

HOUSE BILL No. 2170

By Committee on Health and Human Services

2-4

AN ACT concerning the behavioral sciences regulatory board; relating to professions regulated by the board; privileged and confidential communications; amending K.S.A. 65-6315 and repealing the existing section; also repealing K.S.A. 65-5810, 65-6410, 74-5323 and 74-5372.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) As used in this section:

(1) "Ancillary personnel" means any employee or supervisee of a licensee or any employee of the licensee's practice setting.

(2) "Client" means a person who receives professional services from a licensee.

(3) "Confidential communication" means any form of information transmitted in confidence by action or declaration between a client and licensee or ancillary personnel, or generated in confidence by a client, licensee or ancillary personnel in the course of professional services. Confidential communication shall include communications between a licensee and another licensee or other health care provider.

(4) "Licensee" means any person licensed by the behavioral sciences regulatory board with the exception of baccalaureate social workers and associate social workers.

(5) "Personal representative of a client" means:

(A) A parent of a minor client;

(B) a guardian, guardian ad litem or conservator of a client;

(C) an executor, administrator or other legal representative of a deceased client's estate; or

(D) an attorney or other person designated in writing by a client; or

(E) any other person authorized by law.

(6) "Professional services" means services provided by a licensee to a client within the licensee's authorized scope of practice.

(b) A client of a licensee has a privilege to prevent a licensee or ancillary personnel from testifying or otherwise disclosing any confidential communication or that the client has been or is currently receiving professional services.

(c) The client's privilege under subsection (b) extends to communications made by those persons participating in professional services of the

1 client, including members of the client's family.

2 (d) The privilege under subsection (b) may be claimed by the client
3 or by the personal representative of a client. The licensee shall claim the
4 privilege on behalf of the client unless the client or personal represen-
5 tative of the client has made a written waiver of the privilege that has
6 been provided to the licensee or unless one of the exceptions provided
7 by subsection (e) is applicable.

8 (e) The client's privilege under subsection (b) shall not extend to:

9 (1) A legal proceeding to involuntarily commit the client to in-patient
10 or out-patient treatment for mental illness, alcoholism or drug
11 dependency;

12 (2) an examination or evaluation of the psychological, mental, alcohol
13 or drug dependency, personality or emotional condition of the client
14 which is conducted pursuant to an order entered by a judge;

15 (3) a court ordered examination or evaluation concerning the psy-
16 chological or emotional development or needs of a child pursuant to
17 K.S.A. 38-1514 and amendments thereto;

18 (4) any legal proceeding in which the psychological, mental, alcohol
19 or drug dependency, personality or emotional condition of the client is
20 an element or factor of the claim or defense of the client, or, after the
21 client's death, in any proceeding in which any party relies upon any of
22 the client's conditions as an element of a claim or defense;

23 (5) information that the licensee is required by law to report to a
24 public official, including but not limited to, child abuse pursuant to K.S.A.
25 38-1522 and amendments thereto, adult abuse pursuant to K.S.A. 39-
26 1431 and amendments thereto and resident abuse pursuant to K.S.A. 39-
27 1402 and amendments thereto;

28 (6) information necessary for the emergency treatment of a client. In
29 such circumstances the licensee shall document the reasons for disclosure
30 of the communication and make such statement a part of the licensee's
31 treatment record of the client;

32 (7) information necessary to protect a person who has been threat-
33 ened with physical harm or serious bodily injury by a client;

34 (8) any information to any state or national accreditation or certifi-
35 cation or licensing authority for audit or evaluation purposes, but the
36 licensee shall obtain, before such disclosure is made, written assurance
37 that the name of any client or former client shall not be disclosed to any
38 person not otherwise authorized by law to receive such information;

39 (9) any information which is required by state law or regulation, or
40 federal law or federal regulations to be available for audit, evaluation or
41 other legally authorized purposes and (A) which concerns individuals who
42 reside in or are receiving services from a treatment facility or (B) which
43 concerns individuals who are receiving professional services from a

1 licensee;

2 (10) any information relevant to the collection of a bill for profes-
3 sional services rendered by a licensee;

4 (11) any information sought by a coroner serving under the laws of
5 Kansas when such information is material to an investigation or proceed-
6 ing conducted by the coroner in the performance of such coroner's official
7 duties;

8 (12) any information relevant to investigation or adjudication of an
9 alleged violation of the act, or rules and regulations adopted thereunder,
10 under which the licensee practices;

11 (13) if authorized by this act or as otherwise provided by Kansas law,
12 health care information as permitted to be used or disclosed pursuant to
13 federal standards for privacy of individually identifiable health informa-
14 tion, 42 C.F.R. part 160 *et seq.* and amendments thereto and 42 C.F.R.
15 164 *et seq.* and amendments thereto;

16 (14) drug or alcohol abuse client records as permitted to be used or
17 disclosed pursuant to federal regulations concerning the confidentiality
18 of such records, 42 C.F.R. part 2; or

19 (15) any information that pertains to criminal conduct that occurred
20 where the licensee practices or against the licensee or ancillary personnel;
21 or

22 (16) any information that a client intends to commit a crime.

23 (f) Nothing in this section or in this act shall be construed to prohibit
24 any licensee from seeking collaboration or consultation on behalf of a
25 client with professional colleagues or administrative superiors, or both,
26 within an agency, institution or organization where the licensee is
27 employed.

28 (g) Nothing in this section or in this act shall be construed to prohibit
29 any licensee from testifying in court hearings concerning matters of res-
30 ident abuse, adult abuse, adoption, child abuse, child neglect or severance
31 of parental rights.

32 Sec. 2. K.S.A. 65-6315 is hereby amended to read as follows: 65-
33 6315. (a) No licensed social work associate or licensed baccalaureate social
34 worker, secretary, stenographer or clerk of a licensed social work associate
35 or licensed baccalaureate social worker or anyone who participates in
36 delivery of social work services or anyone working under supervision of
37 a licensed social worker may disclose any information such person may
38 have acquired from persons consulting such person in the person's pro-
39 fessional capacity or be compelled to disclose such information except:

40 (1) With the written consent of the client, or in the case of death or
41 disability, of the personal representative of the client, other person au-
42 thorized to sue or the beneficiary of an insurance policy on the client's
43 life, health or physical condition;

1 (2) when the person is a child under the age of 18 years and the
2 information acquired by the licensed social worker indicated that the child
3 was the victim or subject of a crime, the licensed social worker may be
4 required to testify fully in relation thereto upon any examination, trial or
5 other proceeding in which the commission of such a crime is a subject of
6 inquiry;

7 (3) when the person waives the privilege by bringing charges against
8 the licensed social worker but only to the extent that such information is
9 relevant under the circumstances.

10 ~~(b) The confidential relations and communications between a li-~~
11 ~~icensed master social worker's or a licensed specialist clinical social~~
12 ~~worker's client are placed on the same basis as provided by law for those~~
13 ~~between an attorney and an attorney's client.~~

14 ~~(c) (b)~~ Nothing in this section or in this act shall be construed to
15 prohibit any licensed *baccalaureate* social worker or *licensed associate*
16 *social worker* from testifying in court hearings concerning matters of adult
17 abuse, adoption, child abuse, child neglect, or other matters pertaining
18 to the welfare of children or from seeking collaboration or consultation
19 with professional colleagues or administrative superiors, or both, on be-
20 half of the client. There is no privilege under this section for information
21 which is required to be reported to a public official.

22 Sec. 3. K.S.A. 65-5810, 65-6315, 65-6410, 74-5323 and 74-5372 are
23 hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43