

# Regulatory Boards - Enforcement

written by Richard Leslie | June 1, 2016

## **Avoiding Liability Bulletin - June 2016**

I was recently reading some proposed rules – more specifically – “disciplinary guidelines” and “uniform standards related to substance abusing licensees” – promulgated by the California Board of Psychology. Two provisions caught my eye. What is your first reaction or thought when you read each of the items? My brief thoughts and comments appear below.

1) In the introduction to the guidelines, the Board describes consumers of psychological services (I assume that means clients or patients) as a “particularly vulnerable population.” The Board describes itself as a consumer protection agency protecting this “particularly vulnerable population” from unsafe, incompetent, or negligent psychologists.

2) In the introduction to the uniform standards, it states that if the grounds for discipline involve drugs or alcohol, the applicant or licensee “shall be presumed to be a substance abusing licensee or applicant.”

With respect to item # 1, patients of psychologists are described as a particularly vulnerable population. Clients/patients are described not as potentially vulnerable or vulnerable, but particularly vulnerable. In fact, patients and clients (described by the Board as “consumers of psychological services”) come from all walks of life with all manner of strengths, weaknesses, and problems – much like the patients of physicians. The needs of the individual consumer and the services provided will vary widely. In fact, patients may or may not be vulnerable or particularly vulnerable. With all of the attention being paid (properly so) to removing or lessening the stigma from those who seek or receive counseling, psychotherapy, or mental health treatment, classifying clients or patients so generally as a particularly vulnerable population does not help to remove or lessen the stigma – it endorses and promotes it.

Viewed from the perspective of protecting the licensee from unfair or heavy-handed enforcement, such a generalization in a rule or regulation (albeit in introductory language) contributes to establishing the mindset that all patients are particularly vulnerable – merely because they seek psychotherapy or the services of a psychotherapist. Think about how the licensing board may view both you and a client who files a complaint. When you are the person about whom a complaint is filed, or the suspected wrongdoer approached by the licensing board, the government is investigating you. Government (the state agency) is there to protect the public from you – and that mission sometimes leads to unjust or unnecessary enforcement actions against licensees, especially when the government’s mindset is that the complainant is a particularly vulnerable person.

With respect to item # 2 (the presumption of being a substance abusing licensee or applicant), the

opportunity for unfair treatment of licensees is increased substantially. The presumption, unless successfully rebutted, subjects the licensee to a whole host of oversight and required treatment and drug testing – considered by some as draconian. One conviction of a misdemeanor for possession of a small amount of marijuana, or one reckless driving conviction, no matter what the circumstances, will likely lead to the presumption that the licensee is a substance abusing licensee. While this presumption may be rebutted, I question its necessity or appropriateness. The licensing board might argue that this particularly vulnerable population (consumers of psychological services) must be protected from substance abusing licensees and that the presumption better protects the public. Others (including me) think that the licensing board should be guided by the facts involved in each particular case, and that such a presumption is unnecessary and can easily lead to unfairness.