

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1172

Introduced by Senator Lieu

February 22, 2012

~~An act to amend Section 1733 of the Insurance Code, relating to licensing.~~ *An act to add Article 15 (commencing with Section 865) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Lieu. ~~Insurance licensees: fiduciary duties: Sexual orientation change efforts.~~

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, psychiatric technicians, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit psychotherapists, as defined, from performing sexual orientation change efforts, as defined, in the absence of informed consent of the patient, which is to be provided on a form developed by the State Department of Mental Health. Informed consent would not be effective for patients under 18 years of age. The bill would require the department to prepare and disseminate an informational brochure on sexual orientation change efforts. The bill would require a psychotherapist who performs sexual orientation change efforts to report certain data to the department, which would be required to summarize this information in an annual report. The bill would provide for a cause of action against psychotherapists by patients or former patients in specified cases.

Existing law requires that certain licensees, including, but not limited to, those licensed as surplus line brokers, receiving funds as premium or return premium on or under any policy of insurance or undertaking of bail, receive and hold those funds in his or her fiduciary capacity.

This bill would make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 15 (commencing with Section 865) is
2 added to Chapter 1 of Division 2 of the Business and Professions
3 Code, to read:

4

5 Article 15. Sexual Orientation Change Efforts

6

7 865. For the purposes of this article, the following terms shall
8 have the following meanings:

9 (a) “Department” means the State Department of Mental
10 Health.

11 (b) “Informed consent” means consent that is provided in
12 writing by a patient to a psychotherapist with whom the patient
13 has a therapeutic relationship. The informed consent must explicitly
14 manifest the patient’s voluntary informed consent to sexual
15 orientation change efforts as set forth in Section 865.1.

16 (c) “Psychotherapist” means a physician and surgeon
17 specializing in the practice of psychiatry, a psychologist, a
18 psychological assistant, a psychiatric technician, a marriage and
19 family therapist, a registered marriage and family therapist, intern,
20 or trainee, an educational psychologist, a licensed clinical social
21 worker, an associate clinical social worker, a licensed professional
22 clinical counselor, or a registered clinical counselor, intern, or
23 trainee.

24 (d) “Psychotherapy” means the professional assessment,
25 evaluation, treatment, or counseling of a mental or emotional
26 illness, symptom, or condition by a psychotherapist.

27 (e) “Sexual orientation change efforts” means psychotherapy
28 aimed at altering the sexual or romantic desires, attractions, or
29 conduct of a person toward people of the same sex so that the
30 desire, attraction, or conduct is eliminated or reduced or might

1 *instead be directed toward people of a different sex. It does not*
2 *include psychotherapy aimed at altering sexual desires, attractions,*
3 *or conduct toward minors or relatives or regarding sexual activity*
4 *with another person without that person’s consent.*

5 (f) *“Therapeutic deception” means a representation by a*
6 *psychotherapist that sexual orientation change efforts are endorsed*
7 *by leading psychological associations or that they can or will*
8 *reduce or eliminate a person’s sexual or romantic desires,*
9 *attractions, or conduct toward another person of the same sex.*

10 (g) *“Therapeutic relationship” means the relationship that*
11 *exists during the time the patient receives psychotherapy.*

12 (h) *“Leading psychological associations” means the American*
13 *Psychiatric Association, the American Psychological Association,*
14 *the American Counseling Association, the National Association*
15 *of Social Workers, and the American Pediatrics Association.*

16 865.1. (a) *Sexual orientation change efforts shall not be*
17 *engaged in absent informed consent to therapy by the patient as*
18 *prescribed in subdivision (b).*

19 (b) *To obtain informed consent, a treating psychotherapist shall*
20 *provide a patient with the following information prior to engaging*
21 *in sexual orientation change efforts, on a form prescribed by the*
22 *department:*

23 (1) *The reason or reasons for recommending the use of sexual*
24 *orientation change efforts, including, but not limited to, the nature*
25 *and seriousness of the patient’s mental illness, disorder, or*
26 *condition leading to the recommendation.*

27 (2) *The nature of the procedures to be used in the sexual*
28 *orientation change efforts and the anticipated frequency and*
29 *duration of the sexual orientation change efforts.*

30 (3) *The probable degree and duration, either temporary or*
31 *permanent, of improvement to the patient’s mental illness, disorder,*
32 *or condition expected as a result of sexual orientation change*
33 *efforts.*

34 (4) *The nature, degree, duration, and the probability of the risks*
35 *and side effects that may be attributable to sexual orientation*
36 *change efforts.*

37 (5) *The views of leading psychological associations on sexual*
38 *orientation change efforts.*

1 (6) A list of all reasonable alternative treatments and why the
2 psychotherapist is recommending sexual orientation change efforts
3 over these alternative treatments.

4 (c) At the time a psychotherapist provides the patient with the
5 informed consent form, as prescribed in subdivision (b), the patient
6 shall also receive a copy of the informational brochure
7 disseminated by the department as described in subdivision (c) of
8 Section 865.2.

9 865.2. (a) (1) Under no circumstances shall a patient under
10 18 years of age undergo sexual orientation change efforts,
11 regardless of the willingness of a patient's parent, guardian,
12 conservator, or other person to authorize such efforts.

13 (2) The right to refuse sexual orientation change efforts is not
14 waived by giving informed consent and that consent may be
15 withdrawn at any time prior to, during, or between sessions of
16 sexual orientation change efforts.

17 (3) Any act of duress or coercion by any person or facility shall
18 invalidate the patient's consent to sexual orientation change efforts.

19 (b) (1) A psychotherapist who performs sexual orientation
20 change efforts shall file a report with the department setting forth
21 the data required by paragraph (2). An institution in which sexual
22 orientation change efforts are performed shall be the reporting
23 entity for all sexual orientation change efforts treatments performed
24 at that institution.

25 (2) The following detailed information for each reporting period
26 shall be made on forms prescribed by the department within 30
27 days after January 1 and July 1 of each year:

28 (A) The total number of patients who received sexual orientation
29 change efforts.

30 (B) Information regarding each patient who received or
31 continued to receive sexual orientation change efforts, including
32 all of the following:

33 (i) Diagnosis.

34 (ii) Duration of sexual orientation change efforts and frequency
35 of therapeutic visits.

36 (iii) Age, sex, and ethnicity of the patient.

37 (iv) Whether the patient was capable of giving his or her written
38 informed consent.

1 (v) *Whether any complications resulted from sexual orientation*
2 *change efforts, such as insomnia, anxiety, depression, loss of*
3 *appetite, loss of employment, suicidality, or death.*

4 (vi) *Whether any preexisting conditions related to the patient's*
5 *mental or emotional health were exacerbated or otherwise affected*
6 *by the sexual orientation change efforts.*

7 (vii) *The method of payment for the sexual orientation change*
8 *efforts and, if applicable, the name of the insurance company*
9 *making those payments.*

10 (viii) *Any other information required by the department by*
11 *regulation, except as provided in paragraph (3).*

12 (3) *The name of the patient receiving sexual orientation change*
13 *efforts shall remain confidential information. No state agency,*
14 *employee, or agent shall require release of the identity of any*
15 *person subjected to sexual orientation change efforts. The forms*
16 *prescribed by paragraph (2) shall not require any information*
17 *that would disclose, directly or indirectly, the identity of the patient.*

18 (4) *The department shall prepare and publish an annual written*
19 *report summarizing the information received under this section.*
20 *The report shall not contain any information that identifies or*
21 *tends to identify any facility, psychotherapist, or patient. The report*
22 *shall be made available to members of the public electronically*
23 *and in writing upon request.*

24 (c) (1) *The department shall prepare and disseminate an*
25 *informational brochure for sexual orientation change efforts to*
26 *psychotherapists for distribution to patients contemplating being*
27 *subjected to sexual orientation change efforts. This brochure shall*
28 *be developed by the department in consultation with members of*
29 *the Medical Board of California, Board of Psychology, and the*
30 *Board of Behavioral Sciences. The brochure shall be provided to*
31 *each individual contacting the Medical Board of California and*
32 *affiliated health boards, the Board of Psychology, or the Board*
33 *of Behavioral Sciences regarding a complaint involving sexual*
34 *orientation change efforts.*

35 (2) *The brochure shall include, but is not limited to, the*
36 *following:*

37 (A) *A legal and an informal definition of sexual orientation*
38 *change efforts.*

1 (B) A brief description of the scientific findings regarding the
2 ineffectiveness of sexual orientation change efforts as reported by
3 the American Psychiatric Association.

4 (C) A brief summary of the stated positions of the leading
5 psychological associations with respect to sexual orientation
6 change efforts.

7 (D) A right to legal redress to be set forth as follows:

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9 “If you have been subjected to efforts to change your sexual
10 orientation without providing written informed consent, you may
11 want to consult an attorney about bringing legal action against
12 your psychotherapist.”

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14 (E) A description of services available for support of patients
15 with issues relating to their sexual orientation or gender identity.

16 865.3. (a) A cause of action may be brought against a
17 psychotherapist by a patient or former patient, either during the
18 duration of the sexual orientation change efforts or within two
19 years following termination of the therapeutic relationship, for
20 injury for harm caused by sexual orientation change efforts, if the
21 sexual orientation change efforts occurred to a patient who was
22 under 18 years of age at any point during the use of sexual
23 orientation change efforts, or, if the patient is 18 years of age or
24 older, by means of therapeutic deception or without obtaining
25 written informed consent. The patient or former patient may
26 recover damages and attorney’s fees.

27 (b) Nothing in this article precludes a patient’s right to bring
28 a civil action against a psychotherapist arising from other legal
29 claims.

30 ~~SECTION 1. Section 1733 of the Insurance Code is amended~~
31 ~~to read:~~

32 ~~1733. All funds received by a person acting as a licensee under~~
33 ~~this chapter, Chapter 5A (commencing with Section 1759), Chapter~~
34 ~~6 (commencing with Section 1760), or Chapter 7 (commencing~~
35 ~~with Section 1800), as premium or return premium on or under~~
36 ~~any policy of insurance or undertaking of bail, are received and~~
37 ~~held by that person in his or her fiduciary capacity. A person who~~
38 ~~diverts or appropriates the fiduciary funds to his or her own use is~~
39 ~~guilty of theft and punishable for theft as provided by law. A~~
40 ~~premium that a premium financier agrees to advance pursuant to~~

- 1 ~~the terms of a premium finance agreement shall constitute fiduciary~~
- 2 ~~funds as defined in this section only if actually received by a person~~
- 3 ~~licensed in one or more of the capacities specified in this section.~~

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