authorize the court to disclose information concerning an arrest or conviction that has been granted automatic relief by DOJ to agencies under the Department of Social Services and makes conforming changes.

**8. Argument in Support**

According to Californians for Safety and Justice, a co-sponsor of this bill:

> Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California's economy. Nationally, it has been estimated that the U.S. loses roughly $65 billion per year in terms of gross domestic product due to employment losses among people with convictions.
>
> AB 1076 requires the California Department of Justice (DOJ) to automate arrest and conviction relief by dismissing eligible convictions for individuals who have completed their probation and/or county jail sentence, arrests that did not result in a conviction for qualified misdemeanors, non-violent, non-sex felonies three years after arrest.
>
> This bill will not require any action from a petitioner, thereby reducing significant barriers to employment and housing opportunities for millions of Californians.

**9. Argument in Opposition**

According to the California District Attorneys Association:

> Under section 1203.425(a)(2)(D)(i) a defendant is eligible for relief if "[t]he defendant was sentenced to probation and has completed their term of probation without revocation." But it is impossible to give notice to the Department of Justice 90 days before the person is eligible because a person's probation can be revoked until the last day of probation. In other words, eligibility cannot be determined until probation is completed without revocation – so how can notice of an objection to eligibility be given 90 days in advance?
>
> Under section 1203.425(a)(2)(D)(ii) and (iii), a person is eligible for relief only after the sentence has been completed and either one or two years has passed. But once a defendant has served their sentence a court loses jurisdiction and the case is over. (See *In re Griffin* (1967) 67 Cal.2d 343, 346; *People v. Antolin* (2017) 9 Cal.App.5th 1176, 1182.) Neither probation nor the prosecution has the authority to order the case back on calendar to determine if the defendant has met the requirements for eligibility so keeping track of whether the defendant is eligible without a new case being filed and measuring the 90-day period will be very difficult.

**-- END –**

# AB 1076 - (A) Amends the Law

## *SECTION 1.*

*Section 480 of the Business and Professions Code, as amended by Section 3 of Chapter 995 of the Statutes of 2018, is amended to read:*

**480.**

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit ~~himself~~ *themselves* or ~~herself or~~ another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that ~~he or she has~~ *they have* been convicted of a felony if ~~he or she has~~ *they have* obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that ~~he or she has~~ *they have* been convicted of a misdemeanor if ~~he or she has~~ *they have* met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

## *SEC. 2.*

*Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, is amended to read:*

**480.**

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 1 (commencing with Section 5000) of Division 3.

(ii) Chapter 6 (commencing with Section 6500) of Division 3.

(iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, *1203.42,* or ~~1203.42~~ *1203.425* of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that ~~he or she~~ *the person* has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if ~~he or she~~ *that person* has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, *1203.42,* or ~~1203.42~~ *1203.425* of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, *1203.42,* or ~~1203.42~~ *1203.425* of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of ~~his or her~~ *the applicant's* complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's ~~Internet Web site~~ *internet website* and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) “Conviction” as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

## *SEC. 3.*

*Section 480.2 of the Business and Professions Code is amended to read:*

**480.2.**

(a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit ~~himself~~ *themselves* or ~~herself or~~ another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that ~~he or she~~ *the person* has been convicted of a felony if ~~he or she~~ *that person* has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that ~~he or she~~ *the person* has been convicted of a misdemeanor if ~~he or she~~ *the person* has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, *1203.41,* or ~~1203.41~~ *1203.425* of the Penal Code.

(j) This section shall become operative on July 1, 2020.

## *SEC. 4.*

*Section 851.93 is added to the Penal Code, to read:*

***851.93.***

*(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.*

*(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:*

*(A) The arrest was for a misdemeanor offense and the charge was dismissed.*

*(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.*

*(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.*

*(D) The person successfully completed any of the following, relating to that arrest:*

*(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.*

*(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.*

*(iii) A pretrial diversion program, pursuant to Section 1000.4.*

*(iv) A diversion program, pursuant to Section 1001.9.*

*(v) Any diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.*

*(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's records.*

*(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.*

*(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.*

*(c) On a weekly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.*

*(d) Relief granted pursuant to this section is subject to the following conditions:*

*(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.*

*(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.*

*(3) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.*

*(4) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.*

*(5) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.*

*(e) This section shall not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.*

*(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.*

*(g) This section shall be operative commencing January 1, 2021.*

## *SEC. 5.*

*Section 1203.425 is added to the Penal Code, immediately following Section 1203.42, to read:*

***1203.425.***

*(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in paragraph (2) and are eligible for automatic conviction record relief.*

*(2) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:*

*(A) The person is not required to register pursuant to the Sex Offender Registration Act.*

*(B) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.*

*(C) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.*

*(D) Except as otherwise provided in clause (iii) of subparagraph (E), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.*

*(E) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:*

*(i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.*

*(ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, has completed their sentence, and, based upon the disposition date in the department's record, at least one calendar year has elapsed since the date of judgment.*

*(iii) The defendant was sentenced for a crime that is, or on or before January 1, 2012, would have been, eligible for sentencing pursuant to subdivision (h) of Section 1170, and, based upon the disposition date and the sentence specified in the department's records, it appears that two years have elapsed following the defendant's completion of the sentence.*

*(b) (1) Except as specified in subdivision (h), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's records.*

*(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.*

*(3) Except as otherwise provided in subdivision (d) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.*

*(c) On a weekly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.*

*(d) Relief granted pursuant to this section is subject to the following conditions:*

*(1) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.*

*(2) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission.*

*(3) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.*

*(4) Relief granted pursuant to this section does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.*

*(5) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.*

*(6) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.*

*(7) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.*

*(8) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.*

*(9) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.*

*(e) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.41, and 1203.42.*

*(f) The department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (h), on the OpenJustice Web portal, as defined in Section 13010.*

*(g) Subdivisions (a) to (f), inclusive, shall be operative commencing January 1, 2021.*

*(h) For convictions entered on or after January 1, 2018, the prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a motion to prohibit the department from granting automatic relief pursuant to this section. The court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed. If the court grants that motion, the court shall report that outcome to the department, and the department shall not grant relief pursuant to this section. The person may continue to be eligible for relief pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42, and if the court subsequently grants such a motion, the court shall report that outcome to the department and the department shall grant relief pursuant to the applicable section.*

*(i) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.*

## ~~SEC. 3.~~*SEC. 6.*

Section 11105 of the Penal Code is amended to read:

**11105.**

(a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) A city or county, city and county, district, or an officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing ~~his or her~~ *the officer's* duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, “federal tax information,” “state entity” and “designee” are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, ~~he or she~~ *the Attorney General* shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To a person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To an individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on ~~his or her~~ *their* own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility’s or cable corporation’s request for state summary criminal history information for purposes of employing current or prospective employees who

may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a “compelling need” as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, “cable corporation” means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) To a campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon’s fingerprints and any other information specified by the department.

(12) To a foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual’s application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped “no criminal record” and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the

agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section *1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or* 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 24, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #13(b)(1)(B)(ii) – AB 798 (Cervantes) – Maternal Mental Health |

**Background:**
This bill would declare the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders. This bill would create a pilot program, in counties that elect to participate, designed to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program would be coordinated by the California Department of Public Health (CDPH) and be privately funded. The bill would require CDPH to submit a report to the Legislature regarding the pilot program 6 months after the results of the pilot program are reported, as specified. The bill would repeal these provisions on January 1, 2025.

Note: in 2017 the Board took a Support if Amended position to request the author include “postpartum” and “psychological” in the bill so as to cover the spectrum of time and service needs that mothers with maternal mental health conditions experience. This bill died in its house of origin that session.

**Location:** 6/12/2019 Senate Committee on Appropriations

**Status:** 6/24/2019 In committee: Set, first hearing. Hearing canceled at the request of author.

**Votes:** 4/2/2019 Assembly Committee on Health (15-0-0)
5/16/2019 Assembly Committee on Appropriations (18-0-0)
5/22/2019 Assembly Floor (78-0-2)
6/12/2019 Senate Committee on Health (9-0-0)

**Action Requested:**
No action is required at this time. Staff will continue to Watch AB 798 (Cervantes).

Attachment A: AB 798 (Cervantes) Bill Text

# AB 798 - (A) Amends the Law

***SECTION 1.***

*It is the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders.*

## *SEC. 2.*

*Section 131120 is added to the Health and Safety Code, to read:*

***131120.***

*(a) There is hereby created a pilot program, in counties that elect to participate, including the County of Riverside, to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program shall be coordinated by the State Department of Public Health and shall be privately funded. The pilot program may include a provider-to-provider or patient-to-provider consultation program and utilize telehealth or e-consult technologies. The pilot program may include the following elements:*

*(1) Training and toolkits on screening, assessment, and the range of treatment options.*

*(2) Coordination of care to link women with individual services in their communities.*

*(3) Access to perinatal psychiatric consultations.*

*(b) Within six months after the results of the pilot program are reported, the State Department of Public Health, in consultation with the California Task Force on the Status of Maternal Mental Health Care and state entities, shall submit a report to the Legislature, in accordance with the requirements of Section 9795 of the Government Code, regarding the pilot program described in subdivision (a). The report shall do all of the following:*

*(1) Document the impact of the pilot program on increasing the number of women who were screened, assessed, and treated for maternal mental health disorders.*

*(2) Identify methods to expand the pilot program to additional counties or statewide.*

*(3) Identify funding opportunities to support the expansion of the pilot program, including federal funding, state funding, and surcharges.*

*(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 24, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item 13(b)(1)(B)(iii) SB 660 (Pan) Postsecondary Education: Mental Health |

**Background:**
This bill would require the Trustees of the California State University and the governing board of each community college district to establish a goal of having one full-time equivalent mental health counselor with an applicable California license per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law. The bill would define a mental health counselor, for purposes of this bill, as a person who provides individual counseling, group counseling, crisis intervention, emergency services, referrals, program evaluation and research, or outreach and consultation interventions to the campus community, or any combination of these, and who holds an active license and is in good standing with the Board of Behavioral Sciences, the Board of Psychology, or the Medical Board of California.

The bill would also require each campus of those institutions to, at least every three years, conduct a campus survey and focus groups to understand students' needs and challenges regarding, among other things, their mental health, would require each campus of those institutions to collect data on attempted suicides, as specified, and would require that data, without any personally identifiable information and collected in accordance with state and federal privacy law, to be included in the report to the Legislature.

**Location:** 6/26/2019 Assembly Committee on Appropriations

**Status:** 6/26/2019 From committee: Do pass and re-refer to Com. on Appropriations.

**Votes:** 4/10/2019 Senate Committee on Education (7-0-0)
4/29/2019 Senate Committee on Appropriations (6-0-0)
5/23/2019 Senate Floor (38-0-0)
6/25/2019 Assembly Committee on Higher Education (11-0-1)

**Action Requested:**
No action is required at this time. Staff will continue to Watch SB 660 (Pan).

Attachment A: SB 660 (Pan) Bill Text

# SB 660 - (A) Amends the Law

***SECTION 1.***

*The Legislature finds and declares all of the following:*

*(a) Students face anxiety, depression, and stress as they confront challenges of campus life.*

*(b) Suicide is the second leading cause of death among college students, claiming more than 1,100 lives every year nationally.*

*(c) One in four students has a diagnosable mental illness and 40 percent of students do not seek mental health services when they need it.*

*(d) For students of color, these challenges may be even more acute as they face additional stressors, such as discrimination, immigration status, financial hardship, and being the first of their families to attend college, and students of color are less likely to access needed services.*

*(e) Among the many benefits of mental health counseling are lower college dropout rates, improved academic performance, and reduced legal liability for campuses.*

*(f) The California State University system in particular is woefully understaffed with mental health counselors to address the needs of their campuses.*

## *SEC. 2.*

*Section 66027.2 is added to the Education Code, to read:*

***66027.2.***

*(a) (1) The Trustees of the California State University and the governing board of each community college district shall establish a goal of having one full-time equivalent mental health counselor per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law.*

*(2) Where possible, mental health counselors hired under paragraph (1) should be full-time staff, and efforts should be made so that mental health counselors reflect the diversity of the student body.*

*(3) The ratio specified in paragraph (1) shall apply as a goal during all academic terms, including summer and winter sessions.*

*(b) The number of mental health counselors as computed pursuant to subdivision (a) shall constitute the goal for the minimum number of mental health counselors to be hired on a campus based on the campus student population. Additional mental health counselors may be hired in accordance with additional needs identified on a campus.*

*(c) For purposes of this section, “mental health counselor” means a person who provides individual counseling, group counseling, crisis intervention, emergency services, referrals, program evaluation and research, or outreach and consultation interventions to the campus community, or any combination of these, and who holds an active license and is in good standing with the Board of Behavioral Sciences, the Board of Psychology, or the Medical Board of California.*

*(d) (1) On or before January 1, 2021, and every three years thereafter, a postsecondary educational institution subject to this section shall report to the Legislature, consistent with Section 9795 of the Government Code, how funding was spent and the number of mental health counselors employed on each of its campuses.*

*(2) Each campus of a postsecondary educational institution subject to this section shall, at least every three years, conduct a campus survey and focus groups, including focus groups with students of color, to understand students' needs and challenges regarding their mental health and emotional well-being, sense of belonging on campus, and academic success.*

*(A) The campus surveys and data collection required in this paragraph shall be conducted in accordance with state and federal privacy law, including, but not limited to, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g), and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).*

*(B) The data collected, without any personally identifiable information, shall be included in the report required to be submitted to the Legislature pursuant to paragraph (1).*

*(3) Each campus of a postsecondary educational institution subject to this section shall collect data on attempted suicides through self-reporting, mental health counselor records, and known hospitalizations. This data, without any personally identifiable information, shall be included in the report required to be submitted to the Legislature pursuant to paragraph (1).*

***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.*

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 24, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #13(b)(2)(A) – AB 1145 (Garcia, Christina) Child abuse: 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.

At the April 24-26 Board Meeting, the Board took a Support position on AB 1145 (Garcia, Christina). Due to the bill being held in the Assembly Appropriations Committee, this bill is now a two-year bill.

**Location:** Assembly Committee on Appropriations

**Status:** 4/24/2019 In committee: Hearing postponed by committee

**Votes:** 4/2/2019 Assembly Public Safety (5-2-1)

**Action Requested:**
No action is required at this time. Staff will continue to advocate for AB 1145.

Attachment A: AB 1145 (Garcia, Christina) Assembly Appropriations Analysis
Attachment B: AB 1145 (Garcia, Christina) Letter to Assembly Appropriations
Attachment C: AB 1145 (Garcia, Christina) Bill Text

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1145 (Cristina Garcia) – As Introduced February 21, 2019

Policy Committee: Public Safety Vote: 5 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

**SUMMARY**:

This bill excludes for purposes of reporting as defined by the Child Abuse and Neglect Reporting Act, from the definition of "sexual abuse" voluntary sodomy, oral copulation or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

**FISCAL EFFECT**:

Negligible costs to the Department of Social Services to update training materials for mandated reporters.

**COMMENTS**:

1) **Purpose.** According to the author:

> 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) **Background.** Under CANRA, the definition of "child abuse" includes sexual assault or sexual exploitation. The definition of sexual assault includes specific crimes involving sexual contact. 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. In 2013, the Department of Consumer Affairs (DCA) evaluated whether CANRA requires mandated reporters to report all conduct that falls 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 reporter reasonably suspects that the conduct resulted from force, undue influence, coercion or other indicators of child abuse.

3) **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.

4) **Prior Legislation.** AB 832 (C. Garcia), of 2015-2016 Legislative Session, was identical to this bill. AB 832 failed passage on the Assembly Floor.

**Analysis Prepared by**: Kimberly Horiuchi / APPR. / (916) 319-2081

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May 13, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
State Capitol, Room 2114
Sacramento, CA 95814

RE: **AB 1145 (Garcia, Cristina) – Child abuse: reportable conduct - SUPPORT**

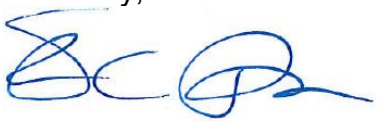
Dear Assembly Member Gonzalez:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on AB 1145 (Garcia, Cristina). 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 for these situations, provides clarity on the requirements of mandatory reporters under the Child Abuse and Neglect Reporting Act (CANRA).

For these reasons, the Board asks for your support of AB 1145 (Garcia, Cristina) when it is heard in the Assembly Committee on Appropriations. 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,



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

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Assembly Member Cristina Garcia
Lisa Murawski, Principal Consultant, Assembly Committee on Appropriations
Ellen Cesaretti, Consultant, Assembly Republican Caucus

# 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.

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 24, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #13(b)(2)(B) – SB 53 (Wilk) 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.

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.

At the April 24-26, 2019 Board Meeting, the Board voted to Oppose SB 53 (Wilk).

**Location:** 7/11/2019 Assembly Committee on Appropriations

**Status:** 7/11/2019 Do pass and re-refer to Committee on Appropriations

**Votes:** 3/12/2019 Sen Governmental Organization (14-0-2)
4/8/2019 Senate Committee on Appropriations (6-0-0)
4/22/2019 Senate Floor (38-0-0)
7/10/2019 Assembly Governmental Organization (21-0-0)

**Action Requested:**
No action is required at this time. Staff will continue to advocate an **Oppose** position on SB 53 (Wilk).

Attachment A: SB 53 (Wilk) Letter to Assembly Appropriations
Attachment B: SB 53 (Wilk) Assembly Governmental Organization Analysis
Attachment C: SB 53 (Wilk) Bill Text

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July 18, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
State Capitol, Room 2114
Sacramento, CA 95814

RE: **SB 53 (Wilk) – Open Meetings - OPPOSE**

Dear Assembly Member Gonzalez:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted an **OPPOSE** position on SB 53 (Wilk). 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.

The Board places a very high importance on transparency. This is evidenced by the adoption of the Board's 2019-2023 Strategic Plan, which includes adoption of the Board's revised Mission, Vision, and Values. The Values adopted for the next five years are: Transparency, Integrity, Fairness, Responsiveness, and Professionalism. The Board makes every effort to interweave transparency in its operations by webcasting all Board meetings, posting Board meeting materials and minutes online, and publicizing all public Board and Committee meetings via email listserv (to licensees and external stakeholders) and via social media. Moreover, the Board ensures that all items created or modified during two-member advisory committees are brought to the full Board in an open meeting for review, discussion, and approval. This existing format provides an opportunity for the public to comment on the policy-making function of the Board.

The Board of Psychology utilizes a two-person committee structure in a limited number of circumstances when necessary. This structure may be used due to concerns for employee safety, for a collaborative discussion of confidential information which could not be discussed in depth during a public meeting, or for collaborative working group meetings of limited duration and scope where the Committee's task is drafting iterative versions of legislatively mandated reports, drafting letters, or providing expert analysis.

The Board's Enforcement Committee is a two-person committee where Enforcement Analysts (who out of concern for their safety use an assigned alphabetical letter when communicating with the public instead of their real name) are present and active participants in the conversations of the Committee. This often involves discussion of confidential materials which would not be able to be discussed in an open meeting. Enforcement analyst participation would not be possible with the passage of SB 53 and enforcement analysts would no longer be able to participate in and provide invaluable information to the Committee. Again, for transparency purposes, all actions by the Enforcement Committee are reviewed, discussed, and approved by the full Board at a subsequent Board Meeting.

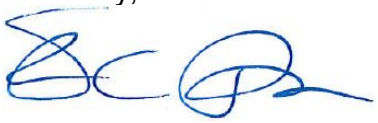
In addition, the Board has an ad hoc Sunset Review Committee which is an extremely collaborative committee used while the Board is preparing the legislatively mandated Sunset Review report and background paper. The ability to meet and communicate frequently and

with short notice is imperative to the success of the Committee and the Board as a whole while it prepares for Sunset Review. The Board also has a Telepsychology Committee that was tasked with providing staff with expert and profession-specific input necessary to analyze a national telepsychology compact proposal and to draft telepsychology regulation language for the full Board's consideration. This Committee met for a limited duration and with a limited scope to provide necessary input to staff regarding the provision of telepsychology. Again, all reports, analysis, and language drafted during these ad hoc meetings is reviewed by the full Board at a Board Meeting where the public has sufficient notice and ability to comment.

Lastly, the Board is also concerned that SB 53 would curb the Board's ability to effectively perform advocacy activities and limit Board outreach and education activities. Specifically, each year the Board organizes meetings with some or all members of the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee to inform legislators and legislative staff on issues impacting consumer protection, Board operations, and the profession of psychology. This bill would limit the Board's ability to have both a public and licensed Board member at each legislative meeting. SB 53 would also create potential Open Meetings Act issue when more than one Board Member attends a professional conference as part of the Board's outreach and education efforts. The Board does not believe that it is the intent of the bill to impact activities outside of committee meetings, but this bill would create additional barriers to effective advocacy and outreach activities intended to enhance consumer protection and educate the public.

For these reasons, the Board asks you to OPPOSE SB 53 (Wilk) when it is heard in the Assembly Committee on Appropriations. 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,



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

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Senator Scott Wilk
Assembly Committee on Appropriations
Assembly Republican Caucus

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Adam Gray, Chair
SB 53 (Wilk) – As Amended March 5, 2019

**SENATE VOTE**: 38-0

**SUBJECT**: Open meetings

**SUMMARY:** Modifies the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley-Keene Open Meeting Act (Bagley-Keene Act). Specifically, **this bill**:

1) Requires 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 by state funds.

**EXISTING LAW**:

1) The Bagley-Keene Act generally requires that all meetings of a “state body” be open and public and that all persons be permitted to attend and participate in any meeting of a state body.

2) Defines a "state body" as 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 sections 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.

3) Requires, under the Ralph M. Brown Act (Brown Act), that all meetings of a local government body be open and public and that all persons be permitted to attend and participate in any meeting.

**FISCAL EFFECT**: Unknown

**COMMENTS**:

Purpose of the bill: According to the author, "the bill 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 the Bagley-Keene Act. The ambiguity of the Bagley-Keene Act 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."

The author adds, "this bill clarifies the Bagley-Keene Act to state in definite terms that any multimember body that is funded by another state body and served by one of its officials falls under the scope of the Act. By clarifying this nebulous language, SB 53 ensures maximum transparency for state government."

Bagley-Keene Act: When the Legislature enacted the Bagley-Keene Act of 1967 it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Bagley-Keene Act explicitly mandates open meetings for California State agencies, boards, and commissions. The Bagley-Keene Act facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public should be allowed to monitor and participate in the decision-making process.

Brown Act: Similarly, the Brown Act of 1953 protects citizen's rights to open meetings at the local and county government levels and contains language that is very similar to the language found in AB 2058 (Wilk). The Brown Act defines a "legislative body" as a:

> A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committee, composed solely of the members of the legislative body that are less than a quorum of the legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative boy are legislative bodies for purposes of this chapter.

Previous legislative efforts: Former Governor Jerry Brown vetoed similar bills authored by Senator Wilk in 2014 and in 2015. In the veto message of AB 2058, former Governor Brown wrote, "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."

The following year former Governor Brown vetoed AB 85, noting "this 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."

Arguments in support: The League of Women Voters of California writes in support, "no formally-constituted state bodies should be exempt from holding open meetings based on a legal technicality, rather than a specifically authorized closed session. Currently two-member advisory bodies may claim that they do not qualify as state bodies because the defining clause requires them to have three or more members. This bill would remove the loophole and uphold the purpose of the Bagley-Keene Act."

The California News Publishers Association adds, "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: The California Board of Accountancy (CBA) writes in opposition, "the CBA recognizes the value of our open meeting laws, and therefore, operates in an open and transparent manner, and uses two-member advisory committees in an appropriate manner. Under current law, the activities of its advisory activities are reviewed and approved by the whole committee or board in a meeting open to the public. However, the CBA is concerned that SB 53 would negatively impact its operations by subjecting those advisory committees to the Open Meeting Act. This 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."

Urgency clause: This bill has an urgency clause and would take effect immediately.

Prior 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) of the 2017-2018 Legislative Session. 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) of the 2015-2016 Legislative Session. 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)

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) of the 2013- 2014 Legislative Session. 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.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California News Publishers Association
California Association of Licensed Investigators
Californians Aware
League of Women Voters California

**Opposition**

California Acupuncture Board
California Board for Professional Engineers, Land Surveyors, and Geologists
California Board of Accountancy
California Board of Chiropractic Examiners
California Board of Psychology
Contractors State License Board
The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

**Analysis Prepared by**: Mike Dayton / G.O. / (916) 319-2531

# 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.*

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 24, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #13(b)(2)(C) – 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.

At the April 24-26, 2019 Board Meeting, the Board voted to **Support** SB 66 (Atkins).

**Location:** 7/3/2019 From committee: Do pass and re-refer to Committee on Appropriations with recommendation: To consent calendar

**Status:** 7/3/2019 Referred to Committee on Appropriations

**Votes:** 3/20/2019 Senate Health (8-0-1)
5/16/2019 Senate Committee on Appropriations (6-0-0)
5/23/2019 Senate Floor (38-0-0)
7/2/2019 Assembly Health (15-0-0)

**Action Requested:**
No action is required at this time. Staff will continue to advocate a **Support** position on SB 66 (Atkins).

Attachment A: SB 66 (Atkins) Letter to Assembly Appropriations
Attachment B: SB 66 (Atkins) Assembly Health Analysis
Attachment C: SB 66 (Atkins) Bill Text

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July 18, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
State Capitol, Room 2114
Sacramento, CA 95814

RE: **SB 66 (Atkins) – Medi-Cal: federally qualified health center and rural health clinic services - SUPPORT**

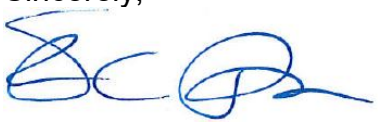
Dear Assembly Member Gonzalez:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on SB 66 (Atkins). This bill would require the state to allow Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) to bill Medi-Cal for two visits if a patient is provided mental health services on the same day they receive other medical services.

In California, if a patient receives treatment through Medi-Cal at a FQHC or RHC 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 cannot be adequately reimbursed for their time and expertise. In turn, the FQHC and RHC have to find alternative funds to cover that visit or deny the service on 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 would remove unnecessary barriers to access to mental health care and increase the likelihood that patients can start or continue receiving services at these clinics.

For these reasons, the Board asks for your support of SB 66 (Atkins) when it is heard in the Assembly Committee on Appropriations. 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,



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

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Senator Toni Atkins
Consultant, Assembly Committee on Appropriations
Assembly Republican Caucus

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 66 (Atkins) – As Amended March 21, 2019

**SENATE VOTE**: 38-0

**SUBJECT**: Medi-Cal: federally qualified health center and rural health clinic services.

**SUMMARY:** Requires Medi-Cal reimbursement to Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) 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 or dental provider. Specifically, **this bill**:

1) Permits an FQHC or RHC to apply for an adjustment to its per-visit rate for purposes of establishing its FQHC or RHC rate if the FQHC/RHC 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.

2) Requires the FQHC or RHC to bill a medical visit and a mental health visit that take place on the same day at a single location as separate visits.

3) Defines, for purposes of this bill:

    a) A "mental health visit" as 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" as a face-to-face encounter between an FQHC or RHC patient and a dentist, dental hygienist, or registered dental hygienist in alternative practice.

4) Requires DHCS to develop and adjust all appropriate forms to determine which FQHC's or RHC's rates to be adjusted and to facilitate the calculation of the adjusted rates.

5) Permits an FQHC or RHC that applies for an adjustment to its rate 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.

6) Requires a maximum of two visits taking place on the same day at a single location of an FQHC or a RHC to be reimbursed when one or more of the following conditions exists:

    a) After the first visit the patient suffers illness or injury requiring additional diagnosis or treatment; or,
    b) The patient has a medical visit and a mental health visit or a dental visit.

7) Requires DHCS, by July 1, 2019, 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.

8) Permits 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.

9) Requires DHCS, by July 1, 2020, to submit a state plan amendment (SPA) to the federal Centers for Medicare and Medicaid Services (CMS) reflecting the changes described in this bill.

10) Requires an FQHC or RHC visit to also include a face-to-face encounter between an FQHC or RHC patient and a licensed acupuncturist.

**EXISTING LAW**:

1) Establishes the Medi-Cal program as California's Medicaid program, administered by DHCS, which provides comprehensive health care coverage for low-income individuals. Requires FQHC and RHC services to be covered benefits under the Medi-Cal program.

2) Requires FQHCs and RHCs to be reimbursed on a per-visit basis. Defines a "visit" as a face-to-face encounter between an FQHC or RHC patient and the following health care providers: a physician, physician assistant, nurse practitioner, certified nurse midwife, clinical psychologist, licensed clinical social worker, 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.

3) 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.

4) Permits 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.

5) Authorizes FQHCs and RHCs to receive reimbursement from county specialty mental health plans and through Drug Medi-Cal outside of the regular Medi-Cal reimbursement structure that applies to FQHCs and RHCs.

**FISCAL EFFECT**: According to the Senate Appropriations Committee, staff notes the following estimate reflects figures provided in a Department of Finance (DOF) estimate, dated August 7, 2018, for a substantively similar bill (SB 1125 (Atkins) of 2018):

1) Costs of $272.7 million ($109.1 million General Fund (GF)), assuming that 50% of clinics would request a rate adjustment, there will be a 25% increase for the number of eligible visits, and partially offset by an estimated 5-percent net decrease to the Prospective Payment System rate.

2) Costs of $3.6 to $7.2 million ($1.8 to $3.6 million GF), the equivalent of 25 to 50 limited-term auditor positions, to implement the provisions of this bill.

3) DOF notes "increased reimbursement costs for clinics and state operations costs are highly variable and depended on clinic behavior and timing of rate adjustment requests."

C**OMMENTS**:

1) **PURPOSE OF THIS BILL**. 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. 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 federally designated clinics that are required to serve medically underserved populations that provide primary care services. There are 1,040 FQHCs and approximately 283 RHCs in California. The number of FQHCs has grown significantly. In 2006, there were 476 FQHC service sites, which grew to 1007 in 2015. As the number of FQHC service sites has expanded and as Medi-Cal enrollment has grown, the number of Medi-Cal reimbursed FQHC visits has also increased, increasing 5.9 million in 2008 to 11.9 million in 2014. Medi-Cal reimbursement to FQHCs and RHCs is governed by state and federal law. FQHCs and RHCs are reimbursed by Medi-Cal on a cost-based per-visit rate under what is known as the prospective payment system (PPS). For Medi-Cal managed care plan patients, DHCS reimburses FQHCs and RHCs for the difference between its per-visit PPS rate and the payment made by the plan. This payment is known as a "wrap around" payment. The Medi-Cal managed care wrap-around rate was established to reimburse providers for the difference between their PPS rate and their Medi-Cal managed care reimbursement rate. The rationale for the enhanced reimbursement is to ensure that FQHCs and RHCs do not use federal grant funds intended for uninsured and special needs populations to back-fill for potentially below-cost Medicare or Medi-Cal rates. The mean and median PPS rate paid to an FQHC and an RHC is considerably higher than the most common primary care visit fee-for-service reimbursement rates in Medi-Cal. Because FQHCs and RHCs are required to receive a cost-of-living adjustment to their rates (under the Medicare Economic Index) and because of their role in providing primary care access to the Medi-Cal population, FQHCs and RHCs have been exempted from the various Medi-Cal rate reductions enacted in 2008-2011.

3) **BILLING FOR SAME DAY VISITS.** DHCS policy on same day visits at FQHCs and RHCs is in California's Medicaid State Plan. It states that encounters with more than one health professional and/or multiple encounters with the same health professional, which take place on the same day and at a single FQHC or RHC location, constitute a single visit, except that more than one visit may be counted on the same day in the following circumstances:

**a)** When the clinic patient, after the first visit, suffers illness or injury requiring another diagnosis or treatment; or,
**b)** When the clinic patient has a face-to-face encounter with a dentist or dental hygienist and then also has a face-to-facet encounter with another health professional or comprehensive perinatal services practitioner on the same date.

4) **MEDI-CAL ACUPUNCTURE BENEFIT CODIFICATION**. In addition to the same day billing provisions, this bill also codifies a requirement that an FQHC or RHC visit also includes a face-to-face encounter between an FQHC or RHC patient and a licensed acupuncturist for purposes of the PPS payment provisions. 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.

5) **FQHC ALTERNATIVE PAYMENT METHODOLOGY PILOT NOT GOING FORWARD.** SB 147 (Hernandez), Chapter 760, Statutes of 2014, requires DHCS to authorize a three-year payment reform pilot project for FQHCs using an alternative payment methodology (APM) authorized under federal Medicaid law. SB 147 requires an FQHC participating in the pilot to receive a per member per month payment for each of its APM enrollees from a Medi-Cal managed care health plan, instead of the wrap around payment FQHCs currently receive from DHCS. The proposed APM structure would have provided participating FQHCs the flexibility to deliver care in the most effective manner, without the more restrictive traditional billing structure in effect now. Under the APM, FQHCs would have been allowed to provide and/or expand upon the innovative forms of care which are not reimbursed under traditional volume-based PPS. Examples of non-traditional services could include but are not limited to: integrated primary and behavioral health visits on the same day, group visits, email visits, phone visits, community health worker contacts, case management, and care coordination across systems. In February 2018, DHCS announced that the APM pilot would not go forward for the foreseeable future. DHCS had submitted a concept paper to CMS [prior to formally submitting a SPA] to get approval of the concept. CMS indicated the FQHC APM pilot proposal, as outlined by the concept paper and SB 147, would not comply with the federal APM requirement that payments under the APM would result in payment to the FQHC of an amount which is at least equal to the amount that would otherwise be required to be paid to the FQHC under the PPS reimbursement structure and that the state could not use a SPA as the exclusive vehicle for receiving federal approval. As an alternative, CMS suggested DHCS propose a waiver amendment to the state's existing 1115 waiver demonstration (Medi-Cal 2020), in addition to the APM SPA, to waive the requirement and allow for the prospective attestation by participating clinics. However, DHCS noted that this would require a change of state law.

6) **PRIOR LEGISLATION.**

**a)** SB 1125 (Atkins) of 2018 was 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."

**b)** 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.

**c)** 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.

**d)** 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, which was substantially similar to AB 1445, 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.

**7)** **SUPPORT**. This bill is jointly sponsored by the CaliforniaHealth+ Advocates (CH+A) and the Steinberg Institute, which write that this bill will help FQHCs and RHCs better provide integrated behavioral health services to patients by allowing reimbursement for mental health services provided on the same day as medical services. CH+A states 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. 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. CH+A states California is one of only a handful of states that do not allow for mental and physical health visits on the same day as same day visits for medical and mental health care are currently authorized in 32 state Medicaid programs, including Washington, Oregon, Nevada, and Arizona. Allowing for patients to access care in the primary care setting helps to lower the overall cost of care to the health system by lowering emergency room utilization, preventing illnesses from escalating into more serious conditions, and improving quality of life for the patients we serve. The Steinberg Institute argues allowing Medi-Cal beneficiaries to access medical and mental health care on the same day improves the overall patient experience and ensures access to brain health services, which is especially important for low-income clients who experience transportation challenges, child care issues or trouble getting off of work. Allowing beneficiaries to access medical and mental health care on the same day improves the overall patient experience and brings the state closer to fully integrated care.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Association of Public Hospitals and Health Systems (cosponsor)
CaliforniaHealth+ Advocates (cosponsor)
Local Health Plans of California (cosponsor)
Steinberg Institute (cosponsor)
AARP California
Alliance of Catholic Health Care, Inc.
American Congress of Obstetricians & Gynecologists - District IX
APLA Health
Association of California Healthcare Districts, and Affiliated Entity Alpha Fund
Blue Shield of California
Board of Psychology
California Academy of Family Physicians
California Alliance of Child and Family Services
California Children's Hospital Association
California Chronic Care Coalition
California Council of Community Behavioral Health Agencies
California Dental Hygienists' Association
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 State Association of Counties
Center for Family Health & Education
Central City Community Health Center
CommuniCare Health Centers
Community Clinic Association of Los Angeles County
Community Medical Center, Inc.
Corporation for Supportive Housing
County Behavioral Health Directors Association
County Health Executives Association of California
County of Monterey
County of Santa Clara
El Dorado Community Health Center
Essential Access Health
First 5 LA
Harbor Community Clinic
Health Alliance of Northern California
Health Center Partners of Southern California
Health Improvement Partnership of Santa Cruz
HealthRight 360
Indian Health Center of Santa Clara Valley
Latino Coalition for a Healthy California

Local Health Plans of California
Marin Community Clinic
Mendocino Community Health Centers
Mental Health Services Oversight and Accountability Commission
NAMI California
National Association of Social Workers, California Chapter
North Coast Clinics Network
Northeast Valley Health Corporation
OLE Health
Planned Parenthood Affiliates of California
Private Essential Access Community Hospitals
Redwood Community Health Coalition
SAC Healthsystems
San Fernando Community Health Center
San Francisco Community Clinic Consortium
San Francisco Department of Public Health
Santa Barbara Neighborhood Clinics
Santa Rosa Community Health
St. John's Well Child and Family Center
Valley Community Healthcare
West County Health Centers, Inc.
Western Center on Law & Poverty, Inc.

**Opposition**

None on file.

**Analysis Prepared by**: Scott Bain / HEALTH / (916) 319-2097

# 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.*

~~(l)~~ *(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.

~~(o)~~ *(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 ~~(l)~~ *(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 ~~(l)~~ *(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.

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Cherise Burns<br>Central Services Manager |
| **SUBJECT** | Agenda Item #13(b)(2)(D) – SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct |

**Background:**

SB 425 would require any health care facility, or other entity that arranges for healing arts licensees to practice or provide care for patients at their institution (such as a college), to report any written allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, or the patient's representative, to the relevant state licensing agency within 15 days of receiving the written allegation. This bill would also require the relevant agency to investigate the circumstances underlying a received report. The bill would require such a report to be kept confidential and not subject to discovery or disclosure, except that it may be reviewed and disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act. Additionally, the bill would make a willful failure to file the report by a health care facility or other entity punishable by a civil fine not to exceed $100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed $50,000 per violation.

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 or college 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. This additional sexual misconduct reporting requirement for health facilities/peer review bodies and licensees working in these facilities/peer review bodies is not only warranted but is long overdue.

At the April 24-26, 2019 Board Meeting, the Board voted to Support SB 425 (Hill).

**Location:** 7/9/2019 Assembly Committee on Appropriations

**Status:** 7/9/2019 From committee: Do pass and re-refer to Committee on Appropriations.

**Votes:** 4/08/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)

4/23/2019 Senate Committee on Judiciary (7-2-0)
5/16/2019 Senate Committee on Appropriations (4-2-0)
5/28/2019 Senate Floor (33-5-0)
6/25/2019 Assembly Committee on Business and Professions (19-0-0)
7/9/2019 Assembly Committee on Judiciary (12-0-0)

**Action Requested:**
No action is required at this time. Staff will continue to advocate a **Support** position on SB 425 (Hill).

Attachment A: SB 425 (Hill) Assembly Judiciary Analysis
Attachment B: SB 425 (Hill) Letter of Support to Assembly Appropriations
Attachment C: SB 425 (Hill) Bill Text

Date of Hearing: July 9, 2019

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 425 (Hill) – As Amended June 27, 2019

**SENATE VOTE**: 33-5

**SUBJECT**: HEALTH CARE PRACTITIONERS: LICENSEE'S FILE: PROBATIONARY PHYSICIAN'S AND SURGEON'S CERTIFICATE: UNPROFESSIONAL CONDUCT

**KEY ISSUE**: SHOULD A LICENSED HEALTH CARE FACILITY, INCLUDING A COLLEGE STUDENT HEALTH CENTER, BE REQUIRED TO REPORT ALLEGATIONS OF SEXUAL MISCONDUCT MADE AGAINST A LICENSED HEALTH CARE PROVIDER TO THE APPROPRIATE LICENSING BOARD, WITHIN 15 DAYS OF RECEIVING A WRITTEN ALLEGATION?

## SYNOPSIS

*SB 425 is one of two bills to come before the Committee this year that respond to recent and troubling revelations about nearly three decades of allegations of sexual assault against a single gynecologist at the USC student health center. (AB 1510, by Committee Member Reyes, would create a one-year window to revive otherwise time-barred claims.) Not only did USC allow the doctor to continue examining young women, despite multiple allegations, it did not report the doctor to the California Medical Board until 2016. Existing law requires the executive officers of licensed health care facilities and clinics to file so-called "805 reports" with the medical board whenever (1) a licensed health care provider loses staff privileges or employment for a medical disciplinary reason, or (2) when the facility's peer review body makes a determination that a licensed health care provider is incompetent or has engaged in misconduct, including sexual misconduct. A failure to make these required reports results in a fine of $100,000 per violation for a willful failure to report, and up to $50,000 per violation for all other failures to report. Because the licensing provisions for "health care facilities" and "clinics," as defined and provided for in the Health & Safety Code, apparently exempt student health centers operated by a university, USC was arguably exempt from the 805 reporting requirements. SB 425 would make two important changes to existing reporting laws. First, the bill imposes reporting requirements upon licensed health care facilities and "other entities," which is defined to expressly include postsecondary institutions. Second, whereas existing law requires facilities and clinics to report sexual misconduct to the medical board after a determination by an internal "peer review body," SB 425 will require a report within 15 days of receipt of a written allegation of sexual misconduct. In addition, the bill makes other changes related to the board's disciplinary powers and disclosure requirements. Although the bill was originally opposed by the California Medical Association and other health care professional associations, the author has taken many amendments in prior committees that appear to have removed all opposition. The bill is supported by consumer groups, the major medical boards, the California Hospital Association, and the University of California.*

**SUMMARY:** Requires health care facilities and related entities to report allegations of sexual misconduct against health care providers to the relevant medical board, and makes other changes to disciplinary and enforcement powers of the boards. Specifically, **this bill**:

1) Requires a health care facility or other entity, including a postsecondary institution that makes arrangements under which a healing arts licensee is allowed to practice or provide care for patients, to report any allegation of sexual abuse or sexual misconduct made by a patient against the licensee, if the patient or the patient's representative makes the allegation in writing. Specifies that the report shall be made to the relevant agency within 15 days of receipt of the written allegation of sexual abuse or sexual misconduct. Requires the agency that receives the report to investigate the circumstances underlying the report.

2) Specifies that the report required by this bill shall be kept confidential and shall not be subject to discovery, except as specified.

3) Provides that the willful failure to file a report is punishable by a fine not to exceed $100,000 per violation, while a non-willful failure to file a report is punishably by a fine not to exceed $50,000.

4) Provides that no person shall incur any civil or criminal liability as a result of making a report required by this bill.

5) Requires the Medical Board to disclose a probationary physician's and surgeon's certificate and the operative statement of issues relating to the probation to an inquiring member of the public and shall post the certificate and statement on the board's internet website for ten years from issuance.

6) Provides that, in the absence of good cause, the failure of a licensee under investigation to attend and participate in an interview by the Medical Board constitutes professional misconduct.

**EXISTING LAW**:

1) Regulates the practice of medicine under the Medical Practice Act and establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons. (Business & Professions Code Sections 2000-2525.5.)

2) Establishes various medical licensing boards within the Department of Consumer Affairs that provide for the licensing and regulation of health care providers and authorizes the licensing boards to deny, suspend, or revoke a license in cases of professional misconduct, including sexual misconduct. (Business & Professions Code Sections 500 *et seq*., and Sections 725-733.)

3) Requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility or clinic to file a report with the relevant licensing board within 15 days after a peer review body denies, revokes, or terminates the staff privileges or employment of a licensed health care provider for a medical disciplinary reason. Specifies that no person shall incur any civil or criminal liability as a result of making a required report. (Business & Professions Code Section 805.)

4) Requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility or clinic to file a report with the relevant licensing board within 15 days after a peer review body makes a determination that a licensed health care provider is incompetent, has abused the power to prescribe or administer controlled substances, or has

engaged in sexual misconduct with one or more patients during a course of treatment or an examination. (Business & Professions Code Section 805.01.)

5) Provides that the willful failure to file a report as described in 3) and 4) above is punishable by a fine not to exceed $100,000 per violation, while a non-willful failure to file a report is punishably by a fine not to exceed $50,000. (Business & Professions Code Sections 805 (k)-(l), 805.01 (g)-(h).)

6) Requires the state's medical licensing boards to create and maintain a central file of the names of, and disciplinary information about, all persons who hold a license or certificate from the board. Provides that information pertaining to disciplinary action against a licensee is subject to public disclosure; however, certain confidential information may only be disclosed to the relevant licensing agency, the licensee, and the licensee's counsel or legal representative, as specified. (Business & Professions Code Sections 800, 803.1, 805.1 and 805.5.)

7) Provides that repeated failure by a licensed physician or surgeon, in the absence of good cause, to attend and participate in an interview by the Medical Board constitutes unprofessional conduct. (Business & Professions Code Section 2234(g).)

**FISCAL EFFECT**: As currently in print this bill is keyed fiscal.

**COMMENTS**: SB 425 is one of two bills to come before the Committee this year that respond to recent and troubling revelations about nearly three decades of allegations of sexual assault against a single gynecologist at the USC student health center. (AB 1510 (Reyes) would create a one-year window to revive claims alleging that a sexual assault occurred at a student health center.) Not only did USC allow the doctor to continue examining and treating young women at the student health center – despite multiple allegations and reports over the years – it apparently did not report the doctor to the California Medical Board until 2016.

Although USC may have had a moral obligation to report the doctor's egregious conduct to the medical board for appropriate disciplinary action, it is not entirely clear that the university had statutory duty to do so. Existing law requires the executive officers of licensed health care facilities and clinics to file so-called "805 reports" with the medical board whenever (1) a licensed health care provider loses staff privileges or employment for a disciplinary cause or (2) when the facility's peer review body makes a determination that a licensed health care provider is incompetent or has engaged in misconduct, including sexual misconduct. A failure to make these required reports results in a fine of $100,000 per violation for a willful failure to report, and up to $50,000 per violation for all other failures to report. However, the licensing provisions for "health care facilities" and "clinics," as defined and provided for in the Health & Safety Code, exempt "student health centers operated by public institutions of higher education" [Health & Safety Code Section 1206(j).] Even though USC is not a "public" institution of higher education, like other student health centers it is not licensed as a "health care facility" or a "clinic" under the Health & Safety Code and, therefore, not subject to reporting requirements in the Business & Professions Code. Moreover, student health care centers – unlike health care facilities and clinics licensed under the Health & Safety Code – do not have "peer review" bodies that make determinations about misconduct. At any rate, had the law clearly and unequivocally required student health centers like the one at USC to report misconduct, an unknown number of young women might have been spared the harm and humiliation of being sexually assaulted by someone they had trusted to provide them with medical care.

To ensure that future allegations of sexual misconduct by medical professionals are promptly reported to the relevant licensing board, no matter where the misconduct occurs, SB 425 will make two important changes to existing reporting laws. First, the bill imposes reporting requirements upon a licensed health care facility or "other entity" that makes arrangements for licensed health care providers to practice or provide care to patients. Second, whereas existing law requires facilities and clinics to report sexual misconduct to the medical board after a determination by an internal "peer review body," SB 425 will require a report within 15 days of receipt of a written allegation of sexual misconduct. In addition, the bill makes other changes related to the board's disciplinary powers and disclosure requirements.

***What Triggers a Report: From Peer Review Determination to Written Allegation****:* In addition to expressly applying reporting requirements to a health care center operated by a college or university, SB 425 makes a substantial change as to what will trigger a report. Existing law requires a health care facility or clinic to report a physician or surgeon to the medical board under two situations, both of which require the actions of an internal "peer review body" – that is, a designated group of other medical and professional staff at the facility or clinic. First, the chief of staff and the executive administrator of a health care facility or clinic must file a report if, as a result of an action of a peer review body, the licensed health care provider's staff privileges are denied, revoked, or otherwise restricted, or the provider's employment is terminated, for a medical disciplinary reason. (Business & Professions Code Section 805.) Second, a reporting requirement is triggered if the peer review body determines that a licensed health care provider was incompetent (exhibiting gross deviation from professional standards), inappropriate or excessively prescribed dangerous or controlled substances to themselves or others, or engaged in sexual misconduct with one or more patients during a course of treatment or an examination. (Business & Professions Code Section 805.01.)

This bill would not replace these provisions of existing law or displace the work of peer review bodies; however, it would create an additional trigger by requiring a health care facility or any other entity, including a student health care center that arranges for the provision of medical care by licensed health care providers, to report allegations of sexual misconduct within 15 days of receiving a written allegation of sexual misconduct by a patient (or the patient's representative) against a licensed health care provider. Existing law requires a report to be made within 15 days of an action or determination by the peer review body, but there is no specified time frame for when the peer review body must take its action or make its determination. SB 425 will ensure that, once a written allegation is made, the appropriate licensing board will be alerted and take appropriate steps. This is especially critical in the case of student health centers, which do not necessarily have peer review bodies.

The California Medical Association and professional medical associations opposed earlier versions of this bill because it feared that the bill eliminated the preliminary role of the peer review body and therefore might lead to unsubstantiated allegations, or even "rumors" of misconduct, inefficiently and prematurely triggering a report to the licensing reports. However, the author has taken amendments addressing concerns about reporting mere "rumors" of sexual misconduct by requiring that the allegation be in writing. Earlier concerns about licensing boards being "burdened" by a flood of unsubstantiated allegations is muted by the fact that the state's major licensing boards support this bill.

***Modest Changes in Disclosure and Enforcement Provisions:*** While SB 425 clearly extends reporting requirements to student health centers and creates an additional, more prompt,

reporting requirement when there is a written allegation of sexual misconduct, in most other ways, the bill either tracks existing reporting requirements or makes modest improvements. For example, a *willful* failure to report is punishable by a fine not to exceed $100,000, while all other failures to report are punishable by a fine not to exceed $50,000, which is identical to the existing penalties for failure to make an "805" report. Similar to existing law, SB 425 generally makes the reports confidential, but allows review of the information in the manner provided in existing law. Finally, consistent with existing law, SB 425 provides that a person shall not incur civil or criminal liability for filing a report as required by this bill, which is true for persons who file "805" reports under existing law. However, SB 425 makes modest changes in disclosure and enforcement provisions. First, the bill requires the medical board to disclose information about a doctor's probationary status to an inquiring member of the public and the bill requires the board to post the information about the probation on its internet website for ten years. In addition, SB 425 will enhance a licensing board's ability to investigate licensees by providing that failure to attend or participate in a board interview, without good cause, constitutes unprofessional conduct. (Existing law only makes "repeated" failure to attend or participate unprofessional misconduct.)

In short, SB 425 appropriately builds upon familiar and long-standing reporting requirements, while at the same time ensuring that these requirements apply to *all* clinics and health care facilities and making sure that allegations of sexual assault reach the relevant licensing board in a more certain and timely manner than they do under the existing peer review process. Had SB 425 been in place thirty years ago, the USC doctor who assaulted an unknown number of unsuspecting students, over a nearly thirty year period, might have been properly booted from the profession after the first allegation was made against him.

***ARGUMENTS IN SUPPORT***: According to the California Board of Psychology, SB 425 "adds a critical reporting tool to ensure that when written 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. The Board of Psychology believes that the additional sexual misconduct reporting requirements in SB 425 (Hill) is not only warranted but is long overdue."

The Consumer Attorneys of California (CAOC) that SB 425 "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." CAOC adds that last year Governor Brown signed SB 1448, which required doctors and other professional to notify patients if they are placed on probation in cases of sexual misconduct. CAOC believes that "SB 425 will continue this important work of protecting vulnerable populations from individuals who abuse positions of trust."

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Acupuncture Board
California Chiropractic Examiners Board
California Psychology Board

California Hospital Association
Consumer Attorneys of California
Consumer Watchdog
Medical Board of California
University Of California

**Opposition**

None on file

**Analysis Prepared by**: Thomas Clark / JUD. / (916) 319-2334

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July 18, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
State Capitol, Room 2114
Sacramento, CA 95814

RE: **SB 425 (Hill) – Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct - SUPPORT**

Dear Assembly Member Gonzalez:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on SB 425 (Hill). This bill would require hospitals, clinics and other health facilities, to report written allegations of patient sexual abuse and other sexual misconduct by healing arts professionals to the appropriate state licensing authorities within 15 days. As this bill would also make changes to Medical Board of California's (MBC) authority and operations that are unrelated to this Board's purview, the Board is silent on those provisions of the bill.

SB 425 (Hill) adds a critical reporting tool to ensure that when written 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. The Board of Psychology believes that the additional sexual misconduct reporting requirements in SB 425 (Hill) is not only warranted but is long overdue.

The Board believes there will be a small increase in the number of reports of sexual misconduct due to SB 425 but is unable to quantify this increase as the Board is unaware how many reports are not currently being reported to the Board.

For these reasons, the Board asks for your support of SB 425 (Hill) when it is heard in the Assembly Committee on Appropriations. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Cherise Burns, at (916) 574-7227.

Sincerely,

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

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Senator Jerry Hill
Consultant, Assembly Committee on Appropriations
Consultant, Assembly Republican Caucus

# SB 425 - (A) 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 ~~Podiatric 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 licentiate 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 (2).*

*(2) "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.*

*(3) "Health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.*

*(4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.*

*(5) "Sexual misconduct" means inappropriate contact or communication of a sexual nature.*

*(b) A health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the agency within 15 days of receiving the written allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice 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) The report provided pursuant to subdivision (b) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided subdivision in (c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).*

*(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, that shall be paid by the health care facility or other entity subject to subdivision (b). 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 (c), 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, that shall be paid by the health care facility or other entity subject to subdivision (b). 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; 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 differ based on whether a health care facility 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 care facility, 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 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.

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #13(b)(3) – Review of Bills with Watch Status |

## Background:

The enclosed matrix lists the legislative bills the Board of Psychology watched during the 2019 legislative session. This matrix references the status and location of the bills to date.

Information on bills in the matrix can be found at: http://leginfo.legislature.ca.gov.

## Action Requested:

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

# Watch Bills

# For Board Meeing Packet

**AB 5** **(Gonzalez D) Worker status: employees and independent contractors.**
**Introduced:** 12/3/2018
**Last Amend:** 7/11/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing 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 for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.This bill would state the intent of the Legislature to 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 and the Unemployment Insurance Code, except if a statutory exemption from employment status or from a particular obligation related to employment or where a statutory grant of employment status or a particular right related to employment applies. The bill would exempt specified professions from these provisions and instead provide that the employment relationship test for those professions shall be governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 if certain requirements are met. These exempt professions would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, workers providing hairstyling or barbering services, electrologists, estheticians, workers providing natural hair braiding, licensed repossession agencies who meet requirements described below, and those performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 8** **(Chu D) Pupil health: mental health professionals.**
**Introduced:** 12/3/2018
**Last Amend:** 5/16/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** (1)Existing law requires the governing board of a school district to give diligent care to the health and physical development of pupils and authorizes the governing board of a school district to employ properly certified persons for the work. Existing law requires a school of a school district or county office of education and a charter school to notify pupils and parents or guardians of pupils no less than twice during the school year on how to initiate access to available pupil mental health services on campus or in the community, or both, as provided. Existing law requires, subject to sufficient funds being provided, the State Department of Education, in consultation with the State Department of Health Care Services and appropriate stakeholders, to, on or before July 1, 2020, develop guidelines for the use of telehealth technology in public schools, including charter schools, to provide mental health and behavioral health services to pupils on school campuses.This bill would require, on or before December 31, 2024, a school of a school district or county office of education and a charter school to have at least one mental health professional, as defined, for every 600 pupils generally accessible to pupils on campus during school hours. The bill would require, on or before December 31, 2024, a school of a school district or county office of education and a charter school with fewer than 600 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. The bill would encourage a school subject to the bill's provisions with pupils who are eligible to receive Medi-Cal benefits to seek reimbursement for costs of implementing the bill's provisions, as specified. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.This bill contains other related provisions and other existing laws.

Position

Watch

**AB 166** **(Gabriel D) Medi-Cal: violence preventive services.**
**Introduced:** 1/7/2019
**Last Amend:** 6/24/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services 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 require the department to establish, no later than January 1, 2021, a violence intervention pilot program at a minimum of 8 sites, including at least one site in 8 specified counties, and would require the department to consult with identified stakeholders, such as professionals in the community violence intervention field, for purposes of establishing the pilot program. The bill would require the department to provide violence preventive services that are rendered by a qualified violence prevention professional to a Medi-Cal beneficiary who meets identified criteria, including that the beneficiary has received medical treatment for a violent injury. The bill would require the department to approve one or more training and certification programs for violence prevention professionals, and 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.This bill contains other related provisions.

Position
Watch

**AB 189** **(Kamlager-Dove D) Child abuse or neglect: mandated reporters: autism service personnel.**
**Introduced:** 1/10/2019
**Last Amend:** 5/7/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever they, in their professional capacity or within the scope of their employment, have knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable by up to 6 months of confinement in a county jail, by a fine of $1,000, or by both that imprisonment and fine.This bill 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. By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 241** **(Kamlager-Dove D) Implicit bias: continuing education: requirements.**
**Introduced:** 1/18/2019
**Last Amend:** 7/1/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under the act, a physician and surgeon is required to demonstrate satisfaction of continuing education requirements, including cultural and linguistic competency in the practice of medicine, as specified. This bill, by January 1, 2022, would require all continuing education courses for a physician and surgeon to contain curriculum that includes specified instruction in the understanding of implicit bias in medical treatment. The bill, by January 1, 2022, would require associations that accredit continuing education courses to develop standards to comply with these provisions.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 289** **(Fong R) California Public Records Act Ombudsperson.**

**Introduced:** 1/28/2019
**Last Amend:** 4/24/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The act declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. This bill would establish, within the California State Auditor's Office, the California Public Records Act Ombudsperson. The bill would require the California State Auditor to appoint the ombudsperson subject to certain requirements. The bill would require the ombudsperson to receive and investigate requests for review, as defined, determine whether the denials of original requests, as defined, complied with the California Public Records Act, and issue written opinions of its determination, as provided. The bill would require the ombudsperson to create a process to that effect, and would authorize a member of the public to submit a request for review to the ombudsperson consistent with that process. The bill would require the ombudsperson, within 30 days from receipt of a request for review, to make a determination, as provided, and would require the ombudsperson to require the state agency to provide the public record if the ombudsperson determines that it was improperly denied. The bill would authorize the ombudsperson to require any state agency determined to have improperly denied a request to reimburse the ombudsperson for its costs to investigate the request for review. The bill would require the ombudsperson 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 ombudsperson has received in the prior year. By expanding the duties of the California State Auditor's Office, this bill would create an appropriation.This bill contains other existing laws.

Position
Watch

**AB 469** **(Petrie-Norris D) State records management: records management coordinator.**
**Introduced:** 2/11/2019
**Last Amend:** 6/3/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law, 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. This bill 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 at least every 2 years.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 476** **(Rubio, Blanca D) Department of Consumer Affairs: task force: foreign-trained professionals.**
**Introduced:** 2/12/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law establishes the Bagley-Keene Open Meeting Act, which requires state boards, commissions, and similar state-created multimember bodies to give public notice of meetings and conduct their meetings in public unless authorized to meet in closed session.This bill, 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.This bill contains other related provisions.

Position
Watch

**AB 496** **(Low D) Business and professions.**
**Introduced:** 2/12/2019
**Last Amend:** 5/6/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Under existing law, the Department of Consumer Affairs, which is under the control of the director of the Director of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. With respect to the Department of Consumer Affairs, existing law provides that the Governor has power to remove from office any member of any board appointed by the Governor for specified reasons, including incompetence.This bill would instead provide that the appointing authority has power to remove a board member from office for those specified reasons.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 512** **(Ting D) Medi-Cal: specialty mental health services.**
**Introduced:** 2/13/2019
**Last Amend:** 7/3/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, 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 requires the department to implement managed mental health care 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. Existing law requires mental health plan reviews to be conducted by an external quality review organization (EQRO) on an annual basis, and requires those reviews to include specific data for Medi-Cal eligible minor and nonminor dependents in foster care, such as the number of Medi-Cal eligible minor and nonminor dependents in foster care served each year.This bill would require each mental health plan to prepare a cultural competency assessment plan to address specified matters, including mental health disparities in access, utilization, and outcomes by various categories, such as race, ethnicity, and immigration status. The bill would require a mental health plan to convene a committee for the purpose of reviewing and approving the cultural competency assessment plan, to annually update its cultural competency plan and progress, to post this material on its internet website, and to submit its cultural competency assessment plan to the department every 3 years for technical assistance and implementation feedback. The bill would require the department to develop at least 8 statewide mental health disparities reduction targets, to post the cultural competency assessment plan submitted by each mental health plan to its internet website, and to consult with the Office of Health Equity and the office of the state Surgeon General to review and implement county assessments and statewide performance on mental health disparities reductions. The bill would require the department to direct the EQRO to develop a protocol for monitoring performance of each mental health plan, and to report on identified matters, including statewide progress related to the mental health disparities reduction targets. The bill would require the EQRO to publish specified information in the annual detailed technical report, such as recommendations for statewide strategies to reduce mental health disparities. The bill would require the mental health plan to meet specified mental health disparities reduction targets or make year-over-year improvements toward meeting the targets. The bill would require the department to promulgate, by January 1, 2021, regulations to implement these provisions.

Position
Watch

**AB 565** **(Maienschein D) Public health workforce planning: loan forgiveness, loan repayment, and scholarship programs.**
**Introduced:** 2/13/2019
**Last Amend:** 6/10/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law establishes the Steven M. Thompson Physician Corps Loan Repayment Program (program) in the California Physician Corps Program within the Health Professions Education Foundation, which 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.This bill also would define “practice setting” to include a program or facility operated by, or contracted to, a county mental health plan. By expanding the group of persons eligible for financial incentives payable from a continuously appropriated fund, this bill would make an appropriation.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 577** **(Eggman D) Health care coverage: maternal mental health.**
**Introduced:** 2/14/2019
**Last Amend:** 7/11/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.This bill would, for purposes of an individual who presents written documentation of being diagnosed with a maternal mental health condition, as defined, from the individual's treating health care provider, require completion of covered services for that condition, not exceeding 12 months, as specified. By expanding the duties of health care service plans, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 630** **(Arambula D) Board of Behavioral Sciences: marriage and family therapists: clinical social workers: educational psychologists: professional clinical counselors: required notice: exemptions.**
**Introduced:** 2/15/2019
**Last Amend:** 6/6/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law provides for the licensure and regulation of marriage and family therapists, educational psychologists, clinical social workers, and professional clinical counselors by the Board of Behavioral Sciences, which is within the Department of Consumer Affairs. A violation of these provisions is a crime.This bill, commencing July 1, 2020, would require those licensees and registrants, prior to initiating specified services, to 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.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 744** **(Aguiar-Curry D) Health care coverage: telehealth.**
**Introduced:** 2/19/2019
**Last Amend:** 7/9/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, 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. Under existing 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. Existing 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.This bill would delete those interactive communication provisions, and would instead specify that face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for any health care services provided by store and forward.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 798** **(Cervantes D) Maternal mental health.**
**Introduced:** 2/20/2019
**Last Amend:** 6/13/2019

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**Summary:** Existing law requires the State Department of Public Health within the California Health and Human Services Agency to develop and maintain a statewide community-based comprehensive perinatal services program to, among other things, ensure the appropriate level of maternal, newborn, and pediatric care services necessary to provide the healthiest outcomes for mothers and infants. Existing law also requires the department, until January 1, 2023, to investigate and apply for federal funding opportunities to support maternal mental health.This bill would declare the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders. This bill would create a pilot program, in counties that elect to participate, designed to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program would be coordinated by the State Department of Public Health and be privately funded. The bill would require the department to submit a report to the Legislature regarding the pilot program 6 months after the results of the pilot program are reported, as specified. The bill would repeal these provisions on January 1, 2025.This bill contains other existing laws.

Position
Watch

**AB 895** **(Muratsuchi D) Pupil Mental Health Services Program Act.**
**Introduced:** 2/20/2019
**Last Amend:** 4/8/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law, 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 schoolsites 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 schoolsites. The act would award matching grants for a period of not more than 3 years and would prohibit a single schoolsite 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% of the moneys allocated to the department for these purposes from being used for program administration and evaluation.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 1058** **(Salas D) Medi-Cal: specialty mental health services and substance use disorder treatment.**
**Introduced:** 2/21/2019
**Last Amend:** 6/25/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, 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 provides for various benefits under the Medi-Cal program, including substance use disorder treatment and mental health services that are delivered through the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services Program.This bill would require the department to engage, commencing no later than January 15, 2020, in a stakeholder process to develop recommendations for addressing legal and administrative barriers to the delivery of integrated behavioral health services for Medi-Cal beneficiaries with cooccurring substance use disorders and mental health conditions who access services through the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services Program. The bill would require the stakeholder group to include specified individuals, such as behavioral health subject-matter experts and representatives from county behavioral health departments, and would require the stakeholder group to complete various tasks, including reviewing departmental policies and procedures on the department's implementation and operation of administrative and oversight responsibilities for the 3 programs and reporting recommendations to the Legislature by September 15, 2020. The bill

would repeal these provisions on January 1, 2021.

Position
Watch

**AB 1076** **(Ting D) Criminal records: automatic relief.**
**Introduced:** 2/21/2019
**Last Amend:** 7/11/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law authorizes a person who was arrested and has successfully completed a prefiling diversion program, a person who has successfully completed a specified drug diversion program, a person who has successfully completed a specified deferred entry of judgment program, and a person who has suffered an arrest that did not result in a conviction, under certain conditions, to petition the court to seal the person's arrest record. Under existing law, if a defendant successfully completes certain diversion programs, the arrest for the crime for which the defendant was diverted is deemed to have never occurred.This bill would, commencing January 1, 2021, require the Department of Justice, on a weekly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified. The bill would require the department to grant relief to an eligible person, without requiring a petition or motion. The bill would not limit petitions, motions, or orders for relief, as required or authorized by any other law.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 1184** **(Gloria D) Public records: writing transmitted by electronic mail: retention.**
**Introduced:** 2/21/2019
**Last Amend:** 5/16/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** The California Public Records Act requires a public agency, defined to mean any state or local agency, to make public records available for inspection, subject to certain exceptions. Existing law specifies that public records include any writing containing information relating to the conduct of the public's business, including writing transmitted by electronic mail. 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 provisions and authorizes every agency to adopt regulations stating the procedures to be followed when making its records available, if the regulations are consistent with those provisions. 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, unless a longer retention period is required by statute or regulation, require a public agency for purposes of the California Public Records Act to retain and preserve for at least 2 years every writing containing information relating to the conduct of the public's business prepared, owned, or used by any public agency that is transmitted by electronic mail.This bill contains other related provisions and other existing laws.

Position
Watch

**AB 1519** **(Low D) Healing arts.**
**Introduced:** 2/22/2019
**Last Amend:** 7/2/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** (1)Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists and dental assistants by the Dental Board of California and authorizes the board to appoint an executive officer to exercise powers and perform duties delegated by the board to the executive officer. The act requires the Governor, the Senate Committee on Rules, and the Speaker of the Assembly to appoint specified members of the board, and authorizes the Governor to remove a member of the board from office at any time for continued neglect of duty, incompetency, or unprofessional or dishonorable conduct. The act requires the board to appoint its own attorney and to prescribe that attorney's duties and compensation. These provisions are in effect only until January 1, 2020, and, upon repeal of those provisions, the board will be subject to review by the appropriate policy committees of the Legislature. This bill would instead authorize the appointing authority to remove from office at any time a member of the board appointed by that authority for the reasons specified above. The bill would require the board to appoint its own attorney by July 1, 2020. The bill would revise and

recast additional provisions relating to administration of the act, and would extend the provisions relating to the Dental Board of California and the executive officer to January 1, 2024. This bill contains other existing laws.

Position
Watch

**AB 1601** **(Ramos D) Office of Emergency Services: behavioral health response.**
**Introduced:** 2/22/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** The California Emergency Services Act establishes the Office of Emergency Services within the Governor's office under the supervision of the Director of Emergency Services and makes the office responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies. Existing law authorizes the Governor, or the director when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.This bill 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. The bill would require the Director of Health Care Services, in collaboration with the Office of Emergency Services, to immediately request necessary federal waivers to ensure the provision of healthcare services, as specified, during a natural disaster or declared state of emergency.

Position
Watch

**SB 163** **(Portantino D) Health care coverage: pervasive developmental disorder or autism.**
**Introduced:** 1/24/2019
**Last Amend:** 6/27/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing 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.This bill would revise the definition of behavioral health treatment to require the services and treatment programs provided to be based on behavioral, developmental, relationship-based, or other evidence-based models. The bill would remove the exception for health care service plans and health insurance policies in the Medi-Cal program, consistent with the MHPAEA. This bill contains other related provisions and other existing laws.

Position
Watch

**SB 181** **(Chang R) Healing arts boards.**
**Introduced:** 1/28/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing 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.This bill would make nonsubstantive changes to that license display and disclosure provision.

Position
Watch

**SB 331** **(Hurtado D) Suicide prevention: strategic plans.**
**Introduced:** 2/19/2019
**Last Amend:** 5/17/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing 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 every 3 years, 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. By creating a new duty for counties, this bill would impose a state-mandated local program.This bill contains other related provisions and other existing laws.

Position
Watch

**SB 546** **(Hueso D) Unlicensed activity.**
**Introduced:** 2/22/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law establishes the Department of Consumer Affairs and requires boards within the department to license and regulate various professions and vocations. Under existing 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.This bill would make a nonsubstantive change to that provision.

Position
Watch

**SB 601** **(Morrell R) State agencies: licenses: fee waiver.**
**Introduced:** 2/22/2019
**Last Amend:** 6/27/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing 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.This bill would authorize any state agency that issues any business license to establish a process for a person or business that has been displaced or is experiencing economic hardship as a result of an emergency, as defined, to submit an application for reduction or waiver of fees required by the agency to obtain a license, renew or activate a license, or replace a physical license for display.

Position
Watch

**SB 639** **(Mitchell D) Medical services: credit or loan.**
**Introduced:** 2/22/2019
**Last Amend:** 7/1/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law prohibits a healing arts licensee, as defined, or an employee or agent of that licensee from charging treatment or costs to an open-end credit or loan extended by a third party that is arranged for or established in the licensee's office before the date on which the treatment is rendered or costs are incurred 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. Existing law prohibits a licensee, or the licensee's employee or agent, from arranging for or establishing 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. Existing law provides that a person who willfully violates these provisions is subject to specified civil liability.This bill would instead 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 more than 30 days before the date on which the treatment is rendered or costs are incurred, except for specified incremental fees charged by a licensed dentist for orthodontic treatment. The bill would additionally prohibit a licensee or employee or agent of that licensee from accepting and processing an open-end credit or loan application that contains a deferred interest provision, except as specified. The bill would require a licensee, if the licensee accepts Medi-Cal, to indicate on the treatment plan for a Medi-Cal patient if Medi-Cal would cover an alternate, medically appropriate service. This bill would make it unlawful for a licensee, or an

employee or agent of a licensee, to complete any portion of an application for credit or a loan for the patient or accept an application that is not completely filled out by the patient. The bill would prohibit a licensee or the licensee's employee or agent from arranging for or establishing credit or a loan that is extended by a third party for a patient in a treatment area where medical treatment is administered unless the patient agrees to do so. The bill would also revise the content of the required written or electronic notice. The bill would make these provisions operative on July 1, 2020.

Position
Watch

**SB 660** **(Pan D) Postsecondary education: mental health counselors.**
**Introduced:** 2/22/2019
**Last Amend:** 5/17/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law establishes the California State University, administered by the Trustees of the California State University, and the California Community Colleges, administered by the Board of Governors of the California Community Colleges. Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.This bill would require the Trustees of the California State University and the governing board of each community college district to establish a goal of having one full-time equivalent mental health counselor with an applicable California license per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law. The bill would define mental health counselor for purposes of this provision. The bill would require those institutions, on or before January 1, 2021, and every 3 years thereafter, to report to the Legislature how funding was spent and the number of mental health counselors employed on each of its campuses, as specified. The bill would require each campus of those institutions to, at least every 3 years, conduct a campus survey and focus groups to understand students' needs and challenges regarding, among other things, their mental health, would require each campus of those institutions to collect data on attempted suicides, as specified, and would require that data, without any personally identifiable information and collected in accordance with state and federal privacy law, to be included in the report to the Legislature. To the extent that this bill would impose new duties on community college districts, it would constitute a state-mandated local program.This bill contains other related provisions and other existing laws.

Position
Watch

**SB 700** **(Roth D) Business and professions: noncompliance with support orders and tax delinquencies.**
**Introduced:** 2/22/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Under existing 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.This bill would make nonsubstantive changes to those provisions.

Position
Watch

**SB 786** **(Committee on Business, Professions and Economic Development) Healing arts.**
**Introduced:** 3/11/2019
**Last Amend:** 6/25/2019

| Desk | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** (1)Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board to disclose to an inquiring member of the public specified information regarding any enforcement action taken against a licensee.This bill would make nonsubstantive changes to those provisions.This bill contains other related provisions and other existing laws.

Position
Watch

**Total Measures: 30**

**Total Tracking Forms: 30**

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #13(b)(4) – Review of Two-Year Bills with Watch Status |

## Background:

The enclosed matrix lists the legislative bills the Board of Psychology watched during the 2019 legislative session. These bills have failed to meet a legislative deadline in 2019, but can be heard again in 2020.

Information on bills in the matrix can be found at: http://leginfo.legislature.ca.gov.

## Action Requested:

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

# 2-Year Bill Status Report

# Friday, August 02, 2019

## Watch

**AB 71** **(Melendez R) Employment standards: independent contractors and employees.**
**Current Text:** Amended: 2/25/2019 html pdf
**Last Amend:** 2/25/2019
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was L. & E. on 1/17/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-A. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship. Existing law makes it unlawful for a person or employer to avoid employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor. Existing law authorizes the Labor and Workforce Development Agency to take specified actions against violators of these provisions, authorizes civil penalties, and authorizes the Labor Commissioner to enforce those provisions pursuant to administrative authority or by civil suit. This bill 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. The bill would make related, conforming changes. This bill contains other existing laws.

Position Assigned
Watch

**AB 184** **(Mathis R) Board of Behavioral Sciences: registrants and licensees.**
**Current Text:** Introduced: 1/10/2019 html pdf
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 1/24/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-A. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1st House | | | | 2nd House | | | | | | | |

**Summary:** Existing law establishes the Board of Behavioral Sciences within the Department of Consumer Affairs, and requires the board to regulate various registrants and licensees under the Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Clinical Social Worker Practice Act, and the Licensed Professional Clinical Counselor Act.This bill would require the board 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.

Position Assigned
Watch

**AB 193** **(Patterson R) Professions and vocations.**
**Current Text:** Amended: 3/20/2019 html pdf

**Last Amend:** 3/20/2019
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 2/4/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-A. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1st House | | | | 2nd House | | | | | | | |

**Summary:** (1)Existing law establishes the Department of Consumer Affairs in the Business, Consumer Services, and Housing Agency to, among other things, ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated.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, 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. 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. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

**AB 312** **(Cooley D) State government: administrative regulations: review.**
**Current Text:** Introduced: 1/29/2019 html pdf
**Status:** 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 4/3/2019)(May be acted upon Jan 2020)
**Location:** 5/17/2019-A. 2 YEAR

| Desk | Policy | 2 year | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.This bill 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.

Position
Watch

Assigned

**AB 396** **(Eggman D) School employees: School Social Worker Pilot Program.**
**Current Text:** Amended: 3/20/2019 html pdf
**Last Amend:** 3/20/2019
**Status:** 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 4/3/2019)(May be acted upon Jan 2020)
**Location:** 5/17/2019-A. 2 YEAR

| Desk | Policy | 2 year | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law establishes the State Department of Education, under the administration of the Superintendent of Public Instruction, and assigns to the department numerous duties relating to the financing, governance, and guidance of the public elementary and secondary schools in this state. Existing law authorizes a school district to employ and compensate psychologists and social workers who meet specified qualifications.This bill, subject to an appropriation of moneys by the Legislature, would establish the School Social Worker Pilot Program, under the administration of the department, 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 to develop an application process and criteria for determining grant recipients on a competitive basis, as provided. The bill would require each governing board of a school district and governing body of a charter school receiving a grant award to report to the department, and would require the department, on or before January 1, 2027, to report to the Legislature, changes in pupil outcomes at the schools participating in the pilot program, including, among others, changes in chronic absenteeism and changes in rates of suspension and expulsion. The bill would make the pilot program inoperative on July 1, 2027, and would repeal it on January 1, 2028.

Position
Watch

Assigned

**AB 536** **(Frazier D) Developmental services.**
**Current Text:** Introduced: 2/13/2019 html pdf
**Status:** 6/4/2019-Failed Deadline pursuant to Rule 61(a)(8). (Last location was APPR. SUSPENSE FILE on 5/15/2019)
**Location:** 6/4/2019-A. 2 YEAR

| Desk | Policy | 2 year | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing 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, and requires regional centers to identify and pursue all possible sources of funding for consumers receiving those services. Existing law 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.This bill 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 make various technical and nonsubstantive changes.

Position
Watch

Assigned

**AB 544** **(Brough R) Professions and vocations: inactive license fees and accrued and unpaid renewal fees.**
**Current Text:** Amended: 3/21/2019 html pdf
**Last Amend:** 3/21/2019
**Status:** 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/1/2019)(May be acted upon Jan 2020)
**Location:** 5/17/2019-A. 2 YEAR

| Desk | Policy | 2 year | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law provides for the licensure and regulation of professions and vocations by various boards within the Department of Consumer Affairs. Existing law provides for the payment of a fee for the renewal of certain licenses, certificates, or permits in an inactive status, and, for certain licenses, certificates, and permits that have expired, requires the payment of all accrued fees as a condition of reinstatement of the license, certificate, or permit.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.

Position
Watch

Assigned

**AB 768** **(Brough R) Professions and vocations.**
**Current Text:** Introduced: 2/19/2019 html pdf
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 2/28/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-A. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law provides for the licensure and regulation of various professions and vocations by boards, as

defined, within the Department of Consumer Affairs. Existing law generally requires the department and each board in the department to charge a fee of $2 for the certification of a copy of any record, document, or paper in its custody. Existing law generally requires that the delinquency, penalty, or late fee for any licensee within the department to be 50% of the renewal fee for that license, but not less than $25 nor more than $150.This bill would instead authorize the department 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% of the renewal fee for that license, but not to exceed $150.

Position Assigned
Watch

**AB 770** **(Garcia, Eduardo D) Medi-Cal: federally qualified health clinics: rural health clinics.**
**Current Text:** Amended: 5/2/2019 html pdf
**Last Amend:** 5/2/2019
**Status:** 6/4/2019-Failed Deadline pursuant to Rule 61(a)(8). (Last location was APPR. SUSPENSE FILE on 5/15/2019)
**Location:** 6/4/2019-A. 2 YEAR

| Desk | Policy | 2 year | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, 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 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. Existing law prescribes the reimbursement rate methodology for establishing and adjusting the per-visit rate. Under existing law, if an FQHC or RHC is partially reimbursed by a 3rd-party payer, such as a managed care entity, the department is required to reimburse the FQHC or RHC for the difference between its per-visit rate programs on a contract-by-contract basis. Existing law authorizes an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year. Existing law provides that the department's implementation of FQHC and RHC services is subject to federal approval and the availability of federal financial participation.This bill would require the methodology of the adjusted per-visit rate to exclude, among other things, a provider productivity standard. The bill would authorize an FQHC or RHC to apply for a rate adjustment for the adoption, implementation, or upgrade of a certified electronic health record system as a change in the scope of service. The bill would clarify specified terms, including the meaning of "scope of "service," would expand the meaning of "visit" to include FQHC and RHC services rendered outside of the facility location, and would modify how the department reimburses an FQHC or RHC that is partially reimbursed by a 3rd-party payer. The bill would require a health care provider who contracts with an FQHC or RHC to provide services outside of the facility on behalf of the facility, and for which the facility bills for those services, to comply with specified requirements, including actively serving patients in the same county as, or a county adjacent to, the physical location of the billing FQHC or RHC. The bill would repeal the provisions authorizing an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year, and would instead extend the time frame for an FQHC or RHC to file a scope of service rate change to any time during the fiscal year. The bill would require the department to ensure that department staff conducting audits related to FQHC and RHC services receive appropriate training on federal and state laws governing those facilities, and would make various conforming and technical changes.

Position Assigned
Watch

**AB 1201** **(Boerner Horvath D) Unfair Practices Act.**
**Current Text:** Introduced: 2/21/2019 html pdf
**Status:** 5/3/2019-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/21/2019)(May be acted upon Jan 2020)
**Location:** 5/3/2019-A. 2 YEAR

| 2 year | Policy | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing 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. Existing 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.This bill would make a nonsubstantive change to that provision.

Position
Watch

Assigned

**AB 1271** **(Diep R) Licensing examinations: report.**
**Current Text:** Introduced: 2/21/2019 html pdf
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 3/11/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-A. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Existing law provides for the licensure and regulation of professions and vocations by various boards that comprise the Department of Consumer Affairs.This bill 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.

Position
Watch

Assigned

**SB 201** **(Wiener D) Medical procedures: treatment or intervention: sex characteristics of a minor.**
**Current Text:** Amended: 3/25/2019 html pdf
**Last Amend:** 3/25/2019
**Status:** 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B., P. & E.D. on 2/13/2019)(May be acted upon Jan 2020)
**Location:** 4/26/2019-S. 2 YEAR

| Desk | 2 year | Fiscal | Floor | Desk | Policy | Fiscal | Floor | Conf. Conc. | Enrolled | Vetoed | Chaptered |
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**Summary:** Under existing law, the Medical Practice Act, it is 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. Any violation of the law relating to enforcement of the Medical Practice Act is a misdemeanor, as specified.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.

Position
Watch

Assigned

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 23, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Jason Glasspiegel<br>Central Services Coordinator |
| **SUBJECT** | Agenda Item #15 – 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 received feedback from Legal Counsel on May 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 submitted for the Initial Departmental Review which involves reviews by DCA Legal, DCA Budgets, DCA's Division of Legislative and Regulatory Review, DCA Chief Counsel, DCA Executive Office and Business Consumer Services and Housing Agency.

**b) 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 |
|---|---|---|---|---|---|---|---|

This package is in the Initial Review Stage. Staff received feedback from Legal Counsel on May 13, 2019, and are working to incorporate the recommended changes prior to submitting the package back to legal before the August Board Meeting. Upon approval by Board Legal Counsel, the package will be submitted for the Initial Departmental Review which involves reviews by DCA Legal, DCA Budgets, DCA's Division of Legislative and Regulatory Review, DCA Chief Counsel, DCA Executive Office and Business Consumer Services and Housing Agency.

## c) 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 |
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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.

## d) 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 submitted for the Initial Departmental Review which involves reviews by DCA Legal, DCA Budgets, DCA's Division of Legislative and Regulatory Review, DCA Chief Counsel, DCA Executive Office and Business Consumer Services and Housing Agency.

## e) 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 received approval from legal on July 7, 2019. While incorporating feedback previously provided by legal, the Board discovered that some language had been inadvertently left out and needs to be added back in before final submission to DCA. This language is attached for your review and approval. Upon approval of the language, the package will be submitted for the Initial Departmental Review which involves reviews by DCA Legal, DCA Budgets, DCA's Division of Legislative and Regulatory Review, DCA Chief Counsel, DCA Executive Office and Business Consumer Services and Housing Agency.

## 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 |
|---|---|---|---|---|---|---|---|

This package is in the Initial Review Stage. Staff incorporated the feedback provided by Legal Counsel and resubmitted this package to Legal Counsel on July 17, 2019. Upon approval by Board Legal Counsel, the package will be submitted for the Initial Departmental Review which involves reviews by DCA Legal, DCA Budgets, DCA's Division of Legislative and Regulatory Review, DCA Chief Counsel, DCA Executive Office and Business Consumer Services and Housing Agency.

**Action Requested:**

Review and approve amended Continuing Professional Development language (attached and highlighted in yellow).

Attachment: CPD Language

**Agenda Item 15(e) – Attachment**

## § 1381.9. Renewal of Expired License; Reapplication After Cancelled License.

(a) In the event a licensee does not renew his or her license as provided in section 2982 of the Code, the license expires. In addition to any other requirements, a licensee renewing pursuant to section 2984 of the Code shall furnish a full set of fingerprints as required by and set out in section 1381.7(b) as a condition of renewal.

(b) After a license has been expired for three years, the license is automatically cancelled, and a new license must be obtained in order to provide psychological services. A person whose license has been cancelled may obtain a new license pursuant to the requirements in section 2986 of the Code, and ~~if~~ the person:
(1) submits a complete licensing application pursuant to section 1381;
(2) meets all current licensing requirements;
(3) successfully passes the examination pursuant to section 1388.6;
(4) provides evidence of continuing professional development taken pursuant to section 1397.67(b), and no fact, circumstance, or condition exists that would be grounds for denial of licensure under sections 480 or Division/ Chapter/ Article 4 of the Code.

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

## § 1397.60. Definitions. [Effective until December 31, 2020.]

This section is inoperative January 1, 2021 and repealed on December 31, 2021.

As used in this article:

(a) “Conference” means a course consisting of multiple concurrent or sequential free-standing presentations. Acceptable presentations must meet the requirements of section 1397.61(c).

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

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

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

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

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

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

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

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

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

(a) Acceptable CPD learning activities under “Professional Activities” include:

(1) “Peer Consultation”

(A) “Peer Consultation” means structured and organized interaction, in person or electronically mediated, with professional colleagues designed to broaden professional knowledge and expertise, reduce professional isolation and directly inform the work of the psychologist. CPD pursuant to this section may only be obtained through individual or group case consultation, reading groups, or research groups. These activities must be focused on maintaining, developing, or increasing conceptual and applied

competencies that are relevant to psychological practice, education, or science.
(B) "Peer Consultation" does not include "Supervision" as defined in section (b)(3).

(2) "Practice Outcome Monitoring" (POM)
"Practice Outcome Monitoring" (POM) means the application of outcome assessment protocols with clients/patients, in order to monitor one's own practice process and outcomes, with the goal of assessing effectiveness. All outcome measures must be sensitive to cultural and diversity issues.

(3) "Professional Services"
"Professional Services" means ongoing participation in services related to the field of psychology, or other related disciplines, including but not limited to, serving on psychological association boards or committees, editorial boards of peer reviewed journals related to psychology or other related disciplines, scientific grant review teams, boards of regulatory bodies, program development and/or evaluation activities separate and apart from a fee for service arrangement.

(4) "Conference/Convention Attendance"
"Conference/Convention Attendance" means attending a professional gathering that consists of multiple concurrent or sequential free-standing presentations related to the practice of psychology, or that may be applied to psychological practice, where the licensee interacts with professional colleagues and participates in the social, interpersonal, professional, and scientific activities that are part of the environment of those gatherings. CPD credit may be accrued for "Conference/Convention Attendance" separate from credit earned for completing sponsored CE coursework or sessions at the same conference/convention.

(5) "Examination Functions"
"Examination Functions" means serving in any examination development-related function for the Board or for the development of the EPPP.

(6) "Expert Review/Consultation"
"Expert Review/Consultation" means serving in any expert capacity for the Board.

(7) "Attendance at a California Board of Psychology Meeting"
"Attendance at a California Board of Psychology Meeting" means physical attendance at a full day Board meeting or physical

attendance at a separately noticed Committee meeting of the Board.

(b) Acceptable CPD learning activities under "Academic" include:

(1) "Academic Coursework"

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

(2) "Academic/Sponsor-Approved Continuing Education (CE) Instruction"

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

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

(3) "Supervision"

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

(4) "Publications"

"Publications" means authoring or co-authoring peer-reviewed journal articles, book chapters, book(s), or editing or co-editing a book, related to psychology or related discipline.

(5) "Self-Directed Learning"

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

(c) Acceptable CPD learning activities under "Sponsored Continuing Education" means Sponsor-Approved Continuing Education, which includes any approved structured, sequenced learning activity, whether conducted in-person or online. "Course" or "presentation" means a sponsor-approved systematic learning experience. "Provider" means an organization, institution, association, university, or other person or entity assuming full responsibility for the CE program offered, and whose courses are accepted for credit pursuant to section 1397.61(k).

(d) Acceptable CPD learning activities under "Board Certification" are defined as earning a specialty certification in an area of psychology from the American Board of Professional Psychology (ABPP).

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

**§ 1397.61. Continuing Education Requirements. [Effective until December 31, 2020.]**

This section is inoperative January 1, 2021 and repealed on December 31, 2021.

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

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

(1) Formal coursework in laws and ethics taken from an accredited educational institution;
(2) Approved continuing education course in laws and ethics;
(3) Workshops in laws and ethics;

(4) Other experience which provide direction and education in laws and ethics including, but not limited to, grand rounds or professional association presentation.

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

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

(1) Continuing education courses shall be:

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

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

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

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

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

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

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

(d) Examination Functions. A licensee who serves the Board as a selected participant in any examination development related function will receive one hour of continuing education credit for each hour served. Selected Board experts will receive one hour of continuing education credit for each hour attending Board sponsored Expert Training Seminars. A licensee who receives approved continuing education credit as set forth in this paragraph shall maintain a record of hours served for submission to the Board pursuant to section 1397.61(e).

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

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

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

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

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

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

(b) A psychologist renewing his or her license shall certify under penalty of perjury on the application for license renewal that he or she has engaged in a minimum of four (4) hours of training in the subject of laws and ethics, as they apply to the practice of psychology in California for each renewal period. This includes recent changes or updates on the laws and regulations related to the practice of psychology; recent changes or updates in the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association; accepted standards of practice; and other applications of laws and ethics as they affect the licensee's ability to practice psychology safely. This requirement shall be met using any combination of the four (4) CPD categories and the licensee shall indicate on his or her documentation which of the CPD activities are being used to fulfill this requirement. The four (4) hours shall be considered part of the 36 hour CPD requirement.

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

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

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

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

(1) "Peer Consultation"

(A) A maximum of 18 hours shall be credited in "Peer Consultation".
(B) One (1) hour of activity in "Peer Consultation" equals one (1) hour of credit.
(C) The licensee shall maintain a record of this activity. This record shall include: date(s), type of activity, and total number of hours.

(2) "Practice Outcome Monitoring" (POM)

(A) A maximum of nine (9) hours shall be credited in "POM".
(B) "POM" for one (1) patient/client equals one (1) hour credited.
(C) The licensee shall maintain a record of this activity. This record shall include: date(s) of monitoring, client identifier, and how outcomes were measured.

(3) "Professional Service"

(A) A minimum of 4.5 hours and a maximum of 12 hours shall be credited in "Professional Service".
(B) One (1) year of "Professional Service" for a particular activity equals nine (9) hours credited and six (6) months equals 4.5 hours credited.
(C) The licensee shall maintain a record of this activity. This record shall include: board or program name, role of licensee, dates of service, and term of service (six months or one year).

(4) “Conference/Convention Attendance”

(A) A maximum of six (6) hours shall be credited in “Conference/Convention Attendance”.

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

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

(5) “Examination Functions”

(A) A maximum of 12 hours shall be credited in “Examination Functions”.

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

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

(6) “Expert Review/Consultation”

(A) A maximum of 12 hours shall be credited in “Expert Review/Consultation”.

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

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

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

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

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

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

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

(1) “Academic Coursework”

(A) A maximum of 18 hours shall be credited in “Academic Coursework”.

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

(C) Each one (1) semester unit earned equals six (6) hours of credit and each one (1) quarter unit earned equals 4.5 hours of credit.
(D) The licensee shall maintain a record of this activity. This record shall include a transcript with evidence of a passing grade (C or higher or "pass").

(2) "Academic/Sponsor-Approved CE Instruction"

(A) "Academic Instruction"
(i) A maximum of 18 hours shall be credited in "Academic Instruction".
(ii) Each course taught counts only once for each renewal period and may only be submitted for credit once the course is completed.
(iii) A term-long (quarter or semester) academic course equals 18 hours of credit.
(iv) The licensee shall maintain a record of this activity. This record shall include: course syllabus, title of course, name of institution, and dates of instruction.

(B) "Sponsor-Approved CE Instruction"
(i) A maximum of 18 hours shall be used in "Sponsor-Approved CE Instruction".
(ii) Each course taught counts only once for each renewal period and may only be submitted for credit once the course is completed.
(iii) One (1) hour of instruction equals 1.5 hours of credit.
(iv) The licensee shall maintain a record of this activity. This record shall include: course syllabus, title of course, dates of instruction, name of sponsoring entity, and number of hours taught.

(3) "Supervision"

(A) A maximum of 18 hours shall be credited in "Supervision".
(B) One (1) hour of supervision equals one (1) hour of credit.
(C) The licensee shall maintain a record of this activity. This record shall include: dates of supervision and a trainee identifier.

(4) "Publications"

(A) A maximum of nine (9) hours shall be credited in "Publications".
(B) One (1) publication equals nine (9) hours of credit.
(C) A publication may only be counted once.
(D) The licensee shall maintain a record of this activity. This record shall include: either a letter of acceptance for publication, or proof of publication with publication date in the renewal period for which it is being submitted.

(5) "Self-Directed Learning"

(A) A maximum of six (6) hours shall be credited in "Self-Directed Learning".

(B) One (1) hour of activity in "Self-Directed Learning" equals one (1) hour of credit.
(C) The licensee shall maintain a record of this activity. This record shall include: date(s), medium (e.g. webinar), topic or title, and total number of hours.

(h) Acceptable "Sponsored Continuing Education" includes:
(1) A maximum of 27 hours shall be credited in "Sponsored Continuing Education".
(2) Credit may be granted only once during a renewal cycle for each course taken.
(3) One (1) hour of sponsored continuing education equals one (1) hour of credit.
(4) The licensee shall maintain proof of attendance provided by the sponsor of the continuing education.

(i) Acceptable CPD learning activities under "Board Certification" include:
(1) ABPP Board Certification
(A) ABPP Board Certification may count for 100% (36 hours) of required CPD in the renewal cycle in which the certification is awarded.
(B) The licensee shall maintain proof of specialty certification.

(2) "Senior Option" ABPP Board Certification
(A) "Senior Option" ABPP Board Certification may count for 50% (18 hours) of required CPD in the renewal cycle in which the certification is awarded.
(B) The licensee shall maintain proof of specialty certification.

(j) To satisfy the requirements of section 2915 of the Code, an organization seeking the authority to approve a provider of continuing education shall meet the following requirements. An organization authorized pursuant to this section may also provide continuing education. An organization previously approved by the Board to approve providers of CE are deemed authorized under this section.
(1) The approving organization must:
(A) have a 10-year history of providing educational programming for psychologists,
(B) have documented procedures for maintaining a continuing education approval program, including, but not limited to:
(i) maintaining and managing records and data related to approved CE programs, and
(ii) monitoring and approving CE providers and courses
(C) have policies in place to avoid a conflict of interest between its provider and approval functions,

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

(2) The approving organization shall ensure that approved providers:
(A) offer content at post-licensure level in psychology that is designed to maintain, develop, broaden, and/or increase professional competencies,
(B) demonstrate that the information and programs presented are intended to maintain, develop, and increase conceptual and applied competencies that are relevant to psychological practice, education, or science, and have a direct consumer application in at least one of the following ways:
(i) programs include content related to well-established psychological principles,
(ii) programs are based on content that extends current theory, methods or research, or informs current practice,
(iii) programs provide information related to ethical, legal, statutory, or regulatory guidelines and standards that impact the practice of psychology, and/or
(iv) program's content focuses on non-traditional or emerging practice or theory and can demonstrate relevance to practice.
(C) use a formal (written) evaluation tool to assess program effectiveness (what was learned) and assess how well each of the educational goals was achieved (this is separate from assessing attendee satisfaction with the CE program),
(D) use results of the evaluation process to improve and plan future programs,
(E) provide CE credit on the basis of one hour of credit will be earned for each hour of approved instruction,
(F) provide attendance verification to CE attendees that includes the name of the licensee, the name of the course, the date of the course, the number of credit hours earned, and the approving agency,
(G)provide services to all licensees without discrimination, and
(H) ensure that advertisements for CE courses include language that accurately reflects the approval status of the provider.

(3) Failure of the approving organization to meet the provisions of this section shall constitute cause for revocation of authorization by the Board. Authorization shall be revoked only by a formal Board action, after notice and hearing, and for good cause.

(k)(1) Each person who applies to renew his or her license shall certify under penalty of perjury that he or she has complied with all the requirements of this section within the licensure period they are currently in and shall maintain proof of compliance for four (4) years from the effective date of the renewal, and shall submit such proof to the Board upon request

(k)(2) Each person who applies to reactivate or reinstate his or her license shall certify under penalty of perjury that he or she has complied with all the requirements of this section within the 24 month period prior to the request to reactive or reinstate and shall maintain proof of compliance for four (4) years from the date of the reactivation or reinstatement, and shall submit such proof to the Board upon request.

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

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

Note: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference: Sections 29, 32, 2915 and 2915.7, Business and Professions Code.

**§ 1397.62. Continuing Education Exemptions and Exceptions. [Effective until December 31, 2020.]**

This section is inoperative January 1, 2021 and repealed on December 31, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

(C) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience and similar courses previously

offered by the provider), particularly as it relates to the practice of psychology.

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

(c) Psychologists requiring reasonable accommodation according to the Americans with Disabilities Act may be granted an exemption from the on-site participation requirement and may substitute all or part of their continuing education requirement with an American Psychological Association or accreditation agency approved independent learning continuing education program. A qualified individual with a disability must apply to the Board to receive this exemption.

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

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

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

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

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

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

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

**§ 1397.67. Renewal After Inactive or ~~Delinquent~~ Expired Status. [Effective until December 31, 2020.]**

This section is inoperative January 1, 2021 and repealed on December 31, 2021.

(a) To activate a license which has been placed on inactive status pursuant to section 2988 of the Code, the licensee must submit evidence of completion of the requisite 36 hours of qualifying continuing education courses for the two-year period prior to establishing the license as active.

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

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

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

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

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

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

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

**Agenda Item 15(e) – Attachment**

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

California Board of PSYCHOLOGY

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 29, 2019 |
| **TO** | Board Members |
| **FROM** | Sandra Monterrubio, Enforcement Program Manager<br>Board of Psychology |
| **SUBJECT** | Enforcement Report, Item 18 |

Please find attached the Overview of Enforcement Activity conveying complaint, investigation, and discipline statistics to date for the current fiscal year and the corresponding statistical Legend.

The Enforcement Unit's intake position is currently vacant. As a result, the enforcement team is sharing the responsibility by opening complaints, answering phone calls and emails and distributing mail. The team is doing a great job sharing these additional responsibilities all while maintaining their own heavy workload.

Complaint Program
Since July 1, 2019, the Board has received 77 complaints. All complaints received are opened and assigned to an enforcement analyst for a desk investigation within 8 days of receipt.

Citation Program
Since July 1, 2019, the Board has issued 4 enforcement citations. Enforcement citation and fines are issued for minor violations, such as, false or misleading advertising and record keeping.

Discipline Program
Since July 1, 2019, the Board has referred 7 cases to the Office of the Attorney General for formal discipline.

Probation Program
Enforcement staff is currently monitoring sixty-two (62) probationers. Of the sixty-two (62) probationers, twenty-three (23) are tolled. Tolled means the probationer is not currently practicing in California and their probation stops until they resume practice. Currently there is no time limit for how long a probationer can remain in a tolled status.

Posted Discipline

At our Board Meeting in April, there were inquiries regarding the outcome of how discipline in an accusation was determined based on the public information that is posted on the Board's website, newsletter, and in its email subscription. The posted accusation information provides a high-level summary of the facts of the complaint. Prior to discipline being imposed, each case is thoroughly investigated and analyzed. An investigator collects evidence and conducts interviews, and a subject matter expert reviews the entire case file and opines as to whether there is a departure from the standard of care. Once the case is sent to the OAG for filing of an accusation, the assigned Deputy Attorney General reviews the entire case file and determines if there is clear and convincing evidence to prosecute the case. As a result, each case is considered to be fully researched and analyzed by the assigned analyst, subject matter expert, investigator (when appropriate), and deputy attorney general, before an accusation is filed.

Attachments:
Overview of Enforcement Activity and Legend

Action Requested
This item is for informational purposes only.

# BOARD OF PSYCHOLOGY
## Overview of Enforcement Activity

| **License & Registration** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
|---|---|---|---|---|---|
| Psychologist | 20,024 | 20,596 | 20,977 | 21,329 | 21,735 |
| Registered Psychologist | 278 | 249 | 188 | 162 | 127 |
| Psychological Assistant | 1,466 | 1,442 | 1,350 | 1,475 | 1,397 |
| **Cases Opened** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Complaints Received | 798 | 1,042 | 1,097 | 715 | 77 |
| Arrest Reports** | 50 | 39 | 53 | 31 | 2 |
| Investigations Opened | 602 | 771 | 805 | 512 | 68 |
| Cases referred to DA | 0 | 0 | 0 | 0 | 0 |
| Cases referred to AG | 33 | 45 | 70 | 38 | 7 |
| **Filings** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Accusations | 23 | 27 | 15 | 25 | 2 |
| Statement of Issues | 5 | 7 | 6 | 5 | 0 |
| Petition to Revoke Probation | 3 | 1 | 6 | 1 | 1 |
| Petitions to Compel Psych. Exam | 1 | 0 | 0 | 0 | 0 |
| Petitions for Penalty Relief | 0 | 3 | 6 | 5 | 0 |
| Petition for Reinstatement | 0 | 2 | 1 | 5 | 0 |
| Petitions for Reconsideration | 0 | 0 | 2 | 0 | 0 |
| **Filing Withdrawals/Dismissals** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Accusations Withdrawn | 5 | 0 | 0 | 0 | 0 |
| Accusations Dismissed | 4 | 1 | 0 | 0 | 0 |
| Statement of Issues Withdrawn | 0 | 1 | 3 | 0 | 0 |
| **Citations** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Citations Ordered | 27 | 32 | 46 | 22 | 4 |
| **Disciplinary Decisions** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Revocations | 4 | 2 | 9 | 1 | 0 |
| Revocation, Stayed, Probation | 24 | 16 | 7 | 11 | 1 |
| Revoked, Stayed, Probation, Susp. | 0 | 0 | 0 | 0 | 0 |
| Surrender | 12 | 26 | 11 | 5 | 2 |
| Reprovals | 3 | 3 | 4 | 3 | 0 |
| ISO/TRO/PC23 Ordered | 2 | 1 | 2 | 0 | 0 |
| Statement of Issues-License Denied | 0 | 0 | 0 | 0 | 0 |
| **Total Disciplinary Decisions** | **45** | **48** | **33** | **20** | **3** |
| **Other Decisions** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Statement of Issues-License Granted | 1 | 0 | 0 | 3 | 0 |
| Petitions for Penalty Relief Denied | 0 | 2 | 4 | 6 | 0 |
| Petitions for Penalty Relief Granted | 0 | 1 | 2 | 2 | 1 |
| Petition for Reinstatement Granted | 0 | 0 | 0 | 1 | 0 |
| Petition for Reinstatement Denied | 0 | 2 | 1 | 1 | 0 |
| Reconsiderations Denied | 1 | 0 | 2 | 0 | 0 |
| Reconsiderations Granted | 0 | 0 | 0 | 0 | 0 |
| Orders Compelling Psych. Evaluation | 0 | 0 | 3 | 0 | 0 |
| **Total Other Decisions** | **2** | **5** | **12** | **13** | **1** |
| **Violation Types** | **15/16** | **16/17** | **17/18** | **18/19** | ***19/20** |
| Gross Negligence/Incompetence | 23 | 29 | 20 | 18 | 1 |
| Improper Supervision | 1 | 0 | 1 | 0 | 0 |
| Repeated Negligent Acts | 22 | 31 | 21 | 11 | 1 |
| Self-Abuse of Drugs or Alcohol | 7 | 15 | 7 | 3 | 0 |
| Dishonest/Corrupt/Fraudulent Act | 6 | 8 | 9 | 5 | 1 |
| Mental Illness | 4 | 5 | 2 | 1 | 0 |
| Aiding Unlicensed Practice | 1 | 0 | 0 | 0 | 0 |
| General Unprofessional Conduct | 5 | 2 | 13 | 6 | 1 |
| Probation Violation | 3 | 26 | 29 | 10 | 2 |
| Sexual Misconduct | 6 | 14 | 2 | 3 | 0 |
| Conviction of a Crime | 18 | 23 | 1 | 5 | 2 |
| Discipline by Another State Board | 5 | 5 | 2 | 0 | 0 |
| Misrepresentation of License Status | 1 | 1 | 1 | 0 | 0 |

****Enforcement data pulled on July 26, 2019**

## 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.

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# MEMORANDUM

| | |
|---|---|
| **DATE** | August 14, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Sandra Monterrubio, Enforcement Program Manager |
| **SUBJECT** | Hold for Discussion Policy |

HOLD FOR DISCUSSION POLICY:

A vote to hold a decision for discussion means that you either: (1) disagree with one or more portions of the proposed action and do not want it adopted "as-is" as the Board's decision; or (2) you have a question or concern about the Decision and would like to discuss the matter with fellow Board Members before voting. This choice should be made if you believe additional or different terms or conditions of probation should be added or deleted, or that the penalty should be modified in any way.

Currently, it takes one vote to hold a case. When there was a full composition of the Board, it required two votes to hold a case. However, when the Board had only six members it was decided that the policy would change from a two-vote hold to a one-vote hold. Now that there is full Board, the Board should discuss whether it wants to reinstate the two-vote hold.

Action Requested

To discuss and determine if the two-vote hold should be reinstated

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# MEMORANDUM

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| **DATE** | July 8, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 21(a)**<br>Licensed Educational Psychologist (LEP): Report on Presentation by Board of Behavioral Sciences Regarding LEP Functions for Discussion |

## Background:

At the June Licensing Committee meeting, staff invited the Board of Behavioral Sciences (BBS) representatives, Ms. Kim Madsen, Executive Officer, and Ms. Betty Connolly, LEP and Board Chair, to present information relating to the scope of practice and roles of a Licensed Educational Psychologist (LEP). A copy of the presentation slides is provided to the Board as Attachment A.

In summary, Ms. Connolly clarified that the scope of practice for LEPs are very focused and they do not consider it as psychotherapy, but instead refer it to as educational counseling. Their roles are to address a student's ability and barriers to access education. She also explained that LEPs who work at a school setting are typically called school psychologists as they are credentialed to work in schools. She shared that if a client goes to an LEP with a problem that is not within the scope of practice, the client would be referred to an appropriate provider. In responding to public comments on the confusion regarding LEPS and scope of practice, Ms. Connolly offered to approach representatives of the Association of School Psychologists and suggest that a formal, written statement be drafted to clarify the role of an LEP. Both Ms. Connolly and Ms. Madsen stated that they do not feel that the BBS will be considering revising the scope of practice of LEPs at this time.

## Attachment:

A: Licensed Educational Psychologists Presentation by the Board of Behavioral Sciences

## Action Requested:

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

## 21(a) LEP Presentation by BBS

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

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# MEMORANDUM

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|---|---|
| **DATE** | July 8, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 21(b)**<br>Foreign Degree Evaluation Services: Review and Consideration of Amendments to Business and Professions Code Section 2914(c) |

**Background:**

At the January 11, 2019 Licensing Committee meeting, the National Association of Credential Evaluation Services (NACES) and the National Register of Health Service Psychologists (NRHSP) presented their foreign degree evaluation processes. The Committee tasked staff to use the Committee's discussion as a guide to draft amendments to the Business and Professions Code (BPC) Section 2914 for the Committee to review and discuss at their next meeting.

At the June 13, 2019 Licensing Committee meeting, the Committee members reviewed and approved the amendments to BPC section 2914(c)(4), recommending the proposed language be presented to the Board for adoption and for staff to seek legislation upon approval.

**Attachments:**

A: Proposed Amendments for Business and Professions Code section 2914 (Marked)
B: Proposed Amendments for Business and Professions Code section 2914 (Unmarked)

**Action Requested:**

Review and adopt the proposed amendments to the Business and Professions Code Section 2914 and proceed to seek legislation.

Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475).

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (h), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

(c) (1) On or after January 1, 2020, possess an earned doctorate degree in psychology, in educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. Until January 1, 2020, the board may accept an applicant who possesses a doctorate degree in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is approved to operate in this state by the Bureau for Private Postsecondary Education.

(2) Paragraph (1) does not apply to any student who was enrolled in a doctoral program in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology at a nationally accredited or approved institution as of December 31, 2016.

(3) No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

(4) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. ~~These applicants shall provide the board with a comprehensive evaluation of t~~The degree ~~performed~~ shall be evaluated by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), or by the National Register of Health Services Psychologists (NRHSP).~~,~~ The evaluation shall:
i) Provide a transcript of the degree used to qualify for licensure in English
ii) Indicate that the degree used to qualify for licensure is verified using primary sources;
iii) Determine that the degree is equivalent to a degree that qualifies for licensure pursuant to subsections (b) and (c)(1) through (3); and

iv) Be submitted directly to the board by a member of the NACES or NRHSP.

The applicant shall provide ~~and~~ any other documentation the board deems necessary.

(d) (1) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. The supervisor shall submit verification of the experience required by this subdivision to the trainee in a manner prescribed by the board. If the supervising licensed psychologist fails to provide verification to the trainee in a timely manner, the board may establish alternative procedures for obtaining the necessary documentation. Absent good cause, the failure of a supervising licensed psychologist to provide the verification to the board upon request shall constitute unprofessional conduct.

(2) The board shall establish qualifications by regulation for supervising psychologists.

(e) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(f) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(g) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution’s required curriculum for graduation.

(h) Until January 1, 2020, an applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if both of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the former Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.

*(Amended by Stats. 2016, Ch. 484, Sec. 3. (SB 1193) Effective January 1, 2017.)*

Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475).

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (h), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

(c) (1) On or after January 1, 2020, possess an earned doctorate degree in psychology, in educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. Until January 1, 2020, the board may accept an applicant who possesses a doctorate degree in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is approved to operate in this state by the Bureau for Private Postsecondary Education.

(2) Paragraph (1) does not apply to any student who was enrolled in a doctoral program in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology at a nationally accredited or approved institution as of December 31, 2016.

(3) No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

(4) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. The degree shall be evaluated by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), or by the National Register of Health Services Psychologists (NRHSP).~~,~~ The evaluation shall:
i) Provide a transcript of the degree used to qualify for licensure in English
ii) Indicate that the degree used to qualify for licensure is verified using primary sources;
iii) Determine that the degree is equivalent to a degree that qualifies for licensure pursuant to subsections (b) and (c)(1) through (3); and
iv) Be submitted directly to the board by a member of the NACES or NRHSP.

The applicant shall provide any other documentation the board deems necessary.

(d) (1) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. The supervisor shall submit verification of the experience required by this subdivision to the trainee in a manner prescribed by the board. If the supervising licensed psychologist fails to provide verification to the trainee in a timely manner, the board may establish alternative procedures for obtaining the necessary documentation. Absent good cause, the failure of a supervising licensed psychologist to provide the verification to the board upon request shall constitute unprofessional conduct.

(2) The board shall establish qualifications by regulation for supervising psychologists.

(e) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(f) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(g) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution’s required curriculum for graduation.

(h) Until January 1, 2020, an applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if both of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the former Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.

*(Amended by Stats. 2016, Ch. 484, Sec. 3. (SB 1193) Effective January 1, 2017.)*

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# MEMORANDUM

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|---|---|
| **DATE** | July 8, 2019 |
| **TO** | Board Members |
| **FROM** | Mai Xiong<br>Licensing and BreEZe Coordinator |
| **SUBJECT** | **Agenda Item 21(c)(1-2)**<br>Informational Video for Supervisors: Discussion and Recommendations for Content to be Included in the Video<br>1) Laws and Regulations<br>2) Frequently Asked Questions (FAQs) |

## Background:

At the October 25, 2018 Licensing Committee meeting, the Committee raised concerns that some current or potential supervisors are unclear about their roles and responsibilities in providing supervision to a trainee. The Committee agreed that an informational video would be an additional resource for current supervisors and may be used as a guiding tool to prepare a licensee who will assume the role as a supervisor in future.

At the January 11, 2019 Licensing Committee meeting, the Committee discussed and agreed that the supervision videos cover the following areas – regulations, best practices, and frequently asked questions (FAQ). The Committee reviewed the content area for the relevant regulations and a flowchart to illustrate how each selected regulation pertains to the licensure process at their meeting on June 13, 2019. The Committee was also provided preliminary information of an existing psychological assistant FAQs document that is available on the Board's website for possible content that may be incorporated into the video. The Committee also expressed their intention to seek stakeholder input relating to the content areas for best practices and FAQs on the first day of their meeting scheduled for September 12-13, 2019.

The next Committee meeting will be a two-day meeting scheduled on September 12 and 13, 2019. Staff will begin outreach through the listserv and social media to announce that the Committee plans to solicit feedback from the public on the content areas for these informational videos during the first day of the meeting. SOLID of the Department of Consumer Affairs will be available to facilitate and capture the discussion relating to the informational videos.

## Action Requested:

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

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# MEMORANDUM

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|---|---|
| **DATE** | July 8, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 21(d)**<br>Discussion and Consideration for Grievance Process: How to Resolve a Discrepancy between Weekly Log and Verification of Experience |

**Background:**

At the January 11, 2019 Licensing Committee meeting, a trainee questioned the policy of the Board regarding considering weekly logs if there is a discrepancy on the hours reported by the primary supervisor on the Verification of Experience (VOE) form. The trainee also asked if the Committee would consider any grievance process when such a discrepancy occurs.

At the June 13, 2019 Licensing Committee meeting, staff explained that this does not happen often; however, when an issue arises, there is not a process in place that allows the Board to address it.

The Committee discussed and tasked staff to work with legal to draft appropriate language to have a process in regulations for the Committee's consideration at its September meeting.

**Action Requested:**

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

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# MEMORANDUM

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|---|---|
| **DATE** | July 8, 2019 |
| **TO** | Board Members |
| **FROM** | Mai Xiong<br>Licensing and BreEZe Coordinator |
| **SUBJECT** | **Agenda Item 21(e)**<br>Review and Possible Approval to the Licensing Committee's Revised Name and Goal |

## Background:

Considering the recent Strategic Planning process completed by the Board, each Committee will be reviewing their goal and recommend any changes to the full Board.

At the June 13, 2019 Licensing Committee meeting, the Committee members reviewed the current Goal and recommends the revised Committee Name and Goal as shown below be adopted by the Board to more accurately reflect what the Committee does.

Revised Committee Name: ~~Licensing~~Licensure Committee

Revised Goal:

The goal of this committee is to~~ ensure valid licensing, continuing education, and licensure renewal policies and procedures, making recommendations for changes as appropriate. The committee will also ensure a valid and reliable examination process to assess professional knowledge, as well as the laws and ethics governing the profession, working with such entities as the Association of State and Provincial Psychology Boards (ASPPB) and the Department of Consumer Affairs Offices of Professional Examination Services~~ create and maintain a clear and efficient framework for licensure, examination processes, and continuing professional development through the Board's statutes and regulations to ensure licensees meet the qualifications necessary to practice safely and ethically. The Committee communicates relevant information to its affected stakeholders.

## Action Requested:

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

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# MEMORANDUM

| | |
|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 21(f) – PSB#1**<br>Consideration of Licensing Committee Recommendations Regarding Requests for an Extension of the 72-Month Registration Period Limitation for Registered Psychological Assistant Pursuant to Section 1391.1(b) of Title 16 of the California Code of Regulations |

## Background:

California Code of Regulations, Title 16, section 1391.1 provides in part:

> (b) Registration as a psychological assistant shall be limited to a cumulative total of six years (72 months). Each registration shall be subject to annual renewal pursuant to section 1391.12.
>
> For any psychological assistant registered prior to the effective date of this subdivision, subsequent renewals or registrations shall be limited to a cumulative total of six years (72 months) from the date of the psychological assistant's next registration or renewal, whichever occurs first.
>
> Upon showing of good cause as determined by the Board, these specified time limitations may be reasonably modified.

## Psychological Assistant (PSB) #1 – Request for a One-Year Extension of the 72-Month Registration Period

PSB #1 was issued a total of two psychological assistant registrations. PSB #1's first registration was issued on May 20, 2013 and expired on May 20, 2019. PSB #1's second registration was issued on February 25, 2014 and expired on February 25, 2015. According to the 72-month limitation rule with the genesis date beginning on October 23, 2011, the projected end date of the 72-month will be on August 7, 2019, minus the number of days in delinquent status, if the PSB renews the registration successfully with no interruption.

PSB #1 reported a total of 2,058 hours of pre-doctoral Supervised Professional Experience (SPE) accrued from July 7, 2012 to June 28, 2013. This experience was accrued in a formal internship and not as a registered psychological assistant. PSB #1 has not completed the doctoral program but expects to finish the dissertation by May

2019 and graduate in June 2019 per the correspondence provided to the Board. Thus, no post-doctoral SPE has been reported.

PSB #1 stated having difficulty in completing the dissertation due to experiencing psychological issues and the need for intensive psychotherapy throughout graduate school. PSB #1 explained the attempt to overcome the difficulty in completing the dissertation, but it has been a lengthy process. PSB #1 is requesting a one-year extension hoping to continue to treat clients without disruption to their care and to gain post-doctoral SPE necessary for licensure.

**Action Requested:**

Review and consider the Licensing Committee's recommendation to approve the one-year extension request of the 72-month limitation for the psychological assistant registration.

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# MEMORANDUM

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|---|---|
| **DATE** | July 25, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 21(f) – PSB #2**<br>Consideration of Licensing Committee Recommendations Regarding Requests for an Extension of the 72-Month Registration Period Limitation for Registered Psychological Assistant Pursuant to Section 1391.1(b) of Title 16 of the California Code of Regulations |

## Background:

California Code of Regulations, Title 16, section 1391.1 provides in part:

> (b) Registration as a psychological assistant shall be limited to a cumulative total of six years (72 months). Each registration shall be subject to annual renewal pursuant to section 1391.12.
>
> For any psychological assistant registered prior to the effective date of this subdivision, subsequent renewals or registrations shall be limited to a cumulative total of six years (72 months) from the date of the psychological assistant's next registration or renewal, whichever occurs first.
>
> Upon showing of good cause as determined by the Board, these specified time limitations may be reasonably modified.

## Psychological Assistant (PSB) #2 – Request for a One-Year Extension of the 72-Month Registration Period

PSB #2 was issued a total of two psychological assistant registrations. PSB #2's first registration was issued on October 31, 2011 and expired on October 31, 2014. PSB #2's second registration was issued on May 10, 2016 and expired on May 10, 2019.

PSB #2 initially submitted an extension request for two years on May 7, 2019 and was under the impression that the registration has already met the 72-month registration limitation with the genesis date beginning on October 23, 2011. By reviewing the Board's record, staff notified PSB #2 that there are about two more months left towards the 72-month registration limitation. PSB #2 proceeded with renewing the registration and the new expiration date was on July 22, 2019. Staff notified PSB #2 that the request would need to be reviewed by the Licensing Committee at the September meeting due to the period of requested extension is more than one year, PSB #2 then revised the length of the extension request to one year. Staff explained that the extension request

would still need to be reviewed by the Board as it is not a straight forward request that staff is able to make a determination based on the review guidelines provided by the Board.

PSB #2 has successfully met the Supervised Professional Experience (SPE) requirements towards licensure as a psychologist by completing the 3,000 hours of SPE accrued through the psychological assistant registration on November 26, 2018. PSB #2 was credited 1,500 hours of SPE when applying to take the Examination for Professional Practice in Psychology (EPPP) on June 25, 2018. PSB #2 subsequently submitted the remaining 1,500 hours, which were credited towards licensure on November 26, 2018. The breakdown of the SPE is as follows:

- 1,500 hours of pre-doctoral SPE accrued from October 31, 2011 to November 30, 2012.
- 1,500 hours of post-doctoral SPE accrued from December 17, 2012 to July 9, 2014.

PSB #2 was approved to take the EPPP on July 10, 2018, and no examination attempt has been made per the Board's records. An additional verification of experience (VOE) form was submitted to the Board to supplement the extension request. This VOE reflects PSB #2 has worked an additional 3,417 hours utilizing the psychological assistant registration during the period of May 10, 2016 through May 10, 2019.

PSB #2 stated that this request is due to an unexpected life-changing event which occurred on June 26, 2016. PSB #2 spent the next few years grieving through individual counseling and PSB #2's own art therapy while continuing to treat clients. PSB #2 took steps to prepare for the EPPP, but encountered difficulties in retaining study materials and other psychological symptoms. PSB #2 is requesting a one-year extension hoping to continue to treat clients and study for the EPPP for licensure.

Below is the timeline of events for PSB #2 as shown in ascending chronological order:

| **Event** | **Date** |
|---|---|
| First PSB registration issued | October 31, 2011 |
| Birth of child | February 2014 |
| Completed 3,000 hours of SPE | July 9, 2014 |
| First PSB registration expired | October 31, 2014 |
| Second PSB registration issued | May 10, 2016 |
| Unexpected life-changing event occurred | June 26, 2016 |
| Applied to take the EPPP | June 25, 2018 |
| 1,500 hours of SPE credited towards licensure | June 25, 2018 |
| Approved to schedule and take the EPPP | July 10, 2018 |
| Remaining 1,500 hours of SPE credited towards licensure | November 26, 2018 |
| Additional 3,417 hours worked under PSB registration | May 10, 2019 |
| EPPP eligibility expired; no examination attempt was recorded | July 10, 2019 |
| Second PSB registration expired | July 22, 2019 |

**Action Requested:**

Review and consider the Licensing Committee's recommendation to deny the one-year extension request of the 72-month limitation for the psychological assistant registration.

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# MEMORANDUM

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|---|---|
| **DATE** | August 1, 2019 |
| **TO** | Board of Psychology |
| **FROM** | Liezel McCockran<br>Continuing Education and Renewals Coordinator |
| **SUBJECT** | Agenda Item# 21(g): Consideration of Licensing Committee Recommendations Regarding Request for Continuing Education (CE) Exception pursuant to 16 CCR 1397.62(b) |

**Background:**

Pursuant to the continuing education course requirements set forth by Title 16 CCR section 1397.61(c), licensees are required to take CE courses provided by American Psychological Association (APA), or its approved sponsors, Continuing Medical Education (CME) courses specifically applicable and pertinent to the practice of psychology and that are accredited by the California Medical Association (CMA) or the Accreditation Council for Continuing Medical Education (ACCME), or provided by the California Psychological Association, or its approved sponsors.

16 CCR section 1397.62(b) provides in part:

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

(1) An exception granted pursuant to this subsection means that the Board will accept continuing education courses that are not acceptable pursuant to section 1397.61(c) provided that they are directly related to the licensee's specific area of practice and offered by recognized professional organizations. The Board will review the licensee's area of practice, the subject matter of the course, and the provider on a case-by-case basis. This exception does not mean the licensee is exempt from completing the continuing education required by Business and Professions Code section 2915 and this article.

(2) Licensees seeking this exception shall provide all necessary information to enable the Board to determine the lack of available approved continuing education and the relevance of each course to the continuing competence of the licensee. Such a request shall be submitted in writing and must include a clear statement as to the relevance of the course to the practice of psychology and the following information:

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

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

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

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

Staff requested that the Licensing Committee review the exception request of Licensee #1, summarized below, and the supporting documentation to determine if the Licensee has satisfied the requirements of 1397.62(b) at the (DATE) Licensing Committee meeting.

**Licensee #1 – Request for CE exception**

Licensee License e#1 is requesting a CE exception for 18 hours out of the required 36 CE hours. The CE exception is being requested for a CE course titled 'Nutritional and Integrative Medicine for Mental Health Professionals'. The training meets the educational requirements to become a Certified Mental Health Integrative Medicine Provider (CMHIMP).

Licensee #1 is a [position title redacted] for the state Department of Corrections and Rehabilitation. Licensee #1's primary job duty is to review and monitor referrals of parolees with a qualifying mental health classification to outside contracted agencies for various services. Licensee #1 states that the goal of this position is to help reduce recidivism. It has been attested by Licensee #1 that in this position, no direct mental health services are provided by Licensee#1 as the focus of the position is to monitor the services provided by other qualified providers.

Licensee #1 stated that there is no direct link between this training and Licensee #1's current job duties. However, Licensee #1 is interested in learning about the impact of diet and nutrition on mood, thoughts, and behavior. Licensee #1 states that there is reliable evidence that non-pharmaceutical and dietary intake have direct impact on key neurotransmitters that regulate/modulate mood and behavior. Licensee #1 states that currently, there are not many psychologists in the field with this expertise.

Licensee #1 has not scheduled other trainings yet to fulfill the next renewal requirement in 2021 but will be taking additional other trainings to satisfy the remaining requirements.

**Action Requested:**

The Licensing Committee recommends denying Licensee #1's CE exception request as there are ample courses provided by approved CE providers in the same content area that are geared more to the practice of psychology.

Attachment: CE Course and Instructor Information

## 21(g) Request for Continuing Education Exception

A hardcopy of this document will be made available at the meeting or upon request. Requests may be emailed to bopmail@dca.ca.gov.

California Board of PSYCHOLOGY

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# MEMORANDUM

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| **DATE** | July 31, 2019 |
| **TO** | Board Members |
| **FROM** | Stephanie Cheung<br>Licensing Manager |
| **SUBJECT** | **Agenda Item 22**<br>Consideration of Renaming Registered Psychological Assistant for Purposes of Changes to Pathways to Licensure |

## Background:

The statutory and regulatory proposed amendments relating to Pathways to Licensure were reviewed and approved by the Board at its November 16, 2018 meeting. One of the approved proposed amendments was to rename "Psychological Assistant" to "Psychological Associate".

It was brought to staff's attention that, a title that includes the word "Associate", could be categorized as an independent practitioner for reimbursement purpose. This perception could potentially mislead the public to believe that "Psychological Associates" are independent practitioners while, in actuality, they are required to be under the immediate supervision of a qualified primary supervisor in order to perform any psychological functions pursuant to Business and Professions Code, section 2913, which provides in part:

> "(c)(1) The psychological assistant is at all times under the immediate supervision, as defined in regulations adopted by the board, of a licensed psychologist, or a licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology or the American College of Osteopathic Board of Neurology and Psychiatry, who shall be responsible for insuring that the extent, kind, and quality of the psychological services that the psychological assistant performs are consistent with his or her training and experience and be responsible for the psychological assistant's compliance with this chapter and regulations."

## Actions Requested:

Discuss and consider the renaming of registered psychological assistant. Once a name is determined, delegate to staff to make this change in the proposed amendments in both statutory and regulatory language relating to Pathways to Licensure.