

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

661E0050

## HOUSE BILL NO. 1002

Introduced by: Representatives Monroe, McCoy, and Slaughter and Senators Ham and Madden at the request of the Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the waiver of a  
2 patient's privilege on communications with a physician or psychotherapist.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 19-13-11 be amended to read as follows:

5 19-13-11. ~~There is no~~ The privilege under § 19-13-7 as to a communication relevant to an  
6 issue of the physical, mental, or emotional condition of the patient is waived in any proceeding  
7 in which ~~he relies upon~~ the condition as is an element of ~~his~~ the patient's claim or defense or,  
8 after the patient's death, in any proceeding in which any party relies upon the condition as an  
9 element of ~~his~~ a claim or defense.

10 Section 2. That § 19-2-3 be amended to read as follows:

11 19-2-3. In any action or proceeding or quasi-judicial administrative proceeding, ~~whenever~~  
12 if the physical or mental health of any person is in issue, any privilege under § 19-13-7 ~~shall~~  
13 ~~conclusively be deemed to be~~ is waived at trial or for the purpose of discovery under chapter  
14 15-6 if such action or proceeding is civil in nature. However, the waiver of the privilege shall be  
15 narrow in scope, closely tailored to the time period and subject matter of the claim. If any party

1 objects to the discovery of the privileged communication on the grounds that disclosure of the  
2 communication would subject the party to annoyance, embarrassment, oppression, or undue  
3 burden or expense and that the disclosure of the privileged communication is not likely to lead  
4 to the discovery of relevant evidence, the court shall conduct an in camera review of the  
5 privileged communication to determine whether the communication is discoverable.