

SENATE BILL 803

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HB 821/13 – JUD

4r2044
CF HB 641

By: **Senator Raskin**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Communications Between Patient or**
3 **Client and Health Care Professional – Exceptions to Privilege**

4 FOR the purpose of creating an exception to the privilege of communications of a
5 certain patient or client if the disclosure is necessary to prove a charge in a
6 certain criminal proceeding against the patient, former patient, client, or former
7 client; creating an exception to the privilege of certain communications of a
8 certain patient or client if the disclosure is necessary to obtain certain relief in a
9 certain peace order proceeding; providing for the application of this Act; and
10 generally relating to communications between a patient or client and health
11 care professional.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 9–109, 9–109.1, and 9–121
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2013 Supplement)

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

19 **Article – Courts and Judicial Proceedings**

20 9–109.

21 (a) (1) “Authorized representative” means a person authorized by the
22 patient to assert the privilege granted by this section and until permitted by the
23 patient to make disclosure, the person whose communications are privileged.

24 (2) “Licensed psychologist” means a person who is licensed to practice
25 psychology under the laws of Maryland.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) “Patient” means a person who communicates or receives services
2 regarding the diagnosis or treatment of his mental or emotional disorder from a
3 psychiatrist, licensed psychologist, or any other person participating directly or vitally
4 with either in rendering those services in consultation with or under direct supervision
5 of a psychiatrist or psychologist.

6 (4) “Psychiatrist” means a person licensed to practice medicine who
7 devotes a substantial proportion of his time to the practice of psychiatry.

8 (b) Unless otherwise provided, in all judicial, legislative, or administrative
9 proceedings, a patient or the patient’s authorized representative has a privilege to
10 refuse to disclose, and to prevent a witness from disclosing:

11 (1) Communications relating to diagnosis or treatment of the patient;
12 or

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

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

18 (d) There is no privilege if:

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

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

24 (3) In a civil or criminal proceeding:

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

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

29 (4) The patient, an authorized representative of the patient, or the
30 personal representative of the patient makes a claim against the psychiatrist or
31 licensed psychologist for malpractice;

32 (5) Related to civil or criminal proceedings under defective
33 delinquency proceedings; [or]

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

5 **(7) IN A CRIMINAL PROCEEDING AGAINST A PATIENT OR FORMER**
6 **PATIENT ALLEGING THAT THE PATIENT OR FORMER PATIENT HAS HARASSED OR**
7 **THREATENED OR COMMITTED ANOTHER CRIMINAL ACT AGAINST THE**
8 **PSYCHIATRIST OR LICENSED PSYCHOLOGIST, THE DISCLOSURE IS NECESSARY**
9 **TO PROVE THE CHARGE; OR**

10 **(8) IN A PEACE ORDER PROCEEDING UNDER TITLE 3, SUBTITLE**
11 **15 OF THIS ARTICLE IN WHICH THE PSYCHIATRIST OR LICENSED PSYCHOLOGIST**
12 **IS A PETITIONER AND A PATIENT OR FORMER PATIENT IS A RESPONDENT, THE**
13 **DISCLOSURE IS NECESSARY TO OBTAIN RELIEF.**

14 9–109.1.

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

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

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

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

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

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

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

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

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

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

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

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

8 (d) There is no privilege if:

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

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

14 (3) In a civil or criminal proceeding:

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

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

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

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

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

31 **(7) IN A PEACE ORDER PROCEEDING UNDER TITLE 3, SUBTITLE**
32 **15 OF THIS ARTICLE IN WHICH THE PSYCHIATRIC-MENTAL HEALTH NURSING**

1 **SPECIALIST OR PROFESSIONAL COUNSELOR IS A PETITIONER AND A CLIENT OR**
2 **FORMER CLIENT IS A RESPONDENT, THE DISCLOSURE IS NECESSARY TO OBTAIN**
3 **RELIEF.**

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 a
9 disabled person; or

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

13 9–121.

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

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

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

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

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

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

33 (d) There is no privilege if:

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

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

5 (3) In a civil or criminal proceeding:

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

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

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

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

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

21 **(7) IN A PEACE ORDER PROCEEDING UNDER TITLE 3, SUBTITLE**
22 **15 OF THIS ARTICLE IN WHICH THE LICENSED CERTIFIED SOCIAL WORKER IS A**
23 **PETITIONER AND A CLIENT OR FORMER CLIENT IS A RESPONDENT, THE**
24 **DISCLOSURE IS NECESSARY TO OBTAIN RELIEF.**

25 (e) There is no privilege in:

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any communication relating to diagnosis, treatment, or
4 counseling of a patient or client, a medical record of the diagnosis, treatment, or
5 counseling, or any information that by its nature would show the existence of the
6 medical record of the diagnosis, treatment, or counseling occurring or made before the
7 effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 June 1, 2014.