

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5931

Chapter 424, Laws of 2009

61st Legislature
2009 Regular Session

LICENSED MENTAL HEALTH PRACTITIONER PRIVILEGE

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 21, 2009
YEAS 44 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House April 7, 2009
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 8, 2009, 11:09 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5931** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 11, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5931

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Senate Judiciary (originally sponsored by Senators Murray, Delvin, and Kline)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to licensed mental health practitioner privilege;
2 and amending RCW 5.60.060.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 5.60.060 and 2008 c 6 s 402 are each amended to read
5 as follows:

6 (1) A spouse or domestic partner shall not be examined for or
7 against his or her spouse or domestic partner, without the consent of
8 the spouse or domestic partner; nor can either during marriage or
9 during the domestic partnership or afterward, be without the consent of
10 the other, examined as to any communication made by one to the other
11 during the marriage or the domestic partnership. But this exception
12 shall not apply to a civil action or proceeding by one against the
13 other, nor to a criminal action or proceeding for a crime committed by
14 one against the other, nor to a criminal action or proceeding against
15 a spouse or domestic partner if the marriage or the domestic
16 partnership occurred subsequent to the filing of formal charges against
17 the defendant, nor to a criminal action or proceeding for a crime
18 committed by said spouse or domestic partner against any child of whom
19 said spouse or domestic partner is the parent or guardian, nor to a

1 proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW:
2 PROVIDED, That the spouse or the domestic partner of a person sought to
3 be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not
4 be compelled to testify and shall be so informed by the court prior to
5 being called as a witness.

6 (2)(a) An attorney or counselor shall not, without the consent of
7 his or her client, be examined as to any communication made by the
8 client to him or her, or his or her advice given thereon in the course
9 of professional employment.

10 (b) A parent or guardian of a minor child arrested on a criminal
11 charge may not be examined as to a communication between the child and
12 his or her attorney if the communication was made in the presence of
13 the parent or guardian. This privilege does not extend to
14 communications made prior to the arrest.

15 (3) A member of the clergy, a Christian Science practitioner listed
16 in the Christian Science Journal, or a priest shall not, without the
17 consent of a person making the confession or sacred confidence, be
18 examined as to any confession or sacred confidence made to him or her
19 in his or her professional character, in the course of discipline
20 enjoined by the church to which he or she belongs.

21 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.360
22 (8) and (9), a physician or surgeon or osteopathic physician or surgeon
23 or podiatric physician or surgeon shall not, without the consent of his
24 or her patient, be examined in a civil action as to any information
25 acquired in attending such patient, which was necessary to enable him
26 or her to prescribe or act for the patient, except as follows:

27 (a) In any judicial proceedings regarding a child's injury,
28 neglect, or sexual abuse or the cause thereof; and

29 (b) Ninety days after filing an action for personal injuries or
30 wrongful death, the claimant shall be deemed to waive the physician-
31 patient privilege. Waiver of the physician-patient privilege for any
32 one physician or condition constitutes a waiver of the privilege as to
33 all physicians or conditions, subject to such limitations as a court
34 may impose pursuant to court rules.

35 (5) A public officer shall not be examined as a witness as to
36 communications made to him or her in official confidence, when the
37 public interest would suffer by the disclosure.

1 (6)(a) A peer support group counselor shall not, without consent of
2 the law enforcement officer or firefighter making the communication, be
3 compelled to testify about any communication made to the counselor by
4 the officer or firefighter while receiving counseling. The counselor
5 must be designated as such by the sheriff, police chief, fire chief, or
6 chief of the Washington state patrol, prior to the incident that
7 results in counseling. The privilege only applies when the
8 communication was made to the counselor while acting in his or her
9 capacity as a peer support group counselor. The privilege does not
10 apply if the counselor was an initial responding officer or
11 firefighter, a witness, or a party to the incident which prompted the
12 delivery of peer support group counseling services to the law
13 enforcement officer or firefighter.

14 (b) For purposes of this section, "peer support group counselor"
15 means a:

16 (i) Law enforcement officer, firefighter, civilian employee of a
17 law enforcement agency, or civilian employee of a fire department, who
18 has received training to provide emotional and moral support and
19 counseling to an officer or firefighter who needs those services as a
20 result of an incident in which the officer or firefighter was involved
21 while acting in his or her official capacity; or

22 (ii) Nonemployee counselor who has been designated by the sheriff,
23 police chief, fire chief, or chief of the Washington state patrol to
24 provide emotional and moral support and counseling to an officer or
25 firefighter who needs those services as a result of an incident in
26 which the officer or firefighter was involved while acting in his or
27 her official capacity.

28 (7) A sexual assault advocate may not, without the consent of the
29 victim, be examined as to any communication made between the victim and
30 the sexual assault advocate.

31 (a) For purposes of this section, "sexual assault advocate" means
32 the employee or volunteer from a rape crisis center, victim assistance
33 unit, program, or association, that provides information, medical or
34 legal advocacy, counseling, or support to victims of sexual assault,
35 who is designated by the victim to accompany the victim to the hospital
36 or other health care facility and to proceedings concerning the alleged
37 assault, including police and prosecution interviews and court
38 proceedings.

1 (b) A sexual assault advocate may disclose a confidential
2 communication without the consent of the victim if failure to disclose
3 is likely to result in a clear, imminent risk of serious physical
4 injury or death of the victim or another person. Any sexual assault
5 advocate participating in good faith in the disclosing of records and
6 communications under this section shall have immunity from any
7 liability, civil, criminal, or otherwise, that might result from the
8 action. In any proceeding, civil or criminal, arising out of a
9 disclosure under this section, the good faith of the sexual assault
10 advocate who disclosed the confidential communication shall be
11 presumed.

12 (8) A domestic violence advocate may not, without the consent of
13 the victim, be examined as to any communication between the victim and
14 the domestic violence advocate.

15 (a) For purposes of this section, "domestic violence advocate"
16 means an employee or supervised volunteer from a community-based
17 domestic violence program or human services program that provides
18 information, advocacy, counseling, crisis intervention, emergency
19 shelter, or support to victims of domestic violence and who is not
20 employed by, or under the direct supervision of, a law enforcement
21 agency, a prosecutor's office, or the child protective services section
22 of the department of social and health services as defined in RCW
23 26.44.020.

24 (b) A domestic violence advocate may disclose a confidential
25 communication without the consent of the victim if failure to disclose
26 is likely to result in a clear, imminent risk of serious physical
27 injury or death of the victim or another person. This section does not
28 relieve a domestic violence advocate from the requirement to report or
29 cause to be reported an incident under RCW 26.44.030(1) or to disclose
30 relevant records relating to a child as required by RCW 26.44.030(12).
31 Any domestic violence advocate participating in good faith in the
32 disclosing of communications under this subsection is immune from
33 liability, civil, criminal, or otherwise, that might result from the
34 action. In any proceeding, civil or criminal, arising out of a
35 disclosure under this subsection, the good faith of the domestic
36 violence advocate who disclosed the confidential communication shall be
37 presumed.

1 (9) A mental health counselor, independent clinical social worker,
2 or marriage and family therapist licensed under chapter 18.225 RCW may
3 not disclose, or be compelled to testify about, any information
4 acquired from persons consulting the individual in a professional
5 capacity when the information was necessary to enable the individual to
6 render professional services to those persons except:

7 (a) With the written authorization of that person or, in the case
8 of death or disability, the person's personal representative;

9 (b) If the person waives the privilege by bringing charges against
10 the mental health counselor licensed under chapter 18.225 RCW;

11 (c) In response to a subpoena from the secretary of health. The
12 secretary may subpoena only records related to a complaint or report
13 under RCW 18.130.050;

14 (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360
15 (8) and (9); or

16 (e) To any individual if the mental health counselor, independent
17 clinical social worker, or marriage and family therapist licensed under
18 chapter 18.225 RCW reasonably believes that disclosure will avoid or
19 minimize an imminent danger to the health or safety of the individual
20 or any other individual; however, there is no obligation on the part of
21 the provider to so disclose.

Passed by the Senate April 21, 2009.

Passed by the House April 7, 2009.

Approved by the Governor May 8, 2009.

Filed in Office of Secretary of State May 11, 2009.