

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 387

By: Brecheen of the Senate

4 and

5 Roberts (Dustin) of the
6 House

7
8 AS INTRODUCED

9 An Act relating to sexual exploitation by a mental
10 health services provider; creating the Protection
11 Against Sexual Exploitation By a Mental Health
12 Services Provider Act; providing short title;
13 defining terms; creating certain causes of action;
14 specifying damages; specifying defenses; requiring
15 certain report; specifying information to be included
16 in report; making certain information privileged;
17 making certain actions subject to disciplinary
18 action; establishing immunity from liability in
19 certain circumstances; providing for codification;
20 and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 14-101 of Title 43A, unless
24 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 a 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 a
5 Mental Health Services Provider Act:

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

1 psychology; forensic psychology; community psychology; developmental
2 psychology; applied psychology; cognitive and behavioral psychology;
3 child and adolescent psychology; educational psychology;
4 industrial/organizational psychology; human factors psychology;
5 social psychology; sports psychology; health psychology;
6 neuropsychology; couple and family psychology; group psychology;
7 organizational business consulting psychology; psychoanalysis
8 psychology; rehabilitation psychology; counseling psychology; school
9 psychology; clinical psychology; psychiatric rehabilitation;
10 neuropsychiatry, psychiatry; or medicine in a professional
11 relationship to assist an individual, group, couple, or family in:
12 a. alleviating mental or emotional illnesses, symptoms,
13 conditions, disorders, or undesired behaviors
14 including any psychological condition as defined by
15 the current edition of Diagnostic and Statistical
16 Manual of Mental Disorders, promulgated by the
17 American Psychiatric Association, or the current
18 edition of International Classification of Diseases,
19 promulgated by the World Health Organization,
20 b. understanding, analyzing, and interpreting conscious
21 or subconscious motivations,
22 c. resolving psychologically-based emotional,
23 attitudinal, somatic, or psychosomatic illnesses,
24

1 symptoms, conditions, disorders, or undesired
2 behaviors,

3 d. resolving relationship, parental, or familial
4 conflicts, symptoms, conditions, disorders, or
5 undesired behaviors,

6 e. resolving biological abnormalities contributing to any
7 mental or emotional illnesses, symptoms, conditions,
8 disorders, or undesired behaviors, or

9 f. modifying feelings, attitudes, or behaviors that
10 interfere with effective emotional, social,
11 intellectual, occupational, educational, or
12 developmental functioning;

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

16 a. a student, intern, resident, or medical professional
17 practicing:

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

20 (2) medicine pursuant to the provisions of the
21 Oklahoma Allopathic Medical and Surgical
22 Licensure and Supervision Act or the Oklahoma
23 Osteopathic Medicine Act, as provided for in
24 Title 59 of the Oklahoma Statutes and

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

6 (3) medicine pursuant to the provision of the
7 Oklahoma Nursing Practice Act or the Physician
8 Assistant Act, as provided for in Title 59 of the
9 Oklahoma Statutes and commensurate rules,
10 policies and guidelines, who has received
11 specific training for and is experienced in
12 performing mental health therapeutic, diagnostic,
13 or counseling functions,

14 b. a student, intern, candidate, supervisee, or mental
15 health professional providing mental health services:

16 (1) pursuant to the provisions of the Psychologists
17 Licensing Act, as provided for in Title 59 of the
18 Oklahoma Statutes and commensurate rules,
19 policies, and guidelines,

20 (2) pursuant to the provisions of the Licensed
21 Professional Counselors Act as provided for in
22 Title 59 of the Oklahoma Statutes,
23
24

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

1 (10) while serving in the capacity of a psychiatric-
2 social rehabilitation specialist pursuant to
3 rules and policy prescribed by the Oklahoma
4 Health Care Authority,

5 (11) while serving in the capacity of a Behavioral
6 Health Professional, Mental Health Professional,
7 or Alcohol or Other Drug Treatment Professional
8 pursuant to rules and policy prescribed by the
9 Oklahoma Health Care Authority, or

10 (12) while serving in the capacity of a Certified
11 Prevention Specialist or Certified Criminal
12 Justice Addictions Professional pursuant to rules
13 and policy prescribed by the Oklahoma Drug and
14 Alcohol Professional Counselor Association and
15 the International Certification and Reciprocity
16 Consortium,

17 c. any person employed or contracted by a private
18 nonprofit behavioral services provider contracting
19 with the state to provide behavioral services who is
20 expressly exempted from the aforementioned
21 occupational licensing acts or certifying bodies,

22 d. a member of the clergy performing services other than
23 religious, moral, and spiritual counseling, teaching,
24 and instructions, or

1 e. any other person, licensed or unlicensed, purporting
2 to provide mental health services or functions to a
3 resident of the state of Oklahoma;

4 3. "Patient" means an individual who seeks or obtains mental
5 health services;

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

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

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

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

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

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

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

20 2. Multiple acts of sexual conduct, sexual exploitation, or
21 therapeutic deception by a mental health services provider with one
22 current or former patient shall be a misdemeanor punishable by a
23 fine not exceeding Ten Thousand Dollars (\$10,000.00); and
24

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

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

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

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

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

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

23 1. With the consent of the patient or former patient;
24

1 2. Outside the therapy or treatment sessions of the patient or
2 former patient; or

3 3. Off the premises regularly used by the provider for the
4 therapy or treatment sessions of the patient or former patient.

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

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

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

24

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 wishes 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 perpetrator;

12 3. Identify the alleged victim, unless the alleged victim has
13 requested anonymity; and

14 4. Express suspicion that sexual exploitation has occurred.

15 D. Information in a report is privileged information and is for
16 the exclusive use of the prosecuting attorney or state licensing
17 board that receives the information. A person who receives
18 privileged information shall not disclose the information except to
19 the extent that disclosure is consistent with the authorized
20 purposes for which the person first obtained the information. The
21 identity of an alleged victim of sexual exploitation by a provider
22 shall not be disclosed by the reporter, or by a person who has
23 received or has access to a report or record, unless the alleged
24 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 punishable by
5 a fine not exceeding One Thousand Dollars (\$1,000.00).

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

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

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

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

18 SECTION 8. This act shall become effective November 1, 2011.

19

20 53-1-853 JM 1/18/2011 2:12:38 PM

21

22

23

24