

AMENDED IN SENATE AUGUST 24, 2009

AMENDED IN SENATE JUNE 23, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 681

Introduced by Assembly Member Hernandez

February 26, 2009

An act to amend Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as amended, Hernandez. Confidentiality of medical information: psychotherapy.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient.

This bill would also except from those provisions disclosures that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56.104 of the Civil Code is amended to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, ~~except as authorized in paragraph (1) of subdivision (c) of Section 56.10 or except for information requested by law enforcement subsequent to a disclosure authorized in paragraph (19) of subdivision (c) of Section 56.10 in which that information is clearly necessary to prevent the serious and imminent threat disclosed under that paragraph, except as provided in subdivision (e),~~ no provider of health care, health care service plan, or contractor may release medical information to persons or entities *who have requested that information and who are* authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before

1 or immediately after the length of time specified in paragraph (2)
2 has expired.

3 (b) The person or entity requesting the information shall submit
4 a copy of the written request required by this section to the patient
5 within 30 days of receipt of the information requested, unless the
6 patient has signed a written waiver in the form of a letter signed
7 and submitted by the patient to the provider of health care or health
8 care service plan waiving notification.

9 (c) For purposes of this section, “psychotherapist” means a
10 person who is both a “psychotherapist” as defined in Section 1010
11 of the Evidence Code and a “provider of health care” as defined
12 in subdivision (i) of Section 56.05.

13 (d) This section does not apply to the disclosure or use of
14 medical information by a law enforcement agency or a regulatory
15 agency when required for an investigation of unlawful activity or
16 for licensing, certification, or regulatory purposes, unless the
17 disclosure is otherwise prohibited by law.

18 (e) *This section shall not apply to either of the following:*

19 (1) *Information authorized to be disclosed pursuant to*
20 *paragraph (1) of subdivision (c) of Section 56.10.*

21 (2) *Information requested by law enforcement or by the target*
22 *of the threat subsequent to a disclosure authorized by paragraph*
23 *(19) of subdivision (c) of Section 56.10, in which the additional*
24 *information is clearly necessary to prevent the serious and*
25 *imminent threat disclosed under that paragraph.*

26 (e)

27 (f) Nothing in this section shall be construed to grant any
28 additional authority to a provider of health care, health care service
29 plan, or contractor to disclose information to a person or entity
30 without the patient’s consent.