

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 803

By: Robinson

COMMITTEE SUBSTITUTE

[privacy of information - authorizing release of
certain information about inmates under certain
circumstances -

emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 2503, as amended by Section 33, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2503), is amended to read as follows:

Section 2503. A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;
2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;
3. A "psychotherapist" is:
 - a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or
 - b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. There is no privilege under this section for communications:

1. Relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise;

3. Relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition 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 the condition as an element of the party's claim or defense;

4. If the services of the physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or physical injury to the patient or another individual;

5. In which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;

6. Relevant to an issue in a proceeding challenging the competency of the physician or psychotherapist;

7. Relevant to a breach of duty by the physician or psychotherapist; ~~or~~

8. That are subject to a duty to disclose under statutory law; or

9. When the patient in question is an inmate in the custody of the Department of Corrections or a private prison or contract facility under contract with the Department of Corrections, and the release of the information is necessary:

a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or

b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 1-109, as amended by Section 3, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2002, Section 1-109), is amended to read as follows:

Section 1-109. A. All mental health and drug or alcohol abuse treatment information, whether written or recorded, and all communications between a physician or psychotherapist and a patient are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the patient or in related administrative work.

Such information shall not be disclosed to anyone not involved in the treatment or related administrative work without a valid written release or an order from a court of competent jurisdiction. If the patient is a minor child, the written consent of the parent, as defined by the Inpatient Mental Health Treatment of Children Act, is required; provided, however, confidential information may be released as provided by Sections 7005-1.1 through 7005-1.3 of Title 10 of the Oklahoma Statutes.

B. The restrictions on disclosure shall not apply to the following:

1. Communications between facilities pursuant to a qualified service agreement as provided by a contract with the Department to provide mental health or substance abuse treatment services;
2. When failure to disclose the information presents a serious and imminent threat to the health and safety of any person;
3. Communications to law enforcement officers that are directly related to a commission of a crime by a patient on the premises of a facility or against facility personnel or to a threat to commit such a crime, and that are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, the name and address of that individual, and the last-known whereabouts of that individual;

4. Reporting under state law of incidents of suspected child abuse and neglect to the appropriate authorities;

5. Disclosure of information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the parole or other release of the patient; ~~and~~

6. Disclosure of patient-identifying information to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention; and

7. When the patient in question is an inmate in the custody of the Department of Corrections or a private prison or contract facility under contract with the Department of Corrections, and the release of the information is necessary:

- a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or
- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

Disclosures under this subsection shall be limited to the minimum information necessary to accomplish the intended purpose of the disclosure.

C. A person who is or has been a patient of a physician, psychotherapist, mental health facility, a drug or alcohol abuse treatment facility or service, other agency for the purpose of mental health or drug or alcohol abuse care and treatment shall not

be entitled to personal access to psychotherapy notes or progress notes unless such access is consented to by the treating physician or practitioner or is ordered by a court. Access to such information shall be provided to the patient in a manner consistent with the best interests of the patient as determined by the person in charge of the care and treatment of the patient.

D. The restrictions on disclosure of mental health or drug or alcohol abuse treatment information shall not restrict the disclosure of patient-identifying information related to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death. Any other disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator, or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient. "Responsible family member" means the parent, adult child, adult sibling, or other adult relative who was actively involved in providing care to or monitoring the care of the deceased patient as verified by the physician, psychologist or other person responsible for the care and treatment of such person.

E. A valid written release for disclosure of mental health or drug or alcohol abuse treatment information shall have the following elements:

1. The specific name or general designation of the program or person permitted to make the disclosure;
2. The name or title of the individual or the name of the organization to which disclosure is to be made;
3. The name of the patient;
4. The purpose of the disclosure;
5. A description of the information to be disclosed;

6. The dated signature of the patient and, if a guardian has been appointed for the patient, the guardian of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent;

7. A statement of the right of the patient to revoke the release in writing and a description of how the patient may do so;

8. An expiration date, event or condition if not revoked before, which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;

9. A statement that the information may be subject to redisclosure by the recipient resulting in the information no longer being protected; and

10. If the release is signed by a person authorized to act for a patient, a description of the authority of such person to act.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 1376, is amended to read as follows:

Section 1376. All communications between a licensed psychologist and the individual with whom the psychologist engages in the practice of psychology are confidential. At the initiation of the professional relationship the psychologist shall inform the patient of the following limitations to the confidentiality of their communications. No psychologist, colleague, agent or employee of any psychologist, whether professional, clerical, academic or therapeutic, shall disclose any information acquired or revealed in the course of or in connection with the performance of the psychologist's professional services, including the fact, circumstances, findings or records of such services, except under the following circumstances:

1. Pursuant to the provisions of Section 2503 of Title 12 of the Oklahoma Statutes or where otherwise provided by law;

2. Upon express, written consent of the patient;

3. Upon the need to disclose information to protect the rights and safety of self or others if:

- a. the patient presents a clear and present danger to himself and refuses explicitly or by behavior to voluntarily accept further appropriate treatment. In such circumstances, where the psychologist has a reasonable basis to believe that a patient can be committed to a hospital pursuant to Section 5-401 of Title 43A of the Oklahoma Statutes, the psychologist shall have a duty to seek commitment. The psychologist may also contact members of the patient's family, or other individuals if in the opinion of the psychologist, such contact would assist in protecting the safety of the patient,
- b. the patient has communicated to the psychologist an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:
 - (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
 - (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
 - (3) arranges for the patient to be hospitalized voluntarily, or

- (4) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law,
- c. the patient has a history of physical violence which is known to the psychologist and the psychologist has a reasonable basis to believe that there is a clear and imminent danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the psychologist shall have a duty to take reasonable precaution. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:
 - (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
 - (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
 - (3) arranges for the patient to be hospitalized voluntarily,
 - (4) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law,
- d. nothing contained in subparagraph b of this paragraph shall require a psychologist to take any action which, in the exercise of reasonable professional judgment, would endanger the psychologist or increase the danger to a potential victim or victims, or
- e. the psychologist shall only disclose that information which is essential in order to protect the rights and safety of others;

4. In order to collect amounts owed by the patient for professional services rendered by the psychologist or employees of

the psychologist. Provided, the psychologist may only disclose the nature of services provided, the dates of services, the amount due for services and other relevant financial information. If the patient raises as a defense to said action, a substantive assertion concerning the competence of the psychologist or the quality of the services provided, the psychologist may disclose whatever information is necessary to rebut such assertion;

5. In any proceeding brought by the patient against the psychologist and in any malpractice, criminal or license revocation proceeding in which disclosure is necessary or relevant to the claim or defense of the psychologist; ~~or~~

6. In such other situations as shall be defined by the rules and regulations of the Board; or

7. When the patient in question is an inmate in the custody of the Department of Corrections or a private prison or contract facility under contract with the Department of Corrections, and the release of the information is necessary:

- a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or
- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-502.2, is amended to read as follows:

Section 1-502.2 A. Unless otherwise provided by law, all information and records which identify any person who has or may have any communicable or venereal disease which is required to be reported pursuant to Sections 1-501 through 1-532.1 of this title

and which are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third party payor, or any other agency, person, or organization in the state shall be confidential. Any information authorized to be released pursuant to paragraphs 1 through 7 of this subsection shall be released in such a way that no person can be identified unless otherwise provided for in such paragraph or by law. Such information shall not be released except under the following circumstances:

1. Release is made upon court order;

2. Release is made in writing, by or with the written consent of the person whose information is being kept confidential or with the written consent of the legal guardian or legal custodian of such person, or if such person is a minor, with the written consent of the parent or legal guardian of such minor;

3. Release is necessary as determined by the State Department of Health to protect the health and well-being of the general public. Any such order for release by the Department and any review of such order shall be in accordance with the procedures specified in Sections 309 through 323 of Title 75 of the Oklahoma Statutes. Only the initials of the person whose information is being kept confidential shall be on public record for such proceedings unless the order by the Department specifies the release of the name of such person and such order is not appealed by such person or such order is upheld by the reviewing court;

4. Release is made of medical or epidemiological information to those persons who have had risk exposures pursuant to Section 1-502.1 of this title;

5. Release is made of medical or epidemiological information to health professionals, appropriate state agencies, or district courts to enforce the provisions of Sections 1-501 through 1-532.1 of this

title and related rules and regulations concerning the control and treatment of communicable or venereal diseases;

6. Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified; ~~or~~

7. Release is made of medical information among health care providers, their agents or employees, within the continuum of care for the purpose of diagnosis and treatment of the person whose information is released. This exception shall not authorize the release of confidential information by a state agency to a health care provider unless such release is otherwise authorized by this section; or

8. When the patient in question is an inmate in the custody of the Department of Corrections or a private prison or contract facility under contract with the Department of Corrections, and the release of the information is necessary:

- a. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and it is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or
- b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

B. For the purposes of this section only, the words "written consent" shall mean that the person whose information is required to be kept confidential by this section or the person legally authorized to consent to release by this section has been informed of all persons or organizations to whom such information may be released or disclosed by the specific release granted. Releases granted pursuant to paragraph 2 of subsection A of this section

shall include a notice in bold typeface that the information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but are not limited to, diseases such as hepatitis, syphilis, gonorrhea and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS). Consent obtained for release of information, pursuant to paragraph 2 of subsection A of this section, shall not be considered valid unless prior to consent, the person consenting to the release was given notice of the provisions for release of confidential information pursuant to this section.

C. 1. The State Department of Health may convene a confidential meeting of a multidisciplinary team for recommendation on school placement of a student who is infected with the human immunodeficiency virus. The multidisciplinary team shall include, but not be limited to the following:

- a. the parent, parents, legal representative, or legal guardian or legal custodian of the student;
- b. the physician of the student;
- c. a representative from the superintendent's office of the affected school district;
- d. a representative from the State Department of Education; and
- e. a representative from the State Department of Health.

Each member of the team shall be responsible for protecting the confidentiality of the student and any information made available to such person as a member of the team. The multidisciplinary team shall be exempt from the requirements of Sections 301 through 314 of Title 25 of the Oklahoma Statutes and Sections 24A.1 through 24A.19 of Title 51 of the Oklahoma Statutes.

2. Each member of the local school board having jurisdiction over the student shall also be responsible for protecting the

confidentiality of the student and any information made available to such person as a school board member.

D. The State Department of Health may convene a confidential meeting of a multidisciplinary advisory committee to make recommendations regarding the practice of health care workers who are infected with the human immunodeficiency virus (HIV) or hepatitis B (HBV), who may be performing exposure-prone procedures. The membership of the multidisciplinary advisory committee shall include, but not be limited to, the following:

1. The Commissioner of Health or her designee;
2. Legal counsel to the Commissioner of Health;
3. The state epidemiologist or his designee;
4. An infectious disease specialist with expertise in HIV/HBV infection; and
5. Two practicing health care workers from the same discipline as the HIV/HBV-infected health care worker.

In addition, the health care worker being discussed, and/or an advocate, and the personal physician of the health care worker being discussed shall be invited to the multidisciplinary advisory committee meeting. Discussion of the case shall be made without using the actual name of the health care worker. Each member of the multidisciplinary advisory committee shall be responsible for protecting the confidentiality of the HIV/HBV-infected health care worker and the confidentiality of any information made available to such person as a member of the multidisciplinary advisory committee. The multidisciplinary advisory committee shall be exempt from the requirements of the Open Meetings Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.

E. Upon advice of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may notify an appropriate official at the health care facility where the HIV/HBV-infected

health care worker practices that said health care worker is seropositive for HIV and/or HBV. Notification shall be made only when necessary to monitor the ability of the HIV/HBV-infected health care worker to comply with universal precautions and appropriate infection control practices, and/or to monitor the ongoing functional capacity of the health care worker to perform his or her duties. Notification shall occur through one of the following officials:

1. The facility administrator;
2. The hospital epidemiologist;
3. The chairman of the infection control committee of the

facility; or

4. The medical chief of staff of the facility.

F. If the HIV/HBV-infected health care worker fails or refuses to comply with the recommendations of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may take such actions as may be required to perform the duties imposed by the laws of the State of Oklahoma, and may advise the appropriate licensing board.

G. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section, upon conviction, shall be guilty of a misdemeanor punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

H. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section shall be civilly liable to the person who is the subject of the disclosure for court costs, attorneys fees, exemplary damages and all actual damages,

including damages for economic, bodily or psychological harm which is proximately caused by the disclosure.

SECTION 5. AMENDATORY 76 O.S. 2001, Section 19, is amended to read as follows:

Section 19. A. 1. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be entitled to obtain access to the information contained in the patient's medical records, including any x-ray or other photograph or image, upon request.

2. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be furnished copies of all records, including any x-ray or other photograph or image, pertaining to that person's case upon request and upon the tender of the expense of the copy or copies. The cost of each copy, not including any x-ray or other photograph or image, shall not exceed twenty-five cents (\$0.25) per page. The cost of each x-ray or other photograph or image shall not exceed Five Dollars (\$5.00) or the actual cost of reproduction, whichever is less. The physician, hospital, or other medical professionals and institutions may charge a patient for the actual cost of mailing the patient's requested medical records, but may not charge a fee for searching, retrieving, reviewing, and preparing medical records of the person.

3. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological or psychiatric records. In the case of psychological or psychiatric records, the patient shall not be entitled to copies unless access to the records is consented to by the treating physician or practitioner or is ordered by a court of competent jurisdiction upon a finding that it is in the best interests of the patient, but the patient may be provided access to information contained in the records, as provided in subsection B of Section 1-109 of Title 43A of the Oklahoma Statutes. The patient or, if the patient is a minor child or a guardian has been appointed

for the patient, the guardian of the patient may authorize the release of the psychiatric or psychological records of the patient to the patient's attorney, a third party payor, or a governmental entity. The execution of an authorization shall not be construed to authorize the patient personal access to the records or information.

B. 1. In cases involving a claim for personal injury or death against any practitioner of the healing arts or a licensed hospital, arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims, that person shall be deemed to waive any privilege granted by law concerning any communication made to a physician or health care provider with reference to any physical or mental condition or any knowledge obtained by the physician or health care provider by personal examination of the patient; provided that, before any communication, medical or hospital record, or testimony is admitted in evidence in any proceeding, it must be material and relevant to an issue therein, according to existing rules of evidence.

2. Any person who obtains any document pursuant to the provisions of this section shall provide copies of the document to any opposing party in the proceeding upon payment of the expense of copying the document pursuant to the provisions of this section.

C. This section shall not apply to the records of an inmate in a correctional institution when the correctional institution believes the release to be a threat to the safety or security of the inmate or the institution.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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