

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2423

BY DELEGATES HOWELL, ROHRBACH, SHOTT, WARD,

DEAN, WILSON AND ATKINSON

[Introduced February 14, 2017; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §61-8-31 of the Code of West Virginia, 1931, as amended, relating
 2 to the criminal offense of therapeutic deception; and including medical doctors and doctors
 3 of osteopathy as medical professionals who are subject to the prohibition against
 4 therapeutic deception.

Be it enacted by the Legislature of West Virginia:

1 That §61-8-31 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-31. Therapeutic deception; penalties.

1 (a) In this section, unless a different meaning plainly is required:

2 (1) "Client" or "patient" means a person who is being treated clinically or medically by a
 3 physician or psychotherapist for more than one session or initial visit.

4 (2) "Physician" means a doctor of medicine licensed pursuant to article three, chapter thirty
 5 of this code or a doctor of osteopathic medicine licensed pursuant to article fourteen, chapter
 6 thirty of this code;

7 (3) "Psychotherapist" means any of the following:

8 (A) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

9 (B) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or a
 10 medical psychologist licensed pursuant to article three, chapter thirty of this code;

11 (C) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this
 12 code; or

13 (D) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this
 14 code.

15 ~~(3)~~ (4) "Sexual contact" has the same meaning as provided in article eight-b, chapter sixty-
 16 one of this code.

17 ~~(4)~~ (5) "Sexual intercourse" has the same meaning as provided in article eight-b, chapter
18 sixty-one of this code.

19 ~~(5)~~ (6) "Therapeutic deception" means a representation by ~~the~~ a physician or
20 psychotherapist to ~~the~~ a patient or client that sexual contact or sexual intercourse with the
21 physician or psychotherapist is consistent with or part of the treatment of the patient or client.

22 (b) It is unlawful for any physician or psychotherapist, or any person who fraudulently
23 represents himself or herself as a physician or psychotherapist, to engage in sexual contact or
24 sexual intercourse with a client or patient by means of therapeutic deception.

25 (c) For purposes of this section, consent of the patient or client is not a defense, regardless
26 of the age of the patient or client.

27 (d) Any person who violates subsection (b) of this section is guilty of a felony and, upon
28 conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional
29 facility for not less than one year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to add medical doctors and doctors of osteopathy to the category of medical professionals who are subject to the prohibition against therapeutic deception.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.