

AMENDED IN SENATE APRIL 25, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1172

Introduced by Senator Lieu

February 22, 2012

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. 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. The bill would require a specified statement to be included on the informed consent form. Informed consent would not be effective for patients under 18 years of age. The bill would provide for a cause of action against psychotherapists by patients, former patients, or certain other persons in specified cases.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) An individual's sexual orientation, whether homosexual,
4 bisexual, or heterosexual, is not a disease, disorder, illness,
5 deficiency, or shortcoming. The major professional associations
6 of mental health practitioners and researchers in the United States
7 have recognized this fact for nearly 40 years.

8 (b) Sexual orientation change efforts pose critical health risks
9 to lesbian, gay, and bisexual people, including confusion,
10 depression, guilt, helplessness, hopelessness, shame, social
11 withdrawal, suicidality, substance abuse, stress, disappointment,
12 self-blame, decreased self-esteem and authenticity to others,
13 increased self-hatred, hostility and blame toward parents, feelings
14 of anger and betrayal, loss of friends and potential romantic
15 partners, problems in sexual and emotional intimacy, sexual
16 dysfunction, high-risk sexual behaviors, a feeling of being
17 dehumanized and untrue to self, a loss of faith, and a sense of
18 having wasted time and resources. This is documented by the
19 American Psychological Association Task Force on Appropriate
20 Therapeutic Responses to Sexual Orientation in its 2009 Report
21 of the Task Force on Appropriate Therapeutic Responses to Sexual
22 Orientation.

23 (c) Recognizing that there is no evidence that any type of
24 psychotherapy can change a person's sexual orientation and that
25 sexual orientation change efforts may cause serious and lasting
26 harms, the American Psychiatric Association, the American
27 Psychological Association, the American Counseling Association,
28 the National Association of Social Workers, and the American
29 Academy of Pediatrics uniformly oppose efforts to change the
30 sexual orientation of any individual.

31 (d) Minors who experience family rejection based on their sexual
32 orientation face especially serious health risks. In one study,
33 lesbian, gay, and bisexual young adults who reported higher levels
34 of family rejection during adolescence were 8.4 times more likely
35 to report having attempted suicide, 5.9 times more likely to report
36 high levels of depression, 3.4 times more likely to use illegal drugs,
37 and 3.4 times more likely to report having engaged in unprotected
38 sexual intercourse compared with peers from families that reported

1 no or low levels of family rejection. This is documented by Caitlyn
2 Ryan et al. in their article entitled Family Rejection as a Predictor
3 of Negative Health Outcomes in White and Latino Lesbian, Gay,
4 and Bisexual Young Adults (2009) 123 Pediatrics 346.

5 (e) California has a compelling interest in protecting the lives
6 and health of lesbian, gay, and bisexual people.

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

10

11 Article 15. Sexual Orientation Change Efforts

12

13 865. For the purposes of this article, the following terms shall
14 have the following meanings:

15 (a)

16 “Informed consent” means consent that is voluntarily provided
17 in writing by a patient to a psychotherapist with whom the patient
18 has a therapeutic relationship. The informed consent must explicitly
19 manifest the patient’s agreement to sexual orientation change
20 efforts and include a statement as set forth in Section 865.1.
21 Consent that is provided as a result of therapeutic deception or
22 duress or coercion is not informed consent.

23 (b) “Psychotherapist” means a physician and surgeon
24 specializing in the practice of psychiatry, a psychologist, a
25 psychological assistant, ~~a psychiatric technician~~, a marriage and
26 family therapist, a registered marriage and family therapist, intern,
27 or trainee, an educational psychologist, a licensed clinical social
28 worker, an associate clinical social worker, a licensed professional
29 clinical counselor, or a registered clinical counselor, intern, or
30 trainee.

31 (c) “Psychotherapy” means the professional assessment,
32 evaluation, treatment, or counseling of a mental or emotional
33 illness, symptom, or condition by a psychotherapist.

34 (d) “Sexual orientation change efforts” means psychotherapy
35 aimed at altering the sexual or romantic desires, attractions, or
36 conduct of a person toward people of the same sex so that the
37 desire, attraction, or conduct is eliminated or reduced or might
38 instead be directed toward people of a different sex. It does not
39 include psychotherapy aimed at altering sexual desires, attractions,

1 or conduct toward minors or relatives or regarding sexual activity
2 with another person without that person’s consent.

3 (e) “Therapeutic deception” means a representation by a
4 psychotherapist that sexual orientation change efforts are endorsed
5 by leading medical and mental health associations or that they can
6 or will reduce or eliminate a person’s sexual or romantic desires,
7 attractions, or conduct toward another person of the same sex.

8 (f) “Therapeutic relationship” means the relationship that exists
9 during the time the patient receives psychotherapy.

10 (g) “Leading medical and mental health associations” means
11 the American Psychiatric Association, the American Psychological
12 Association, the American Counseling Association, the National
13 Association of Social Workers, and the American Academy of
14 Pediatrics.

15 865.1. (a) No psychotherapist shall engage in sexual orientation
16 change efforts without first obtaining the patient’s informed consent
17 to therapy as prescribed in subdivision (b).

18 (b) To obtain informed consent, a treating psychotherapist shall
19 provide a patient with a form to be signed by the patient that
20 provides informed consent. The form shall include the following
21 statement:

22
23 “Having a lesbian, gay, or bisexual sexual orientation is not a
24 mental disorder. There is no scientific evidence that any types of
25 therapies are effective in changing a person’s sexual orientation.
26 Sexual orientation change efforts can be harmful. The risks include,
27 but are not limited to, depression, anxiety, and self-destructive
28 behavior.

29 Medical and mental health associations that oppose the use of
30 sexual orientation change efforts include the American Medical
31 Association, the American Psychological Association, the
32 American Psychiatric Association, the National Association of
33 Social Workers, the American Counseling Association, the
34 American Academy of Pediatrics, and the American Association
35 for Marriage and Family Therapy.”

36
37 865.2. (a) Under no circumstances shall a patient under 18
38 years of age undergo sexual orientation change efforts, regardless
39 of the willingness of a patient’s parent, guardian, conservator, or
40 other person to authorize such efforts.

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

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

7 865.3. (a) (1) A cause of action may be brought against a
8 psychotherapist by a patient, former patient, or deceased former
9 patient's parent, child, or sibling if the sexual orientation change
10 efforts were conducted without first obtaining informed consent
11 or by means of therapeutic deception, or if the sexual orientation
12 change efforts were conducted on a patient who was under 18
13 years of age at any point during the use of the sexual orientation
14 change efforts.

15 (2) The patient, former patient, or deceased former patient's
16 parent, child, or sibling may recover actual damages, or statutory
17 damages in the amount of five thousand dollars (\$5,000),
18 whichever is greater, in addition to costs and reasonable attorney's
19 fees.

20 (3) The time for commencement of the action shall be within
21 eight years of the date the patient or former patient attains the age
22 of majority or within five years of the date the patient, former
23 patient, or deceased former patient's parent, child, or sibling
24 discovers or reasonably should have discovered that the patient
25 was subjected to sexual orientation change efforts in violation of
26 this article.

27 (b) Nothing in this article precludes or limits the right of a
28 patient, former patient, or deceased former patient's parent, child,
29 or sibling to bring a civil action against a psychotherapist arising
30 from other legal claims.