

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-213
HOUSE BILL 581

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 psychiatrist licensed in accordance with Article 1 of Chapter 90 of the General Statutes, a psychologist as defined in G.S. 90-270.2(9), a licensed professional counselor as defined in G.S. 90-330(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, whether or not it occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination:
 - a. Sexual contact which includes any of the following actions:
 1. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the oral, genital, or anal openings of the client's body by any part of the psychotherapist's body or by any object used

by the psychotherapist for the purpose of sexual stimulation or gratification of either the psychotherapist or the client; or any intrusion, however slight, into the oral, genital, or anal openings of the psychotherapist's body by any part of the client's body or by any object used by the client for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, if agreed to, or not resisted by the psychotherapist.

2. Kissing of, or the intentional touching by the psychotherapist of, the client's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, or kissing of, or the intentional touching by the client of, the psychotherapist's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, if agreed to or not resisted by the psychotherapist, for the purpose of sexual stimulation or gratification to either the psychotherapist or the client.

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.

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

"§ 90-21.44. Scope of discovery.

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

- (1) The client claims impairment of sexual functioning.
- (2) The psychotherapist requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

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

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

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

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

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

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

"§ 90-21.46. Prohibited defense.

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

"§ 90-21.47. Statute of limitations.

An action for sexual exploitation must be commenced within three years after the cause of action accrues. A cause of action for sexual exploitation accrues at the later of either:

- (1) The last act of the psychotherapist giving rise to the cause of action.
- (2) At the time the client discovers or reasonably should discover that the sexual exploitation occurred; however, no cause of action shall be

commenced more than 10 years from the last act of the psychotherapist giving rise to the cause of action.

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

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

Section 2. This act becomes effective January 1, 1999, and applies to conduct occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 1:45 p.m. this 31st day of October, 1998