

HOUSE BILL No. 4237

February 21, 1989, Introduced by Reps. Gubow, DeMars, Scott, Stabenow, Crandall, Wartner, DeLange, Bankes, Bennett, Trim and Hertel and referred to the Committee on Mental Health.

A bill to amend section 750 of Act No. 258 of the Public Acts of 1974, entitled as amended

"Mental health code,"

as amended by Act No. 362 of the Public Acts of 1984, being section 330.1750 of the Michigan Compiled Laws; and to add section 946.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 750 of Act No. 258 of the Public Acts of
2 1974, as amended by Act No. 362 of the Public Acts of 1984, being
3 section 330.1750 of the Michigan Compiled Laws, is amended and
4 section 946 is added to read as follows:

5 Sec. 750. (1) For the purposes of this section:

6 (a) "Psychiatrist" means a person licensed to practice
7 medicine ~~pursuant to~~ UNDER part 170 of the public health code,
8 Act No. 368 of the Public Acts of 1978, being sections 333.17001

1 to 333.17088 of the Michigan Compiled Laws, or osteopathic
 2 medicine ~~pursuant to~~ UNDER part 175 of Act No. 368 of the
 3 Public Acts of 1978, being sections 333.17501 to 333.17556 of the
 4 Michigan Compiled Laws, or ~~someone~~ A PERSON under ~~his or her~~
 5 THE supervision OF A PSYCHIATRIST, while engaged in the examina-
 6 tion, diagnosis, or treatment of a patient for a mental
 7 condition.

8 (b) "Psychologist" means a person licensed to engage in the
 9 practice of psychology ~~pursuant to~~ UNDER part 182 of Act
 10 No. 368 of the Public Acts of 1978, being sections 333.18201 to
 11 333.18237 of the Michigan Compiled Laws; a person with training
 12 and experience equivalent to that necessary for licensing as a
 13 psychologist; ~~or~~ a person employed by a public agency as a psy-
 14 chologist; or ~~someone~~ A PERSON under the supervision of a psy-
 15 chologist, while engaged in the examination, diagnosis, or treat-
 16 ment of a patient for a mental condition.

17 (c) "Privileged communication" means a communication made to
 18 a psychiatrist or psychologist in connection with the examina-
 19 tion, diagnosis, or treatment of a patient, or to ~~other persons~~
 20 ANOTHER PERSON while ~~they are~~ THE OTHER PERSON IS participating
 21 in the examination, diagnosis, or treatment.

22 (d) "Health care corporation" means any of the following:

23 (i) A nonprofit dental care corporation incorporated under
 24 Act No. ~~+23~~ 125 of the Public Acts of 1963, being sections
 25 550.351 to 550.373 of the Michigan Compiled Laws.

26 (ii) A hospital service corporation, medical care
 27 corporation, or a consolidated hospital service corporation and

1 medical care corporation incorporated or reincorporated under the
 2 nonprofit health care corporation reform act, Act No. 350 of the
 3 Public Acts of 1980, being sections 550.1101 to 550.1704 of the
 4 Michigan Compiled Laws. ~~, or incorporated or consolidated under~~
 5 ~~Act No. 108 of the Public Acts of 1939, being sections 550.301 to~~
 6 ~~550.316 of the Michigan Compiled Laws or Act No. 109 of the~~
 7 ~~Public Acts of 1939, being sections 550.501 to 550.517 of the~~
 8 ~~Michigan Compiled Laws.~~

9 (iii) A health maintenance organization licensed ~~pursuant~~
 10 ~~to~~ UNDER part 210 of Act No. 368 of the Public Acts of 1978,
 11 being sections 333.21001 to 333.21098 of the Michigan Compiled
 12 Laws.

13 (e) "Health care insurer" means ~~any~~ AN insurance company
 14 authorized to provide health insurance in this state or ~~any~~ A
 15 legal entity ~~which~~ THAT is self-insured and provides health
 16 care benefits to its employees.

17 (2) Privileged communications shall not be disclosed in
 18 civil, criminal, legislative, or administrative cases or proceed-
 19 ings, or in proceedings preliminary to such cases or proceedings,
 20 unless the patient has waived the privilege, except in the cir-
 21 cumstances set forth in this section.

22 (3) Privileged communications shall be disclosed upon
 23 request:

24 (a) When the privileged communication is relevant to a phys-
 25 ical or mental condition of the patient ~~which~~ THAT the patient
 26 has introduced as an element of ~~his or her~~ THE PATIENT'S claim
 27 or defense in a civil or administrative case or proceeding or

1 ~~which~~ THAT, after the death of the patient, has been introduced
2 as an element of ~~his or her~~ THE PATIENT'S claim or defense by a
3 party to a civil or administrative case or proceeding.

4 (b) When the privileged communication is relevant to a
5 matter under consideration in a proceeding governed by this act
6 but only if the patient was informed that any communications
7 could be used in the proceeding.

8 (c) When the privileged communication is relevant to a
9 matter under consideration in a proceeding to determine the legal
10 competence of the patient or ~~his or her~~ THE PATIENT'S need for
11 a guardian but only if the patient was informed that any communi-
12 cations made could be used in such a proceeding.

13 (d) In ~~actions,~~ A civil or criminal ~~,~~ ACTION against the
14 psychiatrist or psychologist for malpractice.

15 (e) When the ~~communications were~~ PRIVILEGED COMMUNICATION
16 WAS made during an examination ordered by a court, prior to which
17 the patient was informed that a communication made would not be
18 privileged, but only with respect to the particular purpose for
19 which the examination was ordered.

20 (f) When the ~~communications were~~ PRIVILEGED COMMUNICATION
21 WAS made during treatment ~~which~~ THAT the patient was ordered to
22 undergo to render ~~him or her~~ THE PATIENT competent to stand
23 trial on a criminal charge, but only with respect to issues to be
24 determined in proceedings concerned with the competence of the
25 patient to stand trial.

26 (4) In a proceeding in which subsections (2) and (3)
27 prohibit disclosure of a communication made to a psychiatrist or

1 psychologist in connection with the examination, diagnosis, or
2 treatment of a patient, the fact that the patient has been
3 examined or treated or undergone a diagnosis also shall not be
4 disclosed unless ~~the privileged communication~~ THAT FACT is rel-
5 evant to a determination by a health care insurer or health care
6 corporation of its rights and liabilities under a policy, con-
7 tract, or certificate of insurance or health care benefits.

8 (5) PRIVILEGED COMMUNICATIONS MAY BE DISCLOSED TO COMPLY
9 WITH THE DUTY TO WARN SET FORTH UNDER SECTION 946.

10 SEC. 946. (1) WHEN A PATIENT HAS COMMUNICATED TO A MENTAL
11 HEALTH PRACTITIONER WHO IS TREATING THE PATIENT A THREAT OF IMMI-
12 NENT PHYSICAL VIOLENCE AGAINST A CLEARLY IDENTIFIED OR REASONABLY
13 IDENTIFIABLE THIRD PARTY, THE MENTAL HEALTH PRACTITIONER HAS A
14 DUTY TO WARN THE THIRD PERSON OF THE THREAT OR TO TAKE REASONABLE
15 PRECAUTIONS TO PROTECT THE THIRD PARTY FROM PHYSICAL VIOLENCE
16 FROM THE PATIENT.

17 (2) THERE IS A REBUTTABLE PRESUMPTION THAT A MENTAL HEALTH
18 PRACTITIONER HAS DISCHARGED THE DUTY CREATED UNDER SUBSECTION (1)
19 IF THE MENTAL HEALTH PRACTITIONER MAKES A REASONABLE AND TIMELY
20 EFFORT TO DO 1 OR MORE OF THE FOLLOWING:

21 (A) HOSPITALIZE THE PERSON UNDER CHAPTER 4 OR 4A.

22 (B) REMOVE THE RISK BY MEDICATING OR OTHERWISE TREATING THE
23 PATIENT.

24 (C) COMMUNICATE THE THREAT TO THE THIRD PARTY AND TO AN
25 APPROPRIATE LAW ENFORCEMENT AGENCY.

26 (3) A PSYCHIATRIST OR PSYCHOLOGIST WHO COMPLIES WITH THE
27 DUTY CREATED UNDER THIS SECTION DOES NOT VIOLATE SECTION 750. A

1 PSYCHIATRIST WHO COMPLIES WITH THE DUTY CREATED UNDER THIS
2 SECTION DOES NOT VIOLATE THE PHYSICIAN-PATIENT PRIVILEGE ESTAB-
3 LISHED UNDER SECTION 2157 OF THE REVISED JUDICATURE ACT OF 1961,
4 ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 600.2157 OF
5 THE MICHIGAN COMPILED LAWS. A PSYCHIATRIC SOCIAL WORKER WHO COM-
6 PLIES WITH THE DUTY CREATED UNDER THIS SECTION DOES NOT VIOLATE
7 THE CONFIDENTIALITY PROVISIONS OF SECTION 1610 OF THE OCCUPA-
8 TIONAL CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING SEC-
9 TION 339.1610 OF THE MICHIGAN COMPILED LAWS.

10 (4) AS USED IN THIS SECTION:

11 (A) "MENTAL HEALTH PRACTITIONER" MEANS A PSYCHIATRIST, PSY-
12 CHOLOGIST, OR PSYCHIATRIC SOCIAL WORKER.

13 (B) "PSYCHIATRIC SOCIAL WORKER" MEANS A CERTIFIED SOCIAL
14 WORKER, SOCIAL WORKER, OR SOCIAL WORK TECHNICIAN REGISTERED UNDER
15 ARTICLE 16 OF THE OCCUPATIONAL CODE, ACT NO. 299 OF THE PUBLIC
16 ACTS OF 1980, BEING SECTIONS 339.1601 TO 339.1610 OF THE MICHIGAN
17 COMPILED LAWS, WHO HAS SUCCESSFULLY COMPLETED A PSYCHIATRIC
18 SOCIAL SERVICE PRACTICUM.

19 (C) "PSYCHIATRIST" MEANS THAT TERM AS DEFINED IN
20 SECTION 750.

21 (D) "PSYCHOLOGIST" MEANS THAT TERM AS DEFINED IN
22 SECTION 750.

23 Section 2. This amendatory act shall not take effect unless
24 Senate Bill No. _____ or House Bill No. 4238 (request
25 no. 00678'89 a *) of the 85th Legislature is enacted into law.