

SECOND REGULAR SESSION

# SENATE BILL NO. 499

89TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR HOWARD.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2481.011

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## AN ACT

To repeal section 337.035, RSMo Supp. 1997, relating to the practice of psychology, and to enact in lieu thereof seven new sections relating to the same subject.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 337.035, RSMo Supp. 1997, is repealed and seven new sections enacted in lieu thereof, to be known as sections 337.035, 538.400, 538.405, 538.407, 538.410, 538.412 and 538.417, to read as follows:

337.035. 1. The committee may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The committee shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incapacitated by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice as provided **in** this chapter;

(11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated pursuant to this chapter;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the committee may,

singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the department deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

4. An interested third party may file a complaint [or] **and may** appear or present evidence relative to such complaint or another complaint filed pursuant to this section. For purposes of this section, an interested third party includes a parent or guardian of a person who received treatment by a psychologist or any person who is [related within the second degree of consanguinity or affinity and who is] financially responsible for the payment of such treatment.

**538.400. 1. For the purposes of sections 538.400 to 538.417, the following terms mean:**

**(1) "Emotionally dependent", the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows, or has reason to believe, that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist;**

**(2) "Former patient", a person who was given psychotherapy within two years prior to sexual contact with the psychotherapist;**

**(3) "Patient", a person who seeks or obtains psychotherapy;**

**(4) "Psychotherapist", a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, mental health service provider or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy;**

**(5) "Psychotherapy", the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition;**

**(6) "Sexual contact", any of the following, whether or not occurring with the consent of a patient or former patient:**

**(a) Sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for such purpose, or any intrusion, however slight, into the genital or anal openings of the psychotherapist's body by any part of the patient's or former patient's body or by any object used by the patient or former patient for such purpose, if agreed to by the psychotherapist;**

**(b) Kissing of, or the intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttock or breast or of the clothing covering any of these body parts;**

**(c) Kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or**

**intentional touching.**

**Sexual contact includes requests by the psychotherapist for conduct described in paragraphs (a) to (c) of this subdivision. Sexual contact does not include conduct described in paragraphs (a) or (b) that is a part of standard medical treatment of a patient;**

**(7) "Therapeutic deception", a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.**

**538.405. 1. A cause of action against a psychotherapist or a professional or semi-professional whose occupation includes counseling for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist or a professional or semi-professional whose occupation includes counseling, if the sexual contact occurred during the period the patient was receiving psychotherapy from the psychotherapist or a professional or semi-professional whose occupation includes counseling if:**

**(1) The former patient was emotionally dependent on the psychotherapist or a professional or semi-professional whose occupation includes counseling; or**

**(2) The sexual contact occurred by means of therapeutic deception.**

**2. The patient or former patient may recover damages from a psychotherapist or a professional or semi-professional whose occupation includes counseling who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.**

**3. Any psychotherapist or professional or semi-professional whose occupation includes counseling and who knows or should know he or she has a dominating influence or control over the person being treated may be charged with forcible rape as provided in section 566.030, RSMo; provided such forcible compulsion is obtained by means of, but not limited to, mind altering drugs, hypnosis or the claim that sexual activity is part of the treatment, in the course of the patient performing any sexual activities with the counseling professional.**

**538.407. 1. An employer of a psychotherapist may be liable pursuant to section 538.405 of this act if:**

**(1) The employer fails or refuses to take reasonable action when the employer knows, or has reason to know, that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or**

**(2) The employer fails, or refuses, to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years,**

**concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.**

**2. An employer or former employer of a psychotherapist may be liable pursuant to section 538.405 of this act if the employer or former employer:**

**(1) Knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;**

**(2) Receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and**

**(3) Fails or refuses to disclose the occurrence of the sexual contacts.**

**3. An employer or former employer may be liable pursuant to section 538.405 of this act only to the extent that the failure or refusal to take any action required by subsections 1 or 2 of this section was a proximate and actual cause of any damages sustained by the claimant.**

**4. No cause of action arises, nor may a licensing board in this state take disciplinary action, against a psychotherapist's employer or former employer who in good faith complies with the provisions of this section.**

**538.410. 1. In an action for sexual exploitation, evidence of the plaintiff's sexual history is not subject to discovery except when:**

**(1) The plaintiff claims damage to sexual functioning; or**

**(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history; and**

**(3) The court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.**

**2. The court shall allow the discovery 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 subject to discovery.**

**538.412. 1. In an action for sexual exploitation, evidence of the plaintiff's sexual history is not admissible except when:**

**(1) The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and**

**(2) The court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.**

**2. The court shall 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.**

**3. Any violation of the terms of the court's order may be grounds for a new trial.**

**538.417. An action for sexual exploitation shall be commenced within five years after the cause of action arises.**

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