

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1466

Session of  
1987

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INTRODUCED BY DeWEESE, BLAUM, KOSINSKI, NOYE, KUKOVICH,  
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JUNE 8, 1987

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 16, 1988

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## 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~~ <—

23 (1) SEXUAL contact which includes any of the following <—  
24 actions, whether or not occurring with the consent of a  
25 patient or former patient:

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

1 intrusion, however slight, into the oral, genital or anal  
2 openings of psychotherapist's body by any part of the  
3 patient's or former patient's body or by any object used by  
4 the patient or former patient for this purpose, if agreed to  
5 or not resisted by the psychotherapist.

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

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

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

18 (2) REQUESTS BY THE PSYCHOTHERAPIST FOR CONDUCT <—  
19 DESCRIBED IN PARAGRAPH (1).

20 (3) THE OBSERVATION BY A THERAPIST OF A PATIENT ENGAGING  
21 IN SELF-STIMULATION OF ANY OF THE ANATOMICAL AREAS MENTIONED  
22 IN PARAGRAPH (1), IF SUCH STIMULATION OCCURS AT THE REQUEST  
23 OR DIRECTION OF THE THERAPIST.

24 "Therapeutic deception." A representation by a  
25 psychotherapist that sexual contact between the psychotherapist  
26 and a patient is consistent with or part of the patient's or  
27 former patient's treatment.

28 Section 3. Cause of action for sexual exploitation.

29 Any person who, as a patient or former patient of a  
30 psychotherapist, is sexually exploited by his psychotherapist,

1 may file a cause of action, in the court of common pleas of the  
2 county in which the alleged sexual exploitation occurred,  
3 against that psychotherapist for mental or physical injury  
4 caused by the sexual exploitation and for damages., ~~if the~~ <—  
5 ~~sexual exploitation occurs:~~

6 ~~(1) during the period of time the patient receives~~  
7 ~~psychotherapy from the psychotherapist, such period of time~~  
8 ~~commencing with the beginning of the first therapy session~~  
9 ~~and continuing up to and including the last therapy session;~~  
10 ~~or~~

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

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

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

17 Section 4. Prohibited defenses.

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

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

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

28 (3) THAT THE PATIENT WAS NOT TREATED BY THE THERAPIST ON <—  
29 A CONTINUOUS BASIS OR THAT THERE WAS A BREAK IN THE PATIENT'S  
30 THERAPY.

1           ~~(3)~~ (4) That the patient consented to the sexual           <—  
2   ~~exploitation.~~ EXPLOITATION OR INITIATED THE SEXUAL CONTACT.   <—  
3           (5) THAT THE SEXUAL CONTACT WAS PART OF THE THERAPY OR  
4   TREATMENT OF THE PATIENT.

5 Section 5. Liability of employer.

6       (a) Failure or refusal to take action or make inquiries.--An  
7 employer of a psychotherapist ~~may be~~ IS liable under section 3   <—  
8 if the employer:

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

13          (2) fails or refuses to make inquiries of an employer or  
14 former employer, whose name and address have been disclosed  
15 to him and who employed the psychotherapist as a  
16 psychotherapist within the last five years, concerning the  
17 known occurrence of sexual exploitation by the  
18 psychotherapist with patients or former patients of the  
19 psychotherapist.

20       (b) Failure or refusal to disclose information.--An employer  
21 or former employer of a psychotherapist ~~may be~~ IS liable to the   <—  
22 patient under section 3 if the employer or former employer:

23           (1) knows of the occurrence of sexual exploitation by  
24 the psychotherapist with patients or former patients of the  
25 psychotherapist;

26           (2) receives a specific written request by another  
27 employer or prospective employer, regarding the past  
28 experiences of the psychotherapist engaged in the business of  
29 psychotherapy, concerning the existence or nature of the  
30 sexual exploitation; and

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

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

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

(C) IMMUNITY.--ANY EMPLOYER OR FORMER EMPLOYER COMPLYING WITH THE REQUIREMENTS OF THIS SECTION SHALL HAVE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY ON ACCOUNT OF SUCH COMPLIANCE UNLESS THE ACTIONS OF THE EMPLOYER OR FORMER EMPLOYER WERE TAKEN IN BAD FAITH OR WITH A MALICIOUS PURPOSE.

Section 6. Scope of discovery and admission of evidence.

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

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

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

(b) Limitation by court.--The court shall allow the

1 discovery or admission into evidence only of specific  
2 information or examples of the sexual, personal or medical  
3 history of the plaintiff or the plaintiff's spouse that are  
4 determined by the court to be relevant. The court's order shall  
5 detail the information or conduct that is subject to discovery  
6 or which is admissible, and no other such evidence may be  
7 introduced. ALL ARGUMENTS, OFFERS OF PROOF OR OTHER PROCEEDINGS <—  
8 TO DETERMINE THE RELEVANCY OF SEXUAL, PERSONAL OR MEDICAL  
9 HISTORY OR CONDUCT OF THE PLAINTIFF SHALL BE HELD IN CAMERA.

10 Section 7. Limitation period.

11 An action for sexual exploitation by a psychotherapist shall  
12 be commenced within ~~ten years after the cause of action arises.~~ <—  
13 FIVE YEARS AFTER THE LAST INCIDENCE OF SEXUAL EXPLOITATION HAS <—  
14 OCCURRED.

15 SECTION 8. ELECTION OF REMEDIES NOT REQUIRED.

16 A PATIENT INJURED BY PSYCHOTHERAPIST SEXUAL EXPLOITATION AS  
17 SET FORTH IN THIS ACT NEED MAKE NO ELECTION OF REMEDIES OR  
18 ACTIONS AGAINST THE PSYCHOTHERAPIST, BUT MAY PURSUE RIGHTS UNDER  
19 THIS ACT AS WELL AS THROUGH THE PROFESSIONAL LICENSING BOARD  
20 WITH WHICH THE PSYCHOTHERAPIST IS REGISTERED AND ANY  
21 PROFESSIONAL ORGANIZATION WITH WHICH THE PSYCHOTHERAPIST IS  
22 AFFILIATED.

23 Section 8 9. Severability. <—

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

29 Section 9 10. Applicability. <—

30 This act shall apply to causes of action arising on or after

1 the effective date of this act.

2 Section ~~10~~ 11. Effective date.

<—

3 This act shall take effect in 60 days.