

HB0821/413828/4

BY: Delegate Morhaim

AMENDMENTS TO HOUSE BILL 821, AS AMENDED
(First Reading File Bill)

AMENDMENT NO. 1

On page 1 of the bill, in line 2, after “Patient” insert “or Client”; in line 3, strike “Psychiatrist or Licensed Psychologist” and substitute “Health Care Professional”; in lines 5, 7, and 9, in each instance, after “patient” insert “or client”; in lines 9 and 10, strike “psychiatrist or licensed psychologist” and substitute “health care professional”; and in line 13, after “9-109” insert “, 9-109.1, and 9-121”.

AMENDMENT NO. 2

On page 1 of the House Judiciary Committee Amendments (HB0821/452511/1), in lines 1 and 4 of Amendment No. 1, in each instance, strike “or former patient” and substitute “, former patient, client, or former client”; and in lines 3 and 4, strike “the psychiatrist or licensed psychologist” and substitute “a certain health care professional”.

AMENDMENT NO. 3

On page 1 of the House Judiciary Committee Amendments, in line 4 of Amendment No. 3, after “PATIENT.” insert:

“9-109.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Client” means an individual who communicates to or receives services from a psychiatric-mental health nursing specialist or a professional counselor regarding the diagnosis or treatment of the individual’s mental or emotional disorder.

(Over)

(3) “Professional counselor” means an individual who is certified, licensed, or exempted from licensure as a counselor under Title 17 of the Health Occupations Article.

(4) “Psychiatric–mental health nursing specialist” means a registered nurse who:

(i) Has a master’s degree in psychiatric–mental health nursing;
or

(ii) Has a baccalaureate degree in nursing and a master’s degree in a mental health field; or

(iii) Is certified as a clinical specialist in psychiatric and mental health nursing by the American Nurses’ Association or by a body approved by the Board of Nursing.

(b) Unless otherwise provided, in any judicial, legislative, or administrative proceeding, a client or a client’s authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications relating to:

(1) Diagnosis or treatment of the client; or

(2) Any information that by its nature would show a medical record of the diagnosis or treatment exists.

(c) (1) If a client is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the client.

(2) A guardian appointed before the proceeding has the authority to act for the client.

(d) There is no privilege if:

(1) A disclosure is necessary for the purpose of placing the client in a facility for mental illness;

(2) A judge finds that the client, after being informed that there will be no privilege, makes communications in the course of an examination ordered by the court and the issue at trial involves the client's mental or emotional disorder;

(3) In a civil or criminal proceeding:

(i) The client introduces the client's mental condition as an element of the claim or defense; or

(ii) After the client's death, the client's mental condition is introduced by any party claiming or defending through or as a beneficiary of the client;

(4) The client, the authorized representative of the client, or the personal representative of the client makes a claim against the psychiatric-mental health nursing specialist or the professional counselor for malpractice; [or]

(5) The client expressly consents to waive the privilege or, in the case of death or disability, the client's personal representative waives the privilege for the purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition;

(6) IN A CRIMINAL PROCEEDING AGAINST A CLIENT OR FORMER CLIENT ALLEGING THAT THE CLIENT OR FORMER CLIENT HAS HARASSED OR THREATENED OR COMMITTED ANOTHER CRIMINAL ACT AGAINST THE PSYCHIATRIC-MENTAL HEALTH NURSING SPECIALIST OR THE PROFESSIONAL COUNSELOR, THE DISCLOSURE IS NECESSARY TO PROVE THE CHARGE; OR

(Over)

(7) THE DISCLOSURE IS NECESSARY TO ESTABLISH A CLAIM ON BEHALF OF THE PSYCHIATRIC-MENTAL HEALTH NURSING SPECIALIST OR THE PROFESSIONAL COUNSELOR IN A CIVIL PROCEEDING AGAINST THE CLIENT OR FORMER CLIENT.

(e) There is no privilege in:

(1) Any administrative or judicial nondelinquent juvenile proceeding;

(2) Any guardianship and adoption proceeding initiated by a child placement agency;

(3) Any guardianship and protective services proceeding concerning a disabled person; or

(4) Any criminal or delinquency proceeding in which there is a charge of child abuse or neglect or that arises out of an investigation of suspected child abuse or neglect.

9-121.

(a) (1) In this section the following words have the meanings indicated.

(2) “Client” means a person who communicates to or receives services from a licensed certified social worker regarding his mental or emotional condition, or from any other person participating directly or vitally with a licensed certified social worker in rendering those services, in consultation with or under direct supervision of a licensed certified social worker.

(3) “Licensed certified social worker” means any person licensed as a certified social worker under Title 19 of the Health Occupations Article.

(4) “Witness” means a licensed certified social worker or any other person participating directly or vitally with a licensed certified social worker in rendering services to a client, in consultation with or under direct supervision of a licensed certified social worker.

(b) Unless otherwise provided, in all judicial or administrative proceedings, a client has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications made while the client was receiving counseling or any information that by its nature would show that such counseling occurred.

(c) If a client is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the client. A previously appointed guardian has the same authority.

(d) There is no privilege if:

(1) A disclosure is necessary for the purpose of placing the client in a facility for mental illness;

(2) A judge finds that the client, after being informed there will be no privilege, makes communications in the course of an examination ordered by the court;

(3) In a civil or criminal proceeding:

(i) The client introduces the client’s mental condition as an element of the claim or defense; or

(ii) After the client’s death, the client’s mental condition is introduced by any party claiming or defending through or as a beneficiary of the client;

(4) The client or the personal representative of the client makes a claim against the licensed certified social worker for malpractice; [or]

(5) The client expressly consents to waive the privilege, or in the case of death or disability, the client's personal representative waives the privilege for purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition;

(6) IN A CRIMINAL PROCEEDING AGAINST A CLIENT OR FORMER CLIENT ALLEGING THAT THE CLIENT OR FORMER CLIENT HAS HARASSED OR THREATENED OR COMMITTED ANOTHER CRIMINAL ACT AGAINST THE LICENSED CERTIFIED SOCIAL WORKER, THE DISCLOSURE IS NECESSARY TO PROVE THE CHARGE; OR

(7) THE DISCLOSURE IS NECESSARY TO ESTABLISH A CLAIM ON BEHALF OF THE LICENSED CERTIFIED SOCIAL WORKER IN A CIVIL PROCEEDING AGAINST THE CLIENT OR FORMER CLIENT.

(e) There is no privilege in:

(1) Any administrative or judicial nondelinquent juvenile proceeding;

(2) Any guardianship and adoption proceeding initiated by a child placement agency;

(3) Any guardianship and protective services proceeding concerning disabled persons; or

(4) Any criminal or delinquency proceeding in which there is a charge of child abuse or neglect or which arises out of an investigation of suspected child abuse or neglect.”.

AMENDMENT NO. 4

On page 1 of the House Judiciary Committee Amendments, in lines 4, 5, and 6 of Amendment No. 4, in each instance, strike “or treatment” and substitute “treatment, or counseling”; and in line 5, after “patient” insert “or client”.