

By: Allison

H.B. No. 3519

A BILL TO BE ENTITLED

AN ACT

1
2 relating to disclosure of confidential patient information by a
3 physician or mental health professional.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. (a) The legislature finds that the privilege of
6 confidentiality between a physician and a patient and between a
7 mental health professional and a patient is essential to foster
8 trust and candid communication. This confidentiality should not be
9 breached absent a compelling interest. Over the years, the
10 legislature has created exceptions to the privilege of
11 confidentiality, authorizing physicians and mental health
12 professionals to disclose confidential information in certain
13 circumstances. These exceptions recognize the importance of
14 providing physicians and mental health professionals with
15 discretion, rather than imposing a mandate, to disclose certain
16 patient information to satisfy certain compelling interests.

17 (b) In light of recent events involving and affecting
18 individuals living with mental health issues, the legislature
19 finds there is a greater need to afford physicians and mental
20 health professionals discretion to disclose patient information
21 when that disclosure could help mitigate harm to the patient or
22 others.

23 (c) The legislature supports the Supreme Court of Texas
24 holding in *Thapar v. Zezulka*, 994 S.W.2d 635 (Tex. 1999),

1 concluding that when law states a health professional "may"
2 perform an action, the law grants discretion rather than imposes a
3 requirement. The legislature intends for the exceptions created
4 under this Act to be construed in the same manner, as providing
5 discretion to disclose, but not imposing a duty to disclose. The
6 legislature reiterates this intent by including express language to
7 that effect in the law.

8 SECTION 2. Section 611.002(b), Health and Safety Code, is
9 amended to read as follows:

10 (b) Confidential communications or records may not be
11 disclosed except as provided by Section 611.004, 611.0041, or
12 611.0045.

13 SECTION 3. Section 611.004, Health and Safety Code, is
14 amended by amending Subsection (a) and adding Subsection (e) to
15 read as follows:

16 (a) A professional may disclose confidential information
17 only:

18 (1) to a governmental agency if the disclosure is
19 required or authorized by law;

20 (2) to a person reasonably able to prevent or mitigate
21 a threat, including the subject of the threat, [medical or law
22 enforcement personnel] if the professional, in good faith, believes
23 [determines] that disclosure is necessary to prevent or mitigate a
24 serious and [there is a probability of] imminent threat [physical
25 injury by the patient] to the health or safety of a person or the
26 public [patient or others or there is a probability of immediate
27 mental or emotional injury to the patient];

1 (3) to qualified personnel for management audits,
2 financial audits, program evaluations, or research, in accordance
3 with Subsection (b);

4 (4) to a person who has the written consent of the
5 patient, or a parent if the patient is a minor, or a guardian if the
6 patient has been adjudicated as incompetent to manage the patient's
7 personal affairs;

8 (5) to the patient's personal representative if the
9 patient is deceased;

10 (6) to individuals, corporations, or governmental
11 agencies involved in paying or collecting fees for mental or
12 emotional health services provided by a professional;

13 (7) to other professionals and personnel under the
14 professionals' direction who participate in the diagnosis,
15 evaluation, or treatment of the patient;

16 (8) in an official legislative inquiry relating to a
17 state hospital or state school as provided by Subsection (c);

18 (9) to designated persons or personnel of a
19 correctional facility in which a person is detained if the
20 disclosure is for the sole purpose of providing treatment and
21 health care to the person in custody;

22 (10) to an employee or agent of the professional who
23 requires mental health care information to provide mental health
24 care services or in complying with statutory, licensing, or
25 accreditation requirements, if the professional has taken
26 appropriate action to ensure that the employee or agent:

27 (A) will not use or disclose the information for

1 any other purposes; and

2 (B) will take appropriate steps to protect the
3 information; ~~[or]~~

4 (11) to satisfy a request for medical records of a
5 deceased or incompetent person pursuant to Section 74.051(e), Civil
6 Practice and Remedies Code; or

7 (12) to a person in accordance with Section 611.0041.

8 (e) A professional who discloses confidential information
9 under Subsection (a)(2) is presumed to have acted in good faith with
10 regard to a belief described by that subsection if the belief is
11 based on the professional's actual knowledge or in reliance on a
12 credible representation by a person with apparent knowledge or
13 authority.

14 SECTION 4. Chapter 611, Health and Safety Code, is amended
15 by adding Sections 611.0041 and 611.0042 to read as follows:

16 Sec. 611.0041. DISCLOSURE OF CONFIDENTIAL INFORMATION FOR
17 NOTICE AND PATIENT'S CARE. (a) For a patient who is available and
18 has the capacity to make health care decisions, a professional may
19 disclose confidential information in accordance with this section
20 if the professional:

21 (1) obtains the patient's consent;

22 (2) provides the patient with the opportunity to
23 object to the disclosure, and the patient does not object; or

24 (3) reasonably infers from the circumstances, based on
25 the exercise of professional judgment, that the patient does not
26 object to the disclosure.

27 (b) For a patient who is not available or for whom the

1 opportunity to consent or for objection to the use or disclosure
2 under Subsection (a) cannot practicably be provided because of the
3 patient's incapacity or an emergency, a professional may, in the
4 exercise of professional judgment, determine whether the
5 disclosure is in the best interests of the patient and disclose the
6 patient's confidential information in accordance with this section
7 if determined to be in the patient's best interests.

8 (c) A professional authorized to disclose confidential
9 information under this section may only disclose a patient's
10 confidential information that, in the exercise of professional
11 judgment, is directly relevant to:

12 (1) the recipient's involvement with the patient's
13 health care, including obtaining prescriptions, medical supplies,
14 test results, or other similar forms of confidential information;

15 (2) the recipient's involvement with payment for the
16 patient's health care; or

17 (3) notification to the patient's family member, the
18 patient's legally authorized representative, or a person
19 responsible for the patient's care at the patient's location,
20 general condition, or death.

21 (d) A professional may disclose a patient's confidential
22 information under this section only to:

23 (1) the patient's relative;

24 (2) the patient's close personal friend;

25 (3) a person identified by the patient to receive the
26 disclosure;

27 (4) the patient's legally authorized representative;

1 (5) a person responsible for the patient's care; or

2 (6) a governmental or private entity authorized by law

3 to assist in disaster relief efforts for the purpose described by

4 Subsection (c)(3).

5 (e) A professional may disclose a patient's confidential

6 information to a person described by Subsection (d)(6) without

7 complying with Subsection (a) or (b) to the extent the

8 professional, in the exercise of professional judgment, determines

9 that the requirements interfere with the professional's ability to

10 respond to the disaster.

11 (f) A professional may disclose a deceased patient's

12 confidential information to a person described by Subsection (d)

13 who is involved in the patient's care or with payment of the

14 patient's health care that is relevant to the recipient's

15 involvement unless the patient informed the professional that the

16 patient preferred that the information not be disclosed.

17 Sec. 611.0042. CONSTRUCTION OF AUTHORIZED DISCLOSURE

18 PROVISIONS. The authorization to disclose confidential

19 information described by Sections 611.004 and 611.0041 may not be

20 construed to create an independent duty or requirement to disclose

21 the information.

22 SECTION 5. Section 159.004, Occupations Code, is amended to

23 read as follows:

24 Sec. 159.004. EXCEPTIONS TO CONFIDENTIALITY IN OTHER

25 SITUATIONS. (a) An exception to the privilege of confidentiality in

26 a situation other than a court or administrative proceeding,

27 allowing disclosure of confidential information by a physician,

1 exists only with respect to the following:

2 (1) a governmental agency, if the disclosure is
3 required or authorized by law;

4 (2) a person reasonably able to prevent or mitigate a
5 threat, including the subject of the threat [~~medical or law~~
6 ~~enforcement personnel~~], if the physician, in good faith, believes
7 [~~determines~~] that disclosure is necessary to prevent or mitigate a
8 serious and [~~there is a probability of:~~

9 [(A)] imminent threat [~~physical injury~~] to the
10 health or safety of a [~~patient, the physician, or another~~] person or
11 the public [~~or~~

12 [(B) ~~immediate mental or emotional injury to the~~
13 ~~patient~~];

14 (3) qualified personnel for research or for a
15 management audit, financial audit, or program evaluation, but the
16 personnel may not directly or indirectly identify a patient in any
17 report of the research, audit, or evaluation or otherwise disclose
18 identity in any manner;

19 (4) those parts of the medical records reflecting
20 specific services provided if necessary in the collection of fees
21 for medical services provided by a physician, professional
22 association, or other entity qualified to provide or arrange for
23 medical services;

24 (5) a person who has consent, as provided by Section
25 [159.005](#);

26 (6) a person, corporation, or governmental agency
27 involved in the payment or collection of fees for medical services

1 provided by a physician;

2 (7) another physician or other personnel acting under
3 the direction of the physician who participate in the diagnosis,
4 evaluation, or treatment of the patient;

5 (8) an official legislative inquiry regarding state
6 hospitals or state schools, if:

7 (A) information or a record that identifies a
8 patient or client is not released for any purpose unless proper
9 consent to the release is given by the patient; and

10 (B) only records created by the state hospital or
11 school or its employees are included; ~~or~~

12 (9) health care personnel of a penal or other
13 custodial institution in which the patient is detained if the
14 disclosure is for the sole purpose of providing health care to the
15 patient; or

16 (10) a person in accordance with Section 159.0043.

17 (b) A physician who discloses confidential information
18 under Subsection (a)(2) is presumed to have acted in good faith with
19 regard to a belief described by that subsection if the belief is
20 based on the physician's actual knowledge or in reliance on a
21 credible representation by a person with apparent knowledge or
22 authority.

23 SECTION 6. Chapter 159, Occupations Code, is amended by
24 adding Sections 159.0043 and 159.0047 to read as follows:

25 Sec. 159.0043. DISCLOSURE OF CONFIDENTIAL INFORMATION FOR
26 NOTICE AND PATIENT'S CARE. (a) For a patient who is available and
27 has the capacity to make health care decisions, a physician may

1 disclose confidential information in accordance with this section
2 if the physician:

3 (1) obtains the patient's consent;

4 (2) provides the patient with the opportunity to
5 object to the disclosure, and the patient does not object; or

6 (3) reasonably infers from the circumstances, based on
7 the exercise of professional judgment, that the patient does not
8 object to the disclosure.

9 (b) For a patient who is not available or for whom the
10 opportunity to consent or for objection to the use or disclosure
11 under Subsection (a) cannot practicably be provided because of the
12 patient's incapacity or an emergency, a physician may, in the
13 exercise of professional judgment, determine whether the
14 disclosure is in the best interests of the patient and disclose the
15 patient's confidential information in accordance with this section
16 if determined to be in the patient's best interests.

17 (c) A physician authorized to disclose confidential
18 information under this section may only disclose a patient's
19 confidential information that, in the exercise of professional
20 judgment, is directly relevant to:

21 (1) the recipient's involvement with the patient's
22 health care, including obtaining prescriptions, medical supplies,
23 test results, or other similar forms of confidential information;

24 (2) the recipient's involvement with payment for the
25 patient's health care; or

26 (3) notification to the patient's family member, the
27 patient's legally authorized representative, or a person

1 responsible for the patient's care of the patient's location,
2 general condition, or death.

3 (d) A physician may disclose a patient's confidential
4 information under this section only to:

5 (1) the patient's relative;

6 (2) the patient's close personal friend;

7 (3) a person identified by the patient to receive the
8 disclosure;

9 (4) the patient's legally authorized representative;

10 (5) a person responsible for the patient's care; or

11 (6) a governmental or private entity authorized by law
12 to assist in disaster relief efforts for the purpose described by
13 Subsection (c)(3).

14 (e) A physician may disclose a patient's confidential
15 information to a person described by Subsection (d)(6) without
16 complying with Subsection (a) or (b) to the extent the physician, in
17 the exercise of professional judgment, determines that the
18 requirements interfere with the physician's ability to respond to
19 the disaster.

20 (f) A physician may disclose a deceased patient's
21 confidential information to a person described by Subsection (d)
22 who is involved in the patient's care or with payment of the
23 patient's health care that is relevant to the recipient's
24 involvement unless the patient informed the physician that the
25 patient preferred that the information not be disclosed.

26 Sec. 159.0047. CONSTRUCTION OF AUTHORIZED DISCLOSURE
27 PROVISIONS. The authorization to disclose confidential

1 information described by Sections 159.003, 159.004, and 159.0043
2 may not be construed to create an independent duty or requirement to
3 disclose the information.

4 SECTION 7. The change in law made by this Act applies only
5 to confidential information provided on or after the effective date
6 of this Act. Confidential information provided before the
7 effective date of this Act is governed by the law in effect
8 immediately before the effective date of this Act, and that law is
9 continued in effect for that purpose.

10 SECTION 8. This Act takes effect September 1, 2019.