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AB-2968 Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure. (2017-2018)

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Assembly Bill No. 2968

CHAPTER 778

An act to amend Sections 337 and 728 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2968, Levine. Psychotherapist-client relationship: victims of sexual behavior and sexual contact: informational brochure.

Existing law requires the Department of Consumer Affairs to prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and their advocates, and requires the brochure to be developed by the department in consultation with the office of Criminal Justice Planning and the office of the Attorney General, as specified. Existing law requires the brochure to include specified subjects and requires the brochure to be provided to individuals who contact the Medical Board of California and affiliated health boards or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual relations.

This bill would instead require the brochure to be prepared, developed, and disseminated by the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California. The bill would require that the brochure also be for victims of psychotherapist-client sexual behavior. The bill would revise the required content of the brochure, would require the brochure to be made available on the Internet Web sites of the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California, and would require the brochure to be provided to each individual contacting those boards regarding a complaint involving psychotherapist-client sexual behavior and sexual contact. The bill would also make conforming changes.

Existing law requires a psychotherapist or an employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact, as defined, with a previous psychotherapist to provide a brochure developed by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapists. Existing law defines "psychotherapist" for purposes of those provisions to include various mental health practitioners and makes a failure to comply unprofessional conduct.

This bill would make this requirement also apply in the case of alleged sexual behavior, as defined, with a previous psychotherapist and would specify that the required brochure is the above-described brochure. The bill would also expand the list of mental health practitioners included in the definition of "psychotherapist" for those purposes.

This bill would incorporate additional changes to Section 728 of the Business and Professions Code proposed by AB 93 to be operative only if this bill and AB 93 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 337 of the Business and Professions Code is amended to read:

337. (a) The Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California shall prepare and disseminate an informational brochure for victims of psychotherapist-client sexual behavior and sexual contact and their advocates. This brochure shall be developed by the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.

(b) The brochure shall include, but is not limited to, the following:

- (1) A legal and an informal definition of psychotherapist-client sexual behavior and sexual contact.
- (2) A brief description of common personal reactions.
- (3) A client's bill of rights.
- (4) Instructions for reporting psychotherapist-client sexual behavior and sexual contact.
- (5) A full description of administrative complaint procedures.
- (6) Information that other civil and criminal remedies may also be available to them in regards to the incident.
- (7) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, or the Osteopathic Medical Board of California regarding a complaint involving psychotherapist-client sexual behavior and sexual contact.

(d) The brochure shall be made available on the Internet Web sites of the Board of Behavioral Sciences, the Board of Psychology, the Medical Board of California, and the Osteopathic Medical Board of California.

SEC. 2. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse or alleged sexual behavior or sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the client a brochure developed pursuant to Section 337 that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss the brochure with the client.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

- (1) "Psychotherapist" means any of the following:
 - (A) A physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy.
 - (B) A psychologist.
 - (C) A psychological assistant.
 - (D) A registered psychologist.
 - (E) A trainee under the supervision of a licensed psychologist.
 - (F) A marriage and family therapist.
 - (G) An associate marriage and family therapist.
 - (H) A marriage and family therapist trainee.
 - (I) A licensed educational psychologist.
 - (J) A clinical social worker.
 - (K) An associate clinical social worker.

(L) A licensed professional clinical counselor.

(M) An associate professional clinical counselor.

(N) A clinical counselor trainee.

(2) "Sexual behavior" means inappropriate contact or communication of a sexual nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues.

(3) "Sexual contact" means the touching of an intimate part of another person.

(4) "Intimate part" and "touching" have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

(5) "The course of a prior treatment" means the period of time during which a client first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the client as being within his or her scope of practice, until the psychotherapist-client relationship is terminated.

SEC. 2.5. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse or alleged sexual behavior or sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the client a brochure developed pursuant to Section 337 that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss the brochure with the client.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means any of the following:

(A) A physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy.

(B) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).

(C) A psychological assistant.

(D) A registered psychologist.

(E) A trainee under the supervision of a licensed psychologist.

(F) A marriage and family therapist.

(G) An associate marriage and family therapist.

(H) A marriage and family therapist trainee.

(I) A licensed educational psychologist.

(J) A clinical social worker.

(K) An associate clinical social worker.

(L) A licensed professional clinical counselor.

(M) An associate professional clinical counselor, as specified in Chapter 16 (commencing with Section 4999.10).

(N) A clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10).

(2) "Sexual behavior" means inappropriate contact or communication of a sexual nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues.

(3) "Sexual contact" means the touching of an intimate part of another person.

(4) "Intimate part" and "touching" have the same meanings as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

(5) "The course of a prior treatment" means the period of time during which a client first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the client as being within his or her scope of practice, until the psychotherapist-client relationship is terminated.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 728 of the Business and Professions Code proposed by both this bill and Assembly Bill 93. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 728 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 93, in which case Section 2 of this bill shall not become operative.