

HOUSE No. 1315

By Ms. Balser of Newton, petition of Ruth B. Balser and others relative to protecting the confidentiality of patient records. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Ruth B. Balser	John W. Scibak
Douglas W. Petersen	Steven A. Tolman
Jennifer L. Flanagan	William Smitty Pignatelli
Christine E. Canavan	Alice K. Wolf
William N. Brownsberger	Anne M. Gobi
Barbara A. L'Italien	Byron Rushing
Kay Khan	Denise Provost
Steven J. D'Amico	

In the Year Two Thousand and Seven.

AN ACT TO PROTECT PATIENT CONFIDENTIALITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 112 of the General Laws, as appearing in the 2004 Offi-
2 cial Edition, is hereby amended by inserting after section 172 the
3 following section:—

4 Section 172B. Except as in hereinafter provided, in any court pro-
5 ceeding, and in any proceeding preliminary thereto and in legislative
6 and administrative proceedings, a client shall have the privilege of
7 refusing to disclose and of preventing a witness from disclosing, any
8 communication, wherever made, between said client and any mental
9 health counselor licensed pursuant to the provisions of Section one
10 hundred and sixty-three of Chapter one hundred and twelve, or a
11 mental health counselor employed in a state, county or municipal
12 government agency, relative to the diagnosis or treatment of the
13 client's mental or emotional condition.

14 If a client is incompetent to exercise or waive such privilege, a
15 guardian shall be appointed to act in the client's behalf under this

16 section. A previously appointed guardian shall be authorized to so
17 act.

18 Upon the exercise of the privilege granted by this section, the
19 judge or presiding officer shall instruct the jury that no adverse
20 inference may be drawn therefrom.

21 The privilege granted hereunder shall not apply to any of the
22 following communications:—

23 (a) If a mental health counselor, in the course of his diagnosis or
24 treatment of the client, determines the client is in need of treatment
25 in a hospital for mental emotional illness or that there is a threat of
26 imminently dangerous activity by the patient against himself or
27 another person, and on the basis of such determination discloses
28 such communication either for the purpose of placing or retaining
29 the client in such hospital, provided however that the provision of
30 this section shall continue in effect after the patient is in said hos-
31 pital, or placing the patient under arrest or under the supervision of
32 law enforcement authorities.

33 (b) If a judge finds that the client, after having been informed that
34 the communications would not be privileged, has made communica-
35 tions to mental health counselor in the course of a psychiatric exami-
36 nation ordered by the court, provided that such communications
37 shall be admissible only on issues involving the patient's mental or
38 emotional condition but not as a confession or admission of guilt.

39 (c) In any proceeding, except one involving child custody, in
40 which the client introduces his mental or emotional condition as an
41 element of his claim or defense, and the judge or presiding officer
42 finds that it is more important to the interests of justice that the com-
43 munication be disclosed than that the relationship between client and
44 mental health counselor be protected;

45 (d) In any proceeding after the death of a client in which his
46 mental or emotional condition is introduced by any party claiming or
47 defending through or as beneficiary of the patient as an element of
48 the claim or the defense, and the judge or presiding officer finds that
49 it is more important to the interests of justice that the communication
50 be disclosed than that the relationship between client and mental
51 health counselor be protected.

52 (e) In the initiation of proceedings under paragraph C of section
53 twenty-three or under section twenty-four of chapter one hundred

54 and nineteen, or section three of chapter two hundred ten or to give
55 testimony in connection therewith;

56 (f) In any proceeding whereby the mental health counselor has
57 acquired the information while conducting an investigation pursuant
58 to section fifty-one B of chapter one hundred nineteen;

59 (g) Or in any case involving child custody, adoption or the dis-
60 pensing with the need for consent to adoption which upon hearing in
61 chambers, the judge in the exercise of his discretion, determines that
62 the mental health counselor has evidence bearing significantly on
63 the client's ability to provide suitable care or custody, and it is more
64 important to the welfare of the child that the communication be dis-
65 closed than that the relationship between the client and the mental
66 health counselor be protected; provided however, that in such case
67 of adoption or the dispensing with the need for consent to adoption,
68 a judge shall determine that the client has been informed that such
69 communication should not be privileged; or

70 h) If in any proceeding brought by the client against the mental
71 health counselor, and in any malpractice, criminal, or license revo-
72 cation proceeding, in which disclosure is necessary or relevant to the
73 claim or defense of the mental health counselor.