

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 578

VERSION: AMENDED APRIL 25, 2013

AUTHOR: WYLAND

SPONSOR: CALIFORNIA ASSOCIATION OF
MARRIAGE AND FAMILY THERAPISTS
(CAMFT)

RECOMMENDED POSITION: OPPOSE

SUBJECT: MARRIAGE AND FAMILY THERAPISTS: UNPROFESSIONAL CONDUCT

Existing Law:

- 1) Outlines several provisions that constitute unprofessional conduct of a marriage and family therapist. (Business and Professions Code (BPC) §4982)
- 2) Allows the Board to deny an application for licensure or registration as a marriage and family therapist, and allows the Board to suspend or revoke a marriage and family therapist license or registration if there is a violation of the unprofessional conduct provisions. (BPC §4982)
- 3) Provides that it is unprofessional conduct to engage in gross negligence or incompetence in the performance of marriage and family therapy. (BPC §4982(d))
- 4) Provides that it is unprofessional conduct to intentionally or recklessly cause physical or emotional harm to any client. (BPC §4982(i))
- 5) Provides that it is unprofessional conduct to engage in any type of sexual relations with a client or former client within two years of terminating therapy. (BPC §4982(k))

This Bill:

- 1) Adds engaging in certain types of dual relationships with a patient to the list of provisions that may be considered unprofessional conduct for a marriage and family therapist licensee or registrant. (BPC §4982(ac))
- 2) Clarifies that dual relationships that constitute unprofessional conduct are relationships that are likely to impair professional judgment or lead to exploitation of the client. (BPC §4982(ac))
- 3) Defines a dual relationship as one where the therapist and the client engage in a separate and distinct relationship at the same time as the therapeutic relationship, or following the termination of the therapeutic relationship. (BPC §4982(ac))
- 4) Specifies that if a dual relationship cannot be avoided, the therapist must take appropriate precautions to ensure his or her judgment is not impaired and the client is not exploited. This includes documenting the dual relationship. (BPC §4982(ac))

- 5) Specifies that a violation of this provision is not subject to BPC §4983, which states that a violation of the Licensed Marriage and Family Therapist Act is a misdemeanor punishable by imprisonment in county jail for up to six months, a fine of \$2,500, or both. (BPC §4982(ac))
- 6) Preserves the unprofessional conduct statute provision §4982(k), which prohibits engaging in sexual relations with a client, or a former client within two years following termination of therapy. (BPC §4982(ac))

Comment:

- 1) **Background.** The Board currently takes disciplinary action on LMFT licensees or registrants for unprofessional conduct if it determines that they have engaged in an inappropriate dual relationship. Current law does not define an inappropriate dual relationship; instead, the Board typically cites unprofessional conduct section 4982(d) (gross negligence or incompetence) and/or section 4982(i) (intentionally or recklessly causing physical/emotional harm to the client). If the dual relationship involved sexual conduct, the Board would cite section 4982(k) (sexual relations with a client).
- 2) **Author's Intent.** The author's office notes that since the Board takes disciplinary action against licensees for inappropriate dual relationships, the law should state specifically that certain types of dual relationships are unprofessional conduct, and should also clarify which types of dual relationships are considered inappropriate.
- 3) **Prior Case.** The author's office refers to a recent disciplinary case as an example of the need to clarify in law that certain types of dual relationships constitute unprofessional conduct. During this case, which occurred in 2011, the licensee had allegedly engaged in an inappropriate dual relationship. However, the presiding administrative law judge dismissed the case partially because the Board's subject matter expert testified that he believes all dual relationships are unethical and could not think of any dual relationship that did not harm a client. The administrative law judge stated that this testimony contradicted professional standards.
- 4) **CAMFT Code of Ethics.** The current version of the CAMFT code of ethics (dated June 11, 2011) contains language addressing dual relationships that is very similar to the language proposed by this bill. This language can be found in sections 1.2 – 1.2.2, beginning on page one of **Attachment A**.

Attachment B is the 2002 version of the CAMFT ethical standards (dated May 1, 2002). This is the version that was in effect at the time the disciplinary case referenced above was dismissed, in part due to the subject matter expert's opinion about dual relationships. The language addressing dual relationships in this version is slightly different from the current version. It can be found in sections 1.2 – 1.2.2 on page 2.
- 5) **AAMFT-CA Code of Ethics. Attachment C** contains the July 1, 2012 version of the AAMFT Code of Ethics. The definition of multiple relationships can be found in section 1.3 on page 2.
- 6) **California Board of Psychology.** The California Board of Psychology indirectly defines inappropriate dual relationships in its licensing law by incorporating the American Psychological Association's (APA's) "Ethical Principles and Code of Conduct" by reference into its law. The Psychology Board's statute states that the standards of ethical conduct

outlined in this document are to be applied by the board as the accepted standard of care in all board enforcement policies and disciplinary cases. (BPC §2936)

The APA's June 1, 2010 version of this document, Section 3.05, states the following:

"A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists. Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical."

The Board of Psychology statute that references this document, as well as Section 3.05 of the June 1, 2010 version of the APA document, which discusses multiple relationships, can be found in **Attachments D** and **E**, respectively.

7) Other State Licensing Boards. The bill's sponsor, CAMFT, has provided the following examples of other state licensing boards that address dual relationships in their unprofessional conduct statute:

- **Arizona:** Chapter 33 (Behavioral Health Professionals) Title 32-325(12) "Unprofessional conduct" includes the following: (y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental."
- **Vermont:** Chapter 61, Title 26 (Clinical Social Workers, Professions and Occupations) section 3210- "The following conduct...by a licensed social worker constitutes unprofessional conduct...: (9) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client; (10) failing to take steps to protect a client and to set clear, appropriate, and culturally sensitive boundaries, in instances where dual or multiple relationships are unavoidable.."
- **Kansas:** Board of Behavioral Sciences, Social Workers, Section 102-2-7: "Any of the following acts by a licensee or an applicant for a social work license shall constitute unprofessional conduct: (tt) engaging in a dual relationship with a client, supervisee, or student."

8) Exemption from BPC Section 4983. A recent amendment to this bill exempts a violation of this proposed dual relationship unprofessional conduct subsection from BPC Section 4983.

Section 4983 states that a violation of the Licensed Marriage and Family Therapist Act is a misdemeanor punishable by imprisonment in county jail for up to six months, a fine of \$2,500, or both.

None of the other marriage and family therapy code sections are exempt from Section 4983; therefore, it is unclear why a dual relationship violation should be.

9) Other Board Licensees. This bill clarifies inappropriate dual relationships in the unprofessional conduct provisions of marriage and family therapist licensing law, but it does not add this provision to licensing laws for the Board's other three license types (licensed educational psychologists, licensed clinical social workers, and licensed professional clinical counselors). If the Board decides to support this proposed amendment, it may wish to

consider if it would also be appropriate for inclusion in the unprofessional conduct sections of its other license categories.

10) Recommended Position. At its April 18, 2013 meeting, the Policy and Advocacy Committee recommended that the Board take an “oppose” position on this bill.

11) Support and Opposition.

Support:

- California Association of Marriage & Family Therapists (Sponsor)

Opposition:

- None on file.

12) History

2013

May 6 In Assembly. Read first time. Held at Desk.
May 6 Read third time. Passed. (Ayes 32. Noes 0.) Ordered to the Assembly.
May 1 Ordered to special consent calendar.
Apr. 25 Read second time and amended. Ordered to third reading.
Apr. 24 From committee: Do pass as amended. (Ayes 10. Noes 0. Page 638.) (April 22).
Apr. 5 Set for hearing April 22.
Apr. 1 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Mar. 11 Referred to Com. on B., P. & E.D.
Feb. 25 Read first time.
Feb. 24 From printer. May be acted upon on or after March 26.
Feb. 22 Introduced. To Com. on RLS. for assignment. To print.

13) Attachments

Attachment A: CAMFT Code of Ethics (June 11, 2011 version)

Attachment B: CAMFT Ethical Standards Part I (May 1, 2002 version)

Attachment C: AAMFT Code of Ethics (Effective July 1, 2012)

Attachment D: Business and Professions Code Section 2936 (Board of Psychology Statute)

Attachment E: American Psychological Association “Ethical Principles of Psychologists and Code of Conduct,” effective June 1, 2010 (Section 3.05 – Multiple Relationships)