

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1466 Session of
1987

INTRODUCED BY DeWEESE, BLAUM, KOSINSKI, NOYE, KUKOVICH,
LASHINGER, SWEET, HAGARTY, PISTELLA, WOGAN, SHOWERS, BUNT,
MARKOSEK, KENNEY, TIGUE, TRUMAN, COHEN, YANDRISEVITS,
PRESTON, BELARDI, VEON, DEAL, JACKSON AND O'BRIEN, JUNE 10,
1987

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 10, 1987

AN ACT

1 Providing a civil cause of action for sexual exploitation by
2 psychotherapists; providing for liability of employers of
3 psychotherapists; limiting the scope of discovery and
4 admission of evidence; and providing a limitation period.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the
9 Psychotherapist Sexual Exploitation Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Emotionally dependent." The nature of the patient's or
15 former patient's emotional condition and the nature of the
16 treatment provided by the psychotherapist are such that the
17 patient or former patient is unable to withhold consent to

1 sexual exploitation by the psychotherapist.

2 "Former patient." A person who was given psychotherapy
3 within two years prior to sexual exploitation by the
4 psychotherapist, whether or not that person was charged for the
5 services.

6 "Patient." A person who seeks or obtains psychotherapy,
7 whether or not that person is charged for the services. A person
8 is a patient of a psychotherapist for the period commencing with
9 the first therapy session and continuing up to and including the
10 last therapy session.

11 "Psychotherapist." Includes, but is not limited to, a
12 physician, psychologist, clergyman, drug and alcohol abuse
13 counselor, mental health counselor, social worker, nurse,
14 marriage counselor, family counselor, crisis intervention
15 counselor, rehabilitation counselor, pastoral counselor,
16 psychoanalyst, or other person, whether or not licensed by the
17 Commonwealth, who practices or purports to practice
18 psychotherapy.

19 "Psychotherapy." The professional treatment, assessment or
20 counseling of a mental or emotional illness, symptom or
21 condition by psychological means.

22 "Sexual exploitation." Sexual contact which includes any of
23 the following actions, whether or not occurring with the consent
24 of a patient or former patient:

25 (1) Sexual intercourse, cunnilingus, fellatio, anal
26 intercourse or any intrusion, however slight, into the oral,
27 genital or anal openings of the patient's or former patient's
28 body by any part of the psychotherapist's body or by any
29 object used by the psychotherapist for this purpose, or any
30 intrusion, however slight, into the oral, genital or anal

1 openings of psychotherapist's body by any part of the
2 patient's or former patient's body or by any object used by
3 the patient or former patient for this purpose, if agreed to
4 or not resisted by the psychotherapist.

5 (2) Kissing of, or the intentional touching by the
6 psychotherapist of, the patient's or former patient's genital
7 area, groin, inner thigh, buttocks or breast, or of the
8 clothing covering any of these body parts.

9 (3) Kissing of, or the intentional touching by the
10 patient or former patient of, the psychotherapist's genital
11 area, groin, inner thigh, buttocks or breast, or of the
12 clothing covering any of these body parts, if the
13 psychotherapist agrees to the kissing or intentional
14 touching.

15 The term includes requests by the psychotherapist for conduct
16 described in paragraph (1), (2) or (3).

17 "Therapeutic deception." A representation by a
18 psychotherapist that sexual contact between the psychotherapist
19 and a patient is consistent with or part of the patient's or
20 former patient's treatment.

21 Section 3. Cause of action for sexual exploitation.

22 Any person who, as a patient or former patient of a
23 psychotherapist, is sexually exploited by his psychotherapist,
24 may file a cause of action, in the court of common pleas of the
25 county in which the alleged sexual exploitation occurred,
26 against that psychotherapist for mental or physical injury
27 caused by the sexual exploitation and for damages, if the sexual
28 exploitation occurs:

29 (1) during the period of time the patient receives
30 psychotherapy from the psychotherapist, such period of time

commencing with the beginning of the first therapy session
and continuing up to and including the last therapy session;
or

(2) after the period the patient receives psychotherapy
from the psychotherapist if:

(i) the former patient is emotionally dependent on
the psychotherapist; or

(ii) the sexual exploitation occurs by means of
therapeutic deception.

Section 4. Prohibited defenses.

The defendant psychotherapist is prohibited from using any of
the following defenses to the action:

(1) That the sexual exploitation occurred outside a
psychotherapy or treatment session or that it occurred off
the premises regularly used by the psychotherapist for
psychotherapy or treatment sessions.

(2) That the length of the period during which the
patient was under treatment by the psychotherapist was too
short for the patient to become emotionally dependent upon
the psychotherapist.

(3) That the patient consented to the sexual
exploitation.

Section 5. Liability of employer.

(a) Failure or refusal to take action or make inquiries.--An
employer of a psychotherapist may be liable under section 3 if
the employer:

(1) fails or refuses to take reasonable action when he
knows or has reason to know that the psychotherapist engaged
in sexual exploitation of the plaintiff or any other patient
or former patient of the psychotherapist; or

1 (2) fails or refuses to make inquiries of an employer or
2 former employer, whose name and address have been disclosed
3 to him and who employed the psychotherapist as a
4 psychotherapist within the last five years, concerning the
5 known occurrence of sexual exploitation by the
6 psychotherapist with patients or former patients of the
7 psychotherapist.

8 (b) Failure or refusal to disclose information.--An employer
9 or former employer of a psychotherapist may be liable to the
10 patient under section 3 if the employer or former employer:

11 (1) knows of the occurrence of sexual exploitation by
12 the psychotherapist with patients or former patients of the
13 psychotherapist;

14 (2) receives a specific written request by another
15 employer or prospective employer, regarding the past
16 experiences of the psychotherapist engaged in the business of
17 psychotherapy, concerning the existence or nature of the
18 sexual exploitation; and

19 (3) fails or refuses to disclose to the prospective
20 employer the occurrence of the sexual exploitation.

21 (c) Proximate and actual cause.--An employer or former
22 employer may be liable under section 3 only to the extent that
23 the failure or refusal to take any action required by subsection
24 (a) or (b) was a proximate and actual cause of any damages
25 sustained.

26 (d) Immunity.--Any employer or former employer complying in
27 good faith and without malice with the requirements as set forth
28 in this section shall have immunity from any liability, civil or
29 criminal, that might otherwise result by reason of such actions.

30 Section 6. Scope of discovery and admission of evidence.

1 (a) General rule.--Evidence of the sexual, personal or
2 medical history of the plaintiff or the plaintiff's spouse is
3 not subject to discovery or admissible evidence in actions for
4 sexual exploitation by a psychotherapist unless the plaintiff or
5 the plaintiff's spouse claims damage to sexual functioning or
6 unless:

7 (1) the defendant requests a hearing prior to discovery
8 and/or trial and makes an offer of proof of the relevancy of
9 the history; and

10 (2) the court finds that the history is relevant and
11 that the probative value of the history outweighs its
12 prejudicial effect.

13 (b) Limitation by court.--The court shall allow the
14 discovery or admission into evidence only of specific
15 information or examples of the sexual, personal or medical
16 history of the plaintiff or the plaintiff's spouse that are
17 determined by the court to be relevant. The court's order shall
18 detail the information or conduct that is subject to discovery
19 or which is admissible, and no other such evidence may be
20 introduced.

21 Section 7. Limitation period.

22 An action for sexual exploitation by a psychotherapist shall
23 be commenced within ten years after the cause of action arises.

24 Section 8. Severability.

25 The provisions of this act are severable. If any provision of
26 this act or its application to any person or circumstance is
27 held invalid, the invalidity shall not affect other provisions
28 or applications of this act which can be given effect without
29 the invalid provision or application.

30 Section 9. Applicability.

1 This act shall apply to causes of action arising on or after
2 the effective date of this act.

3 Section 10. Effective date.

4 This act shall take effect in 60 days.