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HOUSE BILL 1772

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Goodman and Ryu

Read first time 02/08/13. Referred to Committee on Judiciary.

1 AN ACT Relating to extending physician-patient privilege to other  
2 health care providers; and amending RCW 5.60.060 and 18.73.270.

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

4 **Sec. 1.** RCW 5.60.060 and 2012 c 29 s 12 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)(a) 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  
23 surgeon (~~(or)~~), podiatric physician or surgeon, or emergency medical  
24 responder shall not, without the consent of his or her patient, be  
25 examined in a civil action as to any information acquired in attending  
26 such patient, which was necessary to enable him or her to prescribe or  
27 act for the patient, except as follows:

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

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

37 (b) For the purposes of this subsection, "emergency medical  
38 responder" means a "physician's trained emergency medical service

1 intermediate life support technician and paramedic" as that term is  
2 defined in RCW 18.71.200, or an "emergency medical technician" or  
3 "first responder" as those terms are defined in RCW 18.73.030.

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

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

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

22 (i) Law enforcement officer, firefighter, civilian employee of a  
23 law enforcement agency, or civilian employee of a fire department, who  
24 has received training to provide emotional and moral support and  
25 counseling to an officer or firefighter who needs those services as a  
26 result of an incident in which the officer or firefighter was involved  
27 while acting in his or her official capacity; or

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

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

37 (a) For purposes of this section, "sexual assault advocate" means  
38 the employee or volunteer from a community sexual assault program or

1 underserved populations provider, victim assistance unit, program, or  
2 association, that provides information, medical or legal advocacy,  
3 counseling, or support to victims of sexual assault, who is designated  
4 by the victim to accompany the victim to the hospital or other health  
5 care facility and to proceedings concerning the alleged assault,  
6 including police and prosecution interviews and court proceedings.

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

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

21 (a) For purposes of this section, "domestic violence advocate"  
22 means an employee or supervised volunteer from a community-based  
23 domestic violence program or human services program that provides  
24 information, advocacy, counseling, crisis intervention, emergency  
25 shelter, or support to victims of domestic violence and who is not  
26 employed by, or under the direct supervision of, a law enforcement  
27 agency, a prosecutor's office, or the child protective services section  
28 of the department of social and health services as defined in RCW  
29 26.44.020.

30 (b) A domestic violence advocate may disclose a confidential  
31 communication without the consent of the victim if failure to disclose  
32 is likely to result in a clear, imminent risk of serious physical  
33 injury or death of the victim or another person. This section does not  
34 relieve a domestic violence advocate from the requirement to report or  
35 cause to be reported an incident under RCW 26.44.030(1) or to disclose  
36 relevant records relating to a child as required by RCW 26.44.030(12).  
37 Any domestic violence advocate participating in good faith in the  
38 disclosing of communications under this subsection is immune from

1 liability, civil, criminal, or otherwise, that might result from the  
2 action. In any proceeding, civil or criminal, arising out of a  
3 disclosure under this subsection, the good faith of the domestic  
4 violence advocate who disclosed the confidential communication shall be  
5 presumed.

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

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

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

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

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

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

27 **Sec. 2.** RCW 18.73.270 and 2009 c 359 s 1 are each amended to read  
28 as follows:

29 (1) Except when treatment is provided in a hospital licensed under  
30 chapter 70.41 RCW, a physician's trained emergency medical service  
31 intermediate life support technician and paramedic, emergency medical  
32 technician, or first responder who renders treatment to a patient for  
33 (a) a bullet wound, gunshot wound, powder burn, or other injury arising  
34 from or caused by the discharge of a firearm; (b) an injury caused by  
35 a knife, an ice pick, or any other sharp or pointed instrument which  
36 federal, state, or local law enforcement authorities reasonably believe  
37 to have been intentionally inflicted upon a person; (c) a blunt force

1 injury that federal, state, or local law enforcement authorities  
2 reasonably believe resulted from a criminal act; or (d) injuries  
3 sustained in an automobile collision, shall disclose without the  
4 patient's authorization, upon a request from a federal, state, or local  
5 law enforcement authority as defined in RCW 70.02.010(3), the following  
6 information, if known:

- 7 (i) The name of the patient;
- 8 (ii) The patient's residence;
- 9 (iii) The patient's sex;
- 10 (iv) The patient's age;
- 11 (v) The patient's condition or extent and location of injuries as  
12 determined by the physician's trained emergency medical service  
13 intermediate life support technician and paramedic, emergency medical  
14 technician, or first responder;
- 15 (vi) Whether the patient was conscious when contacted;
- 16 (vii) Whether the patient appears to have consumed alcohol or  
17 appears to be under the influence of alcohol or drugs;
- 18 (viii) The name or names of the physician's trained emergency  
19 medical service intermediate life support technician and paramedic,  
20 emergency medical technician, or first responder who provided treatment  
21 to the patient; and
- 22 (ix) The name of the facility to which the patient is being  
23 transported for additional treatment.

24 (2) A physician's trained emergency medical service intermediate  
25 life support technician and paramedic, emergency medical technician,  
26 first responder, or other individual who discloses information pursuant  
27 to this section is immune from civil or criminal liability or  
28 professional licensure action for the disclosure, provided that the  
29 physician's trained emergency medical service intermediate life support  
30 technician and paramedic, emergency medical technician, first  
31 responder, or other individual acted in good faith and without gross  
32 negligence or willful or wanton misconduct.

33 (3) The obligation to provide information pursuant to this section  
34 is secondary to patient care needs. Information must be provided as  
35 soon as reasonably possible taking into consideration a patient's  
36 emergency care needs.

37 (4) For purposes of this section, "a physician's trained emergency

1 medical service intermediate life support technician and paramedic" has  
2 the same meaning as in RCW 18.71.200.

3 (5) The privilege described in RCW 5.60.060(4) is not a basis for  
4 excluding as evidence in any criminal proceeding any report or  
5 information contained in a report or disclosure made under this  
6 section.

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