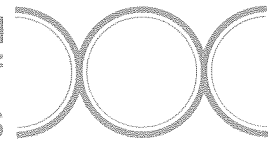


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# TASK FORCE ON SEXUAL EXPLOITATION BY COUNSELORS & THERAPISTS

## LEGISLATIVE REPORT 1985

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TASK FORCE ON SEXUAL EXPLOITATION  
BY COUNSELORS AND THERAPISTS

REPORT TO THE MINNESOTA LEGISLATURE  
FEBRUARY 1985

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## SUMMARY OF THE REPORT

### BACKGROUND INFORMATION

The 1984 Minnesota legislature mandated the Commissioner of Corrections to form the Task Force on Sexual Exploitation by Counselors and Therapists. After an extensive call for applicants, the task force was constituted with a broad base of representation from professional organizations, regulatory agencies, the legal community, agencies and individuals involved in counseling and therapy services, appropriate state agencies, women's and men's organizations, mental health advocacy organizations, consumers, and geographic regions of Minnesota. Approximately 60 professionals and members of the public worked directly on this project. Additionally, testimony was provided by 40 people at a public hearing that was covered extensively in the media.

This group was instructed to report to the 1985 session of the legislature on a variety of issues related to the problem, including creation of a statewide education plan and recommendations for criminal, civil, and regulatory changes. This document is that report.

Sexual exploitation of clients is a widespread problem among counseling professionals. In self-report studies, as many as 17% of the responding therapists have admitted to sexual contact with patients during therapy or within three months following termination. Eighty percent of these therapists have been sexual with multiple clients. It is estimated that the actual incidence of sexual exploitation is much higher.

The long-term damage to sexually exploited clients is often extensive. In addition to not receiving help with their original problems, these victims have a high rate of psychiatric hospitalization, depression, shame, suicidal feelings and attempts, and other serious psychological consequences. They also experience decreased trust in other people and develop sexual problems, which lead to marital discord and broken relationships. People close to the exploited client and the abusing therapist also frequently require treatment as a result of the exploitation.

Therapists who sexually exploit their clients fall into several diagnostic categories. Most of them suffer from character disorders which include a lack of any feelings of remorse. This makes treatment of these abusers very difficult and the prognosis for their recovery exceptionally poor.

The remedies available to sexually exploited clients are usable in only a small percentage of the cases. If the therapist is employed, there may be a complaint procedure available within the agency. If the therapist belongs to a professional organization which has a prohibition against sexual contact with clients, the client may file a complaint; however, sanctions available to these organizations are very limited.

Other legal options for sexually exploited clients are also limited. In order to prosecute under the criminal statutes, the client must be forcibly assaulted, as defined by the current criminal sexual conduct code, be a minor, or mentally or physically incapacitated. Most cases of therapist-client sexual exploitation do not fall within these bounds.

The civil statutes contain no mention of the issue, so suits brought under common law must prove liability. In addition, since most malpractice insurance policies in Minnesota do not cover sexual exploitation of clients, it is pointless for clients to sue in most cases.

If the therapist is licensed by the state, the client may complain to the appropriate regulatory board and the therapist may face a variety of sanctions related directly to the practice of therapy, ranging from restriction of practice to revocation of the license. The only therapists currently regulated by the state are physicians, including psychiatrists; psychologists; and nurses. There are many other counselors who are not licensed and who, therefore, have no consequences related to their practice when they sexually exploit clients. There is currently no mechanism in Minnesota to prevent anyone from practicing psychotherapy.

## RECOMMENDATIONS

### Statewide Education Plan

A general plan for educating professionals who must work with the problems of sexual exploitation of clients includes recommendations that:

- The state develop models of policies and procedures related to sexual exploitation for use by professionals;
- The state collect, create, and disseminate information on the problems of sexual exploitation to professionals;
- The state design and implement training seminars on the problems of sexual exploitation for professionals; and

- The state develop a manual on sexual exploitation by counselors and therapists to be used by all concerned professionals.

Specific plans for educating special groups are targeted for:

- Faculty of institutions that train counselors and therapists;
- Practicing counselors and therapists;
- Employers and clinical supervisors of counselors and therapists;
- Members of professional organizations; and
- Private and public participants in the administrative, civil, and criminal complaint processes.

A general plan for educating the public on the problems of sexual exploitation of clients includes recommendations that:

- The state develop a brochure on sexual exploitation of clients for the public;
- The state provide information for media coverage on sexual exploitation of clients;
- The state write an addition for Client's Bills of rights that would define and prohibit sexual exploitation in therapy;
- The state design a handbook for victims of sexual exploitation and their advocates; and
- The state utilize the existing sexual assault network to provide information, crisis intervention, advocacy and referral to victims of sexual exploitation by therapists.

Specific educational plans are targeted for:

- The general public and clients; and
- Victims and victim advocates.

#### Criminal, Civil and Administrative Law Changes

It is recommended that the following be added to the criminal statutes:

- A clear definition of who is considered to be a psychotherapist;
- Inclusion of sexual exploitation of clients in the third and fourth degree criminal sexual conduct codes; and
- Rules of evidence in sexual exploitation cases similar to those in other sexual abuse cases.

It is recommended that the following be added to the civil statutes:

- A clear definition of who is considered to be a psychotherapist;
- A cause of action for sexual exploitation of clients;
- Employer liability in such cases;
- A requirement that malpractice policies in Minnesota cover sexual exploitation cases;
- Extension of the statute of limitations in appropriate cases; and
- Professional reporting requirements.

In the administrative statutes, it is recommended that changes to current regulatory boards include:

- A statutory prohibition of sexual exploitation of clients;
- A mandate that each client of a licensee of the boards receive a client bill of rights that includes a definition and prohibition of sexual exploitation;
- Inclusion on each board's ethics panel of at least one psychotherapist and one public member; and
- Standardization of investigative and disciplinary procedures across all of the boards.

In terms of currently unregulated therapists, it is recommended that:

- The legislature adopt policies that create consequences for all psychotherapists and sources of redress for all of their clients that relate directly to the practice of psychotherapy, including the authority to prohibit offenders from practicing; and



- The state continue in a more timely manner its current process of reviewing licensure applications submitted by counseling groups.

Due to the constraints of the separation of church and state, it is recommended that:

- In lieu of state regulation, religious institutions work together in an ecumenical effort to deal with the problem of sexual exploitation of clients by the counseling clergy; and
- That the state cooperate with any such effort.

### Implementation

In order to implement the suggestions contained in this report, it is recommended that:

- Adequate staffing be provided to work with the task force and to carry out the recommendations of this report;
- This effort be carried out by the Department of Corrections, which has housed the Minnesota Program for Victims of Sexual Assault for the past ten years;
- The task force continue for another year to complete its work; and
- The legislature express its concern for clients who have been sexually exploited by therapists in Minnesota by funding this project.

## BACKGROUND INFORMATION

### SECTION ONE:

#### OVERVIEW OF THE PROBLEM OF SEXUAL EXPLOITATION BY COUNSELORS AND THERAPISTS

There are many aspects to the complex problem of sexual exploitation of clients by therapists. This section of the report presents an overview of the problem, beginning with a clarification of terms. Next, the research on the prevalence of sexual exploitation of clients is reviewed. Then the effects of victimization upon the clients are described, as are the characteristics of exploitive therapists. Finally, the remedies currently available in Minnesota to sexually exploited clients are enumerated, along with obstacles to reporting.

#### DEFINITIONS

The terms used to discuss sexual exploitation by counselors and therapists are often ambiguous and thus may become part of the problem. In order to eliminate this potential source of confusion within this report, the following terms will be used with these meanings:

**Psychotherapist, Counselor or Therapist** - any physician, psychologist, nurse, social worker, chemical dependency counselor, members of the clergy, or other person whether or not licensed by the State of Minnesota who renders or purports to render psychotherapy, counseling, or other assessment or treatment of or involving any mental or emotional illness, symptom, or condition.

**Client or Patient** - any person who receives the services of a psychotherapist, counselor or therapist.

**Sexual Exploitation** - any sexual or romantic contact between client and therapist, which may include, but not be limited to, the following: intercourse, kissing, touching breasts or genitals in a sexual manner by either client or therapist, dating, or verbal suggestions of sexual involvement by the therapist.

#### PREVALENCE AND DYNAMICS

The taboo against sexual relations between therapists and clients is strong. The Hippocratic oath instructs against "The seduction of patients bound or free." Freud clearly stated that conventional morality and professional dignity make a sexual relationship

## Background

unacceptable. The American Psychiatric Association, the American Psychological Association, the National Association of Social Workers and other professional mental health organizations condemn the practice. And yet it happens.

Dr. William Masters said that if only 25% of the women who came to him claiming they have slept with previous therapists are being truthful, the issue is overwhelming (Lamberti, 1981). A study by Kardener, Fuller and Mensh (1973), reported that of the 46% of psychiatrists sampled who responded to their survey, 10% reported having engaged in erotic behavior with clients, 5% to the point of intercourse. This study was replicated by Holroyd and Brodsky (1977) with psychologists. With a 70% return of inquiries, they found that 5.5% of male and 0.6% of female licensed Ph.D. psychologists admitted to sexual intercourse with clients. Of this group, 80% had intercourse with more than one patient, with an average of 5.3 clients each. An additional 9.0% of male psychologists and 1.0% of female psychologists reported other erotic contact with clients. This study also found that within three months of therapy termination, 7.2% of males and 0.6% of females had intercourse with clients. In total, 17.1% of male and 2.0% of female psychologists who responded had some form of sexual contact with clients, either during therapy or within the three following months.

A study of a large drug abuse treatment system, funded by the Drug Abuse Council in 1974, documented widespread exploitation of women, including the use of coercive tactics to bring about sex between clients and counselors (Ponsor, Soler, and Abod, 1976). The best estimates are that one in five psychotherapists will be sexually intimate with her/his patients (Zelen and Butler, 1980).

There is increasing evidence that psychotherapists are aware of the problem of sexual involvement within their own professions. A study conducted by Grunebaum, Nadelson and Macht in 1976 found that 50% of the psychiatrists in their sample knew of specific instances of sexual involvement between client and therapist, but most had not reported these cases to any official body.

A recent study conducted by the Task Force on Sexual Intimacy Between Psychotherapists and Patients of the California State Psychological Association revealed that 57% of the responding psychologists reported that they had been consulted informally by other psychologists who were concerned about their own sexual involvement with clients (Bouhoutsos, 1982).

When a therapist engages in any kind of sexual contact with a patient, the therapist is taking advantage of his or her superior position. In 1974, Kardener drew the parallel between therapist-client sexual involvement and incest. He compares the parent as a caretaker of the child, with the therapist as

caretaker of the clients. When sexual intimacy occurs in the therapeutic situation, the patient is denied healing, support and adequate caretaking (Zelen and Butler, 1980).

In many ways, the therapist-client relationship often replicates the parent-child relationship. When it is used constructively, this can be a powerful and healing mechanism. The interpersonal boundaries that are appropriate and healthy between a parent and a child are very similar to the ethical interpersonal boundaries that promote a healing, therapeutic relationship in counseling. Nielsen (1984) has described the breakdown of such boundaries that leads to abuse. Among them are: role reversals, emotional enmeshment, voyeurism, and sexual talk and touch. These boundary violations happen in therapy when counselors put their own needs and wishes ahead of the good of the clients; discuss their own problems with the clients; and fail to keep an appropriate emotional distance from their clients' problems. They also occur when the therapist asks for more explicit sexual information than is necessary to help the client or when they talk with or touch the client in a sexual manner.

White (1978) has applied similar concepts to organizational problems. He asserts that failure to maintain appropriate professional boundaries within counseling organizations can create a climate of "organizational incest", which may result in the sexual exploitation of clients. Among the problems which may contribute to this destructive environment are: the system being closed to outside scrutiny and ideas; the staff using work colleagues for their entire support system and using work as a place to solve personal problems; and inappropriate sexual relationships between people at different levels in the organization (e.g., supervisor-supervisee).

While a small percentage of psychotherapists still believe that there may be some benefits to clients as a result of sexual relationships with their therapists, there is no scientific evidence to support this claim (Hare-Mustin, 1974). Sometimes psychotherapists contend that the sexual contact was permissible because the therapist was in love with the patient. Yet, Edelwich and Brodsky (1982) point out that sexual involvement with a client is always a failure of therapy. The problem is one of a misuse of power and failure to respect appropriate interpersonal boundaries between professional and client.

Locally, in the last ten years Walk-In Counseling Center in Minneapolis has assisted more than 350 clients who were sexually exploited by former therapists. They have worked with Minneapolis Family and Children's Service to help these clients recover, and both organizations have provided national leadership and consultation on the problems of sexually exploited clients.

## EFFECTS OF SEXUAL EXPLOITATION ON THE VICTIMS

Little scientific data is available on the effects of sexually abusive behavior on a client. However, studies by Belote (1974), and D'Addario (1977), strongly indicate that the long term effects of such behavior is detrimental to the patients, and in some cases it is devastating.

Clinical observations reported in 1983 by Schoener, Milgrom and Gonsiorek, and in 1984 by Luepker and Retsch-Bogart, resulted in a description of the common experiences of the client who is sexually involved with a therapist. Their clients suffered from intense feelings of guilt and shame, anger at the violation of trust, fear of reprisals and rejection, low self-esteem, depression, and grief over the loss of the therapeutic relationship. Furthermore, these clients had received no valid treatment for the problems that originally brought them to therapy.

More recently, Bouhoutsos, Holroyd, Lerman, Forer, and Greenberg, (1983) reported data regarding the nature and effects of sexual intimacy between psychotherapists and patients. While this study only had a 16% return rate, its findings are still enlightening. In California, 318 psychologists reported treating 559 patients who had been sexually exploited by a former therapist. This study found that 90% of these patients had subsequent ill effects. The patient's personalities were adversely affected in 34% of the cases. This included increased depression, loss of motivation, impaired social adjustment, significant emotional disturbance, suicidal feelings or behavior, and increased drug or alcohol use. Patients also experienced an increased mistrust of the opposite sex, negative impact on marriage and family, and impaired sexual relationships. Twenty-six percent of the patients were reported to have worsened sexual, marital or intimate relationships. Eleven percent of the cases were hospitalized and 1% committed suicide.

In their clinical work with 27 victims of therapist-client sexual exploitation at the Minneapolis Family and Children's Service, Luepker and Retsch-Bogart (1984) found that 14% of these clients had required psychiatric hospitalization after the onset of sexual activity with their therapists. An additional 22% had been psychiatrically hospitalized prior to such involvement. The clinical impression of these authors was that this high rate of hospitalization was the only characteristic that distinguished these clients from their general agency client population.

While clients who are sexually exploited are the primary victims of their therapists, there are also potential secondary victims. The spouses or significant others of the primary victims, their children, parents, friends and co-workers may be indirectly but seriously affected by the sexual exploitation. It is common for broken marriages and relationships to follow revelation of the sexual exploitation. Additionally, colleagues, family and friends of the exploiting therapist may also experience adverse results, as tertiary victims (Milgrom, 1981).

#### THE SEXUALLY EXPLOITIVE THERAPIST

While there are no scientific studies that reveal the causes of sexually exploitive behavior by therapists, interviews with admitted abusers and clinical observations provide some insight. Butler and Zelen (1977) interviewed 20 therapists who admitted to sexual contact with their clients. Ninety percent of these subjects reported being vulnerable, needy or lonely at the time when the sexual contact occurred. During unsatisfying marriages, recent separations or divorces, some of these therapists used their clients to gratify their own needs.

In his work with over 350 cases of therapist-client sexual exploitation, Schoener (Task Force Minutes, September 25, 1984) has detailed five levels of disturbance on the part of offending therapists:

1. Episodic behavior - The offender engages in an isolated instance of bad judgment or loss of control. These offenders are usually remorseful and have a good prognosis for rehabilitation, but represent a small proportion of the total number of cases.
2. Neurotic - The offender often engages clients in a slow seduction that substitutes for a social life for the therapist. Prognosis for rehabilitation is variable.
3. Compulsive character disorder - The offender engages in repetitive, compulsive acting out. Many sexually exploitive therapists fall into this category and prognosis for recovery is very poor, as with many other character disordered people who have entrenched patterns of acting out behavior.
4. Narcissistic character disorders - The offender is grandiose, thinking that he or she knows what is best for people, even despite blatant evidence to the contrary; uses people without feeling any remorse; may be a cult-like leader with a devoted, protective following; is systematically exploitive, which may also involve financial exploitation. Many sexually exploitive therapists fall into this category and the prognosis for their rehabilitation is extremely poor.

5. Overtly psychotic - The offender suffers from a long-term, serious emotional disturbance. Only a few sexually exploitive therapists fall into this category and the prognosis for recovery is highly variable.

#### REMEDIES CURRENTLY AVAILABLE IN MINNESOTA TO SEXUALLY EXPLOITED CLIENTS

Clients who are sexually exploited by their therapists may have several remedies available to them. These remedies may exist through employers of the therapist, professional organizations to which the therapist belongs, or through the state. If the therapist is employed by an agency or institution, the exploited client may be able to file a complaint with the employer. However, many employers do not have policies which prohibit or punish sexual contact with clients and may have no formal grievance procedure for clients to follow. Many therapists who sexually exploit clients are self-employed and work alone.

If the therapist belongs to a professional organization that covers the practice of psychotherapy, the exploited client may be able to file a complaint with that organization. As with employers, some organizations do not have policies which prohibit or punish sexual contact with clients, and they may have no formal grievance procedure for clients to follow. Furthermore, therapists are not required to belong to professional organizations and many of them do not choose to join. Even professional organizations, which have a well-developed procedure for client complaints like that of the National Association of Social Workers, can only impose limited sanctions against offending members. Expulsion from the organization and public denunciation are usually the most extreme consequences.

Through the State of Minnesota, there are three possible sources of remedy: criminal, civil, and administrative. Currently, in order to prosecute under the criminal statutes, a sexually exploited client must be forcibly assaulted, as defined by the current criminal sexual conduct code, be a minor, or mentally or physically incapacitated. This covers only a small percentage of cases.

Civil remedies for sexual exploitation by therapists currently fall within the realm of common law, making the question of liability of the therapist and his or her employer an issue in every case. Malpractice is the most common cause of action and source of damage awards, but most malpractice insurance policies written in Minnesota do not cover sexual exploitation of clients.



Administrative remedies are available when the therapist is licensed by the state; however, the only counselors licensed in Minnesota are physicians (including psychiatrists), psychologists, and nurses. Remedies include suspension or revocation of the therapist's license, but there are no consistent policies and procedures for investigation or discipline of licensed professionals. The practice of all other psychotherapists is unregulated by the state. Even if a therapist's license is revoked, that therapist may still continue to practice psychotherapy because he or she will then fall into the category of the unregulated.

### OBSTACLES TO REPORTING SEXUAL EXPLOITATION BY COUNSELORS AND THERAPISTS

Both clients and concerned colleagues face a number of problems in reporting instances of sexual exploitation by therapists. For clients, the problems may begin with a lack of information. Many clients are unaware that a therapist's behavior is unethical and/or illegal. Secondly, many clients do not have knowledge of the resources available to them or are intimidated by the complicated procedures involved in taking action against an exploitive therapist. Reporting is also hampered because clients are fearful that they will not be believed or that they will be blamed for provoking the sexual abuse. They may also fear the reaction of friends or loved ones. Finally, the investigative procedure is difficult for some clients. If action is pursued with licensure boards or ethics committees, the client must be willing to be cross-examined, to spend considerable time, and to face reliving painful experiences. A civil suit, criminal action, or courtroom appeal of a loss of license also involves time, money and threatens public exposure (Schoener, Milgrom, and Gonsiorek, 1983; and Luepker and Retsch-Bogart, 1980). Due to all of these reasons, only a small percentage of sexually exploited clients take any sort of action against offending therapists (Bouhoutsos, 1982).

Concerned colleagues face a different set of problems. Currently, only psychologists are required to report sexual exploitation of clients by other psychologists. There are tremendous risks involved for therapists who consider reporting their colleagues, including the fear of libel suits, fear of retaliation by other therapists, loss of referrals, and violating clients' rights to confidentiality and privacy. Finally, there has been a tradition of not speaking negatively of professional colleagues, which has resulted in therapists keeping silent when they know of sexual exploitation of clients.

(References for the above section are located in Appendix D.)

## SECTION TWO:

### HISTORY OF THE TASK FORCE ON SEXUAL EXPLOITATION BY COUNSELORS AND THERAPISTS

#### ESTABLISHMENT OF THE TASK FORCE

The 1984 Minnesota Legislature mandated the Commissioner of Corrections to establish a task force to study the problems of sexual exploitation by counselors and therapists. Laws of Minnesota, 1984, Chapter 631, charged this task force to:

- Develop a statewide plan to educate clients, potential clients, counselors and therapists, their employers and training institutions, and the general public on the issues surrounding sexual exploitation by counselors and therapists;
- Study the need for regulation of all professionals engaging in therapy and counseling and the need to improve rules and procedures of regulatory agencies in addressing complaints involving sexual exploitation by counselors and therapists;
- Explore changes in the civil and criminal codes as they relate to sexual exploitation; and
- Develop recommendations to the legislature on the above-mentioned topics.

(See Appendix A for a copy of this law.)

In June 1984, the Commissioner of Corrections widely publicized the call for task force applicants through the Secretary of State's Office, the press, and with an extensive mailing. Broadly based representation on the task force was sought, including representatives from professional organizations, regulatory agencies, the legal community, agencies and individuals involved in counseling or therapy services, appropriate state agencies, women's organizations, mental health advocacy organizations, men's organizations, and consumers. Approximately 90 helping professionals and members of the public responded. Eighteen members and six ex officio members were selected to represent the constituencies mandated by the legislature and the various geographic regions of Minnesota.

In August, the Commissioner of Corrections appointed the Coordinator and named the Chairperson of the task force.

## THE WORK OF THE TASK FORCE

At its first meeting in September, the task force organized into five topical work groups to accomplish the necessary research and to make action recommendations to the task force. These groups were: Public Education, Criminal and Civil Statutes, Victim Issues, Professional Regulations, and Professional Education. (See Appendix B for a description of the work groups' activities.)

Additional members were added to each work group to give more people an opportunity to participate in the process, to gain additional expertise, and to share the enormous work load. Approximately 60 people contributed directly to the work of the task force. Included in this group were: victims of sexual exploitation by therapists, psychiatrists, psychologists, social workers, members of the clergy, chemical dependency counselors, nurses, marriage and family counselors, victim advocates, representatives of appropriate state agencies and licensing boards, criminal justice professionals, attorneys, legislators, and representatives of professional organizations. (See Appendix C for a list of all task force and work group members.)

In October and November, the work groups and the task force spent several full days meeting to study the various sexual exploitation issues. As a part of this process, they invited input from area professionals who have worked with the problem, including: therapists for exploited clients and abusing therapists; victim advocates; attorneys for complaining clients, accused therapists, and the state; staff and members of state regulatory boards; and representatives of professional organizations who have policies and procedures for regulating the sexually exploitive behavior of their members.

To gather further information from informed professionals and firsthand testimony from victims, the task force held a public hearing on November 12, 1984. The hearing was publicized through press releases and a mailing to 2,000 agencies, organizations, and individuals. Forty people gave 11 hours of testimony, transcribed by court reporters to a 483 page document. The media carried extensive coverage of this hearing resulting in many more calls and letters to the task force.

In late November, during a 12 hour work session, the work groups formulated their specific proposals. The task force spent the next two months debating and revising these ideas, before making this final report in February, 1985.

## RECOMMENDATIONS

### SECTION ONE:

#### STATEWIDE EDUCATION PLAN

The law which created the Task Force on Sexual Exploitation by Counselors and Therapists mandates the formulation of a statewide education plan for the public, clients, counselors and therapists, employers, and training institutions. As the task force examined the problem and heard testimony from those affected by it, the importance of a multifaceted educational program was apparent. Because there may be denial and lack of remorse on the part of therapists who sexually exploit their patients, it is essential that colleagues and employers be able to recognize the problem and know how to handle it. It is also important that the public become knowledgeable as they approach therapy, so that they know what is and is not acceptable behavior from their therapists and what their rights are as clients. Additionally, it is important that those persons who are responsible for processing administrative, civil, and criminal complaints understand the issues and the dilemmas faced by both the victimized clients and the accused therapists. Therefore, the following recommendations are made for a statewide educational plan.

#### PROFESSIONAL EDUCATION

In order to educate the wide variety of professionals who need to know about sexual exploitation by therapists and how to deal with it, it is recommended that the state develop a general professional education plan, the details of which will be tailored to meet the needs of the individual categories of professionals. Recommendations for the overall plan and the specific issues for each group follow.

##### I. GENERAL RECOMMENDATIONS FOR PROFESSIONAL EDUCATION

It is recommended that:

- A. The state develop models of policies and procedures related to sexual exploitation for use by professionals.
- B. The state collect, create, and disseminate information on the problems of sexual exploitation to professionals.
- C. The state design and implement training seminars on the problems of sexual exploitation for professionals.

- D. The state develop a manual on sexual exploitation by counselors and therapists to be used by all concerned professionals.

This manual would include:

1. The nature and scope of sexual exploitation by therapists;
2. Ethical implications of sexual exploitation by therapists;
3. Legal implications of sexual exploitation by therapists;
4. Description of the causes that lead a therapist to becoming sexually exploitive, and the symptoms of such therapists;
5. Strategies for dealing with feelings of sexual attraction in the therapeutic relationship;
6. Strategies for clinical supervisors to use in coping with potential and actual sexual exploitation of clients;
7. Strategies for educational institutions to use in preventing the sexual exploitation of clients;
8. The responsibility of the employer to clients, therapists, and the community;
9. Reactions of clients to sexual exploitation and how to help them emotionally;
10. Strategies for helping clients deal with the process of filing a sexual exploitation complaint;
11. Private and public remedies and how to accomplish them;
12. Organizational patterns that contribute to the problem;
13. Impact of sexual exploitation on colleagues;
14. Models of policies and procedures to deal with sexual exploitation; and
15. Strategies for dealing with sexual exploitation cases involving the clergy.

## II. RECOMMENDATIONS FOR SPECIFIC PROFESSIONAL GROUPS

### A. Educating Faculty of Institutions That Train Counselors and Therapists

Universities, colleges, and other training organizations are the initial contact for many persons entering the helping professions. These institutions serve a gatekeeping function in that they have some control over who is allowed entry into their professions. They are also the student's first exposure to the ethical standards of the profession, both through what is explicitly taught and the examples modeled by the faculty. Additionally, these educational programs provide an opportunity for advanced counselors to learn the skills essential to becoming supervisors. These individuals should be trained to recognize and handle potential and actual sexual exploitation problems among their supervisees. Therefore, it is recommended that:

1. The state develop guidelines and/or models concerning sexual exploitation for training institutions.

These models and/or guidelines would include:

- a. Entrance and exit screening to identify students whose personality characteristics might put them at risk to sexually exploit clients;
- b. Supervision of student interns covering the issues of sexual attraction, sexual exploitation, and setting and keeping appropriate interpersonal boundaries with clients; and
- c. Ethical standards for professors that forbid sexual exploitation of students and supervisees, so that a learning atmosphere is created that nurtures ethical professional behavior and the keeping of appropriate interpersonal boundaries.

2. The state develop guidelines and/or models for coursework in the area of sexual exploitation of clients.

These models and/or guidelines would include:

- a. The nature and scope of the problem of sexual exploitation;
- b. The use of power and need for appropriate interpersonal boundaries between therapist and client as they relate to sexual exploitation;

## Recommendations

- c. Techniques for supervising others when issues related to sexual exploitation arise;
  - d. Recognizing and helping clients who have been sexually exploited by other therapists;
  - e. Ethical issues regarding sexual exploitation of clients for therapists, their colleagues, and employers; and
  - f. Legal issues regarding sexual exploitation of clients for therapists, their colleagues, and employees.
3. The state offer consultation to the faculty of training institutions on the subject of sexual exploitation.

This consultation would cover:

- a. The nature and scope of the problem of sexual exploitation of clients;
  - b. Professional ethical standards relating to the sexual exploitation of clients, students, and supervisors;
  - c. The role and responsibility of training institutions in preventing therapist-client sexual exploitation; and
  - d. Adoption and implementation of the guidelines and/or models developed above.
4. The state distribute the manual on sexual exploitation and other relevant information to educational institutions.

### B. Educating Practicing Counselors and Therapists

Many counselors and therapists who have successfully completed their educational programs have had little or no exposure to the ethical and practical problems of sexual exploitation. Other psychotherapists have had no formal counseling education. Therefore, it is recommended that:

1. The state distribute the manual on sexual exploitation and other relevant materials to practicing counselors and therapists.
2. The state design and implement a series of regional training seminars for practicing counselors and therapists.

These seminars would include:

- a. The nature and scope of the problem of sexual exploitation of clients;



## Recommendations

- b. Ethical and legal issues of sexual exploitation;
- c. Strategies for dealing with sexual attraction to clients;
- d. Appropriate interpersonal boundaries with clients and how to keep them;
- e. Techniques for recognizing and working with clients who have been sexually exploited by other therapists;
- f. Identifying and eliminating organizational patterns conducive to sexual exploitation, including the sexual exploitation of supervisees; and
- g. Techniques for recognizing and working with therapists who have sexually exploited their clients.

### C. Educating Employers and Clinical Supervisors of Counselors and Therapists

Employers whose agencies include counseling have a primary responsibility to the clients they serve. They are legally and ethically responsible for the professional conduct of the therapists they employ. Additionally, quality clinical supervision is an important element in prevention and handling of sexual exploitation. Many employers and clinical supervisors have had little or no opportunity to educate themselves on the issues of sexual exploitation and their responsibilities when such occasions arise. Therefore, it is recommended that:

- 1. The state develop guidelines and/or models on the problems of sexual exploitation of clients for employers of counselors and therapists.

These guidelines and/or models would include:

- a. Ethical responsibilities of agencies in regard to sexual exploitation of clients;
- b. Legal responsibilities of agencies in regard to sexual exploitation of clients;
- c. Hiring and firing practices related to sexual exploitation of clients;
- d. Sexual exploitation policies and complaint and disciplinary procedures;
- e. Effective supervision on sexual exploitation issues;
- f. Staff education on sexual exploitation of clients; and
- g. Organizational patterns that foster sexual exploitation of clients and how to prevent and handle them.

## Recommendations

2. The state design and implement a series of regional training seminars on the problems of sexual exploitation of clients for the employers of therapists.

These seminars would include:

- a. The nature and scope of the problem of sexual exploitation of clients;
  - b. Ethical responsibilities to clients in regard to sexual exploitation;
  - c. Legal responsibilities to clients in regard to sexual exploitation;
  - d. Techniques for checking the backgrounds of potential therapists to avoid hiring potentially sexually exploitive therapists;
  - e. Techniques for identifying current therapists at risk for sexual exploitation;
  - f. The importance and nature of adequate clinical supervision on the sexual exploitation issues;
  - g. The necessity for and nature of an adequate screening process for clinical supervisors;
  - h. Models for establishing a written policy prohibiting sexual contact with clients that make it grounds for dismissal;
  - i. Models for establishing a client complaint procedure;
  - j. Models for establishing within the work setting an investigative procedure for client complaints of sexual exploitation and a disciplinary process for offenders;
  - k. Models for establishing an agency ethics review committee;
  - l. Models for staff education on the subject;
  - m. Techniques for identifying and eliminating organizational patterns conducive to sexual exploitation, including the sexual exploitation of supervisees; and
  - n. Strategies for responding to requests for employment recommendations for sexually exploitive therapists.
3. The state compile and maintain a list of professionals who have the expertise and ability to help organizations which experienced difficulty with the problems of sexual exploitation or which seek consultation to prevent such problems.
  4. The state create and distribute clinical supervision guidelines for supervisors on the problem of sexual exploitation.

5. The state design and implement a series of regional training seminars for clinical supervisors on the problems connected with sexual exploitation of clients.

These seminars would include:

- a. The nature and scope of the problem of sexual exploitation of clients;
- b. Power and interpersonal boundary issues of sexual exploitation of clients and supervisees;
- c. Strategies to help supervisees deal with their sexual attraction to clients;
- d. Techniques to help supervisees create and maintain appropriate interpersonal boundaries with clients;
- e. Techniques to help supervisees recognize and work with clients who have been sexually exploited by other therapists;
- f. Techniques to recognize and help supervisees who have sexually exploited clients;
- g. Strategies for identifying and eliminating organizational patterns conducive to sexual exploitation, including the sexual exploitation of supervisees;
- h. Ethical concerns related to sexual exploitation of clients; and
- i. Legal concerns related to sexual exploitation of clients.

**D. Educating Members of Professional Organizations**

Many counselors and therapists belong to professional organizations which have the potential to foster high ethical standards among their membership. Currently, the approaches of such organizations to the problem of sexual exploitation by their members vary widely, ranging from no mention of such issues in their codes of ethics to standards calling for public censure and expulsion of offenders from the organization. One of the things that makes membership in some organizations attractive is that it includes the right to purchase relatively inexpensive malpractice insurance. It is recommended that:

1. The state develop guidelines and/or models for professional organizations on the handling of problems of sexual exploitation of clients.

These guidelines and/or models would include:

## Recommendations

- a. A model section for a code of ethics prohibiting sexual exploitation of clients;
  - b. A model investigative and disciplinary procedure for sexual exploitation cases that includes a time line;
  - c. Guidelines for establishing membership criteria which address sexual exploitation concerns; and
  - d. A model for on-going membership education which addresses sexual exploitation issues.
2. The state work cooperatively with professional organizations to develop a plan to disseminate the manual on the problems of sexual exploitation and other relevant materials to all professionals who may be concerned with the problem.
  3. The state create and implement a statewide seminar for members of professional organizations on the problems of sexual exploitation of clients.

This seminar would include:

- a. The nature and scope of the problem of sexual exploitation, including information about exploitive therapists and the experiences of victimized clients;
  - b. The development of a written code of ethics that includes a specific prohibition of sexual exploitation of clients;
  - c. The creation of procedures which enforce the code of ethics that include a clear-cut disciplinary procedure and time line that is fair to both complaining clients and accused therapists and protects their confidentiality;
  - d. The establishment of criteria for membership that support an ethical professional environment;
  - e. The provision for ongoing ethical and practical education for members around the issues of sexual exploitation; and
  - f. The identification and elimination of organizational patterns conducive to sexual exploitation, including the sexual exploitation of supervisees.
4. The state maintain ongoing contact with professional organizations on sexual exploitation issues.

This would be done through:

- a. Consultation with individual organizations;
- b. Providing articles and announcements for organizational newsletters; and

- c. Providing a speaker's bureau for organizational meetings.

E. Educating Private and Public Participants in the Administrative, Civil and Criminal Complaint Processes

When a client makes a formal complaint against a therapist for sexual exploitation, the complaining client and the accused therapist must deal with many individuals who have the power to make the process humane and fair. These individuals include private or public attorneys, members of the regulatory boards and their staffs, investigators, law enforcement officers, judges, and others. Many of these participants in the legal process have had little or no opportunity to educate themselves on the issues of sexual exploitation and so, inadvertently, make the process more difficult for the parties involved. Currently, there are only a very few private attorneys who have handled client sexual exploitation. Changes in the criminal, civil, and administrative statutes and procedures will also necessitate education of those people entrusted with carrying out these processes. Therefore, it is recommended that:

1. The state distribute educational materials on the problems of sexual exploitation of clients to professionals involved in the legal process.

These materials would include:

- a. A manual on sexual exploitation for all concerned professionals; and
- b. A synopsis of the relevant laws and cases.

2. The state design and implement seminars on the problems of sexual exploitation of clients for professional groups involved in the administrative, civil and criminal complaint processes.

These seminars would include:

- a. The nature and scope of the problem of sexual exploitation;
- b. The experiences of the accused therapists and the complaining clients, and how to make the process humane and fair for both; and
- c. Application of statutory and case laws to the problem.

3. The state create and maintain a network among attorneys working on related administrative, civil, and criminal cases, and compile and maintain a referral list available to the public.

## PUBLIC EDUCATION

In order to educate the public about therapy and the potential dangers of sexual exploitation, it is recommended that the state develop a wide range of materials to convey the necessary information to the public. An overview of the general recommendations is presented, followed by specific suggestions for the general public and victims.

### I. GENERAL RECOMMENDATIONS FOR PUBLIC EDUCATION

It is recommended that:

- A. The state develop a brochure on sexual exploitation of clients for the public.
- B. The state provide information for media coverage on sexual exploitation of clients.
- C. The state write an addition for client's bills of rights that would define and prohibit sexual exploitation in therapy.
- D. The state design a handbook for victims of sexual exploitation and their advocates.
- E. The state utilize the existing sexual assault network to provide information, crisis intervention, advocacy and referral to victims of sexual exploitation by therapists.

### II. RECOMMENDATIONS FOR SPECIFIC PUBLIC GROUPS

#### A. Educating the General Public and Clients

A recent study released by the National Institute of Mental Health found that one out of every five people in the United States has a treatable mental illness. All of these people are therapy candidates and this does not include the people who are not ill, but seek therapy as a way to enrich some aspect of their lives. Many of the client victims of sexual exploitation who have communicated their stories to the task force indicated that two powerful forces contributed to their sexual exploitation by their therapists. One was that they sought help at one of the most vulnerable moments in their lives. The other was that they did not know what to expect in therapy; they trusted that the therapist knew what he/she was doing. Thus, it seems important to educate the general public to become good consumers of therapy. Also, many people who are not in counseling themselves know someone who is and are in a position to offer information and wisdom. Therefore, it is recommended that:

## Recommendations

1. The state publish and make available to the public a brochure on the problems of sexual exploitation of clients.

This brochure would include:

- a. A definition of sexual exploitation of clients;
- b. A statement that it is the therapist's responsibility to refrain from sexual involvement with the client under all circumstances;
- c. A statement that it is the client's right to ask questions about anything that happens in therapy and to consult a third party about any concerns;
- d. A statement that sexual contact between therapist and client is considered unethical professional behavior, and that it is not considered to be therapeutic and may have long-lasting destructive consequences for the client;
- e. A statement that it is unethical for a therapist to terminate therapy for the purpose of initiating sexual contact with the client and that the negative consequences to the client may be long-lasting;
- f. A statement that clients have a right to be fully informed of the therapist's qualifications to practice, including training, credentials, and years of experience;
- g. A statement that clients have a right to be fully informed regarding the therapist's areas of specialization and limitations;
- h. A statement that clients should have access to a client's bill of rights;
- i. A strategy for choosing a therapist in a way that minimizes the risk of sexual exploitation; and
- j. Procedures for finding help with sexual exploitation experiences.

2. The state communicate information about sexual exploitation of clients to the public in a variety of other ways through the media.

This would include:

- a. News releases;
- b. Public service announcements on radio and television; and
- c. Other information in the electronic and print media.

3. The state create and make available to the general public, clients, counselors, and therapists a client's bill of rights on the sexual exploitation of clients.



This document would include:

- a. A definition of sexual exploitation of clients;
- b. A statement that counselors and therapists are prohibited from having sexual contact or romantic involvement with their clients; and that in all circumstances it is the counselors' responsibility to see that this does not happen;
- c. The procedure for reporting a violation; and
- d. The procedure for obtaining advocacy for reporting a violation and referral for supportive services.

**B. Educating Victims and Victim Advocates**

Victims of sexually exploitive therapists need a great deal of assistance. Many entered therapy in a very vulnerable state and risked putting their trust in a counselor. When a therapist exploits his or her power and violates that trust relationship, the damage can be immense and long-lasting. Significant others, family members and friends of the victim, and other clients of the exploited therapist, may also be greatly affected by the sexual exploitation and may be considered secondary victims. When a victim or a secondary victim seeks help in dealing with that sexual exploitation, there is a great deal of complex information that needs to be communicated sensitively and clearly to that person. Therefore, it is recommended that:

1. The state create and disseminate a handbook for victims of sexual exploitation and their advocates.

The handbook would include:

- a. Legal and layperson's definitions of sexual exploitation;
  - b. The client's bill of rights;
  - c. Options for reporting and how to do each one;
  - d. Confidentiality considerations in dealing with reporting procedures, the media, family and friends, other clients, the agency, the professional community and others;
  - e. Common reactions of primary and secondary victims and fictional accounts of both; and
  - f. The places and means to get advocacy, support, treatment and referral.
2. The state provide information on sexual exploitation and referral to local resources to anyone who requests help.

## Recommendations

3. The state establish a client advocacy model and provide training to the existing sexual assault centers to assist them in providing crisis information, referral, and advocacy for victims of sexual exploitation by counselors and therapists.
4. The state create and maintain a network among psychotherapists who provide counseling to victims of sexual exploitation and compile and maintain a referral list available to the public.

## SECTION TWO:

### CRIMINAL, CIVIL AND ADMINISTRATIVE REMEDIES

In Minnesota, there are three potential avenues of legal remedies to take against sexually exploitive counselors and therapists: criminal, civil and administrative. The abused client may choose to pursue any or all of these legal actions that apply. In order to prosecute under the criminal statutes, the client must be forcibly assaulted, as defined by the current criminal sexual conduct code, be a minor, or mentally or physically incapacitated. Most cases of therapist-client sexual exploitation do not fall within these bounds.

In the civil realm, current causes of action fall within common law, rather than statutory law. Malpractice is a possible cause of action; however, most professional liability insurance policies do not currently cover sexual exploitation. Consequently, financial damages are not usually available to the exploited client and lawyers are reluctant to take such cases. One case has been tried under the consumer fraud laws, but the remedies available in this area are very limited.

Administrative remedies are available when the therapist is licensed by the state; however, the only counselors licensed in Minnesota are physicians (including psychiatrists), psychologists, and nurses. These remedies range from conditional licensing to suspension or revocation of the license or registration. They serve to protect the state and the public in general, but offer no compensation to the individual client. In addition, there is currently no mechanism to keep abusing therapists from practicing counseling. While these remedies provide some help to some victims, the existing statutes need to be expanded and clarified to adequately protect the public from sexually exploitive therapists and to make the process more equitable for accused counselors. Therefore, the following recommendations are made:

#### I. RECOMMENDATIONS FOR CHANGES IN THE CRIMINAL STATUTES

Research and testimony from psychotherapy professionals and from victims indicated that the damage done to clients sexually exploited by their therapists can be extensive and long-lasting. Consequently, the following recommendations expand the criminal code to include those injured individuals not currently covered. These recommendations seek to clarify the problem and to better ensure protection of the privacy of the client, so that more victims might be willing to risk prosecuting. It is recommended that the following changes be made in the criminal statutes.

(For the proposed wording of these statutory changes, see Appendix E.)

A. New Definitions

Since there are many people who are performing the functions that constitute counseling and therapy, clear definitions of who is to be covered by these statutes are necessary. Additionally, sexually exploitive therapists often lead their victims to believe that the sexual contact is a beneficial part of their treatment. Thus, it is recommended that the following definitions be added to the criminal code:

1. Psychotherapist - counselors and therapists, defined by a list of occupations and by services performed;
2. Patient - clients who seek or obtain services; and
3. Deception - using false claims to obtain sexual contact.

B. Additions to Third and Fourth Degree Criminal Sexual Conduct

Third degree criminal sexual conduct currently involves sexual penetration under any of the following circumstances: the victim is a minor, mentally defective, mentally incapacitated, or physically helpless; the perpetrator uses force or coercion over any victim or authority over a minor. The present Minnesota Sentencing Guidelines recommend a presumptive sentence duration of 18-97 months imprisonment for a conviction, depending upon the offender's criminal history and the specific circumstances of the crime.

Fourth degree criminal sexual conduct is currently like third degree, except that it involves sexual contact. The present sentencing guidelines recommend a presumptive sentence duration of 12-65 months imprisonment for a conviction, depending upon the offender's criminal history and the specific circumstances of the crime.

Many psychotherapists attempt to avoid their responsibility to their patients by ending treatment in order to become sexually involved. Testimony from professional experts and victims indicates that these clients may be as seriously injured by this form of sexual exploitation as those who are exploited during therapy.

Under current law, a complainant must prove lack of consent. In many of the cases of therapist-client exploitation, it is the client's vulnerability, dependency, and trust in the therapist that results in what is misconstrued as consent.

It is recommended that the following be added to both the third and fourth degree criminal sexual conduct code:

1. Deception may not be used to accomplish sexual contact;
2. A psychotherapist may not engage in sexual contact with a current patient;
3. A psychotherapist may not engage in sexual contact with a former patient within six months of the last day of providing services; and
4. Consent of the patient to sexual contact may not be used as a defense by the psychotherapist.

C. Additions to the Admissibility of Evidence in All Criminal Sexual Conduct Cases Involving Sexual Exploitation of Clients

Testimony from psychotherapy professionals and research in the field has indicated that accusations of sexual exploitation by clients are usually not fabricated or a misinterpretation on the client's part. In cases of alleged therapist-client sexual exploitation, it often comes down to a question of the patient's word against the psychotherapist's word, and the issue of the patient's personal or medical history is frequently raised to discredit the patient's accusations. Thus, it is recommended that the following be added to the criminal sexual conduct statute and to the rules of evidence promulgated by the Minnesota Supreme Court:

1. Evidence of the patient's personal or medical history not be admissible except when it is the accused therapist's defense that the patient has fabricated the story.
2. Evidence of the patient's personal or medical history must be admitted in the following manner:
  - a. The accused therapist must request a hearing prior to the trial;
  - b. The judge must determine whether the value of the patient's history outweighs its prejudicial value;
  - c. The judge may allow only those parts of the patient's history to be admitted as evidence that expert testimony has determined to be directly related to the issue of fabrication;
  - d. The judge must make a specific order detailing exactly what portion of the patient's history may be admitted as evidence and nothing else may be introduced; and

## Recommendations

- e. Violation of the terms of the judge's order shall result in a mistrial, which will not prevent a retrial of the accused therapist.

## II. RECOMMENDATIONS FOR CHANGES IN THE CIVIL STATUTES

Victims of sexual exploitation by therapists and those professionals who have helped them to recover from their experiences report that taking civil action can be confusing, traumatic, and possibly fruitless. Because there are no statutory prohibitions of sexually exploitive behavior by counselors and therapists, each case must establish the liability of the therapist and any employer of that therapist. In most cases there is no malpractice insurance coverage of the exploitation; consequently, it is difficult or impossible to recover damages. Currently, only psychologists are mandated to report such abuse. The statute of limitations has often expired before the client even recognizes the abuse as such. The proposals in this section are designed to bring clarity and consistency to the civil statutes in this area. It is recommended that the following changes be made in the civil statutes. (For the proposed wording of these statutory changes, see Appendix F.)

### A. New Definition

Since there are many people who are performing the functions that constitute counseling and therapy, clear definitions of who is to be covered by these statutes are necessary. Thus, it is recommended that the following definition be added to the civil code:

Psychotherapist - counselors and therapists, defined by a list of occupations and by services performed.

### B. Cause of Action

Current causes of action for sexual exploitation cases are not statutory, but are only a part of common law; consequently, liability must be proven in each case and interpretation of the common law is made on a case by case basis. Statutory provision for a cause of action would create clarity and uniformity in the law, eliminate the need to establish liability in each case, and establish a legislative policy against sexual exploitation by counselors and therapists. It would have the additional advantages of simplifying litigation and encouraging settlement of cases, all of which would be cost effective for the state. Thus, it is recommended that the following be added to the civil code:

A cause of action for wrongful sexual contact between psychotherapist and patient be created, in cases where physical, mental or emotional injury has occurred for the patient or anyone else.

C. Employer Liability

With the exercise of care and good judgment, employers have the power to lessen the possibility of sexual exploitation of clients in their agencies. Making employers liable would encourage them to take more responsibility in this area. The current standard in common law is that the client must prove that the therapist's employer should have been able to reasonably foresee that the therapist would be sexually exploitive. The proposed statutory change would establish that the act of employing a therapist would constitute the foreseeability of sexual exploitation. Thus, it is recommended that the following additions be made to the civil code:

1. That employers be held liable for the same damages as therapists within their employ; and
2. That sexual contact must occur within the scope of employment: arising out of the psychotherapy, occurring during the therapy session, or occurring on the premises.

D. Professional Liability Insurance

A recent Minnesota Supreme Court interpretation indicates that some malpractice insurance policies in Minnesota do not currently cover sexual contact by psychotherapists. Many such policies, particularly those written in the past few years, specify that they do not cover sexual exploitation. This means that the likelihood of a client collecting civil damages is very small; consequently, lawyers are very reluctant to take sexual exploitation cases. Thus, it is recommended that the following be added to the civil statutes:

That all professional liability insurance policies covering psychotherapists in Minnesota must cover sexual contact between therapist and client.

E. Statute of Limitations

The nature of the damage in sexual exploitation cases often results in a client not recognizing the victimization until years later. In other cases, the therapist uses his or her power to manipulate, coerce, or threaten the patient into not reporting. Thus, it is recommended that the following be added to the civil statutes:

That the statute of limitations be extended in cases of sexual exploitation by psychotherapists when the client is unable to complain for a period of time due to the effects of the sexual contact or due to any threats, instructions or statements from the sexually exploitive therapist.

F. Punitive Liability

The purpose of punitive damages is to punish someone for outrageous conduct and to make them an example so that others will be deterred from similar behavior. Actual damages only compensate the victim for expenses or losses incurred and pain and suffering experienced. The only way to increase damage awards beyond the actual damages is to allow for punitive damages. In many instances of therapist sexual exploitation, the breach of trust and misuse of power is an outrageous act. It is also believed that punitive damage awards might deter other offenders. Thus, it is recommended that the following be added to the civil code:

That punitive damages may be awarded to the sexually exploited client.

G. Reporting Requirements

Mandatory reporting of sexual exploitation by colleagues was one of the concepts most extensively explored by the task force. The dilemmas faced in resolving this issue have to do with confidentiality and deciding who is most important to protect. There are several groups to be considered: the complaining clients, the public in general, the accused therapists, the employers of the accused therapists, and those who would be doing the reporting. It seems impossible to devise a plan that protects the confidentiality and interests of everyone.

In particular, there is often a conflict between the immediate welfare of injured clients and the public in general. Therapeutically, a client who has been sexually exploited by a former therapist may not be ready to report and may feel abused anew if someone else reveals his or her identity. It seems that the decision to report should be within the control of the abused client. On the other hand, if the abuse is never reported, the abusing therapist is free to exploit other members of the public. So, the question is, how to balance protection of the public with respect for the confidentiality of the exploited client.



## Recommendations

For the accused therapists and their employers, the dilemmas are somewhat different. A therapist who is accused anonymously has no opportunity to face his or her accusers and consequently no opportunity to prove him/herself innocent, raising serious due process questions. Even though it is rare for false accusations of sexual exploitation to be made, they do occur occasionally. On the other hand, it is often difficult to prove a case against a sexually exploitive therapist without corroborating testimony from other victims. Third party reporting makes it possible for investigators to locate, through reporting therapists or employers, other victims who often will then change their minds and report. Employers of psychotherapists who are accused of sexual exploitation may find themselves in conflict between protecting the confidentiality of the abused client and protecting themselves from further liability by not reporting. In some cases, the confidentiality rights of the client may prevent employers from dismissing the offending therapist because of due process considerations.

Those psychotherapists who discover sexual exploitation by their colleagues may also find themselves confronted with a dilemma. If they learned this information from a client, then, in reporting, they run the risk of losing the trust of that client. Since most sexually exploited clients who return to therapy have a very difficult time trusting another therapist, this could be a serious problem and might even prevent some clients from seeking help to deal with their exploitation experiences.

The task force believes that there are no simple solutions to these complex issues and that they warrant further monitoring, research, and study. For now, the task force has attempted to balance the above considerations by recommending that the following changes be made in the civil code:

1. That when a psychotherapist or an employer of a psychotherapist discovers that a patient has been sexually exploited by a therapist, if he or she has access to that patient, he or she must inform the patient that such acts by the therapist are a violation of the law and ask for the patient's consent to use his or her name in reporting the incident; and
2. That if the client consents to have his or her name used, then the psychotherapist or employer must report the conduct to the appropriate regulatory board or agency;

## Recommendations

3. That if the client declines to have his or her name used, the psychotherapist or employer is encouraged, but not required, to report the incident, naming the therapist, but not the client, to the appropriate regulatory board or agency;
4. That no client may be charged or held liable for any cost incurred by any psychotherapist or employer of a psychotherapist in the course of investigating any claim of sexual contact between a psychotherapist and a client;
5. That psychotherapists or employers who report such behavior in good faith will be immune from any civil or criminal liability.
6. That violations of these provisions would constitute a misdemeanor; and
7. That the Attorney General, in consultation with the Commissioner of Corrections, shall determine where these reports will be made.

### III. RECOMMENDATIONS FOR CHANGES IN THE ADMINISTRATIVE STATUTES

Administrative statutes are the only sources of regulation of the actual rights and responsibilities of the practice of psychotherapy. Documented cases of therapist-client sexual exploitation in Minnesota have indicated that both regulated and unregulated therapists attempt to take sexual advantage of their clients. The current state of regulation in Minnesota appears to contribute to the problem. Physicians (including psychiatrists), psychologists and nurses are the only counselors licensed by the state. Licensure and registration do not necessarily imply training or competency in the practice of psychotherapy.

Everyone else who is a psychotherapist is unregulated. Furthermore, there is nothing in Minnesota statutes to prevent an offending therapist from continuing to practice. If a psychiatrist, psychologist, or nurse has his or her license revoked, then they fall into the unregulated group and may continue to practice, as long as they do not use any regulated title. They do usually lose the chance to collect third party payments from clients' medical insurance policies, which may result in the loss of some clients for those professionals when they lose their licenses. The current boards are reluctant to revoke licenses because they want to continue to monitor the behavior of offending therapists; however, there is little or no evidence to indicate that this monitoring is effective in protecting the public. In some cases, complaining clients have experienced difficulty in getting a timely response or satisfaction from the boards. Additionally, enforcement is inconsistent and there is even disagreement about what constitutes the burden of proof in disciplinary cases.

Despite these problems with the currently regulated groups, it seems clear that the state needs to assume some form of responsibility for the many psychotherapists who are currently practicing and unregulated. As the task force investigated these issues, it became clear that there are no simple solutions to these problems. Also, regulation by itself is no panacea, but must be accompanied by an active education program in order to be effective. The recommendations below reflect the desire of the task force to improve current regulatory procedures and to address the reality that so many counselors in the state are unregulated.

Another problem exists in state licensed institutions that deal with psychotherapy patients. Current provision for employees of such agencies do not adequately prohibit sexual exploitation of patients or make it grounds for dismissal.

It is recommended that the following changes be made in the administrative statutes:

A. REGULATORY BOARDS

1. Statutory Prohibition of Sexual Exploitation

Currently, not all of the boards have an explicit statutory prohibition against sexual exploitation of clients. Thus, it is recommended that the following be added to the administrative code:

That the statutes covering all current and future regulatory boards shall contain a specific prohibition against sexual exploitation of psychotherapy clients.

2. Client's Bill of Rights

Many exploited clients testified that they did not know what was appropriate therapist behavior when they entered counseling. They suggested that each therapist be required to provide such information to each client. In many cases, this information could be inserted in existing bills of rights. Thus, it is recommended that the following be added to the administrative code:

That any psychotherapist licensed, registered or otherwise regulated by an administrative body of the State of Minnesota be required to give each current and new client a copy of a client's bill of rights which includes a specific definition of and prohibition against sexual exploitation of clients.

3. Ethics Panels

At present, not all boards have a psychotherapist member, so that standards of ethical practice may not be adequately represented. Thus, it is recommended that the following be added to the administrative code:

- a. That in consideration of cases of sexual exploitation by psychotherapists, all board ethics panels contain, at a minimum, one psychotherapist and one public member; and
- b. That in the case of the Medical Board of Examiners, the psychotherapist be a psychiatrist.

4. Investigative and Disciplinary Procedures

Currently, complaining clients and accused therapists have a wide variety of often frustrating experiences with the existing boards. For clients, this adds to the emotional trauma of the original exploitation and, in many cases, appears to lead to a reluctance to complain. For therapists, it often means having their careers disrupted for two or more years. Disciplinary action is inconsistent, and it is possible that remorseful therapists are punished more severely than habitual offenders who are well defended. Attorneys representing the state, the complaining clients, and the accused therapists report that the standard for the burden of proof in cases related to the regulatory boards is unclear. Many argue that acceptance of the preponderance of the evidence as the standard of proof would allow the state the greatest leeway in prosecuting cases and thus in protecting the public. Other states, such as Wisconsin, publicize the cases where disciplinary action is taken, providing opportunities for members of the public to protect themselves from offending therapists. In Minnesota, this is usually not done, except for the Board of Psychology. Thus, it is recommended that the following be added to the administrative code.

- a. That the Attorney General's office create a single standard of procedure for investigating complaints of sexual exploitation by therapists, including the following:
  - i. A clear, consistent time line;
  - ii. A provision for exceptional cases, with a requirement that these be well-documented and clearly explained to both client and therapist; and
  - iii. The Attorney General's office and the boards make every effort to protect the identity of the client and the identity of the therapist until proven guilty.
- b. That disciplinary actions of the boards on sexual exploitation by therapists be consistent and include the following:
  - i. Procedures for the first offense:
    - a. As a rule, the license or registration of the person be suspended for a minimum of one year;
    - b. Exceptions be documented;

## Recommendations

- c. Psychotherapeutic treatment by a therapist, approved by the board, be mandatory before reinstatement of the license or registration and that a second therapist, approved by the board, evaluate the disciplined therapist's competency to practice without abusing clients before such reinstatement; and
  - d. A period of supervised probation following reinstatement.
- ii. Procedures for subsequent offenses
  - a. License or registration be permanently revoked.
  - b. The boards have no discretionary power to waive this penalty.
- iii. Burden of proof
  - Be clarified to be the preponderance of the evidence.
- c. That the boards actively publicize their disciplinary actions by detailed press releases.

## B. INSTITUTIONS AND AGENCIES LICENSED BY THE STATE AND PROVIDING PSYCHOTHERAPY

At present there are a variety of institutions that are licensed by state agencies to provide inpatient and outpatient mental health services, including psychotherapy. This would include, but not be limited to, mental hospitals, chemical dependency treatment centers, and halfway houses. Patients of such institutions and agencies are very vulnerable to sexual exploitation by psychotherapists and any other staff who have access to them. The Vulnerable Adults Act mandates that some institutions adequately provide for the well-being of their clients, including protecting them against sexual exploitation. What does not exist is a statutory mandate that would create job-related consequences for those who sexually exploit patients in state licensed institutions, including making it grounds for dismissal. Thus, the following recommendations are made for changes in the administrative code:

- 1. That all employees in state licensed institutions and agencies must refrain from sexual contact with patients, and that violation may result in dismissal.
- 2. That each such institution or agency be mandated to develop accompanying policies that include:

- a. A code of ethics that defines and prohibits sexual exploitation of patients;
- b. Staff education on sexual exploitation of patients;
- c. Adequate supervision that deals with potential sexual exploitation of patients;
- d. Investigative and disciplinary procedures for sexual exploitation cases;
- e. Hiring procedures that reduce the possibility of sexual exploitation of clients;
- f. Firing policies for sexual exploitation cases; and
- g. A patient's bill of rights that includes a definition and prohibition of sexual exploitation of patients by employees.

### C. REGULATING THE UNREGULATED

In testimony from victims and from those professionals who have helped them cope with their experiences, it was made clear that much of the sexual exploitation is being done by psychotherapists whose practice is not regulated by any state agency. This means that the only constraints on their practice are criminal and civil remedies and the current laws contain no provision for most of these cases. Many clients reported their horror upon discovering that the state of Minnesota has so little control over such potentially damaging behavior. Also, there is currently no way to keep anyone from practicing psychotherapy in Minnesota. Thus, the following recommendations are made for the regulation of the unregulated:

#### 1. General Recommendations for Regulation

The task force made extensive but unsuccessful efforts to identify specific recommendations that would solve the problems related to sexual exploitation by unregulated psychotherapists. Thus, it is suggested that the legislature determine and adopt policies which incorporate the following general recommendations:

- a. All psychotherapists must have consequences for sexual exploitation of clients that are directly related to their practice of psychotherapy and include the possibility of being prohibited from practicing psychotherapy in any form; and
- b. All sexually exploited psychotherapy clients must have a source of redress with the state that relates directly to their psychotherapists' practice of psychotherapy.

2. The Licensure Process

Currently, several occupational groups (including social workers, chemical dependency practitioners, marriage and family therapists, and professional counselors) are seeking to be licensed by the state. Acknowledging that regulation, including licensure, is a possible source of prevention and remedy for sexual exploitation of psychotherapy clients, it is recommended that:

The state continue in its review process of the counseling groups seeking state licensure in a more timely manner.

3. The Special Case of the Clergy

Members of the clergy are sought out for both psychological and spiritual counseling, affording them the opportunity for great power and influence with their counselees. The cases of sexual exploitation by clergy handled by Walk-In Counseling Center and described by victims at the public hearing of the task force indicate the importance of a organized approach to the problem within the clergy. Also, as trusted advisors to whom many people turn in times of crisis, and who are often the continuing resource throughout the life of a counselee, the clergy are in a position to provide support to members of their congregations who have been sexually exploited by other counselors.

A number of clergymen from several denominations testified at the public hearing about the problem of sexual exploitation among their profession. Among the suggestions made for increasing accountability within their ranks was the establishment of an interfaith effort for the development of guidelines and procedures for use in dealing constructively with ministers and congregation members who have experienced sexual exploitation.

Since the separation of church and state is constitutionally guaranteed, it is unlikely that the state will mandate administrative regulation of the practice of counseling by the clergy, except in their civil functions. Therefore, it is recommended that:



## Recommendations

- a. Religious institutions work together in an ecumenical collaboration to create ecclesiastical and professional policies prohibiting sexual exploitation of counselees and to implement clear and consistent disciplinary policies in such cases; and
- b. The state cooperate with and offer assistance, training and materials to religious institutions and any ecumenical collaboration in responding to the problem of sexual exploitation of clients.

### SECTION THREE: IMPLEMENTATION

#### I. STAFFING

Many of the recommendations contained in this report will require extensive staff support to carry them out. Therefore, it is recommended that:

Adequate staffing be added to implement this work.

#### II. IMPLEMENTING AGENCY

The task force and two temporary halftime staff members are currently a part of the Minnesota Program for Victims of Sexual Assault, a program of the Minnesota Department of Corrections. The Minnesota Program for Victims of Sexual Assault has successfully provided statewide services on other forms of sexual assault and sexual abuse for the past ten years. Therefore, it is recommended that:

The staff to implement this project, except where otherwise specified in the report, be housed in the Department of Corrections.

#### III. THE TASK FORCE

While the Task Force on Sexual Exploitation has accomplished a great deal in its first five months of existence, there are still many objectives to be reached. Some are issues that the task force did not have time to address before its report was due and others consist of implementing and monitoring its recommendations. Therefore, it is recommended that:

The Task Force on Sexual Exploitation continue for one year with its work as an advisory board to the Department of Corrections.

##### A. The work of the on-going task force would include:

1. Assist with the implementation of the recommendations of this report;
2. Encourage research in Minnesota on the incidence of sexual exploitation of clients in various professional groups and on the effectiveness of preventive and remedial programs and policies;

## Recommendations

3. Monitor and encourage communication among the state agencies responsible for providing services and remedies for sexual exploitation of clients;
  4. Encourage the reporting of instances of sexual exploitation of clients and the fair and expeditious handling of those cases;
  5. Work with the legislature to identify and make recommendations on currently unaddressed issues involving the sexual exploitation of clients;
  6. Coordinate the efforts of the state to reduce the incidence of sexual exploitation by counselors and therapists; and
  7. Work with other states to establish a national communication system so that sexually exploitive therapists cannot escape the consequences of their actions by moving from state to state.
- B. The Commissioner of Corrections shall determine the membership of the task force in accordance with the criteria set forth in the Laws of Minnesota, 1984, Chapter 631.

## IV. FUNDING

In order for the State of Minnesota to underscore its commitment to dealing with the problems of sexual exploitation of clients in this state, it is recommended that:

The legislature appropriate adequate funds for the task force, staffing, materials, and other resources needed to carry out the recommendations of this report.

APPENDICES

APPENDIX A

Chapter No. 631  
Laws of Minnesota, 1984

relating to occupations and professions; establishing a task force to study the problem of sexual exploitation by counselors and therapists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (TASK FORCE ON SEXUAL EXPLOITATION BY PSYCHOTHERAPISTS.)

Subdivision 1. (CREATION; MEMBERSHIP.) The commissioner of corrections shall appoint a task force to study the problem of sexual exploitation by counselors and therapists. The task force shall consist of not more than 18 members who are broadly representative of the state, including representatives of professional organizations, board of medical examiners, board of psychology, and board of nursing, agencies and individuals offering counseling or therapy services, the legal community, appropriate state agencies, women's organizations, and consumers. The terms, compensation, and removal of members are as provided in section 15.059.

Sub. 2. (STATE-WIDE PLAN.) The task force shall develop a statewide plan to:

- (1) educate the public about the nature and scope of sexual exploitation by counselors and therapists;
- (2) educate counselors and therapists, their employers, and training institutions about the consequences of and methods of preventing unethical conduct; and
- (3) educate clients and potential clients about their rights, ways to select nonabusive counselors and therapists, and remedies for sexual exploitation by a counselor or therapist.

Sub. 3. (RECOMMENDATIONS.) Based on its findings, the task force shall make recommendations to the legislature by February 1, 1985, on:

- (1) the need for a bill of rights for counseling and therapy clients;
- (2) the need to improve the procedures and rules of regulatory agencies to minimize trauma for complainants and standardize penalties;
- (3) the advisability of prohibiting information concerning the previous sexual conduct of a client or former client in proceedings of regulatory agencies;
- (4) the need to create a felony offense for sexual exploitation by a counselor or therapist;
- (5) the need for increasing damage awards in civil suits involving sexual exploitation by counselors or therapists;
- (6) the need to require rules of professional conduct that prohibit sexual contact with clients and patients and require reporting of known violations;
- (7) the need for regulation of all professionals engaging in therapy and counseling; and
- (8) the need for other actions to address the problem of sexual exploitation by counselors and therapists.

Subd. 4. (EXPIRATION.) The task force expires on July 1, 1985.

Sec. 2. (EFFECTIVE DATE.)

Section 1 is effective the day following final enactment.

APPENDIX B

WORK GROUP DESCRIPTIONS

Task Force on Sexual Exploitation  
by Counselors and Therapists

PROFESSIONAL EDUCATION

This group will address the legislative mandate to develop a state-wide plan to educate counselors and therapists, their employers, and training institutions about the consequences and methods of preventing unethical conduct. It also examined the need for such educational plans for clinical supervisors, professional organizations, professional participants in the legal process, and the clergy.

PUBLIC EDUCATION

This group addressed the legislative mandate to develop a state-wide plan to educate the public, including clients and potential clients, about the nature and scope of sexual exploitation by counselors and therapists. It also examined possible sources of interference with such education.

VICTIM ISSUES

This group addressed the legislative mandates to: examine the need for a bill of rights for counseling and therapy clients; examine the need to improve the procedures and rules of regulatory agencies to minimize trauma for complainants; and standardize penalties.

CRIMINAL AND CIVIL STATUTES

This group addressed the legislative mandates to examine the need to create a felony offense for sexual exploitation by a counselor or therapist and to examine the need for increasing damage awards in civil suits involving sexual exploitation by counselors or therapists. It also examined the advisability of prohibiting information concerning the previous sexual conduct of a client in testimony in civil suits against sexually exploitive counselors and therapists and examined the need to extend the statute of limitations in criminal and civil cases involving sexual exploitation by a counselor or therapist.

PROFESSIONAL REGULATIONS

This group addressed the legislative mandates to: examine the need for regulation of all professionals engaging in therapy and counseling; examine the need to require rules of professional conduct that prohibit sexual contact with clients and patients and require reporting known violations. It also examined the impact of current regulations.

APPENDIX C

TASK FORCE AND WORK GROUP MEMBERS

PUBLIC EDUCATION

\*DAVID BARAGA  
 \*KATHY DENMAN  
 \*ALICE HUDSON  
 \*JEANETTE MILGROM  
 REBECCA BIDERMAN  
 NANCY BIELE  
 MARIA BROWN  
 DONNA FISCHER  
 STEPHEN PINSKY

PROFESSIONAL EDUCATION

\*JANE BOYAJIAN  
 \*MARY HARTMANN\*\*\*  
 \*\*TRUDY DUNHAM  
 JOSEPH DALY  
 VALLI KANUHA  
 KENNETH PIERRE  
 MIMI SANDS  
 MINNA SHAPIRO  
 PEGGY SPECKTOR  
 INEZ WAGNER  
 ANN STEFANSON WIENS

CRIMINAL & CIVIL STATUTES

\*JILL RUZICKA  
 \*RAYMOND SCHMITZ  
 JOHN AUSTIN  
 CAROLEN BAILEY  
 BARBARA DOHERTY  
 PHILIP GETTS  
 JAMES KERR

PROFESSIONAL REGULATIONS

\*JOSEPHIER BROWN  
 \*SHIRLEY CORRIGAN  
 \*JOHN GONSIOREK  
 \*LEAH HOROWITZ  
 \*CARL MARQUIT  
 \*ROSEMARY MARTIN  
 \*\*CHARLES McCAFFERTY  
 \*\*NORMAN HANSON  
 EIMO AGRIMSON  
 DOTTIE BELLINGER  
 EUGENE BURKE  
 DANIEL CAIN  
 LYNNE LOCKIE  
 LUDWIG SPOLYAR

VICTIM ISSUES

\*AUTUMN COLE  
 \*PATRICIA McDONOUGH  
 \*CHRIS SERVATY  
 DARLENE DOMMEL  
 CAROLYN HALLIDAY  
 RICHARD LUNDY  
 GAYL MADIGAN  
 JOHN MARTINSON  
 CRAIG NAKKEN  
 SONDRAL SMALLEY

CHAIRPERSON OF THE  
 TASK FORCE

\*NANCY MALMON

LEGISLATIVE MEMBERS

\*\*SENATOR DONNA PETERSON  
 \*\*REPRESENTATIVE LEE GREENFIELD  
 \*\*REPRESENTATIVE CONNIE LEVI

COORDINATOR OF THE  
 TASK FORCE

BARBARA SANDERSON

\*\*\* (Replaced DOROTHY BERNSTEIN)

\*TASK FORCE MEMBERS  
 \*\*EX-OFFICIO TASK FORCE  
 MEMBERS

APPENDIX D

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APPENDIX E

RECOMMENDED WORDING FOR CHANGES IN CRIMINAL STATUTES

609.341 DEFINITIONS

Subd. 16. "Psychotherapist" means any physician, psychologist, nurse, social worker, chemical dependency counselor, clergy or other person whether or not licensed by the State of Minnesota who renders or purports to render psychotherapy, counseling, or other assessment or treatment of or involving any mental or emotional illness, symptom or condition.

Subd. 17. "Patient" means any person who seeks or obtains psychotherapeutic services.

Subd. 18. "Deception" means the making of a false or fraudulent representation concerning a cure, treatment or professional identity or relationship for the purpose of obtaining sexual intercourse or contact.

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE

(c) The actor uses force, coercion, or deception to accomplish the sexual penetration or

(e) The actor is a psychotherapist and engages in sexual penetration with his patient, in a prosecution under this clause Consent shall not be a defense.

(f) The actor is a psychotherapist and engages in sexual penetration with a former patient within six months after the last day upon which the actor provided psychotherapeutic services, in a prosecution under this clause Consent shall not be a defense.

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE

(c) The actor uses force, coercion, or deception to accomplish the sexual contact or

(e) The actor is a psychotherapist and engages in sexual contact with his patient, in a prosecution under this clause Consent shall not be a defense.

(f) The actor is a psychotherapist and engages in sexual contact with a former patient within six months after the last day upon which the actor provided psychotherapeutic services, in a prosecution under this clause Consent shall not be a defense.

609.347 EVIDENCE

Subd.6. In a prosecution under 609.342 to 609.346 involving a psychotherapist and patient, evidence of the patient's personal or medical history shall not be admissible except where fabrication by the complainant is the defense and

(1) The actor requests a hearing prior to the commencement of the trial.

(2) The court at such hearing determines that the probative value of such history outweighs the prejudicial value thereof.

(3) In determining the above, the court shall consider only specific examples of conduct of the complainant which are determined by the court upon expert testimony to be related directly to the issue of fabrication.

(4) The court shall make a specific order detailing the information to be admitted and no other information may be introduced.

(5) Violation of the terms of such order shall be a mistrial which shall not prevent the retrial of the actor.

APPENDIX F

RECOMMENDED WORDING FOR CHANGES IN THE CIVIL STATUTES

A BILL FOR AN ACT

relating to psychiatrists, psychologists, and psychotherapists;  
establishing a cause of action; requiring insurance coverage;  
defining the statute of limitations, amending Minnesota Statutes  
section 541.07

BE ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. (DEFINITIONS.) For the purposes of this Act, the  
following terms shall have the following meanings.

Subd.1. "Psychotherapist" means any physician, psychologist, nurse,  
social worker, chemical dependency counselor, clergy, or other person  
whether or not licensed by the State of Minnesota who renders or purports  
to render psychotherapy, counseling, or other assessment or treatment of  
or involving any mental or emotional illness, symptom, or condition.

Subd.2. "Person" means any natural person, corporation,  
partnership, or other entity.

Section 2. (CAUSE OF ACTION FOR WRONGFUL SEXUAL CONTACT.)

From and after the effective date of this Act, any person who suffers  
directly or indirectly physical, mental or emotional injury of any kind  
caused by, resulting from, or arising out of sexual contact with a  
psychotherapist who is rendering or has rendered to that person  
psychotherapy, counseling, or other assessment or treatment of or

involving any mental or emotional illness, symptom, or condition shall have a civil cause of action against the psychotherapist for all damages resulting from, arising out of, or caused by such sexual contact.

Section 3. (LIABILITY OF EMPLOYER.)

Subd.1. Any person who employs or hires a psychotherapist, whether as an agent, employee, independent contractor, or otherwise, for the primary or incidental purpose of rendering psychotherapy, psychoanalysis, counseling, or other treatment of any mental or emotional illness, symptom, or condition, shall be liable to the same extent as any such psychotherapist for damages as provided in section 2 above so long as the sexual contact occurred within the psychotherapist's scope of employment.

Subd.2. For the purpose of this section, the sexual contact shall be deemed to have occurred within the psychotherapist's scope of employment if it arose out of psychotherapy rendered to the plaintiff at least in part during a regularly scheduled therapy or treatment session or on premises regularly used by the psychotherapist for the rendering of psychotherapy.

Section 4. (INSURANCE COVERAGE REQUIRED.) No policy of professional liability insurance intended to afford or provide coverage for any psychotherapist as defined in section 1 of this Act who is practicing in this state on or after the effective date of this Act shall exclude or fail to provide coverage for damages resulting from, arising out of, or caused by sexual contact of any kind between a patient or client and a psychotherapist who is a named insured.

Section 5. (EXPENSES OF INVESTIGATION NOT TO BE CHARGED TO PATIENT.) No patient may be charged or held liable for any charge, cost, or expense incurred for any purpose whatsoever by any psychotherapist or employer of a psychotherapist in the course of investigating any claim of sexual contact between a psychotherapist and a patient.

Section 6. Minnesota Statutes (1984) Chapter 541 shall be amended by adding a new section to read as follows:

Subd.1. (Period of Limitation for Unlawful Sexual Contact). In the case of an action for wrongful sexual contact against a physician, psychologist, nurse, social worker, chemical dependency counselor, clergy, or other person whether or not licensed by the State of Minnesota who renders or purports to render psychotherapy, psychoanalysis, counseling, or other treatment of any mental or emotional illness, symptom, or condition, the applicable period of limitation shall be suspended during any period when the plaintiff is unable, as the direct and proximate result of (1) the wrongful sexual contact or (2) any written or verbal threat, instructions, or statements from the defendant, to commence and prosecute the cause of action.

Subd.2. Any act which exists on the effective date of this action and is not otherwise barred shall be subject to this section.

Section 6. Minnesota Statutes (1984) Section 549.20 is amended by adding a new subdivision to read as follows:

Subd.4. (Punitive Damages). Nothing in this section shall be deemed to limit or affect the right of any person to recover punitive or exemplary damages for wrongful sexual contact with a physician, psychologist, nurse, social worker, chemical dependency counselor, clergy, or other person who renders or purports to render psychotherapy, psychoanalysis, counseling, or other treatment of any mental or emotional illness, symptom, or condition, and nothing in this section shall be deemed to affect or limit the right of any person to seek punitive or exemplary damages from any master or principal whose employee, independent contractor or other agent is found to have engaged in wrongful sexual conduct within the scope of his or her employment by the principal or master.

#### 626.599 REPORTING OF SEXUAL ABUSE BY THERAPISTS

Subd.1. (Public Policy). The Legislature hereby declares that the public policy of this state is to protect persons who have sought or obtained the services of a therapist from sexual exploitation by such therapist.

Subd.2. (Definitions). As used in this section, the following terms have the meaning given them unless the specific content indicates otherwise:

(a) Patient - as defined in 609.341.

(b) Psychotherapist - as defined in 609.341.

(c) Employer - any person who employs or hires a psychotherapist, whether as an agent, employee, independent contractor or otherwise, for the primary purpose of rendering psychotherapy, psychoanalysis, counseling, or other treatment of any mental or emotional illness, symptom or condition.

Subd.3. (Notice to Patient). Any psychotherapist or employer of a psychotherapist who learns that a patient has been subjected to any acts that would constitute a violation of MSA Statutes 609.344 (e) or (f) or 699.345 (e) or (f) shall immediately advise the patient that such acts may give rise to a civil cause of action for damages against the psychotherapist who committed the act and his or her employer, and, if proved beyond a reasonable doubt, constitute a gross misdemeanor. In providing such notice to the patient, the psychotherapist shall also inform the patient that if the acts in question are reported to any regulatory agency or board that the patient has the right to consent to the use of his or her name in any such report. The psychotherapist shall also inform the patient that the acts in question may be reported in any event but that neither the patient's name nor any other identifying information about the patient shall be set forth in any such report.

Subd.4. (Duty to Report). If the patient consents to the use of his or her name in the report specified in Subd. 3, the psychotherapist or employer of a psychotherapist who learns that a patient has been subjected to any acts that would constitute a violation of MSA Statutes 609.344 (e) or (f) or 699.345 (e) or (f) shall report in writing any such act to the

appropriate regulatory board or agency. If the patient refuses to consent to the use of his or her name in such report, the psychotherapist or employer of a psychotherapist who learns that a patient has been subjected to any acts that would constitute a violation of MSA Statutes 609.344 (e) or (f) or 699.345 (e) or (f) may report the acts in question but shall not state the patient's name or set forth any other identifying information about the patient.

Subd.5. (Contents of Report). In any report submitted pursuant to Subd. 4, the person submitting the report shall state identity of the person who committed the acts in question, the nature of the conduct, the place or places where it occurred, and the dates upon which the conduct occurred.

Subd.6. (Violation a Misdemeanor). Any person who willfully violates any provision of this section shall be guilty of a misdemeanor.

Subd.7. (Immunity from Liability). No person who in good faith makes any report pursuant to this section shall be held liable for any civil damages or criminal penalty as the result of making any such report.

Subd.8. (Agency to Receive Report). The Attorney General, in consultation with the Commissioner of Corrections, shall by rule and regulation designate the agency, board, or commission, as the case may be, to receive the reports required by this section.



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STATE OF MINNESOTA