

September 13, 2019

The Honorable Gavin Newsom
Governor
State Capitol, First Floor
Sacramento, CA 95814

RE: AB 1076 (Ting) – Criminal Records: Automatic Relief – Request for VETO

Dear Governor Newsom:

At its August 16, 2019 meeting, the Board of Psychology (Board) adopted an **OPPOSE** position on AB 1076 (Ting). This bill would significantly impair the Board's ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly undermine the Board's ability to carry out its mission of consumer protection.

Specifically, AB 1076 (Ting) would require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. The bill would also prohibit DOJ from providing the Board with information on arrests or convictions that have been sealed. It would also prohibit the courts from disclosing any information concerning arrests that were granted relief pursuant to the bill's provisions or convictions that have been granted relief pursuant to other code sections. This bill would also remove the Board's ability to deny an application for licensure based on a conviction, or the acts underlying the conviction, where the convicted individual has received relief.

The Board's primary concerns with the provisions of AB 1076 (Ting) is that it will have detrimental impacts on the Board's mission of protecting consumers in the following ways:

- It will remove the Board's ability to adequately evaluate and determine the rehabilitation of petitioners for reinstatement due to the loss of arrest and conviction information and the associated court documents related to any arrest(s) and conviction(s) subsequent to license revocation;
- It could diminish the Board's ability to adequately protect the health and safety of California consumers by removing the Board's ability to review and evaluate a current licensee's arrest and conviction information for the purposes of disciplinary action; and
- It will unnecessarily increase costs to the Board and substantially lengthen investigation timeframes for petitions for reinstatement and some subsequent arrest and conviction investigations of current licensees.

Of critical concern to the Board is the complete loss of arrest and conviction information necessary for the Board to determine the rehabilitation, pursuant to Title 16 California Code of Regulations (CCR) sections 1395 and 1395.1, of licensees who are subject to disciplinary action and former licensees petitioning for reinstatement of a license that has been revoked or surrendered. Under the provisions of the bill, a petitioner for license reinstatement would not have to disclose a subsequent conviction that had been granted relief, when such petitioners for reinstatement had past violations so egregious that the Board revoked their license (or the license was surrendered in lieu of revocation). To adequately protect consumers, it is paramount to have access to this arrest and conviction information for purposes of determining a licensee's

or petitioner's fitness to practice independently and the degree of rehabilitation achieved by the individual. The arrest or conviction may likely be directly relevant to that determination.

In relation to arrest information for current Board licensees, the Board is also concerned about losing arrest information due to reliability and timeliness issues with subsequent arrest notifications from DOJ. While it does not occur frequently, the Board has had multiple instances in the past five years where the Board was not notified by DOJ regarding a licensee's subsequent arrest despite the fact that the disclosure was made on the licensee's renewal application, or the Board was notified by DOJ up to a year after the arrest. Under AB 1076, the subsequent arrest notifications that the Board received over a year after the arrest could have been automatically granted relief and, barring self-disclosure by a licensee (which AB 1076 makes unnecessary), the Board would have received no notification of the arrest. The Board's Enforcement Program relies on subsequent arrest information from DOJ to protect the health and safety of the public, where these notifications alert the Board to arrests of its licensees when the crime may demonstrate an unfitness to independently practice psychology, where patient abuse may be ongoing (e.g., financial or elder abuse), or where danger to the public is imminent thereby warranting an interim suspension order or an order to cease practice pursuant to Penal Code Section 23.

While it does appear that the Department of Consumer Affairs' Division of Investigation (DOI) will continue to have access to arrest and conviction information under the bill, including court records, in order for the Board to access this information it would have to be a part of a complaint investigation by DOI. Currently, the Board does not utilize DOI for investigating petitions for reinstatements and instead uses its in-house Special Investigator (SI), in conformity with DOI's directives to the Board. Using DOI to investigate all petitions for reinstatements and subsequent arrest notifications is currently not an option as DOI's Complaint Prioritization and Referral Guidelines dictate that subsequent arrest notifications without an immediate public threat and arrest and conviction record complaints are to be investigated by the Board.

Further, even if DOI were to revise their guidelines in order to investigate Board petitions for reinstatement and subsequent arrests for licensees, this option would be highly impractical since complaints generally take up to 12 to 16 months for DOI to investigate (as complaints involving sexual misconduct and consumer harm must be given first priority), and the investigative costs are significantly higher than when performed by in-house staff. If the Board were able to perform these investigations using DOI, this would increase the Board's investigation timeframes and costs, which the Board would most likely be unable to recover. In effect, if AB 1076 were signed into law, the Board would be unable to ensure adequate review and consideration of subsequent arrest and conviction information for the purposes of determining rehabilitation, pursuant to 16 CCR sections 1395 and 1395.1, of individuals petitioning for reinstatement of a license and licensees who are subject to disciplinary action.

Regarding the fiscal impact of AB 1076, the potential impact is not estimable at this time. Currently, the Board's SI reviews and investigates an average of two (2) petitions for reinstatement per Fiscal Year (FY) over the past four FYs. Since the Board has not used DOI to investigate petitions for reinstatement in many years, and the scope and extent of their investigation would depend on the criminal history of the petitioner, the Board is unable to estimate the potential increase in DOI investigative time and associated costs.

Currently, one of the Board's Enforcement Analysts (Staff Services Analyst (SSA)) reviews the criminal history summaries of an average of 154 applicants per year, 93 percent of which are approved for licensure after a review of their criminal history. Due to current data restraints, it is not possible for the Board to estimate how many of these applicants would have had criminal history summaries under AB 1076's provisions. It is therefore impossible for the Board to estimate the decrease in the number of criminal history reviews that would be needed in the future. However, due to the higher hourly rate of DOI investigatory staff time in comparison with the hourly rate of an SSA, the cost savings due to reductions in the review of criminal histories for initial applications could potentially be negligible due to the increased DOI costs for petitions for reinstatement and subsequent arrests of licensees.

Due to the bill's weakening of the consumer protections integral to the Board's enforcement processes and the bill's undermining of the Board's legislative mandate of consumer protection, the Board asks for your "**Veto**" of AB 1076 (Ting).

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member Ting
Anthony Williams, Secretary, Legislative Affairs, Office of the Governor