

AMENDED IN ASSEMBLY MAY 14, 2014

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 578

Introduced by Senator Wyland

February 22, 2013

An act to ~~amend Section 4982 of~~ *add Section 4980.49* to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 578, as amended, Wyland. Marriage and family therapists: ~~unprofessional conduct.~~ *records retention.*

Existing law, the Licensed Marriage and Family Therapist Act, provides for the licensure or registration and the regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor. ~~Existing law authorizes the board to deny a license or registration or to suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct, which, among other things, includes engaging in sexual relations with a current or former client within a specified period of time.~~

~~This bill would specify that unprofessional conduct includes engaging in a dual relationship with a client that is likely to impair his or her professional judgment or lead to exploitation of the client. The bill describes a dual relationship as a separate and distinct relationship between a marriage and family therapist and his or her client that occurs simultaneously with the therapeutic relationship or following the termination of the therapeutic relationship. The bill would require, if a~~

dual relationship occurs and cannot be avoided, a marriage and family therapist to take professional precautions, including documentation of the dual relationship, to ensure that his or her judgment is not impaired and that the client is not exploited. The bill would specify that a violation of those provisions would not be a crime.

This bill would require, for a patient whose therapy is terminated on or after January 1, 2015, a marriage and family therapist to retain the patient's health service records for a minimum of 7 years from the date therapy is terminated. The bill would, in this regard, require a minor patient's health service records to be retained for a minimum of 7 years from the date the patient reaches 18 years of age. Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 4980.49 is added to the Business and
2 Professions Code, to read:
3 4980.49. (a) A marriage and family therapist shall retain a
4 patient's health service records for a minimum of seven years from
5 the date therapy is terminated. If the patient is a minor, the
6 patient's health service records shall be retained for a minimum
7 of seven years from the date the patient reaches 18 years of age.
8 (b) This section shall apply only to the records of a patient
9 whose therapy is terminated on or after January 1, 2015.
10 SEC. 2. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 4982 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~4982. The board may deny a license or registration or may~~
6 ~~suspend or revoke the license or registration of a licensee or~~
7 ~~registrant if he or she has been guilty of unprofessional conduct.~~
8 ~~Unprofessional conduct includes, but is not limited to, the~~
9 ~~following:~~

10 ~~(a) The conviction of a crime substantially related to the~~
11 ~~qualifications, functions, or duties of a licensee or registrant under~~
12 ~~this chapter. The record of conviction shall be conclusive evidence~~
13 ~~only of the fact that the conviction occurred. The board may inquire~~
14 ~~into the circumstances surrounding the commission of the crime~~
15 ~~in order to fix the degree of discipline or to determine if the~~
16 ~~conviction is substantially related to the qualifications, functions,~~
17 ~~or duties of a licensee or registrant under this chapter. A plea or~~
18 ~~verdict of guilty or a conviction following a plea of nolo contendere~~
19 ~~made to a charge substantially related to the qualifications,~~
20 ~~functions, or duties of a licensee or registrant under this chapter~~
21 ~~shall be deemed to be a conviction within the meaning of this~~
22 ~~section. The board may order any license or registration suspended~~
23 ~~or revoked, or may decline to issue a license or registration when~~
24 ~~the time for appeal has elapsed, or the judgment of conviction has~~
25 ~~been affirmed on appeal, or, when an order granting probation is~~
26 ~~made suspending the imposition of sentence, irrespective of a~~
27 ~~subsequent order under Section 1203.4 of the Penal Code allowing~~
28 ~~the person to withdraw a plea of guilty and enter a plea of not~~
29 ~~guilty, or setting aside the verdict of guilty, or dismissing the~~
30 ~~accusation, information, or indictment.~~

31 ~~(b) Securing a license or registration by fraud, deceit, or~~
32 ~~misrepresentation on any application for licensure or registration~~
33 ~~submitted to the board, whether engaged in by an applicant for a~~
34 ~~license or registration, or by a licensee in support of any application~~
35 ~~for licensure or registration.~~

36 ~~(c) Administering to himself or herself any controlled substance~~
37 ~~or using of any of the dangerous drugs specified in Section 4022,~~
38 ~~or of any alcoholic beverage to the extent, or in a manner, as to be~~
39 ~~dangerous or injurious to the person applying for a registration or~~
40 ~~license or holding a registration or license under this chapter, or~~

1 to any other person, or to the public, or, to the extent that the use
2 impairs the ability of the person applying for or holding a
3 registration or license to conduct with safety to the public the
4 practice authorized by the registration or license. The board shall
5 deny an application for a registration or license or revoke the
6 license or registration of any person, other than one who is licensed
7 as a physician and surgeon, who uses or offers to use drugs in the
8 course of performing marriage and family therapy services.

9 ~~(d) Gross negligence or incompetence in the performance of~~
10 ~~marriage and family therapy.~~

11 ~~(e) Violating, attempting to violate, or conspiring to violate any~~
12 ~~of the provisions of this chapter or any regulation adopted by the~~
13 ~~board.~~

14 ~~(f) Misrepresentation as to the type or status of a license or~~
15 ~~registration held by the person, or otherwise misrepresenting or~~
16 ~~permitting misrepresentation of his or her education, professional~~
17 ~~qualifications, or professional affiliations to any person or entity.~~

18 ~~(g) Impersonation of another by any licensee, registrant, or~~
19 ~~applicant for a license or registration, or, in the case of a licensee,~~
20 ~~allowing any other person to use his or her license or registration.~~

21 ~~(h) Aiding or abetting, or employing, directly or indirectly, any~~
22 ~~unlicensed or unregistered person to engage in conduct for which~~
23 ~~a license or registration is required under this chapter.~~

24 ~~(i) Intentionally or recklessly causing physical or emotional~~
25 ~~harm to any client.~~

26 ~~(j) The commission of any dishonest, corrupt, or fraudulent act~~
27 ~~substantially related to the qualifications, functions, or duties of a~~
28 ~~licensee or registrant.~~

29 ~~(k) Engaging in sexual relations with a client, or a former client~~
30 ~~within two years following termination of therapy, soliciting sexual~~
31 ~~relations with a client, or committing an act of sexual abuse, or~~
32 ~~sexual misconduct with a client, or committing an act punishable~~
33 ~~as a sexually related crime, if that act or solicitation is substantially~~
34 ~~related to the qualifications, functions, or duties of a marriage and~~
35 ~~family therapist.~~

36 ~~(l) Performing, or holding oneself out as being able to perform,~~
37 ~~or offering to perform, or permitting any trainee or registered intern~~
38 ~~under supervision to perform, any professional services beyond~~
39 ~~the scope of the license authorized by this chapter.~~

- 1 ~~(m) Failure to maintain confidentiality, except as otherwise~~
2 ~~required or permitted by law, of all information that has been~~
3 ~~received from a client in confidence during the course of treatment~~
4 ~~and all information about the client that is obtained from tests or~~
5 ~~other means.~~
- 6 ~~(n) Prior to the commencement of treatment, failing to disclose~~
7 ~~to the client or prospective client the fee to be charged for the~~
8 ~~professional services, or the basis upon which that fee will be~~
9 ~~computed.~~
- 10 ~~(o) Paying, accepting, or soliciting any consideration,~~
11 ~~compensation, or remuneration, whether monetary or otherwise,~~
12 ~~for the referral of professional clients. All consideration,~~
13 ~~compensation, or remuneration shall be in relation to professional~~
14 ~~counseling services actually provided by the licensee. Nothing in~~
15 ~~this subdivision shall prevent collaboration among two or more~~
16 ~~licensees in a case or cases. However, no fee shall be charged for~~
17 ~~that collaboration, except when disclosure of the fee has been made~~
18 ~~in compliance with subdivision (n).~~
- 19 ~~(p) Advertising in a manner that is false, fraudulent, misleading,~~
20 ~~or deceptive, as defined in Section 651.~~
- 21 ~~(q) Reproduction or description in public, or in any publication~~
22 ~~subject to general public distribution, of any psychological test or~~
23 ~~other assessment device, the value of which depends in whole or~~
24 ~~in part on the naivete of the subject, in ways that might invalidate~~
25 ~~the test or device.~~
- 26 ~~(r) Any conduct in the supervision of any registered intern,~~
27 ~~associate clinical social worker, or trainee by any licensee that~~
28 ~~violates this chapter or any rules or regulations adopted by the~~
29 ~~board.~~
- 30 ~~(s) Performing or holding oneself out as being able to perform~~
31 ~~professional services beyond the scope of one's competence, as~~
32 ~~established by one's education, training, or experience. This~~
33 ~~subdivision shall not be construed to expand the scope of the~~
34 ~~license authorized by this chapter.~~
- 35 ~~(t) Permitting a trainee or registered intern under one's~~
36 ~~supervision or control to perform, or permitting the trainee or~~
37 ~~registered intern to hold himself or herself out as competent to~~
38 ~~perform, professional services beyond the trainee's or registered~~
39 ~~intern's level of education, training, or experience.~~

- 1 ~~(u) The violation of any statute or regulation governing the~~
2 ~~gaining and supervision of experience required by this chapter.~~
- 3 ~~(v) Failure to keep records consistent with sound clinical~~
4 ~~judgment, the standards of the profession, and the nature of the~~
5 ~~services being rendered.~~
- 6 ~~(w) Failure to comply with the child abuse reporting~~
7 ~~requirements of Section 11166 of the Penal Code.~~
- 8 ~~(x) Failure to comply with the elder and dependent adult abuse~~
9 ~~reporting requirements of Section 15630 of the Welfare and~~
10 ~~Institutions Code.~~
- 11 ~~(y) Willful violation of Chapter 1 (commencing with Section~~
12 ~~123100) of Part 1 of Division 106 of the Health and Safety Code.~~
- 13 ~~(z) Failure to comply with Section 2290.5.~~
- 14 ~~(aa) (1) Engaging in an act described in Section 261, 286, 288a,~~
15 ~~or 289 of the Penal Code with a minor or an act described in~~
16 ~~Section 288 or 288.5 of the Penal Code regardless of whether the~~
17 ~~act occurred prior to or after the time the registration or license~~
18 ~~was issued by the board. An act described in this subdivision~~
19 ~~occurring prior to the effective date of this subdivision shall~~
20 ~~constitute unprofessional conduct and shall subject the licensee to~~
21 ~~refusal, suspension, or revocation of a license under this section.~~
- 22 ~~(2) The Legislature hereby finds and declares that protection of~~
23 ~~the public, and in particular minors, from sexual misconduct by a~~
24 ~~licensee is a compelling governmental interest, and that the ability~~
25 ~~to suspend or revoke a license for sexual conduct with a minor~~
26 ~~occurring prior to the effective date of this section is equally~~
27 ~~important to protecting the public as is the ability to refuse a license~~
28 ~~for sexual conduct with a minor occurring prior to the effective~~
29 ~~date of this section.~~
- 30 ~~(ab) Engaging in any conduct that subverts or attempts to subvert~~
31 ~~any licensing examination or the administration of an examination~~
32 ~~as described in Section 123.~~
- 33 ~~(ac) Engaging in a dual relationship with a client that is likely~~
34 ~~to impair his or her professional judgment or lead to exploitation~~
35 ~~of the client. For purposes of this subdivision, a dual relationship~~
36 ~~occurs when a marriage and family therapist and his or her client~~
37 ~~engage in a separate and distinct relationship either simultaneously~~
38 ~~with the therapeutic relationship, or following the termination of~~
39 ~~the therapeutic relationship. If a dual relationship occurs and cannot~~
40 ~~be avoided, a marriage and family therapist shall take appropriate~~

1 ~~and culturally sensitive professional precautions, including~~
2 ~~documentation of the dual relationship, to ensure that his or her~~
3 ~~judgment is not impaired and that the client is not exploited. A~~
4 ~~violation of this subdivision shall not be subject to Section 4983.~~
5 ~~Nothing in this subdivision shall be construed to alter or affect the~~
6 ~~prohibitions of subdivision (k).~~

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