

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: HB 263

SPONSOR: Representative Ross

SUBJECT: Psychotherapist-Patient Privilege

DATE: April 10, 2003

REVISED: 04/14/03 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------------|
| 1. | <u>Munroe</u> | <u>Wilson</u> | <u>HC</u> | <u>Fav/1 amendment</u> |
| 2. | <u>Collins</u> | <u>Whiddon</u> | <u>CF</u> | <u>Favorable</u> |
| 3. | _____ | _____ | <u>JU</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill revises the definition of “psychotherapist” to include for purposes of the psychotherapist-patient privilege, an advanced registered nurse practitioner who is certified in psychotherapist/mental health nursing and is engaged in a clinical practice that primarily involves the treatment of mental or emotional conditions, including chemical abuse.

This bill amends section 90.503 of the Florida Statutes.

II. Present Situation:

Evidence

Chapter 90, F.S., specifies the “Florida Evidence Code.” Section 90.501, F.S., provides that except as otherwise provided by this chapter, any other statute, or the Constitution of the United States or of the State of Florida, no person in a legal proceeding has a privilege to: refuse to be a witness; refuse to disclose any matter; refuse to produce any object or writing; or prevent another from being a witness, from disclosing any matter, or from producing any object or writing. Section 90.507, F.S., provides that a person who has a privilege against disclosure of a confidential matter or communication waives the privilege if the person, or the person’s predecessor while holder of the privilege, voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to disclosure of any significant part of the matter or communication. If such disclosure itself is a privileged communication, then s. 90.507, F.S., does not apply.

The Florida Evidence Code recognizes the lawyer-client privilege, the psychotherapist-patient privilege, the sexual assault victim-counselor privilege, the domestic violence advocate-victim

privilege, the husband-wife privilege, the clergy privilege, the accountant-client privilege, the journalist's privilege, and the trade secret privilege.¹ The psychotherapist privilege provides that:

- A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist.²

This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.³ The term "psychotherapist", as used under the privilege, includes:

- Any person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
- A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under Florida law, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism or other drug addiction; and
- Treatment personnel of Florida-licensed hospitals, mental health facilities, and substance abuse treatment centers, who are engaged primarily in the diagnosis or treatment of a mental condition, including alcoholism or other drug addiction.

The psychotherapist-patient privilege may be asserted by the patient or patient's attorney on behalf of the patient, by a guardian or conservator of the patient, or by the personal representative of the estate of a deceased patient.⁴ It may also be asserted by the psychotherapist, but only on behalf of the patient and such assertion of the privilege by the psychotherapist raises a rebuttable presumption that it is made on the patient's behalf.⁵

Advanced Registered Nurse Practitioners

Advanced registered nurse practitioners perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses.

Chapter 464, F.S., requires the Board of Nursing to adopt rules authorizing advanced registered nurse practitioners to perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee. Advanced registered nurse practitioners may perform medical acts under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance. The Board of Nursing and

¹ See sections 90.5015, 90.502, 90.503, 90.5035, 90.5036, 90.504, 90.505, 90.5055, and 90.506, F.S.

² See s. 90.503(2), F.S.

³ See s. 90.503(2), F.S.

⁴ See s. 90.503(3), F.S.

⁵ Id.

the Board of Medicine have filed identical administrative rules setting forth standards for the protocols⁶ which establish obligations on medical physicians, osteopathic physicians, and dentists who enter into protocol relationships with advanced registered nurse practitioners. The Board of Osteopathic Medicine and the Board of Dentistry who have regulatory jurisdiction over osteopathic physicians and dentists, respectively, are not required to adopt administrative rules regarding the standards for advanced registered nurse practitioner protocols. Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

III. Effect of Proposed Changes:

The bill amends s. 90.503, F.S., to revise the definition of “psychotherapist” to include, for purposes of the psychotherapist-patient privilege, an advanced registered nurse practitioner who is certified in psychotherapist/mental health nursing and is engaged in a clinical practice that primarily involves the treatment of mental or emotional conditions, including chemical abuse.

The enactment of this bill will provide advanced registered nurse practitioners who are practicing as psychiatric mental health nurses with the same protections regarding confidential communications with patients as those that are currently provided to other mental health professionals. The mental health professionals who are currently granted this privilege include: persons who are authorized to practice medicine; licensed psychologists; licensed clinical social workers, marriage and family therapists, and mental health counselors; and other treatment personnel who are employed by facilities licensed under chapters 394, 395, or 397, F.S., and are primarily engaged in the diagnosis and treatment of a mental or emotional condition, including alcoholism and other drug addiction.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

⁶ See Rules 64B-4.010 and 64B-35.002, Florida Administrative Code.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On page 1, lines 29-30, “in psychotherapist/mental health nursing” should read “as a psychiatric and mental health nurse.” The American Nursing Credentialing Center affiliated with the American Nurses Association issues a certification to an advanced registered nurse practitioner as a “Psychiatric and Mental Health Nurse Practitioner.”⁷

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging, and Long-Term Care:

The amendment revises the definition of “psychotherapist” to include for purposes of the psychotherapist-patient privilege, an advanced registered nurse practitioner who is certified as a psychiatric and mental health nurse and is engaged in a clinical practice that primarily involves the treatment of mental or emotional conditions, including chemical abuse.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁷ See American Nurses Credentialing Center Catalog page 8, < <http://nursingworld.org/ancc/certify/cert/catalogs/CBT.PDF>>.