



1995 ASSEMBLY BILL 567

September 25, 1995 - Introduced by Representatives BELL, BOCK, BOYLE, BALDWIN, KAUFERT, OLSEN, MUSSER, NOTESTEIN, PLACHE, RYBA, WASSERMAN, SCHNEIDERS, RILEY and ROBSON, cosponsored by Senators BURKE, MOEN, A. LASEE and DARLING. Referred to Committee on Consumer Affairs.

1 **AN ACT** *to renumber* 441.115; *to renumber and amend* 441.07 (2), 448.02 (6)
2 and 455.09 (3); *to amend* 457.25 (4) and 978.07 (1) (d); and *to create* 441.07
3 (1d), 441.07 (1h), 441.07 (2) (b), 441.075, 441.115 (2), 448.02 (3g), 448.02 (3r),
4 448.02 (6) (b), 448.03 (2) (jm), 448.35, 455.02 (4), 455.085, 455.09 (1g), 455.09
5 (1r), 455.09 (3) (b), 457.02 (3m), 457.035, 457.26 (3), 457.26 (4), 457.26 (5) and
6 940.22 (3) (e) of the statutes; **relating to:** disciplinary proceedings against
7 certain therapists convicted of sexual exploitation.

Analysis by the Legislative Reference Bureau

Current law prohibits a therapist from having sexual contact with any of his or her patients or clients. Current law defines "therapist" as a physician, psychologist, social worker, nurse, chemical dependency counselor, member of the clergy or any other person, whether or not licensed, who performs or purports to perform psychotherapy. Under current law, if the therapist is licensed and is convicted of having sexual contact with a patient or client, the therapist may be disciplined by the examining board which licensed him or her (the board of nursing, the medical examining board, the psychology examining board or the examining board of social workers, marriage and family therapists and professional counselors) on the basis of either being a felon or engaging in unprofessional conduct. Under current law, the appropriate examining board's disciplinary proceeding could result in a reprimand of the license holder or a limitation, suspension or revocation of the license.

This bill requires the appropriate examining board to revoke a therapist's license for 3 years upon the first conviction for having sexual contact with a patient or client, and requires the examining board to revoke a therapist's license

permanently for a 2nd such conviction. The bill sets conditions on reinstatement for a therapist whose license has been revoked as a result of a first-time conviction for having sexual contact with a patient or client. The bill also requires the appropriate examining board to provide patients or clients with notice of certain disciplinary hearings and an opportunity to attend the hearings or to provide a written statement to the examining board. The bill requires that records of complaints against therapists for having sexual contact with a patient or client must be kept for 10 years. Finally, the bill requires the examining boards to prepare an informational brochure on sexual misconduct by therapists for distribution to therapists and to patients and clients.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 441.07 (1d) of the statutes is created to read:

2 441.07 **(1d)** (a) If a person licensed under this chapter is convicted under s.
3 940.22 (2) and the person has no previous convictions under that section, the board
4 shall revoke his or her license for 3 years. If the person is convicted under s. 940.22
5 (2) and has a previous conviction under that section, the board shall revoke his or her
6 license permanently.

7 (b) The board may not reinstate the license of a person whose license has been
8 revoked under par. (a) and who is eligible for reinstatement of his or her license
9 unless the person has submitted evidence satisfactory to the board that he or she has
10 been evaluated for the need for treatment by, and has completed any recommended
11 treatment with, a person or facility that the board considers qualified and
12 appropriate to evaluate and treat the person whose license has been revoked.

13 (c) In any proceeding for revocation under par. (a), the board shall allow a
14 patient or client who has an interest in the proceeding, or the patient's or client's
15 designated representative, to attend all hearings held by the board concerning the
16 proceeding. The board shall give notice of the hearing to the patient, client or

1 designated representative by mailing a written statement informing the patient,
2 client or designated representative of the time, place and nature of the hearing. The
3 notice shall be mailed at least 10 days before the date of the hearing.

4 (d) The board shall maintain a record of a complaint that a person licensed
5 under this chapter violated s. 940.22 (2) and of any proceedings under this section
6 based on that complaint for 10 years after the date on which the complaint is
7 received.

8 **SECTION 2.** 441.07 (1h) of the statutes is created to read:

9 441.07 (1h) The board shall notify a patient or client who has an interest in a
10 proceeding under this section, or the patient's or client's designated representative,
11 as soon as reasonably practical after the board makes a final decision on whether to
12 suspend, limit or revoke a license or reprimand a person licensed under this chapter.
13 The board shall notify the patient, client or designated representative of the board's
14 final decision under this subsection, by telephone and by a written statement mailed
15 to the patient, client or designated representative.

16 **SECTION 3.** 441.07 (2) of the statutes is renumbered 441.07 (2) (a) and amended
17 to read:

18 441.07 (2) (a) The Except as provided in par. (b) and sub. (1d), the board may
19 reinstate a revoked license, no earlier than one year following revocation, upon
20 receipt of an application for reinstatement.

21 **SECTION 4.** 441.07 (2) (b) of the statutes is created to read:

22 441.07 (2) (b) If a license is revoked under sub. (1d), the board shall mail a
23 written notice of any hearing that the board holds on the application for
24 reinstatement to a patient or client whose complaint formed a basis for the conviction
25 and to the office of the district attorney that handled the prosecution of the licensee,

1 if they can be found. The notice shall be mailed at least 2 weeks before the hearing.
2 The notice shall inform the person or office notified of the manner in which the person
3 or office may provide written statements to the board concerning the application for
4 reinstatement. The board shall give consideration to any written statements
5 provided by the person or office and received on or before the date specified in the
6 notice.

7 **SECTION 5.** 441.075 of the statutes is created to read:

8 **441.075 Information on sexual exploitation by licensees.** (1) The board
9 shall publish an informational brochure about sexual exploitation by a person
10 licensed under this chapter. The brochure shall be made available to all applicants
11 for licenses and all persons licensed under this chapter and to a patient or client who
12 complains to the board or another authority about sexual exploitation by a person
13 licensed under this chapter. The brochure shall be developed by the board in
14 consultation with the medical examining board, the psychology examining board,
15 the examining board of social workers, marriage and family therapists and
16 professional counselors and the coalition for ethics in professional relationships.

17 (2) The brochure prepared under sub. (1) shall include all of the following
18 information:

19 (a) A legal and an informal definition of sexual exploitation by a therapist.

20 (b) A brief description of common personal reactions and histories of a victim
21 of sexual exploitation.

22 (c) A patient's or client's bill of rights.

23 (d) A list of the options for reporting sexual exploitation and instructions for
24 each option.

1 (e) A full description of administrative, civil, criminal and professional
2 association complaint procedures.

3 (f) A description of services available for the support of a victim of sexual
4 exploitation.

5 **SECTION 6.** 441.115 of the statutes is renumbered 441.115 (1).

6 **SECTION 7.** 441.115 (2) of the statutes is created to read:

7 441.115 (2) A person whose license is revoked under s. 441.07 (1d) (a) may work
8 as a researcher in the area of nursing or as an administrator of an institution that
9 provides training for nurses, provides nursing services or conducts research in the
10 area of nursing if the person does not engage in the practice of professional nursing
11 or the practice of practical nursing.

12 **SECTION 8.** 448.02 (3g) of the statutes is created to read:

13 448.02 (3g) SEXUAL EXPLOITATION BY A THERAPIST. (a) If a person licensed as a
14 physician under this chapter is convicted under s. 940.22 (2) and the person has no
15 previous convictions under that section, the board shall revoke his or her license for
16 3 years. If the person is convicted under s. 940.22 (2) and has a previous conviction
17 under that section, the board shall revoke his or her license permanently.

18 (b) The board may not reinstate the license of a person whose license has been
19 revoked under par. (a) and who is eligible for reinstatement of his or her license
20 unless the person has submitted evidence satisfactory to the board that he or she has
21 been evaluated for the need for treatment by, and has completed any recommended
22 treatment with, a person or facility that the board considers qualified and
23 appropriate to evaluate and treat the person whose license has been revoked.

24 (c) In any proceeding for revocation under par. (a), the board shall allow a
25 patient or client who has an interest in the proceeding, or the patient's or client's

1 designated representative, to attend all hearings held by the board concerning the
2 proceeding. The board shall give notice of the hearing to the patient, client or
3 designated representative by mailing a written statement informing the patient,
4 client or designated representative of the time, place and nature of the hearing. The
5 notice shall be mailed at least 10 days before the date of the hearing.

6 (d) The board shall maintain a record of a complaint that a person licensed
7 under this chapter violated s. 940.22 (2) and of any proceedings under this section
8 based on that complaint for 10 years after the date on which the complaint is
9 received.

10 **SECTION 9.** 448.02 (3r) of the statutes is created to read:

11 448.02 (3r) NOTICE OF DECISION. The board shall notify a patient or client who
12 has an interest in a proceeding under this section, or the patient's or client's
13 designated representative, as soon as reasonably practical after the board makes a
14 final decision on whether to suspend, limit or revoke a license, certificate or limited
15 permit or reprimand a person holding a license, certificate or limited permit granted
16 by the board. The board shall notify the patient, client or designated representative
17 of the board's final decision under this subsection, by telephone and by a written
18 statement mailed to the patient, client or designated representative.

19 **SECTION 10.** 448.02 (6) of the statutes is renumbered 448.02 (6) (a) and
20 amended to read:

21 448.02 (6) (a) The Except as provided in par. (b) and sub. (3g), the board may
22 restore any license, certificate or limited permit which has been voluntarily
23 surrendered or revoked under any of the provisions of this chapter, on such terms and
24 conditions as it may deem appropriate.

25 **SECTION 11.** 448.02 (6) (b) of the statutes is created to read:

1 448.02 **(6)** (b) If a license, certificate or limited permit is revoked under sub.
2 (3g), the board shall mail a written notice of any hearing that the board holds on the
3 application for reinstatement to a patient or client whose complaint formed a basis
4 for the conviction and to the office of the district attorney that handled the
5 prosecution of the licensee, if they can be found. The notice shall be mailed at least
6 2 weeks before the hearing. The notice shall inform the person or office notified of
7 the manner in which the person or office may provide written statements to the board
8 concerning the application for reinstatement. The board shall give consideration to
9 any written statements provided by the person or office and received on or before the
10 date specified in the notice.

11 **SECTION 12.** 448.03 (2) (jm) of the statutes is created to read:

12 448.03 **(2)** (jm) Any person whose license, certificate or limited permit is
13 revoked under s. 448.02 (3g) (a) who is working solely as a researcher in an area of
14 practice regulated under this chapter or solely as an administrator of an institution
15 that provides training or services or conducts research in an area of practice
16 regulated under this chapter.

17 **SECTION 13.** 448.35 of the statutes is created to read:

18 **448.35 Information on sexual exploitation by licensees.** (1) The board
19 shall publish an informational brochure about sexual exploitation by a person who
20 holds a license, certificate or limited permit under this chapter. The brochure shall
21 be made available to all applicants for and holders of licenses, certificates or limited
22 permits under this chapter and to a patient or client who complains to the board or
23 another authority about sexual exploitation by a person who holds a license,
24 certificate or limited permit under this chapter. The brochure shall be developed by
25 the board in consultation with the board of nursing, the psychology examining board,

1 the examining board of social workers, marriage and family therapists and
2 professional counselors and the coalition for ethics in professional relationships.

3 (2) The brochure prepared under sub. (1) shall include all of the following
4 information:

5 (a) A legal and an informal definition of sexual exploitation by a therapist.

6 (b) A brief description of common personal reactions and histories of a victim
7 of sexual exploitation.

8 (c) A patient's or client's bill of rights.

9 (d) A list of the options for reporting sexual exploitation and instructions for
10 each option.

11 (e) A full description of administrative, civil, criminal and professional
12 association complaint procedures.

13 (f) A description of services available for the support of a victim of sexual
14 exploitation.

15 **SECTION 14.** 455.02 (4) of the statutes is created to read:

16 455.02 (4) Nothing in this chapter prevents a person whose license is revoked
17 under s. 455.09 (1g) (a) from working as a researcher in the field of psychology or as
18 an administrator of an institution that provides psychological training or services or
19 from conducting psychological research if the person does not offer to provide
20 psychological services and does not provide psychological services to individuals.

21 **SECTION 15.** 455.085 of the statutes is created to read:

22 **455.085 Information on sexual exploitation by licensees.** (1) The
23 examining board shall publish an informational brochure about sexual exploitation
24 by a person licensed under this chapter. The brochure shall be made available to all
25 applicants for licenses and all licensees under this chapter and to a patient or client

1 who complains to the examining board or another authority about sexual
2 exploitation by a licensee. The brochure shall be developed by the examining board
3 in consultation with the board of nursing, the medical examining board, the
4 examining board of social workers, marriage and family therapists and professional
5 counselors and the coalition for ethics in professional relationships.

6 (2) The brochure prepared under sub. (1) shall include all of the following
7 information:

8 (a) A legal and an informal definition of sexual exploitation by a therapist.

9 (b) A brief description of common personal reactions and histories of a victim
10 of sexual exploitation.

11 (c) A patient's or client's bill of rights.

12 (d) A list of the options for reporting sexual exploitation and instructions for
13 each option.

14 (e) A full description of administrative, civil, criminal and professional
15 association complaint procedures.

16 (f) A description of services available for the support of a victim of sexual
17 exploitation.

18 **SECTION 16.** 455.09 (1g) of the statutes is created to read:

19 455.09 (1g) (a) If a licensee is convicted under s. 940.22 (2) and the licensee has
20 no previous convictions under that section, the examining board shall revoke his or
21 her license for 3 years. If the licensee is convicted under s. 940.22 (2) and has a
22 previous conviction under that section, the examining board shall revoke his or her
23 license permanently.

24 (b) The examining board may not reinstate the license of a licensee whose
25 license has been revoked under par. (a) and who is eligible for reinstatement of his

1 or her license unless the licensee has submitted evidence satisfactory to the
2 examining board that he or she has been evaluated for the need for treatment by, and
3 has completed any recommended treatment with, a person or facility that the
4 examining board considers qualified and appropriate to evaluate and treat the
5 licensee.

6 (c) In any proceeding for revocation under par. (a), the examining board shall
7 allow a patient or client who has an interest in the proceeding, or the patient's or
8 client's designated representative, to attend all hearings held by the examining
9 board concerning the proceeding. The examining board shall give notice of the
10 hearing to the patient, client or designated representative by mailing a written
11 statement informing the patient, client or designated representative of the time,
12 place and nature of the hearing. The notice shall be mailed at least 10 days before
13 the date of the hearing.

14 (d) The examining board shall maintain a record of a complaint that a licensee
15 violated s. 940.22 (2) and of any proceedings under this section based on that
16 complaint for 10 years after the date on which the complaint is received.

17 **SECTION 17.** 455.09 (1r) of the statutes is created to read:

18 455.09 (1r) The examining board shall notify a patient or client who has an
19 interest in a proceeding under this section, or the patient's or client's designated
20 representative, as soon as reasonably practical after the examining board makes a
21 final decision on whether to suspend, limit or revoke a license or reprimand a
22 licensee. The examining board shall notify the patient, client or designated
23 representative of the examining board's final decision under this subsection, by
24 telephone and by a written statement mailed to the patient, client or designated
25 representative.

1 **SECTION 18.** 455.09 (3) of the statutes is renumbered 455.09 (3) (a) and
2 amended to read:

3 455.09 (3) (a) A revoked license may not be renewed. ~~One~~ Except as provided
4 in sub. (1g), one year from the date of revocation of a license under this chapter,
5 application may be made for reinstatement. The examining board may accept or
6 reject an application for reinstatement. If reinstatement is granted, the licensee
7 shall pay a reinstatement fee in an amount equal to the renewal fee.

8 **SECTION 19.** 455.09 (3) (b) of the statutes is created to read:

9 455.09 (3) (b) If a license is revoked under sub. (1g), the examining board shall
10 mail a written notice of any hearing that the examining board holds on the
11 application for reinstatement to a patient or client whose complaint formed a basis
12 for the conviction and to the office of the district attorney that handled the
13 prosecution of the licensee, if they can be found. The notice shall be mailed at least
14 2 weeks before the hearing. The notice shall inform the person or office notified of
15 the manner in which the person or office may provide written statements to the
16 examining board concerning the application for reinstatement. The examining
17 board shall give consideration to any written statements provided by the person or
18 district attorney's office and received on or before the date specified in the notice.

19 **SECTION 20.** 457.02 (3m) of the statutes is created to read:

20 457.02 (3m) Restrict any individual whose certificate is revoked under s.
21 457.26 (3) (a) from working solely as a researcher in any area of practice regulated
22 under this chapter or solely as an administrator of an institution that provides
23 training or services or conducts research in an area of practice regulated under this
24 chapter.

25 **SECTION 21.** 457.035 of the statutes is created to read:

1 **457.035 Information on sexual exploitation by licensees.** (1) The
2 examining board shall publish an informational brochure about sexual exploitation
3 by an individual certified under this chapter. The brochure shall be made available
4 to all applicants for certificates and all certificate holders under this chapter and to
5 a patient or client who complains to the examining board or another authority about
6 sexual exploitation by a certificate holder. The brochure shall be developed by the
7 examining board in consultation with the board of nursing, the medical examining
8 board, the psychology examining board, and the coalition for ethics in professional
9 relationships.

10 (2) The brochure prepared under sub. (1) shall include all of the following
11 information:

12 (a) A legal and an informal definition of sexual exploitation by a therapist.

13 (b) A brief description of common personal reactions and histories of a victim
14 of sexual exploitation.

15 (c) A patient's or client's bill of rights.

16 (d) A list of the options for reporting sexual exploitation and instructions for
17 each option.

18 (e) A full description of administrative, civil, criminal and professional
19 association complaint procedures.

20 (f) A description of services available for the support of a victim of sexual
21 exploitation.

22 **SECTION 22.** 457.25 (4) of the statutes is amended to read:

23 457.25 (4) Any circuit court that appoints a guardian of the person or estate
24 of a certificate holder or makes a judgment or other determination that a certificate
25 holder is mentally ill or mentally incompetent or, that a certificate holder has done

1 any of the acts enumerated in s. 457.26 (2) or that a certificate holder has been
2 convicted of an offense specified under s. 457.26 (3) shall submit a written report of
3 the appointment, judgment or determination to the appropriate section of the
4 examining board within 30 days after the date on which the appointment, judgment
5 or determination is made.

6 **SECTION 23.** 457.26 (3) of the statutes is created to read:

7 457.26 (3) (a) If a certificate holder is convicted under s. 940.22 (2) and the
8 certificate holder has no previous convictions under that section, the appropriate
9 section of the examining board shall revoke his or her certificate for 3 years. If the
10 certificate holder is convicted under s. 940.22 (2) and has a previous conviction under
11 that section, the appropriate section of the examining board shall revoke his or her
12 certificate permanently.

13 (b) The appropriate section of the examining board may not reinstate the
14 certificate of a certificate holder whose certificate has been revoked under par. (a)
15 and who is eligible for reinstatement of his or her certificate unless the certificate
16 holder has submitted evidence satisfactory to the appropriate section of the
17 examining board that he or she has been evaluated for the need for treatment by, and
18 has completed any recommended treatment with, a person or facility that the
19 appropriate section of the examining board considers qualified and appropriate to
20 evaluate and treat the certificate holder.

21 (c) In any proceeding for revocation under par. (a), the appropriate section of
22 the examining board shall allow a patient or client who has an interest in the
23 proceeding, or the patient's or client's designated representative, to attend all
24 hearings held by that section of the examining board concerning the proceeding.
25 That section of the examining board shall give notice of the hearing to the patient,

1 client or designated representative by mailing a written statement informing the
2 patient, client or designated representative of the time, place and nature of the
3 hearing. The notice shall be mailed at least 10 days before the date of the hearing.

4 (d) The appropriate section of the examining board shall maintain a record of
5 a complaint that a certificate holder violated s. 940.22 (2) and of any proceedings
6 under this section based on that complaint for 10 years after the date on which the
7 complaint is received.

8 **SECTION 24.** 457.26 (4) of the statutes is created to read:

9 457.26 (4) The appropriate section of the examining board shall notify a patient
10 or client who has an interest in a proceeding under this section, or the patient's or
11 client's designated representative, as soon as reasonably practical after that section
12 of the examining board makes a final decision on whether to suspend, limit or revoke
13 a certificate or reprimand a certificate holder. That section of the examining board
14 shall notify the patient, client or designated representative of that section's final
15 decision under this subsection, by telephone and by a written statement mailed to
16 the patient, client or designated representative.

17 **SECTION 25.** 457.26 (5) of the statutes is created to read:

18 457.26 (5) If a certificate is revoked under sub. (3) (a), and the certificate holder
19 applies for reinstatement of the certificate, the appropriate section of the examining
20 board shall mail a written notice of any hearing which that section of the examining
21 board holds on the application for reinstatement to a patient or client whose
22 complaint formed a basis for the conviction and to the office of the district attorney
23 that handled the prosecution of the certificate holder, if they can be found. The notice
24 shall be mailed at least 2 weeks before the hearing. The notice shall inform the
25 person or office notified of the manner in which the person or office may provide

1 written statements to that section of the examining board concerning the application
2 for reinstatement. That section of the examining board shall give consideration to
3 any written statements provided by the person or office and received on or before the
4 date specified in the notice.

5 **SECTION 26.** 940.22 (3) (e) of the statutes is created to read:

6 940.22 (3) (e) The department or any examining board, affiliated credentialing
7 board or board in the department or a district attorney's office that receives a report
8 under par. (b) 1 or 2 shall maintain a record of the report for 10 years after the date
9 on which the report is received, unless a longer period is required under s. 978.07 (1)
10 (a) to (c).

11 **SECTION 27.** 978.07 (1) (d) of the statutes is amended to read:

12 978.07 (1) (d) Any Except as provided in s. 940.22 (3) (e), any other district
13 attorney record not included under pars. (a) to (c) made or received in connection with
14 a transaction as evidence of a district attorney's activities or functions, after 6 years.

15 **SECTION 28. Initial applicability.**

16 (1) The treatment of sections 441.07 (1d), 448.02 (3g), 455.09 (1g) and 457.26
17 (3) of the statutes first applies to offenses occurring on the effective date of this
18 subsection, but does not preclude the counting of other convictions as prior
19 convictions for purposes of permanently revoking a person's professional credential.

20 (END)