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## Document (1)

1. [\*Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 9-121\*](#)

**Client/Matter:** -None-

## [Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 9-121](#)

Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.

### **Annotated Code of Maryland > COURTS AND JUDICIAL PROCEEDINGS > TITLE 9. WITNESSES > SUBTITLE 1. COMPETENCE, COMPELLABILITY, AND PRIVILEGE**

## **§ 9-121. Communications between licensed social worker and client**

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### **(a) Definitions. --**

(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) Privilege established. --** 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) Incompetency of client. --** 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) Privilege inapplicable in certain circumstances. --** 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;

(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) **Privilege inapplicable in certain proceedings.** --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.

## History

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1983, ch. 531; [1990, ch. 6, § 11](#); [1999, ch. 34, § 1](#); [2000, ch. 270, § 2](#); [2006, ch. 44, § 6](#); [2014, chs. 195, 196](#).

Annotations

## Notes

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### EFFECT OF AMENDMENTS. --

Chapters 195 and 196, Acts 2014, effective June 1, 2014, made identical changes. Each added (d)(6) and (d)(7) and made related changes.

### EDITOR'S NOTE. --

Section 6, ch. 44, Acts 2006, enacted April 7, 2006, pursuant to [art. II, § 17\(b\) of the Maryland Constitution](#) and effective from date of enactment, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new supplement, new volume, or replacement volume of the Annotated Code, shall make nonsubstantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 6 of ch. 44, a comma was deleted following "section" in (a).

Section 2, chs. 195 and 196, Acts 2014, provides 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 [June 1, 2014]."

## Case Notes

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UNIVERSITY OF BALTIMORE LAW FORUM. --For a comment, "State v. Johnson: To Warrant an in Camera Review of a Victim's Mental Health Records, a Defendant Must Offer a Factual Predicate to Show a Reasonable Likelihood that the Records Contain Exculpatory Information," see [45 U. Balt. L. F. 240 \(2015\)](#).

REPORT OF ADULT SEXUAL ASSAULT. --Except as otherwise required by statute, a physician, psychiatrist, psychologist, or therapist generally has no legal obligation to report that an adult patient has been raped or otherwise sexually assaulted. 74 Op. Att'y Gen. 128 (1989).

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The duty of a citizen, health care provider or employee of a rape crisis center is the same regardless of whether the alleged crime is a felony or a misdemeanor. 74 Op. Att'y Gen. 128 (1989).

**CERTAIN MATTERS NOT PRIVILEGED FOR INVESTIGATORY PURPOSES.** --Trial court did not err in denying the clients' motion to quash subpoena that the State social worker examining board issued to obtain a complete patient file on them for its investigation of the licensed social worker and whether the social worker failed to report the one client's abuse of his granddaughter to authorities as the licensed social worker was statutorily required to do. The clients did not have a statutory right to an order quashing the subpoena at issue, and the State's compelling interest in disciplining its social workers and the limited disclosure requested outweighed any constitutional interest the clients had in keeping the contents of the file private. [Doe v. Md. Bd. of Soc. Workers, 154 Md. App. 520, 840 A.2d 744 \(2004\)](#), aff'd sub nom. [Doe v. Md. Bd. of Soc. Work Examiners, 384 Md. 161, 862 A.2d 996 \(2004\)](#).

Exceptions to the social worker-client privilege found in (d)-(e) are not meant to be exhaustive insofar as they would exclude an exemption to the privilege based on an investigation by the Board of Social Work Examiners of one of its social workers not fulfilling her statutorily mandated duties under [§ 5-704\(a\) of the Family Law Article](#). The statute establishing a social worker-client privilege and its exceptions does not exist in a vacuum but can be, and is, affected by other statutes which further limit the scope of the privilege. [Doe v. Md. Bd. of Soc. Work Exam'rs, 384 Md. 161, 862 A.2d 996 \(2004\)](#).

Social worker and client were unable to quash a subpoena issued by the Board of Social Work Examiners for the confidential records of the social worker's treatment of the client when the Board was investigating the social worker's failure to report the client's abuse of his granddaughter. The State had a compelling interest in the investigation that outweighed the client's privacy interest. [Doe v. Md. Bd. of Soc. Work Exam'rs, 384 Md. 161, 862 A.2d 996 \(2004\)](#).

**CONFIDENTIALITY OF MENTAL HEALTH RECORDS.** --Criminal defendant is entitled to an in camera review of a victim's mental health records, even though privileged, if the defendant can establish a reasonable likelihood that the privileged records contain exculpatory evidence relevant to the defense. [State v. Johnson, 440 Md. 228, 102 A.3d 295 \(2014\)](#).

Defendant was not entitled to an in camera review of the victim's privileged mental health records because defendant did not show a likelihood that the victim's psychotherapy records contained exculpatory information as defense counsel only proposed hypotheticals; and, although it would be appropriate to know of the victim's propensity for veracity, that alone was not enough to outweigh the victim's right to assert the privilege in the victim's mental health records. [State v. Johnson, 440 Md. 228, 102 A.3d 295 \(2014\)](#).

**EMPLOYEE'S DISCRETION IN REPORTING INFORMATION RELATING TO CRIMINAL ACTIVITY.** --The confidentiality restrictions that affect information about criminal activity gained in a social services employee's official capacity do not apply to information gained off-duty, in the employee's personal capacity. Hence, the employee has the discretion to report any or all information about a client's criminal activities gained in the employee's personal capacity. 75 Op. Att'y Gen. 415 (July 31, 1990).

A social services employee has the discretion to report some, but not all, information about a client's criminal activities gained in the employee's official capacity. An employee may report any crime that he or she witnesses and any information about a client's intention to commit a future crime. Except as otherwise required by law, an employee may not report officially obtained information about a client's past criminal activity. 75 Op. Att'y Gen. 415 (July 31, 1990).

**PRIVILEGE MAY BE WAIVED.** --In a child abuse proceeding, the mother's argument that conversations with her Pennsylvania therapist were privileged was not preserved for appellate review, because she failed to raise before the ALJ any privilege under Maryland or Pennsylvania law, such as Courts § 9-121. [McClanahan v. Wash. County Dep't of Soc. Servs., 218 Md. App. 258, 96 A.3d 917 \(2014\)](#).

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[CITED IN Porter Hayden Co. v. Bullinger, 350 Md. 452, 713 A.2d 962 \(1998\); Butler-Tulio v. Scroggins, 139 Md. App. 122, 774 A.2d 1209 \(2001\).](#)

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