

10. Privileged Communications

COURTS & JUDICIAL PROCEEDINGS ARTICLE, §9-109

§9-109. Communications between patient and psychiatrist or psychologist.

(a) *Definitions.* —

(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) *Privilege generally.* — 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) *Appointment of guardian.* — 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) *Exclusion of privilege.* — 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;

(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) In an extreme risk protective order proceeding under Title 5, Subtitle 6 of the Public Safety 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.