


## MEMORANDUM

<b>DATE</b>	June 1, 2017
<b>TO</b>	Board of Psychology
<b>FROM</b>	 Cherise Burns Central Services Manager
<b>SUBJECT</b>	Agenda Item #12(b)(2)(E) – SB 798 (Hill) Healing Arts: Boards

### Background:

This bill is the Sunset Bill for the Medical Board of California (MBC), which includes provisions transferring the licensing and regulation of Research Psychoanalysts to the Board of Psychology (Board). Currently Research Psychoanalysts are licensed and regulated by MBC, which organizationally is a historical remnant that the Senate Committee on Business, Professions, and Economic Development and the Medical Board believe it is time to remedy. The Senate Committee on Business, Professions, and Economic Development (Senate BP&ED) expressed to Board staff that the Board appears to be the most appropriate regulatory body for these professionals and wishes to transfer their oversight to the Board.

On April 21, 2017 the Board took a **Support if Amended** position on SB 798, seeking delayed implementation of the research psychoanalyst provisions, addition of a provision to transfer and extend current regulatory provisions until the Board can promulgate new regulations, and a technical amendment regarding which fund registration money should be deposited into once these provisions take effect. Board members also had questions regarding implementation of the provisions, current MBC practices, and code of ethics and disciplinary guideline questions that Board staff will be researching and meeting with the MBC on in the near future to answer.

After the Board's approval of the position, staff contacted Senate BP&ED to formally notify them of the Board's position and requested amendments. SB 798 was amended on May 26, the amendments relating to research psychoanalysts are now found in sections 92-96 and 98-103 of the bill (Attachment B). The amendments include, among other things, delayed implementation of the transfer of the research psychoanalyst registration program to the Board until January 1, 2019, continuation of all agreements entered into with, and orders and regulations issued by, MBC as if they were entered into with, or issued by, the Board, and specification that registration fees for the program will be paid into the Psychology Fund.

Additionally, Board staff and the Board's legal counsel initiated conversations with MBC staff to get clarification on the current registration program's operations and will continue

to meet with MBC staff during implementation of the bill. Staff is also researching the Board's questions related to the research psychoanalyst statutory and regulatory provisions, disciplinary issues, and a code of ethics for these professionals. Board staff will also be reaching out to the American Psychoanalytic Association (APsaA) to gather additional information on the field.

**Location:** Assembly

**Status:** 6/1/2017 In Assembly. Read first time and held at Desk.

**Votes:** 5/31/2017 Senate Floor (36-4-0)  
5/25/2017 Senate Committee on Appropriations (7-0-0)  
5/15/2017 Senate Committee on Appropriations (7-0-0) Placed on  
Suspense  
4/24/2017 Senate Committee on Business, Professions, and Economic  
Development (8-0-1)

**Action Requested:**

Staff recommends that the Board adopt a **Support** position on SB 798 (Hill) as the Board's requested amendments have been incorporated into the bill and begin the process of establishing an Ad Hoc Committee for Research Psychoanalysts.

Attachment A: SB 798 (Hill) Analysis REVISED

Attachment B: SB 798 (Hill) Text

## 2017 Bill Analysis – REVISED

<b>Author:</b> Hill	<b>Bill Number:</b> SB 798	<b>Related Bills:</b>
<b>Sponsor:</b>	<b>Version:</b> Amended 5/26/2017	
<b>Subject:</b> Healing Arts: Boards.		

### SUMMARY

This bill would make various changes to the Medical Board of California (MBC) Licensing Law and Osteopathic Medical Board of California Licensing Law, both of which are being reauthorized by the Legislature through the Sunset Process. Sections 92-96 and 98-103 of the bill would transfer the registration and regulation of Research Psychoanalysts from MBC to the Board of Psychology (Board) effective January 1, 2018. This bill would additionally make Research Psychoanalysts liable to enforcement through the Board’s unprofessional conduct statutes. This bill would transfer funds collected from the licensing and regulation of Research Psychoanalysts from MBC to the Board and authorize the Board to employ whatever additional clerical assistance is necessary for the administration of these provisions.

### RECOMMENDATION

**SUPPORT** – The transfer of registration and oversight of Research Psychoanalysts to the Board makes sense from a policy and regulatory perspective and agrees that these registrants would be more appropriately overseen by the Board due to its expertise in the discipline of Psychology and in administering similar registration programs that allow for limited clinical practice.

### REASON FOR THE BILL

This bill is a Sunset Bill and therefore is the Senate Business, Professions and Economic Developments (Senate BP&ED) proposal for reauthorization of the MBC. Senate BP&ED Committee Staff noted that psychoanalysis is a discipline of psychology and that it does not make sense that MBC administers the Research Psychoanalyst registration program instead of the Board of Psychology, which oversees those practicing psychology and already successfully administers registration programs for

Other Boards/Departments that may be affected:	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
<b>Policy &amp; Advocacy Committee Position:</b> <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 Date: _____ Vote: _____	<b>Full Board Position:</b> <input type="checkbox"/> Support <input checked="" type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: <u>April 21, 2017</u> Vote: <u>6 Aye, 0 No, Passed</u>

individuals with practice limitations in psychology. This bill would transfer the administration and oversight of the Research Psychoanalyst registration program to the Board.

## ANALYSIS

According to the 1995 MBC publication "[From Quackery to Quality Assurance: The First Twelve Decades of the Medical Board of California](#)," Research Psychoanalysts as a registration category came from legislative efforts in 1978-1979 by four psychoanalysis schools in California (three in Los Angeles and one in San Francisco) that trained physicians and psychologists in classical psychoanalysis. These analysts were not allowed to legally treat patients without a license as a physician or psychologist, so the four schools authored legislation to license these lay analysts as "Research Psychoanalysts" with one of MBC's organizational predecessor the Division of Allied Health Professions, to authorize approval of schools for psychoanalysis, and to allow these new licensees who would be required to complete clinical training in psychoanalysis to treat patients as an adjunct to teaching, training, or research. The term "adjunct" would later be defined in Title 16 of the California Code of Regulations Section 1371, originally promulgated in 1981 and revised and renumbered in 1983, to mean the following:

*"Adjunct" means that the research psychoanalyst may not engage in a full-time clinical practice rendering psychoanalytic services on a fee-for-service basis. A research psychoanalyst may render psychoanalytic services on a fee-for-service basis for not more than an average of one-third of his or her total professional time including time spent in practice, teaching, training or research. Such teaching, training or research shall be the primary activity of the research psychoanalyst.*

Since that time, the statutory and regulatory requirements for Research Psychoanalysts have received minimal modification or clarification aside from adding disciplinary and use of controlled substance and dangerous drug provisions, and statutes relating to revocation for conviction of specified sex offenses.

According to the [2016 DCA Annual Report](#), MBC regulated 82 Research Psychoanalysts, processed 4 new applications, issued 9 new registrations, and renewed 78 registrations in 2016. Currently, this workload is completed by an Associate Governmental Program Analyst employed by MBC; this workload represents 25 percent of that analyst's workload.

This bill would transfer the registration and oversight of Research Psychoanalysts from MBC to the Board effective January 1, 2018. During MBC's Sunset Review this year, Senate BP&ED noted that since psychoanalysis is a discipline of psychology it did not make sense that MBC was registering these Research Psychoanalysts. In Senate BP&ED's Report "[Background Paper for The Medical Board of California: Identified Issues, Background and Recommendations Regarding the Medical Board of California](#)," they noted that "It appears that the Board of Psychology may have more expertise in this discipline and may be a more appropriate entity to register RPs [Registered Psychoanalysts] who engage in a psychology based practice".

Board staff agrees that registration of Research Psychoanalysts by the Board makes sense from a policy and regulatory perspective and that these registrants would be more appropriately overseen by the Board of Psychology due to its expertise in the discipline of Psychology and in administering similar registration programs that allow for limited clinical practice. However, Board staff notes that the statutes and regulations for these registrants would necessitate extensive review and potential revision, and the field would need to be better explored to determine why this population has the specific current practice limitations in place and their relevance, review of other licensing requirements, and the reasons for not requiring these registrants to complete any continuing education when they are not a training category and provide independent psychoanalysis therapy to patients, even if limited to only a third of their practice. With the delayed implementation provisions added to the bill by the May 26 amendments, Board staff is confident that the Board can successfully assume the research psychoanalyst program and recommends the Board take a **Support** position on the bill.

### **LEGISLATIVE HISTORY**

AB 2745 (Statutes of 2016, Chapter 303, Sections 9-11) this bill updated the definition of unprofessional conduct to include the use of any controlled substance, the use of any dangerous drugs, or the use of alcoholic beverages. The bill also required the revocation of a registration for a person required to register as a sex offender, as specified.

AB 253 (Statutes of 2007, Chapter 678, Sections 25-26) this bill made technical clarifying changes to the general provisions relating to Research Psychoanalysts.

### **OTHER STATES' INFORMATION**

Board staff reached out to other states through the Association of State and Provincial Psychology Boards list serve and found that of the 13 states that responded to our inquiry, none of these states have a specific registration category for Psychoanalysts or Research Psychoanalysts.

### **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.

This bill would create additional workload for Board staff that is not absorbable within current resources. In particular, the Board would need to hire an additional Associate Governmental Program Analyst to administer the entire registration program including extensive review of statutory and regulatory provisions, registration criteria, and other requirements of these registrants, updating and processing initial and renewal applications, integration of these registrants into the BreZE system, updates to the Board's website and print materials, and a survey of the registration population to better understand the state of the field and how it differs from the Board's other licensing and

registration categories. The transfer of these registrants would also create minor and absorbable increases for other Board staff that open mail, process payments, submit tickets to the BreEZe system, and update the Board's website.

Additionally, upon assumption of the Research Psychoanalyst registration program, the Board would need create an Ad Hoc Committee to review the statutes and regulations for these registrants, many which have not been updated since the early 1980's, and the registration program's components. This Ad Hoc Committee would need to have at least one licensed Psychologist and one subject matter expert who is a Research Psychoanalyst, and would need to meet at least twice a year for the first few years in order to do a complete review of the field and requirements. The Ad Hoc Committee would review the statutory and regulatory requirements for licensure, the ethical standards and scope of practice for these registrants, and develop, conduct and review a job analysis of the field to determine the need for updated licensing and renewal requirements, continuing education requirements, and any necessary disciplinary provisions.

### **FISCAL IMPACT**

Board staff estimates that with the amount of statutory, regulatory, and administrative review required to successfully administer the Research Psychoanalyst registration program and staff the corresponding Ad Hoc Committee, the Board will need to hire one additional Associate Governmental Program Analyst to administer the program. Board staff will provide more detailed cost estimates at a later date.

The Board will also need to contract with a Research Psychoanalyst to be a subject matter expert for the Ad Hoc Committee, which would include a per diem fee of \$100 per day for two meetings per year along with reimbursement for travel expenses.

### **ECONOMIC IMPACT**

Not Applicable

### **LEGAL IMPACT**

Not Applicable

### **APPOINTMENTS**

Not Applicable

### **SUPPORT/OPPOSITION**

**Support:** None on file.

**Opposition:** None on file.

### **ARGUMENTS**

**Proponents:** None on file.

**Opponents:** None on file.

*2499.7. (a) Certificates to practice podiatric medicine shall expire at midnight on the last day of the birth month of the licensee during the second year of a two-year term.*

*(b) To renew an unexpired certificate, the licensee, on or before the date on which the certificate would otherwise expire, shall apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.*

**SEC. 91.** Section 2525.2 of the Business and Professions Code is amended to read:

**2525.2.** An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of ~~California~~ *California, the California Board of Podiatric Medicine,* or the Osteopathic Medical Board of California shall not recommend medical cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

**SEC. 92.** *The heading of Chapter 5.1 (commencing with Section 2529) of Division 2 of the Business and Professions Code is repealed.*

**SEC. 93.** Section 2529 of the Business and Professions Code is amended to read:

**2529.** (a) Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Center, or institutes deemed equivalent by the Medical Board of California who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

(b) Those students and graduates seeking to engage in psychoanalysis under this chapter shall register with the Medical Board of California, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of those persons for unprofessional conduct as defined in Sections 726, 2234, 2235, and 2529.1

*(c) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.*

**SEC. 94.** Section 2529.1 of the Business and Professions Code is amended to read:

**2529.1.** (a) The use of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the registrant, or to any other person or to the public, or to the extent that this use impairs the ability of the registrant to practice safely or more than one misdemeanor or any felony conviction involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The board may order discipline of the registrant in accordance with Section 2227 or may order the denial of the registration 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 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing this person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

*(c) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.*

**SEC. 95.** Section 2529.5 of the Business and Professions Code is amended to read:

**2529.5.** (a) Each person to whom registration is granted under the provisions of this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the Medical Board of California at a sum not in excess of one hundred dollars (\$100).

(b) The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the board at a sum not in excess of fifty dollars (\$50). Students seeking to renew their registration shall present to the board evidence of their continuing student status.

(c) The money in the Contingent Fund of the Medical Board of California shall be used for the administration of this chapter.

*(d) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.*

**SEC. 96.** Section 2529.6 of the Business and Professions Code is amended to read:

**2529.6.** (a) Except as provided in subdivisions (b) and (c), the board shall revoke the registration of any person who has been required to register as a sex offender pursuant to Section 290 of the Penal Code for conduct that occurred on or after January 1, 2017.

(b) This section shall not apply to a person 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.

(c) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

(d) A proceeding to revoke a registration pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*(e) This section shall become inoperative on January 1, 2019, and shall be repealed as of that date.*

**SEC. 97.** Section 2566.2 is added to the Business and Professions Code, to read:

**2566.2.** Every registration issued to a dispensing optician, contact lens dispenser, and spectacle lens dispenser shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

**SEC. 98.** The heading of Article 3.5 (commencing with Section 2950) is added to Chapter 6.6 of Division 2 of the Business and Professions Code, to read:

**Article 3.5. Research Psychoanalysts**

**SEC. 99.** Section 2950 is added to the Business and Professions Code, to read:

**2950.** (a) Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Center, or institutes deemed equivalent by the board, who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

(b) Those students and graduates seeking to engage in psychoanalysis under this article shall register with the board, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of those persons for unprofessional conduct as defined in Sections 726, 2960, 2960.6, 2969, and 2996.

*(c) This section shall become operative on January 1, 2019.*

**SEC. 100.** Section 2951 is added to the Business and Professions Code, to read:

**2951.** (a) The use of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the registrant, or to any other person or to the public, or to the extent that this use impairs the ability of the registrant to practice safely, or more than one misdemeanor or any felony conviction involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section. The board may order discipline of the registrant in accordance with Article 4 (commencing with Section 2960) or may order the denial of the registration 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 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of



*the Penal Code, allowing this person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.*

*(c) This section shall become operative on January 1, 2019.*

**SEC. 101.** *Section 2952 is added to the Business and Professions Code, to read:*

**2952.** *(a) Each person to whom registration is granted under the provisions of this chapter shall pay into the Psychology Fund a fee to be fixed by the board at a sum not in excess of one hundred dollars (\$100).*

*(b) The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the board at a sum not in excess of fifty dollars (\$50). Students seeking to renew their registration shall present to the board evidence of their continuing student status.*

*(c) The money in the Contingent Fund of the Medical Board of California shall be used for the administration of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to Chapter 5.1 (commencing with Section 2529) as it read before the enactment of the statute that added this section, shall be deposited in the Psychology Fund.*

*(d) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this article.*

*(e) This section shall become operative on January 1, 2019.*

**SEC. 102.** *Section 2953 is added to the Business and Professions Code, to read:*

**2953.** *(a) Except as provided in subdivisions (b) and (c), the board shall revoke the registration of any person who has been required to register as a sex offender pursuant to Section 290 of the Penal Code for conduct that occurred on or after January 1, 2017.*

*(b) This section shall not apply to a person 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.*

*(c) This section shall not apply to a person who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.*

*(d) A proceeding to revoke a registration pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

*(e) This section shall become operative on January 1, 2019.*

**SEC. 103.** *Section 2954 is added to the Business and Professions Code, to read:*

**2954.** *(a) All agreements entered into with, and orders and regulations issued by, the Medical Board of California shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Board of Psychology, respectively.*

*(b) This section shall become operative on January 1, 2019.*

**SEC. 104.** *Section 4170 of the Business and Professions Code is amended to read:*

**4170.** *(a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:*

*(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.*

*(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.*

*(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.*

*(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.*