

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 581
Committee Substitute Favorable 4/23/97
Senate Judiciary Committee Substitute Adopted 8/13/98
Fourth Edition Engrossed 8/18/98

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 90 of the General Statutes is amended by adding a new
6 Article to read:

7 **“ARTICLE 1F.**
8 **“PSYCHOTHERAPY PATIENT/CLIENT SEXUAL EXPLOITATION ACT.**
9 **”§ 90-21.41. Definitions.**

10 The following definitions apply in this Article:

11 (1) Client. – A person who may also be called patient or counselee who
12 seeks or obtains psychotherapy, whether or not the person is charged for
13 the service. The term ‘client’ includes a former client.

14 (2) Psychotherapist. – A psychiatrist licensed in accordance with Article 1
15 of Chapter 90 of the General Statutes, a psychologist as defined in G.S.
16 90-270.2(9), a licensed professional counselor as defined in G.S. 90-
17 330(a)(2), a substance abuse professional as defined in G.S. 90-

113.31(8), a social worker engaged in a clinical social work practice as defined in G.S. 90B-3(6), a fee-based pastoral counselor as defined in G.S. 90-382(4), a licensed marriage and family therapist as defined in G.S. 90-270.47(3), or a mental health service provider, who performs or purports to perform psychotherapy.

(3) Psychotherapy. – The professional treatment or professional counseling of a mental or emotional condition that includes revelation by the client of intimate details of thoughts and emotions of a very personal nature to assist the client in modifying behavior, thoughts and emotions that are maladjustive or contribute to difficulties in living.

(4) Sexual exploitation. – Either of the following:

a. Any physical contact for the purpose of sexual stimulation or gratification to either the psychotherapist or the client whether or not the contact occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination.

b. Any act done or statement made by the psychotherapist for the purpose of sexual stimulation or gratification of the client or psychotherapist which includes any of the following actions:

1. The psychotherapist's relating to the client the psychotherapist's own sexual fantasies or the details of the psychotherapist's own sexual life.

2. The uncovering or display of breasts or genitals of the psychotherapist to the client.

3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.

4. Statements containing sexual innuendo, sexual threats, or sexual suggestions regarding the relationship between the psychotherapist and the client.

(5) Sexual history. – Sexual activity of the client other than that conduct alleged by the client to constitute sexual exploitation in an action pursuant to this Article.

(6) Therapeutic deception. – A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

"§ 90-21.42. Action for sexual exploitation.

Any client who is sexually exploited by the client's psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

(1) At any time between and including the first date and last date the client was receiving psychotherapy from the psychotherapist;

(2) Within three years after the termination of the psychotherapy; or

(3) By means of therapeutic deception.

"§ 90-21.43. Remedies.

1 A person found to have been sexually exploited as provided under this Article may
2 recover from the psychotherapist actual or nominal damages, and reasonable attorneys'
3 fees as the court may allow. The trier of fact may award punitive damages in accordance
4 with the provisions of Chapter 1D of the General Statutes.

5 **"§ 90-21.44. Scope of discovery.**

6 (a) In an action under this Article, evidence of the client's sexual history is not
7 subject to discovery, except under the following conditions:

8 (1) The client claims impairment of sexual functioning.

9 (2) The psychotherapist requests a hearing prior to conducting discovery
10 and makes an offer of proof of the relevancy of the evidence, and the
11 court finds that the information is relevant and that the probative value
12 of the history outweighs its prejudicial effect.

13 (b) The court shall allow the discovery only of specific information or examples of
14 the client's conduct that are determined by the court to be relevant. The court order shall
15 detail the information or conduct that is subject to discovery.

16 **"§ 90-21.45. Admissibility of evidence of sexual history.**

17 (a) At the trial of an action under this Article, evidence of the client's sexual
18 history is not admissible unless:

19 (1) The psychotherapist requests a hearing prior to trial and makes an offer
20 of proof of the relevancy of the sexual history; and

21 (2) The court finds that, in the interest of justice, the evidence is relevant
22 and that the probative value of the evidence substantially outweighs its
23 prejudicial effect.

24 (b) The court shall allow the admission only of specific information or examples
25 of instances of the client's conduct that are determined by the court to be relevant. The
26 court's order shall detail the conduct that is admissible, and no other such evidence may
27 be introduced.

28 (c) Sexual history otherwise admissible pursuant to this section may not be proved
29 by reputation or opinion.

30 **"§ 90-21.46. Prohibited defense.**

31 It shall not be a defense in any action brought pursuant to this Article that the client
32 consented to the sexual exploitation or that the sexual contact with a client occurred
33 outside a therapy or treatment session or that it occurred off the premises regularly used
34 by the psychotherapist for therapy or treatment sessions.

35 **"§ 90-21.47. Statute of limitations.**

36 Any action under this Article shall be subject to the limitations on the period for the
37 commencement of actions set forth in G.S. 1-52(16).

38 **"§ 90-21.48. Agreements to not pursue complaint before licensing entity void.**

39 Any provision of a settlement agreement of a claim based in whole or part on an
40 allegation of sexual exploitation as defined in this Article, which prohibits a party from
41 initiating or pursuing a complaint before the regulatory entity responsible for overseeing
42 the conduct or licensing of the psychotherapist, is void."

1 Section 2. This act becomes effective October 1, 1998, and applies to conduct
2 occurring on or after that date.