

1 AN ACT relating to confidentiality of mental health records.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) When a release of medical records, including mental health records of either
6 party to a divorce or custody proceeding under this chapter, is tendered pursuant
7 to the Family Court Rules of Practice and Procedure (FCRPP), those records
8 shall be delivered pursuant to the FCRPP guidelines.

9 (2) In the event either party objects to signing a release related to production of his
10 or her mental health records, an individual with a legally recognized interest in
11 the disclosures sought may request an order authorizing the disclosure of a
12 party's mental health records. The request shall:

13 (a) Use initials only to refer to any patient; and

14 (b) Not contain or otherwise disclose any patient identifying information unless
15 the:

16 1. Patient is the applicant;

17 2. Patient has given written consent to disclose; or

18 3. Court has ordered the record of the proceeding sealed from the public.

19 (3) The patient and the person holding the records from whom disclosure is sought
20 shall be provided:

21 (a) Adequate notice in a manner that does not disclose patient-identifying
22 information to other persons; and

23 (b) An opportunity to file a written response to the request, or to appear in
24 person, for the limited purpose of providing evidence on the statutory and
25 regulatory criteria for the issuance of the court order as described in
26 subsection (5) of this section.

27 (4) Unless the patient requests an open hearing, any oral argument, review of

1 evidence, or hearing on the request shall be held in the judge's chambers or in
2 some manner which ensures that patient-identifying information is not disclosed
3 to anyone other than a party to the proceeding, the patient, or the person holding
4 the record. The proceeding may include an examination by the judge of the
5 patient records referred to in the request.

6 (5) An order under subsection (2) of this section shall be entered only if the court
7 finds that:

8 (a) Other ways of obtaining the information are not available or would not be
9 effective; and

10 (b) The public interest and need for the disclosure outweigh the potential injury
11 to the patient, the physician-patient relationship, and the treatment services.

12 (6) All mental health records used in proceedings under this chapter shall be
13 accompanied by an order which shall:

14 (a) Limit disclosure to those parts of the patient's record which are essential to
15 fulfill the objective of the order;

16 (b) Limit disclosure to those persons whose need for information is the basis for
17 the order; and

18 (c) Include other measures as are necessary to limit disclosure for the
19 protection of the patient, the physician-patient relationship, and the
20 treatment services, such as:

21 1. Limiting viewing of the records to in camera inspection;

22 2. Restricting discussion of the content of the mental health records with
23 anyone who is not a party to the case;

24 3. Restricting copying, photographing, or otherwise duplicating records;
25 and

26 4. Sealing the record.

27 (7) A violation of an order entered under this section may subject the offender to the

- 1 contempt powers of the court.
- 2 (8) Nothing in this section shall be construed to restrict treatment providers or other
- 3 professionals involved in a court proceeding from collaborating or consulting
- 4 with one another or any other individual involved in the proceeding from
- 5 reporting a legitimate safety concern or incident of abuse to the appropriate
- 6 authorities.