

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1453

5 By: Brecheen of the Senate

6 and

7 Billy of the House

8 **[mental health services provider - Protection**
9 **Against Sexual Exploitation By A Mental Health**
10 **Services Provider Act - codification - effective**
11 **date]**

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

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

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

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

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

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

1 neuropsychology; couple and family psychology; group psychology;
2 organizational business consulting psychology; psychoanalysis
3 psychology; rehabilitation psychology; counseling psychology; school
4 psychology; clinical psychology; psychiatric rehabilitation;
5 neuropsychiatry; psychiatry; or medicine in a professional
6 relationship to assist an individual, group, couple, or family in:

- 7 a. alleviating mental or emotional illnesses, symptoms,
8 conditions, disorders, or undesired behaviors
9 including any psychological condition as defined by
10 the current edition of Diagnostic and Statistical
11 Manual of Mental Disorders, promulgated by the
12 American Psychiatric Association, or the current
13 edition of International Classification of Diseases,
14 promulgated by the World Health Organization,
- 15 b. understanding, analyzing, and interpreting conscious
16 or subconscious motivations,
- 17 c. resolving psychologically-based emotional,
18 attitudinal, somatic, or psychosomatic illnesses,
19 symptoms, conditions, disorders, or undesired
20 behaviors,
- 21 d. resolving relationship, parental, or familial
22 conflicts, symptoms, conditions, disorders, or
23 undesired behaviors,

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- 1 e. resolving biological abnormalities contributing to any
2 mental or emotional illnesses, symptoms, conditions,
3 disorders, or undesired behaviors, or
4 f. modifying feelings, attitudes, or behaviors that
5 interfere with effective emotional, social,
6 intellectual, occupational, educational, or
7 developmental functioning;

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

- 11 a. a student, intern, resident, or medical professional
12 practicing:

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

15 (2) medicine pursuant to the provisions of the
16 Oklahoma Allopathic Medical and Surgical
17 Licensure and Supervision Act or the Oklahoma
18 Osteopathic Medicine Act, as provided in Title 59
19 of the Oklahoma Statutes and commensurate rules,
20 policies, and guidelines, who has received
21 specific training for and is experienced in
22 performing mental health therapeutic, diagnostic,
23 or counseling functions, or
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1 (3) medicine pursuant to the provisions of the
2 Oklahoma Nursing Practice Act or the Physician
3 Assistant Act, as provided in Title 59 of the
4 Oklahoma Statutes and commensurate rules,
5 policies and guidelines, who has received
6 specific training for and is experienced in
7 performing mental health therapeutic, diagnostic,
8 or counseling functions,

9 b. a student, intern, candidate, supervisee, or mental
10 health professional providing mental health services:

11 (1) pursuant to the provisions of the Psychologists
12 Licensing Act, as provided in Title 59 of the
13 Oklahoma Statutes and commensurate rules,
14 policies, and guidelines,

15 (2) pursuant to the provisions of the Licensed
16 Professional Counselors Act as provided in Title
17 59 of the Oklahoma Statutes,

18 (3) pursuant to the provisions of the Social Worker's
19 Licensing Act as provided in Title 59 of the
20 Oklahoma Statutes,

21 (4) pursuant to the provisions of the Marital and
22 Family Therapist Licensure Act as provided in
23 Title 59 of the Oklahoma Statutes,
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- 1 (5) pursuant to the provisions of the Licensed
2 Behavioral Practitioner Act as provided in Title
3 59 of the Oklahoma Statutes,
- 4 (6) pursuant to the provisions of the Licensed
5 Alcohol and Drug Counselor Act as provided in
6 Title 59 of the Oklahoma Statutes,
- 7 (7) while serving in the capacity of a Certified
8 Behavioral Health Case Manager I, II, or III, as
9 provided in Title 450, Chapter 50 of the Oklahoma
10 Administrative Code,
- 11 (8) while serving in the capacity of a school
12 psychologist, school psychometrist, or school
13 counselor pursuant to rules and policy prescribed
14 by the Oklahoma State Department of Education,
- 15 (9) while serving in the capacity of a Behavioral
16 Health Rehabilitation Specialist pursuant to
17 rules and policy prescribed by the Oklahoma
18 Health Care Authority,
- 19 (10) while serving in the capacity of a psychiatric-
20 social rehabilitation specialist pursuant to
21 rules and policy prescribed by the Oklahoma
22 Health Care Authority,
- 23 (11) while serving in the capacity of a Behavioral
24 Health Professional, Mental Health Professional,

1 or Alcohol or Other Drug Treatment Professional
2 pursuant to rules and policy prescribed by the
3 Oklahoma Health Care Authority, or

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

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

16 d. a member of the clergy performing services other than
17 religious, moral, and spiritual counseling, teaching,
18 and instructions, or

19 e. any other person, licensed or unlicensed, purporting
20 to provide mental health services or functions to a
21 resident of the state of Oklahoma;

22 3. "Patient" means an individual who seeks or obtains mental
23 health services;

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

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

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

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

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

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

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

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

5 3. Therapeutic deception of the patient or former patient by
6 the provider.

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

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

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

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

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 14-104 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 A 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 A Mental Health Services Provider Act may
11 recover exemplary damages and reasonable attorney fees.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 14-105 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 A 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 A Mental Health Services Provider Act
3 by a former patient that the patient was not emotionally dependent
4 on the provider when the sexual conduct began and the provider
5 terminated mental health services with the patient more than five
6 (5) years before the date the sexual conduct began.

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

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

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

22 2. Any state licensing board that has responsibility for the
23 licensing of the provider.

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

4 C. A report under this section need contain only the
5 information needed to:

6 1. Identify the reporter;

7 2. Identify the alleged perpetrator;

8 3. Identify the alleged victim, unless the alleged victim has
9 requested anonymity; and

10 4. Express suspicion that sexual exploitation has occurred.

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

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

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

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO
17 PASS, As Amended and Coauthored.

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