STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1714

By: Toure of the House

and

Morgan of the Senate

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Section 2503, as amended by Section 33, Chapter 468, O.S.L. 2002, (12 O.S. Supp. 2002, Section 2503), which relates to physician and psychotherapist-patient privilege; qualifying certain exclusion; and declaring an 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.~~ 4. 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.~~ 5. Relevant to an issue in a proceeding challenging the competency of the physician or psychotherapist;

~~7.~~ 6. Relevant to a breach of duty by the physician or psychotherapist; or

~~8.~~ 7. That are subject to a duty to disclose under statutory law.

E. There is a qualified privilege under this Code as to a communication 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. The qualified privilege shall be subject to the waiver provision of subsection B of Section 19 of Title 76 of the Oklahoma Statutes. An adverse party in the proceeding may obtain relevant information regarding such condition through statutory discovery.

SECTION 2. 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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