

Chapter 196

(House Bill 641)

AN ACT concerning

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

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

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

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

Article – Courts and Judicial Proceedings

9–109.

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

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

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

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

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

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

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

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

(d) There is no privilege if:

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

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

(3) In a civil or criminal proceeding:

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

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

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

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

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

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

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

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.

(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

(7) IN A PEACE ORDER PROCEEDING UNDER TITLE 3, SUBTITLE 15 OF THIS ARTICLE IN WHICH THE PSYCHIATRIC-MENTAL HEALTH NURSING SPECIALIST OR PROFESSIONAL COUNSELOR IS A PETITIONER AND A CLIENT OR FORMER CLIENT IS A RESPONDENT, THE DISCLOSURE IS NECESSARY TO OBTAIN RELIEF.

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

(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.

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

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

Approved by the Governor, April 14, 2014.