

### School Safety Confidential Information Act

**Summary:** Allow a mental health professional to disclose limited information about a client to school district personnel if, in the professional's opinion, there is a threat to a school or the occupants of a school.

1. Revision necessary to C.R.S. 12-43-218, Disclosure of Confidential Communications. Under the existing statute there is a broad prohibition against sharing confidential information without client consent:

"(1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. ..."

2. Subsection (2) of the statute allows for exceptions. The School Safety Confidential Information Act would add an exception for school safety.

Draft language in italics:

(2) Subsection (1) of this section does not apply when: ...

*(d) A client, regardless of the client's age:*

*(I) Makes a direct threat against a school or the occupants thereof; or*

*(II) Makes statements or exhibits behaviors that, in the reasonable judgement of the licensee, registrant, or certificate holder, creates a dangerous environment in a school that may jeopardize the safety or wellbeing of children, students, teachers, administrators, parents, or other members of the school faculty or the general public; provided, however, that any such disclosure under this subsection (d) (II) be made to school district personnel on a strict need-to-know basis, and that such disclosure be kept confidential by the licensee, registrant, or certificate holder and applicable school district personnel.*

3. Considerations:

- a. Intentionally does not invoke C.R.S. 13-21-117, Duty to Warn. Not intended to expand professional liability.
- b. Information shared on a "need-to-know" basis. Need-to-know would be determined by the professional and school district personnel.
- c. Professional and school district personnel would be required to keep information confidential.

C.R.S. 12-43-218

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Seventieth General Assembly of the State of Colorado (2015) \*\*\*

TITLE 12. PROFESSIONS AND OCCUPATIONS  
HEALTH CARE  
ARTICLE 43. MENTAL HEALTH  
PART 2. GENERAL PROVISIONS

C.R.S. 12-43-218 (2015)

**12-43-218.** Disclosure of confidential communications

(1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of said communications acquired in such capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section does not apply when:

(a) A client or the heirs, executors, or administrators of a client file suit or a complaint against a licensee, registrant, or certificate holder on any cause of action arising out of or connected with the care or treatment of the client by the licensee, registrant, or certificate holder;

(b) A licensee, registrant, or certificate holder was in consultation with a physician, registered professional nurse, licensee, registrant, or certificate holder against whom a suit or complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, registrant, or certificate holder is conducted by any of the following:

(I) A board or a person or group authorized by the board to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where the licensee, registrant, or certificate holder practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-43-203 (11) if said person has signed a release authorizing such review;

(d) A client, regardless of the client's age:

(I) Makes a direct threat against a school or the occupants thereof; or

(II) Makes statements or exhibits behaviors that, in the reasonable judgement of the licensee, registrant, or certificate holder, creates a dangerous environment in a school that may jeopardize the safety or wellbeing of children, students, teachers, administrators, parents, or other members of the school faculty or the general public; provided, however, that any such disclosure under this subsection (d) (II) be made to school district personnel on a strict need-to-know basis, and that such disclosure be kept confidential by the licensee, registrant, or certificate holder and applicable school district personnel.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section do not become public records solely by virtue of the use of the records and information. The identity of a client whose records are reviewed shall not be disclosed to any person not directly involved in the review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with section 12-43-224 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

**HISTORY:** Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. L. 89: (4) amended, p. 699, § 5, effective July 7. L. 98: (1), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended, p. 1114, § 16, effective July 7. L. 2000: (1), (2)(a), (2)(b), IP(2)(c), and (2)(c)(II) amended, p. 1842, § 19, effective August 2. L. 2008: (1), (2), and (3) amended, p. 422, § 17, effective August 5. L. 2011: (1), IP(2), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended and (6) added, (SB 11-187), ch. 285, p. 1302, § 32, effective July 1.

#### ANNOTATION

Law reviews. For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Admissibility of Mental and Physical Health Records and Testimony", see 29 Colo. Law. 61 (December 2000).

The prohibition against revealing confidential information absent consent established

by subsection (1) is inapplicable when a grievance is filed against a psychologist and the board, in the interest of public health and safety, investigates the conduct of the psychologist. *Colo. Bd. of Psychologist Exam'rs v. I.W.*, 140 P.3d 186 (Colo. App. 2006).

This section does not create a private cause of action for damages for violation of a patient's right to confidentiality. *Dauwe v. Musante*, 122 P.3d 15 (Colo. App. 2004).

Communication between social worker and client may be compelled in the case of a sexual assault of a child under age 16. Court should make a determination after an in-camera review of the records. *People v. Ross*, 745 P.2d 277 (Colo. App. 1987) (decided under § 12-63.5-115 prior to its repeal in 1988).

Making it a criminal act for a social worker to reveal a privileged communication from a client was irreconcilable with § 19-3-304. *Human Servs. Inc. v. Woodward*, 765 P.2d 1052 (Colo. App. 1988) (decided under § 12-63.5-115 prior to its repeal in 1988).

When a psychotherapist reveals opinions to third parties without the client's consent, the psychotherapist is negligent. A divorced mother of two children was seeking therapy concerning allegations that the ex-husband and father of the children had abused the children. The mother was dissatisfied with treatment and ended the therapeutic relationship. The psychotherapist sent a letter to the father of the children and the new therapist for the mother and children opining that the mother's actions were alienating the father from the children. Such letter prompted the father to modify his custody arrangement with the mother. By sending the letter to the father, the psychotherapist was negligent and breached the duty of care to the mother. *Mitchell v. Ryder*, 20 P.3d 1229 (Colo. App. 2000).

Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law. Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kalley*, 2014 CO 50, 333 P.3d 89.



**LexisNexis®** [About LexisNexis](#) | [Privacy Policy](#) | [Terms &](#)

[Conditions](#) | [Contact Us](#)

Copyright © 2015 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

C.R.S. 13-21-117

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Seventieth General Assembly of the State of Colorado (2015) \*\*\*

TITLE 13. COURTS AND COURT PROCEDURE  
DAMAGES AND LIMITATIONS ON ACTIONS  
ARTICLE 21. DAMAGES  
PART 1. GENERAL PROVISIONS

C.R.S. **13-21-117** (2015)

**13-21-117.** Civil liability - mental health providers - duty to warn - definitions

(1) As used in this section, unless the context otherwise requires:

(a) "Mental health provider" means a physician, social worker, psychiatric nurse, psychologist, or other mental health professional, or a mental health hospital, community mental health center or clinic, institution, or their staff.

(b) "Psychiatric nurse" means a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by virtue of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing.

(2) (a) A mental health provider is not liable for damages in any civil action for failure to warn or protect a specific person or persons, including those identifiable by their association with a specific location or entity, against the violent behavior of a person receiving treatment from the mental health provider, and any such mental health provider must not be held civilly liable for failure to predict such violent behavior except where the patient has communicated to the mental health provider a serious threat of imminent physical violence against a specific person or persons, including those identifiable by their association with a specific location or entity.

(b) When there is a duty to warn and protect under the provisions of paragraph (a) of this subsection (2), the mental health provider shall make reasonable and timely efforts to notify the person or persons, or the person or persons responsible for a specific location or entity, that is specifically threatened, as well as to notify an appropriate law enforcement agency or to take other appropriate action, including but not limited to hospitalizing the patient. A mental health provider is not liable for damages in any civil action for warning a specific person or persons, or a person or persons responsible for a specific location or entity, against or predicting the violent behavior of a person receiving treatment from the mental health provider.

(c) A mental health provider must not be subject to professional discipline when there is a duty to warn and protect pursuant to this section.

(3) The provisions of this section do not apply to the negligent release of a patient from any mental health hospital or ward or to the negligent failure to initiate involuntary seventy-two-hour treatment and evaluation after a personal patient evaluation determining that the person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others.

**HISTORY:** Source: L. 86: Entire section added, p. 687, § 1, effective May 22.L. 2006: Entire section amended, p. 1396, § 37, effective August 7.L. 2014: Entire section R&RE, (HB 14-1271), ch. 109, p. 398, § 1, effective April 7.

#### ANNOTATION

Law reviews. For article, "The Duty to Warn and the Liability of Mental Health Care Providers", see 16 Colo. Law. 70 (1987). For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Perreira v. Colorado -- A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989). For comment, "A Proposal to Adopt a Professional Judgment Standard of Care in Determining the Duty of a Psychiatrist to Third Persons", see 62 U. Colo. L. Rev. 237 (1991).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 2014 repeal and reenactment.

The language of the statute is broad and all-encompassing. It applies to "any civil action" for "failure to warn", and nothing in the statute supports plaintiff's claim that it focuses only on duties to take affirmative action. *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

Limits on liability not confined to context of confidential, therapeutic relationship. Section applies to psychologist who evaluated individual even though psychologist did not treat the individual. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

The statute applies to inpatients. If the general assembly had intended the statute to apply only to outpatients, it could have used the words "a mental health outpatient's" instead of "a mental health patient's". *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

Victim rights statute (§ § 24-4.1-301 to 24-4.1-304) does not support any expansion of liability of mental health providers because it imposes no duty on those providers or liability for damages. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

Exception to immunity for acts of hospitalized patients. Although immunity is expressly extended to mental health hospitals and their staff members who fail to warn or protect others against a mental health patient's violent propensities, tendencies, or generalized threats of potential violence, there is an exception where hospital is aware of hospitalized patient's aggressive behavior towards plaintiff. *Halverson v. Pikes Peak Fam. Counseling*, 795 P.2d 1352 (Colo. App. 1990).

Exception does not only apply when attacked victim communicates violent threat to hospital and is broad enough to apply when the violent patient's threats have been communicated to the health care provider. *Halverson v. Pikes Peak Fam. Counseling*, 851 P.2d 233 (Colo. App. 1992).

Mental health provider has a duty to warn a person or persons of patient's violent behavior only when patient himself predicts his violent behavior by communicating or expressing his threat to the mental health provider. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

A psychologist's immunity for warning a possible victim is not dependent upon a subsequent determination that the patient was in fact a threat. Otherwise, the immunity would have little value if the psychologist would be exposed to liability after the threat failed to manifest harm, which may be the result of such a warning. In addition, immunity is not discharged by hospitalization. *McCarty v. Kaiser-Hill Co., L.L.C.*, 15 P.3d 1122 (Colo. App. 2000).

Section inapplicable to wrongful death action based upon alleged negligence in the treatment of a suicidal patient who later does commit suicide; instead, section contemplates and describes the duty to protect third persons from a mental health patient's behavior. *Sheron v. Lutheran Med. Center*, 18 P.3d 796 (Colo. App. 2000).

Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law. Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.



**LexisNexis**® [About LexisNexis](#) | [Privacy Policy](#) | [Terms &](#)

[Conditions](#) | [Contact Us](#)

Copyright © 2015 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.