
By: Senator Craig

Requested: October 24, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings - Evidence - Psychotherapist-Patient Privilege**

3 FOR the purpose of establishing that the evidentiary privilege protecting certain
4 confidential communications between a patient and a psychiatrist, licensed
5 psychologist, or certain other persons does not apply in certain proceedings; and
6 generally relating to certain privileged communications.

7 BY repealing and reenacting, with amendments,
8 Article - Courts and Judicial Proceedings
9 Section 9-109
10 Annotated Code of Maryland
11 (1995 Replacement Volume and 1996 Supplement)

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

14 **Article - Courts and Judicial Proceedings**

15 9-109.

16 (a) (1) "Authorized representative" means a person authorized by the patient
17 to assert the privilege granted by this section and until permitted by the patient to make
18 disclosure, the person whose communications are privileged.

19 (2) "Licensed psychologist" means a person who is licensed to practice
20 psychology under the laws of Maryland.

21 (3) "Patient" means a person who communicates or receives services
22 regarding the diagnosis or treatment of his mental or emotional disorder from a
23 psychiatrist, licensed psychologist, or any other person participating directly or vitally with
24 either in rendering those services in consultation with or under direct supervision of a
25 psychiatrist or psychologist.

26 (4) "Psychiatrist" means a person licensed to practice medicine who devotes
27 a substantial proportion of his time to the practice of psychiatry.

28 (b) Unless otherwise provided, in all judicial, legislative, or administrative
29 proceedings, a patient or his authorized representative has a privilege to refuse to

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1 disclose, and to prevent a witness from disclosing, communications relating to diagnosis
2 or treatment of the patient's mental or emotional disorder.

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

6 (d) There is no privilege if:

7 (1) A disclosure is necessary for the purposes of placing the patient in a
8 facility for mental illness;

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

12 (3) In a civil or criminal proceeding:

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

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

17 (4) The patient, an authorized representative of the patient, or the personal
18 representative of the patient makes a claim against the psychiatrist or licensed
19 psychologist for malpractice;

20 (5) Related to civil or criminal proceedings under defective delinquency
21 proceedings; or

22 (6) The patient expressly consents to waive the privilege, or in the case of
23 death or disability, his personal or authorized representative waives the privilege for
24 purpose of making claim or bringing suit on a policy of insurance on life, health, or
25 physical condition.

26 (E) THERE IS NO PRIVILEGE IN:

27 (1) ANY ADMINISTRATIVE OR JUDICIAL NONDELINQUENT JUVENILE
28 PROCEEDING;

29 (2) ANY GUARDIANSHIP AND ADOPTION PROCEEDING INITIATED BY A
30 CHILD PLACEMENT AGENCY;

31 (3) ANY GUARDIANSHIP AND PROTECTIVE SERVICES PROCEEDING
32 CONCERNING DISABLED PERSONS; OR

33 (4) ANY CRIMINAL OR DELINQUENCY PROCEEDING IN WHICH THERE IS
34 A CHARGE OF CHILD ABUSE OR NEGLECT OR WHICH ARISES OUT OF AN
35 INVESTIGATION OF SUSPECTED CHILD ABUSE OR NEGLECT.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1997.