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STATE OF ALASKA
THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

1988 - April 27

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/15/87

FURTHER REFERRALS:

DATE: April 27, 1988

The Judiciary Committee has considered SB 252am

"An Act relating to communications to a psychologist or psychological associate by a client."

RECOMMENDS:

- replace with HCS SB252 (Judiciary) [-] the same title
- attached amendment(s) [] a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: [] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact [] same as previous fiscal note published _____
- zero fiscal note [] same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

 Chairman's signature

Original sponsor: Josephson

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 252 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to communications to a psychologist
7 or psychological associate by a client."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.86.200(a) is amended to read:

10 (a) A psychologist or psychological associate may not reveal to
11 another person a communication made to the psychologist or psychologi-
12 cal associate by a client about a matter concerning which the client
13 has employed the psychologist or psychological associate in a profes-
14 sional capacity. This section does not apply to

15 (1) a case conference with other psychologists, psychologi-
16 cal associates, or with physicians and surgeons;

17 (2) a [, OR IN THE] case in which the client in writing
18 authorized the psychologist or psychological associate to reveal a
19 communication;

20 (3) a case where an immediate threat of serious physical
21 harm to an identifiable victim is communicated to a psychologist or
22 psychological associate by a client;

23 (4) disclosures of confidential communications required
24 under Rule 504, Alaska Rules of Evidence; or

25 (5) proceedings conducted by the board or the department
26 where the disclosure of confidential communications is necessary to
27 defend against charges that the psychologist or psychological associ-
28 ate has violated provisions of this chapter.

29 * Sec. 2. AS 08.86.200(b) is amended to read:

1 (b) Notwithstanding (a) of this section, a psychologist or
2 psychological associate shall report to the appropriate authority
3 incidents of child abuse or neglect as required by AS 47.17.020,
4 incidents of elder abuse as required by AS 47.24.010, and incidents of
5 abuse of disabled persons disclosed to the psychologist or psychologi-
6 cal associate by a client. In this subsection "disabled person" means
7 a person who has a physical or mental disability or a physical or
8 mental impairment, as defined in AS 18.80.300.
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**STATE OF ALASKA
1988 LEGISLATIVE SESSION**

BILL VERSION: HCS SB 252(Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 4-29-88
Title: Client - psychologist
confidentiality
Sponsor: Josephson
Requestor: _____

Agency Affected: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JH

Prepared by: John Hartle, Committee Aide
Division: House Judiciary Committee

Phone: 465-4990
Date: 4-29-88

Approved by Commissioner: John Sund, Chairman
Agency: House Judiciary Committee

Date: 4-29-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1 IN THE SENATE

BY JOSEPHSON

2

SENATE BILL NO. 252

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to communications to a psychologist
7 or psychological associate by a client."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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11 another person a communication made to the psychologist or psychologi-
12 cal associate by a client about a matter concerning which the client
13 has employed the psychologist or psychological associate in a profes-
14 sional capacity. This section does not apply to

15 (1) a case conference with other psychologists, psychologi-
16 cal associates, or with physicians and surgeons;

17 (2) a [, OR IN THE] case in which the client in writing
18 authorized the psychologist or psychological associate to reveal a
19 communication;

20 (3) a case where an immediate threat of serious physical
21 harm to an identifiable victim is communicated to a psychologist or
22 psychological associate by a client;

23 (4) disclosures of confidential communications required
24 under Rule 504, Alaska Rules of Evidence; or

25 (5) proceedings conducted by the board where the disclosure
26 of confidential communications is necessary to defend against charges
27 by the client that the psychologist or psychological associate has
28 violated provisions of this chapter.

29 * Sec. 2. AS 08.86.200(b) is amended to read:

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2 psychological associate shall report to the appropriate authority
3 incidents of child abuse or neglect as required by AS 47.17.020,
4 incidents of elder abuse as required by AS 47.24.010, and incidents of
5 abuse of ^{disabled} incompetent persons disclosed to the psychologist or
6 psychological associate by a client.

↑
add

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT H ANCHORAGE
3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7611



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4525

SPONSOR STATEMENT ON SB 252 am

What does SB 252 do?

Simply, it releases psychologists and psychological associates from their professional commitment of confidentiality to a client in a case where the client has made an immediate threat of serious physical harm to an identifiable victim.

The bill also allows disclosures of confidential communications required under Rule 504 of the Alaska Rules of Evidence. Confidential communications may also be disclosed where necessary to defend the psychologist against a claim of misconduct.

Lastly, the bill expands the required reporting of incidents of abuse to include senior citizens and incompetent persons, when such incidents of abuse are disclosed to the psychologist.

House Judiciary Committee
April 27, 1988.



Official Business

Alaska State Legislature

Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

TO: House Judiciary Committee
FROM: Senator Joe Josephson *JJS*
DATE: January 14, 1988
RE: Senate Bill 252

SB 252 am, which is supported by the Department of Commerce and Economic Development and the Alaska Psychological Association, would add three exceptions to the general rule that communications made by a client to a psychologist or psychological associate are confidential.

At present, AS 08.86.200(a) provides that a psychologist or psychological associate may not reveal a client's communication made in a professional setting, unless disclosure is made at a case conference with other psychologists or psychological associates, or with doctors, or unless the client has given written permission for the disclosure of the communication.

The three additional exceptions proposed are:

- when the client has made an immediate threat of physical harm to an identifiable victim;
- when disclosure is required under Rule 504, Alaska Rules of Evidence; and
- when the Board of Psychological Examiners or the Department have initiated proceedings against a psychologist or psychological associate, and disclosure is necessary to enable the psychologist or psychological associate to defend against the charges.

The reasons for adding the three additional exceptions are obvious. In the first case, when a threat of physical harm has been made, disclosure may be required to protect a potential, identifiable victim. In the second case, when disclosure is required under Rule 504, Alaska Rules of Evidence, the psychologist or psychological associate is placed in the dilemma that compliance with the Rule can

Page Two

constitute a violation of the statute. This is a "Catch 22" situation which ought to be corrected.

Finally, it is obviously unfair to impose confidentiality upon one who has been charged with a violation of law, if disclosure of a confidential communication could explain conduct and enable the charged person to defend against the charges.

In addition, SB 252 am would amend AS 08.86.200(b) by requiring a psychologist or psychological associate to report incidents of elder abuse or abuse of incompetent persons to the appropriate authority. At present, the only reporting requirement is for cases of child abuse or neglect. The additional reporting requirement is consistent with legislative concern for the protection of the elderly, and of incompetents, from abuse.

A copy of Rule 504, Alaska Rules of Evidence, and a copy of the zero fiscal note, are attached.

Attachments

110290

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4-27-87

<u>REQUEST</u>	<u>FISCAL DETAIL</u>
Bill/Resolution No. : <u>SB 252</u>	Agency Affected : _____
Title : <u>Client - Psychologist Confidentiality</u>	BRU : _____
_____	_____
Sponsor : <u>Jospehson</u>	Components : _____
Requestor : _____	_____
Date of Request : _____	_____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

Prepared by: Senate HESS *St. P. Frick* Phone: 465 - 3791

Division: _____ Date: 4/25/87

Approved by Commissioner: _____ Date: _____

Agency: _____

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient to so be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian, guardian *auctorem* or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist

at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) *Exceptions.* There is no privilege under this rule:

(1) *Condition and Element of Claim or Defense.* As to communications relevant to the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, of any party claiming through or under the patient, of any person raising the patient's condition as an element of his own case, or of any person claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or after the patient's death, in any proceeding in which any party puts the condition in issue.

(2) *Crime or Fraud.* If the services of the physician or psychotherapist were sought, obtained or used to enable or aid anyone to commit or plan a crime or fraud or to escape detection or apprehension after the commission of a crime or a fraud.

(3) *Breach of Duty Arising Out of Physician-Patient Relationship.* As to a communication relevant to an issue of breach, by the physician, or by the psychotherapist, or by the patient, of a duty arising out of the physician-patient or psychotherapist-patient relationship.

(4) *Proceedings for Hospitalization.* For communications relevant to an issue in proceedings to hospitalize the patient for physical, mental or emotional illness, if the physician or psychotherapist, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(5) *Required Report.* As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection.

(6) *Examination by Order of Judge.* As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This

exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he may advise the defendant whether to enter a plea based on insanity or to present a defense based on his mental or emotional condition.

(7) *Criminal Proceeding.* For physician-patient communications in a criminal proceeding. This exception does not apply to the psychotherapist-patient privilege. (Added by Supreme Court Order 364 effective August 1, 1979)

The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road
Fairbanks AK 99709

February 22, 1988

House Judiciary Committee Members

Representatives Barnes, Cotten, Gruenberg, Navarre, Sund,
Taylor and Ulmer

Interior Delegation Members

Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, Fanning

P.O. Box V

Juneau, AK 99811

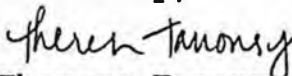
Re: Senate Bill 252 am

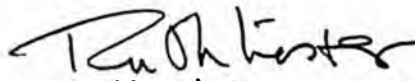
Dear Legislators,

I am writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on Senate Bill 252, which expands the exceptions to the statutory duty of confidentiality on the part of psychologists and psychological associates.

The Task Force supports this bill. In the interior, there have been suits brought by child sexual offenders in precisely those instances contemplated by the new subsection (3) which the bill would add to AS 08.86.200(a), i.e., the offender has made to the therapist an immediate threat of serious physical harm to an identifiable victim, which the therapist has then disclosed, following which the offender sued the therapist for violation of confidentiality. The court's ruling was in accordance with the statutory proposal, i.e., the offender's right to confidentiality does not apply in such situations; but having this codified in statutory form would reduce the costs of defending such an action, as well as discourage the filing of such a suit in the first place. For the sake of the victims and potential victims of such offenders, and the sake of the psychologists and psychological associates who have better uses for their time than fending off such suits, we urge enactment of the bill. Thank you for your consideration.

Sincerely,


Theresa Tanoury
Coordinator


Ruth Lister
Chair



Aron S. Wolf, M.D., F.A.P.A. - President
Elinor E. Weeks, M.D.
Grag McCarthy, M.D.
Thomas L. Jewitt, M.D.
Bruce N. Smith, Ph. D.
Martin Alraps, Ph. D.
Richard F. Lazur, Psy. D.
Nicki J. Nielsen, M.S.W., A.C.S.W.
Helen Craig, M.S.W., A.C.S.W. - Secretary Treasurer
Donald Sparrow, M.S.W., A.C.S.W.
Wendy Chase, M.S.W., A.C.S.W.
Jackie T. Jaday, M.S.W.
Randall Jones, M.A. - Vice President
Theresa Turner - Office Manager

February 8, 1988

Chairman
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Sir:

I am writing this letter of support for S.B. 252 as representative for the Alaska Psychological Association. Confidentiality is the medium through which psychology is able to effect change in individuals, families, groups, or organizations. In the past 15 years, legal challenges to confidentiality (e.g., Tarasoff) have impinged upon blanket psychologist-client privilege. The National American Psychological Association has recently published recommendations to all state psychological associations to amend existing confidentiality statutes to reflect these recent court decisions. To date, 32 other states have adopted similar recommended exclusions enumerated in S.B. 252. The nucleus of this bill is to protect the consumer against intrusion into the doctor-patient relationship by clearly specifying exclusions necessary for the protection of the greater public.

If you should have any further questions, please contact me by phone at 561-1361.

Sincerely,

Bruce N. Smith Ph.D.

Bruce N. Smith, Ph.D.
Past President
Chair, Legislative Committee

BNS/cs

JH ✓

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT H ANCHORAGE
3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7611



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4525

Committee

To: John Sund, Chairman
House Judiciary Committee

From: Senator Joe P. Josephson *Joe P. Josephson*

Re: Scheduling of Senat Bill 252

Date: March 10, 1988

I know that your committee schedule is very heavy these days, and that you are hearing a great number of House bills. I would like to request that when you begin to take up Senate bills, that you consider scheduling SB 252.

This is a bill I sponsored at the behest of the Alaska Psychological Association last year. Its topical nature warrants legislative attention.

The bill would make provisions in law to allow psychologists and psychiatrists to warn of a patient's violent threats against an identifiable victim. Such communications are currently held to be confidential between the professional and the patient.

Thank you for your attention and favorable consideration to my request.

cc: Dr. Paul Craig, President-elect
Alaska Psychological Association