

LEGISLATIVE BILL 130

Approved by the Governor March 11, 1993

Introduced by Robak, 22

AN ACT relating to professional counselors; to amend sections 28-382, 28-707, 28-714, and 71-1,204, Reissue Revised Statutes of Nebraska, 1943, and section 27-504, Revised Statutes Supplement, 1992; to create a professional counselor-client privilege; to define terms; to provide exceptions and immunity in certain circumstances; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 27-504, Revised Statutes Supplement, 1992, be amended to read as follows:

27-504. (1) As used in this rule:

(a) A patient is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his or her physical, mental, or emotional condition;

(b) A physician is (i) a person authorized to practice medicine in any state or nation or who is reasonably believed by the patient so to be or (ii) a person licensed or certified as a psychologist under the laws of any state or nation who devotes all or a part of his or her time to the practice of clinical psychology; ~~and~~

(c) A client is a person who consults or is interviewed by a professional counselor for professional counseling as defined in section 71-1,266;

(d) A professional counselor is a person certified as a professional counselor pursuant to sections 71-1,265 to 71-1,277; and

(e) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of (i) 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, including members of the patient's family, or (ii) the client participating in professional counseling by a professional counselor.

(2)(a) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his or her physical, mental, or emotional condition among himself or herself, his or her physician, or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(b) A client has a privilege to refuse to disclose and to

prevent any other person from disclosing confidential communications made during counseling between himself or herself, his or her professional counselor, or persons who are participating in the counseling under the direction of the professional counselor, including members of the client's family.

(3) The privilege may be claimed by the patient or client, by his or her guardian or conservator, or by the personal representative of a deceased patient or client. The person who was the physician or professional counselor may claim the privilege but only on behalf of the patient or client. His or her authority so to do is presumed in the absence of evidence to the contrary.

(4)(a) There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for physical, mental, or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization or if a professional counselor deems it necessary to refer a client to determine if there is need for hospitalization.

(b) If the judge orders an examination of the physical, mental, or emotional condition of the patient, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) There is no privilege under this rule as to communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(d) There is no privilege under this rule in any judicial proceedings under the Nebraska Juvenile Code regarding injuries to children, incompetents, or disabled persons or in any criminal prosecution involving injury to any such person or the willful failure to report any such injuries.

(e) There is no privilege under this rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in section 28-401 shall apply.

Sec. 2. That section 28-382, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-382. (1) No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult Protective Services Act unless otherwise specifically mentioned in the act.

(2) Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to the Adult Protective Services Act on the ground that it is a confidential communication

protected by the privilege granted to husband and wife, ~~or~~ patient and physician, or client and professional counselor.

Sec. 3. That section 28-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-707. (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or health; or

(b) Cruelly confined or cruelly punished; or

(c) Deprived of necessary food, clothing, shelter, or care.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IV felony if the offense is committed knowingly and intentionally.

Sec. 4. That section 28-714, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-714. The privileged communication between patient and physician, between client and professional counselor, and between husband and wife; shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to sections 28-710 to 28-717.

Sec. 5. That section 71-1,204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,204. Any insurer or employee of an insurer making a report as required by section 71-1,199 or 71-1,200 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the ~~physician-patient~~ privilege between patient and physician or between client and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report, except that such immunity shall not apply to the making of malicious or knowingly false statements or to the initiating of a report with reckless disregard for the truth of such report.

Sec. 6. That original sections 28-382, 28-707, 28-714, and 71-1,204, Reissue Revised Statutes of Nebraska, 1943, and section 27-504, Revised Statutes Supplement, 1992, are repealed.