

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 587                                  Psychotherapist-Patient Privilege  
**SPONSOR(S):** Roberson  
**TIED BILLS:**    **IDEN./SIM. BILLS:** SB 544

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Judiciary Committee</u>	<u></u>	<u>Hogge</u>	<u>Hogge</u>
2) <u>Health Care Regulation Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

**SUMMARY ANALYSIS**

The Florida Evidence Code includes a number of privileges. Privileges render certain communications or records inadmissible as evidence. One such privilege under Florida law is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence.

Over the years, the Legislature has on various occasions, expanded the definition of “psychotherapist” for purposes of the privilege. Currently, “psychotherapist” includes licensed medical doctors, psychologists, clinical social workers, marriage and family therapists, and mental health counselors. Also included are other treatment personnel employed by certain licensed health facilities and engaged primarily in the diagnosis and treatment of mental health and substance abuse conditions.

This bill extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental health and substance abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS

The bill could be seen as safeguarding individual liberty by expanding the protections given to certain communications between patients and their mental health professionals.

#### B. EFFECT OF PROPOSED CHANGES:

##### **PROPOSED CHANGES**

This bill extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental health and substance abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice.

##### **BACKGROUND**

###### Psychotherapist-Patient Privilege

The Florida Evidence Code contains a number of privileges. Privileges render certain communications or records within a protected relationship inadmissible as evidence in civil and criminal proceedings. Examples of protected relationships include the relationship between attorney and client; clergy and penitent; and husband and wife. Another is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence. Concerning the psychotherapist-patient privilege, the operative language in the Code provides:

A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.<sup>1</sup>

The privilege has been extended to various mental health professionals since first incorporated into the Code. Initially limited to psychiatrists, the privilege was extended by the Legislature to any person "authorized to practice (medicine or psychology) in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition." Later revisions extended it to cover treatment personnel of state-licensed hospitals, mental health facilities and substance abuse treatment centers, when those personnel are primarily engaged in mental health diagnosis or treatment; and state-licensed or certified social workers,<sup>2</sup> marriage and family therapists, and mental health counselors, again, only if primarily engaged in mental health treatment or diagnosis.

Florida's psychotherapist-patient privilege may be asserted by the patient, by a guardian or conservator of the patient, or by the personal representative of the estate of a deceased patient. It may also be asserted

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<sup>1</sup> S. 90.503(2), Fla. Stat. (2004)

<sup>2</sup> Many advanced nurse practitioners apparently are already included within the current definition of "psychotherapist," since they are covered as staff of a licensed hospital, mental health facility or substance abuse center.

by the psychotherapist, but only on the patient's behalf. An assertion of the privilege by the psychotherapist creates a rebuttable presumption that it is made on the patient's behalf.

### Advanced Registered Nurse Practitioners

Nursing in Florida is regulated under the Nurse Practice Act ("NPA"), ch. 464, F.S. Under the Nurse Practice Act, nurses licensed in Florida may seek certification as advanced registered nurse practitioners; this certification authorizes them to "perform acts of medical diagnosis and treatment, prescription, and operation which are identified by" a joint committee of the Board of Nursing and the Board of Medicine.

Advanced registered nurse practitioners perform all duties of a registered nurse, in addition to advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses. Advanced registered nurse practitioners may perform medical acts under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols identifying the medical acts to be performed and the conditions for their performance. Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

To be certified as an advanced registered nurse practitioner, a nurse must demonstrate either: 1) successful completion of a course in advanced nursing which is at least one academic year in length and primarily meant to prepare nurses for advanced or specialized practice; 2) certification by an appropriate specialty board; or 3) graduation from a program leading to a master's degree in a nursing clinical area. The Nurse Practice Act requires the Board of Nursing to adopt rules authorizing advanced registered nurse practitioners to perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee. The Board of Nursing and the Board of Medicine have filed identical administrative rules setting forth standards for the protocols which establish obligations on medical physicians, osteopathic physicians, and dentists who enter into protocol relationships with advanced registered nurse practitioners.

## C. SECTION DIRECTORY:

Section 1. Amends s. 90.503, F.S., to add certain advanced registered nurse practitioners to the definition of "psychotherapist" for purposes of the application of the psychotherapist-patient privilege.

Section 2. Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.

2. Expenditures:  
None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Many advanced nurse practitioners are already included within the current definition of "psychotherapist," since they are covered as staff of a licensed hospital, mental health facility or substance abuse center.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

- A. HOUSE PRINCIPLES ANALYSIS:
  
- B. EFFECT OF PROPOSED CHANGES:
  
- C. SECTION DIRECTORY:

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

- A. FISCAL IMPACT ON STATE GOVERNMENT:
  - 1. Revenues:
  
  - 2. Expenditures:
  
- B. FISCAL IMPACT ON LOCAL GOVERNMENTS:
  - 1. Revenues:
  
  - 2. Expenditures:
  
- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
  
- D. FISCAL COMMENTS:

### **III. COMMENTS**

- A. CONSTITUTIONAL ISSUES:
  - 1. Applicability of Municipality/County Mandates Provision:
  
  - 2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**