

By: Robinson of the Senate  
and  
Dorman of the House

An Act relating to civil and criminal procedure; amending 12 O.S. 2001, Section 2503, as last amended by Section 10, Chapter 390, O.S.L. 2003 (12 O.S. Supp. 2003, Section 2503), which relates to privileged communications; deeming not privileged certain communications made for certain fraudulent purposes; requiring release of certain records to certain law enforcement authorities under certain circumstances; providing for codification; 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 last amended by Section 10, Chapter 390, O.S.L. 2003 (12 O.S. Supp. 2003, 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. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications 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. Communications 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, are not privileged under this

section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise; ~~or~~

3. The 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 is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery; or

4. Information communicated to a physician or any other provider of medical services for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition in an effort to unlawfully obtain insurance benefits or other benefits by fraud shall not be deemed a privileged or confidential communication.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19A of Title 76, unless there is created a duplication in numbering, reads as follows:

In an investigation by law enforcement authorities of alleged insurance fraud, medical records not deemed confidential or privileged pursuant to paragraph 4 of subsection D of Section 2503 of Title 12 of the Oklahoma Statutes shall be released to a law enforcement authority presenting a valid subpoena, search warrant, or court order for the records.

SECTION 3. 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.

Passed the Senate the 9th day of March, 2004.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2004.

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Presiding Officer of the House  
of Representatives