

JUDICIAL PROOF

CHAPTER 349

HOUSE BILL NO. 1304
(Martinson)

ADDICTION COUNSELOR-CLIENT PRIVILEGE

AN ACT to establish a certified addiction counselor-client privilege for confidential communications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS. As used in this Act:

1. "Client" means a person who consults or is examined or interviewed by a counselor.
2. "Confidential communication" means a communication which is not intended to be disclosed to third parties, except persons present to further the interest of the client in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the counselor, including members of the client's family.
3. "Counselor" means an addiction counselor who has been certified by the professional standards and certification committee appointed by the state health officer in accordance with qualifications established by that committee or who is reasonably believed by the client so to be, while engaged in the diagnosis or treatment of a physical, mental, or emotional condition, including alcohol or any addiction.
4. "Privilege" means the counselor-client privilege authorized under sections 1 through 4 of this Act.

SECTION 2. CERTIFIED ADDICTION COUNSELOR - CLIENT GENERAL RULE OF PRIVILEGE. A client 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 the client's physical, mental, or emotional condition, including alcohol or drug addiction, among the client, the client's counselor, and

persons who are participating in the diagnosis or treatment under the direction of the counselor, including members of the client's family.

SECTION 3. WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the client, the client's guardian or conservator, or the personal representative of a deceased client. The person who was the counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

SECTION 4. EXCEPTIONS TO THE PRIVILEGE.

1. There is no privilege under this Act for communications relevant to an issue in proceedings to hospitalize the client for mental illness, including alcohol or drug addiction, if the counselor in the course of diagnosis or treatment has determined the client is in need of hospitalization.
2. If the court orders an examination of the physical, mental, or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under this Act with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.
3. There is no privilege under this Act as to a communication relevant to an issue of the physical, mental, or emotional condition of the client in any proceeding in which the client relies on a condition as an element of the client's claim or defense or, after the client's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

Approved March 26, 1981