



# DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

<b>SUBJECT</b> <b>REQUIRED DISTRIBUTION OF          “PROFESSIONAL THERAPY NEVER          INCLUDES SEX”</b>	<b>POLICY NO.</b> <b>100.3</b>	<b>EFFECTIVE          DATE</b> <b>01/01/05</b>	<b>PAGE</b> <b>1 of 3</b>
<b>APPROVED BY:</b>  Director	<b>SUPERSEDES</b> <b>100.3</b>	<b>ORIGINAL          ISSUE DATE</b> <b>05/01/04</b>	<b>DISTRIBUTION          LEVEL(S)</b> <b>2</b>

## PURPOSE

- 1.1 To establish a Department-wide policy and procedure to ensure compliance with Section 728(a) of the California Business and Professions Code requiring the distribution of a brochure entitled “Professional Therapy Never Includes Sex” (hereinafter referred to as “the brochure”) to clients who report alleged sexual intercourse or alleged sexual contact during the course of a prior treatment.
- 1.2 To briefly note the appropriate recording and reporting practices.

## DEFINITIONS

- 2.1 “Sexual Contact” is defined as the touching of an intimate part of another person (B&P Code, Section 728(c)(1)).
  - 2.1.1 “Touching” is defined as physical contact with another person whether accomplished directly, through the clothing of the person committing the offense or through the clothing of the victim. (Penal Code, Section 243.4(d))
  - 2.1.2 “Intimate Part” is defined as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female (Penal Code, Section 243.4(f)). Note: The brochure defines “Intimate Part” as the sexual organ, anus, groin, buttocks, or breast of another person.
- 2.2 “The course of a prior treatment” is defined as the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his/her scope of practice, or that the psychotherapist represents to the patient as being within his/her scope of practice, until the psychotherapist-patient relationship is terminated (B&P Code, Section 728 (c)(4)).

## POLICY

- 3.1 The following persons or their employer:
  - physicians
  - wavered or licensed psychologists
  - registered or licensed clinical social workers



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➤ registered or licensed marriage and family therapists

who become aware that a patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the patient a copy of the brochures which delineates the rights of, and remedies for, patients who have been involved sexually with his/her psychotherapist and discuss the brochure. Failure to do so constitutes unprofessional conduct and could result in disciplinary action (Section 728(a) of the California Business and Professions Code).

- 3.2 Case managers and any other clinic staff not defined in Section 3.1 are encouraged to report to their supervisor clients who report alleged sexual intercourse or alleged sexual contact during a prior treatment. The supervisor then becomes responsible for follow-up in accordance with Section 3.1.

### **PROCEDURE**

- 4.1 Center Managers/Program Heads/Program Managers are responsible for informing all staff of this regulation and ensuring that they understand the circumstances for and process of distribution and discussion of the brochure with the client and for monitoring compliance.
- 4.2 Persons listed in this policy must act in accordance with the requirements as noted in the section in which they are listed.
- 4.3 The client’s disclosure and action taken following the disclosure in compliance with this policy must be documented in the client’s clinical record. Verbal translation of the brochure into another language should also be documented.
- 4.4 At the client’s request, a staff person may support or assist the client in reporting the incident, but should not pressure the client to report or assume responsibility for reporting. **Except in those situations where reporting by staff is required by law, such as with a child, dependent adult or elder abuse, reports covered by this law must be filed by the client.**
- 4.5 Copies of the brochure in English and Spanish are available from the Administrative Support Bureau Warehouse:
 

English	#MH634E
Spanish	#MH634S

The forms can be ordered on the Forms Request as a “write-in” including the appropriate form number.



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- 4.6 The brochure may be photocopied providing no parts are excluded. The English version of the brochure may be downloaded from the web site: <http://www.bbs.ca.gov/pdf/proftherapy.pdf>.
- 4.7 If the brochure is not available in the language of the client, staff should review and translate the brochure for the client during the required discussion of the information. The decision to report and actual reporting remains with the client as stated in Section 4.4.

### **AUTHORITY**

California Business & Professions Code, Section 728  
Penal Code, Section 243.4(d) & (f)

### **REVIEW DATE**

This policy shall be reviewed no later than May 15, 2009.