

1 ENGROSSED SENATE
2 BILL NO. 1453

By: Brecheen of the Senate

3 and

4 Billy of the House

5
6 [mental health services provider - Protection
7 Against Sexual Exploitation By A Mental Health
8 Services Provider Act - codification - effective
9 date]

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

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

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

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

20 As used in the Protection Against Sexual Exploitation By A
21 Mental Health Services Provider Act:

22 1. "Mental health services" means the application of testing;
23 assessment; diagnosis; treatment; treatment planning;
24 psychoeducation; prevention; case management; social work case

1 management; psychosocial rehabilitation; consultation; hypnosis;
2 biofeedback; eye movement desensitization and reprocessing;
3 behavioral analysis; professional counseling; community counseling;
4 mental health counseling; clinical mental health counseling; child
5 and adolescent counseling; alcohol and drug counseling; addiction
6 counseling; behavioral addiction counseling; gambling counseling;
7 forensic counseling; death, dying, and bereavement counseling; group
8 counseling; gerontological counseling; rehabilitation counseling;
9 school counseling; career counseling; marriage, couple, and family
10 counseling; marital and family therapy; behavioral health services;
11 social work; clinical social work; school social work; hospital and
12 palliative social work; gerontological social work; child, youth and
13 family social work; health care social work; alcohol, tobacco and
14 other drugs social work; therapy; play therapy; art therapy; music
15 therapy; dance therapy; group therapy; group psychotherapy;
16 psychotherapy; psychoanalysis; nursing; physical therapy;
17 psychology; forensic psychology; community psychology; developmental
18 psychology; applied psychology; cognitive and behavioral psychology;
19 child and adolescent psychology; educational psychology;
20 industrial/organizational psychology; human factors psychology;
21 social psychology; sports psychology; health psychology;
22 neuropsychology; couple and family psychology; group psychology;
23 organizational business consulting psychology; psychoanalysis
24 psychology; rehabilitation psychology; counseling psychology; school

1 psychology; clinical psychology; psychiatric rehabilitation;
2 neuropsychiatry; psychiatry; or medicine in a professional
3 relationship to assist an individual, group, couple, or family in:
4 a. alleviating mental or emotional illnesses, symptoms,
5 conditions, disorders, or undesired behaviors
6 including any psychological condition as defined by
7 the current edition of Diagnostic and Statistical
8 Manual of Mental Disorders, promulgated by the
9 American Psychiatric Association, or the current
10 edition of International Classification of Diseases,
11 promulgated by the World Health Organization,
12 b. understanding, analyzing, and interpreting conscious
13 or subconscious motivations,
14 c. resolving psychologically-based emotional,
15 attitudinal, somatic, or psychosomatic illnesses,
16 symptoms, conditions, disorders, or undesired
17 behaviors,
18 d. resolving relationship, parental, or familial
19 conflicts, symptoms, conditions, disorders, or
20 undesired behaviors,
21 e. resolving biological abnormalities contributing to any
22 mental or emotional illnesses, symptoms, conditions,
23 disorders, or undesired behaviors, or
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1 f. modifying feelings, attitudes, or behaviors that
2 interfere with effective emotional, social,
3 intellectual, occupational, educational, or
4 developmental functioning;

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

8 a. a student, intern, resident, or medical professional
9 practicing:

10 (1) psychiatry who is a diplomate of the American
11 Board of Psychiatry and Neurology,

12 (2) medicine pursuant to the provisions of the
13 Oklahoma Allopathic Medical and Surgical
14 Licensure and Supervision Act or the Oklahoma
15 Osteopathic Medicine Act, as provided in Title 59
16 of the Oklahoma Statutes and commensurate rules,
17 policies, and guidelines, who has received
18 specific training for and is experienced in
19 performing mental health therapeutic, diagnostic,
20 or counseling functions, or

21 (3) medicine pursuant to the provisions of the
22 Oklahoma Nursing Practice Act or the Physician
23 Assistant Act, as provided in Title 59 of the
24 Oklahoma Statutes and commensurate rules,

1 policies and guidelines, who has received
2 specific training for and is experienced in
3 performing mental health therapeutic, diagnostic,
4 or counseling functions,

5 b. a student, intern, candidate, supervisee, or mental
6 health professional providing mental health services:

7 (1) pursuant to the provisions of the Psychologists
8 Licensing Act, as provided in Title 59 of the
9 Oklahoma Statutes and commensurate rules,
10 policies, and guidelines,

11 (2) pursuant to the provisions of the Licensed
12 Professional Counselors Act as provided in Title
13 59 of the Oklahoma Statutes,

14 (3) pursuant to the provisions of the Social Worker's
15 Licensing Act as provided in Title 59 of the
16 Oklahoma Statutes,

17 (4) pursuant to the provisions of the Marital and
18 Family Therapist Licensure Act as provided in
19 Title 59 of the Oklahoma Statutes,

20 (5) pursuant to the provisions of the Licensed
21 Behavioral Practitioner Act as provided in Title
22 59 of the Oklahoma Statutes,

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1 (6) pursuant to the provisions of the Licensed
2 Alcohol and Drug Counselor Act as provided in
3 Title 59 of the Oklahoma Statutes,

4 (7) while serving in the capacity of a Certified
5 Behavioral Health Case Manager I, II, or III, as
6 provided in Title 450, Chapter 50 of the Oklahoma
7 Administrative Code,

8 (8) while serving in the capacity of a school
9 psychologist, school psychometrist, or school
10 counselor pursuant to rules and policy prescribed
11 by the Oklahoma State Department of Education,

12 (9) while serving in the capacity of a Behavioral
13 Health Rehabilitation Specialist pursuant to
14 rules and policy prescribed by the Oklahoma
15 Health Care Authority,

16 (10) while serving in the capacity of a psychiatric-
17 social rehabilitation specialist pursuant to
18 rules and policy prescribed by the Oklahoma
19 Health Care Authority,

20 (11) while serving in the capacity of a Behavioral
21 Health Professional, Mental Health Professional,
22 or Alcohol or Other Drug Treatment Professional
23 pursuant to rules and policy prescribed by the
24 Oklahoma Health Care Authority, or

1 (12) while serving in the capacity of a Certified
2 Prevention Specialist or Certified Criminal
3 Justice Addictions Professional pursuant to rules
4 and policy prescribed by the Oklahoma Drug and
5 Alcohol Professional Counselor Association and
6 the International Certification and Reciprocity
7 Consortium,

8 c. any person employed or contracted by a private
9 nonprofit behavioral services provider contracting
10 with the state to provide behavioral services who is
11 expressly exempted from the aforementioned
12 occupational licensing acts or certifying bodies,

13 d. a member of the clergy performing services other than
14 religious, moral, and spiritual counseling, teaching,
15 and instructions, or

16 e. any other person, licensed or unlicensed, purporting
17 to provide mental health services or functions to a
18 resident of the state of Oklahoma;

19 3. "Patient" means an individual who seeks or obtains mental
20 health services;

21 4. "Former patient" means an individual who has received mental
22 health services from a mental health services provider, but has had
23 such services terminated in the previous five (5) years;

1 5. "Sexual conduct" means that as defined in Section 1024.1 of
2 Title 21 of the Oklahoma Statutes;

3 6. "Sexual exploitation" means a pattern, practice, or scheme
4 of conduct, which may include sexual conduct that can reasonably be
5 construed as being for the purposes of sexual arousal or
6 gratification or sexual abuse of any person. The term does not
7 include obtaining information about the sexual history of a patient
8 within standard accepted practice while treating a sexual or marital
9 dysfunction; and

10 7. "Therapeutic deception" means a representation by a mental
11 health services provider that sexual conduct with, or sexual
12 exploitation by, the mental health services provider is consistent
13 with, or a part of, the treatment of a patient or former patient.

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

17 A. A mental health services provider is liable to a patient or
18 former patient of the provider for damages for sexual exploitation
19 if the patient or former patient suffers, directly or indirectly, a
20 physical, mental, or emotional injury caused by, resulting from, or
21 arising out of:

22 1. Sexual conduct with the patient or former patient by the
23 provider;

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

3 3. Therapeutic deception of the patient or former patient by
4 the provider.

5 B. A mental health services provider who engages in sexual
6 conduct, sexual exploitation, or therapeutic deception of a patient
7 or former patient shall be subject to any applicable criminal
8 sanctions as follows:

9 1. A single act of sexual conduct, sexual exploitation, or
10 therapeutic deception by a mental health services provider with one
11 current or former patient shall be a misdemeanor punishable by a
12 fine not exceeding Five Thousand Dollars (\$5,000.00);

13 2. Multiple acts of sexual conduct, sexual exploitation, or
14 therapeutic deception by a mental health services provider with one
15 current or former patient shall be a misdemeanor punishable by a
16 fine not exceeding Ten Thousand Dollars (\$10,000.00); and

17 3. Multiple acts of sexual conduct, sexual exploitation, or
18 therapeutic deception by a mental health services provider with two
19 or more current or former patients shall be a felony punishable by a
20 fine not exceeding Twenty Thousand Dollars (\$20,000.00).

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

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

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

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

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

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

21 B. It is a defense to an action brought under the Protection
22 Against Sexual Exploitation By A Mental Health Services Provider Act
23 by a former patient that the patient was not emotionally dependent
24 on the provider when the sexual conduct began and the provider

1 terminated mental health services with the patient more than five
2 (5) years before the date the sexual conduct began.

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

6 A. If a mental health services provider or the employer of a
7 provider has reasonable cause to suspect that a patient has been the
8 victim of sexual exploitation by a provider during the course of
9 treatment or within five (5) years following the termination of the
10 rendering of such mental health services, or if a patient alleges
11 sexual exploitation by a provider during the course of treatment or
12 within five (5) years following the termination of the rendering of
13 such mental health services, the provider or the employer shall
14 report the alleged conduct no later than the thirtieth day after the
15 date the person became aware of the conduct or the allegations to:

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

18 2. Any state licensing board that has responsibility for the
19 licensing of the provider.

20 B. Before making a report under this section, the reporter
21 shall inform the alleged victim of the reporter's duty to report and
22 shall determine if the alleged victim wishes to remain anonymous.

23 C. A report under this section need contain only the
24 information needed to:

- 1 1. Identify the reporter;
- 2 2. Identify the alleged perpetrator;
- 3 3. Identify the alleged victim, unless the alleged victim has
- 4 requested anonymity; and
- 5 4. Express suspicion that sexual exploitation has occurred.

6 D. Information in a report is privileged information and is for
7 the exclusive use of the prosecuting attorney or state licensing
8 board that receives the information. A person who receives
9 privileged information shall not disclose the information except to
10 the extent that disclosure is consistent with the authorized
11 purposes for which the person first obtained the information. The
12 identity of an alleged victim of sexual exploitation by a provider
13 shall not be disclosed by the reporter, or by a person who has
14 received or has access to a report or record, unless the alleged
15 victim has consented to the disclosure in writing.

16 E. In addition to any other penalty stated, a person who
17 intentionally violates subsection A or D of this section is subject
18 to disciplinary action by the appropriate licensing board. A
19 violation under this subsection shall be a misdemeanor punishable by
20 a fine not exceeding One Thousand Dollars (\$1,000.00).

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

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1 A. A person who, in good faith, makes a report required by
2 Section 6 of this act is immune from civil or criminal liability
3 resulting from the filing of that report.

4 B. Reporting under the Protection Against Sexual Exploitation
5 By A Mental Health Services Provider Act is presumed to be done in
6 good faith.

7 C. The immunity provided by this section shall not apply to
8 liability resulting from sexual exploitation of a patient or former
9 patient by a mental health services provider.

10 SECTION 8. This act shall become effective November 1, 2012.

11 Passed the Senate the 14th day of March, 2012.

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Presiding Officer of the Senate

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15 Passed the House of Representatives the ____ day of _____,
16 2012.

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Presiding Officer of the House
of Representatives

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