

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1051

By: Carey

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5  
6 AS INTRODUCED

7 An Act relating to mental health; creating the  
8 Protection Against Sexual Exploitation By Mental  
9 Health Services Provider Act; defining terms;  
10 creating certain cause of action; providing for  
11 liability of certain employer; providing limitation  
12 to liability; providing for exception to limitation  
13 of liability; specifying damages; specifying action  
14 that is not a defense; specifying defense;  
15 establishing duty to report; specifying information  
16 reported; providing for certain privilege; specifying  
17 penalty; establishing limited immunity from  
18 liability; prohibiting certain evidence from being  
19 admissible; stating exception; establishing time  
20 limitation of action; providing exception; providing  
21 for action against a governmental unit; providing for  
22 certain notice; providing for codification; and  
23 providing an effective date.  
24

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 14-101 of Title 43A, unless  
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Protection  
Against Sexual Exploitation By Mental Health Services Provider Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 14-102 of Title 43A, unless  
3 there is created a duplication in numbering, reads as follows:

4 As used in the Protection Against Sexual Exploitation By Mental  
5 Health Services Provider Act:

6 1. "Mental health services" means assessment, diagnosis,  
7 treatment, or counseling in a professional relationship to assist an  
8 individual or group in:

9 a. alleviating mental or emotional illness, symptoms,  
10 conditions, or disorders, including alcohol or drug  
11 addiction,

12 b. understanding conscious or subconscious motivations,

13 c. resolving emotional, attitudinal, or relationship  
14 conflicts, or

15 d. modifying feelings, attitudes, or behaviors that  
16 interfere with effective emotional, social, or  
17 intellectual functioning;

18 2. "Mental health services provider" or "provider" means an  
19 individual, licensed or unlicensed, who performs or purports to  
20 perform mental health services including, but not limited to:

21 a. a psychiatrist who is a diplomate of the American  
22 Board of Psychiatry and Neurology,

23 b. a physician licensed pursuant to the provisions of the  
24 Oklahoma Allopathic Medical and Surgical Licensure and

1 Supervision Act or the Oklahoma Osteopathic Medicine  
2 Act, as provided for in Title 59 of the Oklahoma  
3 Statutes, who has received specific training for and  
4 is experienced in performing mental health  
5 therapeutic, diagnostic, or counseling functions,

6 c. a clinical psychologist licensed to practice by the  
7 State Board of Examiners of Psychologists,

8 d. a professional counselor licensed pursuant to the  
9 provisions of the Licensed Professional Counselors Act  
10 as provided for in Title 59 of the Oklahoma Statutes,

11 e. a person licensed as a clinical social worker pursuant  
12 to the provisions of the Social Worker's Licensing Act  
13 as provided for in Title 59 of the Oklahoma Statutes,

14 f. a person licensed as a marital and family therapist  
15 pursuant to the provisions of the Marital and Family  
16 Therapist Licensure Act as provided for in Title 59 of  
17 the Oklahoma Statutes,

18 g. a person licensed as a behavioral practitioner  
19 pursuant to the provisions of the Licensed Behavioral  
20 Practitioner Act as provided for in Title 59 of the  
21 Oklahoma Statutes,

22 h. a person licensed as a certified alcohol and drug  
23 counselor pursuant to the provisions of the Licensed  
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1 Alcohol and Drug Counselor Act as provided for in  
2 Title 59 of the Oklahoma Statutes, or

3 i. a member of the clergy performing services other than  
4 religious, moral, and spiritual counseling, teaching,  
5 and instruction;

6 3. "Patient" means an individual who seeks or obtains mental  
7 health services;

8 4. "Sexual conduct" means sexual conduct as defined in Section  
9 1024.1 of Title 21 of the Oklahoma Statutes;

10 5. "Sexual exploitation" means a pattern, practice, or scheme  
11 of conduct, which may include sexual conduct, that can reasonably be  
12 construed as being for the purposes of sexual arousal or  
13 gratification or sexual abuse of any person. The term does not  
14 include obtaining information about the sexual history of a patient  
15 within standard accepted practice while treating a sexual or marital  
16 dysfunction; and

17 6. "Therapeutic deception" means a representation by a mental  
18 health services provider that sexual conduct with, or sexual  
19 exploitation by, the mental health services provider is consistent  
20 with, or a part of, the treatment of a patient or former patient.

21 SECTION 3. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 14-103 of Title 43A, unless  
23 there is created a duplication in numbering, reads as follows:

1 A mental health services provider is liable to a patient or  
2 former patient of the provider for damages for sexual exploitation  
3 if the patient or former patient suffers, directly or indirectly, a  
4 physical, mental, or emotional injury caused by, resulting from, or  
5 arising out of:

6 1. Sexual conduct with the patient or former patient by the  
7 provider;

8 2. Sexual exploitation of the patient or former patient by the  
9 provider; or

10 3. Therapeutic deception of the patient or former patient by  
11 the provider.

12 SECTION 4. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 14-104 of Title 43A, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. An employer of a mental health services provider is liable  
16 to a patient or former patient of the provider for damages if the  
17 patient or former patient is injured as described by Section 3 of  
18 this act and the employer:

19 1. Fails to make inquiries of an employer or former employer,  
20 whose name and address have been disclosed to the employer and who  
21 employed the provider as a mental health services provider within  
22 the five (5) years before the date of disclosure, concerning the  
23 possible occurrence of sexual exploitation by the provider of  
24 patients or former patients of the provider; or

1           2. Knows or has reason to know that the provider engaged in the  
2 sexual exploitation of the patient or former patient and the  
3 employer failed to:

4           a. report the suspected sexual exploitation as required  
5                 by Section 7 of this act, or

6           b. take necessary action to prevent or stop the sexual  
7                 exploitation by the provider.

8           B. An employer or former employer of a provider is liable to a  
9 patient or former patient of the provider for damages if the patient  
10 or former patient is injured as described by Section 3 of this act  
11 and the employer or former employer:

12           1. Knows of the occurrence of the sexual exploitation by the  
13 provider of the patient or former patient;

14           2. Receives a specific request by an employer or prospective  
15 employer of the provider, engaged in the business of providing  
16 mental health services, concerning the possible existence or nature  
17 of sexual exploitation by the provider; and

18           3. Fails to disclose the occurrence of the sexual exploitation.

19           C. An employer or former employer is liable under this section  
20 only to the extent that the failure to take the action described by  
21 subsection A or B of this section was a proximate and actual cause  
22 of damages sustained.

23           D. If a provider who sexually exploits a patient or former  
24 patient is a member of the clergy and the sexual exploitation occurs

1 when the provider is acting as a member of the clergy, liability if  
2 any under this section is limited to the church, congregation, or  
3 parish in which the member of the clergy carried out the clergy  
4 member's pastoral duties:

5 1. At the time the sexual exploitation occurs, if the liability  
6 is based on a violation of subsection A of this section; or

7 2. At the time of the previous occurrence of sexual  
8 exploitation, if the liability is based on a violation of subsection  
9 B of this section.

10 E. Nothing in subsection D of this section shall prevent the  
11 extension of liability under this section beyond the local church,  
12 congregation, or parish where the current or previous sexual  
13 exploitation occurred, as appropriate under subsection D of this  
14 section, if the patient proves that officers or employees of the  
15 religious denomination in question at the regional, state, or  
16 national level:

17 1. Knew or should have known of the occurrences of sexual  
18 exploitation by the provider;

19 2. Received reports of such occurrences and failed to take  
20 necessary action to prevent or stop such sexual exploitation by the  
21 provider and that such failure was a proximate and actual cause of  
22 the damages; or

23 3. Knew or should have known of the provider's propensity to  
24 engage in sexual exploitation.

1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 14-105 of Title 43A, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. A plaintiff who prevails in a suit under the Protection  
5 Against Sexual Exploitation By Mental Health Services Provider Act  
6 may recover actual damages and may recover damages for mental  
7 anguish even if an injury other than mental anguish is not shown.

8 B. In addition to an award under subsection A of this section,  
9 a plaintiff who prevails in a suit under the Protection Against  
10 Sexual Exploitation By Mental Health Services Provider Act may  
11 recover exemplary damages and reasonable attorney fees.

12 SECTION 6. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 14-106 of Title 43A, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. It is not a defense to an action brought under the  
16 Protection Against Sexual Exploitation By Mental Health Services  
17 Provider Act that the sexual exploitation of the patient or former  
18 patient by the mental health services provider occurred:

- 19 1. With the consent of the patient or former patient;
- 20 2. Outside the therapy or treatment sessions of the patient or  
21 former patient; or
- 22 3. Off the premises regularly used by the provider for the  
23 therapy or treatment sessions of the patient or former patient.

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1 B. It is a defense to an action brought under the Protection  
2 Against Sexual Exploitation By Mental Health Services Provider Act  
3 by a former patient that the person was not emotionally dependent on  
4 the provider when the sexual conduct began and the provider  
5 terminated mental health services with the patient more than two (2)  
6 years before the date the sexual conduct began.

7 C. A person is considered "not emotionally dependent" for  
8 purposes of the Protection Against Sexual Exploitation By Mental  
9 Health Services Provider Act if the nature of the emotional  
10 condition of the patient or former patient and the nature of the  
11 treatment provided by the provider are not such that the provider  
12 knows or has reason to believe that the patient or former patient is  
13 unable to withhold consent to the sexual conduct.

14 SECTION 7. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 14-107 of Title 43A, unless  
16 there is created a duplication in numbering, reads as follows:

17 A. If a mental health services provider or the employer of a  
18 provider has reasonable cause to suspect that a patient has been the  
19 victim of sexual exploitation by a provider during the course of  
20 treatment, or if a patient alleges sexual exploitation by a provider  
21 during the course of treatment, the provider or the employer shall  
22 report the alleged conduct not later than the thirtieth day after  
23 the date the person became aware of the conduct or the allegations  
24 to:

1           1. The prosecuting attorney in the county in which the alleged  
2 sexual exploitation occurred; and

3           2. Any state licensing board that has responsibility for the  
4 licensing of the provider.

5           B. Before making a report under this section, the reporter  
6 shall inform the alleged victim of the reporter's duty to report and  
7 shall determine if the alleged victim wants to remain anonymous.

8           C. A report under this section need contain only the  
9 information needed to:

10           1. Identify the reporter;

11           2. Identify the alleged victim, unless the alleged victim has  
12 requested anonymity; and

13           3. Express suspicion that sexual exploitation has occurred.

14           D. Information in a report is privileged information and is for  
15 the exclusive use of the prosecuting attorney or state licensing  
16 board that receives the information. A person who receives  
17 privileged information shall not disclose the information except to  
18 the extent that disclosure is consistent with the authorized  
19 purposes for which the person first obtained the information. The  
20 identity of an alleged victim of sexual exploitation by a provider  
21 shall not be disclosed by the reporter, or by a person who has  
22 received or has access to a report or record, unless the alleged  
23 victim has consented to the disclosure in writing.

1 E. In addition to any other penalty stated, a person who  
2 intentionally violates subsection A or D of this section is subject  
3 to disciplinary action by the appropriate licensing board. A  
4 violation under this subsection shall be a misdemeanor.

5 SECTION 8. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 14-108 of Title 43A, unless  
7 there is created a duplication in numbering, reads as follows:

8 A. A person who, in good faith, makes a report required by  
9 Section 7 of this act is immune from civil or criminal liability  
10 resulting from the filing of that report.

11 B. Reporting under the Protection Against Sexual Exploitation  
12 By Mental Health Services Provider Act is presumed to be done in  
13 good faith.

14 C. The immunity provided by this section does not apply to  
15 liability resulting from sexual exploitation by a mental health  
16 services provider of a patient or former patient.

17 SECTION 9. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 14-109 of Title 43A, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. In an action for sexual exploitation, evidence of the  
21 plaintiff's sexual history and reputation is not admissible unless:

- 22 1. The plaintiff claims damage to sexual functioning; or
- 23 2. The defendant requests a hearing before the trial and makes  
24 an offer of proof of the relevancy of the history or reputation and

1 the court finds that the history or reputation is relevant and that  
2 the probative value of the evidence outweighs its prejudicial  
3 effect.

4 B. The court may allow the admission only of specific  
5 information or examples of the plaintiff's conduct that are  
6 determined by the court to be relevant. The court order shall  
7 detail the information or conduct that is admissible and no other  
8 such evidence may be introduced.

9 SECTION 10. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-110 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. Except as otherwise provided by this section, an action  
13 under the Protection Against Sexual Exploitation By Mental Health  
14 Services Provider Act must be filed before the third anniversary of  
15 the date the patient or former patient understood or should have  
16 understood the conduct for which liability is established under the  
17 Protection Against Sexual Exploitation By Mental Health Services  
18 Provider Act.

19 B. If a patient or former patient entitled to file an action  
20 under the Protection Against Sexual Exploitation By Mental Health  
21 Services Provider Act is unable to bring the action because of the  
22 effects of the sexual exploitation, continued emotional dependence  
23 on the mental health services provider, or threats, instructions, or  
24 statements by the provider, the deadline for filing an action under

1 this act is tolled during that period, except that the deadline may  
2 not be tolled for more than fifteen (15) years.

3 C. This section shall not apply to a patient or former patient  
4 who is a minor. This section shall apply once that patient or  
5 former patient has reached the age of eighteen (18). If the action  
6 is brought by a parent, guardian, or other person having custody of  
7 the minor, the action shall be brought within the period set forth  
8 in this section.

9 SECTION 11. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-111 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. Subject to subsection B of this section, a patient, a former  
13 patient, or another person acting on behalf of a patient or former  
14 patient may bring an action under the Protection Against Sexual  
15 Exploitation By Mental Health Services Provider Act against a  
16 governmental unit that is an employer of a mental health services  
17 provider who commits the offending conduct described in this act in  
18 relation to a patient or former patient. In an action brought under  
19 this subsection, the patient or former patient may obtain:

- 20 1. An order requiring the governmental unit to discharge the  
21 provider who committed the conduct;
- 22 2. Court costs; and
- 23 3. A reasonable attorney fee, as determined by the court.

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1 B. A patient, former patient, or person acting on behalf of a  
2 patient or former patient may not bring an action under subsection A  
3 of this section unless sixty (60) days before the date that the  
4 action is to be filed, the person notifies the governmental unit in  
5 writing of its intention to bring an action under this section. The  
6 notice shall reasonably describe the facts giving rise to the claim.  
7 If, before the sixtieth day after the date the notice is provided  
8 under this section, the governmental unit discharges the provider  
9 who committed the conduct with respect to which the claim is filed,  
10 the person may not bring suit under subsection A of this section.

11 C. Governmental immunity to a suit is waived only to the extent  
12 of the liability created by subsection A of this section.

13 SECTION 12. This act shall become effective November 1, 2009.

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