

By Ms. Gibson of Belmont, petition of Mary Jane Gibson, Michael J. Barrett and Robert A. Havern relative to the privileged communication section of the social work licensing statute. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT TO AMEND THE PRIVILEGED COMMUNICATION SECTION OF THE SOCIAL WORK LICENSING STATUTE.

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

1 SECTION 1. Section 135 of chapter 112 of the General Laws
2 is hereby amended by striking out said section and inserting in
3 place thereof the following: —

4 All communications between a social worker licensed pursuant
5 to the provisions of section one hundred and thirty-two of chapter
6 one hundred and twelve, or a social worker employed in a state,
7 county or municipal governmental agency, and the clients with
8 whom the social worker engages in the practice of social work
9 as defined in section one hundred and thirty of chapter one
10 hundred and twelve are confidential.

11 At the initiation of the professional relationship such social
12 worker shall inform the client of such confidential communica-
13 tions and the limitations thereto as set forth in this section.

14 No social worker, colleague, agent or employee of any social
15 worker, whether professional, clerical, academic or therapeutic,
16 shall disclose any information about a client acquired or revealed
17 from in the course of or in connection with the performance of
18 the social worker's professional services, including the fact,
19 circumstances, findings or records of such services, except under
20 the following circumstances:

21 (a) pursuant to the provisions of section one hundred and thirty-
22 five A of chapter one hundred and twelve or any other law,

23 (b) upon express, written consent of the client,

24 (c) upon the need to disclose information which protects the
25 safety of the client or others, as described below:

26 (1) the client presents a clear and present danger to himself and
27 refuses explicitly by his behavior to voluntarily accept further
28 appropriate treatment. In such circumstances, where the social
29 worker has a reasonable basis to believe that a client can be
30 committed to a hospital pursuant to section twelve of chapter one
31 hundred and twenty-three, he shall have a duty to seek said
32 commitment. The social worker may also contact members of the
33 client's family or other individuals if in the social worker's opinion,
34 it would assist in protecting the safety of the client.

35 (2) the client has communicated to the social worker an actual
36 threat of physical violence against a clearly identified or
37 reasonably identifiable victim or victims. In such circumstances,
38 the social worker shall have a duty to warn such victim or victims
39 of said threat, or take action or actions intended to diminish the
40 likelihood of such violence, provided, however, that such duty
41 shall be discharged if the social worker takes one or more of the
42 following actions:

43 i) makes reasonable efforts to communicate the threat to the
44 victim or victims;

45 ii) seeks civil commitment of the client pursuant to said section
46 twelve of said chapter one hundred and twenty-three;

47 iii) makes reasonable efforts to notify an appropriate police
48 department or other law enforcement agency.

49 (3) where the client has a history of physical violence which is
50 known to the social worker and where the social worker has a
51 reasonable basis to believe that there is a clear and present danger
52 of physical violence against a clearly identified or reasonably
53 identified victim or victims. In such circumstances, the social
54 worker shall have a duty to warn such victim or victims or take
55 action or actions intended to diminish the likelihood of such
56 violence, provided, that such duty shall be discharged if the social
57 worker takes one or more of the following actions:

58 i) makes reasonable efforts to communicate the threat to the
59 victim or victims;

60 ii) seeks civil commitment of the client pursuant to said section
61 twelve of said chapter one hundred and twenty-three;

62 iii) makes reasonable efforts to notify an appropriate police
63 department or other law enforcement agency.

64 Nothing contained in subsection (c) shall require a social worker
65 to take any action which, in exercise of reasonable professional
66 judgment, would endanger himself or increase the danger to a
67 potential victim or victims.

68 In furtherance of the purposes of subsection (c), the social
69 worker shall only disclose such information necessary to
70 accomplish the purposes of said subsection.

71 (d) in order to collect amounts owed by the client for
72 professional services rendered by the social worker or his
73 employees; provided, however, that the social worker may only
74 disclose the nature of services provided, the dates of services, the
75 amount due for services and other relevant financial information;
76 provided, further, that if the client raises as a defense to said action
77 substantive assertions concerning the competence of the social
78 worker or the quality of the services provided, the social worker
79 may disclose whatever information is necessary to rebut such
80 assertions; or

81 (e) to initiate a proceeding under subsection C of section twenty-
82 three of chapter one hundred and nineteen or section twenty-four
83 of said chapter one hundred and nineteen, or section three of
84 chapter two hundred and ten and give testimony in connection
85 therewith;

86 (f) where the social worker has acquired the information while
87 conducting an investigation pursuant to section fifty-one B of
88 chapter one hundred and nineteen.

89 (g) where the social worker has acquired the information while
90 acting as an elder protective services worker for a designated
91 protective services agency as defined in section fourteen of chapter
92 nineteen A and has acquired the information while conducting
93 an assessment in accordance with section eighteen of said chapter
94 nineteen A.

95 (h) in such other situations as shall be defined in the rules and
96 regulations of the board of social work registration.

97 The provision of information acquired by a social worker in
98 any licensed category from persons consulting him in his
99 professional capacity, to any insurance company, nonprofit
100 hospital service corporation, medical service corporation, or
101 health maintenance organization, or to a board established
102 pursuant to section twelve of chapter one hundred and twenty-
103 six B, pertaining to the administration or provision of benefits,

104 including utilization review or peer review, provided for expenses
105 arising from the out-patient diagnosis or treatment, or both, of
106 mental or nervous conditions, shall not constitute a waiver or
107 breach of any right to which a person consulting said social worker
108 is otherwise entitled under this section.

1 SECTION 2. Chapter 112 of the General Laws is hereby
2 amended by adding the following new section: —

3 Section 135A. Subject to the provisions of section twenty B of
4 chapter two hundred and thirty-three, in any court proceeding and
5 in any proceeding preliminary thereto and in legislative or
6 administrative proceedings, a person who during the course of
7 diagnosis or treatment communicates with a social worker, as
8 defined by section one hundred and thirty of chapter one hundred
9 and twelve, or with a social worker employed in a state, county
10 or municipal governmental agency, shall have the privilege of
11 refusing to disclose, and of preventing a witness from disclosing,
12 any communication, as defined in said section twenty B of chapter
13 two hundred and thirty-three, wherever made, between said
14 person and said social worker relative to the diagnosis or
15 treatment of the person's mental or emotional condition.