

By Mr. Collaro of Worcester, petition of Andrew Collaro for legislation to further regulate the confidentiality of medical records of patients. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT FURTHER REGULATING CONFIDENTIALITY OF PATIENT'S RECORDS.

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 20B of chapter 233 of the General Laws
2 is amended by adding the following after the last sentence of the
3 fourth paragraph: — Where a defendant in a criminal proceeding
4 seeks access to a patient's confidential communications relative
5 to diagnosis or treatment of the patient's mental or emotional
6 condition, the trial judge shall conduct an in camera hearing,
7 where he may review the patient's medical records and interview
8 the patient and the psychotherapist to determine whether any
9 privileged information is relevant to the defense. If, after said
10 hearing, the court finds that the weight and relevancy of said
11 evidence is sufficient to outweigh its prejudicial effect to the
12 patient, the evidence shall be disclosed to the defense; otherwise
13 not. The finding of the court shall be in writing.

1 SECTION 2. Chapter 112 of the General Laws shall be further
2 amended in section 135A by inserting after subsection (i.) the
3 following: —

4 (j.) Where a defendant in a criminal proceeding seeks access to
5 a client's confidential communications with a social worker, the
6 trial judge shall conduct an in camera hearing, where he may
7 review the privileged communications and interview the client
8 and the social worker to determine whether any privileged
9 information is relevant to the defense. If, after said hearing, the

10 court finds that the weight and relevancy of said evidence is
 11 sufficient to outweigh its prejudicial effect to the client, the
 12 evidence shall be disclosed to the defense; otherwise not. The
 13 finding of the court shall be in writing.

The Confidentiality of Testimony

In the Year One Thousand Nine Hundred and Ninety-Two

AN ACT FURTHER REGULATING THE CONFIDENTIALITY OF WITNESS'S EVIDENCE

Enacted by the Senate and House of Representatives in General Session
 Court assembled and by the authority of the people as follows:

SECTION 1. Section 205 of chapter 212 of the General Laws
 is amended by adding the following after the last sentence of the
 fourth paragraph: — Where a defendant in a criminal proceeding
 seeks access to a judicial confidential communication which relates
 to diagnosis or treatment of the patient's mental or emotional
 condition, the trial judge shall conduct an in camera hearing,
 where he may review the patient's medical records and interview
 the patient and the psychiatrist to determine whether any
 prejudicial information is relevant to the defense. If after said
 hearing the court finds that the weight and relevancy of said
 evidence is sufficient to outweigh its prejudicial effect to the
 patient, the evidence shall be disclosed to the defense; otherwise
 not. The finding of the court shall be in writing.

SECTION 2. Chapter 212 of the General Laws shall be further
 amended in section 125A by inserting after subsection (1) the
 following: —
 (2) Where a defendant in a criminal proceeding seeks access to
 a client's confidential communication with a social worker, the
 trial judge shall conduct an in camera hearing, where he may
 review the psychiatric conclusions and interview the client
 and the social worker to determine whether any prejudicial
 information is relevant to the defense. If after said hearing the