

**CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS
RE: BSRB LICENSEES**

For psychologists,¹ clinical psychotherapists,² masters social workers,³ clinical social workers,⁴ clinical professional counselors,⁵ professional counselors⁶:

(a) The confidential relations and communications between a licensed psychologist and the psychologist's client are placed on the same basis as provided by law for those between an attorney and the attorney's client. Except as provided in subsection (b), nothing in this act shall be construed to require such privileged communications to be disclosed.

(b) Nothing in this section or in this act shall be construed to prohibit any licensed psychologist from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

There are 2 bases of confidentiality for an attorney and client:

K.S.A. 60-426, which is applicable in judicial or quasi-judicial proceedings (administrative hearings, and prehearing proceedings such as depositions) in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client.

Kansas Supreme Court Rule 1.6, which is applicable in all other situations.

Rule 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime; or

¹K.S.A. 74-5323.

²K.S.A. 74-5372.

³K.S.A. 65-6315.

⁴K.S.A. 65-6315.

⁵K.S.A. 65-5810.

⁶K.S.A. 65-5810.

(2) to comply with requirements of law or orders of any tribunal; or

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

K.S.A. 60-426: Lawyer-client privilege.

(a) General rule. Subject to K.S.A. 60-437, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege

(1) if he or she is the witness to refuse to disclose any such communication, and

(2) to prevent his or her lawyer from disclosing it, and

(3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness

(i) in the course of its transmittal between the client and the lawyer, or

(ii) in a manner not reasonably to be anticipated by the client, or

(iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.

(b) Exceptions. Such privileges shall not extend

(1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or

(2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether

the respective claims are by testate or intestate succession or by inter vivos transaction, or

(3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or

(4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or

(5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section

(1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person;

(2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship;

(3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

For clinical marriage & family therapists and marriage & family therapists⁷:

(a) A person licensed under the marriage and family therapists licensure act and employees and professional associates of the person shall not be required to disclose any information that the person, employee or associate may have acquired in rendering marriage and family therapy services, unless:

(1) Disclosure is required by other state laws;

(2) failure to disclose the information presents a clear and present danger to the health or safety of an individual;

(3) the person, employee or associate is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case a waiver of the privilege accorded by this section is limited to that action;

(4) the client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that person's behalf; or

(5) a client agrees to a waiver of the privilege accorded by this section, and in circumstances where more than one person in a family is receiving therapy, each such family member agrees to the waiver. Absent a waiver from each family member, a marriage and family therapist shall not disclose information received from a family member.

(b) Nothing in this section or in this act shall be construed to prohibit any person licensed under the marriage and family therapist licensure act from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

⁷K.S.A. 65-6410.

For associate social workers and baccalaureate social workers⁸:

(a) No licensed social work associate or licensed baccalaureate social worker, secretary, stenographer or clerk of a licensed social work associate or licensed baccalaureate social worker or anyone who participates in delivery of social work services or anyone working under supervision of a licensed social worker may disclose any information such person may have acquired from persons consulting such person in the person's professional capacity or be compelled to disclose such information except:

(1) With the written consent of the client, or in the case of death or disability, of the personal representative of the client, other person authorized to sue or the beneficiary of an insurance policy on the client's life, health or physical condition;

(2) when the person is a child under the age of 18 years and the information acquired by the licensed social worker indicated that the child was the victim or subject of a crime, the licensed social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such a crime is a subject of inquiry;

(3) when the person waives the privilege by bringing charges against the licensed social worker but only to the extent that such information is relevant under the circumstances.

⁸K.S.A. 65-6315.