

# CONFIDENTIALITY AND PRIVILEGED COMMUNICATIONS

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**CONFIDENTIALITY OF  
MENTAL HEALTH  
INFORMATION**

MCL 330.1748

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**WHAT IS CONFIDENTIAL  
INFORMATION ?**

- Information in the record of a recipient and other info acquired in the course of providing mental health services
- Information is not open to public inspection and may be disclosed outside the CMHSP or contracted provider only as allowed by MCL 330.1748 or MCL 330.1748a

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**WHAT IS CONFIDENTIAL  
INFORMATION**

AG Opinion 5709, 5/20/1980, Frank Kelly, AG

“...it is my opinion that a county community mental health board may obtain information concerning specific recipients from private or public agencies with which it has contracted to provide mental health services to recipients, where such information is sought for a purpose germane to the county community mental health program, without the consent of the recipient.”

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**WHAT IS CONFIDENTIAL INFORMATION**

AG Opinion 5709, 5/20/1980, Frank Kelly, AG

“...it is also my opinion that a county community mental health board may require the service providers with which it contracts to share information regarding recipients, so long as the information is germane to the provision of mental health services...provided that such information is not disseminated outside the county mental health program.”

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**MANDATORY DISCLOSURE**

When requested, confidential info must be disclosed in the following situations:

- Case records made after March 28, 1996 when requested by adult competent recipient (access to own record)
- Per order or subpoena of a court of record or subpoena of the legislature (MCR requires release in most subpoena situations)
- To prosecuting attorney in order to participate in proceedings governed by the MHC (e.g. civil commitment, IST proceedings)

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**MANDATORY DISCLOSURE**

- To an attorney for the recipient with consent of the recipient, guardian authorized to consent or parent/legal guardian of a minor recipient
- If necessary to comply with another provision of law
- To MDCH if necessary for it to discharge responsibility placed upon it by law

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### MANDATORY DISCLOSURE

- To the Office of the Auditor General in order to discharge Constitutional responsibilities
- To a surviving spouse of the recipient, or if no spouse, to the individual most closely related to the recipient within 3<sup>rd</sup> level of consanguinity in order to apply for or receive benefits but only if that person has been appointed personal representative of the estate of the deceased recipient.

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### DISCRETIONARY DISCLOSURE WITH CONSENT

Except as indicated preceding, if consent is obtained from the recipient, guardian with authority to consent, parent with legal custody of a minor recipient, or court appointed representative or executor of the estate of a deceased recipient, information may be disclosed to:

- A mental health service provider for the recipient
- To the recipient or his/her guardian or parent of a minor recipient or another individual or agency...

*Unless in the written judgment of the holder of the record, the disclosure would be detrimental to the recipient or others (discretionary)*

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### DISCRETIONARY DISCLOSURE WITHOUT CONSENT

Information may be disclosed at the discretion of the holder without the consent of the recipient/guardian/parent under 1 or more of the following situations:

- As necessary for the recipient to apply for or receive benefits if the benefit would accrue to the provider for payment for services
- As necessary for outside research, evaluation, accreditation or statistical compilation (no identification, unless impracticable – in no case where recipient may be harmed)
- To provider of mental health or other health services or public agency, if compelling need for disclosure based upon substantial probability of harm to recipient or others<sup>9</sup>

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Disclosure to MPAS

- Controlled by federal law

MCL 330.1748a

- Child abuse or neglect investigations

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**PRIVILEGED  
COMMUNICATIONS**

MCL 330.1750

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**WHAT ARE PRIVILEGED  
COMMUNICATIONS ?**

•Communications made by a patient to a psychiatrist or psychologist in connection with the exam, diagnosis or treatment of a patient, or to another person while that person is participating in the exam, diagnosis or treatment, OR

•Communication made privileged under applicable state or federal laws;

Licensed master's level SW – client

Licensed professional counselor – client

Marriage and family therapist – client

Other: Priest – penitent, Attorney - client

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**GENERAL PROHIBITION**

**Sec. 750**

Privileged communication shall not be disclosed in civil, criminal, legislative or administrative cases or proceedings or in proceedings preliminary to such, unless the patient has waived the privilege

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**EXCEPTIONS**

- If PC is relevant to a physical/medical condition introduced by patient into civil or administrative case as claim or defense
- If PC relevant to matter under consideration in proceeding governed by MHC **BUT ONLY IF** patient was informed ahead of time that PC could be used in proceeding

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**EXCEPTIONS**

- If PC relevant to determination of legal competency of patient or need for a guardian **BUT ONLY IF** patient informed ahead of time that communication could be used in proceeding
- If PC was made during court ordered examination, **PRIOR TO WHICH** patient informed communication would not be privileged but only with respect to the purpose for which the exam was ordered.

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**EXCEPTIONS**

- If PC made during treatment patient was ordered to undergo to render patient competent to stand trial on criminal charge, **BUT ONLY WITH RESPECT** to issues to be determined in proceedings concerned with the patient’s competency to stand trial

Fact that the person has been examined or treated or undergone diagnosis shall also not be disclosed unless to insurer, health care corporation, etc.

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**EXCEPTIONS  
DUTY TO WARN**

**Duty to Warn – MCL 330.1946**

“Mental Health Professional” = physician, licensed psychologist, RN, licensed professional counselor, Licensed marriage and family therapist, licensed master’s SW

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**EXCEPTIONS  
DUTY TO WARN**

•When does duty to warn arise?

When a patient communicates to a mental health professional who is treating the patient a threat of physical violence –

Against a reasonably identifiable 3<sup>rd</sup> person, and

The patient has apparent intent and ability to carry out the threat, and

The intent to carry out the threat is in the reasonably foreseeable future

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**EXCEPTIONS  
DUTY TO WARN**

- What is the duty?

The mental health professional has a duty to the patient to take 1 or more of the following actions in a timely manner:

Hospitalize the patient or initiate proceedings to hospitalize under MHC Chapter 4 or 4a

AND/OR

Make reasonable attempts to notify the 3<sup>rd</sup> party of threat and notify local law enforcement

If 3<sup>rd</sup> party is a minor, notify DHS CPS and minor's custodial parent, non-custodial parent or legal guardian, whoever is appropriate in the best interests of the child.

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**EXCEPTIONS  
CHILD PROTECTION LAW**

**Child Protection Law, MCL 722.622 Definitions.**

(f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy

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**EXCEPTIONS  
CHILD PROTECTION LAW**

- **Child Protection Law, MCL 722.623 Sec. 3**

(1) An individual is required to report under this act as follows:...

This section lists mandatory reporters and includes mental health professionals

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Child Protection Law, MCL 722.623 Sec. 3**

(6) Indicates that if an allegation, written report or subsequent investigation determines that the person suspected of child abuse or neglect is not a “person responsible for the child's health or welfare”, DHS CPS will transmit the report or results of any investigation to law enforcement in county where alleged incident occurred

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Child Protection Law, MCL 722.623 Sec. 3**

(7) Indicates that if local law enforcement gets an allegation or written report or subsequent investigation indicates that the person suspected of the child abuse or neglect is “a person responsible for the child's health or welfare”, law enforcement shall refer the allegation, report or results of investigation to DHS CPS in county where the abused or neglected child is found

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Child Protection Law, MCL 722.624**

In addition to mandatory reporters, any person, including a child, who has reasonable cause to suspect child abuse or neglect may report to DHS CPS or law enforcement

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Child Protection Law MCL 722.631  
Privileged communications**

Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Child Protection Law, MCL 722.632  
Report to law enforcement officials or  
probate court.**

This act shall not prohibit a person who has reasonable cause to suspect child abuse or neglect from making a report to the appropriate law enforcement officials or probate court. (see definition #17)

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**EXCEPTIONS  
CHILD PROTECTION LAW**

■ **Attorney General Opinion No. 6934, March  
19, 1997, Kelly, AG**

CHILD PROTECTION LAW:

MENTAL HEALTH CODE:

Duty of community mental health  
professional to report child abuse

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**EXCEPTIONS  
CHILD PROTECTION LAW**

- Section 3 of the Child Protection Law does not impose a duty on a community mental health professional to report child abuse when an adult recipient of community mental health services discloses that he or she was abused as a child or when an adult recipient discloses having abused a child, who is now an adult, unless there is reasonable cause to suspect that there is a threat of harm to a child.

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**EXCEPTIONS  
CHILD PROTECTION LAW**

Two Exceptions:

**First** - If an adult recipient discloses having been abused as a child, and that abuser is now responsible for another child's health or welfare and facts and circumstances provide reasonable cause to suspect a threat of harm exists to that other child.

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**EXCEPTIONS  
CHILD PROTECTION LAW**

**Second** – If adult recipient discloses having abused a child who is now an adult but that recipient is now responsible for another child's health or welfare, and facts and circumstances provide reasonable cause to suspect a threat of harm exists to that other child.

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