

MEMORANDUM

DATE	April 9, 2017
TO	Board of Psychology
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #4(b)(1)(A)(5) – SB 572 (Stone) Healing arts licensees: violations: grace period

Background:

This bill would prohibit healing arts boards under the Department of Consumer Affairs (DCA) from issuing a disciplinary action or otherwise penalizing a licensee who commits a violation that does not cause irreparable harm to a consumer and is remedied within 15 days.

This bill raises multiple concerns for board staff regarding the Board's ability to hold its licensees to the current statutory and regulatory licensing and ethical standards.

Location: Senate Committee on Business Professions and Economic Development

Status: 03/29/2017 Hearing set for April 17, 2017

Action Requested:

Staff requests the Board take an Oppose position on SB 572 (Stone). This bill purposefully undermines the Board of Psychology's (Board's) authority to discipline its licensees who violate the Psychology Licensing Law, thereby impeding the Board's mandate of consumer protection and enforcement of ethical standards of practice within the field of psychology.

Attachment A: Analysis of SB 572 (Stone)

Attachment B: SB 572 (Stone) Text

2017 Bill Analysis

Author: Stone	Bill Number: SB 572	Related Bills:
Sponsor: Author Sponsored	Version: March 27, 2017	
Subject: Healing arts licensees: violations: grace period		

SUMMARY

This bill would prohibit healing arts boards under the Department of Consumer Affairs (DCA) from issuing a disciplinary action or otherwise penalizing a licensee who commits a violation that does not cause irreparable harm to a consumer and is remedied within 15 days.

RECOMMENDATION

OPPOSE. Staff recommends an Oppose position on SB 572. This bill purposefully undermines the Board of Psychology's (Board's) authority to discipline its licensees who violate the Psychology Licensing Law, thereby impeding the Board's mandate of consumer protection and enforcement of ethical standards of practice within the field of psychology. This bill is not only ill defined and ambiguous, but could have far reaching negative impacts on the consumers of psychological services in California who rely on the Board to ensure that their licensed providers are competent, ethical, and provide the highest quality of care.

REASON FOR THE BILL

According to the author, there is no grace period for licensees that are in violation of minor provisions. The lack of a grace period gives incentive for the governing board's to seek out minor violations that are of no immediate danger to anyone which can be an unnecessary burden. The bill seeks to give licensees a chance to correct minor violations without a financial punishment.

ANALYSIS

Current law provides the Board with statutory and regulatory authority to protect the public through the application and enforcement of standards for the ethical and legal

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

practice of psychology in California. SB 572 would add language to the general provisions of the Business and Professions Code which would prohibit the Board from issuing a disciplinary action or otherwise penalizing a licensee who commits a violation if all of the following apply:

- (a) The violation did not cause any irreparable harm and will not result in irreparable harm if left uncorrected for 15 days.
- (b) The licensee corrects the violation within 15 days.
- (c) The licensee is not currently on probation at the time of the violation.

This bill raises multiple concerns for Board staff regarding its ability to hold its licensees to the current statutory and regulatory licensing and ethical standards.

Definition of Irreparable Harm

Irreparable harm is not defined within the language of SB 572. Without this definition staff is concerned that each case will need to be reviewed by a contracted subject matter expert to determine if irreparable harm has occurred. If this additional review is required, this will add additional time and cost to the review of all enforcement cases.

Definition of 15 days

The language does not specify when the 15 day period is to begin and how it is to be calculated. Will the Board be required to send certified letters to every licensee who commits one of these applicable offenses and confirm receipt of the letter before the 15 day period can begin? Once the 15 day period begins, will that 15 calendar days or 15 business days, and how will holidays treated?

Applicability to Continuing Education Citations

Licensees are given two years to complete their required 36 hours of continuing education. If the bill passed, each licensee may be entitled to receive an additional 15 days to make up any deficient hours found during a continuing education audit. Staff believes that this undermines the purpose of having continuing education requirements and diminishes the Board's ability to effectively audit its licensees.

Citation versus Formal Discipline

The Board, at its discretion, can issue a citation and fine in lieu of formal discipline. This would be difficult to accomplish if each case required a subject matter experts determination regarding irreparable harm. The cost involved for this determination would need to be recovered should the licensee be determined to have caused irreparable harm, and therefore the Board would pursue formal discipline. Likewise, for those cases determined to not have caused irreparable harm, the Board would have to

incur the costs of the subject matter experts review fees without any option for cost recovery.

Multiple Offenders

SB 572 states that the provisions of the bill do not apply to a licensee that is on probation. While that may help curb abuse by some bad actors, there is no provision regarding licensees that are repeat offenders of the same or similar provisions. Staff is concerned that this bill would incentivize licensees to disregard certain provisions of the Psychology Licensing Law, as there would be no repercussions for those "minor" violations such as completing continuing education, retaining patient records, or practicing with an expired license.

The Board's Ability to Meet its Key Performance Indicators

Currently, the Board is given 180 days to investigate a complaint. Board staff has serious concerns regarding their ability to meet the required timeframes if each violation is required to be reviewed by an expert to determine if irreparable harm was caused.

Should SB 572 be signed into law as written, the Board would lose its ability to effectively regulate the practice of psychology in California, thereby neglecting its mandate of consumer protection, and exposing consumers of psychological services to undue harm.

LEGISLATIVE HISTORY

None

OTHER STATES' INFORMATION

None

PROGRAM BACKGROUND

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists, including enforcing standards of ethical conduct.

FISCAL IMPACT

This bill has an undeterminable fiscal impact. The cost to the Board could be significant if the Board is required to seek expert opinion to assist with the determination of irreparable harm for each individual case.

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: None

Opponents: None

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SECTION 1. *Article 16 (commencing with Section 870) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:*

Article 16. Grace Period for Violations

870. *Notwithstanding any other law, a person with a license issued pursuant to this division shall not be subject to disciplinary action by, or otherwise penalized by, the board that issued the license for a violation of a provision applicable to the license if all of the following apply:*

- (a) The violation did not cause any irreparable harm and will not result in irreparable harm if left uncorrected for 15 days.*
- (b) The licensee corrects the violation within 15 days.*
- (c) The licensee is not currently on probation at the time of the violation.*