

Approved: 2-22-00
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Sandy Praeger at 10:00 a.m. on February 16, 2000 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Lisa Montgomery, Revisor of Statutes
Hank Avila, Legislative Research Department
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board
Ron Hein, Mental Health Credentialing Coalition
Camille Nohe, Assistant Attorney General

Others attending: See attached list

Hearing on SB 397 - Allowing licensed professional counselors to practice without direction if such counselor does not diagnose and treat

Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board, testified in support of **SB 397** which she noted could be called a "technical clean up" bill to **HB 2213** that was passed by the 1999 legislature. Under the provisions of **SB 397** a licensed professional counselor whose practice does not include diagnosis and treatment would not be required to be under the direction of another professional as specified in the law. There are currently some licensed professional counselors practicing independently who are not diagnosing and treating mental disorders, such as vocational or educational counselors. (Attachment 1) The Chair noted there needed to be clarification in the bill for those not diagnosing and treating mental disorders, and directed staff to draft language that would allow this exception under rules and regulations before the bill is worked.

Ron Hein, representing the Mental Health Credentialing Coalition, testified in support of **SB 397** (Attachment 2) as well as expressing his support for adding the rules and regulations amendment to the bill.

There were no opponents to **SB 397**.

Briefing on: SB 399 - Confidentiality requirements for behavioral sciences regulatory board

Camille Nohe, Assistant Attorney General and general counsel to the Behavioral Sciences Regulatory Board, briefed the Committee on **SB 399** which would prevent disclosure of treatment and confidential communications regarding clients of professionals licensed by BSRB. The bill would identify who may claim the privileges and those persons who would be extended the privilege of confidential communication. The bill also outlines a variety of exceptions to the privilege. (Attachment 3) The Chair directed Ms. Nohe to draw up a chart for the Committee regarding confidential and privileged communications between licensees of the Behavioral Sciences Regulatory Board and their clients, and exemptions to those otherwise protected communications. The Chair noted the bill will be "blessed" for a possible hearing at a later date.

Action on SB 556 - Who has right to disposition of a decedents remains

The Chair briefed the Committee on a balloon of the bill showing technical clarifications offered by the Kansas Funeral Directors and Embalmers Association and the State Board of Mortuary Arts. (Attachment 4) Senator Hardenburger made a motion to adopt the amendments, seconded by Senator Langworthy. The motion carried. Senator Hardenburger made a motion the Committee recommend SB 566 as amended favorably for passage, seconded by Senator Steineger. The motion carried.

Action on SB 557 - Regulation and licensing of crematories

The Chair briefed the Committee on two balloons of the bill offered by the State Board of Mortuary Arts and the Kansas Funeral Directors and Embalmers Association. Senator Jones made a motion to adopt the amendments, seconded by Senator Becker. After Committee discussion the Chair directed staff to draft a

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S, Statehouse, at 10:00 a.m. on February 16, 2000.

balloon of the bill combining the two amendments. Senator Jones withdrew his motion. The Chair noted that the bill would be considered by the Committee when the balloon of the bill is ready.

Approval of Minutes

Senator Becker made a motion to approve the Committee minutes of February 7, 8, 9 and 10, 2000, seconded by Senator Jones. The motion carried.

Adjournment

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 17, 2000.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-16-00

| NAME | REPRESENTING |
|--|--|
| Stacy Westerland | KNASW |
| Camille Nohr | Attorney General |
| Mary Froelich | Board of Pharmacy |
| Greg Schrade | Board of Pharmacy |
| Lori Nuebel | SRS |
| Donna Travis | AARP |
| Ursula Spencer | AARP |
| Sharon Wilson | AARP |
| Steve KERNENY | KS PSYCHIATRIC SOCIETY |
| Susan Leri | KS psych. assoc. |
| Gallen | |
| Mack Smith, ^{exec.} _{sec.} | Kansas State Board of Mortuary Arts |
| Pam Scott | KST KS Funeral Directors Assn |
| Don Backhol | KS Ref. Consumer Council if board |
| Bruce Hubin | KS Pharmacists Assoc. |
| Michael Moser | KDITE |
| Betsy Hart | KNASW |
| Joe Meazu | The Farm, Inc. (Student) |
| Jeff Borkenbig | HIAA |



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SENATE TESTIMONY

February 16, 2000

Madam Chair and Committee Members:

Thank you for the opportunity to testify in support of HB 397. I am Phyllis Gilmore the Executive Director of the Behavioral Sciences Regulatory Board.

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the bachelor, master and clinical level social workers, the master level professional counselors, and the master level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with us, although most of them are registered with SRS at the present time.

SB 397 could be called a "technical clean-up" to HB 2213 that was passed by the 1999 Legislature. It is an attempt to correct a situation for licensed professional counselors that was created when 2213 passed. There are currently some licensed professional counselors practicing independently who are not diagnosing and treating mental disorders. An example would be vocational or educational counseling. Without the passage of SB 397 these individuals would not be able to continue in their present position after July 1, 2000 unless they became licensed at the clinical level. SB 397 allows them to continue in independent practice as long as they are not diagnosing and treating mental disorders.

The BSRB supports HB 397 and does not feel that the public safety is jeopardized in anyway by its passage.

Thank you for the opportunity speak to you this morning. I will be happy to stand for questions.

Senate Public Health & Welfare
Date: 2-16-00
Attachment No. /

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SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Testimony re: SB 397, Loss of Independent Practice for LPCs

Presented by Ronald R. Hein

on behalf of

MENTAL HEALTH CREDENTIALING COALITION

February 16, 2000

Madame Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Mental Health Credentialing Coalition. The Coalition is comprised of the members of the Kansas Association for Marriage and Family Therapy, the Kansas Association of Masters in Psychology, and the Kansas Counseling Association/Kansas Mental Health Counselors Association.

In 1983, registered professional counselors had in their scope of practice the ability to do the practice of professional counseling which included, counseling, assessment, consultation and referral. They were able to engage in these activities independently. In 1996, registered professional counselors became licensed professional counselors, able to engage in those activities in independent practice. HB 2213, which will go into effect July 1 of 2000, indicates that all LPCs should be under the direction of a clinical person.

The professional counselor's scope and practice is very broad. It includes: assisting individuals or groups to understand personal strengths and weaknesses, assessment, including administering, scoring and interpreting instruments designed to describe an individual's aptitudes, abilities, achievements, interests and personal characteristics; consultation, utilizing methods and techniques of the practice of counseling to assist in solving current or potential problems of individuals or groups in relation to a third party; and referral to other practitioners.

Persons licensed as LPC's prior to July 1, 2000, have practiced independently throughout their careers in a wide array of professional activities, some of which do not include any practice activity related to diagnosing and treating mental disorders. Career counseling, vocational rehabilitation counseling, and selected school counseling settings are examples. In addition, this status was based on licensure requirements that included significant postgraduate training requirements similar to those defined for the clinical licensure by HB 2213. Requiring LPC's to "practice under direction" eliminates the ability for these existing LPC's to continue practicing without direction unless they transition to the clinical level by January 1, 2002. Since the clinical level is clearly defined for authorization to diagnose and treat mental disorders, and since some of these existing LPC

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Attachment No. 2

licensees are engaged in careers that do not include this activity, neither applying for the clinical license nor practicing under the direction of a clinical licensee seem appropriate.

Therefore, the MHCC supports SB 397 which eliminates the requirement of being under direction if the LPC does not diagnose and treat mental disorders.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



State of Kansas

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February 16, 2000

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Briefing to the Senate Health and Welfare Committee Regarding Senate Bill 399

Presented by Assistant Attorney General Camille Nohe

As an Assistant Attorney General in the Legal Opinions and Governmental Counsel Division, I have served as general counsel to the Behavioral Sciences Regulatory Board for about 8 years. This committee currently has before Senate Bill 399 which embraces a topic that has been of concern to me for many of these years: the lack of consistency, clarity and difficulty in applying confidential and privileged communication statutes to clients of the various mental health professionals licensed by the Board.

As a preliminary matter, you should be aware of the legal distinction between confidential communications and privileged communications (although this distinction is at times blurred by the court decisions and legislative enactments).

Confidentiality refers to statutes, unprofessional conduct regulations and/or professional ethics that denote an obligation not to reveal client information unless permitted or mandated by law. A breach of confidentiality may result in disciplinary action by the licensing body and/or a lawsuit by the client. Confidential communications are not, however, necessarily privileged communications.

A privilege refers to a statutorily created right that exempts clients, under most circumstances, from having their confidential communications revealed in a court proceeding without first granting permission to do so.

Privileged Communications

As you can see from the materials provided, clients of some licensed mental health professionals are protected by a statutory privilege that is "placed on the same basis as provided by law for those between an attorney and the attorney's client." Currently these are clients of licensed Ph.D. psychologists, masters level psychologists and professional counselors. As of July 1, 2000, clients of the following persons licensed by BSRB will also have a statutory privilege placed on the same basis as between an attorney and the attorney's client: clinical psychotherapists, masters social workers, specialist clinical social workers, clinical professional counselors.

The problem here lies in the difficulty in applying a privilege designed for clients of lawyers to clients of mental health professionals. In relation to the exceptions, for example, the lawyer-client privilege does not cover "a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction." Clearly, this exception has no application to a therapist-client relationship.

Another example of the difficulty in applying the lawyer-client privilege to a therapist-client relationship was highlighted in a murder case that required a Kansas Supreme Court decision before it could proceed to trial. The problem was in the definition of "lawyer," which means "a person authorized, *or reasonably believed by the client to be authorized to practice law....*" In considering whether the lawyer-client privilege applied to a communication made to someone the client reasonably believed was a licensed professional counselor - but in fact was not - the Kansas Supreme

Court began by saying, "The issue is simple. The answer is complex." Sixteen pages of analysis later, the Court concluded that the statutory professional counselor privilege "extends only to licensed counselors and not to someone the client reasonably believes to be a licensed counselor." Thus a confession to a unlicensed person - but whom the client thought was licensed - was ultimately found admissible.

Additionally, with the privilege placed on the same basis as between an attorney and client, licensed mental health professional must know the substance of the attorney-client privilege and the exceptions to that privilege. - something in my experience these professional are not even aware of.

Whether clients of associate and baccalaurette social workers and marriage and family therapists actually hold a privilege in relation to their confidential communications is not stated as explicitly as with the professions just discussed. Limitations on disclosure of information are statutorily established for clients of these groups and certain information is specifically not to be treated as privileged¹. However, whether an actual privilege exists in relation to other communications presumably made in confidence is open to debate.

Confidential Communications

As with privileged communications, the spectrum across professional disciplines of what communications are considered confidential is inconsistent and lacking in relationship-specific clarity.

A. Ph.D. Psychologists, Masters Level Psychologists and Professional Counselors

Kansas law also provides that confidential relations and communications between licensed Ph.D. psychologists, masters level psychologists and professional counselors and their clients are

¹ E.g. information that pertains to criminal acts or violations of law.

the same as those between an attorney and client. Clients of additional licensed mental health professionals will be on the same basis as of July 1, 2000.

Pursuant to Kansas Supreme Court Rule 1.6, "Confidentiality of Information," an attorney is prohibited from revealing "information of a client unless the client consents" with 3 exceptions:

- to prevent the client from committing a crime;
- to comply with requirements of law or orders of any tribunal; or
- to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client."

Despite some additional exceptions within the unprofessional conduct regulations for each group of licensed mental health professionals (e.g. consent, mandatory reporting of child abuse, failure to disclose presents a clear and present danger to the health and safety of another), an argument can be made that the 3 lawyer-client exceptions are the only exceptions to client confidentiality. Needless to say, such ambiguity is not a desirable situation.

Additionally, as with privileged communications, for clients of associate and baccalaureate social workers and marriage and family therapists, disclosure of confidential information and the limitations/exceptions are statutorily established in the practice acts and are unrelated to attorney-client confidential communications.

To complicate matters even further, Kansas adopted the Confidential Communications and Information Act that protects communications of a patients treatment facilities. That Act contains 14 exceptions to non-disclosure, all of which are specifically tailored to issues related to patients of a treatment facility - patients who are treated by a range of mental health professionals. These

exceptions are for the most part inconsistent with the attorney-client exceptions (applicable to most mental health professionals) as well as with the lower level social worker and marriage and family therapist exceptions.

Assuming sound public policy requires a privilege for communications a client makes to a licensed provider of mental health services, in my opinion that privilege and any exceptions to the privilege should be statutorily explicit and tailored to that relationship. In addition, such a privilege and any exceptions should be consistent across professions so that clients have the same protection regardless of which mental health professional provides treatment or therapy. I believe that this approach would also benefit mental health centers employing a variety of mental health providers

The good news to all this is the problems pointed the way to the solution. SB 399 was crafted by the Mental Health Task Force to create a confidential/privileged communication act for individual licensed mental health professional that would parallel the Confidential Communications and Information Act (applicable to mental health facility clients).

■ **Ph.D. psychologists**

K.S.A. 74-5323. Privileged communication. The confidential relations and communications between a licensed psychologist and the psychologist's client are placed on the same basis as provided by law for those between an attorney and the attorney's client. *Except as provided in subsection (b), nothing in this act shall be construed to require such privileged communications to be disclosed.*

(b) Nothing in this section or in this act shall be construed to prohibit any licensed psychologist from testifying in court hearing concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

■ **Licensed masters level psychologists and licensed clinical psychotherapists**

K.S.A. 74-5372. Privileged communications. (a) The confidential relations and communications between a licensed masters level psychologist and such psychologist's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(b) The confidential relations and communications between a licensed clinical psychotherapist and such psychotherapist's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed masters level psychologist or licensed clinical psychologist from testifying in court hearing concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

■ **Licensed social workers [associate, baccalaureate, masters and specialist clinical]**

K.S.A. 65-6315. Disclosure of information; limitations. (a) No licensed social work associate; *or licensed baccalaureate social worker, licensed master social worker, person licensed in a social work specialty, secretary, stenographer or clerk of a licensed social work associate or licensed baccalaureate social worker* or anyone who participates in delivery of social work services or anyone working under supervision of a licensed social worker may disclose any information such person may have acquired from persons consulting such person in the person's professional capacity or be compelled to disclose such information except:

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

~~(2) that no information shall be treated as privileged and there shall be no privilege created by this act as to any information acquired by a licensed social work associate, licensed baccalaureate social worker, licensed master social worker, person licensed in a social work specialty, secretary, stenographer or clerk of a licensed social worker or anyone who participates in delivery of social work services or anyone working under the supervision of a licensed social worker when such information pertains to criminal acts or violations of any law;~~

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

~~(4) (3) when the person waives the privilege by bringing charges against the licensed social worker but only to the extent that such information is relevant under the circumstances.~~

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

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

■ **Licensed marriage and family therapists and licensed clinical marriage and family therapist**

K.S.A. 65-6410. Limitations on disclosure of information. (a) A person licensed under the marriage and family therapists licensure act and employees and professional associates of the person shall not be required to disclose any information that the person, employee or associate may have acquired in rendering marriage and family therapy services, unless:

~~(a) (1) Disclosure is required by other state laws;~~

~~(b) (2) failure to disclose the information presents a clear and present danger to the health or safety of an individual;~~

(c) (3) the person, employee or associate is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case a waiver of the privilege accorded by this section is limited to that action;

(d) (4) the patient client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that person's behalf; and

(e) (5) a patient client agrees to a waiver of the privilege accorded by this section, and in circumstances where more than one person in a family is receiving therapy, each such family member agrees to the waiver. Absent a waiver from each family member, a marriage and family therapist shall not disclose information received by a family member.

(b) Nothing in this section or in this act shall be construed to prohibit any person licensed under the marriage and family therapist licensure act from testifying in court hearing concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

■ **Licensed professional counselors and licensed clinical professional counselors**

K.S.A. 65-5810. Confidential communications. (a) The confidential relations and communications between a licensed professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(b) The confidential relations and communications between a licensed clinical professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed professional counselor or licensed clinical professional counselor from testifying in court hearing concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

[Italicized language and strike-through becomes effective 7-1-00 pursuant to L. 1999, ch. 117, sec. 28.]

K.S.A. 60-426. Lawyer-client privilege.

(a) General rule. Subject to K.S.A. 60-437, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he or she is the witness to refuse to disclose any such communication, and (2) to prevent his or her lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated by the client, or (iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.

(b) Exceptions. Such privileges shall not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person; (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship; (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

Kansas Supreme Court Rule 1.6, Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) To prevent the client from committing a crime; or
- (2) to comply with requirements of law or orders of any tribunal; or
- (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Kansas Confidential Communications and Information Act - Treatment Facility Patients

65-5601. Definitions. As used in K.S.A. 65-5601 to 65-5605, inclusive:

(a) "Patient" means a person who consults or is examined or interviewed by treatment personnel.

(b) "Treatment personnel" means any employee of a treatment facility who receives a confidential communication from a patient while engaged in the diagnosis or treatment of a mental, alcoholic, drug dependency or emotional condition, if such communication was not intended to be disclosed to third persons.

(c) "Ancillary personnel" means any employee of a treatment facility who is not included in the definition of treatment personnel.

(d) "Treatment facility" means a community mental health center, community service provider, psychiatric hospital and state institution for the mentally retarded.

(e) "Head of the treatment facility" means the administrative director of a treatment facility or the designee of the administrative director.

(f) "Community mental health center" means a mental health clinic or community mental health center licensed under K.S.A. 75-3307b and amendments thereto.

(g) "Psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Topeka state hospital and hospitals licensed under K.S.A. 75-3307b and amendments thereto.

(h) "State institution for the mentally retarded" means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(i) "Community service provider" means: (1) A community facility for the mentally retarded organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto; (2) community service provider as provided in the developmental disabilities reform act; or (3) a nonprofit corporation which provides services for the mentally retarded pursuant to a contract with a mental retardation governing board.

65-5602. Privilege of patient of treatment facility to prevent disclosure of treatment and of confidential communications; extent of privilege; persons who may claim privilege; persons to which confidential communications extend.

(a) A patient of a treatment facility has a privilege to prevent treatment personnel or ancillary personnel from disclosing that the patient has been or is currently receiving treatment or from disclosing any confidential communications made for the purposes of diagnosis or treatment of the

patient's mental, alcoholic, drug dependency or emotional condition. The privilege extends to individual, family or group therapy under the direction of the treatment personnel and includes members of the patient's family. The privilege may be claimed by the patient, by the patient's guardian or conservator or by the personal representative of a deceased patient. The treatment personnel shall claim the privilege on behalf of the patient unless the patient has made a written waiver of the privilege and provided the treatment personnel with a copy of such waiver or unless one of the exceptions provided by K.S.A. 65-5603 is applicable.

(b) Confidential communications shall extend to those persons present to further the interests of the patient in the consultation, examination or interview; ancillary personnel; persons who are participating in the diagnosis and treatment under the direction of the treatment personnel, including members of the patient's family; and any other persons who the patient reasonably believes needs the communication to assist in the patient's diagnosis or treatment.

65-5603. Exceptions to privilege.

(a) The privilege established by K.S.A. 65-5602 and amendments thereto shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has

concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to Kansas advocacy and protective services, inc. which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care between the state psychiatric hospitals and the community mental health centers; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), "proposed patient" and "patient" shall have the meanings respectively ascribed thereto in K.S.A. 1997 Supp. 59-2946 and amendments thereto; or

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study.

(b) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

65-5604. Interpretation of act; rules of discovery not to take precedence over act.

This act shall be interpreted to encourage treatment in a confidential setting and the rules of discovery shall not take precedence over the provisions of this act.

65-5605. Violations; misdemeanor.

Any treatment personnel or ancillary personnel willfully violating the patient's confidentiality as defined by this act shall be guilty of a class C misdemeanor.

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#4

Session of 2000

SENATE BILL No. 556

By Committee on Public Health and Welfare

2-2

- 1 is entitled to control final disposition.
- 2 Sec. 2. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

Senate Public Health & Welfare
 Date: 2-16-00
 Attachment No. 4

9 AN ACT concerning the right to control the disposition of a decedent's
 10 remains.

11
 12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The following persons, in order of priority stated, ~~when~~
 14 ~~persons in prior classes are unavailable at time of death,~~ may order any
 15 lawful manner of final disposition of a decedent's remains including bur-
 16 ial, cremation, entombment or anatomical donation:

17 (1) The agent for health care decisions established by a durable power
 18 of attorney for health care decisions pursuant to K.S.A. 58-625, *et seq.*,
 19 and amendments thereto, if such power of attorney conveys to the agent
 20 the authority to make decisions concerning disposition of the deceased's
 21 body;

22 (2) the spouse of the decedent;

23 (3) the decedent's surviving adult children. If there is more than one
 24 adult child, any adult child who confirms in writing the notification of all
 25 other adult children may ~~serve as the authorizing agent~~ unless the cre-
 26 matory authority receives written objection to the ~~cremation~~ from another
 27 adult child;

28 (4) the decedent's surviving parents;

29 (5) the persons in the next degree of kinship under the laws of de-
 30 scendent and distribution to inherit the estate of the deceased. If there is
 31 more than one person of the same degree, any person of that degree may
 32 direct the manner of disposition;

33 (6) a guardian of the person of the decedent at the time of such
 34 person's death;

35 (7) the personal representative of the deceased; or

36 (8) in the case of indigents or any other individuals whose final dis-
 37 position is the responsibility of the state or county, the public official
 38 charged with arranging the final disposition pursuant to K.S.A. 1999 Supp.
 39 22a-215 and amendments thereto.

40 (b) A funeral director, funeral establishment or crematory shall not
 be subject to criminal prosecution or civil liability for carrying out the
 otherwise lawful instructions of the ~~decedent or the~~ person or persons
 under ~~this section~~ if the funeral director reasonably believes such person

direct the manner of disposition

funeral establishment or

manner of disposition

subsection (a)

