

CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 81. SEXUAL EXPLOITATION BY MENTAL HEALTH SERVICES PROVIDER

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Mental health services" means assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section [505.002](#), Occupations Code;

(B) chemical dependency counselor as defined by Section [504.001](#), Occupations Code;

(C) licensed professional counselor as defined by Section [503.002](#), Occupations Code;

(D) licensed marriage and family therapist as defined by Section [502.002](#), Occupations Code;

(E) member of the clergy;

(F) physician who is practicing medicine as defined by Section [151.002](#), Occupations Code;

(G) psychologist offering psychological services as defined by Section [501.003](#), Occupations Code; or

(H) special officer for mental health assignment certified under Section [1701.404](#), Occupations Code.

(3) "Patient" means an individual who seeks or obtains

mental health services. The term includes a person who has contact with a special officer for mental health assignment because of circumstances relating to the person's mental health.

(4) "Sexual contact" means:

(A) "deviate sexual intercourse" as defined by Section 21.01, Penal Code;

(B) "sexual contact" as defined by Section 21.01, Penal Code;

(C) "sexual intercourse" as defined by Section 21.01, Penal Code; or

(D) requests by the mental health services provider for conduct described by Paragraph (A), (B), or (C). "Sexual contact" does not include conduct described by Paragraph (A) or (B) that is a part of a professionally recognized medical treatment of a patient.

(5) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(6) "Therapeutic deception" means a representation by a mental health services provider that sexual contact with, or sexual exploitation by, the mental health services provider is consistent with, or a part of, a patient's or former patient's treatment.

(7) "Mental health services," as defined by this section, provided by a member of the clergy does not include religious, moral, and spiritual counseling, teaching, and instruction.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1102, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.731, eff. Sept. 1, 2001.

Sec. 81.002. SEXUAL EXPLOITATION CAUSE OF ACTION. A mental

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

(1) sexual contact between the patient or former patient and the mental health services provider;

(2) sexual exploitation of the patient or former patient by the mental health services provider; or

(3) therapeutic deception of the patient or former patient by the mental health services provider.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.003. LIABILITY OF EMPLOYER. (a) An employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section [81.002](#) and the employer:

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

(2) knows or has reason to know that the mental health services provider engaged in sexual exploitation of a patient or former patient and the employer failed to:

(A) report the suspected sexual exploitation as required by Section [81.006](#); or

(B) take necessary action to prevent or stop the sexual exploitation by the mental health services provider.

(b) An employer or former employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section [81.002](#) and the

employer or former employer:

(1) knows of the occurrence of sexual exploitation by the mental health services provider of a patient or former patient;

(2) receives a specific request by an employer or prospective employer of the mental health services provider, engaged in the business of providing mental health services, concerning the possible existence or nature of sexual exploitation by the mental health services provider; and

(3) fails to disclose the occurrence of the sexual exploitation.

(c) An employer or former employer is liable under this section only to the extent that the failure to take the action described by Subsection (a) or (b) was a proximate and actual cause of damages sustained.

(d) If a mental health professional who sexually exploits a patient or former patient is a member of the clergy and the sexual exploitation occurs when the professional is acting as a member of the clergy, liability if any under this section is limited to the church, congregation, or parish in which the member of the clergy carried out the clergy member's pastoral duties:

(1) at the time the sexual exploitation occurs, if the liability is based on a violation of Subsection (a); or

(2) at the time of the previous occurrence of sexual exploitation, if the liability is based on a violation of Subsection (b).

(e) Nothing in Subsection (d) shall prevent the extension of liability under this section beyond the local church, congregation, or parish where the current or previous sexual exploitation occurred, as appropriate under Subsection (d), if the patient proves that officers or employees of the religious denomination in question at the regional, state, or national level:

(1) knew or should have known of the occurrences of sexual exploitation by the mental health services provider;

(2) received reports of such occurrences and failed to take necessary action to prevent or stop such sexual exploitation by the mental health services provider and that such failure was a proximate and actual cause of the damages; or

(3) knew or should have known of the mental health professional's propensity to engage in sexual exploitation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1199 (S.B. 43), Sec. 1, eff. June 17, 2011.

Sec. 81.004. DAMAGES. (a) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(b) In addition to an award under Subsection (a), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.005. DEFENSES. (a) It is not a defense to an action brought under Section 81.002 or 81.003 that the sexual exploitation of the patient or former patient occurred:

(1) with the consent of the patient or former patient;

(2) outside the therapy or treatment sessions of the patient or former patient; or

(3) off the premises regularly used by the mental health services provider for the therapy or treatment sessions of the patient or former patient.

(b) It is a defense to an action brought under Section 81.002 or 81.003 by a former patient that the person was not emotionally dependent on the mental health services provider when the sexual exploitation began and the mental health services provider terminated mental health services with the patient more than two years before the date the sexual exploitation began.

(c) A person is considered not emotionally dependent for purposes of this chapter if the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health services provider are not such that

the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual exploitation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.006. DUTY TO REPORT. (a) If a mental health services provider or the employer of a mental health services provider has reasonable cause to suspect that a patient has been the victim of sexual exploitation by a mental health services provider during the course of treatment, or if a patient alleges sexual exploitation by a mental health services provider during the course of treatment, the mental health services provider or the employer shall report the alleged conduct not later than the 30th day after the date the person became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation occurred; and

(2) any state licensing board that has responsibility for the mental health services provider's licensing.

(b) Before making a report under this section, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(c) A report under this section need contain only the information needed to:

(1) identify the reporter;

(2) identify the alleged victim, unless the alleged victim has requested anonymity; and

(3) express suspicion that sexual exploitation has occurred.

(d) Information in a report is privileged information and is for the exclusive use of the prosecuting attorney or state licensing board that receives the information. A person who receives privileged information may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. The identity of an alleged victim of sexual

exploitation by a mental health services provider may not be disclosed by the reporter, or by a person who has received or has access to a report or record, unless the alleged victim has consented to the disclosure in writing.

(e) A person who intentionally violates Subsection (a) or (d) is subject to disciplinary action by that person's appropriate licensing board and also commits an offense. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.007. LIMITED IMMUNITY FROM LIABILITY. (a) A person who, in good faith, makes a report required by Section 81.006 is immune from civil or criminal liability resulting from the filing of that report.

(b) Reporting under this chapter is presumed to be done in good faith.

(c) The immunity provided by this section does not apply to liability resulting from sexual exploitation by a mental health services provider of a patient or former patient.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.008. ADMISSION OF EVIDENCE. (a) In an action for sexual exploitation, evidence of the plaintiff's sexual history and reputation is not admissible unless:

(1) the plaintiff claims damage to sexual functioning;
or

(2)(A) the defendant requests a hearing before trial and makes an offer of proof of the relevancy of the history or reputation; and

(B) the court finds that the history or reputation is relevant and that the probative value of the evidence outweighs its prejudicial effect.

(b) The court may allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall

detail the information or conduct that is admissible and no other such evidence may be introduced.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.009. LIMITATIONS. (a) Except as otherwise provided by this section, an action under this chapter must be filed before the third anniversary of the date the patient or former patient understood or should have understood the conduct for which liability is established under Section 81.002 or 81.003.

(b) If a patient or former patient entitled to file an action under this chapter is unable to bring the action because of the effects of the sexual exploitation, continued emotional dependence on the mental health services provider, or threats, instructions, or statements by the mental health services provider, the deadline for filing an action under this chapter is tolled during that period, except that the deadline may not be tolled for more than 15 years.

(c) This section does not apply to a patient or former patient who is a "child" or a "minor" as defined by Section 101.003, Family Code, until that patient or former patient has reached the age of 18. If the action is brought by a parent, guardian, or other person having custody of the child or minor, it must be brought within the period set forth in this section.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.07, eff. Sept. 1, 1997.

Sec. 81.010. INJUNCTIVE RELIEF AGAINST GOVERNMENTAL UNITS.

(a) In this section, "governmental unit" has the meaning assigned by Section 101.001(3)(B).

(b) Subject to Subsection (c), a patient, a former patient, or another person acting on behalf of a patient or former patient may bring an action under this section against a governmental unit that is an employer of a mental health services provider, including a special officer for mental health assignment, who commits any conduct described by Section 81.002(1), (2), or (3) in relation to

the patient or former patient. In an action brought under this subsection, the patient or former patient may obtain:

(1) an order requiring the governmental unit to discharge the mental health services provider who committed the conduct;

(2) court costs; and

(3) reasonable attorney's fees, as determined by the court.

(c) A patient, former patient, or person acting on behalf of a patient or former patient may not bring an action under Subsection (b) unless, 60 days before the date that action is to be filed, the person notifies the governmental unit in writing of its intention to bring an action under this section. The notice must reasonably describe the facts giving rise to the claim. If, before the 60th day after the date the notice is provided under this section, the governmental unit discharges the mental health services provider who committed the conduct with respect to which the claim is filed, the person may not bring suit under Subsection (b).

(d) Governmental immunity to suit is waived and abolished only to the extent of the liability created by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 1102, Sec. 2, eff. Sept. 1, 1999.