

HOUSE BILL 821

D3

3lr2504

By: **Delegate Simmons**

Introduced and read first time: February 6, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 16, 2013

CHAPTER _____

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Communications Between Patient or**
3 **Client and ~~Psychiatrist or Licensed Psychologist~~ Health Care Professional –**
4 **Exceptions to Privilege**

5 FOR the purpose of creating an exception to the privilege of communications of a
6 certain patient or client if the disclosure is necessary to prove a charge in a
7 certain criminal proceeding against the patient ~~or former patient~~, former
8 patient, client, or former client; creating an exception to the privilege of certain
9 communications of a certain patient or client if ~~the patient is using the services~~
10 ~~of the psychiatrist or licensed psychologist for certain purposes~~ the disclosure is
11 necessary to establish a claim on behalf of ~~the psychiatrist or licensed~~
12 ~~psychologist~~ a certain health care professional in a civil proceeding against the
13 ~~patient or former patient~~, former patient, client, or former client; providing for
14 the application of this Act; and generally relating to communications between a
15 patient or client and ~~psychiatrist or licensed psychologist~~ health care
16 professional.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 9–109, ~~9–109.1~~, and ~~9–121~~
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2012 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (i) The patient introduces his mental condition as an element of
2 his claim or defense; or

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

5 (4) The patient, an authorized representative of the patient, or the
6 personal representative of the patient makes a claim against the psychiatrist or
7 licensed psychologist for malpractice;

8 (5) Related to civil or criminal proceedings under defective
9 delinquency proceedings; [or]

10 (6) The patient expressly consents to waive the privilege, or in the
11 case of death or disability, his personal or authorized representative waives the
12 privilege for purpose of making claim or bringing suit on a policy of insurance on life,
13 health, or physical condition;

14 (7) **IN A CRIMINAL PROCEEDING AGAINST A PATIENT OR FORMER**
15 **PATIENT ALLEGING THAT THE PATIENT OR FORMER PATIENT HAS HARASSED OR**
16 **THREATENED OR COMMITTED ANOTHER CRIMINAL ACT AGAINST THE**
17 **PSYCHIATRIST OR LICENSED PSYCHOLOGIST, THE DISCLOSURE IS NECESSARY**
18 **TO PROVE THE CHARGE; OR**

19 ~~(8) **THE PATIENT IS USING THE SERVICES OF THE PSYCHIATRIST**~~
20 ~~**OR LICENSED PSYCHOLOGIST IN FURTHERANCE OF AN ONGOING OR FUTURE**~~
21 ~~**CRIME OR FRAUD.**~~

22 **(8) THE DISCLOSURE IS NECESSARY TO ESTABLISH A CLAIM ON**
23 **BEHALF OF THE PSYCHIATRIST OR LICENSED PSYCHOLOGIST IN A CIVIL**
24 **PROCEEDING AGAINST THE PATIENT OR FORMER PATIENT.**

25 9-109.1.

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

27 (2) "Client" means an individual who communicates to or receives
28 services from a psychiatric-mental health nursing specialist or a professional
29 counselor regarding the diagnosis or treatment of the individual's mental or emotional
30 disorder.

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

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

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

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

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

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

13 (1) Diagnosis or treatment of the client; or

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

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

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

20 (d) There is no privilege if:

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

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

26 (3) In a civil or criminal proceeding:

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

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

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

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

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

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

17 (e) There is no privilege in:

18 (1) Any administrative or judicial nondelinquent juvenile proceeding;

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

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

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

26 9–121.

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

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

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

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

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

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

12 (d) There is no privilege if:

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

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

17 (3) In a civil or criminal proceeding:

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

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

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

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

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

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

4 (e) There is no privilege in:

5 (1) Any administrative or judicial nondelinquent juvenile proceeding;

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

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
14 construed to apply only prospectively and may not be applied or interpreted to have
15 any effect on or application to any communication relating to diagnosis ~~or treatment,~~
16 treatment, or counseling of a patient or client, a medical record of the diagnosis ~~or~~
17 ~~treatment,~~ treatment, or counseling, or any information that by its nature would show
18 the existence of the medical record of the diagnosis ~~or treatment,~~ treatment, or
19 counseling occurring or made before the effective date of this Act.

20 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.