

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 821
Judiciary

(Delegate Simmons)

Judicial Proceedings

Courts and Judicial Proceedings - Communications Between Patient or Client and Health Care Professional - Exceptions to Privilege

This bill creates an exception to the privilege of communications between a patient or former patient and a psychiatrist or licensed psychologist if the disclosure is necessary to (1) prove a charge in a criminal proceeding against a patient alleging that the patient or former patient has harassed or threatened or committed another criminal act against the psychiatrist or licensed psychologist or (2) establish a claim on behalf of the psychiatrist or licensed psychologist in a civil proceeding against the patient or former patient. The bill applies the same exception to the privilege of communications between a client or former client and a psychiatric-mental health nursing specialist, professional counselor, or licensed certified social worker.

The bill applies prospectively and may not be applied to or interpreted to have any effect on specified communications, medical records, or information occurring or made before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: The bill is procedural/technical and does not materially affect State finances.

Local Effect: The bill is procedural/technical and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Testimonial privileges are established that pertain to communications between a client and several professionals who provide counseling services, including the practitioners covered under this bill.

Under these privileges a patient/client or the patient/client's authorized representative has a privilege to refuse to disclose and prevent a witness from disclosing communications relating to the diagnosis and treatment of the patient/client or information that would show a medical record of diagnosis or treatment in specified proceedings, including all judicial or administrative proceedings. With respect to licensed certified social workers, the privilege applies to communications made while the client was receiving counseling or any information that by its nature would show that such counseling occurred.

If a patient/client is incompetent to assert or waive this privilege, a guardian must be appointed and act for the patient/client. A previously appointed guardian has the same authority.

The privileges do not apply under specified circumstances, including, if:

- a disclosure is necessary for the purposes of placing the patient/client in a facility for mental illness;
- a judge finds that the patient/client makes specified communications after being informed there will be no privilege;
- in a civil or criminal proceeding (1) the patient/client introduces his or her mental condition as an element of the claim or defense or (2) after the patient/client's death, his or her mental condition is introduced by any party claiming or defending through or as a beneficiary of the patient/client;
- the patient/client, an authorized representative of the patient/client, or the personal representative of the patient/client makes a claim against the practitioner for malpractice; or
- the patient/client expressly consents to waive the privilege, or in the case of death or disability, his or her personal or authorized representative waives the privilege for purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition.

Background: In *Ali v. State*, 199 Md. App. 204 (2011), the Maryland Court of Special Appeals held that certain communications should have been inadmissible under the psychiatrist/psychologist privilege at a patient's trial for crimes against her psychologist.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Maryland State Bar Association, Department of Legislative Services

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