

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 581

Short Title: Sex Exploitation Act.

(Public)

Sponsors: Representatives Hackney, Neely (Cosponsors); Insko and Goodwin.

Referred to: Judiciary II.

March 24, 1997

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

The General Assembly of North Carolina enacts:

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

“ARTICLE 1F.
“PSYCHOTHERAPY PATIENT/CLIENT
SEXUAL EXPLOITATION ACT.

“§ 90-21.41. Definitions.

The following definitions apply in this Article:

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

(2) Psychotherapist. – A physician, psychologist, nurse, counselor, substance abuse counselor, social worker, member of the clergy, marriage and family therapist, physician assistant, mental health service provider, or other person, regardless of license, certification, or registry status and regardless of employment setting, who performs or purports to perform psychotherapy.

- 1 (3) Psychotherapy. – The professional treatment or counseling of a mental
2 or emotional illness, symptom, condition, or problem of living.
- 3 (4) Sexual exploitation. – Either of the following:
- 4 a. Sexual contact which includes any of the following actions
5 whether or not they occurred with the consent of a client or
6 during any treatment, consultation, evaluation, interview, or
7 examination:
- 8 1. Sexual intercourse, cunnilingus, fellatio, anal intercourse,
9 or any intrusion, however slight, into the oral, genital, or
10 anal openings of the client's body by any part of the
11 psychotherapist's body or by any object used by the
12 psychotherapist for the purpose of sexual stimulation or
13 gratification of either the psychotherapist or the client; or
14 any intrusion, however slight, into the oral, genital, or anal
15 openings of the psychotherapist's body by any part of the
16 client's body or by any object used by the client for the
17 purpose of sexual stimulation or gratification of either the
18 psychotherapist or the client, if agreed to, or not resisted
19 by the psychotherapist.
- 20 2. Kissing of, or the intentional touching by the
21 psychotherapist of, the client's lips, genital area, groin,
22 inner thigh, buttocks, or breast, or of the clothing covering
23 any of these body parts, or similar activities by the client
24 that have been agreed to or not resisted by the
25 psychotherapist.
- 26 b. Any act done or statement made by the psychotherapist for the
27 purpose of sexual stimulation or gratification of the client or
28 psychotherapist which includes any of the following actions:
- 29 1. The psychotherapist's relating to the client the
30 psychotherapist's own sexual fantasies or the details of the
31 psychotherapist's own sexual life.
- 32 2. The uncovering or display of breasts or genitals of the
33 psychotherapist to the client.
- 34 3. The showing of sexually graphic pictures to the client for
35 purposes other than diagnosis or treatment.
- 36 4. Statements containing sexual innuendo, threats, or
37 suggestions regarding the relationship between the
38 psychotherapist and the client.
- 39 (5) Sexual history. – Sexual activity of the client other than that conduct
40 alleged by the client to constitute sexual exploitation in an action
41 pursuant to this Article.

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

4 **"§ 90-21.42. Action for sexual exploitation.**

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

7 (1) During the period the client was receiving psychotherapy from the
8 psychotherapist.

9 (2) Within three years after the termination of the psychotherapy.

10 (3) By means of therapeutic deception.

11 **"§ 90-21.43. Remedies.**

12 A person found to have been sexually exploited as provided under this Article may
13 recover from the defendant actual or nominal damages. In cases where the conduct is
14 willful, wanton, malicious, or intentional, or the conduct evidences an intentional
15 disregard by the psychotherapist of the needs of the client, or consists of continued,
16 multiple acts of sexual exploitation, the trier of fact may award punitive damages in
17 accordance with the provisions of Chapter 1D of the General Statutes. In addition, if a
18 person bringing an action pursuant to this Article is found by the trier of fact to have been
19 sexually exploited by the defendant, the court may allow reasonable attorneys' fees to the
20 plaintiff's attorney, to be taxed as part of the court costs.

21 **"§ 90-21.44. Scope of discovery.**

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

24 (1) The plaintiff claims impairment of sexual functioning.

25 (2) The defendant requests a hearing prior to conducting discovery and
26 makes an offer of proof of the relevancy of the evidence, and the court
27 finds that the information is relevant and that the probative value of the
28 history outweighs its prejudicial effect.

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

32 **"§ 90-21.45. Admissibility of evidence of sexual history.**

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

35 (1) The defendant requests a hearing prior to trial and makes an offer of
36 proof of the relevancy of the sexual history.

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

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

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

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

5 **"§ 90-21.46. Prohibited defense.**

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

10 **"§ 90-21.47. Statute of limitations.**

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

14 (1) The last act of the defendant giving rise to the cause of action.

15 (2) At the time the client discovers or reasonably should discover that the
16 client was injured as a result of the sexual exploitation; however, no
17 cause of action shall be commenced more than 15 years from the last act
18 of the defendant giving rise to the cause of action.

19 (b) If a person is unable to bring an action due to the effects of sexual exploitation
20 or due to any threats, instructions, or statements from the psychotherapist, the duration of
21 the period of inability shall not be included in the statute of limitations for the
22 commencement of the action for sexual exploitation.

23 **"§ 90-21.48. Agreements not to pursue complaint before licensing entity prohibited.**

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

28 Section 2. This act becomes effective October 1, 1997, and applies to
29 exploitative conduct occurring on or after that date.