

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1115
Second Edition Engrossed 5/11/93

Short Title: Sex Exploitation Act.

(Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 19, 1993

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 the
6 following new Article to read:

7 **"ARTICLE 1E.**
8 **"PSYCHOTHERAPY PATIENT/CLIENT**
9 **SEXUAL EXPLOITATION ACT.**

10 **"§ 90-21.24. Definitions.**

11 As used in this Article, unless the context clearly requires otherwise, the term:

- 12 (1) 'Client' means a person who may also be called patient or counselee
13 who seeks or obtains psychotherapy, whether or not the person is
14 charged for the service; the term 'client' includes a former client.
15 (2) 'Psychotherapist' means a physician, psychologist, nurse, counselor,
16 substance abuse counselor, social worker, member of the clergy,
17 marriage and family therapist, physician's assistant, mental health
18 service provider, or other person, regardless of license, certification, or
19 registry status and regardless of employment setting, who performs or
20 purports to perform psychotherapy.
21 (3) 'Psychotherapy' means the professional treatment or counseling of a
22 mental or emotional illness, symptom, condition, or problem of living.
23 (4) 'Sexual exploitation' means:

1 a. Sexual contact which includes any of the following actions
2 whether or not occurring with the consent of a client and
3 regardless of whether it occurred during any treatment,
4 consultation, evaluation, interview, or examination:

- 5 1. Sexual intercourse, cunnilingus, fellatio, anal
6 intercourse, or any intrusion, however slight, into the
7 oral, genital, or anal openings of the client's body by any
8 part of the psychotherapist's body or by any object used
9 by the psychotherapist for the purpose of sexual
10 stimulation or gratification of either the psychotherapist
11 or the client; or any intrusion, however slight, into the
12 oral, genital, or anal openings of the psychotherapist's
13 body by any part of the client's body or by any object
14 used by the client for the purpose of sexual stimulation
15 or gratification of either the psychotherapist or the client,
16 if agreed to, or not resisted by the psychotherapist; or
17 2. Kissing of, or the intentional touching by the
18 psychotherapist of, the client's lips, genital area, groin,
19 inner thigh, buttocks or breast, or of the clothing
20 covering any of these body parts, or similar activities by
21 the client that have been agreed to or not resisted by the
22 psychotherapist.

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

- 26 1. The relating by the psychotherapist to the client the
27 psychotherapist's own sexual fantasies or the details of
28 the psychotherapist's own sexual life;
- 29 2. The uncovering or display of breasts or genitals of the
30 psychotherapist to the client;
- 31 3. The showing of sexually graphic pictures to the client for
32 purposes other than diagnosis or treatment; or
- 33 4. Statements containing sexual innuendo, threats, or
34 suggestions regarding the relationship between the
35 psychotherapist and the client.

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

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

42 **"§ 90-21.25. Action for sexual exploitation.**

1 Any client of a psychotherapist who is sexually exploited by the psychotherapist
2 shall have remedy by civil action for sexual exploitation if the sexual exploitation
3 occurred:

- 4 (1) During the period the client was receiving psychotherapy from the
5 psychotherapist;
- 6 (2) Within three years after the termination of the psychotherapy; or
- 7 (3) By means of therapeutic deception.

8 **"§ 90-21.26. Remedies.**

9 A person who has been found to have been sexually exploited as provided under this
10 Article may recover from the defendant actual or nominal damages. In cases where the
11 conduct is willful, wanton, malicious or intentional, constitutes gross negligence,
12 evidences an intentional or reckless disregard by the psychotherapist of the needs of the
13 client, or consists of continued, multiple acts of sexual exploitation, the trier of fact may
14 award punitive damages. In addition, if a person bringing an action pursuant to this
15 Article is found by the trier of fact to have been sexually exploited by the defendant, the
16 court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as part
17 of the court costs.

18 **"§ 90-21.27. Scope of discovery.**

19 (a) In an action under this Article for sexual exploitation, evidence of the
20 plaintiff's sexual history is not subject to discovery except under the following
21 conditions:

- 22 (1) The plaintiff claims impairment of sexual functioning; or
- 23 (2) The defendant requests a hearing prior to conducting discovery and
24 makes an offer of proof of the relevancy of the evidence, and the court
25 finds that the information is relevant and that the probative value of the
26 history outweighs its prejudicial effect.

27 (b) The court shall allow the discovery only of specific information or examples
28 of the plaintiff's conduct that are determined by the court to be relevant. The court order
29 shall detail the information or conduct that is subject to discovery.

30 **"§ 90-21.28. Admissibility of evidence of sexual history.**

31 (a) At the trial of an action under this Article, evidence of the plaintiff's sexual
32 history is not admissible at trial unless:

- 33 (1) The defendant requests a hearing prior to trial and makes an offer of
34 proof of the relevancy of the sexual history, and
- 35 (2) The court finds that, in the interest of justice, the evidence is relevant
36 and that the probative value of the evidence substantially outweighs its
37 prejudicial effect.

38 (b) The court shall allow the admission only of specific information or examples
39 of instances of the plaintiff's conduct that are determined by the court to be relevant.
40 The court's order shall detail the conduct that is admissible, and no other such evidence
41 may be introduced.

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

1 (d) Violation of the terms of an order entered pursuant to this section may be
2 grounds for a new trial.

3 **"§ 90-21.29. Prohibited defense.**

4 It shall not be a defense in any action brought pursuant to this act that the client
5 consented to the sexual exploitation or that the sexual contact with a client occurred
6 outside a therapy or treatment session or that it occurred off the premises regularly used
7 by the psychotherapist for therapy or treatment sessions.

8 **"§ 90-21.30. Statute of limitations.**

9 (a) An action for sexual exploitation must be commenced within four years after
10 the cause of action accrues. A cause of action for sexual exploitation accrues at the later
11 of either:

12 (1) The last act of the defendant giving rise to the cause of action; or

13 (2) At the time the client discovers or reasonably should discover that he
14 or she was injured as a result of the sexual exploitation; provided in no
15 event shall an action pursuant to this Article be commenced more than
16 15 years from the last act of the defendant giving rise to the cause of
17 action.

18 (b) If a person entitled to bring an action under this Article is unable to bring the
19 action due to the effects of the sexual exploitation or due to any threats, instructions, or
20 statements from the psychotherapist, the duration of such period of inability shall not be
21 a part of the limitation period for the commencement of an action for sexual
22 exploitation.

23 **"§ 90-21.31. Agreements not to pursue complaint before licensing entity prohibited.**

24 It is prohibited for any person settling or compromising a claim involving the
25 conduct defined herein as sexual exploitation to request or agree, as a term of
26 settlement, not to pursue a complaint before the regulatory entity responsible for
27 overseeing the conduct or licensing of the defendant."

28 Sec. 2. This act becomes effective October 1, 1993, and applies to
29 exploitative conduct occurring on or after that date.