

# Victim Privilege Statutes by Practitioner

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# **COUNSELOR/ADVOCATE & THERAPIST**

## **SEXUAL ASSAULT AND DOMESTIC VIOLENCE**

### **ALABAMA**

#### **ALA. CODE § 30-6-8 (2011) DISCLOSURE OF INFORMATION [DOMESTIC VIOLENCE FACILITIES]**

Information received by the office, the circuit, any district attorney or his or her employees, or by authorized persons employed by or volunteering services to a facility, through files, reports, inspection, or otherwise, shall be deemed confidential information, except as otherwise herein provided, and shall not be disclosed publicly in such a manner as to identify individuals or facilities. Oral communications between a domestic violence victim and an advocate and written reports and records concerning the victim may not be disclosed without the written consent of the victim. This privilege does not relieve a person from any duty imposed pursuant to Section 26-14-1 or Section 38-9-2. A victim or advocate may not claim this privilege when providing evidence in proceedings concerning child abuse, but may claim this privilege in all other proceedings, both criminal and civil. This privilege expires upon the death of the victim. Each facility, with the approval of the office, shall establish its own rules, regulations, and policies for the performance of the responsibilities charged to it in this chapter. The office shall ensure that the information obtained under authority of this chapter shall be restricted to the items germane to the implementation thereof and shall ensure that the provisions are administered so as not to accumulate any information or distribute any information that is not required by this chapter. The office and each participating district attorney shall ensure that adequate safeguards are incorporated so that data available is used only by properly authorized persons, facilities, and agencies.

#### **ALA. CODE §§ 15-23-41 TO 45 (2011) CRIME COUNSELOR CONFIDENTIALITY**

##### **§ 15-23-41 DEFINITIONS**

As used in this article, unless a contrary meaning is clearly intended from the context in which the term appears, the following terms have the respective meanings hereinafter set forth and indicated:

(1) **CONFIDENTIAL COMMUNICATION.** Any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence.

(2) **VICTIM.** A person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence.

(3) **SEXUAL ASSAULT.** Any sexual offense enumerated in Sections 13A-6-60 through 13A-6-70.

(4) **FAMILY VIOLENCE.** The occurrence of one or more of the following acts between family or household members:

- a. Attempting to cause or causing physical harm.
- b. Placing another in fear of imminent serious physical harm.

(5) **FAMILY OR HOUSEHOLD MEMBERS** Children, spouses, former spouses, persons of the opposite sex living as spouses now or in the past, or persons 60 years of age or older living in the same household and related by blood or marriage.

(6) **VICTIM COUNSELING.** Assessment, diagnosis, and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes, but is not limited to, crisis intervention.

(7) **VICTIM COUNSELING CENTER.** A private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence.

(8) **VICTIM COUNSELOR.** Any employee or supervised volunteer of a victim counseling center or other agency, business, or organization that provides counseling to victims who is not affiliated with a law enforcement agency or a prosecutor's office and whose duties include treating victims for any emotional or psychological condition resulting from a sexual assault or family violence.

#### **ALA. CODE § 15-23-42 (2011) CONFIDENTIALITY OF COMMUNICATIONS WITH VICTIM COUNSELOR.**

(a) A victim, a victim counselor without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, cannot be compelled to give testimony or to produce records concerning confidential communications for any purpose in any criminal proceeding.

(b) A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) The confidential communication privilege of a victim counselor with respect to communications made between the counselor and the victim shall terminate upon the death of the victim.

#### **ALA. CODE § 15-23-43 (2011) WAIVER OF PROTECTION; EXCEPTION FOR SUIT AGAINST COUNSELOR BY VICTIM.**

(a) A victim does not waive the protections afforded by this article by testifying in court about the crime.

(1) However, if the victim partially discloses the contents of a confidential communication in the course of testifying, then either party may request the court to rule that justice requires the protections of this section be waived, to the extent they apply to that portion of the communication.

(2) Any waiver shall apply only to the extent necessary to require any witness to respond to counsel's questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

(b) A victim counselor cannot waive the protections afforded to a victim under this section. However, if a victim brings suit against a victim counselor or the agency, business, or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor may testify or produce records regarding confidential

communications with the victim and is not liable for doing so.

### **ALA. CODE § 15-23-44 (2011) OTHER TESTIMONIAL PRIVILEGE NOT LIMITED BY PROVISIONS.**

Nothing in this article shall be construed to limit any other testimonial privilege available to any person under other statutes or rules.

### **ALA. CODE § 15-23-45 (2011) VICTIM COUNSELORS NOT RELIEVED OF DUTY TO REPORT CERTAIN CRIMES.**

This article shall not be construed to relieve victim counselors of any duty to report suspected child abuse or neglect or any evidence that the victim is about to commit a crime.

### **ALA. R. EVID. § 5:10. CLIENT-COUNSELOR PRIVILEGE.**

**(a) Definitions.** As used in this rule:

(1) The term “client” means a person who, for the purpose of securing professional counseling services, consults with a licensed professional counselor or a certified counselor associate. It also means a person who, for the purpose of securing counseling services as the result of either sexual assault or family violence, consults with a victim counselor.

(2) A “licensed professional counselor” is any person who holds himself or herself out to the public by any title or description of services incorporating the words “licensed professional counselor” or “licensed counselor”; who offers to render professional counseling services to individuals, groups, organizations, corporations, institutions, government agencies, or the general public, implying that the person is licensed and trained, experienced or expert in counseling; and who holds a current, valid license to engage in the private practice of counseling.

(3) A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional counseling services to the client or those to whom disclosure is reasonably necessary for the transmission of the communication.

(4) “Counselor associate” is any person who has been certified by the Alabama Board of Examiners in Counseling to offer counseling services under the supervision of a licensed professional counselor.

(5) “Counseling services” consist of all acts and behaviors that constitute the “practice of counseling” as that term is defined in this rule.

(6) The “practice of counseling” involves the rendering or offering to render counseling services such as, among others, the following methods and procedures employed by the counseling profession:

(A) Counseling. Assisting a person, through the counseling relationship, to develop understanding of personal problems, to define goals, and to plan action reflecting the person's interests, abilities, aptitudes, and needs as these are related to personal-social concerns, education progress, and occupations and careers.

(B) Appraisal activities. Selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, but not including the use of projective techniques in the assessment of personality.

(C) Counseling, guidance, and personnel consulting. Interpreting or reporting upon scientific fact or theory in counseling, guidance, and personnel services to provide assistance in solving some current or potential problems

of individuals, groups, or organizations.

(D) Referral activities. The evaluating of data to identify problems and to determine advisability of referral to other specialists.

(E) Research activities. The designing, conducting, and interpreting of research with human subjects.

(F) Victim counseling. The providing of counseling to victims for any emotional or psychological impact resulting from a sexual assault or family violence.

(7) "Victim counselor" means any employee or supervised volunteer of a victim counseling center or other agency, business, or organization that provides counseling to victims, who is not affiliated with a law enforcement agency or prosecutor's office and whose duties include treating victims for any emotional or psychological condition resulting from a sexual assault or family violence.

(8) "Sexual assault" includes any sexual offense set out in Ala. Code 2009, §§ 13A-6-60 through 13A-6-70.

(9) "Family violence" means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or causing physical harm.

(B) Placing another in fear of imminent serious physical harm.

(10) The designation "family or household members" encompasses children, spouses, former spouses, persons of the opposite sex living as spouses now or in the past, or persons 60 years of age or older living in the same household and related by blood or marriage.

(11) "Victim counseling center" means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence.

**(b) General rule of privilege.** A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating the rendition of counseling services to the client.

**(c) 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 licensed counselor, counselor associate, or victim counselor at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the client.

**(d) Exceptions.**

*(1) Proceedings for hospitalization.* In proceedings to hospitalize the client for mental illness, there is no privilege under this rule for communications relevant to an issue in those proceedings if the counselor or counselor associate has determined, in the course of counseling, that the client is in need of hospitalization.

*(2) Examination by order of court.* If the court orders an examination of the mental or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered, unless the court orders otherwise.

*(3) When the client's condition is an element of a claim or a defense.* There is no privilege under this rule as to a

communication relevant to an issue regarding the mental or emotional condition of the client, in any proceeding in which the client relies upon the 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.

(4) *Breach of duty arising out of the counselor-client relationship.* There is no privilege under this rule as to an issue of breach of duty by the counselor, counselor associate, or victim counselor to the client or by the client to the counselor, counselor associate, or victim counselor.

(5) *Victim counseling in civil cases.* There is no privilege under this rule in civil cases as to a communication made to facilitate victim counseling when the person conducting the counseling is neither a licensed professional counselor nor a counselor associate, except that under no circumstances may a victim counselor or a victim be compelled to provide testimony in any proceeding that would identify the name, address, location, or telephone number of a "safe house," abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, unless the facility is a party to the proceeding.

## ALAKSA

### **ALASKA STAT. § 18.66.200 (2011). COMPULSORY DISCLOSURE OF COMMUNICATIONS PROHIBITED. [DOMESTIC VIOLENCE AND SEXUAL ASSAULT]**

(a) Except as provided in AS 18.66.210 or 18.66.220, a victim or victim counselor may not be compelled, without appropriate consent, to give testimony or to produce records concerning confidential communications for any purpose in a criminal, civil, legislative, or administrative proceeding. In this subsection, "appropriate consent" means

(1) the consent of the victim with respect to the testimony of

(A) an adult victim; and

(B) a victim counselor when the victim is an adult;

(2) the consent of the victim's parent, legal guardian, or guardian ad litem with respect to the testimony of a

(A) victim who is a minor or incompetent to testify; and

(B) victim counselor when the victim is a minor or incompetent to testify.

(b) Either party may apply for appointment of a guardian ad litem for purposes of (a)(2) of this section.

(c) A victim or victim counselor may not be compelled to provide testimony in a civil, criminal, or administrative proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding, or the name, address, or telephone number of a victim counselor, unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

(d) Notwithstanding (a) of this section,

(1) a minor may waive the privilege provided under (a) of this section and testify or give consent for a victim counselor to testify if the court determines that the minor is capable of knowingly waiving the privilege;

(2) a parent or legal guardian may not, on behalf of a minor, waive the privilege provided under (a) of this section with respect to the minor's testimony or the testimony of a victim counselor if

- (A) the parent or legal guardian has been charged with a crime against the minor;
- (B) a protective order or restraining order has been entered against the parent or legal guardian on request of or on behalf of the minor; or
- (C) the parent or legal guardian otherwise has an interest adverse to that of the minor with respect to the waiver of privilege.

**ALASKA STAT. § 18.66.210 (2011). EXCEPTIONS. [DOMESTIC VIOLENCE AND SEXUAL ASSAULT]**

The privilege provided under AS 18.66.200 does not apply to

- (1) reports of suspected child abuse or neglect under AS 47.17;
- (2) evidence that the victim is about to commit a crime;
- (3) a proceeding that occurs after the victim's death;
- (4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-victim counselor relationship;
- (5) a communication that is determined to be admissible hearsay as an excited utterance under the Alaska Rules of Evidence;
- (6) a child-in-need-of-aid proceeding under AS 47.10;
- (7) a communication made during the victim-victim counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime or to escape detection or apprehension after the commission of a crime; or
- (8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime
  - (A) under AS 11.41 against a minor; or
  - (B) in which the physical, mental, or emotional condition of the victim is raised in defense of the victim.

**ALASKA STAT. § 18.66.250. DEFINITIONS (2011). [DOMESTIC VIOLENCE AND SEXUAL ASSAULT]**

In AS 18.66.200-18.66.250,

- (1) "confidential communication" means information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and that is disclosed in the course of victim counseling resulting from a sexual assault or domestic violence;
- (2) "sexual assault" means an offense under AS 11.41.410-11.41.470 or an offense in another jurisdiction whose elements are similar to the elements of an offense under AS 11.41.410-11.41.470;
- (3) "victim" means a person who consults a victim counselor for assistance in overcoming adverse effects of a sexual assault or domestic violence;

(4) "victim counseling" means support, assistance, advice, or treatment to alleviate the adverse effects of a sexual assault or domestic violence on the victim;

(5) "victim counseling center" means a private organization or a local government agency that

(A) has as one of its primary purposes the provision of direct services to victims for trauma resulting from a sexual assault or domestic violence;

(B) is not affiliated with a law enforcement agency or a prosecutor's office; and

(C) is not on contract with the state to provide services under AS 47;

(6) "victim counselor" means an employee or supervised volunteer of a victim counseling center that provides counseling to victims

(A) who has undergone a minimum of 40 hours of training in domestic violence or sexual assault, crisis intervention, victim support, treatment and related areas; or

(B) whose duties include victim counseling.

#### **ALASKA STAT. § 12.45.049 (2011). PRIVILEGE RELATING TO DOMESTIC VIOLENCE AND SEXUAL ASSAULT COUNSELING.**

Confidential communications between a victim of domestic violence or sexual assault and a victim counselor are privileged under AS 18.66.200 - 18.66.250.

#### **ALASKA STAT. § 09.25.400 (2011). PRIVILEGE RELATING TO DOMESTIC VIOLENCE AND SEXUAL ASSAULT COUNSELING.**

Confidential communications between a victim of domestic violence or sexual assault and a victim counselor are privileged under AS 18.66.200-18.66.250.

### **ARIZONA**

#### **ARIZ. REV. STAT. ANN. § 12-2239 (2011). DOMESTIC VIOLENCE VICTIM ADVOCATE; PRIVILEGE; TRAINING; EXCEPTION; DEFINITION.**

**A.** In a civil action, a domestic violence victim advocate shall not be examined as to any communication made by the domestic violence victim to the domestic violence victim advocate.

**B.** This section does not apply to a civil action brought pursuant to title 36, chapter 37, relating to the civil commitment of sexually violent persons.

**C.** Unless the domestic violence shelter or service provider has immunity under other provisions of law, the communication is not privileged if the victim advocate knows or should have known that the victim will give or has given perjurious statements or statements that would tend to disprove the existence of domestic violence.



**D.** The domestic violence victim advocate-victim privilege does not extend to cases in which the domestic violence victim advocate has a duty to report nonaccidental injuries and physical neglect of minors as required by § 13-3620.

**E.** A party to an action may make a motion for disclosure of privileged information under this section and, if the court finds reasonable cause, the court shall hold a hearing in camera as to whether the privilege should apply.

**F.** To qualify for the privilege prescribed in this section, a domestic violence victim advocate must have at least thirty hours of training in assisting victims of domestic violence. A portion of this training must include an explanation of privileged communication and the reporting requirements prescribed in § 13-3620.

**G.** A domestic violence victim advocate who is a volunteer shall perform all activities under qualified supervision.

**H.** The training prescribed in subsection F may be provided by the shelter or service provider or by an outside agency that issues a certificate of completion. The records custodian of the shelter or service provider must maintain the training documents.

**I.** For the purposes of this section, "domestic violence victim advocate" means a person who is an employee or volunteer at a domestic violence shelter or service provider for victims of domestic violence and who meets the training requirements of this section.

**ARIZ. REV. STAT. ANN. § 13-4430. (2011). CONSULTATION BETWEEN CRIME VICTIM ADVOCATE AND VICTIM; PRIVILEGED INFORMATION; EXCEPTION.**

**A.** A crime victim advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information between himself and the victim unless the victim consents in writing to the disclosure.

**B.** Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda, except compensation or restitution information, that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.

**C.** The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory evidence.

**D.** A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.

**E.** If, with the consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise discoverable.

**F.** Notwithstanding subsections A and B, if a crime victim consents either verbally or in writing, a crime victim advocate may disclose information to other professionals and administrative support persons that the advocate works with for the purpose of assisting the advocate in providing services to the victim.

## CALIFORNIA

### CAL. EVID. CODE § 1035 (West 2011). SEXUAL ASSAULT COUNSELOR-VICTIM PRIVILEGE.

#### § 1035. Victim

As used in this article, “victim” means a person who consults a sexual assault counselor for the purpose of securing advice or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

#### § 1035.2. Sexual assault counselor

As used in this article, “sexual assault counselor” means any of the following:

(a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

(A) Law.

(B) Medicine.

(C) Societal attitudes.

(D) Crisis intervention and counseling techniques.

(E) Role playing.

(F) Referral services.

(G) Sexuality.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

(A) Law.

- (B) Victimology.
- (C) Counseling.
- (D) Client and system advocacy.
- (E) Referral services.

#### **§ 1035.4. Confidential communication between the sexual assault counselor and the victim; disclosure**

As used in this article, “confidential communication between the sexual assault counselor and the victim” means information transmitted between the victim and the sexual assault counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted. The term includes all information regarding the facts and circumstances involving the alleged sexual assault and also includes all information regarding the victim's prior or subsequent sexual conduct, and opinions regarding the victim's sexual conduct or reputation in sexual matters.

The court may compel disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled. The court may also compel disclosure in proceedings related to child abuse if the court determines the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.

When a court is ruling on a claim of privilege under this article, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged and must not be disclosed, neither he or she nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

If the court determines certain information shall be disclosed, the court shall so order and inform the defendant. If the court finds there is a reasonable likelihood that particular information is subject to disclosure pursuant to the balancing test provided in this section, the following procedure shall be followed:

- (1) The court shall inform the defendant of the nature of the information which may be subject to disclosure.
- (2) The court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the sexual assault counselor regarding the information which the court has determined may be subject to disclosure.
- (3) At the conclusion of the hearing, the court shall rule which items of information, if any, shall be disclosed. The court may make an order stating what evidence may be introduced by the defendant and the nature of questions to be permitted. The defendant may then offer evidence pursuant to the order of the court. Admission of evidence concerning the sexual conduct of the complaining witness is subject to Sections 352, 782, and 1103.

#### **§ 1035.6. Holder of the privilege**

As used in this article, “holder of the privilege” means:

- (a) The victim when such person has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator.
- (c) The personal representative of the victim if the victim is dead.

#### **§ 1035.8. Sexual assault counselor privilege**

A victim of a sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor if the privilege is claimed by any of the following:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the sexual assault counselor at the time of the confidential communication, but that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

#### **§ 1036. Claim of privilege by sexual assault counselor**

The sexual assault counselor who received or made a communication subject to the privilege under this article shall claim the privilege if he or she is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1035.8.

#### **§ 1036.2. Sexual assault**

As used in this article, “sexual assault” includes all of the following:

- (a) Rape, as defined in Section 261 of the Penal Code.
- (b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code.
- (c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code.
- (d) Rape of a spouse, as defined in Section 262 of the Penal Code.
- (e) Sodomy, as defined in Section 286 of the Penal Code, except a violation of subdivision (e) of that section.
- (f) A violation of Section 288 of the Penal Code.
- (g) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section.
- (h) Sexual penetration, as defined in Section 289 of the Penal Code.
- (i) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code.
- (j) Any attempt to commit any of the above acts.

## **CAL. EVID. CODE § 1037 (West 2011). DOMESTIC VIOLENCE COUNSELOR-VICTIM PRIVILEGE.**

### **§ 1037. Victim**

As used in this article, “victim” means any person who suffers domestic violence, as defined in Section 1037.7.

#### **§ 1037.1. Domestic violence counselor; qualifications; domestic violence victim service organization**

(a)(1) As used in this article, “domestic violence counselor” means a person who is employed by a domestic violence victim service organization, as defined in this article, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has at least 40 hours of training as specified in paragraph (2).

(2) The 40 hours of training shall be supervised by an individual who qualifies as a counselor under paragraph (1), and who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization. The training shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(3) A domestic violence counselor who has been employed by the domestic violence victim service organization for a period of less than six months shall be supervised by a domestic violence counselor who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization.

(b) As used in this article, “domestic violence victim service organization” means a nongovernmental organization or entity that provides shelter, programs, or services to victims of domestic violence and their children, including, but not limited to, either of the following:

(1) Domestic violence shelter-based programs, as described in Section 18294 of the Welfare and Institutions Code.

(2) Other programs with the primary mission to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services.

#### **§ 1037.2. Confidential communication; compulsion of disclosure by court; claim of privilege**

(a) As used in this article, “confidential communication” means any information, including, but not limited to, written or oral communication, transmitted between the victim and the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. The term includes all information regarding the facts and circumstances involving all incidences of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

(b) The court may compel disclosure of information received by a domestic violence counselor which constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim or another household member and which is the subject of a criminal proceeding, if the court determines that the

probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator. The court may also compel disclosure in proceedings related to child abuse if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

(c) When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege consents to have present. If the judge determines that the information is privileged and shall not be disclosed, neither he nor she nor any other person may disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers.

(d) If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

### **§ 1037.3. Child abuse; reporting**

Nothing in this article shall be construed to limit any obligation to report instances of child abuse as required by Section 11166 of the Penal Code.

### **§ 1037.4. Holder of the privilege**

As used in this article, “holder of the privilege” means:

- (a) The victim when he or she has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator, unless the guardian or conservator is accused of perpetrating domestic violence against the victim.

### **§ 1037.5. Privilege of refusal to disclose communication; claimants**

A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor in any proceeding specified in Section 901 if the privilege is claimed by any of the following persons:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

### **§ 1037.6. Claim of privilege by counselor**

The domestic violence counselor who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed

and he or she is authorized to claim the privilege under subdivision (c) of Section 1037.5.

### **§ 1037.7. Domestic violence**

As used in this article, “domestic violence” means “domestic violence” as defined in Section 6211 of the Family Code.

### **§ 1037.8. Notice; limitations on confidential communications**

A domestic violence counselor shall inform a domestic violence victim of any applicable limitations on confidentiality of communications between the victim and the domestic violence counselor. This information may be given orally.

## **COLORADO**

### **COLO. REV. STAT. ANN. § 13-90-107 (West 2011). WHO MAY NOT TESTIFY WITHOUT CONSENT.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)(I) Except as otherwise provided in section 14-13-310(4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(a.5)(I) Except as otherwise provided in Section 14-13-310(5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in a civil union without the other partner's consent, nor during the civil union or afterward shall be examined without the consent of the other as to any communications made by one to the other during the civil union; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401(1)(a)(IV) and (1)(a)(V), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

- (VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of Article 15 of Title 14, C.R.S.
- (b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.
- (c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.
- (d) A physician, surgeon, or registered professional nurse duly authorized to practice his profession pursuant to the laws of this state or any other state shall not be examined without the consent of his patient as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, but this paragraph (d) shall not apply to:
- (I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;
- (II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;
- (III) A review of a physician's or registered professional nurse's services by any of the following:
- (A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;
- (B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;
- (C) The state board of medical examiners, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;
- (D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;
- (E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);
- (IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);
- (V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company



or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f)(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III)(A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV)(A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified

public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103(6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102(20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor shall not be examined without the consent of such licensee's or unlicensed psychotherapist's client as to any communication made by the client to such licensee or unlicensed psychotherapist or such licensee's or unlicensed psychotherapist's advice given thereon in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103(26), C.R.S., shall not be examined as to

communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j)(I)(A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), “voluntary self-evaluation” and “environmental audit report” have the meanings provided for the terms in section 13-25-126.5(2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5(3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3(1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a “victim's advocate” means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (I):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during, or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 25-1-310 and 25-1-1106, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-

10-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the state board of medical examiners or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

## **COLO. REV. STAT. ANN. § 19-1-211 (West 2011). COURT-APPOINTED SPECIAL ADVOCATE PROGRAM: CONFIDENTIALITY**

A CASA volunteer shall not disclose the contents of any document, record, or other information relating to a case to which the CASA volunteer has access in the course of an investigation. All such information shall be considered confidential and shall not be disclosed to persons other than the court and parties to the action.

## **CONNECTICUT**

### **CONN. GEN. STAT. ANN. § 52-146k (West 2011). PRIVILEGED COMMUNICATIONS BETWEEN BATTERED WOMEN'S OR SEXUAL ASSAULT COUNSELOR AND VICTIM.**

(a) As used in this section:

(1) "Battered women's center" means any office, shelter, host home or center offering assistance to battered women through crisis intervention, emergency shelter referral and medical and legal advocacy, and which meets the department of social services criteria of service provision for such centers.

(2) "Battered women's counselor" means any person engaged in a battered women's center (A) who has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of battering, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system and information about state and community resources for battered women, (B) who is certified as a counselor by the battered women's center which provided such training, (C) who is under the control of a direct service supervisor of a battered women's center, and (D) whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, battered women.

(3) "Confidential communication" means information transmitted between a victim of a battering or a sexual assault and a battered women's counselor or sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any person who is present to further the interests of the victim in the consultation or any person to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purposes for which such counselor is consulted, and includes all information received by, and any advice, report or working paper given or made by, such counselor in the course of the relationship with the victim.

(4) "Rape crisis center" means any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal advocacy and follow-up counseling and which meets the Department of Public Health criteria of service provision for such centers.

(5) "Sexual assault counselor" means any person engaged in a rape crisis center who (A) has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of sexual assault and incest, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system, information about hospital and medical systems and information about state and community resources for sexual assault victims, (B) is certified as a counselor by the sexual assault center which has provided such training, (C) is under the control of a direct services supervisor of a rape crisis center, and (D) whose primary purpose is the rendering of advice, counseling and assistance to, and the advocacy of the cause of, victims of sexual assault.

(6) "Victim" means any person who consults a battered women's counselor or a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by a battering or a sexual assault.

(b) On or after October 1, 1983, a battered women's counselor or a sexual assault counselor shall not disclose any confidential communications made to such counselor at any time by a victim in any civil or criminal case or proceeding or in any legislative or administrative proceeding unless the victim making the confidential communications waives the privilege, provided under no circumstances shall the location of the battered women's center or rape crisis center or the identity of the battered women's counselor or sexual assault counselor be disclosed in any civil or criminal proceeding. Any request made on or after October 1, 1983, by the defendant or the state for such confidential communications shall be subject to the provisions of this subsection.

(c) When a victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the victim or the executor or administrator of the estate of the victim may waive the privilege established by this section.

(d) A minor may knowingly waive the privilege established by this section. In any instance where the minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, provided such parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding.

(e) The privilege established by this section shall not apply: (1) In matters of proof concerning chain of custody of evidence; (2) in matters of proof concerning the physical appearance of the victim at the time of the injury; or (3) where the battered women's counselor or sexual assault counselor has knowledge that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

(f) The failure of any party to testify as a witness pursuant to the provisions of this section shall not result in an inference unfavorable to the state's cause or to the cause of the defendant.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 14-310 (2011). DOMESTIC VIOLENCE COUNSELORS.**

(a) For the purposes of this section, the term:

(1) "Confidential communication" means information exchanged between a victim and a domestic violence counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the domestic violence program concerning the victim and services provided to

the victim.

(2) "Domestic violence counselor" means an employee, contractor, or volunteer of a domestic violence program who:

(A) Is rendering support, counseling, or assistance to a victim;

(B) Has undergone not less than 40 hours of domestic violence counselor training conducted by a domestic violence program that includes dynamics of domestic violence, trauma resulting from domestic violence, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves victims.

(3) "Domestic violence program" means a nonprofit, non-governmental organization that supports, counsels, and assists victims, including domestic violence hotlines, domestic violence shelters, and domestic violence intake centers.

(4) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(5) "Victim" means a person against whom severe emotional abuse or an intrafamily offense has been committed or is alleged to have been committed.

(b)(1) A domestic violence counselor shall not disclose a confidential communication except:

(A) As required by statute or by a court of law;

(B) As voluntarily authorized in writing by the victim;

(C) To other individuals employed at the domestic violence program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;

(D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury;

(E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a domestic violence counselor or a domestic violence program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege

established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

## FLORIDA

### **FLA. STAT. ANN § 90.5035 (West 2011). SEXUAL ASSAULT COUNSELOR-VICTIM PRIVILEGE.**

(1) For purposes of this section:

(a) A “rape crisis center” is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

(b) A “sexual assault counselor” is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.

(c) A “trained volunteer” is a person who volunteers at a rape crisis center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

(d) A “victim” is a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

(e) A communication between a sexual assault counselor or trained volunteer and a victim is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship.

(3) The privilege may be claimed by:

(a) The victim or the victim's attorney on his or her behalf.



(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

## HAWAII

### HAW. REV. STAT. RULES OF EVID. § 505.5 VICTIM COUNSELOR PRIVILEGE

(a) Definitions. As used in this rule:

- (1) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.
  - (2) “Domestic violence victims’ program” means any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal, or support counseling.
  - (3) “Sexual assault crisis center” means any office, institution, or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical, legal, or support counseling.
  - (4) “Social worker” means a person who has received a master’s degree in social work from a school of social work accredited by the Council on Social Work Education.
  - (5) A “victim” is a person who consults a victim counselor for assistance in overcoming any adverse emotional or psychological effect of sexual assault, domestic violence, or child abuse.
  - (6) A “victim counseling program” is any activity of a domestic violence victims’ program or a sexual assault crisis center that has, as its primary function, the counseling and treatment of sexual assault, domestic violence, or child abuse victims and their families, and that operates independently of any law enforcement agency, prosecutor’s office, or the department of human services.
  - (7) A “victim counselor” is either a sexual assault counselor or a domestic violence victims’ counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault. A domestic violence victims’ counselor is a person who is employed by or is a volunteer in a domestic violence victims’ program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims’ program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse.
- (b) General rule of privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.

(c) Who may claim the privilege. The privilege may be claimed by the victim, the victim's guardian or conservator, or the personal representative of a deceased victim. The person who was the victim counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the victim.

(d) Exceptions. There is no privilege under this rule:

- (1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.
- (2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.
- (3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.
- (4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a vulnerable adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587A.
- (5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.
- (6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.
- (7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim's claim or defense or, after the victim's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.
- (8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim.

## ILLINOIS

### **750 ILL.COMP.STAT. ANN. 60/227 (West 2011). PRIVILEGED COMMUNICATIONS BETWEEN DOMESTIC VIOLENCE COUNSELORS AND VICTIMS [ILLINOIS DOMESTIC VIOLENCE ACT OF 1986].**

(a) As used in this Section:

- (1) "Domestic violence program" means any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.
- (2) "Domestic violence advocate or counselor" means any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.

(3) "Confidential communication" means any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. The confidential nature of the communication is not waived by the presence at the time of the communication of any additional persons, including but not limited to an interpreter, to further express the interests of the domestic violence victim or by the advocate's or counselor's disclosure to such an additional person with the consent of the victim when reasonably necessary to accomplish the purpose for which the advocate or counselor is consulted.

(4) "Domestic violence victim" means any person who consults a domestic violence counselor for the purpose of securing advice, counseling or assistance related to one or more alleged incidents of domestic violence.

(5) "Domestic violence" means abuse as defined in the Illinois Domestic Violence Act.

(b) No domestic violence advocate or counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal case or proceeding or in any legislative or administrative proceeding without the written consent of the domestic violence victim except (1) in accordance with the provisions of the Abused and Neglected Child Reporting Act or (2) in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.

(c) A domestic violence advocate or counselor who knowingly discloses any confidential communication in violation of this Act commits a Class A misdemeanor.

(d) When a domestic violence victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the domestic violence victim or the executor or administrator of the estate of the domestic violence victim may waive the privilege established by this Section, except where the guardian, executor or administrator of the estate has been charged with a violent crime against the domestic violence victim or has had an Order of Protection entered against him or her at the request of or on behalf of the domestic violence victim or otherwise has an interest adverse to that of the domestic violence victim with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the estate of the domestic violence victim.

(e) A minor may knowingly waive the privilege established by this Section. Where a minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, except where such parent or guardian has been charged with a violent crime against the minor or has had an Order of Protection entered against him or her on request of or on behalf of the minor or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the minor child who shall be compensated in accordance with Section 506 of the Illinois Marriage and Dissolution of Marriage Act.

(f) Nothing in this Section shall be construed to limit in any way any privilege that might otherwise exist under statute or common law.

(g) The assertion of any privilege under this Section shall not result in an inference unfavorable to the State's cause or to the cause of the domestic violence victim.

## **INDIANA**

### **IND. CODE ANN. § 35-37-6-1 (2011). "CONFIDENTIAL COMMUNICATION" DEFINED.**

Sec. 1. (a) As used in this chapter, "confidential communication" means any information:

(1) exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate;

(2) exchanged or disclosed in a support group in which a victim is or was a participant; or

(3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.

(b) The term includes communication that is verbal or written and includes:

(1) advice;

(2) notes;

(3) reports;

(4) statistical data;

(5) memoranda;

(6) working papers;

(7) records; and

(8) personally identifying information;

produced in the course of advocating for a victim.

## **IND. CODE. ANN. § 35-37-6-9 (2011). CONFIDENTIAL COMMUNICATIONS; COMPELLING TESTIMONY; RECORDS; TEMPORARY EMERGENCY SHELTERS; CONSENT TO DISCLOSURE**

Sec. 9. (a) The following persons or entities may not be compelled to give testimony, to produce records, or to disclose any information concerning confidential communications and confidential information to anyone or in any judicial, legislative, or administrative proceeding:

(1) A victim.

(2) A victim advocate or victim service provider unless the victim specifically consents to the disclosure in a written authorization that contains the date the consent expires.

(b) A victim advocate, victim service provider, or victim may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning confidential communications and confidential information as a condition of the victim receiving services.

(d) This section does not prohibit a victim from providing testimony concerning an offense.

(e) The consent to disclose information on behalf of:

(1) a child who is less than eighteen (18) years of age and is unemancipated; or

(2) an incapacitated victim;

may be made by a custodial parent, custodian, guardian, or guardian ad litem in a written authorization that contains the date the consent expires.

(f) A consent under subsection (e) may not be given by a custodial parent, custodian, guardian, or guardian ad litem of the victim if the custodial parent, custodian, guardian, or guardian ad litem:

(1) committed; or

(2) is alleged to have committed;

an offense against the victim.

## IOWA

### **IOWA CODE ANN. §915.20A. (West 2011). VICTIM COUNSELOR PRIVILEGE**

1. As used in this section:

a. "Confidential communication" means information shared between a crime victim and a victim counselor within the counseling relationship, and includes all information received by the counselor and any advice, report, or working paper given to or prepared by the counselor in the course of the counseling relationship with the victim. "Confidential information" is confidential information which, so far as the victim is aware, is not disclosed to a third party with the exception of a person present in the consultation for the purpose of furthering the interest of the victim, a person to whom disclosure is reasonably necessary for the transmission of the information, or a person with whom disclosure is necessary for accomplishment of the purpose for which the counselor is consulted by the victim.

b. "Crime victim center" means any office, institution, agency, or crisis center offering assistance to victims of crime and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

c. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a violent crime committed against the person.

d. "Victim counselor" means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a "victim counselor" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual assault, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim

waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a crime victim center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under rule of evidence 5.615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to rule of evidence 5.412.

## KENTUCKY

### KY. R. EVID. 506. COUNSELOR-CLIENT PRIVILEGE.

(a) Definitions. As used in this rule:

(1) A “counselor” includes:

(A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;

(B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;

(C) A certified professional art therapist who is engaged to conduct art therapy under KRS 309.130 to 309.1399;

(D) A licensed marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;

(E) A licensed professional clinical counselor or a licensed professional counselor associate as defined in KRS 335.500;

(F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team under KRS 36.250 to 36.270;

(G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth's attorney under KRS 15.760 or a county attorney pursuant to KRS 69.350; and

(H) A certified fee-based pastoral counselor as defined in KRS 335.600 who is engaged to conduct fee-based pastoral counseling under KRS 335.600 to 335.699.

(2) A “client” is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.

(3) A communication is “confidential” if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.

(b) 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 counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.

(c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule for any relevant communication:

(1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or

defense.

(2) If the judge finds:

(A) That the substance of the communication is relevant to an essential issue in the case;

(B) That there are no available alternate means to obtain the substantial equivalent of the communication; and

(C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

## LOUISIANA

### LA. REV. STAT. ANN. § 2124.1 (2011). PRIVILEGED COMMUNICATIONS AND RECORDS

A. As used in this Section, the following terms shall have the following meanings:

(1) "Community shelter" means a community shelter or other program established in accordance with R.S. 46:2124.

(2) "Privileged communication" means a communication made to a representative or employee of a community shelter by a victim. It also means a communication not otherwise privileged made by a representative or employee of a community shelter to a victim in the course of rendering services authorized by R.S. 46:2124.

(3) "Victim" means a victim or potential victim of an act of family or domestic violence and his or her children.

B. Except as provided in Subsection D, no person shall be required to disclose, by way of testimony or otherwise, a privileged communication or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication:

(1) In connection with any civil or criminal case or proceeding.

(2) By way of any discovery procedure.

C. The records relating to a privileged communication kept by a community shelter or other agency or department shall not be public records. Such records may be used for the compilation of statistical data if the identity of the victim or the contents of any privileged communication are not disclosed.

D. The prosecuting attorney or any person who is a party in a civil proceeding or who has been arrested or charged with a criminal offense may petition the court for an in-camera inspection of the records of a privileged communication concerning such person. The petition shall allege facts showing that such records would provide admissible evidence favorable to the person and, in criminal proceedings, are relevant to the issue of guilt or punishment and shall be verified. If the court determines that the person is entitled to all or any part of such records, it may order production and disclosure as it deems

## MAINE

### ME. REV. STAT. ANN. tit. 16 § 53-A (2011). PRIVILEGED COMMUNICATIONS TO SEXUAL ASSAULT COUNSELORS.



**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A. Rape crisis center.** “Rape crisis center” means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault.

**B. Sexual assault counselor.** “Sexual assault counselor” means a person who has:

- (1)** Undergone a program of training from a rape crisis center which shall include, but not be limited to: Law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and
- (2)** Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center.

**2. Privileged communications.** Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request, or with the consent of, the victim of sexual assault, a sexual assault counselor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the sexual assault counselor may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required.

## **ME. REV. STAT. ANN. tit. 16 § 53-B (2009). PRIVILEGED COMMUNICATIONS TO VICTIM ADVOCATE; FAMILY VIOLENCE.**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A. “Advocate”** means an employee of or volunteer for a nongovernmental program for victims of domestic or family violence who:

- (1)** Has undergone at least 30 hours of training; and
- (2)** As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program.

**A-1. “Confidential communications”** means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. “Confidential communications” includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim.

**B. “Victim”** means a victim of domestic or family violence.

**2. Privileged communication.** Communications are privileged from disclosure as follows.

**A.** A victim may refuse to disclose and may deny permission to an advocate to disclose confidential written or oral communications between the victim and the advocate and written records, notes, memoranda or reports concerning the victim.

**B.** Except as provided in subsection 3, a victim, advocate or advocate's agency may not be required through oral or written testimony or through production of documents to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate.

**3. Exceptions.** A person may not be required to publicly disclose the address or location of a domestic or family violence shelter or safe house, except that privileged communications may be disclosed in the following cases:

**A.** When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with the provisions of either chapter;

**B.** When a court in the exercise of its discretion determines the disclosure of the information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or

**C.** When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation.

**ME. REV. STAT. ANN. tit. 16 § 53-C (2011). PRIVILEGED COMMUNICATIONS TO GOVERNMENTAL VICTIM WITNESS ADVOCATES OR COORDINATORS.**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A.** "Crime" means a criminal offense in which there is a victim, as defined in this section.

**B.** "Victim" means:

**(1)** A person against whom a crime has been committed;

**(2)** The immediate family of a victim of a crime if:

**(a)** The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

**(b)** Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter.

**C.** "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who perform that function or to administer the program.

**2. Privileged communications.** Communications are privileged from disclosure as follows.

**A.** A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim.

**B.** Except as provided in subsection 3, a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written testimony or through production of documents, to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate or coordinator.

**3. Exceptions.** Privileged communications may be disclosed in the following cases:

**A.** Disclosure may be made to the district attorney, Attorney General or the United States Attorney or their assistants;

**B.** When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with either chapter;

**C.** When a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court;

**D.** When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation; or

**E.** Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Criminal Procedure, Rule 16.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ANN. CH. 233, § 20J (West 2011). SEXUAL ASSAULT; CONFIDENTIAL COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELLOR; DISCLOSURE; DISCOVERY.**

As used in this section the following words, unless the context clearly requires otherwise, shall have the following meaning:--

“Rape crisis center”, any office, institution or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical and legal counseling.

“Sexual assault counsellor”, a person who is employed by or is a volunteer in a rape crisis center, has undergone thirty-five hours of training, who reports to and is under the direct control and supervision of a licensed social worker, nurse, psychiatrist, psychologist or psychotherapist and whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

“Victim”, a person who has suffered a sexual assault and who consults a sexual assault counsellor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such sexual assault.

“Confidential communication”, information transmitted in confidence by and between a victim of sexual assault and a sexual assault counsellor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the sexual assault counsellor which arises out of and in the course of such counseling and assisting, including, but not limited to reports, records, working papers or memoranda.

A sexual assault counsellor shall not disclose such confidential communication, without the prior written consent of the victim; provided, however, that nothing in this chapter shall be construed to limit the defendant's right of cross-examination of such counsellor in a civil or criminal proceeding if such counsellor testifies with such written consent.

Such confidential communications shall not be subject to discovery and shall be inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper or memorandum relates.

**MASS. GEN. LAWS ANN. CH. 233, § 20K (West 2011). DOMESTIC VIOLENCE VICTIMS' COUNSELORS; CONFIDENTIAL COMMUNICATIONS.**

As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:--

“Abuse”, causing or attempting to cause physical harm; placing another in fear of imminent physical harm; causing another to engage in sexual relations against his will by force, threat of force, or coercion.

“Confidential communication”, information transmitted in confidence by and between a victim and a domestic violence victims' counselor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the domestic violence victims' counselor which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers, or memoranda.

“Domestic violence victims' counselor”, a person who is employed or volunteers in a domestic violence victims' program, who has undergone a minimum of twenty-five hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a domestic violence victims' program, and whose primary purpose is the rendering of advice, counseling or assistance to victims of abuse.

“Domestic violence victims' program”, any refuge, shelter, office, safe home, institution or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling.

“Victim”, a person who has suffered abuse and who consults a domestic violence victims' counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such abuse.

A domestic violence victims' counselor shall not disclose such confidential communication without the prior written consent of the victim, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is therein contained before allowing such discovery or the introduction of such evidence.

**MICHIGAN**

**MICH. COMP. LAWS ANN. § 600.2157A (West 2011). CONSULTATION BETWEEN VICTIM AND SEXUAL ASSAULT OR DOMESTIC VIOLENCE COUNSELOR; ADMISSIBILITY.**

Sec. 2157a. (1) For purposes of this section:

(a) “Confidential communication” means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other

person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.

(b) "Domestic violence" means that term as defined in section 1501 of Act No. 389 of the Public Acts of 1978, being section 400.1501 of the Michigan Compiled Laws.

(c) "Sexual assault" means assault with intent to commit criminal sexual conduct.

(d) "Sexual assault or domestic violence counselor" means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.

(e) "Sexual assault or domestic violence crisis center" means an office, institution, agency, or center which offers assistance to victims of sexual assault or domestic violence and their families through crisis intervention and counseling.

(f) "Victim" means a person who was or who alleges to have been the subject of a sexual assault or of domestic violence.

(2) Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.

## MINNESOTA

### **MINN. STAT. ANN. § 595.02 (West 2011). TESTIMONY OF WITNESSES.**

**Subdivision 1. Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person

seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent

or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, “domestic abuse advocate” means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

**Subd. 1a. Alternative dispute resolution privilege.** No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

- (1) constitute a crime;
- (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or
- (3) constitute professional misconduct.

**Subd. 2. Exceptions.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter

260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

**Subd. 3. Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

**Subd. 4. Court order.** (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,



the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

**Subd. 5. Waiver of privilege for health care providers.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

## MONTANA

### MONT. CODE ANN. § 26-1-812 (2011). ADVOCATE PRIVILEGE

(1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

## NEVADA

### NEV. REV. STAT. ANN. §§ 49.2541 TO 49.2549 (West 2010). VICTIM'S ADVOCATE AND VICTIM [PRIVILEGES].

#### 49.2541. Definitions

As used in NRS 49.2541 to 49.2549, inclusive, the words and terms defined in NRS 49.2542 to 49.2545, inclusive, have the meanings ascribed to them in those sections.

#### 49.2542. "Domestic violence" defined

"Domestic violence" means an act described in NRS 33.018.

#### 49.2543. "Sexual assault" defined

"Sexual assault" means a violation of NRS 200.366 or an attempt to violate or conspiracy to violate NRS 200.366.

#### 49.2544. "Victim" defined

"Victim" means a person who alleges that an act of domestic violence or sexual assault has been committed against the person.

#### 49.2545. "Victim's advocate" defined

"Victim's advocate" means a person who works for a nonprofit program that provides assistance to victims with or without compensation and who has received at least 20 hours of relevant training.

#### 49.2546. When communication deemed to be confidential; "communication" defined

1. A communication shall be deemed to be confidential if the communication is between a victim and a victim's advocate and is not intended to be disclosed to third persons other than:

- (a) A person who is present to further the interest of the victim;
- (b) A person reasonably necessary for the transmission of the communication; or
- (c) A person who is participating in the advice, counseling or assistance of the victim, including, without limitation, a member of the victim's family.

2. As used in this section, "communication" includes, without limitation, all records concerning the victim and the services provided to the victim which are within the possession of:

- (a) The victim's advocate; or
- (b) The nonprofit program for whom the victim's advocate works.

#### **49.2547. General rule of privilege**

Except as otherwise provided in NRS 49.2549, a victim who seeks advice, counseling or assistance from a victim's advocate has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications set forth in NRS 49.2546.

#### **49.2548. Who may claim privilege**

1. The privilege provided pursuant to NRS 49.2547 may be claimed by:

- (a) The victim;
- (b) The guardian or conservator of the victim;
- (c) The personal representative of a deceased victim; and
- (d) The victim's advocate, but only on behalf of the victim.

2. The authority of a victim's advocate to claim the privilege is presumed in the absence of evidence to the contrary.

#### **49.2549. Exceptions**

There is no privilege pursuant to NRS 49.2547 if:

- 1. The purpose of the victim in seeking services from a victim's advocate is to enable or aid any person to commit or plan to commit what the victim knows or reasonably should have known is a crime or fraud;
- 2. The communication concerns a report of abuse or neglect of a child, older person or vulnerable person in violation of NRS 200.508, 200.5093 or 200.50935, but only as to that portion of the communication;
- 3. The communication is relevant to an issue of breach of duty by the victim's advocate to the victim or by the victim to the victim's advocate; or

4. Disclosure of the communication is otherwise required by law.

## NEW HAMPSHIRE

### **N.H. REV. STAT. ANN. §§ 173-C:1 TO -C:10 (2011). CONFIDENTIAL COMMUNICATIONS BETWEEN VICTIMS AND COUNSELORS.**

#### **173-C:1 Definitions.**

In this chapter:

I. “Confidential communication” means information transmitted between a victim, as defined in paragraph VI, of an alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a sexual assault or domestic violence counselor in the course of that relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person. The presence of an interpreter for the hearing impaired, a foreign language interpreter, or any other interpreter necessary for that communication to take place shall not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege. The term includes all information received by the sexual assault or domestic violence counselor in the course of that relationship.

II. “Domestic violence center” means any organization or agency which would qualify as a direct service grantee under RSA 173-B:21.

III. “Domestic violence counselor” means any person who is employed or appointed or who volunteers in a domestic violence center who renders support, counseling, or assistance to victims of domestic abuse or attempted domestic abuse, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a center as defined in RSA 173-C:1, II.

IV. “Rape crisis center” means any public or private agency, office, or center that primarily offers assistance to victims of sexual assault and their families and provides all the following services:

- (a) Crisis intervention to victims of sexual assault 24 hours per day.
- (b) Support services to victims of sexual assault by trained volunteers during the hospital examination, police investigation, and court proceedings.
- (c) Referral of victims of sexual assault to public and private agencies offering needed services.
- (d) The establishment of peer counseling services for the victims of sexual assault.
- (e) The development of training programs and the standardization of procedures for law enforcement, hospital, legal and social service personnel to enable them to respond appropriately to the needs of victims.
- (f) The coordination of services which are being provided by existing agencies.
- (g) Education of the public about the nature and scope of sexual assault and the services which are available.
- (h) Development of services to meet the needs of special populations, for example, children, the elderly, and minorities.
- (i) Court advocacy through the criminal justice system.

V. "Sexual assault counselor" means any person who is employed or appointed or who volunteers in a rape crisis center who renders support, counseling, or assistance to victims of sexual assault or attempted sexual assault, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a rape crisis center as defined in RSA 173-C:1, IV.

VI. "Victim" means any person alleging sexual assault under RSA 632-A, domestic abuse as defined in RSA 173-B:1, stalking under RSA 633:3-a, or sexual harassment as defined under state or federal law, who consults a sexual assault counselor or a domestic violence counselor for the purpose of securing support, counseling or assistance concerning a mental, physical, emotional, legal, housing, medical, or financial problem caused by an alleged act of sexual assault or domestic abuse, stalking, or sexual harassment, or an alleged attempted sexual assault or domestic abuse.

### **173-C:2 Privilege.**

I. A victim has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to a sexual assault counselor or a domestic violence counselor, including any record made in the course of support, counseling, or assistance of the victim. Any confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege terminates upon the death of the victim.

I-a. The privilege and confidentiality under paragraph I shall extend to:

- (a) A third person present to assist communication with the victim.
- (b) A third person present to assist a victim who is physically challenged.
- (c) Co-participants in support group counseling of the victim.

II. Persons prevented from disclosing a confidential communication or record pursuant to paragraph I shall be exempt from the provisions of RSA 631:6.

### **173-C:3 Assertion or Waiver of Privilege.**

The privilege may be claimed or waived in all civil, administrative, and criminal legal proceedings, including discovery proceedings, by the following persons:

- I. The victim or an attorney on the victim's behalf.
- II. The guardian of the victim, if the victim has been found incompetent by a court of competent jurisdiction.
- III. A minor victim who is emancipated, married, or over the age of 15, unless, in the opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem shall be appointed in all cases in which there is a potential conflict of interest between a victim under the age of 18 and his parent or guardian.

### **173-C:4 Partial Waiver.**

Waiver as to a specific portion of communication between the victim and the counselor shall not constitute a waiver of the privilege as to other portions of the confidential communication between victim and counselor, relating to the alleged crime.

### **173-C:5 Limitation on the Privilege; Criminal Proceedings.**

In criminal proceedings when a defendant seeks information privileged under this chapter in discovery or at trial, the procedure below shall be followed:

I. A written pretrial motion shall be made by the defendant to the court stating that the defendant seeks discovery of records of a rape crisis center or domestic violence center or testimony of a sexual assault counselor or domestic violence counselor. The written motion shall be accompanied by an affidavit setting forth specific grounds as to why discovery is requested and showing that there is a substantial likelihood that favorable and admissible information would be obtained through discovery or testimony. No discovery or hearing shall occur pursuant to the information sought to be disclosed for at least 3 business days after the filing of a motion for disclosure.

II. The only information subject to discovery from the records of a rape crisis center or a domestic violence center or which may be elicited during the testimony of a sexual assault or domestic violence counselor are those statements of the victim which relate to the alleged crime being prosecuted in the instant trial.

III. Prior to admission of information at deposition, trial, or other legal proceeding, when a claim of privilege has been asserted and whether or not the information was obtained through discovery, the burden of proof shall be upon the defendant to establish by a preponderance of the evidence that:

(a) The probative value of the information, in the context of the particular case, outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or relationship with the counselor or the rape crisis or domestic violence center.

(b) That the information sought is unavailable from any other source.

(c) That there is a substantial probability that the failure to disclose that information will interfere with the defendant's right to confront the witnesses against him and his right to a fair trial.

IV. The trial court shall review each motion for disclosure of information on a case by case basis and determine on the totality of the circumstances that the information sought is or is not subject to the privilege established in RSA 173-C:2. In finding that the privilege shall not apply in a particular case, the trial court shall make written findings as to its reasons therefor.

V. The records and testimony of a rape crisis center or domestic violence center shall be disclosed solely to the trial judge to determine, as a matter of law, whether the information contained in the records or testimony is admissible under this chapter.

VI. That portion of any record and testimony of a rape crisis center or domestic violence center which is not disclosed to the defendant shall be preserved by the court under seal for appeal. For the purpose of preservation, a copy of the record shall be retained with the original released to the center. Costs of duplication shall be borne by the defendant.

VII. If, after disclosure of privileged information, the court upholds the privilege claim, the court shall impose a protective order against revealing any of the information without the consent of the person authorized to permit disclosure.

### **173-C:6 Locations of Centers Privileged.**

Notwithstanding any other provisions of this chapter, the location and the street address of a rape crisis center or domestic violence center are absolutely privileged.

### **173-C:7 Involuntary Waiver.**

The privilege established by this chapter shall not apply when the sexual assault counselor or the domestic violence counselor has knowledge that the victim has given perjured testimony and when the defendant has made an offer of proof that there is probable cause to believe that perjury has been committed.

#### **173-C:8 Failure to Testify.**

Failure of any person to testify as a witness pursuant to the provisions of this chapter shall not give rise to an inference unfavorable to the prosecution or the defense.

#### **173-C:9 Appeal.**

The victim shall have a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of records or testimony of a rape crisis or domestic violence center or sexual assault or domestic violence counselor.

#### **173-C:10 Counselor's Duty to Report Child Abuse.**

The domestic violence or sexual assault counselor shall have the same reporting duties under RSA 169-C:29 as other professionals, providing that this duty shall not apply where a minor is seeking relief pursuant to RSA 173-B:3 for abuse by a spouse or former spouse of the minor, or by an intimate partner who is not related to the minor by consanguinity or affinity. As used in this section, "abuse" and "intimate partners" shall be as defined in RSA 173-B:1.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 2A:84A-22.15 (West 2011). VICTIM COUNSELOR'S PRIVILEGE.**

Subject to Rule 37 of the Rules of Evidence, a victim counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication. The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is incompetent or deceased consent to disclosure may be given by the guardian, executor or administrator except when the guardian, executor or administrator is the defendant or has a relationship with the victim such that he has an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding. A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a domestic violence shelter or any other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

## **NEW MEXICO**

### **N.M. STAT. ANN. § 31-25-1 TO -6 (West 2011). VICTIM COUNSELOR CONFIDENTIALITY.**

#### **§ 31-25-1. Short title**

This act may be cited as the "Victim Counselor Confidentiality Act".

### **§ 31-25-2. Definitions**

As used in the Victim Counselor Confidentiality Act:

A. "confidential communication" means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence;

B. "victim" means a person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence;

C. "victim counseling" means assessment, diagnosis and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes crisis intervention;

D. "victim counseling center" means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence; and

E. "victim counselor" means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the office of a district attorney, has successfully completed forty hours of academic or other formal victim counseling training or has had a minimum of one year of experience in providing victim counseling and whose duties include victim counseling.

### **§ 31-25-3. Confidential communications; information; privileged**

A. A victim, a victim counselor without the consent of the victim or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party shall not be compelled to provide testimony or to produce records concerning confidential communications for any purpose in any criminal action or other judicial, legislative or administrative proceeding.

B. A victim counselor or a victim shall not be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location or telephone number of a safe house, abuse shelter or other facility that provided temporary emergency shelter to the victim of the offense or occurrence that is the subject of a judicial, legislative or administrative proceeding unless the facility is a party to the proceeding.

### **§ 31-25-4. Waiver**

A. A victim does not waive the protections afforded by the Victim Counselor Confidentiality Act by testifying in court about the crime; provided that if the victim partially discloses the contents of a confidential communication in the course of his testimony, then either party to the action may request the court to rule that justice requires the protections of that act be waived to the extent they apply to that portion of the communication. Waiver shall apply only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

B. A victim counselor shall not have authority to waive the protections afforded to a victim under the Victim



Counselor Confidentiality Act; provided that if a victim brings suit against a victim counselor or the agency, business or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor may testify or produce records regarding confidential communications with the victim without liability for those actions.

### **§ 31-25-5. Interpretation**

The Victim Counselor Confidentiality Act shall not be construed to relieve a victim counselor of a duty to report suspected child abuse or neglect pursuant to Section 32-1-15 NMSA 1978, to report any evidence that the victim is about to commit a crime or to limit any testimonial privileges available to any person pursuant to other provisions of law.

### **§ 31-25-6. Rules**

The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of the Victim Counselor Confidentiality Act.

## **NEW YORK**

### **N.Y. [C.P.L.R.] LAW § 4510 (McKinney 2011). RAPE CRISIS COUNSELOR.**

**(a) Definitions.** When used in this section, the following terms shall have the following meanings:

1. "Rape crisis program" means any office, institution or center which has been approved pursuant to subdivision fifteen of section two hundred six of the public health law, offering counseling and assistance to clients concerning sexual offenses, sexual abuses or incest.
2. "Rape crisis counselor" means any person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.
3. "Client" means any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses, sexual abuse, incest or attempts to commit sexual offenses, sexual abuse, or incest, as defined in the penal law.

**(b) Confidential information privileged.** A rape crisis counselor shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or for the rape crisis counselor be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records, except:

1. that a rape crisis counselor may disclose such otherwise confidential communication to the extent authorized by the client;
2. that a rape crisis counselor shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;

3. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or the rape crisis program and such action or proceeding involves confidential communications between the client and the rape crisis counselor.

**(c) Who may waive the privilege.** The privilege may only be waived by the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator.

**(d) Limitation on waiver.** A client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the crime victims board or an insurance representative shall not be deemed to have waived the privilege created by this section.

## **N.Y. [CRIM. PROC.] § 60.76 (McKinney 2011). RULES OF EVIDENCE; RAPE CRISIS COUNSELOR EVIDENCE IN CERTAIN CASES.**

Where disclosure of a communication which would have been privileged pursuant to section forty-five hundred ten of the civil practice law and rules is sought on the grounds that the privilege has been waived or that disclosure is required pursuant to the constitution of this state or the United States, the party seeking disclosure must file a written motion supported by an affidavit containing specific factual allegations providing grounds that disclosure is required. Upon the filing of such motion and affidavit, the court shall conduct an in camera review of the communication outside the presence of the jury and of counsel for all parties in order to determine whether disclosure of any portion of the communication is required.

## **NORTH CAROLINA**

### **N.C. GEN STAT. ANN. § 8-53.12 (West 2011). COMMUNICATIONS WITH AGENTS OF RAPE CRISIS CENTERS AND DOMESTIC VIOLENCE PROGRAMS PRIVILEGED.**

(a) Definitions. -- The following definitions apply in this section:

(1) Agent. -- An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.

(2) Center. -- A domestic violence program or rape crisis center.

(3) Domestic violence program. -- A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims.

(4) Domestic violence victim. -- Any person alleging domestic violence as defined by G. S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for himself or herself, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(5) Rape crisis center. -- Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other services to victims of sexual assault and their families.

(6) Services. -- Includes, but is not limited to, crisis hotlines; safe homes and shelters; assessment and intake; children of violence services; individual counseling; support in medical, administrative, and judicial systems; transportation, relocation, and crisis intervention. The term does not include investigation of physical or sexual assault of children under the age of 16.

(7) Sexual assault. -- Any alleged violation of G.S. 14-27.2, 14-27.3, 14-27.4, 14-27.5, 14-27.7, 14-27.7A, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(8) Sexual assault victim. -- Any person alleging sexual assault, who consults an agent of a rape crisis center for the purpose of obtaining, for themselves, advice, counseling, or other services concerning mental, physical, or emotional injuries suffered as a result of sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(9) Victim. -- A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. -- No agent of a center shall be required to disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services; provided, however, that this subsection shall not apply where the victim waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending shall compel disclosure, either at the trial or prior thereto, if the court finds, by a preponderance of the evidence, a good faith, specific and reasonable basis for believing that (i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material, and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. If the case is in district court, the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Before requiring production of records, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall order that the records be produced for the court under seal, shall examine the records in camera, and may allow disclosure of those portions of the records which the court finds contain information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court. The privilege afforded under this subsection terminates upon the death of the victim.

(c) Duty in Case of Abuse or Neglect. -- Nothing in this section shall be construed to relieve any person of any duty pertaining to abuse or neglect of a child or disabled adult as required by law.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 14-07.1-18 (2011). DOMESTIC VIOLENCE OR SEXUAL ASSAULT PROGRAM RECORDS--CONFIDENTIALITY--EXCEPTIONS--PENALTY.**

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;

b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and

c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

a. A client consents to the release of information that relates only to that client or the client's dependents;

b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;

c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

## PENNSYLVANIA

### **42 PA. CONS. STAT. ANN. § 5945.1 (West 2009). CONFIDENTIAL COMMUNICATIONS TO SEXUAL ASSAULT COUNSELORS.**

**(a) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

**"Confidential communication."** All information, oral or written, transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship, including matters transmitted between the sexual assault counselor and the victim through the use of an interpreter.

**"Coparticipant."** A victim participating in group counseling.

**"Interpreter."** A person who translates communications between a sexual assault counselor and a victim through the use of sign language, visual, oral or written translation.

**"Rape crisis center."** Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

**"Sexual assault counselor."** A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

**"Victim."** A person who consults a sexual assault counselor for the purpose of securing advice, counseling or

assistance concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim.

**(b) Privilege.--**

(1) No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.

(2) No coparticipant who is present during counseling may disclose a victim's confidential communication made during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim.

**23 PA. CONS. STAT. ANN. § 6102 (West 2011). DEFINITIONS [PROTECTION FROM ABUSE].**

**(a) General rule.--**The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**“Abuse.”** The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

**“Adult.”** An individual who is 18 years of age or older.

**“Certified copy.”** A paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court. A raised seal on the copy of the order of the issuing court shall not be required.

**“Comparable court.”** A foreign court that:

(1) has subject matter jurisdiction and is authorized to issue ex parte, emergency, temporary or final protection orders in that jurisdiction; and

(2) possessed jurisdiction over the parties when the protection order was issued in that jurisdiction.

**“Confidential communications.”** All information, whether written or spoken, transmitted between a victim and a

domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship. The term also includes communications made by or to a linguistic interpreter assisting the victim, counselor or advocate in the course of the relationship.

**“Domestic violence counselor/advocate.”** An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.

**“Domestic violence program.”** A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline; safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance.

**“Family or household members.”** Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

**“Firearm.”** Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon as defined by 18 Pa.C.S. § 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

**“Foreign protection order.”** A protection order as defined by 18 U.S.C. § 2266 (relating to definitions) issued by a comparable court of another state, the District of Columbia, Indian tribe or territory, possession or commonwealth of the United States.

**“Hearing officer.”** A magisterial district judge, judge of the Philadelphia Municipal Court, arraignment court magistrate appointed under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue), master appointed under 42 Pa.C.S. § 1126 (relating to masters) and master for emergency relief.

**“Master for emergency relief.”** A member of the bar of the Commonwealth appointed under section 6110(e) (relating to emergency relief by minor judiciary).

**“Minor.”** An individual who is not an adult.

**“Other weapon.”** Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term does not include a firearm.

**“Safekeeping permit.”** A permit issued by a sheriff allowing a person to take possession of any firearm, other weapon or ammunition that a judge ordered a defendant to relinquish in a protection from abuse proceeding.

**“Secure visitation facility.”** A court-approved visitation program offered in a facility with trained professional staff operated in a manner that safeguards children and parents from abuse and abduction.

**“Sheriff.”**

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

**“Victim.”** A person who is physically or sexually abused by a family or household member. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance

from a domestic violence counselor or advocate regarding abuse of the victim.

**“Weapon.”** Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes a firearm which is not loaded or lacks a magazine, clip or other components to render it immediately operable and components which can readily be assembled into a weapon as defined by 18 Pa.C.S. § 907(relating to possessing instruments of crime).

**(b) Other terms.**--Terms not otherwise defined in this chapter shall have the meaning given to them in 18 Pa.C.S. (relating to crimes and offenses)

## **23 PA. CONS. STAT. ANN. § 6116 (West 2009). CONFIDENTIALITY [PROTECTION FROM ABUSE].**

Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a coparticipant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protective services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance.

## **RHODE ISLAND**

### **SUPREME COURT OF RHODE ISLAND.**

### **ADVISORY OPINION TO THE HOUSE OF REPRESENTATIVES.**

43 A.L.R.4th 385  
83-265-M.P.  
Nov. 8, 1983.

House of Representatives propounded questions concerning constitutionality, under Sixth Amendment to United States Constitution and similar provision of State Constitution, of proposed statutes which would make communications privileged between sexual assault victim and sexual assault counselor. The Supreme Court answered that: (1) proposed statute which would make all communications privileged between sexual assault victim and sexual assault counselor would violate federal and state constitutional rights of an accused to confront his or her accusers, to obtain compulsory process, and to offer testimony, and (2) proposed statute which would make communications privileged between sexual assault victim and sexual assault counselor but which would provide for in camera hearing to permit trial justice to determine whether sexual assault counselor knows or has possession of material which contains evidence which would be clearly exculpatory in nature would permit trial justice to ensure that no sensitive and irrelevant evidence is presented to trier of fact and would strike requisite balance between an accused's constitutional right at trial and sexual assault victim's need for confidentiality in regard to any conversations between victim and counselor, and thus would not violate federal or state constitutional rights of an accused to confront his or her accusers, to obtain compulsory process, and to offer testimony.

## TEXAS

### TEX. [GOV'T] CODE ANN. § 420.071 TO 420.075 (Vernon 2011). CONFIDENTIAL COMMUNICATIONS [SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES].

#### § 420.071. Confidential Communications

(a) A communication between an advocate and a survivor, or a person claiming to be a survivor, that is made in the course of providing sexual assault advocacy services to the survivor is confidential and may not be disclosed except as provided by this subchapter.

(b) A record of the identity, personal history, or background information of a survivor or information concerning the victimization of a survivor that is created by or provided to an advocate or maintained by a sexual assault program is confidential and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from a confidential communication or record as described by this subchapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs a confidential communication or record concerning a survivor regardless of when the survivor received the services of an advocate or sexual assault program.

#### § 420.072. Exceptions

(a) A communication or record that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or a person authorized to act on behalf of the survivor consents in writing to the release of the confidential information as provided by Section 420.073.

(b) A communication or record that is confidential under this subchapter may be disclosed only to:

(1) medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication or record is relevant or if there is a probability of immediate mental or emotional injury to the survivor;

(2) a governmental agency if the disclosure is required or authorized by law;

(3) a qualified person to the extent necessary for a management audit, financial audit, program evaluation, or research, except that a report of the research, audit, or evaluation may not directly or indirectly identify a survivor;

(4) a person who has the written consent of the survivor or of a person authorized to act on the survivor's behalf as provided by Section 420.073; or

(5) an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or advocacy for the survivor.

(c) A communication or record that is confidential under this subchapter may not be disclosed to a parent or legal



guardian of a survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe that the parent or legal guardian of the survivor is a suspect in the sexual assault of the survivor.

#### **§ 420.073. Consent**

(a) Consent for the release of confidential information must be in writing and signed by:

- (1) the survivor, if the survivor is 13 years of age or older;
- (2) the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 13 years of age; or
- (3) the survivor's personal representative, if the survivor is deceased.

(a-1) For purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. If the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable or unwilling to sign the release, then the investigating law enforcement officer may sign the release.

(a-2) The written consent must specify:

- (1) the information or records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

#### **§ 420.074. Criminal Subpoena**

Notwithstanding any other provision of this chapter, a person shall disclose a communication or record that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.

#### **§ 420.075. Offense**

A person commits an offense if the person intentionally or knowingly discloses a communication or record that is confidential under this chapter, except as provided by this chapter. An offense under this section is a Class C misdemeanor.

## **UTAH**

### **UTAH CODE ANN. § 77-38-201 TO -204 (West 2011). CONFIDENTIAL COMMUNICATIONS FOR SEXUAL ASSAULT ACT.**

#### **§ 77-38-201. Title**

This part is known and cited as the "Confidential Communications for Sexual Assault Act."

## **§ 77-38-202. Purpose**

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

## **§ 77-38-203. Definitions**

As used in this part:

- (1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.
- (2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.
- (3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.
- (4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

## **§ 77-38-204. Disclosure of confidential communications**

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

- (1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;
- (2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;
- (3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or
- (4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

## **VERMONT**

### **Vt. STAT. ANN. tit. 12 § 1614 (2011). VICTIM AND CRISIS WORKER PRIVILEGE.**

(a)(1) "Crisis worker" means an employee or volunteer who:

(A) provides direct services to victims of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services;

(B) has undergone 20 hours of training;

(C) works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and

(D) is certified by the director of the program.

(2) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of services to the victim or those reasonably necessary for the transmission of the communication.

(b) A victim receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim. The crisis worker shall be presumed to have authority to claim the privilege but only on behalf of the victim.

## **VIRGINIA**

### **VA. CODE ANN. § 63.2-104.1 (West 2011). CONFIDENTIALITY OF RECORDS OF PERSONS RECEIVING DOMESTIC AND SEXUAL VIOLENCE SERVICES.**

A. In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, programs and individuals providing services to victims of sexual or domestic violence shall protect the confidentiality and privacy of persons receiving services.

B. Except as provided in subsections C and D, programs and individuals providing services to victims of sexual or domestic violence shall not:

1. Disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through sexual or domestic violence programs; or
2. Reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of an incapacitated person as defined in § 37.2-1000, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

C. If release of information described in subsection B is compelled by statutory or court mandate:

1. The service provider shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and
2. The service provider shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

D. Programs and individuals providing services to victims of sexual or domestic violence may share:

1. Nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;
2. Court generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and

3. Information necessary for law enforcement and prosecution purposes.

For purposes of this section, "programs" shall include public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

## WASHINGTON

### **WASH. REV. CODE ANN. § 5.60.060 (West 2011). WHO ARE DISQUALIFIED--PRIVILEGED COMMUNICATIONS.**

(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter

making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

(b) For purposes of this section, “peer support group counselor” means a:

(i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, “sexual assault advocate” means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, “domestic violence advocate” means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(12). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under

chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

- (a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;
- (b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;
- (c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;
- (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 (8) and (9); or
- (e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

## WISCONSIN

### **WIS. STAT. ANN. § 905.045 (West 2011). DOMESTIC VIOLENCE OR SEXUAL ASSAULT ADVOCATE-VICTIM PRIVILEGE.**

#### **(1) Definitions.** In this section:

- (a) "Abusive conduct" means abuse, as defined in s. 813. 122(1)(a), of a child, as defined in s. 48.02(2), interspousal battery, as described under s. 940.19 or 940.20(1m), domestic abuse, as defined in s. 813.12(1)(am), or sexual assault under s. 940.225.
- (b) "Advocate" means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.
- (c) A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.
- (d) "Victim" means an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject of abusive conduct. It is immaterial that the abusive conduct has not been reported to any government agency.

**(2) General rule of privilege.** A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, an advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

**(3) Who may claim the privilege.** The privilege may be claimed by the victim, by the victim's guardian or conservator, or by the victim's personal representative if the victim is deceased. The advocate may claim the privilege on behalf of the victim. The advocate's authority to do so is presumed in the absence of evidence to the contrary.

**(4) Exceptions.** Subsection (2) does not apply to any report concerning child abuse that an advocate is required to make under s. 48.981.

**(5) Relationship to s. 905.04.** If a communication or information that is privileged under sub. (2) is also a communication or information that is privileged under s. 905.04(2), the provisions of s. 905.04 supersede this section with respect to that communication or information.

## WYOMING

### **WYO. STAT. ANN. § 1-12-116 (2011). CONFIDENTIAL COMMUNICATIONS BETWEEN FAMILY VIOLENCE AND SEXUAL ASSAULT ADVOCATE AND VICTIM.**

(a) As used in this section:

(i) "Advocate" or "family violence or sexual assault advocate" means a person who is employed by or volunteers services to any family violence and sexual assault program, who is certified by the program as having undergone at least forty (40) hours of crisis advocacy training and whose work is directed and supervised under a family violence and sexual assault program;

(ii) "Confidential communication" means information transmitted in confidence between a victim and an advocate in the course of that relationship and includes all information received by, and any report, working paper or document prepared by the advocate in the course of that relationship;

(iii) "Crisis services to victims of family violence and sexual assault" means emergency and follow-up intervention, information, referral services and medical, legal and social services advocacy;

(iv) "Family violence and sexual assault program" means a program whose primary purpose is to offer shelter and crisis services to victims of family violence and sexual assault through any community facility or center;

(v) "Shelter" means a place of temporary refuge, offered on a twenty-four (24) hour, seven (7) day per week basis to victims and their children;

(vi) "Victim" means a person who has been subjected to sexual assault as defined by W.S. 6-2-301(a)(v), incest as defined by W.S. 6-4-402 or domestic abuse as defined by W.S. 35-21-102(a)(iii).

(b) Except as provided by W.S. 14-3-210, a person exempted from testifying under the provisions of W.S. 1-12-116 shall not be examined as a witness in any civil, criminal, legislative or administrative proceeding concerning the following communications and information:

(i) An advocate shall not testify concerning a confidential communication made by a victim in the course of that relationship, except the advocate:

(A) May testify:

(I) With the express consent of the victim; or

(II) If the victim voluntarily testifies, provided the advocate's testimony shall be limited to the same subject matter.

(B) May be compelled to testify if the victim is unable to testify due to death or incompetence.

(ii) Any employee of a family violence and sexual assault program who has access to confidential communication shall not testify except in those circumstances where the advocate may testify.



## GENERAL THERAPIST/COUNSELOR

### ALASKA

#### **ALASKA STAT. § 08.29.200 CONFIDENTIALITY OF COMMUNICATIONS. [LICENSED PROFESSIONAL COUNSELORS]**

(a) A person licensed under this chapter may not reveal to another person a communication made to the licensee by a client about a matter concerning which the client has employed the licensee in a professional capacity. This section does not apply to

(1) a communication to a potential victim, the family of a potential victim, law enforcement authorities, or other appropriate authorities concerning a clear and immediate probability of physical harm to the client, other individuals, or society;

(2) a case conference or case consultation with other mental health professionals at which the patient is not identified;

(3) the release of information that the client in writing authorized the licensee to reveal;

(4) information released to the board during the investigation of a complaint or as part of a disciplinary or other proceeding; or

(5) situations where the rules of evidence applicable to the psychotherapist-patient privilege allow the release of the information.

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by an elderly person or disabled adult as required by AS 47.24.

(c) Information obtained by the board under (a)(4) of this section is confidential and is not a public record for purposes of AS 40.25.110--40.25.140.

### ARKANSAS

#### **ARK. CODE ANN. § 17-27-311 (West 2009). CONFIDENTIAL RELATIONS AND COMMUNICATIONS**

(a) For the purposes of this chapter, the confidential relations and communications between a licensed counselor and a client, a licensed associate counselor and a client, a licensed marriage and family therapist and a client, or between a licensed associate marriage and family therapist and a client are placed upon the same basis as those between an attorney and a client.

(b) Nothing in this chapter shall be construed to require that any privileged communication be disclosed.

## CALIFORNIA

### **CAL. BUS. & PROF. § 4999.84 (West 2009). CONFIDENTIALITY OF COMMUNICATIONS.**

It is the intent of the Legislature that any communication made by a person to a licensed professional clinical counselor in the course of professional services shall be deemed a privileged communication.

## COLORADO

### **COLO. REV. STAT. ANN. § 13-90-107 (West 2011). WHO MAY NOT TESTIFY WITHOUT CONSENT.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)(I) Except as otherwise provided in section 14-13-310(4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(a.5)(I) Except as otherwise provided in Section 14-13-310(5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in a civil union without the other partner's consent, nor during the civil union or afterward shall be examined without the consent of the other as to any communications made by one to the other during the civil union; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401(1)(a)(IV) and (1)(a)(V), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of Article 15 of Title 14, C.R.S.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any

fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his profession pursuant to the laws of this state or any other state shall not be examined without the consent of his patient as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

(C) The state board of medical examiners, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public

interests, in the judgment of the court, would suffer by the disclosure.

(f)(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III)(A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV)(A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103(6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102(20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor shall not be examined without the consent of such licensee's or unlicensed psychotherapist's client as to any communication made by the client to such licensee or unlicensed psychotherapist or such licensee's or unlicensed psychotherapist's advice given thereon in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103(26), C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j)(I)(A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or

entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), “voluntary self-evaluation” and “environmental audit report” have the meanings provided for the terms in section 13-25-126.5(2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5(3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3(1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a “victim's advocate” means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (I):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during, or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 25-1-310 and 25-1-1106, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-10-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such

review process, and procedures shall be adopted by the state board of medical examiners or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

## CONNECTICUT

### **CONN. GEN. STAT. ANN. § 52-146P. (West 2011). DISCLOSURE OF PRIVILEGED COMMUNICATIONS BETWEEN MARITAL AND FAMILY THERAPIST AND PERSON CONSULTING SUCH THERAPIST PROHIBITED. EXCEPTIONS.**

(a) As used in this section:

(1) "Person" means an individual who consults a marital and family therapist for purposes of diagnosis or treatment;

(2) "Marital and family therapist" means an individual certified as a marital and family therapist pursuant to chapter 383a;

(3) "Communications" means all oral and written communications and records thereof relating to the diagnosis and treatment of a person between such person and a marital and family therapist or between a member of such person's family and a marital and family therapist;

(4) "Consent" means consent given in writing by the person or his authorized representative;

(5) "Authorized representative" means (A) an individual empowered by a person to assert the confidentiality of communications which are privileged under this section, or (B) if a person is deceased, his personal representative or next of kin, or (C) if a person is incompetent to assert or waive his privileges under this section, (i) a guardian or conservator who has been or is appointed to act for the person, or (ii) for the purpose of maintaining confidentiality until a guardian or conservator is appointed, the person's nearest relative.

(b) Except as provided in subsection (c) of this section, all communications shall be privileged and a marital and family therapist shall not disclose any such communications unless the person or his authorized representative consents to waive the privilege and allow such disclosure. In circumstances where more than one person in a family is receiving therapy, each such family member shall consent to the waiver. In the absence of such a waiver from each such family member, a marital and family therapist shall not disclose communications with any family member. The person or his authorized representative may withdraw any consent given under the provisions of this section at any time in a writing addressed to the individual with whom or the office in which the original consent was filed. The withdrawal of consent shall not affect communications disclosed prior to notice of the withdrawal.

(c) Consent of the person shall not be required for the disclosure of such person's communications:

(1) Where mandated by any other provision of the general statutes;

(2) Where a marital and family therapist believes in good faith that the failure to disclose such communications presents a clear and present danger to the health or safety of any individual;



(3) Where a marital and family therapist makes a claim for collection of fees for services rendered, the name and address of the person and the amount of the fees may be disclosed to individuals or agencies involved in such collection, provided notification that such disclosure will be made is sent, in writing, to the person not less than thirty days prior to such disclosure. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the claim, the disclosure shall be limited to the following: (A) That the person was receiving services from a marital and family therapist, (B) the dates of such services, and (C) a general description of the types of services.

## **DELAWARE**

### **DEL. CODE ANN. tit. 24, § 3017 (2011). PRIVILEGED COMMUNICATIONS.**

Communications between a mental health or chemical dependency professional licensed under this chapter and a client of the professional shall be considered confidential to the same extent as provided by Rule 503 of the Delaware Rules of Evidence.

## **HAWAII**

### **HAW. REV. STAT. § 451J-12 (2011). CONFIDENTIALITY AND PRIVILEGED COMMUNICATIONS [MARRIAGE AND FAMILY THERAPISTS].**

No person licensed as a marriage and family therapist, nor any of the person's employees or associates, shall be required to disclose any information that the person may have acquired in rendering marriage and family therapy services except in the following circumstances:

- (1) As required by law;
- (2) To prevent a clear and immediate danger to a person or persons;
- (3) In the course of a civil, criminal, or disciplinary action arising from the therapy where the therapist is a defendant;
- (4) In a criminal proceeding where the client is a defendant and the use of the privilege would violate the defendant's right to a compulsory process of the right to present testimony and witnesses in the defendant's own behalf;
- (5) In accordance with the terms of a client's previously written waiver of the privilege; or
- (6) Where more than one person in a family jointly receives therapy and each family member who is legally competent executes a written waiver; in that instance, a therapist may disclose information received from any family member in accordance with the terms of the person's waiver.

## **IDAHO**

### **IDAHO CODE ANN. § 54-3410 (2011). CONFIDENTIAL COMMUNICATION [COUNSELORS AND THERAPISTS].**

Confidentiality of communication between any person licensed under this chapter and client shall be privileged

from disclosure as provided in section 9-203, Idaho Code, with the exception of the board of review provided in section 54-3404, Idaho Code.

## INDIANA

### **IND. CODE ANN. § 25-23.6-6-1 (2011). MATTERS RELATED IN OFFICIAL CAPACITY; EXCEPTIONS TO PRIVILEGE.**

Sec. 1. Matters communicated to a counselor in the counselor's official capacity by a client are privileged information and may not be disclosed by the counselor to any person, except under the following circumstances:

- (1) In a criminal proceeding involving a homicide if the disclosure relates directly to the fact or immediate circumstances of the homicide.
- (2) If the communication reveals the contemplation or commission of a crime or a serious harmful act.
- (3) If:
  - (A) the client is an unemancipated minor or an adult adjudicated to be incompetent; and
  - (B) the information communicated to the counselor indicates the client was the victim of abuse or a crime.
- (4) In a proceeding to determine mental competency, or a proceeding in which a defense of mental incompetency is raised.
- (5) In a civil or criminal malpractice action against the counselor.
- (6) If the counselor has the express consent of:
  - (A) the client; or
  - (B) in the case of a client's death or disability, the express consent of the client's legal representative.
- (7) To a physician if the physician is licensed under IC 25-22.5 and has established a physician-patient relationship with the client.
- (8) Circumstances under which privileged communication is abrogated under Indiana law.

## IOWA

### **IOWA CODE ANN. § 622.10 (West 2011). COMMUNICATIONS IN PROFESSIONAL CONFIDENCE--EXCEPTIONS--REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS AFTER COMMENCEMENT OF LEGAL ACTION--APPLICATION TO COURT.**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the

usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. a. In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's attorney for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute a legally sufficient patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including but not limited to any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraphs "c" and "e".

b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the attorney for any party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fees for copies of any records shall be as specified in subsection 5.

e. Defendant's counsel shall provide a written notice to plaintiff's attorney in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's attorney has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and attorney for the defendant. Prior to scheduling any meeting or engaging in any communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional, attorney for the defendant shall confer with plaintiff's attorney to determine a mutually convenient date and time for such meeting or telephonic communication. Plaintiff's attorney may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

3A. a. Except as otherwise provided in this subsection, the confidentiality privilege under this section shall be absolute with regard to a criminal action and this section shall not be construed to authorize or require the disclosure of any privileged records to a defendant in a criminal action unless either of the following occur:

(1) The privilege holder voluntarily waives the confidentiality privilege.

(2)(a) The defendant seeking access to privileged records under this section files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case. Such a motion shall be filed not later than forty days after arraignment under seal of the court. Failure of the defendant to timely file such a motion constitutes a waiver of the right to seek access to privileged records under this section, but the court, for good cause shown, may grant relief from such waiver.

(b) Upon a showing of a reasonable probability that the privileged records sought may likely contain exculpatory information that is not available from any other source, the court shall conduct an in camera review of such records to determine whether exculpatory information is contained in such records.

(c) If exculpatory information is contained in such records, the court shall balance the need to disclose such information against the privacy interest of the privilege holder.

(d) Upon the court's determination, in writing, that the privileged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder, the court shall issue an order allowing the disclosure of only those portions of the records that contain the exculpatory information. The court's order shall also prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court.

b. Privileged information obtained by any means other than as provided in paragraph "a" shall not be admissible in any criminal action.

4. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged. At the request of any party or at the request of the deponent, the court shall fix a reasonable fee to be paid to a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. At any time, upon a written request from a patient, a patient's legal representative or attorney, or an adverse party pursuant to subsection 3, any provider shall provide copies of the requested records or images to the requester within thirty days of receipt of the written request. The written request shall be accompanied by a legally sufficient patient's waiver unless the request is made by the patient or the patient's legal representative or attorney.

a. The fee charged for the cost of producing the requested records or images shall be based upon the actual cost of production. If the written request and accompanying patient's waiver, if required, authorizes the release of all of the patient's records for the requested time period, including records relating to the patient's mental health, substance abuse, and acquired immune deficiency syndrome-related conditions, the amount charged shall not exceed the rates established by the workers' compensation commissioner for copies of records in workers' compensation cases. If requested, the provider shall include an affidavit certifying that the records or images produced are true and accurate copies of the originals for an additional fee not to exceed ten dollars.

b. A patient or a patient's legal representative or a patient's attorney is entitled to one copy free of charge of the patient's complete billing statement, subject only to a charge for the actual costs of postage or delivery charges incurred in providing the statement. If requested, the provider or custodian of the record shall include an affidavit certifying the billing statements produced to be true and accurate copies of the originals for an additional fee not to exceed ten dollars.

c. Fees charged pursuant to this subsection are not subject to a sales or use tax. A provider providing the records or images may require payment in advance if an itemized statement demanding such is provided to the requesting party within fifteen days of the request. Upon a timely request for payment in advance, the time for providing the records or images shall be extended until the greater of thirty days from the date of the original request or ten days from the receipt of payment.

d. If a provider does not provide to the requester all records or images encompassed by the request or does not allow a patient access to all of the patient's medical records encompassed by the patient's request to examine the patient's records, the provider shall give written notice to the requester or the patient that providing the requested records or images would be a violation of the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

e. As used in this subsection:

(1) "Records" and "images" include electronic media and data containing a patient's health or billing information and "copies" includes patient records or images provided in electronic form, regardless of the form of the originals. If consented to by the requesting party, records and images produced pursuant to this subsection may be produced on electronic media.

(2) "Provider" means any physician or surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, hospital, nursing home, or other person, entity, facility, or organization that furnishes, bills, or is paid for health care in the normal course of business.

6. For the purposes of this section, "mental health professional" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

7. A qualified school guidance counselor, who is licensed by the board of educational examiners under chapter 272 and who obtains information by reason of the counselor's employment as a qualified school guidance counselor, shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

## KANSAS

### **KAN. STAT. ANN. § 65-5810 (2010). CONFIDENTIAL COMMUNICATIONS; EXCEPTIONS [PROFESSIONAL COUNSELORS].**

(a) The confidential relations and communications between a licensed professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(b) The confidential relations and communications between a licensed clinical professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's

client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed professional counselor or licensed clinical professional counselor 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 the client. There is no privilege under this section for information which is required to be reported to a public official.

**KAN. STAT. ANN. § 65-6410 (2010). CONFIDENTIAL INFORMATION AND COMMUNICATIONS; EXCEPTIONS [MARRIAGE AND FAMILY THERAPISTS].**

(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.

**LOUISIANA**

**LA. REV. STAT. ANN. § 37:1114 (2011). PRIVILEGED COMMUNICATIONS.**

Testimonial privileges, exceptions, and waiver with respect to communications between a licensed professional counselor and his client are governed by the Louisiana Code of Evidence.

**MAINE**

**ME. REV. STAT. ANN. tit. 32 § 13862 (2011). PRIVILEGED COMMUNICATIONS [COUNSELING PROFESSIONALS].**

Except at the request or consent of the client, no person licensed under this chapter may be required to testify in

any civil or criminal action, suit or proceeding at law or in equity respecting any information that the person licensed or registered may have acquired in providing counseling services or marriage and family therapy services to the client in a professional and contractual capacity if that information was necessary to enable the licensee to furnish professional counseling services to the client. When the physical or mental condition of the client is an issue in that action, suit or proceeding or when a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to or otherwise learned by that licensed or registered person in connection with the provision of counseling or marriage and family therapy services may not be privileged and disclosure may be required.

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect Title 22, sections 3477 to 3479-A and 4011-A to 4015.

This section may not be construed to prevent a 3rd-party reimbursor from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to the diagnosis, treatment or other services provided to any persons, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed as long as the policy or certificate under which the claim is made provides that access to those records is permitted. This section may not be construed to prevent access to any records pursuant to any peer review or utilization review procedures applied and implemented in good faith.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ANN. CH. 112, § 172 (West 2011). CONFIDENTIAL COMMUNICATIONS; WAIVER.**

Any communication between an allied mental health or human services professional and a client shall be deemed to be confidential. Said privilege shall be subject to waiver only in the following circumstances:

(a) where the allied mental health and human services professional is a party defendant to a civil, criminal or disciplinary action arising from such practice in which case the waiver shall be limited to that action;

(b) where the client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to compulsory process and right to present testimony and witnesses in his own behalf;

(c) when the communication reveals the contemplation or commission of a crime or a harmful act; and

(d) where a client agrees to the waiver, or in circumstances where more than one person in a family is receiving therapy, where each such family member agrees to the waiver.

The provisions of this section shall not be construed to prevent third party reimbursor from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. The provisions of this section shall not be construed to prevent access to any such records pursuant to any peer review or utilization review procedures applied and implemented in good faith.

## **MICHIGAN**

### **MICH. COMP. LAWS ANN. § 333.18117 (West 2011). PRIVILEGED COMMUNICATIONS; DISCLOSURE.**

Sec. 18117. For the purposes of this part, the confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client of the licensed professional counselor or a limited licensed counselor are privileged communications, and this part does not require a privileged communication to be disclosed, except as otherwise provided by law. Confidential information may be disclosed only upon consent of the client, pursuant to section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281.

**MICH. COMP. LAWS ANN. § 551.339 (West 2011). COMMUNICATION PRIVILEGES; EXEMPTIONS; REPORTS.**

Sec. 9. (1) Except as provided in subsection (2), a communication between a counselor in the family counseling service and a person who is counseled is confidential. The secrecy of the communication shall be preserved inviolate as a privileged communication which privilege cannot be waived. The communication shall not be admitted in evidence in any proceedings. The same protection shall be given to communications between spouses and counselors to whom they have been referred by the court or the court's family counseling service.

(2) A family referred by the court with custody or parenting time problems whose adult members sign an agreement indicating the purpose of the referral is exempt from subsection (1). A report of an evaluation of those families shall be submitted to the court with indicated recommendations.

**MICH. COMP. LAWS ANN. § 333.16911 (West 2011). PRIVILEGED INFORMATION; WAIVER.**

Sec. 16911. (1) Except as provided in subsection (3), information regarding an individual to whom a licensee provided marriage and family therapy is privileged information and not subject to waiver, regardless of any of the following:

(a) Whether the information was obtained directly from the individual, from another person involved in the therapy, from a test or other evaluation mechanism, or from other sources.

(b) Whether the information was obtained before, during, or following therapy.

(c) Whether the individual involved is a present client or a former client.

(2) Except as provided in subsection (3), referrals made by a circuit court or its counseling service, as provided in the circuit court family counseling services act, Act No. 155 of the Public Acts of 1964, being sections 551.331 to 551.344 of the Michigan Compiled Laws, is privileged information not subject to waiver.

(3) The privilege established in this section is waived only under 1 of the following circumstances:

(a) If disclosure is required by law or necessary to protect the health or safety of an individual.

(b) If the licensee is a party defendant to a civil, criminal, or administrative action arising from services performed as a licensee, in which case the waiver is limited only to that action.

(c) If a waiver specifying the terms of disclosure is obtained in writing from each individual over 18 years of age involved in the marriage and family therapy and then only in accordance with the terms of the written waiver. If more than 1 individual is or was involved in the marriage and family therapy performed by a licensee, the privilege is not waived for any individual unless all individuals over 18 years of age involved in the marriage and family therapy have executed the written waiver.



## MINNESOTA

### **MINN. STAT. ANN. § 148B.593 (West 2011). DISCLOSURE OF INFORMATION [SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, MENTAL HEALTH LICENSED PROFESSIONAL COUNSELING].**

(a) A person licensed under sections 148B.50 to 148B.593 may not disclose without written consent of the client any communication made by the client to the licensee in the course of the practice of professional counseling, nor may any employee of the licensee reveal the information without the consent of the employer or client except as provided under section 626.556 or 626.557.

(b) For purposes of sections 148B.50 to 148B.593, the confidential relations and communications between the licensee and a client are placed upon the same basis as those that exist between a licensed psychologist and client. Nothing in sections 148B.50 to 148B.593 may be construed to require any communications to be disclosed except by court order.

### **MINN. STAT. ANN. § 595.02 (West 2009). TESTIMONY OF WITNESSES.**

**Subdivision 1. Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

- (e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.
- (f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.
- (g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.
- (h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.
- (i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:
- (1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;
  - (2) when the communications reveal the contemplation or ongoing commission of a crime; or
  - (3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.
- (j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.
- (k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, “domestic abuse advocate” means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

**Subd. 1a. Alternative dispute resolution privilege.** No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

- (1) constitute a crime;
- (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or
- (3) constitute professional misconduct.

**Subd. 2. Exceptions.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

- (1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and
- (2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to

prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

**Subd. 3. Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

**Subd. 4. Court order.** (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

**Subd. 5. Waiver of privilege for health care providers.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

## **MINN. STAT. ANN. § 148B.39 (West 2011). PRIVILEGED COMMUNICATIONS; EXCEPTIONS [SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, MENTAL HEALTH BOARD OF MARRIAGE AND FAMILY THERAPY]**

A person licensed under sections 148B.29 to 148B.39 and employees and professional associates of the person cannot 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 patient 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; and

(5) a patient 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 marital and family therapist cannot disclose information received by a family member.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 73-30-17 (West, 2011). CONFIDENTIALITY OF CLIENT INFORMATION.**

No licensed professional counselor may disclose any information acquired during professional consultation with clients except:

- (a) With the written consent of the client or, in the case of death or disability or in the case of a minor, with the written consent of his parent, legal guardian or conservator, or other person authorized by the court to file suit;
- (b) When a communication reveals the contemplation of a crime or harmful act, or intent to commit suicide; or
- (c) When a person waives the privilege by bringing charges against a licensed professional counselor for breach of privileged communication, or any other charges.

## **MISSOURI**

### **MO. ANN STAT. § 337.540 (West 2011). PRIVILEGED COMMUNICATIONS, WHEN [PROFESSIONAL COUNSELORS].**

Any communication made by any person to a licensed professional counselor in the course of professional services rendered by the licensed professional counselor shall be deemed a privileged communication and the licensed professional counselor shall not be examined or be made to testify to any privileged communication without the prior consent of the person who received his professional services, except in violation of the criminal law.

## **MONTANA**

### **MONT. CODE ANN. § 37-23-301 (2011). PRIVILEGED COMMUNICATIONS--EXCEPTIONS [PROFESSIONAL COUNSELING].**

A licensee may not disclose any information the licensee acquires from clients consulting the licensee in a professional capacity except:

- (1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;
- (2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;
- (3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;

- (4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;
- (5) to the extent that the privilege is otherwise waived by the client; and
- (6) as may otherwise be required by law.

## NEBRASKA

### **NEB. REV. STAT. § 38-2136 (2011). MENTAL HEALTH PRACTITIONERS; CONFIDENTIALITY; EXCEPTION.**

No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

- (1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;
- (2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;
- (3) When the person waives the privilege by bringing charges against the licensee; or
- (4) When there is a duty to warn under the limited circumstances set forth in section 38-2137

## NEW JERSEY

### **N.J. STAT. ANN. § 45:8B-29 (West 2011). CONFIDENTIAL COMMUNICATIONS; WAIVER OF PRIVILEGE.**

A communication between a marriage and family therapist and the person or persons in therapy shall be confidential and its secrecy preserved. This privilege shall not be subject to waiver, except where the marriage and family therapist is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case, the waiver shall be limited to that action.

## OKLAHOMA

### **OKLA. STAT. tit. 59, § 1925.11 (2011). CONFIDENTIALITY--EXCEPTIONS--PROFESSIONAL PRIVILEGE--COURT TESTIMONY [MARITAL AND FAMILY THERAPISTS].**

A. No person licensed pursuant to the provisions of the Marital and Family Therapist Licensure Act as a marital and family therapist, nor any of his employees or associates, shall be required to disclose any information which he

may have acquired in rendering marital and family therapy services, except when:

1. Authorized by other state laws;
2. Failure to disclose such information presents a clear and present danger to the health or safety of any person;
3. The marital and family therapist is a party defendant to a civil, criminal or disciplinary action arising from such therapy in which case any waiver of the privilege accorded by this section shall be limited to that action;
4. The patient is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process and/or right to present testimony and witnesses in his own behalf; or
5. A patient agrees to waiver of the privilege accorded by this section, in the case of death or disability of the patient, the consent of his personal representative or other person authorized to sue or the beneficiary of any insurance policy on his life, health or physical condition. In circumstances where more than one person in a family is receiving therapy, each such family member must agree to the waiver. Absent such a waiver from each family member, a marital and family therapist shall not disclose information received from any family member.

B. No information shall be treated as privileged and there shall be no privileges created by the Marital and Family Therapist Licensure Act as to any information acquired by the person licensed pursuant to the Marital and Family Therapist Licensure Act when such information pertains to criminal acts or violation of any law.

C. The Marital and Family Therapist Licensure Act shall not be construed to prohibit any licensed person from testifying in court hearings concerning matters of adoption, child abuse, child neglect, battery or matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors on behalf of his client.

## OREGON

### **OR. REV. STAT. ANN. § 40.262 (West 2011). COUNSELOR-CLIENT PRIVILEGE.**

A professional counselor or a marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715 shall not be examined in a civil or criminal court proceeding as to any communication given the counselor or therapist by a client in the course of a noninvestigatory professional activity when such communication was given to enable the counselor or the therapist to aid the client, except:

- (1) When the client or those persons legally responsible for the affairs of the client give consent to the disclosure. If both parties to a marriage have obtained marital and family therapy by a licensed marital and family therapist or a licensed counselor, the therapist or counselor shall not be competent to testify in a domestic relations action other than child custody action concerning information acquired in the course of the therapeutic relationship unless both parties consent;
- (2) When the client initiates legal action or makes a complaint against the licensed professional counselor or licensed marriage and family therapist to the board;
- (3) When the communication reveals the intent to commit a crime or harmful act; or
- (4) When the communication reveals that a minor is or is suspected to be the victim of crime, abuse or neglect.



## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 40-75-190 (2010). CONFIDENTIALITY OF CLIENT COMMUNICATIONS; EXCEPTIONS [PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS].**

(A) No person licensed under this chapter, and no person's employees or associates, shall disclose any information which he or she may have acquired during the course of treatment, except in these instances:

(1) as mandated by Section 63-7-310, requiring certain professionals to report suspected child abuse and neglect and Section 43-35-85, requiring certain professionals to report suspected abuse, neglect, or exploitation of a vulnerable adult;

(2) to prevent a clear and immediate danger to a person or persons;

(3) if the licensee is a defendant in a civil, criminal, or disciplinary action arising from the course of treatment, in which case confidences may be disclosed only in the course of that action;

(4) if the client is a party in a criminal or civil proceeding, including a commitment proceeding;

(5) if a client introduces his mental condition as an element of a claim or defense;

(6) if there is a waiver of confidentiality previously obtained in writing, this information may be revealed only in accordance with the terms of the waiver. In circumstances where more than one person in a family receives treatment conjointly, each family member who is legally competent to execute a waiver must agree to the waiver referred to in this item. Without a waiver from each family member legally competent to execute a waiver, no confidences may be disclosed.

(B) All communications between clients and their licensed professional counselor or marriage and family therapist are considered privileged as provided in Section 19-11-95, protecting confidences between patients of mental illness or emotional condition and licensees under this chapter, and as provided in Section 19-11-100, providing limited protection for persons engaged in the gathering of information for journalistic or literary purposes. Additionally, a licensed professional counselor or a licensed marital and family therapist must maintain privileged communications and patient confidentiality as required of psycho-therapists. All records of treatments maintained by a licensed professional counselor or marriage and family therapist are confidential and must not be disclosed except under the circumstances provided for in this subsection.

(C) A person licensed under this chapter must comply with all applicable state and federal confidentiality laws. A person licensed under this chapter who is employed by, or serves as part of a federally assisted program as defined in the Public Health Service Act, Title 42, Code of Federal Regulation, Part 2 may not release the identity of any person in alcohol or drug abuse treatment except as provided in the Public Health Service Act, Title 42, Code of Federal Regulation.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 36-32-27 (2011). PRIVILEGED INFORMATION--EXCEPTIONS [COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS].**

No licensed professional counselor or licensed professional counselor--mental health or a counselor's employee may disclose any information the counselor may have acquired from persons consulting the counselor in a professional capacity that was necessary to enable the counselor to render services in a professional capacity to those persons except:

- (1) With the written consent of the person or, in the case of death or disability, of the person's own personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition;
- (2) That a licensed professional counselor or licensed professional counselor--mental health is not required to treat as confidential a communication that reveals the contemplation or the commission of a crime or a harmful act;
- (3) If the person is a minor under the laws of this state and the information acquired by the licensed professional counselor or licensed professional counselor--mental health indicated that the minor was the victim or subject of a crime, the licensed professional counselor or licensed professional--mental health may be required to testify fully in any examination, trial, or other proceeding in which the commission of such a crime is the subject of inquiry;
- (4) If the person waives the privilege by bringing charges against the licensed professional counselor or licensed professional counselor--mental health.

## **TENNESSEE**

### **TENN. CODE ANN. § 63-22-114 (West 2011). CONFIDENTIAL INFORMATION OR PRIVILEGED COMMUNICATIONS [PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS].**

The confidential relations and communications between licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists and clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this part shall be construed to require any such privileged communication to be disclosed. However, nothing contained within this section shall be construed to prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports.

## **WASHINGTON**

### **WASH. REV. CODE ANN. § 5.60.060 (West 2011). WHO ARE DISQUALIFIED--PRIVILEGED COMMUNICATIONS.**

- (1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.
- (2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

- (b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a

communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another

person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(12). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;

(c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 (8) and (9); or

(e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

## WEST VIRGINIA

### W. VA. CODE ANN. § 30-31-16 (West 2011). DISCLOSURE [LICENSED PROFESSIONAL COUNSELORS].

All information communicated to or acquired by a licensee while engaged in the practice of counseling or marriage and family therapy with a client is privileged information and may not be disclosed by the licensee except:

(a) With the written consent of the client, or in the case of death or disability, with the written consent of a

personal representative or other person authorized to sue, or the beneficiary of any insurance policy on the client's life, health or physical condition;

(b) When a communication reveals the contemplation of an act dangerous to the client or others; or

(c) When the client, or his or her personal representative, waives the privilege by bringing charges against the licensee.

## WISCONSIN

### **WIS. STAT. ANN. § 905.04 (West 2011). PHYSICIAN-PATIENT, REGISTERED NURSE-PATIENT, CHIROPRACTOR-PATIENT, PSYCHOLOGIST-PATIENT, SOCIAL WORKER-PATIENT, MARRIAGE AND FAMILY THERAPIST-PATIENT AND PROFESSIONAL COUNSELOR-PATIENT PRIVILEGE**

**(1) Definitions.** In this section:

(a) “Chiropractor” means a person licensed under s. 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) A communication or information is “confidential” if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) “Marriage and family therapist” means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) “Patient” means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) “Physician” means a person as defined in s. 990.01(28), or reasonably believed by the patient so to be.

(dg) “Podiatrist” means a person licensed under s. 448.63 or a person reasonably believed by the patient to be a podiatrist.

(dm) “Professional counselor” means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) “Psychologist” means a licensed psychologist, as that term is defined in s. 455.01(4), or a person reasonably believed by the patient to be a psychologist.

(f) “Registered nurse” means a nurse who is licensed under s. 441.06 or licensed as a registered nurse in a party state, as defined in s. 441.50(2)(j), or a person reasonably believed by the patient to be a registered nurse.

(g) “Social worker” means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

**(2) General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

**(3) Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

**(4) Exceptions.** (a) *Proceedings for hospitalization, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian in this state, for court-ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(am) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 54.36(1) or s. 880.33(1), 2003 stats.

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 2m. There is no privilege for information contained in a report of child abuse or neglect that is provided under s. 48.981(3).

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01(1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under subch. IX of ch. 767.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 255.40 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services to court in juvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067 or 48.069 only as provided in s. 48.78 and may disclose information obtained while providing services under s. 938.067 or 938.069 only as provided in s. 938.78.

## WYOMING

### **WYO. STAT. ANN. § 33-38-109 (2011). DISCLOSURE OF INFORMATION [PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS AND CHEMICAL DEPENDENCY SPECIALISTS].**

(a) A person licensed or certified under this act shall not disclose without consent of the client any communication made by the client to the licensed or certified professional in the course of professional practice, nor may any employee of the licensed or certified professional reveal the information without the consent of the employer or client except as indicated by law.

(b) Repealed by Laws 1993, ch. 181, § 3.

(c) A person licensed or certified under this act shall not reveal without the consent of the client or the client's legal advisor his advice given in the course of professional employment; nor shall a secretary, stenographer, clerk or other employee of any person licensed or certified under this act reveal, without the consent of his employer or the client, any facts, the knowledge of which he has acquired in such capacity.

## PUERTO RICO

### **P.R. LAWS ANN. tit. 32 AP. IV, R.26-A (1979). CRIME VICTIM RELATIONSHIP**

(A) As used in this rule, the following terms shall have the meaning indicated below:

(1) *Confidential communication.*— Any information transmitted between the crime victim and his/her counselor be it in private or before a third person whose presence is necessary to establish communication between the victim and the counselor, or to facilitate the counseling services needed by the victim when such information is disclosed during the course of the treatment that the counselor gives to deal with the victim's emotional or psychological condition produced by the commission of a crime and that is made in the confidence that the same will not be disclosed to third persons.

(2) *Victim.*— A person that has suffered emotional or psychological damage as a consequence of the commission of a crime and who resorts to a counselor or to a counseling and help center to obtain assistance or treatment.

(3) *Counseling*.— The assistance, diagnosis or treatment offered to the victim to mitigate the adverse emotional or psychological effects caused by the commission of a crime. It includes, but is not limited to, treatment during the emotional or mental crisis period.

(4) *Help and counseling center*.— Any person or private or government entity that has, as one of its main purposes, to offer treatment and help to crime victims.

(5) *Counselor*.— Any person duly authorized, certified or licensed by the Commonwealth of Puerto Rico to carry out the functions of a counselor, orientator, consultant, therapist or any employee or supervised volunteer of a help and counseling center that offers treatment and help to crime victims.

(B) Subject to the provisions of this rule, any victim of a crime, whether or not a party to the action, has the privilege to refuse to disclose or to prevent another from disclosing a confidential communication between the victim and the counselor, if any one of them reasonably believed such communication to be necessary for the treatment and help required. The privilege may be claimed not only by the holder thereof, but also by a person authorized by the victim, a legal counsel or by the counselor who received the communication.

(C) Subject to the provisions of this rule, neither the counselor nor the victim, whether or not a party to the action, may be required to give the name, address, location or telephone number of a help center, shelter or another facility that gives temporary shelter to crime victims, unless the facility in question is a party to the action.

(D) The fact that a victim testifies in court regarding the crime does not constitute waiver of the privilege.

(1) Notwithstanding the above-stated, if, as part of such testimony, the victim reveals part of the confidential communication, it shall be understood as a waiver of the privilege with respect to that part of the testimony only.

(2) Any waiver of the privilege shall only be extended to that part which is necessary to answer the questions made by the attorney concerning the confidential communication and that are relevant to the facts and circumstances of the case.

(E) The victim cannot waive the privilege through his legal counsel. Notwithstanding the above-stated, if the victim files action for professional malpractice against the counselor or against the help and counseling center in which the counselor is employed or serves as a supervised volunteer, said counselor may testify without being subject to the privilege and will not be held liable for said testimony.



# PSYCHOLOGISTS/PSYCHIATRISTS

## ALABAMA

### **ALA. CODE § 34-26-2<sup>1</sup>(2009) CONFIDENTIAL RELATIONS BETWEEN LICENSED PSYCHOLOGISTS, LICENSED PSYCHIATRISTS, OR LICENSED PSYCHOLOGICAL TECHNICIANS AND THEIR CLIENTS**

For the purpose of this chapter, the confidential relations and communications between licensed psychologists, licensed psychiatrists, or licensed psychological technicians and their clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

## ALASKA

### **ALASKA STAT. § 08.86.200 (2011). CONFIDENTIALITY OF COMMUNICATION. [PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES]**

(a) A psychologist or psychological associate may not reveal to another person a communication made to the psychologist or psychological associate by a client about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to

(1) a case conference with other mental health professionals or with physicians and surgeons;

(2) a case in which the client in writing authorized the psychologist or psychological associate to reveal a communication;

(3) a case where an immediate threat of serious physical harm to an identifiable victim is communicated to a psychologist or psychological associate by a client;

(4) disclosures of confidential communications required under Rule 504, Alaska Rules of Evidence; or

(5) proceedings conducted by the board or the department where the disclosure of confidential communications is necessary to defend against charges that the psychologist or psychological associate has violated provisions of this chapter; information obtained by the board or department under this paragraph is confidential and is not a public record for purposes of AS 40.25.110-40.25.140.

(b) Notwithstanding (a) of this section, a psychologist or psychological associate shall report to the appropriate authority incidents of child abuse or neglect as required by AS 47.17.020, incidents of abuse of a vulnerable adult as required by AS 47.24.010, and incidents of abuse of disabled persons disclosed to the psychologist or psychological associate by a client. In this subsection “disabled person” means a person who has a physical or mental disability or a physical or mental impairment, as defined in AS 18.80.300.

## ARKANSAS

### **ARK. R. EVID. 503. PHYSICIAN AND PSYCHOTHERAPIST-PATIENT PRIVILEGE**

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<sup>1</sup> Limited on preemption grounds by Marks v. Tenbrunsel 910 So.2d 1255 (Ala. 2004).

**(a) Definitions.** As used in this rule:

- (1) A “patient” is a person who consults or is examined or interviewed by a physician or psychotherapist.
- (2) A “physician” is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.
- (3) A “psychotherapist” is (i) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or, (ii) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.
- (4) A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient 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 physician or psychotherapist, including members of the patient's family.
- (5) A “medical record” is any writing, document or electronically stored information pertaining to or created as a result of treatment, diagnosis or examination of a patient.

**(b) General Rule of Privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing his medical records or confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

**(c) Who May Claim the Privilege.** The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

**(d) Exceptions.**

(1) *Proceedings for Hospitalization.* There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) *Examination by Order of Court.* If the court orders an examination of the physical, mental, or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) *Condition an Element of Claim or Defense.*

(A) There is no privilege under this rule as to medical records or communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(B) Any informal, ex parte contact or communication with the patient's physician or psychotherapist is prohibited, unless the patient expressly consents. The patient shall not be required, by order of court or otherwise, to authorize any communication with the physician or psychotherapist other than (i) the furnishing of medical records, and (ii) communications in the context of formal discovery procedures.

**ARK. CODE ANN. § 17-97-105 (West 2011). CONFIDENTIAL RELATIONS AND COMMUNICATIONS [PSYCHOLOGISTS].**

For the purpose of this chapter, the confidential relations and communications between a licensed psychologist or a psychological examiner and a client are placed upon the same basis as those provided by law between an attorney and a client. Nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

**CALIFORNIA**

**CAL. EVID. CODE § 1012 (West 2011). CONFIDENTIAL COMMUNICATION BETWEEN PATIENT AND PSYCHOTHERAPIST.**

As used in this article, “confidential communication between patient and psychotherapist” means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

**CAL. EVID. CODE § 1014 (West 2011). PSYCHOTHERAPIST-PATIENT PRIVILEGE; APPLICATION TO INDIVIDUALS AND ENTITIES.**

Subject to [Section 912](#) and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with [Section 2995](#)) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapist corporation as defined in Article 6 (commencing with [Section 4987.5](#)) of Chapter 13 of Division 2 of the Business and Professions Code, or a licensed clinical social workers corporation as defined in Article 5 (commencing with [Section 4998](#)) of Chapter 14 of Division 2 of the Business and Professions Code, or a professional clinical counselor corporation as defined in Article 7 (commencing with [Section 4999.123](#)) of Chapter 16 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

## COLORADO

### COLO. REV. STAT. ANN. § 13-90-107 (West 2011). WHO MAY NOT TESTIFY WITHOUT CONSENT.

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)(I) Except as otherwise provided in section 14-13-310(4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(a.5)(I) Except as otherwise provided in Section 14-13-310(5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in a civil union without the other partner's consent, nor during the civil union or afterward shall be examined without the consent of the other as to any communications made by one to the other during the civil union; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401(1)(a)(IV) and (1)(a)(V), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of Article 15 of Title 14, C.R.S.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his profession pursuant to the laws of this state or any other state shall not be examined without the consent of his patient as to any

information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

(C) The state board of medical examiners, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f)(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III)(A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV)(A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103(6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S.,

or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102(20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor shall not be examined without the consent of such licensee's or unlicensed psychotherapist's client as to any communication made by the client to such licensee or unlicensed psychotherapist or such licensee's or unlicensed psychotherapist's advice given thereon in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103(26), C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j)(I)(A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section 13-25-126.5(2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5(3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3(1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (l):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.



(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during, or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 25-1-310 and 25-1-1106, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-10-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the state board of medical examiners or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

## CONNECTICUT

### **CONN. GEN. STAT. ANN. § 52-146c. (West 2011). PRIVILEGED COMMUNICATIONS BETWEEN PSYCHIATRIST AND PATIENT.**

(a) As used in this section:

(1) "Person" means an individual who consults a psychologist for purposes of diagnosis or treatment;

(2) "Psychologist" means an individual licensed to practice psychology pursuant to chapter 383;

(3) "Communications" means all oral and written communications and records thereof relating to the diagnosis and treatment of a person between such person and a psychologist or between a member of such person's family and a psychologist;

(4) "Consent" means consent given in writing by the person or his authorized representative;

(5) "Authorized representative" means (A) an individual empowered by a person to assert the confidentiality of communications which are privileged under this section, or (B) if a person is deceased, his personal representative or next of kin, or (C) if a person is incompetent to assert or waive his privileges hereunder, (i) a guardian or conservator who has been or is appointed to act for the person, or (ii) for the purpose of maintaining confidentiality until a guardian or conservator is appointed, the person's nearest relative.

(b) Except as provided in subsection (c) of this section, in civil and criminal actions, in juvenile, probate, commitment and arbitration proceedings, in proceedings preliminary to such actions or proceedings, and in legislative and administrative proceedings, all communications shall be privileged and a psychologist shall not disclose any such communications unless the person or his authorized representative consents to waive the privilege and allow such disclosure. The person or his authorized representative may withdraw any consent given under the provisions of this section at any time in a writing addressed to the individual with whom or the office in which the original consent was filed. The withdrawal of consent shall not affect communications disclosed prior to notice of the withdrawal.

(c) Consent of the person shall not be required for the disclosure of such person's communications:

(1) If a judge finds that any person after having been informed that the communications would not be privileged, has made the communications to a psychologist in the course of a psychological examination ordered by the court, provided the communications shall be admissible only on issues involving the person's psychological condition;

(2) If, in a civil proceeding, a person introduces his psychological condition as an element of his claim or defense or, after a person's death, his condition is introduced by a party claiming or defending through or as a beneficiary of the person, and the judge finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between the person and psychologist be protected;

(3) If the psychologist believes in good faith that there is risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals;

(4) If child abuse, abuse of an elderly individual or abuse of an individual who is disabled or incompetent is known or in good faith suspected;

(5) If a psychologist makes a claim for collection of fees for services rendered, the name and address of the person and the amount of the fees may be disclosed to individuals or agencies involved in such collection, provided notification that such disclosure will be made is sent, in writing, to the person not less than thirty days prior to

such disclosure. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the claim, the disclosure of further information shall be limited to the following: (A) That the person was in fact receiving psychological services, (B) the dates of such services, and (C) a general description of the types of services; or

(6) If the communications are disclosed to a member of the immediate family or legal representative of the victim of a homicide committed by the person where such person has, on or after July 1, 1989, been found not guilty of such offense by reason of mental disease or defect pursuant to section 53a-13, provided such family member or legal representative requests the disclosure of such communications not later than six years after such finding, and provided further, such communications shall only be available during the pendency of, and for use in, a civil action relating to such person found not guilty pursuant to section 53a-13.

## DELAWARE

### DEL. CODE ANN. tit. 24, § 3017 (2011). PRIVILEGED COMMUNICATIONS.

Communications between a mental health or chemical dependency professional licensed under this chapter and a client of the professional shall be considered confidential to the same extent as provided by Rule 503 of the Delaware Rules of Evidence.

### DEL. R. EVID. 503. MENTAL HEALTH PROVIDER, PHYSICIAN, AND PSYCHOTHERAPIST-PATIENT PRIVILEGE.

**(a) Definitions.** As used in this rule:

(1) A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient 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 mental health provider, physician or psychotherapist, including members of the patient's family.

(2) A “mental health provider” is (A) a licensed professional counselor of mental health or licensed associate counselor as authorized under 24 Del. C. §§ 3001-19, or (B) a licensed clinical social worker as authorized under 24 Del. C. §§ 3901-13.

(3) A “patient” is a person who consults or is examined or interviewed by a physician or psychotherapist for treatment or diagnosis.

(4) A “physician” is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(5) A “psychotherapist” is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.

**(b) General rule of privilege.** A patient 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 patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's mental health provider, physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the mental health provider, physician or psychotherapist, including members of the patient's family.

**(c) Who may claim the privilege.** The privilege may be claimed by the patient, the patient's guardian or conservator, or the personal representative of a deceased patient. The person who was the mental health provider, physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

**(d) Exceptions.**

*(1) Proceedings for hospitalization.* There is no privilege under this rule for a communication relevant to an issue in proceedings to hospitalize the patient for mental illness, if the mental health provider, physician or psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

*(2) Examination by order of court.* There is no privilege under this rule for a communication made in the course of a court-ordered investigation or examination of the physical, mental or emotional condition of the patient, whether a party or a witness, with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

*(3) Condition an element of claim or defense.* There is no privilege under this rule for a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

*(4) Commission of crime or fraud.* There is no privilege under this rule for a communication if the services of the mental health provider, physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the patient or another individual.

*(5) Danger to self or others.* There is no privilege under this rule for a communication in which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious physical injury to the patient or another individual.

*(6) Breach of duty.* There is no privilege under this rule for a communication relevant to a breach of duty by the mental health provider, physician or psychotherapist.

*(7) Appointment of guardian; child abuse cases.* There is no privilege under this rule for a communication relevant to a proceeding brought pursuant to 12 Del. C. § 3901 or 16 Del. C. Chapter 9.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 14-307 (2011). PHYSICIANS AND MENTAL HEALTH PROFESSIONALS.**

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, or a report has been filed with the police pursuant to § 7-2601 and the disclosure is required in the

interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; or

(4) evidence in criminal or civil cases where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.).

## FLORIDA

### **FLA. STAT. ANN § 90.503 (West 2011). PSYCHOTHERAPIST-PATIENT PRIVILEGE.**

(1) For purposes of this section:

(a) A “psychotherapist” is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

5. An advanced registered nurse practitioner certified under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

(b) A “patient” is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.

3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

(3) The privilege may be claimed by:

(a) The patient or the patient's attorney on the patient's behalf.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.

(4) There is no privilege under this section:

(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.

(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.

(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

## IDAHO

### **IDAHO CODE ANN. § 54-2314 (2011). PRIVILEGED COMMUNICATION--CONFIDENTIAL RELATIONS AND COMMUNICATIONS BETWEEN PSYCHOLOGIST AND CLIENT.**

A person licensed as a psychologist under the provisions of this act cannot, without the written consent of his client, be examined in a civil or criminal action as to any information acquired in the course of his professional services in behalf of the client. The confidential relations and communications between a psychologist and his client are on the same basis as those provided by law between an attorney and client, and nothing in this article shall be construed to require any such privileged communication to be disclosed.

## INDIANA

### **IND. CODE ANN. § 25-33-1-17 (2011). PRIVILEGED COMMUNICATIONS; EXCEPTIONS [PSYCHOLOGISTS].**

Sec. 17. A psychologist licensed under this article may not disclose any information acquired from persons with whom the psychologist has dealt in a professional capacity, except under the following circumstances:

- (1) Trials for homicide when the disclosure relates directly to the fact or immediate circumstances of said homicide.
- (2) Proceedings the purpose of which is to determine mental competency, or in which a defense of mental incompetency is raised.
- (3) Actions, civil or criminal, against a psychologist for malpractice.
- (4) Upon an issue as to the validity of a document such as a will of a client.
- (5) If the psychologist has the expressed consent of the client or subject, or in the case of a client's death or disability, the express consent of the client's legal representative.
- (6) Circumstances under which privileged communication is abrogated under the laws of Indiana.

## IOWA

### **IOWA CODE ANN. § 622.10 (West 2009). COMMUNICATIONS IN PROFESSIONAL CONFIDENCE--EXCEPTIONS--REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS AFTER COMMENCEMENT OF LEGAL ACTION--APPLICATION TO COURT.**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.
2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.
3. a. In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's attorney for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute a legally sufficient patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:
  - (1) Provide a complete copy of the patient's records including but not limited to any reports or diagnostic imaging relating to the condition alleged.
  - (2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraphs "c" and "e".

- b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.
- c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.
- d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the attorney for any party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fees for copies of any records shall be as specified in subsection 5.
- e. Defendant's counsel shall provide a written notice to plaintiff's attorney in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's attorney has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and attorney for the defendant. Prior to scheduling any meeting or engaging in any communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional, attorney for the defendant shall confer with plaintiff's attorney to determine a mutually convenient date and time for such meeting or telephonic communication. Plaintiff's attorney may seek a protective order structuring all communication by making application to the court at any time.
- f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.
- 3A. a. Except as otherwise provided in this subsection, the confidentiality privilege under this section shall be absolute with regard to a criminal action and this section shall not be construed to authorize or require the disclosure of any privileged records to a defendant in a criminal action unless either of the following occur:
- (1) The privilege holder voluntarily waives the confidentiality privilege.
- (2)(a) The defendant seeking access to privileged records under this section files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case. Such a motion shall be filed not later than forty days after arraignment under seal of the court. Failure of the defendant to timely file such a motion constitutes a waiver of the right to seek access to privileged records under this section, but the court, for good cause shown, may grant relief from such waiver.
- (b) Upon a showing of a reasonable probability that the privileged records sought may likely contain exculpatory information that is not available from any other source, the court shall conduct an in camera review of such records to determine whether exculpatory information is contained in such records.
- (c) If exculpatory information is contained in such records, the court shall balance the need to disclose such information against the privacy interest of the privilege holder.
- (d) Upon the court's determination, in writing, that the privileged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder, the court shall issue an order allowing the disclosure of only those portions of the records that contain the exculpatory information. The court's order shall also prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court.
- b. Privileged information obtained by any means other than as provided in paragraph "a" shall not be admissible in any criminal action.



4. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged. At the request of any party or at the request of the deponent, the court shall fix a reasonable fee to be paid to a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. At any time, upon a written request from a patient, a patient's legal representative or attorney, or an adverse party pursuant to subsection 3, any provider shall provide copies of the requested records or images to the requester within thirty days of receipt of the written request. The written request shall be accompanied by a legally sufficient patient's waiver unless the request is made by the patient or the patient's legal representative or attorney.

a. The fee charged for the cost of producing the requested records or images shall be based upon the actual cost of production. If the written request and accompanying patient's waiver, if required, authorizes the release of all of the patient's records for the requested time period, including records relating to the patient's mental health, substance abuse, and acquired immune deficiency syndrome-related conditions, the amount charged shall not exceed the rates established by the workers' compensation commissioner for copies of records in workers' compensation cases. If requested, the provider shall include an affidavit certifying that the records or images produced are true and accurate copies of the originals for an additional fee not to exceed ten dollars.

b. A patient or a patient's legal representative or a patient's attorney is entitled to one copy free of charge of the patient's complete billing statement, subject only to a charge for the actual costs of postage or delivery charges incurred in providing the statement. If requested, the provider or custodian of the record shall include an affidavit certifying the billing statements produced to be true and accurate copies of the originals for an additional fee not to exceed ten dollars.

c. Fees charged pursuant to this subsection are not subject to a sales or use tax. A provider providing the records or images may require payment in advance if an itemized statement demanding such is provided to the requesting party within fifteen days of the request. Upon a timely request for payment in advance, the time for providing the records or images shall be extended until the greater of thirty days from the date of the original request or ten days from the receipt of payment.

d. If a provider does not provide to the requester all records or images encompassed by the request or does not allow a patient access to all of the patient's medical records encompassed by the patient's request to examine the patient's records, the provider shall give written notice to the requester or the patient that providing the requested records or images would be a violation of the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

e. As used in this subsection:

(1) "Records" and "images" include electronic media and data containing a patient's health or billing information and "copies" includes patient records or images provided in electronic form, regardless of the form of the originals. If consented to by the requesting party, records and images produced pursuant to this subsection may be produced on electronic media.

(2) "Provider" means any physician or surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, hospital, nursing home, or other person, entity, facility, or organization that furnishes, bills, or

is paid for health care in the normal course of business.

6. For the purposes of this section, “mental health professional” means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

7. A qualified school guidance counselor, who is licensed by the board of educational examiners under chapter 272 and who obtains information by reason of the counselor's employment as a qualified school guidance counselor, shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

## KANSAS

### **KAN. STAT. ANN. § 74-5323 (2010). PRIVILEGED COMMUNICATIONS; EXCEPTIONS [PSYCHOLOGISTS].**

(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.

## KENTUCKY

### **KY. R. EVID. 507. PSYCHOTHERAPIST-PATIENT PRIVILEGE.**

(a) Definitions. As used in this rule:

(1) A “patient” is a person who, for the purpose of securing diagnosis or treatment of his or her mental condition, consults a psychotherapist.

(2) A “psychotherapist” is:

(A) A person licensed by the state of Kentucky, or by the laws of another state, to practice medicine, or reasonably believed by the patient to be licensed to practice medicine, while engaged in the diagnosis or treatment of a mental condition;

(B) A person licensed or certified by the state of Kentucky, or by the laws of another state, as a psychologist, or a person reasonably believed by the patient to be a licensed or certified psychologist;

(C) A licensed clinical social worker, licensed by the Kentucky Board of Social Work; or

(D) A person licensed as a registered nurse or advanced registered nurse practitioner by the board of nursing and who practices psychiatric or mental health nursing.

(3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are present during the communication at the direction of the psychotherapist, including members of the patient's family.

(4) "Authorized representative" means a person empowered by the patient to assert the privilege granted by this rule and, until given permission by the patient to make disclosure, any person whose communications are made privileged by this rule.

(b) General rule of privilege. A patient, or the patient's authorized representative, 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 patient's mental condition, between the patient, the patient's psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(c) Exceptions. There is no privilege under this rule for any relevant communications under this rule:

(1) In proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) If a judge finds that a patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of an examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient's mental condition; or

(3) If the patient is asserting that patient's mental condition as an element of a claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

## LOUISIANA

### LA. CODE EVID. ANN. ART. 510 (20119). HEALTH CARE PROVIDER-PATIENT PRIVILEGE.

**A. Definitions.** As used in this Article:

(1) "Patient" is a person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person's health.

(2) "Health care provider" is a person or entity defined as such in R.S. 13:3734(A)(1), and includes a physician and psychotherapist as defined below, and also includes a person who is engaged in any office, center, or institution referred to as a rape crisis center, who has undergone at least forty hours of sexual assault training and who is engaged in rendering advice, counseling, or assistance to victims of sexual assault.

(3) "Physician" is a person licensed to practice medicine in any state or nation.

(4) "Psychotherapist" is:

(a) A physician engaged in the diagnosis or treatment of a mental or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(b) A person licensed or certified as a psychologist under the laws of any state or nation.

(c) A person licensed as a licensed professional counselor or social worker under the laws of any state or nation.

(5) "Representative of a patient" is any person who makes or receives a confidential communication for the purpose of effectuating diagnosis or treatment of a patient.

(6) "Representative" of a physician, psychotherapist, or other health care provider is:

(a) A person acting under the supervision, direction, control, or request of a physician, psychotherapist, or health care provider engaged in the diagnosis or treatment of the patient.

(b) Personnel of a "hospital," as defined in R.S. 13:3734(A)(3), whose duties relate to the health care of patients or to maintenance of patient records.

(7) The definitions of health care provider, physician, psychotherapist, and their representatives include persons reasonably believed to be such by the patient or his representative.

(8)(a) "Confidential communication" is the transmittal or acquisition of information not intended to be disclosed to persons other than:

(i) A health care provider and a representative of a health care provider.

(ii) Those reasonably necessary for the transmission of the communication.

(iii) Persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.

(iv) A patient's health care insurer, including any entity that provides indemnification to a patient.

(v) When special circumstances warrant, those who are present at the behest of the patient, physician, or psychotherapist and are reasonably necessary to facilitate the communication.

(b) "Confidential communication" includes any information, substance, or tangible object, obtained incidental to the communication process and any opinion formed as a result of the consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives.

(9) "Health condition" is a physical, mental, or emotional condition, including a condition induced by alcohol, drugs, or other substance.

**B. (1) General rule of privilege in civil proceedings.** In a non-criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representatives.

**(2) Exceptions.** There is no privilege under this Article in a noncriminal proceeding as to a communication:

(a) When the communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker's compensation proceeding.

(b) When the communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker's compensation proceeding brought or asserted as a consequence of the death or injury of the deceased patient.

(c) When the communication is relevant to an issue of the health condition of the patient in any proceeding in which the patient is a party and relies upon the condition as an element of his claim or defense or, after the

patient's death, in any proceeding in which a party deriving his right from the patient relies on the patient's health condition as an element of his claim or defense.

(d) When the communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.

(e) When the communication made to the health care provider was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(f) When the communication is made in the course of an examination ordered by the court with respect to the health condition of a patient, the fact that the examination was so ordered was made known to the patient prior to the communication, and the communication concerns the particular purpose for which the examination was made, unless the court in its order directing the examination has stated otherwise.

(g)(i) When the communication is made by a patient who is the subject of an interdiction or commitment proceeding to his current health care provider when such patient has failed or refused to submit to an examination by a health care provider appointed by the court regarding issues relating to the interdiction or commitment proceeding, provided that the patient has been advised of such appointment and the consequences of not submitting to the examination.

(ii) Notwithstanding the provisions of Subitem (i) of this Item, in any commitment proceeding, the court-appointed physician may review the medical records of the patient or respondent and testify as to communications therein, but only those which are essential to determine whether the patient is dangerous to himself, dangerous to others, or unable to survive safely in freedom or protect himself from serious harm. However, such communications shall not be disclosed unless the patient was informed prior to the communication that such communications are not privileged in any subsequent commitment proceedings. The court-appointed examination shall be governed by Item B(2)(f).

(h) When the communication is relevant in proceedings held by peer review committees and other disciplinary bodies to determine whether a particular health care provider has deviated from applicable professional standards.

(i) When the communication is one regarding the blood alcohol level or other test for the presence of drugs of a patient and an action for damages for injury, death, or loss has been brought against the patient.

(j) When disclosure of the communication is necessary for the defense of the health care provider in a malpractice action brought by the patient.

(k) When the communication is relevant to proceedings concerning issues of child abuse, elder abuse, or the abuse of disabled or incompetent persons.

(l) When the communication is relevant after the death of a patient, concerning the capacity of the patient to enter into the contract which is the subject matter of the litigation.

(m) When the communication is relevant in an action contesting any testament executed or claimed to have been executed by the patient now deceased.

**C. (1) General rule of privilege in criminal proceedings.** In a criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives.

**(2) Exceptions.** There is no privilege under this Article in a criminal case as to a communication:

- (a) When the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense.
- (b) When the communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.
- (c) When the communication was made in the course of an examination ordered by the court in a criminal case to determine the health condition of a patient, provided that a copy of the order was served on the patient prior to the communication.
- (d) When the communication is a record of the results of a test for blood alcohol level or drugs taken from a patient who is under arrest, or who was subsequently arrested for an offense related to the test.
- (e) When the communication is in the form of a tangible object, including a bullet, that is removed from the body of a patient and which was in the body as a result of the crime charged.
- (f) When the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of disabled or incompetent persons.

**D. Who may claim the privilege.** In both civil and criminal proceedings, the privilege may be claimed by the patient or by his legal representative. The person who was the physician, psychotherapist, or health care provider or their representatives, at the time of the communication is presumed to have authority to claim the privilege on behalf of the patient or deceased patient.

**E. Waiver.** The exceptions to the privilege set forth in Paragraph B(2) shall constitute a waiver of the privilege only as to testimony at trial or to discovery of the privileged communication by one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., or pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

**F. Medical malpractice.** (1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

**G. Sanctions.** Any attorney who violates a provision of this Article shall be subject to sanctions by the court.

## **LA. REV. STAT. ANN. § 13:3734 (2011). PRIVILEGED COMMUNICATION BETWEEN HEALTH CARE PROVIDER AND PATIENT.**

A. As used in this Part:

(1) "Health care provider" means a hospital, as defined in Paragraph (3) hereof, and means a person, corporation, facility, or institution licensed by the state to provide health care or professional services as a physician, hospital, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker, or licensed professional counselor and an officer, employee, or agent thereof acting in the course and scope of his employment.

(2) "Patient" means a natural person who receives health care from a licensed health care provider.

(3) "Hospital" means any hospital as defined in R.S. 40:2102; any "Nursing home" or "home" as defined in R.S. 40:2009.2; or any health care provider's offices or clinics containing facilities for the examination, diagnosis, treatment or care of human illness.

(4) "Representative" means the spouse, parent, tutor, curator, trustee, attorney or other legal agent of the patient.

(5) "Communication" means the acquiring, recording or transmittal, of any information, in any manner whatsoever, concerning any facts, opinions or statements necessary to enable the health care provider to diagnose, treat, prescribe or to act for the patients; said communications may include, but are not limited to any and all medical records, office records, hospital records, charts, correspondence, memoranda, laboratory tests and results, x-rays, photographs, financial statements, diagnoses and prognoses.

(6), (7) Repealed by Acts 1986, No. 496, § 2, eff. July 2, 1986.

B. In noncriminal proceedings, testimonial privileges, exceptions, and waiver with respect to communications between a health care provider and his patient are governed by the Louisiana Code of Evidence.

C. An action or proceeding described in Louisiana Evidence Code Article 510(B)(2) which constitutes an exception for a health care provider to testify at a trial on the merits also shall be an exception for purposes of any discovery method authorized by Article 1421 et seq. of the Louisiana Code of Civil Procedure.

D. Nothing in this Section shall preclude the health care provider from disclosing privileged information by medical report either before or after any legal proceedings are instituted, provided that he is in receipt of a written authorization executed by the patient. If the health care provider knows or reasonably believes that the patient is physically or mentally incapable of authorizing release, the health care provider may disclose privileged information provided he is in receipt of a written authorization executed by a person authorized under R.S. 40:1299.40 to consent to medical treatment for the patient. Furthermore, when a patient is represented by an attorney and that attorney provides the health care provider with written authorization executed by the patient, the health care provider may disclose to the attorney any communication which was necessary to enable him to diagnose, treat, prescribe, or act for the patient and may provide to the attorney, as agent for the patient, any medical reports, X-rays, or any other written information the health care provider has regarding the patient, all without the necessity of complying with formal discovery.

E. (1) In addition to any other provision of law permitting the subpoena of health care provider records, a party may obtain the health care provider records and communications defined by Paragraph (5) of Subsection A of a patient to the extent permitted by Louisiana Code of Evidence Article 510(B)(2)(i) pursuant to a lawful subpoena, summons, or court order served upon the custodian of records of the health care provider, in accordance with the requirements of R.S. 13:3715.1.

(2) No health care provider, custodian of records, officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records including any communication defined by Paragraph (5) of Subsection A to the extent permitted by Louisiana Code of Evidence Article 510(B)(2)(i) when that disclosure is made in accordance with R.S. 13:3715.1.

F. Notwithstanding any law to the contrary, when conducting any investigation, the coroner or his authorized agents or employees may review any medical or dental records which he deems relevant to the investigation. Such records may be made available to him by the custodian thereof without the necessity of authorization, subpoena, or court order. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, when that disclosure is made pursuant to a request by the coroner or his authorized agents or employees.

G. Notwithstanding any provision of this Section or any other law to the contrary, an official of another state, whose functions are comparable to those of a coroner in this state and who is conducting an investigation in which Louisiana medical or dental records are material evidence, may request authorization for the release of those records from the coroner of the parish in which the custodian of the records is located. If the coroner determines

that the requested records are relevant to the out-of-state investigation and the release of those records is appropriate, then the coroner shall authorize the custodian of those records to release those records to the requesting official. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, pursuant to a release authorized by the coroner

## MARYLAND

### **MD. CODE ANN., [CTS. & JUD. PROC.] § 9-109 (West 2011). PATIENT-THERAPIST PRIVILEGE.**

(a)(1) "Authorized representative" means a person authorized by the patient to assert the privilege granted by this section and until permitted by the patient to make disclosure, the person whose communications are privileged.

(2) "Licensed psychologist" means a person who is licensed to practice psychology under the laws of Maryland.

(3) "Patient" means a person who communicates or receives services regarding the diagnosis or treatment of his mental or emotional disorder from a psychiatrist, licensed psychologist, or any other person participating directly or vitally with either in rendering those services in consultation with or under direct supervision of a psychiatrist or psychologist.

(4) "Psychiatrist" means a person licensed to practice medicine who devotes a substantial proportion of his time to the practice of psychiatry.

#### **Communications relating to diagnosis or treatment of patient**

(b) Unless otherwise provided, in all judicial, legislative, or administrative proceedings, a patient or the patient's authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing:

(1) Communications relating to diagnosis or treatment of the patient; or

(2) Any information that by its nature would show the existence of a medical record of the diagnosis or treatment.

#### **Incompetent patients**

(c) If a patient is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the patient. A previously appointed guardian has the same authority.

#### **Disclosures and proceedings not privileged**

(d) There is no privilege if:

(1) A disclosure is necessary for the purposes of placing the patient in a facility for mental illness;

(2) A judge finds that the patient, after being informed there will be no privilege, makes communications in the course of an examination ordered by the court and the issue at trial involves his mental or emotional disorder;

(3) In a civil or criminal proceeding:

(i) The patient introduces his mental condition as an element of his claim or defense; or

(ii) After the patient's death, his mental condition is introduced by any party claiming or defending through or as a beneficiary of the patient;



- (4) The patient, an authorized representative of the patient, or the personal representative of the patient makes a claim against the psychiatrist or licensed psychologist for malpractice;
- (5) Related to civil or criminal proceedings under defective delinquency proceedings; or
- (6) The patient expressly consents to waive the privilege, or in the case of death or disability, his personal or authorized representative waives the privilege for purpose of making claim or bringing suit on a policy of insurance on life, health, or physical condition.

## MASSACHUSETTS

### **MASS. GEN. LAWS ANN. CH. 233, § 20B (West 2011). PRIVILEGED COMMUNICATIONS; PATIENTS AND PSYCHOTHERAPISTS; EXCEPTIONS.**

The following words as used in this section shall have the following meanings:--

“Patient”, a person who, during the course of diagnosis or treatment, communicates with a psychotherapist;

“Psychotherapist”, a person licensed to practice medicine, who devotes a substantial portion of his time to the practice of psychiatry. “Psychotherapist” shall also include a person who is licensed as a psychologist by the board of registration of psychologists; a graduate of, or student enrolled in, a doctoral degree program in psychology at a recognized educational institution as that term is defined in section 118, who is working under the supervision of a licensed psychologist; or a person who is a registered nurse licensed by the board of registration in nursing whose certificate of registration has been endorsed authorizing the practice of professional nursing in an expanded role as a psychiatric nurse mental health clinical specialist, pursuant to the provisions of section eighty B of chapter one hundred and twelve.

“Communications” includes conversations, correspondence, actions and occurrences relating to diagnosis or treatment before, during or after institutionalization, regardless of the patient's awareness of such conversations, correspondence, actions and occurrences, and any records, memoranda or notes of the foregoing.

Except as hereinafter provided, in any court proceeding and in any proceeding preliminary thereto and in legislative and administrative proceedings, a patient shall have the privilege of refusing to disclose, and of preventing a witness from disclosing, any communication, wherever made, between said patient and a psychotherapist relative to the diagnosis or treatment of the patient's mental or emotional condition. This privilege shall apply to patients engaged with a psychotherapist in marital therapy, family therapy, or consultation in contemplation of such therapy.

If a patient is incompetent to exercise or waive such privilege, a guardian shall be appointed to act in his behalf under this section. A previously appointed guardian shall be authorized to so act.

Upon the exercise of the privilege granted by this section, the judge or presiding officer shall instruct the jury that no adverse inference may be drawn therefrom.

The privilege granted hereunder shall not apply to any of the following communications:--

- (a) If a psychotherapist, in the course of his diagnosis or treatment of the patient, determines that the patient is in need of treatment in a hospital for mental or emotional illness or that there is a threat of imminently dangerous activity by the patient against himself or another person, and on the basis of such determination discloses such communication either for the purpose of placing or retaining the patient in such hospital, provided however that the provisions of this section shall continue in effect after the patient is in said hospital, or placing the patient under arrest or under the supervision of law enforcement authorities.

(b) If a judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient's mental or emotional condition but not as a confession or admission of guilt.

(c) In any proceeding, except one involving child custody, adoption or adoption consent, in which the patient introduces his mental or emotional condition as an element of his claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between patient and psychotherapist be protected.

(d) In any proceeding after the death of a patient in which his mental or emotional condition is introduced by any party claiming or defending through or as a beneficiary of the patient as an element of the claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between patient and psychotherapist be protected.

(e) In any case involving child custody, adoption or the dispensing with the need for consent to adoption in which, upon a hearing in chambers, the judge, in the exercise of his discretion, determines that the psychotherapist has evidence bearing significantly on the patient's ability to provide suitable care or custody, and that it is more important to the welfare of the child that the communication be disclosed than that the relationship between patient and psychotherapist be protected; provided, however, that in such cases of adoption or the dispensing with the need for consent to adoption, a judge shall determine that the patient has been informed that such communication would not be privileged.

(f) In any proceeding brought by the patient against the psychotherapist, and in any malpractice, criminal or license revocation proceeding, in which disclosure is necessary or relevant to the claim or defense of the psychotherapist.

The provision of information acquired by a psychotherapist relative to the diagnosis or treatment of a patient's emotional condition, to any insurance company, nonprofit hospital service corporation, medical service corporation, or health maintenance organization, or to a board established pursuant to section twelve of chapter one hundred and seventy-six B, pertaining to the administration or provision of benefits, including utilization review or peer review, for expenses arising from the out-patient diagnosis or treatment, or both, of mental or nervous conditions, shall not constitute a waiver or breach of any right to which said patient is otherwise entitled under this section and section thirty-six B of chapter one hundred and twenty-three.

## **MASS. GEN. LAWS ANN. CH. 112, § 129A (West 2011). CONFIDENTIAL COMMUNICATIONS.**

All communications between a licensed psychologist and the individuals with whom the psychologist engages in the practice of psychology are confidential. At the initiation of the professional relationship the psychologist shall inform the patient of the following limitations to the confidentiality of their communications. No psychologist, colleague, agent or employee of any psychologist, whether professional, clerical, academic or therapeutic, or a graduate of, or student enrolled in, a doctoral degree program in psychology at a recognized educational institution as that term is defined in section 118, who is working under the supervision of a licensed psychologist, shall disclose any information acquired or revealed in the course of or in connection with the performance of the psychologist's professional services, including the fact, circumstances, findings or records of such services, except under the following circumstances: (a) pursuant to the provisions of section twenty B of chapter two hundred and thirty-three or any other law; (b) upon express, written consent of the patient; (c) upon the need to disclose information which protects the rights and safety of others if:

(1) the patient presents a clear and present danger to himself and refuses explicitly or by his behavior to voluntarily accept further appropriate treatment. In such circumstances, where the psychologist has a reasonable basis to believe that a patient can be committed to a hospital pursuant to chapter one hundred and twenty-three, he shall have a duty to seek said commitment. The psychologist may also contact members of the patient's family

or other individuals if in the psychologist's opinion, it would assist in protecting the safety of the patient; or

(2) the patient has communicated to the psychologist an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if said psychologist makes reasonable efforts to take one or more of the following actions:

- (a) communicates a threat of death or serious bodily injury to a reasonably identified person;
- (b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;
- (c) arranges for the patient to be hospitalized voluntarily;
- (d) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law.

(3) the patient has a history of physical violence which is known to the psychologist and the psychologist has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if said psychologist makes reasonable efforts to take one or more of the following actions:

- (a) communicates a threat of death or serious bodily injury to the reasonably identified person;
- (b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;
- (c) arranges for his patient to be hospitalized voluntarily;
- (d) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law.

(4) nothing contained herein shall require a psychologist to take any action which, in the exercise of reasonable professional judgment, would endanger himself or increase the danger to a potential victim or victims.

(5) the psychologist shall only disclose that information which is essential in order to protect the rights and safety of others.

(d) in order to collect amounts owed by the patient for professional services rendered by the psychologist or his employees; provided, however, that the psychologist may only disclose the nature of services provided, the dates of services, the amount due for services and other relevant financial information; provided, further, that if the patient raises as a defense to said action substantive assertions concerning the competence of the psychologist or the quality of the services provided, the psychologist may disclose whatever information is necessary to rebut such assertions; or

(e) in such other situations as shall be defined in the rules and regulations of the board.

No provision of this section shall be construed to prevent a nonprofit hospital service or medical service corporation from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section shall be construed to prevent access to any such records in connection with any coordination of benefits, subrogation, workers' compensation, peer review, utilization review or benefit management procedures applied and implemented in good faith.

## MICHIGAN

### **MICH. COMP. LAWS ANN. § 333.18237 (West 2011). CONFIDENTIAL INFORMATION; DISCLOSURE [PSYCHOLOGISTS].**

Sec. 18237. A psychologist licensed or allowed to use that title under this part or an individual under his or her supervision cannot be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity if the information is necessary to enable the psychologist to render services. Information may be disclosed with the consent of the individual consulting the psychologist, or if the individual consulting the psychologist is a minor, with the consent of the minor's guardian, pursuant to section 16222 if the psychologist reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281. In a contest on the admission of a deceased individual's will to probate, an heir at law of the decedent, whether a proponent or contestant of the will, and the personal representative of the decedent may waive the privilege created by this section.

## MINNESOTA

### **MINN. STAT. ANN. § 148B.593 (West 2011). DISCLOSURE OF INFORMATION [SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, MENTAL HEALTH LICENSED PROFESSIONAL COUNSELING].**

(a) A person licensed under sections 148B.50 to 148B.593 may not disclose without written consent of the client any communication made by the client to the licensee in the course of the practice of professional counseling, nor may any employee of the licensee reveal the information without the consent of the employer or client except as provided under section 626.556 or 626.557.

(b) For purposes of sections 148B.50 to 148B.593, the confidential relations and communications between the licensee and a client are placed upon the same basis as those that exist between a licensed psychologist and client. Nothing in sections 148B.50 to 148B.593 may be construed to require any communications to be disclosed except by court order.

### **MINN. STAT. ANN. § 595.02 (West 2011). TESTIMONY OF WITNESSES.**

**Subdivision 1. Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply

to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, “domestic abuse advocate” means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate or a collaborative law process pursuant to an agreement to participate in collaborative law. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation or collaborative law by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

**Subd. 1a. Alternative dispute resolution privilege.** No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

- (1) constitute a crime;
- (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or
- (3) constitute professional misconduct.

**Subd. 2. Exceptions.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

- (1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and
- (2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and
- (3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

**Subd. 3. Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

- (a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and
- (b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:
  - (i) testifies at the proceedings; or
  - (ii) is unavailable as a witness and there is corroborative evidence of the act; and
- (c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

**Subd. 4. Court order.** (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

**Subd. 5. Waiver of privilege for health care providers.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.



## MISSOURI

### **Mo. ANN STAT. § 337.055 (West 2011). PRIVILEGED COMMUNICATIONS, WHEN [PSYCHOLOGISTS].**

Any communication made by any person to a licensed psychologist in the course of professional services rendered by the licensed psychologist shall be deemed a privileged communication and the licensed psychologist shall not be examined or be made to testify to any privileged communication without the prior consent of the person who received his professional services.

## NEBRASKA

### **NEB. REV. STAT. § 38-2136 (2011). MENTAL HEALTH PRACTITIONERS; CONFIDENTIALITY; EXCEPTION.**

No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in [section 38-2137](#)

### **NEB. REV. STAT. § 38-3131 (2009). CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS [PSYCHOLOGISTS].**

(1) The confidential relations and communications between psychologists and their clients and patients shall be on the same basis as those between physicians and their clients and patients as provided in [section 27-504](#).

(2) In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a client or patient, or his or her legal guardian or personal representative, may refuse to disclose or may prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist, or to a person reasonably believed by the client or patient to be a psychologist, or the psychologist's or person's agents, for the purpose of diagnosis, evaluation, or treatment of any mental and emotional disorder. In the absence of evidence to the contrary, the psychologist shall be presumed to be authorized to claim the privilege on the client's or patient's behalf.

(3) This privilege may not be claimed by the client or patient, or on his or her behalf by authorized persons, in the

following circumstances:

- (a) When abuse or harmful neglect of children, the elderly, or disabled or incompetent individuals is known or reasonably suspected;
- (b) When the validity of a will of a former client or patient of the psychologist is contested;
- (c) When such information is necessary for the psychologist to defend against a malpractice action brought by the client or patient;
- (d) When an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;
- (e) When an immediate threat of self-inflicted injury is disclosed to the psychologist;
- (f) When the client or patient, by alleging mental or emotional damages in litigation, puts his or her mental state in issue;
- (g) When the client or patient is examined pursuant to court order;
- (h) When the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the client or patient or any other cause of action arising out of the professional relationship; or
- (i) In the context of investigations and hearings brought by the client or patient and conducted by the department, when violations of the Psychology Practice Act are at issue.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 45:14B-28 (West 2011). CONFIDENTIAL RELATIONS AND COMMUNICATIONS. [PSYCHOLOGIST]**

The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

There is no privilege under this section for any communication: (a) upon an issue of the client's condition in an action to commit the client or otherwise place the client under the control of another or others because of alleged incapacity, or in an action in which the client seeks to establish his competence or in an action to recover damages on account of conduct of the client which constitutes a crime; or (b) upon an issue as to the validity of a document as a will of the client; or (c) upon an issue between parties claiming by testate or intestate succession from a deceased client.

## **NEW MEXICO**

### **N.M. STAT. ANN. § 61-9-18 (West 2011). PRIVILEGED COMMUNICATIONS [PSYCHOLOGISTS].**

A licensed psychologist or psychologist associate shall not be examined without the consent of his client as to any communication made by the client to him or his advice given in the course of professional employment; nor shall a licensed psychologist's or psychologist associate's secretary, stenographer, clerk or any person supervised by the

psychologist or psychologist associate be examined without the consent of his employer concerning any fact the knowledge of which he has acquired in such capacity.

## **NORTH CAROLINA**

### **N.C. GEN STAT. ANN. § 8-53.3 (West 2009). COMMUNICATIONS BETWEEN PSYCHOLOGIST AND CLIENT OR PATIENT.**

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes.

## **OREGON**

### **OR. REV. STAT. ANN. § 40.230 (West 2011). PSYCHOTHERAPIST-PATIENT PRIVILEGE.**

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication not intended to be disclosed to third persons except:

(A) Persons present to further the interest of the patient in the consultation, examination or interview;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Persons who are participating in the diagnosis and treatment under the direction of the psychotherapist, including members of the patient's family.

(b) "Patient" means a person who consults or is examined or interviewed by a psychotherapist.

(c) "Psychotherapist" means a person who is:

(A) Licensed, registered, certified or otherwise authorized under the laws of any state to engage in the diagnosis or treatment of a mental or emotional condition; or

(B) Reasonably believed by the patient so to be, while so engaged.

(2) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of the patient's mental or emotional condition among the patient, the patient's psychotherapist or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(3) The privilege created by this section may be claimed by:

(a) The patient.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The person who was the psychotherapist, but only on behalf of the patient. The psychotherapist's authority so to do is presumed in the absence of evidence to the contrary.

(4) The following is a nonexclusive list of limits on the privilege granted by this section:

(a) If the judge orders an examination of the mental, physical or emotional condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(b) There is no privilege under this rule as to communications relevant to an issue of the mental or emotional condition of the patient:

(A) In any proceeding in which the patient relies upon the condition as an element of the patient's claim or defense; or

(B) After the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(c) Except as provided in ORCP 44, there is no privilege under this section for communications made in the course of mental examination performed under ORCP 44.

(d) There is no privilege under this section with regard to any confidential communication or record of such confidential communication that would otherwise be privileged under this section when the use of the communication or record is allowed specifically under ORS 426.070, 426.074, 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or record to the extent and for the purposes set forth in the described statute sections.

## PENNSYLVANIA

### **42 PA. CONS. STAT. ANN. § 5944 (West 2011). CONFIDENTIAL COMMUNICATIONS TO PSYCHIATRISTS OR LICENSED PSYCHOLOGISTS.**

No psychiatrist or person who has been licensed under the act of March 23, 1972 (P.L. 136, No. 52), to practice psychology shall be, without the written consent of his client, examined in any civil or criminal matter as to any information acquired in the course of his professional services in behalf of such client. The confidential relations and communications between a psychologist or psychiatrist and his client shall be on the same basis as those provided or prescribed by law between an attorney and client.

## TENNESSEE

### **TENN. CODE ANN. § 63-11-213 (West 2011). CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS [PSYCHOLOGISTS].**

For the purpose of this chapter, the confidential relations and communications between licensed psychologist or psychological examiner or senior psychological examiner or certified psychological assistant and client are placed upon the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

## VERMONT

### **Vt. STAT. ANN. tit. 12 § 1612 (2011). PATIENT'S PRIVILEGE.**

(a) **Confidential information privileged.** Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity.

(b) **Identification by dentist; crime committed against patient under 16.** A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, chiropractor, or nurse shall be required to disclose information indicating that a patient who is under the age of 16 years has been the victim of a crime.

(c) **Mental or physical condition of deceased patient.**

(1) A physician, chiropractor, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section, except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

(A) by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

(B) in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

(C) if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.

(2) A physician, dentist, chiropractor, mental health professional, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section upon request to the chief medical examiner.

## WASHINGTON

### **WASH. REV. CODE ANN. § 18.83.110 (West 2011). PRIVILEGED COMMUNICATIONS [PSYCHOLOGISTS].**

Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A.140 and 71.05.360 (8) and (9).

## WISCONSIN

### **WIS. STAT. ANN. § 905.04 (West 2011). PHYSICIAN-PATIENT, REGISTERED NURSE-PATIENT, CHIROPRACTOR-PATIENT, PSYCHOLOGIST-PATIENT, SOCIAL WORKER-PATIENT, MARRIAGE AND FAMILY THERAPIST-PATIENT AND PROFESSIONAL COUNSELOR-PATIENT PRIVILEGE**

**(1) Definitions.** In this section:

(a) "Chiropractor" means a person licensed under s. 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) "Marriage and family therapist" means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) "Patient" means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) "Physician" means a person as defined in s. 990.01(28), or reasonably believed by the patient so to be.

(dg) "Podiatrist" means a person licensed under s. 448.63 or a person reasonably believed by the patient to be a podiatrist.

(dm) "Professional counselor" means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) "Psychologist" means a licensed psychologist, as that term is defined in s. 455.01(4), or a person reasonably believed by the patient to be a psychologist.

(f) "Registered nurse" means a nurse who is licensed under s. 441.06 or licensed as a registered nurse in a party state, as defined in s. 441.50(2)(j), or a person reasonably believed by the patient to be a registered nurse.

(g) "Social worker" means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

**(2) General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the

patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

**(3) Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

**(4) Exceptions.** (a) *Proceedings for hospitalization, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian in this state, for court-ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(am) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 54.36(1) or s. 880.33(1), 2003 stats.

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 2m. There is no privilege for information contained in a report of child abuse or neglect that is provided under s. 48.981(3).

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01(1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under subch. IX of ch. 767.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s.

255.40 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services to court in juvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067 or 48.069 only as provided in s. 48.78 and may disclose information obtained while providing services under s. 938.067 or 938.069 only as provided in s. 938.78.

## WYOMING

### WYO. STAT. ANN. § 33-27-123 (2011). PRIVILEGED COMMUNICATION [PSYCHOLOGISTS].

(a) In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a patient or client, or his guardian or personal representative, may refuse to disclose or prevent the disclosure of confidential information, including information contained in administrative records, communicated to a person licensed or otherwise authorized to practice under this act, or to persons reasonably believed by the patient or client to be so licensed, and their agents, for the purpose of diagnosis, evaluation or treatment of any mental or emotional condition or disorder. The psychologist shall not disclose any information communicated as described above in the absence of an express waiver of the privilege except in the following circumstances:

(i) Where abuse or harmful neglect of children, the elderly or disabled or incompetent individuals is known or reasonably suspected;

(ii) Where the validity of a will of a former patient or client is contested;

(iii) Where such information is necessary for the psychologist to defend against a malpractice action brought by the patient or client;

(iv) Where an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;

(v) In the context of civil commitment proceedings, where an immediate threat of self-inflicted damage is disclosed to the psychologist;

(vi) Where the patient or client, by alleging mental or emotional damages in litigation, puts his mental state in issue and production of those materials by the patient or client is required by law;

(vii) Where the patient or client is examined pursuant to court order; or

(viii) In the context of investigations and hearings brought by the patient or client and conducted by the board where violations of this act are at issue. Information that is deemed to be of sensitive nature shall be inspected by the board in camera and the board shall determine whether or not the information shall become a part of the record and subject to public disclosure.



# PHYSICIAN

## ARIZONA

### ARIZ. REV. STAT. ANN. § 12-2235 (2011). DOCTOR AND PATIENT.

In a civil action a physician or surgeon shall not, without the consent of his patient, or the conservator or guardian of the patient, be examined as to any communication made by his patient with reference to any physical or mental disease or disorder or supposed physical or mental disease or disorder or as to any such knowledge obtained by personal examination of the patient.

## ARKANSAS

### ARK. R. EVID. 503. PHYSICIAN AND PSYCHOTHERAPIST-PATIENT PRIVILEGE

**(a) Definitions.** As used in this rule:

(1) A “patient” is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A “physician” is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A “psychotherapist” is (i) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or, (ii) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.

(4) A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient 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 physician or psychotherapist, including members of the patient's family.

(5) A “medical record” is any writing, document or electronically stored information pertaining to or created as a result of treatment, diagnosis or examination of a patient.

**(b) General Rule of Privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing his medical records or confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

**(c) Who May Claim the Privilege.** The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

**(d) Exceptions.**

(1) *Proceedings for Hospitalization.* There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or

treatment has determined that the patient is in need of hospitalization.

(2) *Examination by Order of Court.* If the court orders an examination of the physical, mental, or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) *Condition an Element of Claim or Defense.*

(A) There is no privilege under this rule as to medical records or communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(B) Any informal, ex parte contact or communication with the patient's physician or psychotherapist is prohibited, unless the patient expressly consents. The patient shall not be required, by order of court or otherwise, to authorize any communication with the physician or psychotherapist other than (i) the furnishing of medical records, and (ii) communications in the context of formal discovery procedures.

## CALIFORNIA

### **CAL. EVID. CODE § 992 (West 2011). CONFIDENTIAL COMMUNICATION BETWEEN PATIENT AND PHYSICIAN.**

As used in this article, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes a diagnosis made and the advice given by the physician in the course of that relationship.

## COLORADO

### **COLO. REV. STAT. ANN. § 13-90-107 (West 2009). WHO MAY NOT TESTIFY WITHOUT CONSENT.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)(I) Except as otherwise provided in section 14-13-310(4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(a.5)(I) Except as otherwise provided in Section 14-13-310(5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in a civil union without the other partner's consent, nor during the civil union or afterward shall be examined without the consent of the other as to any communications made by one to

the other during the civil union; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401(1)(a)(IV) and (1)(a)(V), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of Article 15 of Title 14, C.R.S.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his profession pursuant to the laws of this state or any other state shall not be examined without the consent of his patient as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

- (C) The state board of medical examiners, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;
- (D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;
- (E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);
- (IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);
- (V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;
- (VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.
- (e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.
- (f)(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.
- (II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.
- (III)(A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.
- (B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.
- (IV)(A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an

investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103(6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102(20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor shall not be examined without the consent of such licensee's or unlicensed psychotherapist's client as to any communication made by the client to such licensee or unlicensed psychotherapist or such licensee's or unlicensed psychotherapist's advice given thereon in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103(26), C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j)(I)(A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section 13-25-126.5(2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5(3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3(1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to

the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (I):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during, or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 25-1-310 and 25-1-1106, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-10-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the state board of medical examiners or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 14-307 (2011). PHYSICIANS AND MENTAL HEALTH PROFESSIONALS.**

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice;



(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; or

(4) evidence in criminal or civil cases where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.).

## GEORGIA

### **GA. CODE ANN. § 24-9-40 (West 2011). CONFIDENTIAL COMMUNICATIONS; PHYSICIANS; PHARMACISTS.**

<This section is repealed effective January 1, 2013, by Laws 2011, Act 52, § 2. See also, Title 24 effective January 1, 2013, following this title.>

(a) No physician licensed under Chapter 34 of Title 43 and no hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit, shall be required to release any medical information concerning a patient except to the Department of Community Health, its divisions, agents, or successors when required in the administration of public health programs pursuant to Code Section 31-12-2 and where authorized or required by law, statute, or lawful regulation; or on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or on appropriate court order or subpoena; provided, however, that any physician, hospital, or health care facility releasing information under written authorization or other waiver by the patient, or by his or her parents or guardian ad litem in the case of a minor, or pursuant to law, statute, or lawful regulation, or under court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his care and treatment or the nature and extent of his injuries at issue in any civil or criminal proceeding. This Code section shall not apply to psychiatrists or to hospitals in which the patient is being or has been treated solely for mental illness.

(b) No pharmacist licensed under Chapter 4 of Title 26 shall be required to release any medical information concerning a patient except on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena; provided, however, that any pharmacist releasing information under written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon appropriate court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any administrative, civil, or criminal proceeding.

## IDAHO

### **IDAHO CODE ANN. § 9-203 (2011). CONFIDENTIAL RELATIONS AND COMMUNICATIONS.**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, nor does this exception apply to any case of lewd and lascivious conduct or attempted lewd and lascivious conduct where either party would otherwise be protected by this privilege.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) Nothing herein contained shall be deemed to preclude physicians from testifying at all cases of physical injury to a person where it appears the injury has been caused as a result of domestic violence.

(C) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(D) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(E) That if the patient be dead and during his lifetime had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matters in any civil or criminal action to which such child or ward is a party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian.

## IOWA

### **IOWA CODE ANN. § 622.10 (West 2009). COMMUNICATIONS IN PROFESSIONAL CONFIDENCE--EXCEPTIONS--REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS AFTER COMMENCEMENT OF LEGAL ACTION--APPLICATION TO COURT.**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. a. In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's attorney for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute a legally sufficient patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including but not limited to any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraphs "c" and "e".

b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or

actions of any kind with respect to this section.

d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the attorney for any party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fees for copies of any records shall be as specified in subsection 5.

e. Defendant's counsel shall provide a written notice to plaintiff's attorney in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's attorney has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and attorney for the defendant. Prior to scheduling any meeting or engaging in any communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional, attorney for the defendant shall confer with plaintiff's attorney to determine a mutually convenient date and time for such meeting or telephonic communication. Plaintiff's attorney may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

3A. a. Except as otherwise provided in this subsection, the confidentiality privilege under this section shall be absolute with regard to a criminal action and this section shall not be construed to authorize or require the disclosure of any privileged records to a defendant in a criminal action unless either of the following occur:

(1) The privilege holder voluntarily waives the confidentiality privilege.

(2)(a) The defendant seeking access to privileged records under this section files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case. Such a motion shall be filed not later than forty days after arraignment under seal of the court. Failure of the defendant to timely file such a motion constitutes a waiver of the right to seek access to privileged records under this section, but the court, for good cause shown, may grant relief from such waiver.

(b) Upon a showing of a reasonable probability that the privileged records sought may likely contain exculpatory information that is not available from any other source, the court shall conduct an in camera review of such records to determine whether exculpatory information is contained in such records.

(c) If exculpatory information is contained in such records, the court shall balance the need to disclose such information against the privacy interest of the privilege holder.

(d) Upon the court's determination, in writing, that the privileged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder, the court shall issue an order allowing the disclosure of only those portions of the records that contain the exculpatory information. The court's order shall also prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court.

b. Privileged information obtained by any means other than as provided in paragraph "a" shall not be admissible in any criminal action.<sup>4</sup> If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing,

which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged. At the request of any party or at the request of the deponent, the court shall fix a reasonable fee to be paid to a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. At any time, upon a written request from a patient, a patient's legal representative or attorney, or an adverse party pursuant to subsection 3, any provider shall provide copies of the requested records or images to the requester within thirty days of receipt of the written request. The written request shall be accompanied by a legally sufficient patient's waiver unless the request is made by the patient or the patient's legal representative or attorney.

a. The fee charged for the cost of producing the requested records or images shall be based upon the actual cost of production. If the written request and accompanying patient's waiver, if required, authorizes the release of all of the patient's records for the requested time period, including records relating to the patient's mental health, substance abuse, and acquired immune deficiency syndrome-related conditions, the amount charged shall not exceed the rates established by the workers' compensation commissioner for copies of records in workers' compensation cases. If requested, the provider shall include an affidavit certifying that the records or images produced are true and accurate copies of the originals for an additional fee not to exceed ten dollars.

b. A patient or a patient's legal representative or a patient's attorney is entitled to one copy free of charge of the patient's complete billing statement, subject only to a charge for the actual costs of postage or delivery charges incurred in providing the statement. If requested, the provider or custodian of the record shall include an affidavit certifying the billing statements produced to be true and accurate copies of the originals for an additional fee not to exceed ten dollars.

c. Fees charged pursuant to this subsection are not subject to a sales or use tax. A provider providing the records or images may require payment in advance if an itemized statement demanding such is provided to the requesting party within fifteen days of the request. Upon a timely request for payment in advance, the time for providing the records or images shall be extended until the greater of thirty days from the date of the original request or ten days from the receipt of payment.

d. If a provider does not provide to the requester all records or images encompassed by the request or does not allow a patient access to all of the patient's medical records encompassed by the patient's request to examine the patient's records, the provider shall give written notice to the requester or the patient that providing the requested records or images would be a violation of the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

e. As used in this subsection:

(1) "Records" and "images" include electronic media and data containing a patient's health or billing information and "copies" includes patient records or images provided in electronic form, regardless of the form of the originals. If consented to by the requesting party, records and images produced pursuant to this subsection may be produced on electronic media.

(2) "Provider" means any physician or surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, hospital, nursing home, or other person, entity, facility, or organization that furnishes, bills, or is paid for health care in the normal course of business.

6. For the purposes of this section, "mental health professional" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

7. A qualified school guidance counselor, who is licensed by the board of educational examiners under chapter 272 and who obtains information by reason of the counselor's employment as a qualified school guidance counselor,

shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

## LOUISIANA

### LA. CODE EVID. ANN. ART. 510 (2011). HEALTH CARE PROVIDER-PATIENT PRIVILEGE.

**A. Definitions.** As used in this Article:

(1) "Patient" is a person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person's health.

(2) "Health care provider" is a person or entity defined as such in R.S. 13:3734(A)(1), and includes a physician and psychotherapist as defined below, and also includes a person who is engaged in any office, center, or institution referred to as a rape crisis center, who has undergone at least forty hours of sexual assault training and who is engaged in rendering advice, counseling, or assistance to victims of sexual assault.

(3) "Physician" is a person licensed to practice medicine in any state or nation.

(4) "Psychotherapist" is:

(a) A physician engaged in the diagnosis or treatment of a mental or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(b) A person licensed or certified as a psychologist under the laws of any state or nation.

(c) A person licensed as a licensed professional counselor or social worker under the laws of any state or nation.

(5) "Representative of a patient" is any person who makes or receives a confidential communication for the purpose of effectuating diagnosis or treatment of a patient.

(6) "Representative" of a physician, psychotherapist, or other health care provider is:

(a) A person acting under the supervision, direction, control, or request of a physician, psychotherapist, or health care provider engaged in the diagnosis or treatment of the patient.

(b) Personnel of a "hospital," as defined in R.S. 13:3734(A)(3), whose duties relate to the health care of patients or to maintenance of patient records.

(7) The definitions of health care provider, physician, psychotherapist, and their representatives include persons reasonably believed to be such by the patient or his representative.

(8)(a) "Confidential communication" is the transmittal or acquisition of information not intended to be disclosed to persons other than:

(i) A health care provider and a representative of a health care provider.

(ii) Those reasonably necessary for the transmission of the communication.

(iii) Persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.

(iv) A patient's health care insurer, including any entity that provides indemnification to a patient.

(v) When special circumstances warrant, those who are present at the behest of the patient, physician, or psychotherapist and are reasonably necessary to facilitate the communication.

(b) "Confidential communication" includes any information, substance, or tangible object, obtained incidental to the communication process and any opinion formed as a result of the consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives.

(9) "Health condition" is a physical, mental, or emotional condition, including a condition induced by alcohol, drugs, or other substance.

**B. (1) General rule of privilege in civil proceedings.** In a non-criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representatives.

**(2) Exceptions.** There is no privilege under this Article in a noncriminal proceeding as to a communication:

(a) When the communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker's compensation proceeding.

(b) When the communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker's compensation proceeding brought or asserted as a consequence of the death or injury of the deceased patient.

(c) When the communication is relevant to an issue of the health condition of the patient in any proceeding in which the patient is a party and relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which a party deriving his right from the patient relies on the patient's health condition as an element of his claim or defense.

(d) When the communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.

(e) When the communication made to the health care provider was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(f) When the communication is made in the course of an examination ordered by the court with respect to the health condition of a patient, the fact that the examination was so ordered was made known to the patient prior to the communication, and the communication concerns the particular purpose for which the examination was made, unless the court in its order directing the examination has stated otherwise.

(g)(i) When the communication is made by a patient who is the subject of an interdiction or commitment proceeding to his current health care provider when such patient has failed or refused to submit to an examination by a health care provider appointed by the court regarding issues relating to the interdiction or commitment proceeding, provided that the patient has been advised of such appointment and the consequences of not submitting to the examination.

(ii) Notwithstanding the provisions of Subitem (i) of this Item, in any commitment proceeding, the court-appointed physician may review the medical records of the patient or respondent and testify as to communications therein, but only those which are essential to determine whether the patient is dangerous to himself, dangerous to others, or unable to survive safely in freedom or protect himself from serious harm. However, such communications shall

not be disclosed unless the patient was informed prior to the communication that such communications are not privileged in any subsequent commitment proceedings. The court-appointed examination shall be governed by Item B(2)(f).

(h) When the communication is relevant in proceedings held by peer review committees and other disciplinary bodies to determine whether a particular health care provider has deviated from applicable professional standards.

(i) When the communication is one regarding the blood alcohol level or other test for the presence of drugs of a patient and an action for damages for injury, death, or loss has been brought against the patient.

(j) When disclosure of the communication is necessary for the defense of the health care provider in a malpractice action brought by the patient.

(k) When the communication is relevant to proceedings concerning issues of child abuse, elder abuse, or the abuse of disabled or incompetent persons.

(l) When the communication is relevant after the death of a patient, concerning the capacity of the patient to enter into the contract which is the subject matter of the litigation.

(m) When the communication is relevant in an action contesting any testament executed or claimed to have been executed by the patient now deceased.

**C. (1) General rule of privilege in criminal proceedings.** In a criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives.

**(2) Exceptions.** There is no privilege under this Article in a criminal case as to a communication:

(a) When the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense.

(b) When the communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(c) When the communication was made in the course of an examination ordered by the court in a criminal case to determine the health condition of a patient, provided that a copy of the order was served on the patient prior to the communication.

(d) When the communication is a record of the results of a test for blood alcohol level or drugs taken from a patient who is under arrest, or who was subsequently arrested for an offense related to the test.

(e) When the communication is in the form of a tangible object, including a bullet, that is removed from the body of a patient and which was in the body as a result of the crime charged.

(f) When the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of disabled or incompetent persons.

**D. Who may claim the privilege.** In both civil and criminal proceedings, the privilege may be claimed by the patient or by his legal representative. The person who was the physician, psychotherapist, or health care provider or their representatives, at the time of the communication is presumed to have authority to claim the privilege on behalf of the patient or deceased patient.

**E. Waiver.** The exceptions to the privilege set forth in Paragraph B(2) shall constitute a waiver of the privilege only



as to testimony at trial or to discovery of the privileged communication by one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., or pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

**F. Medical malpractice.** (1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

**G. Sanctions.** Any attorney who violates a provision of this Article shall be subject to sanctions by the court.

## **LA. REV. STAT. ANN. § 13:3734 (2011). PRIVILEGED COMMUNICATION BETWEEN HEALTH CARE PROVIDER AND PATIENT.**

A. As used in this Part:

(1) "Health care provider" means a hospital, as defined in Paragraph (3) hereof, and means a person, corporation, facility, or institution licensed by the state to provide health care or professional services as a physician, hospital, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker, or licensed professional counselor and an officer, employee, or agent thereof acting in the course and scope of his employment.

(2) "Patient" means a natural person who receives health care from a licensed health care provider.

(3) "Hospital" means any hospital as defined in R.S. 40:2102; any "Nursing home" or "home" as defined in R.S. 40:2009.2; or any health care provider's offices or clinics containing facilities for the examination, diagnosis, treatment or care of human illness.

(4) "Representative" means the spouse, parent, tutor, curator, trustee, attorney or other legal agent of the patient.

(5) "Communication" means the acquiring, recording or transmittal, of any information, in any manner whatsoever, concerning any facts, opinions or statements necessary to enable the health care provider to diagnose, treat, prescribe or to act for the patients; said communications may include, but are not limited to any and all medical records, office records, hospital records, charts, correspondence, memoranda, laboratory tests and results, x-rays, photographs, financial statements, diagnoses and prognoses.

(6), (7) Repealed by Acts 1986, No. 496, § 2, eff. July 2, 1986.

B. In noncriminal proceedings, testimonial privileges, exceptions, and waiver with respect to communications between a health care provider and his patient are governed by the Louisiana Code of Evidence.

C. An action or proceeding described in Louisiana Evidence Code Article 510(B)(2) which constitutes an exception for a health care provider to testify at a trial on the merits also shall be an exception for purposes of any discovery method authorized by Article 1421 et seq. of the Louisiana Code of Civil Procedure.

D. Nothing in this Section shall preclude the health care provider from disclosing privileged information by medical report either before or after any legal proceedings are instituted, provided that he is in receipt of a written authorization executed by the patient. If the health care provider knows or reasonably believes that the patient is physically or mentally incapable of authorizing release, the health care provider may disclose privileged information provided he is in receipt of a written authorization executed by a person authorized under R.S.

40:1299.40 to consent to medical treatment for the patient. Furthermore, when a patient is represented by an attorney and that attorney provides the health care provider with written authorization executed by the patient, the health care provider may disclose to the attorney any communication which was necessary to enable him to diagnose, treat, prescribe, or act for the patient and may provide to the attorney, as agent for the patient, any medical reports, X-rays, or any other written information the health care provider has regarding the patient, all without the necessity of complying with formal discovery.

E. (1) In addition to any other provision of law permitting the subpoena of health care provider records, a party may obtain the health care provider records and communications defined by Paragraph (5) of Subsection A of a patient to the extent permitted by Louisiana Code of Evidence Article 510(B)(2)(i) pursuant to a lawful subpoena, summons, or court order served upon the custodian of records of the health care provider, in accordance with the requirements of R.S. 13:3715.1.

(2) No health care provider, custodian of records, officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records including any communication defined by Paragraph (5) of Subsection A to the extent permitted by Louisiana Code of Evidence Article 510(B)(2)(i) when that disclosure is made in accordance with R.S. 13:3715.1.

F. Notwithstanding any law to the contrary, when conducting any investigation, the coroner or his authorized agents or employees may review any medical or dental records which he deems relevant to the investigation. Such records may be made available to him by the custodian thereof without the necessity of authorization, subpoena, or court order. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, when that disclosure is made pursuant to a request by the coroner or his authorized agents or employees.

G. Notwithstanding any provision of this Section or any other law to the contrary, an official of another state, whose functions are comparable to those of a coroner in this state and who is conducting an investigation in which Louisiana medical or dental records are material evidence, may request authorization for the release of those records from the coroner of the parish in which the custodian of the records is located. If the coroner determines that the requested records are relevant to the out-of-state investigation and the release of those records is appropriate, then the coroner shall authorize the custodian of those records to release those records to the requesting official. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, pursuant to a release authorized by the coroner

## MINNESOTA

### MINN. STAT. ANN. § 595.02 (West 2011). TESTIMONY OF WITNESSES.

**Subdivision 1. Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by

the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to

disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, “domestic abuse advocate” means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate or a collaborative law process pursuant to an agreement to participate in collaborative law. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation or collaborative law by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

**Subd. 1a. Alternative dispute resolution privilege.** No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling,

occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

- (1) constitute a crime;
- (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or
- (3) constitute professional misconduct.

**Subd. 2. Exceptions.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

- (1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and
- (2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and
- (3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

**Subd. 3. Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

- (a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and
- (b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:
  - (i) testifies at the proceedings; or
  - (ii) is unavailable as a witness and there is corroborative evidence of the act; and
- (c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An

unavailable witness includes an incompetent witness.

**Subd. 4. Court order.** (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

**Subd. 5. Waiver of privilege for health care providers.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61,

subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

## OHIO

### OHIO REV. CODE ANN. § 2317.02 (West 2011). PRIVILEGED COMMUNICATIONS AND ACTS.

The following persons shall not testify in certain respects:

(A)(1) An attorney, concerning a communication made to the attorney by a client in that relation or the attorney's advice to a client, except that the attorney may testify by express consent of the client or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of the deceased client. However, if the client voluntarily testifies or is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the attorney may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply concerning a communication between a client who has since died and the deceased client's attorney if the communication is relevant to a dispute between parties who claim through that deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased client when the deceased client executed a document that is the basis of the dispute or whether the deceased client was a victim of fraud, undue influence, or duress when the deceased client executed a document that is the basis of the dispute.

(2) An attorney, concerning a communication made to the attorney by a client in that relationship or the attorney's advice to a client, except that if the client is an insurance company, the attorney may be compelled to testify, subject to an in camera inspection by a court, about communications made by the client to the attorney or by the attorney to the client that are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communications has made a prima facie showing of bad faith, fraud, or criminal misconduct by the client.

(B)(1) A physician or a dentist concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (B)(2), and division (B)(3) of this section, and except that, if the patient is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the physician may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent;

(iii) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered

treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(c) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.

(d) In any criminal action against a physician or dentist. In such an action, the testimonial privilege established under this division does not prohibit the admission into evidence, in accordance with the Rules of Evidence, of a patient's medical or dental records or other communications between a patient and the physician or dentist that are related to the action and obtained by subpoena, search warrant, or other lawful means. A court that permits or compels a physician or dentist to testify in such an action or permits the introduction into evidence of patient records or other communications in such an action shall require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the records is maintained. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(e)(i) If the communication was between a patient who has since died and the deceased patient's physician or dentist, the communication is relevant to a dispute between parties who claim through that deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased patient when the deceased patient executed a document that is the basis of the dispute or whether the deceased patient was a victim of fraud, undue influence, or duress when the deceased patient executed a document that is the basis of the dispute.

(ii) If neither the spouse of a patient nor the executor or administrator of that patient's estate gives consent under division (B)(1)(a)(ii) of this section, testimony or the disclosure of the patient's medical records by a physician, dentist, or other health care provider under division (B)(1)(e)(i) of this section is a permitted use or disclosure of protected health information, as defined in 45 C.F.R. 160.103, and an authorization or opportunity to be heard shall not be required.

(iii) Division (B)(1)(e)(i) of this section does not require a mental health professional to disclose psychotherapy notes, as defined in 45 C.F.R. 164.501.

(iv) An interested person who objects to testimony or disclosure under division (B)(1)(e)(i) of this section may seek a protective order pursuant to Civil Rule 26.

(v) A person to whom protected health information is disclosed under division (B)(1)(e)(i) of this section shall not use or disclose the protected health information for any purpose other than the litigation or proceeding for which the information was requested and shall return the protected health information to the covered entity or destroy the protected health information, including all copies made, at the conclusion of the litigation or proceeding.

(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.



(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.

(3)(a) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(a)(iii) of this section, a physician or dentist may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(b) If the testimonial privilege described in division (B)(1) of this section does not apply to a physician or dentist as provided in division (B)(1)(c) of this section, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of results submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision the results were compiled.

(4) The testimonial privilege described in division (B)(1) of this section is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

(5)(a) As used in divisions (B)(1) to (4) of this section, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, "health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(c) As used in division (B)(5)(b) of this section:

(i) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. "Ambulatory health care facility" does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(ii) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(iii) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code.

(iv) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(v) "Long-term care facility" means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; an adult care facility, as defined in section 3722.01 of the Revised Code; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code.

(d) As used in divisions (B)(1) and (2) of this section, "drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.

(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.

(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.

(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.35 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication made through a telecommunications relay service. Nothing in this section shall limit the obligation of a communications assistant to divulge information or testify when mandated by federal law or regulation or pursuant to subpoena in a criminal proceeding.

Nothing in this section shall limit any immunity or privilege granted under federal law or regulation.

(J)(1) A chiropractor in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, except as otherwise provided in this division. The testimonial

privilege established under this division does not apply, and a chiropractor may testify or may be compelled to testify, in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

- (a) If the patient or the guardian or other legal representative of the patient gives express consent.
  - (b) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent.
  - (c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.
- (2) If the testimonial privilege described in division (J)(1) of this section does not apply as provided in division (J)(1)(c) of this section, a chiropractor may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.
- (3) The testimonial privilege established under this division does not apply, and a chiropractor may testify or be compelled to testify, in any criminal action or administrative proceeding.
- (4) As used in this division, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a chiropractor to diagnose, treat, or act for a patient. A communication may include, but is not limited to, any chiropractic, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.
- (K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.
- (2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true:
- (a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger.
  - (b) The individual who received crisis response services gives express consent to the testimony.
  - (c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.
  - (d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.
  - (e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.
  - (f) The communication or advice pertains or is related to any criminal act.

(3) As used in division (K) of this section:

(a) "Crisis response services" means consultation, risk assessment, referral, and on-site crisis intervention services provided by a critical incident stress management team to individuals affected by crisis or disaster.

(b) "Critical incident stress management team member" or "team member" means an individual specially trained to provide crisis response services as a member of an organized community or local crisis response team that holds membership in the Ohio critical incident stress management network.

(c) "Debriefing session" means a session at which crisis response services are rendered by a critical incident stress management team member during or after a crisis or disaster.

(L)(1) Subject to division (L)(2) of this section and except as provided in division (L)(3) of this section, an employee assistance professional, concerning a communication made to the employee assistance professional by a client in the employee assistance professional's official capacity as an employee assistance professional.

(2) Division (L)(1) of this section applies to an employee assistance professional who meets either or both of the following requirements:

(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;

(b) Has education, training, and experience in all of the following:

(i) Providing workplace-based services designed to address employer and employee productivity issues;

(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;

(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;

(iv) Selecting and evaluating available community resources;

(v) Making appropriate referrals;

(vi) Local and national employee assistance agreements;

(vii) Client confidentiality.

(3) Division (L)(1) of this section does not apply to any of the following:

(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;

(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;

(c) A communication that is made by a client who is an unemancipated minor or an adult adjudicated to be incompetent and indicates that the client was the victim of a crime or abuse;

(d) A civil proceeding to determine an individual's mental competency or a criminal action in which a plea of not guilty by reason of insanity is entered;

- (e) A civil or criminal malpractice action brought against the employee assistance professional;
- (f) When the employee assistance professional has the express consent of the client or, if the client is deceased or disabled, the client's legal representative;
- (g) When the testimonial privilege otherwise provided by division (L)(1) of this section is abrogated under law.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 9-17-24 (2011). PRIVILEGED COMMUNICATIONS TO AND INFORMATION OBTAINED BY HEALTH CARE PROVIDERS.**

In every legal action, both civil and criminal, no health care provider shall be competent to testify concerning any information obtained about a patient, nor shall he or she be required to produce any documentary evidence obtained about a patient, in the course of the customary professional health care relationship, without the consent of the patient, his or her legal guardian, or, if the patient is deceased, his or her next-of-kin, executor, or administrator. No health care provider shall be allowed in giving testimony to disclose any confidential communication or health care information, properly entrusted to him or her in his or her professional capacity and within the customary health care relationship, and necessary and proper to enable him or her to discharge medical duties in the usual course of practice, without the consent of the patient, his or her legal guardian, or, if the patient is deceased, his or her next-of-kin, executor, or administrator. Notwithstanding the foregoing, a health care provider may be required to testify or produce documentary evidence regarding the medical condition of a patient:

- (1) When a patient raises his or her own medical condition in a legal action;
- (2) When a court determines that disclosure of health care information about a person is necessary to a determination of the perceptual capacity of that person as a witness in a legal proceeding and that information is unavailable from any source other than a health care provider;
- (3) When a court orders or the parties to a legal action agree to a medical evaluation of a party or witness by a health care provider in order to facilitate the resolution of the legal action;
- (4) When the question of the competence of a decedent is at issue before the court; or
- (5) When consent is not required pursuant to chapter 37.3 of title 5; provided, however, that any such information shall not be admissible in any proceeding against the patient to whom the information pertains.

## **VERMONT**

### **Vt. STAT. ANN. tit. 12 § 1612 (2011). PATIENT'S PRIVILEGE.**

(a) **Confidential information privileged.** Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity.

(b) **Identification by dentist; crime committed against patient under 16.** A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, chiropractor, or nurse shall be required to disclose information indicating that a patient who is under the age of 16 years has been the victim of a crime.

**(c) Mental or physical condition of deceased patient.**

(1) A physician, chiropractor, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section, except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

(A) by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

(B) in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

(C) if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.

(2) A physician, dentist, chiropractor, mental health professional, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section upon request to the chief medical examiner.

## **WISCONSIN**

### **Wis. STAT. ANN. § 905.04 (West 2011). PHYSICIAN-PATIENT, REGISTERED NURSE-PATIENT, CHIROPRACTOR-PATIENT, PSYCHOLOGIST-PATIENT, SOCIAL WORKER-PATIENT, MARRIAGE AND FAMILY THERAPIST-PATIENT AND PROFESSIONAL COUNSELOR-PATIENT PRIVILEGE**

**(1) Definitions.** In this section:

(a) “Chiropractor” means a person licensed under s. 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) A communication or information is “confidential” if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient’s family.

(bm) “Marriage and family therapist” means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) “Patient” means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) “Physician” means a person as defined in s. 990.01(28), or reasonably believed by the patient so to be.

(dg) “Podiatrist” means a person licensed under s. 448.63 or a person reasonably believed by the patient to be a podiatrist.

(dm) “Professional counselor” means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) "Psychologist" means a licensed psychologist, as that term is defined in s. 455.01(4), or a person reasonably believed by the patient to be a psychologist.

(f) "Registered nurse" means a nurse who is licensed under s. 441.06 or licensed as a registered nurse in a party state, as defined in s. 441.50(2)(j), or a person reasonably believed by the patient to be a registered nurse.

(g) "Social worker" means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

**(2) General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

**(3) Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

**(4) Exceptions.** (a) *Proceedings for hospitalization, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian in this state, for court-ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(am) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 54.36(1) or s. 880.33(1), 2003 stats.

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 2m. There is no privilege for information contained in a report



of child abuse or neglect that is provided under s. 48.981(3).

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01(1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under subch. IX of ch. 767.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 255.40 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services to court in juvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067 or 48.069 only as provided in s. 48.78 and may disclose information obtained while providing services under s. 938.067 or 938.069 only as provided in s. 938.78.

## WYOMING

### **WYO. STAT. ANN. § 6-2-309 (2011). MEDICAL EXAMINATION OF VICTIM; COSTS; USE OF REPORT; MINORS; RIGHTS OF VICTIMS; REIMBURSEMENT [SEXUAL ASSAULT].**

(a) A law enforcement agency receiving a report of a sexual assault may, with the victim's consent, arrange for an examination of the victim by a licensed health care provider acting within the scope of the provider's practice. The examination may include a medical examination and treatment, evidence collection and evaluation, and appropriate referrals for follow-up treatment and services. Upon consent of the victim to release of the results of the examination, the evidence, record and reports shall be delivered to the law enforcement agency.

(b) Repealed by Laws 2006, ch. 77, § 2.

(c) Repealed by Laws 1991, ch. 130, § 2.

(d) Repealed by Laws 2006, ch. 77, § 2.

(e) If a report of a sexual assault is received from a minor victim, and the parents or guardian of the minor cannot be located promptly with diligent effort, the examination provided for by subsection (a) of this section may be conducted with the minor's consent. If a report of a sexual assault is received alleging a minor as the victim and a parent or guardian is the suspected perpetrator, the parent or guardian who is the suspected perpetrator shall not be notified pursuant to this section.

(f) Repealed by Laws 2006, ch. 77, § 2.

(g) Except as provided by subsection (j) of this section, the costs of any examination relating to the investigation or prosecution of a sexual assault shall be billed to and paid by the investigating law enforcement agency. These examination costs shall include the following:

(i) The cost of gathering evidence; and

(ii) Any other examinations authorized by law enforcement to aid in the investigation and prosecution of the sexual assault.

(h) Except as provided by subsection (j) of this section, any examination costs directly incurred by a sexual assault victim that are not covered by subsection (g) of this section, or other collateral source, shall be submitted to the victim services division within the office of the attorney general for determination of eligibility for payment from the crime victims compensation account established by W.S. 1-40-114. All requests for compensation from the account shall be subject to the eligibility guidelines set forth in the Crime Victims Compensation Act, W.S. 1-40-101 through 1-40-119.

(j) A convicted offender of a sexual assault shall be ordered to reimburse any costs incurred under subsections (g) and (h) of this section and any other costs incurred as a direct result of the sexual assault.

(k) Each victim reporting a sexual assault shall be informed of the rights enumerated in this section, the victim's rights to informed consent and the victim's rights as a victim of crime. The victim shall also be informed of available medical, legal and advocacy services.

(m) The examinations authorized by this section shall remain confidential healthcare information unless the victim or the victim's parent or legal guardian executes a release of medical information for the purpose of prosecution to the county attorney, the state of Wyoming or any relevant court. However, if the report of sexual assault described in subsection (a) of this section results in the filing against any person of a criminal charge, or the filing of a petition alleging a delinquent act which would be a felony if committed by an adult, the written report disclosing the results of an examination made pursuant to this section shall be made available to the person charged or his counsel upon demand.

## SOCIAL WORKERS

### ALASKA

#### **ALASKA STAT. § 08.95.900. CONFIDENTIALITY OF COMMUNICATION. [SOCIAL WORKERS]**

(a) A licensed social worker, and the social worker's employees or other persons who have access to the social worker's records, may not reveal to another person a communication made to the licensee by a client about a matter concerning which the client has employed the licensee in a professional capacity. This section does not apply to

(1) a case conference with other licensed social workers or with other licensed practitioners of the healing arts;

(2) the release of information which the client in writing authorized the licensee to reveal;

(3) information released to the board as part of a disciplinary or other proceeding by the board;

(4) information revealed as part of the discovery of evidence related to a court proceeding or introduced in evidence in a court proceeding;

(5) communications relevant to the physical, mental, or emotional condition of the client in a proceeding in which the condition of the client is an element of the claim or defense of the client, of a party claiming through or under the client, or of a person raising the client's condition as an element of the person's own case, or of a person claiming as a beneficiary of the client through a contract to which the client is or was a party; or, after the client's death, in a proceeding in which a party puts the condition of the client in issue;

(6) a communication to a potential victim or to law enforcement officers where a threat of imminent serious physical harm to an identified victim has been made by a client; or

(7) a communication that indicates that another licensed practitioner of the healing arts has committed an act of unprofessional or unlawful conduct in the provision of health or mental health services if the communication is disclosed by the social worker only to the licensing board with jurisdiction over the type of person who allegedly committed the unprofessional or unlawful conduct and the disclosure is made in good faith.

(b) Notwithstanding (a) of this section, a licensed social worker shall report incidents of child abuse or neglect as required by [AS 47.17.020](#) and incidents of harm to vulnerable adults as required by [AS 47.24.010](#).

(c) Information obtained by the board under (a)(3) and (7) of this section is confidential and is not a public record for the purposes of [AS 40.25.110--40.25.140](#).

### ARKANSAS

#### **ARK. CODE ANN. § 17-103-107 (West 2011). PRIVILEGED COMMUNICATIONS [SOCIAL WORKERS].**

No licensed certified social worker, licensed master social worker, or licensed social worker or his or her secretary, stenographer, or clerk may disclose any information he or she may have acquired from persons consulting him in his or her professional capacity to those persons except:

(1) With the written consent of the person or persons or, in the case of death or disability, of his or her own legal guardian, other person authorized to sue, or the beneficiary of an insurance policy on his or her life, health, or physical condition;

(2) That a licensed certified social worker, licensed master social worker, or licensed social worker shall not be required to treat as confidential a communication that reveals the contemplation of a crime or a harmful act;

(3) When the person is a minor under the laws of this state and the information acquired by the licensed certified social worker, licensed master social worker, or licensed social worker indicates that the minor was the victim or subject of a crime, the licensed certified social worker, licensed master social worker, or the licensed social worker may be required to testify fully in any examination, trial, or other proceedings in which the commission of such a crime is the subject of inquiry; or

(4) When the person waives the privilege by bringing charges against the licensed certified social worker, licensed master social worker, or the licensed social worker.

## CONNECTICUT

### **CONN. GEN. STAT. ANN. § 52-146Q. (West 2011). DISCLOSURE OF CONFIDENTIAL COMMUNICATIONS BETWEEN SOCIAL WORKER AND PERSON CONSULTING SUCH SOCIAL WORKER PROHIBITED. EXCEPTIONS.**

(a) As used in this section:

(1) "Person" means an individual who consults a social worker for purposes of evaluation or treatment;

(2) "Social worker" means an individual licensed as a clinical social worker pursuant to chapter 383b or an individual reasonably believed by the person to be so licensed;

(3) "Communications and records" means all oral and written communications and records thereof relating to the evaluation or treatment of a person between such person and a social worker, or between a member of such person's family and a social worker, or between such person or a member of such person's family and an individual participating under the supervision of a social worker in the accomplishment of the objectives of evaluation or treatment, wherever made;

(4) "Consent" means consent given in writing by the person or his authorized representative;

(5) "Authorized representative" means (A) an individual empowered by a person to assert the confidentiality of communications and records under this section, or (B) if a person is deceased, his administrator or executor or, in the absence of such fiduciary, his next of kin, or (C) if a person has been declared incompetent to assert or waive his privileges under this section, a guardian or conservator who is duly appointed to act for the person;

(6) "Mental health facility" includes any hospital, clinic, ward, social worker's office or other facility, public or private, which provides inpatient or outpatient service, in whole or in part, relating to the diagnosis or treatment of a person's mental condition.

(b) All communications and records shall be confidential and, except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records unless the person or his authorized representative consents to such disclosure. Any consent given shall specify the individual or agency to which the communications and records are to be disclosed, the scope of the communications and records to be disclosed, the purpose of the disclosure and the expiration date of the consent. A copy of the consent form shall accompany any communications and records disclosed. The person or his authorized representative may withdraw any consent given under the provisions of this section at any time by written notice to the individual with whom or the office in which the original consent was filed. The withdrawal of consent shall not affect communications and records disclosed prior to notice of the withdrawal, except that such communications and records may not be redisclosed after the date of the notice of withdrawal.

(c) Consent of the person shall not be required for the disclosure or transmission of such person's communications and records in the following situations as specifically limited:

(1) Communications and records may be disclosed to other individuals engaged in the diagnosis or treatment of the person or may be transmitted to a mental health facility to which the person is admitted for diagnosis or treatment if the social worker in possession of the communications and records determines that the disclosure or transmission is needed to accomplish the objectives of diagnosis or treatment, or when a social worker, in the course of evaluation or treatment of the person, finds it necessary to disclose the communications and records for the purpose of referring the person to a mental health facility. The person shall be informed that the communications and records have been so disclosed or transmitted. For purposes of this subdivision, individuals in professional training are to be considered as engaged in the diagnosis or treatment of the person.

(2) Communications and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others, or when disclosure is otherwise mandated by any provision of the general statutes.

(3) Communications and records made in the course of an evaluation ordered by a court may be disclosed at judicial proceedings in which the person is a party provided the court finds that the person has been informed before making the communications that any communications and records may be so disclosed and provided further that communications and records shall be admissible only on issues involving the person's mental condition.

(4) Communications and records may be disclosed in a civil proceeding in which the person introduces his mental condition as an element of his claim or defense or, after the person's death, when his condition is introduced by a party claiming or defending through or as a beneficiary of the person. For any disclosure under this subdivision, the court shall find that it is more important to the interests of justice that the communications and records be disclosed than that the relationship between the person and the social worker be protected.

(5) If a social worker makes a claim for collection of fees for services rendered, the name and address of the person and the amount of the fees may be disclosed to individuals or agencies involved in such collection, provided written notification that such disclosure will be made is sent to the person not less than thirty days prior to such disclosure. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the fees or claims, the disclosure of further information shall be limited to the following: (A) That the person did in fact receive the services of the social worker, (B) the dates and duration of such services, and (C) a general description of the types of services.

## IOWA

### **IOWA CODE ANN. § 154C.5 (West 2011). CONFIDENTIALITY OF INFORMATION. [SOCIAL WORK]**

A licensee or a person working under supervision of a licensee shall not disclose or be compelled to disclose information acquired from persons consulting that person in a professional capacity except:

1. If the information reveals the contemplation or commission of a crime.
2. If the person waives the privilege by bringing charges against the licensee.
3. With the written consent of the client, or in the case of death or disability with the consent of the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.
4. To testify in a court hearing concerning matters pertaining to the welfare of children.

5. To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

## KANSAS

### **KAN. STAT. ANN. § 65-6315 (2010). CONFIDENTIAL INFORMATION AND COMMUNICATIONS; EXCEPTIONS [SOCIAL WORKERS].**

(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.

(b) The confidential relations and communications between a licensed master social worker's or a licensed specialist clinical social worker's client are placed on the same basis as provided by law for those between an attorney and an attorney's client. (c) Nothing in this section or in this act shall be construed to prohibit any licensed social worker 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 the client. There is no privilege under this section for information which is required to be reported to a public official.

## LOUISIANA

### **LA. REV. STAT. ANN. § 37:2718 (2011). PRIVILEGED COMMUNICATIONS [SOCIAL WORKERS].**

A. Testimonial privileges, exceptions, and waiver with respect to communications between a social worker and his client are governed by the Louisiana Code of Evidence.

B. No social worker may disclose any information he may have acquired from persons consulting him in his professional capacity that was necessary to enable him to render services to those persons except:

(1) With the written consent of the client, or in the case of death or disability, with the written consent of his personal representative, other person authorized to sue, or the beneficiary of any insurance policy on his life, health, or physical condition.

(2) When the individual is a minor under the age of eighteen and the information acquired by the social worker

indicated that the child was the victim or subject of a crime, then the social worker may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of such crime is a subject of inquiry.

(3) When a communication reveals the intended commission of a crime or harmful act and such disclosure is determined to be necessary by the social worker to protect any individual or person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety.

(4) When the person waives the privilege by bringing any public charge against the social worker.

C. Nothing in this Section shall be construed, however, to prohibit a social worker from voluntarily testifying in a court hearing concerning matters of adoption, child abuse, child neglect, or other matters pertaining to children, elderly, and physically or mentally impaired adults, except as prohibited under the applicable state and federal laws.

## **MAINE**

### **ME. REV. STAT. ANN. tit. 32 § 7005 (2011). COMMUNICATION BETWEEN SOCIAL WORKERS AND CLIENTS.**

Except at the request of, or with the consent of, the client, no person licensed under this chapter may be required to testify in any civil or criminal action, suit or proceeding at law or in equity respecting any information which he may have acquired in providing social work services to the client in a professional and contractual capacity if that information was necessary to enable him to furnish professional social work services to the client. However, when the physical or mental condition of the client is an issue in that action, suit or proceeding or when a court in the exercise of sound discretion deems the disclosure necessary to the proper administration of justice, no information communicated to, or otherwise learned by, that licensed person in connection with the provision of social work services may be privileged and disclosure may be required.

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections 4011-A to 4015.

## **MARYLAND**

### **MD. CODE ANN., [CTS. & JUD. PROC.] § 9-121 (West 20119). SOCIAL WORKER-CLIENT COMMUNICATIONS.**

#### **Definitions**

(a)(1) In this section the following words have the meanings indicated.

(2) "Client" means a person who communicates to or receives services from a licensed certified social worker regarding his mental or emotional condition, or from any other person participating directly or vitally with a licensed certified social worker in rendering those services, in consultation with or under direct supervision of a licensed certified social worker.

(3) "Licensed certified social worker" means any person licensed as a certified social worker under Title 19 of the Health Occupations Article.

(4) "Witness" means a licensed certified social worker or any other person participating directly or vitally with a licensed certified social worker in rendering services to a client, in consultation with or under direct supervision of

a licensed certified social worker.

Communications made while client received counseling

(b) Unless otherwise provided, in all judicial or administrative proceedings, a client has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications made while the client was receiving counseling or any information that by its nature would show that such counseling occurred.

Incompetent clients

(c) If a client is incompetent to assert or waive this privilege, a guardian shall be appointed and shall act for the client. A previously appointed guardian has the same authority.

Communications or disclosures not privileged

(d) There is no privilege if:

(1) A disclosure is necessary for the purpose of placing the client in a facility for mental illness;

(2) A judge finds that the client, after being informed there will be no privilege, makes communications in the course of an examination ordered by the court;

(3) In a civil or criminal proceeding:

(i) The client introduces the client's mental condition as an element of the claim or defense; or

(ii) After the client's death, the client's mental condition is introduced by any party claiming or defending through or as a beneficiary of the client;

(4) The client or the personal representative of the client makes a claim against the licensed certified social worker for malpractice; or

(5) The client expressly consents to waive the privilege, or in the case of death or disability, the client's personal representative waives the privilege for purpose of making a claim or bringing suit on a policy of insurance on life, health, or physical condition.

Proceedings not privileged

(e) There is no privilege in:

(1) Any administrative or judicial nondelinquent juvenile proceeding;

(2) Any guardianship and adoption proceeding initiated by a child placement agency;

(3) Any guardianship and protective services proceeding concerning disabled persons; or

(4) Any criminal or delinquency proceeding in which there is a charge of child abuse or neglect or which arises out of an investigation of suspected child abuse or neglect.

## MICHIGAN

### **MICH. COMP. LAWS ANN. § 333.18513 (West 2011). CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND PERSONS LICENSED OR REGISTERED UNDER PART; DISCLOSURE OF CONFIDENTIAL COMMUNICATIONS [SOCIAL WORKERS].**

Sec. 18513. (1) An individual registered or licensed under this part or an employee or officer of an organization that employs the registrant or licensee is not required to disclose a communication or a portion of a



communication made by a client to the individual or advice given in the course of professional employment.

(2) Except as otherwise provided in this section, a communication between a registrant or licensee or an organization with which the registrant or licensee has an agency relationship and a client is a confidential communication. A confidential communication shall not be disclosed, except under either or both of the following circumstances:

(a) The disclosure is part of a required supervisory process within the organization that employs or otherwise has an agency relationship with the registrant or licensee.

(b) The privilege is waived by the client or a person authorized to act in the client's behalf.

(3) If requested by the court for a court action, a registrant or licensee shall submit to an appropriate court a written evaluation of the prospect or prognosis of a particular client without disclosing a privileged fact or a privileged communication. An attorney representing a client who is the subject of an evaluation described in this subsection has the right to receive a copy of the evaluation. If required for the exercise of a public purpose by a legislative committee, a registrant or licensee or agency representative may make available statistical and program information without violating the privilege established under subsection (2).

(4) A registrant or licensee may disclose a communication or a portion of a communication made by a client pursuant to section 946 of the mental health code, 1974 PA 258, MCL 330.1946, in order to comply with the duty set forth in that section.

## MINNESOTA

### **MINN. STAT. ANN. § 148B.593 (West 2011). DISCLOSURE OF INFORMATION [SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, MENTAL HEALTH LICENSED PROFESSIONAL COUNSELING].**

(a) A person licensed under sections 148B.50 to 148B.593 may not disclose without written consent of the client any communication made by the client to the licensee in the course of the practice of professional counseling, nor may any employee of the licensee reveal the information without the consent of the employer or client except as provided under section 626.556 or 626.557.

(b) For purposes of sections 148B.50 to 148B.593, the confidential relations and communications between the licensee and a client are placed upon the same basis as those that exist between a licensed psychologist and client. Nothing in sections 148B.50 to 148B.593 may be construed to require any communications to be disclosed except by court order.

## MONTANA

### **MO. ANN STAT. § 337.636 (West 20119). PRIVILEGED COMMUNICATIONS, WHEN [SOCIAL WORKERS].**

Persons licensed under the provisions of sections 337.600 to 337.689 may not disclose any information acquired from persons consulting them in their professional capacity, or be compelled to disclose such information except:

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

(2) When such information pertains to a criminal act;

- (3) When the person is a child under the age of eighteen years and the information acquired by the licensee indicated that the child was the victim of a crime;
- (4) When the person waives the privilege by bringing charges against the licensee;
- (5) When the licensee is called upon to testify in any court or administrative hearings concerning matters of adoption, adult abuse, child abuse, child neglect, or other matters pertaining to the welfare of clients of the licensee; or
- (6) When the licensee is collaborating or consulting with professional colleagues or an administrative superior on behalf of the client.

**MONT. CODE ANN. § 37-22-401 (2011). PRIVILEGED COMMUNICATIONS--EXCEPTIONS [SOCIAL WORKERS].**

A licensee may not disclose any information the licensee acquires from clients consulting the licensee in a professional capacity except:

- (1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;
- (2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;
- (3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;
- (4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;
- (5) to the extent that the privilege is otherwise waived by the client; and
- (6) as may otherwise be required by law

**NEVADA**

**NEV. REV. STAT. ANN. §§ 49.251 TO 49.254 (West 2010). SOCIAL WORKER AND CLIENT [PRIVILEGES].**

**49.251. Definitions**

As used in NRS 49.251 to 49.254, inclusive, unless the context otherwise requires:

- 1. "Client" means a person who consults or is interviewed by a social worker for the purpose of diagnosis or treatment.
- 2. A communication is "confidential" if it is not intended to be disclosed to any third person other than a person:

- (a) Present during the consultation or interview to further the interest of the client;
- (b) Reasonably necessary for the transmission of the communication; or
- (c) Participating in the diagnosis or treatment under the direction of the social worker, including a member of the client's family.

3. "Social worker" means any person licensed under chapter 641B of NRS.

#### **49.252. General rule of privilege**

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing confidential communications among himself, his social worker or any other person who is participating in the diagnosis or treatment under the direction of the social worker.

#### **49.253. Who may claim privilege**

1. The privilege may be claimed by the client, his guardian or conservator or by the personal representative of a deceased client.
2. The person who is the social worker may claim the privilege, but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

#### **49.254. Exceptions**

There is no privilege under NRS 49.252 or 49.253:

1. If the services of the social worker are sought or obtained to enable or aid anyone to commit or plan to commit what the client knows or reasonably should have known is a crime or fraud.
2. If the social worker is required to testify in an administrative or court-related investigation or proceeding involving the welfare of his client or the minor children of his client.
3. If the communication is relevant to an issue of breach of duty by the social worker to his client or by the client to his social worker.
4. If the communication is with persons who are participating in the diagnosis and treatment of the client of the social worker, including members of the patient's family.
5. If disclosure is otherwise required by state or federal law.

## **NEW MEXICO**

### **N.M. STAT. ANN. § 61-31-24 (West 2011). PRIVILEGED COMMUNICATIONS [SOCIAL WORKERS].**

A. A licensed social worker shall not be examined without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a social worker be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in that capacity; nor shall any person who has participated in any social work practice conducted under the supervision of a person authorized by law to conduct such practice,

including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No licensed social worker may disclose any information he has acquired from a person consulting him in his professional capacity, unless:

(1) he has the written consent of the client or, in the case of death or disability, of his personal representative, any other person authorized to sue or the beneficiary of any insurance policy on his life, health or physical condition;

(2) such communication reveals the contemplation of a crime or harmful act;

(3) the client is under the age of sixteen years or an adult who is mentally fragile and the information acquired indicates that the child or adult was the victim or subject of a crime, in which case the social worker may be required to testify fully in relation to the crime in any examination, trial or other proceeding in which the commission of the crime is a subject of inquiry; or

(4) the person waives the privilege by bringing charges against the social worker.

C. Nothing in this section shall be construed to prohibit a licensed social worker from disclosing information in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code or to those matters pertaining to citizens protected under the Adult Protective Services Act.

## OHIO

### OHIO REV. CODE ANN. § 2317.02 (West 2011). PRIVILEGED COMMUNICATIONS AND ACTS.

The following persons shall not testify in certain respects:

(A)(1) An attorney, concerning a communication made to the attorney by a client in that relation or the attorney's advice to a client, except that the attorney may testify by express consent of the client or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of the deceased client. However, if the client voluntarily testifies or is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the attorney may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply concerning a communication between a client who has since died and the deceased client's attorney if the communication is relevant to a dispute between parties who claim through that deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased client when the deceased client executed a document that is the basis of the dispute or whether the deceased client was a victim of fraud, undue influence, or duress when the deceased client executed a document that is the basis of the dispute.

(2) An attorney, concerning a communication made to the attorney by a client in that relationship or the attorney's advice to a client, except that if the client is an insurance company, the attorney may be compelled to testify, subject to an in camera inspection by a court, about communications made by the client to the attorney or by the attorney to the client that are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communications has made a prima facie showing of bad faith, fraud, or criminal misconduct by the client.

(B)(1) A physician or a dentist concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (B)(2), and division (B)(3) of this section, and except that, if the patient is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the physician may be compelled to

testify on the same subject.

The testimonial privilege established under this division does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent;

(iii) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(c) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.

(d) In any criminal action against a physician or dentist. In such an action, the testimonial privilege established under this division does not prohibit the admission into evidence, in accordance with the Rules of Evidence, of a patient's medical or dental records or other communications between a patient and the physician or dentist that are related to the action and obtained by subpoena, search warrant, or other lawful means. A court that permits or compels a physician or dentist to testify in such an action or permits the introduction into evidence of patient records or other communications in such an action shall require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the records is maintained. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(e)(i) If the communication was between a patient who has since died and the deceased patient's physician or dentist, the communication is relevant to a dispute between parties who claim through that deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased patient when the deceased patient executed a document that is the basis of the dispute or whether the deceased patient was a victim of fraud, undue influence, or duress when the deceased patient executed a document that is the basis of the dispute.

(ii) If neither the spouse of a patient nor the executor or administrator of that patient's estate gives consent under division (B)(1)(a)(ii) of this section, testimony or the disclosure of the patient's medical records by a physician, dentist, or other health care provider under division (B)(1)(e)(i) of this section is a permitted use or disclosure of protected health information, as defined in 45 C.F.R. 160.103, and an authorization or opportunity to be heard shall not be required.

(iii) Division (B)(1)(e)(i) of this section does not require a mental health professional to disclose psychotherapy notes, as defined in 45 C.F.R. 164.501.

(iv) An interested person who objects to testimony or disclosure under division (B)(1)(e)(i) of this section may seek a protective order pursuant to Civil Rule 26.

(v) A person to whom protected health information is disclosed under division (B)(1)(e)(i) of this section shall not use or disclose the protected health information for any purpose other than the litigation or proceeding for which the information was requested and shall return the protected health information to the covered entity or destroy the protected health information, including all copies made, at the conclusion of the litigation or proceeding.

(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.

(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.

(3)(a) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(a)(iii) of this section, a physician or dentist may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(b) If the testimonial privilege described in division (B)(1) of this section does not apply to a physician or dentist as provided in division (B)(1)(c) of this section, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of results submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision the results were compiled.

(4) The testimonial privilege described in division (B)(1) of this section is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

(5)(a) As used in divisions (B)(1) to (4) of this section, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum,

laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, “health care provider” means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(c) As used in division (B)(5)(b) of this section:

(i) “Ambulatory care facility” means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. “Ambulatory health care facility” does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(ii) “Emergency facility” means a hospital emergency department or any other facility that provides emergency medical services.

(iii) “Health care practitioner” has the same meaning as in section 4769.01 of the Revised Code.

(iv) “Hospital” has the same meaning as in section 3727.01 of the Revised Code.

(v) “Long-term care facility” means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; an adult care facility, as defined in section 3722.01 of the Revised Code; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the “Social Security Act,” 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) “Pharmacy” has the same meaning as in section 4729.01 of the Revised Code.

(d) As used in divisions (B)(1) and (2) of this section, “drug of abuse” has the same meaning as in section 4506.01 of the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, “employee,” “employer,” and “physician” have the same meanings as in section 2305.33 of the Revised Code.

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) “Cleric” means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.

(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.

(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.



(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.35 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication made through a telecommunications relay service. Nothing in this section shall limit the obligation of a communications assistant to divulge information or testify when mandated by federal law or regulation or pursuant to subpoena in a criminal proceeding.

Nothing in this section shall limit any immunity or privilege granted under federal law or regulation.

(J)(1) A chiropractor in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, except as otherwise provided in this division. The testimonial privilege established under this division does not apply, and a chiropractor may testify or may be compelled to testify, in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(a) If the patient or the guardian or other legal representative of the patient gives express consent.

(b) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent.

(c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(2) If the testimonial privilege described in division (J)(1) of this section does not apply as provided in division (J)(1)(c) of this section, a chiropractor may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(3) The testimonial privilege established under this division does not apply, and a chiropractor may testify or be compelled to testify, in any criminal action or administrative proceeding.

(4) As used in this division, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a chiropractor to diagnose, treat, or act for a patient. A communication may include, but is not limited to, any chiropractic, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.

(2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true:

(a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger.

(b) The individual who received crisis response services gives express consent to the testimony.

(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.

(f) The communication or advice pertains or is related to any criminal act.

(3) As used in division (K) of this section:

(a) "Crisis response services" means consultation, risk assessment, referral, and on-site crisis intervention services provided by a critical incident stress management team to individuals affected by crisis or disaster.

(b) "Critical incident stress management team member" or "team member" means an individual specially trained to provide crisis response services as a member of an organized community or local crisis response team that holds membership in the Ohio critical incident stress management network.

(c) "Debriefing session" means a session at which crisis response services are rendered by a critical incident stress management team member during or after a crisis or disaster.

(L)(1) Subject to division (L)(2) of this section and except as provided in division (L)(3) of this section, an employee assistance professional, concerning a communication made to the employee assistance professional by a client in the employee assistance professional's official capacity as an employee assistance professional.

(2) Division (L)(1) of this section applies to an employee assistance professional who meets either or both of the following requirements:

(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;

(b) Has education, training, and experience in all of the following:

(i) Providing workplace-based services designed to address employer and employee productivity issues;

(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;

(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;

(iv) Selecting and evaluating available community resources;

(v) Making appropriate referrals;

(vi) Local and national employee assistance agreements;

(vii) Client confidentiality.

(3) Division (L)(1) of this section does not apply to any of the following:

(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;

(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;

(c) A communication that is made by a client who is an unemancipated minor or an adult adjudicated to be incompetent and indicates that the client was the victim of a crime or abuse;

(d) A civil proceeding to determine an individual's mental competency or a criminal action in which a plea of not guilty by reason of insanity is entered;

(e) A civil or criminal malpractice action brought against the employee assistance professional;

(f) When the employee assistance professional has the express consent of the client or, if the client is deceased or disabled, the client's legal representative;

(g) When the testimonial privilege otherwise provided by division (L)(1) of this section is abrogated under law.

## OKLAHOMA

### **OKLA. STAT. tit. 59, § 1261.6 (2011). INFORMATION CONFIDENTIAL--DISCLOSURE [SOCIAL WORKERS]**

No person licensed under the provisions of the Social Worker's Licensing Act or secretary, stenographer or clerk of such a licensed person or anyone who participates in delivery of social work services or anyone working under supervision of a person licensed under these provisions may disclose any information acquired from persons consulting the licensed social worker in his or her professional capacity or be compelled to disclose such information.

The confidential relations and communications between a person licensed under this act and the client are placed on the same basis as provided by law for those between an attorney and client. Nothing in the Social Worker's Licensing Act shall be construed to require such privileged communication to be disclosed except:

1. With the written consent of the client, or in the case of death or disability, of his or her personal representative, other person authorized to sue, or the beneficiary of any insurance policy on his or her life, health or physical condition;

2. That no information shall be treated as privileged and there shall be no privilege created by this act as to any information acquired by a person licensed under this act or a secretary, stenographer or clerk of such a licensed person or anyone who participates in delivery of social work services or anyone working under the supervision of such a licensed person when such information pertains to criminal acts or violations of any law;

3. When the person is a child under the age of eighteen (18) years and the information acquired by the licensed

person indicated that the child was the victim or subject of a crime, the licensed person 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; or

4. When the person waives the privilege by bringing charges against the licensed person.

Nothing in this act shall be construed to prohibit any licensed person from testifying in court hearings concerning matters of adoption, child abuse, child neglect, or matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

## OREGON

### **OR. REV. STAT. ANN. § 40.250 (West 2011). CLINICAL SOCIAL WORKER-CLIENT PRIVILEGE.**

A regulated social worker under ORS 675.510 to 675.600 may not be examined in a civil or criminal court proceeding as to any communication given the regulated social worker by a client in the course of noninvestigatory professional activity when the communication was given to enable the regulated social worker to aid the client, except when:

- (1) The client or a person legally responsible for the client's affairs gives consent to the disclosure;
- (2) The client initiates legal action or makes a complaint against the regulated social worker to the State Board of Licensed Social Workers;
- (3) The communication reveals a clear intent to commit a crime that reasonably is expected to result in physical injury to a person;
- (4) The communication reveals that a minor was the victim of a crime, abuse or neglect; or
- (5) The regulated social worker is a public employee and the public employer has determined that examination in a civil or criminal court proceeding is necessary in the performance of the duty of the regulated social worker as a public employee.

## TENNESSEE

### **TENN. CODE ANN. § 63-23-109 (West 2011). CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS [SOCIAL WORKERS].**

- (a) The confidential relations and communications between a client and licensed social worker as defined in this chapter, are placed upon the same basis as those provided by law between licensed psychologists, licensed psychological examiners, licensed senior psychological examiners, certified psychological assistants and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.
- (b) Nothing contained in this section shall be construed to prevent disclosure of confidential communications in proceedings arising under title 37, chapter 1, part 4, concerning mandatory child abuse reports.

## WASHINGTON

### **WASH. REV. CODE ANN. § 5.60.060 (West 2011). WHO ARE DISQUALIFIED--PRIVILEGED COMMUNICATIONS.**

(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

(b) For purposes of this section, “peer support group counselor” means a:

(i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, “sexual assault advocate” means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, “domestic violence advocate” means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(12). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

- (b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;
- (c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;
- (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 (8) and (9); or
- (e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

## WEST VIRGINIA

### W. VA. CODE ANN. § 30-30-24 (West 2011). PRIVILEGED COMMUNICATIONS [SOCIAL WORKERS].

- (a) A licensee may not disclose any information acquired provided by a client or from persons consulting the licensee in a professional capacity, except that which may be voluntarily disclosed under these following circumstances:
  - (1) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the **communication** as **privileged**;
  - (2) With the written consent of the person who provided the information;
  - (3) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;
  - (4) When a **communication** reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the **social worker** to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or
  - (5) When the person waives the **privilege** by bringing any public charges against the licensee.
- (b) When the person is a minor and the information acquired by the licensee indicates the minor was the victim of or witness to a crime, the licensee may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when the court determines that the interests of the minor in having the information held **privileged** are outweighed by the requirements of justice.
- (c) Any person having access to records or anyone who participates in providing social work services or who, in providing any human services, is supervised by a licensee, is similarly bound to regard all information and **communications** as **privileged** in accord with this section.
- (d) Nothing shall be construed to prohibit a licensee from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, elderly, and physically and mentally impaired adults, except as prohibited under the applicable state and federal laws.

## WISCONSIN

### **WIS. STAT. ANN. § 905.04 (West 2011). PHYSICIAN-PATIENT, REGISTERED NURSE-PATIENT, CHIROPRACTOR-PATIENT, PSYCHOLOGIST-PATIENT, SOCIAL WORKER-PATIENT, MARRIAGE AND FAMILY THERAPIST-PATIENT AND PROFESSIONAL COUNSELOR-PATIENT PRIVILEGE**

**(1) Definitions.** In this section:

(a) “Chiropractor” means a person licensed under s. 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) A communication or information is “confidential” if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) “Marriage and family therapist” means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) “Patient” means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) “Physician” means a person as defined in s. 990.01(28), or reasonably believed by the patient so to be.

(dg) “Podiatrist” means a person licensed under s. 448.63 or a person reasonably believed by the patient to be a podiatrist.

(dm) “Professional counselor” means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) “Psychologist” means a licensed psychologist, as that term is defined in s. 455.01(4), or a person reasonably believed by the patient to be a psychologist.

(f) “Registered nurse” means a nurse who is licensed under s. 441.06 or licensed as a registered nurse in a party state, as defined in s. 441.50(2)(j), or a person reasonably believed by the patient to be a registered nurse.

(g) “Social worker” means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

**(2) General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

**(3) Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered



nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

**(4) Exceptions.** (a) *Proceedings for hospitalization, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian in this state, for court-ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(am) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 54.36(1) or s. 880.33(1), 2003 stats.

(b) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 2m. There is no privilege for information contained in a report of child abuse or neglect that is provided under s. 48.981(3).

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in s. 340.01(1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under subch. IX of ch. 767.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 255.40 pertaining to a patient's name and type of wound or burn injury.

(i) *Providing services to court in juvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under s. 48.067

or 48.069 only as provided in s. 48.78 and may disclose information obtained while providing services under s. 938.067 or 938.069 only as provided in s. 938.78.

## WYOMING

### **WYO. STAT. ANN. § 33-38-109 (2011). DISCLOSURE OF INFORMATION [PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS AND CHEMICAL DEPENDENCY SPECIALISTS].**

(a) A person licensed or certified under this act shall not disclose without consent of the client any communication made by the client to the licensed or certified professional in the course of professional practice, nor may any employee of the licensed or certified professional reveal the information without the consent of the employer or client except as indicated by law.

(b) Repealed by Laws 1993, ch. 181, § 3.

(c) A person licensed or certified under this act shall not reveal without the consent of the client or the client's legal advisor his advice given in the course of professional employment; nor shall a secretary, stenographer, clerk or other employee of any person licensed or certified under this act reveal, without the consent of his employer or the client, any facts, the knowledge of which he has acquired in such capacity.

### **WYO. STAT. ANN. § 33-38-113 (2011). PRIVILEGED COMMUNICATION [PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS AND CHEMICAL DEPENDENCY SPECIALISTS].**

(a) In judicial proceedings, whether civil, criminal, or juvenile, in administrative proceedings, and in proceedings preliminary and ancillary thereto, a patient or client, or his guardian or personal representative, may refuse to disclose and may prevent the disclosure of confidential information, including information contained in administrative records, communicated to a person licensed or otherwise authorized to practice under this act, and their agents, for the purpose of diagnosis, evaluation or treatment of any mental or emotional condition or disorder. A person licensed or otherwise authorized to practice under this act shall not disclose any information communicated as described above in the absence of an express waiver of the privilege except in the following circumstances:

(i) Where abuse or harmful neglect of children, the elderly or disabled or incompetent individuals is known or reasonably suspected;

(ii) Where the validity of a will of a former patient or client is contested;

(iii) Where such information is necessary to defend against a malpractice action brought by the patient or client;

(iv) Where an immediate threat of physical violence against a readily identifiable victim is disclosed to the person licensed or otherwise authorized to practice under this act;

(v) In the context of civil commitment proceedings, where an immediate threat of self-inflicted damage is disclosed to the person licensed or otherwise authorized to practice under this act;

(vi) Where the patient or client alleges mental or emotional damages in civil litigation or otherwise places his mental or emotional state in issue in any judicial or administrative proceeding concerning child custody or visitation;

(vii) Where the patient or client is examined pursuant to court order; or

(viii) In the context of investigations and hearings brought by the patient or client and conducted by the board where violations of this act are at issue. Information that is deemed to be of sensitive nature shall be inspected by the board in camera and the board shall determine whether or not the information shall become a part of the record and subject to public disclosure.

## GUAM

### **9 GUAM CODE ANN. § 26.40 (2009). HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE.**

(a) A trafficking victim, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:

- (1) the holder of the privilege;
- (2) a person who is authorized to claim the privilege by the holder of the privilege; or
- (3) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure. The human trafficking caseworker who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under this section.

(b) A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

(c) As used in this article, “human trafficking caseworker” means a person who is employed by any organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of trafficking in persons, and who meets one of the following requirements:

(1) holds a bachelor's degree or higher in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of victims of trafficking in persons; or

(2) has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under subparagraph (1) or by a psychotherapist. The training, supervised by a person qualified under subparagraph (1), shall include, but need not be limited to, the following areas: history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of trafficking victims, and referral services available to trafficking victims. A portion of this training must include an explanation of privileged communication.

(d) As used in this article, “confidential communication” means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted. It includes all information regarding the facts and circumstances involving all incidences of human trafficking.

(e) As used in this article, “holder of the privilege” means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator.



## DOMESTIC VIOLENCE FACILITIES

### FLORIDA

#### **FLA. STAT. ANN § 39.908 (West 2011). CONFIDENTIALITY OF INFORMATION RECEIVED BY DEPARTMENT OR DOMESTIC VIOLENCE CENTER.**

(1) Information about clients received by the department or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection, or otherwise, is confidential and exempt from the provisions of s. 119.07(1). Information about the location of domestic violence centers and facilities is confidential and exempt from the provisions of s. 119.07(1).

(2) Information about domestic violence center clients may not be disclosed without the written consent of the client to whom the information or records pertain. For the purpose of state law regarding searches and seizures, domestic violence centers shall be treated as private dwelling places. Information about a client or the location of a domestic violence center may be given by center staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:

(a) To medical personnel in a medical emergency.

(b) Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.

(c) Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.

(d) To firefighting personnel in a fire emergency.

(e) To any other person necessary to maintain the safety and health standards in the domestic violence shelter.

(f) Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.

(3) The restriction on the disclosure or use of the information about domestic violence center clients does not apply to:

(a) Communications from domestic violence shelter staff or volunteers to law enforcement officers when the information is directly related to a client's commission of a crime or threat to commit a crime on the premises of a domestic violence shelter; or

(b) Reporting suspected abuse of a child or a vulnerable adult as required by law. However, when cooperating with protective investigation services staff, the domestic violence shelter staff and volunteers must protect the confidentiality of other clients at the domestic violence center.

### GEORGIA

#### **GA. CODE ANN. § 19-13-23 (West 2011). DISCLOSURE OF LOCATION OF FAMILY VIOLENCE CENTER.**

(a) Any person who knowingly publishes, disseminates, or otherwise discloses the location of a family violence shelter is guilty of a misdemeanor.

(b) This Code section shall not apply to:

- (1) Confidential communications between a client and his or her attorney; or
- (2) Instances when such publication, dissemination, or disclosure is authorized by the director of the shelter.

## **NORTH DAKOTA**

### **N.D. CENT. CODE § 14-07.1-18 (2011). DOMESTIC VIOLENCE OR SEXUAL ASSAULT PROGRAM RECORDS--CONFIDENTIALITY--EXCEPTIONS--PENALTY.**

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

- a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
- b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
- c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

- a. A client consents to the release of information that relates only to that client or the client's dependents;
- b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
- c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or
- d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

## **OKLAHOMA**

### **OKLA. STAT. tit. 74, § 18P-3 (2011). CONTRACTS FOR SHELTER AND SERVICES--DISCLOSURE OF CASE RECORDS, SHELTER LOCATIONS OR BOARD MEMBER INFORMATION.**

A. The Attorney General is hereby authorized and directed to enter into agreements and to contract for the shelter and other services that are needed for victims of domestic abuse, sexual assault or batterers intervention

programs. Any domestic violence, sexual assault or batterers intervention program providing services pursuant to certification by the Attorney General or a contract or subcontract with the Attorney General and receiving funds from the Attorney General or any contractor with the Attorney General shall be subject to the provisions of the administrative rules of the Attorney General.

B. 1. Except as otherwise provided by paragraph 3 of this subsection, the case records, case files, case notes, client records, or similar records of a domestic violence or sexual assault program certified by the Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or has resided in such program or who has otherwise utilized or is utilizing the services of any domestic violence or sexual assault program or counselor shall be confidential and shall not be disclosed.

2. For purposes of this subsection, the term "client records" shall include, but not be limited to, all communications, records, and information regarding clients of domestic violence and sexual assault programs.

3. The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf or by court order for good cause shown by the judge in camera.

C. The district court shall not order the disclosure of the address of a domestic violence shelter, the location of any person seeking or receiving services from a domestic violence or sexual assault program, or any other information which is required to be kept confidential pursuant to subsection B of this section.

D. The home address, personal telephone numbers and social security number of board members, staff and volunteers of certified domestic violence and sexual assault programs shall not be construed to be open records pursuant to the Oklahoma Open Records Act.

## TENNESSEE

### **TENN. CODE ANN. § 36-3-623 (West 20119). DOMESTIC VIOLENCE SHELTERS AND RAPE CRISIS CENTERS; RECORD CONFIDENTIALITY.**

The records of domestic violence shelters and rape crisis centers shall be treated as confidential by the records custodian of such shelters or centers, unless:

- (1) The individual to whom the records pertain authorizes their release; or
- (2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

## WASHINGTON

### **WASH. REV. CODE ANN. § 70.123.075 (West 2011). CLIENT RECORDS [SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE].**

(1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

- (a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

(2) For purposes of this section "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims.

**WASH. REV. CODE ANN. § 70.123.06 (West 2011). DISCLOSURE OF RECIPIENT INFORMATION [SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE].**

(1) Except as authorized in subsections (2) and (3) of this section, or pursuant to court order under RCW 70.123.075, a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient. In the case of an unemancipated minor, the minor and the parent or guardian must provide the authorization. For the purposes of this section, a "domestic violence program" means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment.

(2)(a) A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient, or if an unemancipated minor is the recipient, signed by the minor and the parent or guardian, and must contain a reasonable time limit on the duration of the recipient's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the recipient's authorization expires ninety days after the date it was signed.

(b) The domestic violence program's disclosure of information shall be only to the extent authorized by the recipient. The domestic violence program, if requested, shall provide a copy of the disclosed information to the recipient.

(c) Except as provided under this chapter, an authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

(3) If disclosure of a recipient's information is required by statute or court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure of information. If personally identifying information is or will be disclosed, the domestic violence program shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

(4) To comply with tribal, federal, state, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may share data in the aggregate that does not contain personally identifying information and that: (a) Pertains to services to their clients; or (b) is demographic information.

**WASH. REV. CODE ANN. § 70.125.065 (West 2011). RECORDS OF RAPE CRISIS CENTERS NOT AVAILABLE AS PART OF DISCOVERY--EXCEPTIONS [VICTIMS OF SEXUAL ASSAULT ACT].**



Records maintained by rape crisis centers shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

- (1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;
- (2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;
- (3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and
- (4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

## **WEST VIRGINIA**

### **W. VA. CODE ANN. § 48-26-701 (West 2011). CONFIDENTIALITY [DOMESTIC VIOLENCE ACT].**

(a) No program or shelter receiving funds pursuant to this article shall disclose or be compelled to disclose, release or be compelled to release any written records created or maintained in providing services pursuant to this article except:

- (1) Upon written consent of the person seeking or who has sought services from the program or the shelter;
- (2) In any proceeding brought under sections four and five, article six, chapter nine of this code or article six, chapter forty-nine of this code;
- (3) As mandated by article six-a, chapter forty-nine and article six, chapter nine of this code;
- (4) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;
- (5) To protect against a clear and substantial danger of imminent injury by a client to himself or herself or another;
- (6) For treatment or internal review purposes to the staff of any program or shelter if the client is also being cared for by other health professionals in the program or shelter.

(b) No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the client. Every person signing an authorization shall be given a copy.

### **W. VA. CODE ANN. § 48-27-312 (West 2011). PRODUCTION OF DOCUMENTS PURSUANT TO A SUBPEONA DUCES TECUM [PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE].**

Notwithstanding any provision of law or any procedural rule to the contrary, any record in a proceeding filed pursuant to this article shall be supplied to any person presenting a subpoena duces tecum issued by a state or federal court in any criminal action or action filed pursuant to this article. Any record in a proceeding filed pursuant to this article is not subject to disclosure pursuant to a subpoena if the subpoena was issued in a civil action. In civil proceedings a court, for good cause shown, may enter an order permitting a person who is not

otherwise permitted access to a court file to examine and copy records of a proceeding filed pursuant to this article: Provided, That the court shall enter such order as may be necessary to protect any document containing the address or other contact information of a person who filed a petition under this article: Provided, however, That any records obtained pursuant to the provisions of this section shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

## **PUERTO RICO**

### **P.R. LAWS ANN. tit. 8, § 652 (2009). CONFIDENTIALITY OF COMMUNICATIONS**

The Women's Advocate Office shall take steps to guarantee the confidentiality of the communications and information it receives from its clients during the course of rendering services to prevent domestic violence and intervene with its victims. All communications between the persons attended to in the Women's Advocate Office and its personnel shall be privileged and shall be protected by the confidentiality privilege established in the Rules of Evidence of Puerto Rico. Likewise, all communications between a victim of domestic violence and any other public entity or body, which renders services to victims of domestic abuse, shall enjoy the same privilege and confidentiality, in harmony with Rule 26-A of the Rules of Evidence of Puerto Rico and the Bill of Rights of Victims and Witnesses of Crime.

## OTHER

### ALASKA

#### **ALASKA STAT. § 24.65.110 (2011). ADVOCACY ON BEHALF OF CRIME VICTIMS; RECORDS. [OFFICE OF VICTIMS RIGHTS]**

(a) The victims' advocate shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have with justice agencies.

(b) The victims' advocate may make the statement a crime victim is authorized to make under art. I, sec. 24, Constitution of the State of Alaska, and AS 12.55.023, in a court of the state when requested by the crime victim and when the crime victim does not personally make a statement.

(c) When advocating on behalf of a crime victim in an ongoing criminal case or juvenile adjudication, the victims' advocate is entitled to all information available to the defendant or juvenile.

(d) Records obtained by the victims' advocate shall remain in the exclusive custody of the victims' advocate. The victims' advocate may not disclose confidential information to any person.

#### **ALASKA STAT. § 24.65.120 (2011). INVESTIGATIONS. [OFFICE OF VICTIMS RIGHTS]**

(a) The victims' advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state.

(b) In an investigation, the victims' advocate may

(1) make inquiries and obtain information considered necessary;

(2) hold private hearings; and

(3) notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the victims' advocate is entitled to obtain access to every record that the defendant is entitled to access or receive.

(c) The victims' advocate shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the victims' advocate except insofar as disclosures may be necessary to enable the victims' advocate to carry out duties and to support recommendations. However, the victims' advocate may not disclose a confidential record obtained from a court or justice agency.

### ARKANSAS

#### **ARK. CODE ANN. § 9-4-111. (West 2011). DISCLOSURE OF INFORMATION.**

Information received by the Arkansas Child Abuse/Rape/Domestic Violence Commission, its employees, or its designees through files, reports, evaluations, inspections, or otherwise shall be confidential information and shall not be disclosed publicly in a manner as to identify individuals or facilities.

## COLORADO

### **COLO. REV. STAT. ANN. § 12-43-218 (West 2011). DISCLOSURE OF CONFIDENTIAL COMMUNICATIONS.**

(1) A licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given thereon, in the course of professional employment; nor shall a licensee's, school psychologist's, registrant's, certificate holder's, or unlicensed psychotherapist's employee or associate, whether clerical or professional, disclose any knowledge of said communications acquired in such capacity; nor shall any person who has participated in any therapy conducted under the supervision of a licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist, including, but not limited to, group therapy sessions, disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section shall not apply when:

(a) A client or the heirs, executors, or administrators of a client file a complaint against a licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist on any cause of action arising out of or connected with the care or treatment of such client by the licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist;

(b) A licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist was in consultation with a physician, registered professional nurse, licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist against whom a suitor complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist is conducted by any of the following:

(I) A board or the director or a person or group authorized by the board or director to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said licensee, school psychologist, registrant, certificate holder, or unlicensed psychotherapist practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital; or

(III) A professional review committee established pursuant to section 12-43-203(11) if said person has signed a release authorizing such review.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section shall not become public records solely by virtue of the use of such records and information. The identity of any client whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the director or a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with the provisions of section 12-43-224(4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

**COLO. REV. STAT. ANN. § 13-90-107 (West 2009). WHO MAY NOT TESTIFY WITHOUT CONSENT.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a)(I) Except as otherwise provided in section 14-13-310(4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(a.5)(I) Except as otherwise provided in Section 14-13-310(5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in a civil union without the other partner's consent, nor during the civil union or afterward shall be examined without the consent of the other as to any communications made by one to the other during the civil union; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401(1)(a)(IV) and (1)(a)(V), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of Article 15 of Title 14, C.R.S.

(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or

she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his profession pursuant to the laws of this state or any other state shall not be examined without the consent of his patient as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, but this paragraph (d) shall not apply to:

(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health care program;

(C) The state board of medical examiners, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f)(I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional

employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III)(A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV)(A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subparagraph (IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 2 of title 12, C.R.S. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 2 of title 12, C.R.S.

(V) Disclosure of information under subparagraph (III) or (IV) of this paragraph (f) shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure which is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-2-103(6), C.R.S.

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102(20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor shall not be examined without the consent of such licensee's or unlicensed psychotherapist's client as to any communication made by the client to such licensee or unlicensed psychotherapist or such licensee's or unlicensed psychotherapist's advice given thereon in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, unlicensed psychotherapist, or licensed addiction counselor be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103(26), C.R.S., shall not be examined as to communications made to him or her in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j)(I)(A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section 13-25-126.5(2).



(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5(3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k)(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3(1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(l)(I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, or a minor child of either the parent or the parent's spouse;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (l):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(m)(I) A law enforcement or firefighter peer support team member shall not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subparagraph (III) of this paragraph (m); nor shall a recipient of individual peer support services be examined as to any such communication without the recipient's consent.

(II) For purposes of this paragraph (m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document, made during, or arising out of, a meeting with a peer support team member.

(B) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(III) The provisions of this paragraph (m) shall apply only to communications made during individual interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency or fire department.

(IV) This paragraph (m) shall not apply in cases in which:

(A) A law enforcement or firefighter peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401, C.R.S., or actual or suspected child neglect, as described in section 19-3-102, C.R.S.;

(C) Due to alcohol or other substance intoxication or abuse, as described in sections 25-1-310 and 25-1-1106, C.R.S., the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental illness and, due to the mental illness, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-10-102, C.R.S.; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the state board of medical examiners or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of paragraph (d) of subsection (1) of this section shall not apply to physicians required to make reports in accordance with section 12-36-135, C.R.S. In addition, the provisions of paragraphs (d) and (g) of

subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

## CONNECTICUT

### **CONN. GEN. STAT. ANN. § 54-86E. (West 2011). CONFIDENTIALITY OF IDENTIFYING INFORMATION PERTAINING TO VICTIM OF SEXUAL ASSAULT. AVAILABILITY OF INFORMATION TO ACCUSED. PROTECTIVE ORDER INFORMATION TO BE ENTERED IN REGISTRY.**

The name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

## DELAWARE

### **DEL. CODE ANN. tit. 11, § 9403 (2011). NONDISCLOSURE OF INFORMATION ABOUT VICTIM.**

(a) Unless a victim or witness waives confidentiality in writing, neither a law-enforcement agency, the prosecutor, nor the corrections department may disclose, except among themselves or as authorized by law, the residential address, telephone number or place of employment of the victim or a member of the victim's family, or the identity, residential address, telephone number or place of employment of a witness or a member of the witness's family, except to the extent that disclosure is of the site of the crime, is required by law or the Rules of Criminal Procedure, is necessary for law-enforcement purposes, or is permitted by the court for good cause.

(b) A court may not compel a victim or witness or a member of the victim's or witness's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record unless the court finds that disclosure of the information is necessary.

(c) The victim's address, place of employment and telephone number and any witness's identity, address, place of employment and telephone number, maintained by a court, prosecutor or law-enforcement agency pursuant to this chapter is exempt from disclosure under the Freedom of Information Act [Chapter 100 of Title 29].

## DISTRICT OF COLUMBIA

### **D.C. CODE § 16-925 (2011). PRIVACY PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE.**

(a) The Mayor shall promulgate rules and establish procedures to implement safeguards, applicable to all confidential information handled by the IV-D agency or executive branch agencies in cooperative agreements with the IV-D agency, to protect the privacy rights of parties in IV-D agency proceedings. These safeguards shall include the following:

(1) Prohibitions against the unauthorized use or disclosure of information relating to paternity, support, or

custody actions in IV-D agency proceedings;

(2) Prohibitions against the release of information concerning the whereabouts of one party or a child to another party, if a protection order has been entered (in the District or in another jurisdiction) to protect the party or the child whose whereabouts are being sought from the party seeking disclosure;

(3) Prohibitions against release of information concerning the whereabouts of one party or a child to another party if the Mayor has reason to believe that the release of the information may result in physical or emotional harm to the party or the child whose whereabouts are being sought;

(4) Requirements to notify the Secretary of the U.S. Department of Health and Human Services when:

(A) The Mayor has reasonable evidence of domestic violence or child abuse against a party or a child; or

(B) The disclosure of information concerning the whereabouts of the party or the child could be harmful to the party or the child; and

(5) In cases where the Secretary of the U.S. Department of Health and Human Services ("Department") has informed the IV-D agency that the Department has been notified that there is reasonable evidence of domestic violence or child abuse, requirements to determine whether disclosure of information concerning a party's or child's whereabouts to any other person would be harmful to a party or the child, and if so, to prohibit the disclosure.

(b) The Superior Court shall establish procedures to implement safeguards, applicable to all confidential information possessed by the Superior Court, to protect the privacy rights of parties in paternity or support proceedings. These safeguards shall include:

(1) Prohibitions against unauthorized use or disclosure of information relating to paternity, support, or custody actions in Superior Court proceedings;

(2) Prohibitions against the release of information concerning the whereabouts of one party or a child to another party, if a protection order has been entered (in the District or in another jurisdiction) to protect the party or the child whose whereabouts are being sought from the party seeking disclosure;

(3) Prohibitions against release of information concerning the whereabouts of one party or a child to another party if the Superior Court has reason to believe that the release of information may result in physical or emotional harm to the party or the child whose whereabouts are being sought;

(4) Requirements to notify the Secretary of the U. S. Department of Health and Human Services when:

(A) The Superior Court has reasonable evidence of domestic violence or child abuse against a party or a child; or

(B) The disclosure of information concerning the whereabouts of the party or the child could be harmful to the party or the child; and

(5) In cases where the Secretary of the U.S. Department of Health and Human Services ("Department") has informed the Superior Court that the Department has been notified that there is reasonable evidence of domestic violence or child abuse, requirements to determine whether disclosure of information concerning a party's or child's whereabouts to any other person would be harmful to a party or the child, and if so, to prohibit the disclosure.

## FLORIDA

### **FLA. STAT. ANN § 456.057 (West 2011). OWNERSHIP AND CONTROL OF PATIENT RECORDS; REPORT OR COPIES OF RECORDS TO BE FURNISHED.**

(1) As used in this section, the term “records owner” means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.

(2) As used in this section, the terms “records owner,” “health care practitioner,” and “health care practitioner's employer” do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

- (a) Certified nursing assistants regulated under part II of chapter 464.
- (b) Pharmacists and pharmacies licensed under chapter 465.
- (c) Dental hygienists licensed under s. 466.023.
- (d) Nursing home administrators licensed under part II of chapter 468.
- (e) Respiratory therapists regulated under part V of chapter 468.
- (f) Athletic trainers licensed under part XIII of chapter 468.
- (g) Electrologists licensed under chapter 478.
- (h) Clinical laboratory personnel licensed under part III of chapter 483.
- (i) Medical physicists licensed under part IV of chapter 483.
- (j) Opticians and optical establishments licensed or permitted under part I of chapter 484.
- (k) Persons or entities practicing under s. 627.736(8).

(3) As used in this section, the term “records custodian” means any person or entity that:

- (a) Maintains documents that are authorized in subsection (2); or
- (b) Obtains medical records from a records owner.

(4) Any health care practitioner's employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.

(5) This section does not apply to facilities licensed under chapter 395.

(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal

review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.
2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.
4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.
5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

(8) Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

(9)(a) 1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release.

2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

(b) Patient records, billing records, insurance information, provider contracts, and all attachments thereto obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and the appropriate regulatory board in disciplinary proceedings. This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(10)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

(b) Notwithstanding paragraph (a), all patient records obtained by the department and any other documents maintained by the department which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(11) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(12) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

(13) Notwithstanding the provisions of s. 456.058, records owners shall place an advertisement in the local

newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(14) Notwithstanding the provisions of s. 456.058, records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(15) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.

(16) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(17) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

(18) A health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(19) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

(20) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.

(21) The board, or department when there is no board, may temporarily or permanently appoint a person or entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner. The custodian appointed shall comply with all provisions of this section, including the release of patient records.

## **GEORGIA**

### **GA. CODE ANN. § 19-13-55 (West 2011). CONFIDENTIALITY OF INFORMATION.**

Any individual, agency, or court which obtains information from the registry shall keep such information or parts thereof confidential, and shall not disseminate or disclose such information, or parts thereof, except as authorized in this article or otherwise by law. Violation of this Code section shall be a misdemeanor.

## **HAWAII**

### **HAW. REV. STAT. § 321-473 (2011). ACCESS TO INFORMATION.**

(a) Upon request of the director or a domestic violence fatality review team, all medical examiners, physicians acting under the direction of a coroner, providers of medical care, state agencies, and county agencies shall disclose to the department and the domestic violence fatality review team all information and records regarding the circumstances of a victim's death so that the department may conduct a multidisciplinary and multiagency review



of domestic violence fatalities pursuant to this part.

(b) To the extent that this section conflicts with other state confidentiality laws, the provisions of this section shall require disclosure, notwithstanding the existence of a specific confidentiality statute.

(c) An entity represented on a domestic violence fatality review team and any entity cooperating with an entity represented on a domestic violence fatality review team may share with other members of the team:

(1) Information in its possession concerning the victim;

(2) Information in its possession concerning any person who was in contact with the victim; and

(3) Any other information in its possession deemed by the entity to be pertinent to the domestic violence fatality review.

(d) Any information shared by an entity with other members of a domestic violence fatality review team is subject to the same restrictions on disclosure of the information or the records as the originating entity.

### **HAW. REV. STAT. § 346-10 (2011). PROTECTION OF RECORDS; DIVULGING CONFIDENTIAL INFORMATION PROHIBITED. [DEPARTMENT OF HUMAN SERVICES]**

(a) The department and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

(1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;

(2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any form of public assistance, food stamps, medical assistance, or social services, including disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel shall be permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;

(3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, including verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;

(4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;

(5) Federal agencies responsible for the administration of federally assisted programs, that provide assistance in cash or in kind for services directly to individuals on the basis of need; and certification of receipt of assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;

- (6) Employees acting within the scope and course of their employment of recognized social welfare organizations as may be approved by the department;
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;
- (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D;
- (9) Purposes directly connected to and necessary for the career planning, job training, education, job placement, or employment of participants in the workfare program under part IX;
- (10) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4); and
- (11) Disclosure of reports and records relating to child abuse or neglect to the extent allowed by rules adopted under section 350-1.4.
- (b) Disclosure to any committee or legislative body (federal, state, or local) of any information that identifies by name and address any such applicant or recipient; and publication of lists or names of applicants and recipients shall be prohibited.
- (c) The department shall promulgate and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information secured pursuant to this section by the officials or employees may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of government records. The department and its agents shall determine whether or not such inspection is in connection with such official duties or within the scope and course of such employment.
- (d) The use of the records, and other communications of the department or its agents by any other agency or department of government to which they may be furnished, shall be limited to the purposes for which they are furnished.
- (e) Confidential information shall be released if requested by specific written waiver of the applicant or recipient concerned.
- (f) The identity of foster parents, adoptive parents, and foster care facility staff parents, and the location of the foster home, adoptive home, or foster care facility is confidential but may be released with the consent of the foster parent, adoptive parent, or foster care facility staff. If the department determines it is in the best interest of the child and of the adoptive parents, foster parents, or facility, the identity and location of the adoptive parents or foster parents, foster home, or facility may be stricken from the individual's case file or withheld from the child's parents, guardians, or other interested persons. Notwithstanding the above, the department shall release the identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers to any association, agency, or government entity which would be of benefit to the foster parents or relative caregivers or to the foster care program, unless the foster parents or relative caregivers submit to the department a signed statement requesting that such information be kept confidential. To be effective, this statement must be submitted to the department by December 31, 1996, or with the application to the department thereafter. The identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers provided to an association, agency, or government entity shall not be released by the

association, agency, or government entity without the consent of the foster parent or relative caregiver.

(g) All reports concerning adult abuse or neglect, as well as all records of such reports, are confidential and any unauthorized disclosure of a report or record of a report shall be a violation. The director of human services may adopt, amend, or repeal rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records.

## IDAHO

### IDAHO CODE ANN. § 9-203 (2011). CONFIDENTIAL RELATIONS AND COMMUNICATIONS.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, nor does this exception apply to any case of lewd and lascivious conduct or attempted lewd and lascivious conduct where either party would otherwise be protected by this privilege.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) Nothing herein contained shall be deemed to preclude physicians from testifying at all cases of physical injury to a person where it appears the injury has been caused as a result of domestic violence.

(C) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(D) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(E) That if the patient be dead and during his lifetime had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matters in any civil or criminal action to which such child or ward is a party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian.

## ILLINOIS

### **750 ILL.COMP.STAT. ANN. 60/227.1 (West 2011). OTHER PRIVILEGED INFORMATION [ILLINOIS DOMESTIC VIOLENCE ACT OF 1986].**

§ 227.1. Other privileged information. Except as otherwise provided in this Section, no court or administrative or legislative body shall compel any person or domestic violence program to disclose the location of any domestic violence program or the identity of any domestic violence advocate or counselor in any civil or criminal case or proceeding or in any administrative or legislative proceeding. A court may compel disclosure of the location of a domestic violence program or the identity of a domestic violence advocate or counselor if the court finds, following a hearing, that there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. If the court makes such a finding, then disclosure shall take place in camera, under a restrictive protective order that does not frustrate the purposes of compelling the disclosure, and the information disclosed shall not be made a part of the written record of the case.

## INDIANA

### **IND. CODE ANN. § 5-2-6.1-11.5 (2011). CLAIMANT'S CONFIDENTIALITY. [LAW ENFORCEMENT]**

Sec. 11.5. A claimant's:

(1) personal information (as defined in IC 9-14-3.5-5); and

(2) medical records;

are confidential.

**IOWA****IOWA CODE ANN. § 22.7 (West 2009). CONFIDENTIAL RECORDS.**

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records.
2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.
3. Trade secrets which are recognized and protected as such by law.
4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.
5. Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.
6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.
7. Appraisals or appraisal information concerning the sale or purchase of real or personal property for public purposes, prior to the execution of any contract for such sale or purchase or the submission of the appraisal to the property owner or other interest holders as provided in section 6B.45.
8. Information on an industrial or commercial development prospect with which the Iowa department of economic development or a city is currently negotiating, prior to submission by the department or the city of a proposal for financial assistance or other incentives for the prospect for approval by the director of the department or by the governing body of the city.
9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

10. Personal information in confidential personnel records of the military division of the department of public defense of the state.
11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.
12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.
13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.
14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.
16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.
17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.
18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "persons outside of government" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:
  - a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
  - b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.
  - c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.
19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

22. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

23. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

24. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

29. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to

section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

37. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. a. Records containing information that would disclose, or might lead to the disclosure of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D.

b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the lowAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

43. Information obtained by the commissioner of insurance pursuant to section 502.607, subsection 2.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 7; or section 815.10, subsection 5.

45. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list



of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator.

46. Military personnel records recorded by the county recorder pursuant to section 331.608.

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

48. Sex offender registry records under chapter 692A, shall only be released as provided in section 692A.121.

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

a. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack.

b. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record.

51. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553.

52. a. The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to a foundation acting solely for the support of an institution governed by chapter 260C, to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303, organized for the support of a government body:

(1) Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.

(2) Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.

(3) Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.

(4) Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.

(5) Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This subparagraph does not apply to a gift or pledge from a publicly held business corporation.

b. The confidential records described in paragraph "a", subparagraphs (1) through (5), shall not be construed to make confidential those portions of records disclosing any of the following:

(1) The amount and date of the donation.

(2) Any donor-designated use or purpose of the donation.

(3) Any other donor-imposed restrictions on the use of the donation.

(4) When a pledge or donation is made expressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.

c. Except as provided in paragraphs "a" and "b", portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

d. This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7.

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

55. An intelligence assessment and intelligence data under chapter 692, shall only be released as provided in section 692.8A.

56. Individually identifiable client information contained in the records of the state database created as a homeless management information system pursuant to standards developed by the United States department of housing and urban development and utilized by the Iowa department of economic development.

57. The following information contained in the records of any governmental body relating to any form of housing assistance:

a. An applicant's social security number.

b. An applicant's personal financial history.

c. An applicant's personal medical history or records.

d. An applicant's current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant's household.

58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

59. The information provided in any report, record, claim, or other document submitted to the treasurer of state

pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter.

60. Information possessed by the office of energy independence, the Iowa power fund board, or the due diligence committee associated with the office and the board, relating to a prospective applicant with which the office, board, or committee is currently negotiating, or an award recipient, shall only be released as provided in section 469.6, subsection 6.

61. Information in a record that would permit a governmental body subject to chapter 21 to hold a closed session pursuant to section 21.5 in order to avoid public disclosure of that information, until such time as final action is taken on the subject matter of that information. Any portion of such a record not subject to this subsection, or not otherwise confidential, shall be made available to the public. After the governmental body has taken final action on the subject matter pertaining to the information in that record, this subsection shall no longer apply. This subsection shall not apply more than ninety days after a record is known to exist by the governmental body, unless it is not possible for the governmental body to take final action within ninety days. The burden shall be on the governmental body to prove that final action was not possible within the ninety-day period.

<Text of subsec. 62, added by Acts 2009 (83 G.A.) ch. 23, S.F. 204, § 6.>

62. Records of the department on aging pertaining to clients served by the office of substitute decision maker.

<Text of subsec. 62, added by Acts 2009 (83 G.A.) ch. 48, H.F. 180, § 1.>

62. Information obtained by the superintendent of credit unions in connection with a complaint response process as provided in section 533.501, subsection 3.

63. Records of the department on aging pertaining to clients served by the elder abuse prevention initiative.

## MAINE

### **ME. REV. STAT. ANN. tit. 17-A § 1176 (2011). CONFIDENTIALITY OF VICTIM RECORDS.**

**1. General rule of confidentiality.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

**2. Disclosure to law enforcement or victim services agencies.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

**A.** A state agency if necessary to carry out the statutory duties of that agency;

**B.** A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;

**C.** A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or

**D.** A person or agency upon request of the victim.

**3. Limited disclosure as part of court order or bail condition.** A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the

defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

**4. Limited disclosure pursuant to discovery.** Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

**5. Disclosure of victim's request for notice prohibited.** In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

## **ME. REV. STAT. ANN. tit. 19-A § 4008 (2011). IDENTIFYING INFORMATION SEALED [PROTECTION FROM ABUSE]**

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed by the clerk and not disclosed to the other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

## **MICHIGAN**

### **MICH. COMP. LAWS ANN. § 780.758 (West 2011). CONFIDENTIALITY OF CERTAIN VICTIM IDENTIFICATION INFORMATION; MOTION TO LIMIT TESTIMONY; COURT FILES AND DOCUMENTS.**

Sec. 8. (1) Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in camera.

(2) The work address and address of the victim shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The work telephone number and telephone number of the victim shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

(3) Pursuant to section 24 of article I of the state constitution of 1963, guaranteeing to crime victims the right to be treated with respect for their dignity and privacy, all of the following information and visual representations of a victim are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246:

(a) The home address, home telephone number, work address, and work telephone number of the victim unless the address is used to identify the place of the crime.

(b) A picture, photograph, drawing, or other visual representation, including any film, videotape, or digitally stored image of the victim.

(4) Subsection (3) shall not preclude the release of information to a victim advocacy organization or agency for the purpose of providing victim services.

## MINNESOTA

### MINN. STAT. ANN. § 595.02 (West 2011). TESTIMONY OF WITNESSES.

**Subdivision 1. Competency of witnesses.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, "domestic abuse advocate" means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section

611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.

(m) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate or a collaborative law process pursuant to an agreement to participate in collaborative law. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation or collaborative law by the common law.

(n) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(o) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

**Subd. 1a. Alternative dispute resolution privilege.** No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

- (1) constitute a crime;
- (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or
- (3) constitute professional misconduct.

**Subd. 2. Exceptions.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

- (1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and
- (2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and
- (3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

**Subd. 3. Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

**Subd. 4. Court order.** (a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person,

the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room



and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

**Subd. 5. Waiver of privilege for health care providers.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

## NEBRASKA

### **NEB. REV. STAT. § 42-918 (2011). CONTACT WITH VICTIMS OF SPOUSE ABUSE AND FAMILIES; CONFIDENTIALITY; VIOLATION; PENALTY.**

Under the Protection from Domestic Abuse Act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to the act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

## OHIO

### **OHIO REV. CODE ANN. § 2317.02 (West 2011). PRIVILEGED COMMUNICATIONS AND ACTS.**

The following persons shall not testify in certain respects:

(A)(1) An attorney, concerning a communication made to the attorney by a client in that relation or the attorney's advice to a client, except that the attorney may testify by express consent of the client or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of the deceased client. However, if the client voluntarily testifies or is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the attorney may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply concerning a communication between a client who has since died and the deceased client's attorney if the communication is relevant to a dispute between parties who claim through that deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased client when the

deceased client executed a document that is the basis of the dispute or whether the deceased client was a victim of fraud, undue influence, or duress when the deceased client executed a document that is the basis of the dispute.

(2) An attorney, concerning a communication made to the attorney by a client in that relationship or the attorney's advice to a client, except that if the client is an insurance company, the attorney may be compelled to testify, subject to an in camera inspection by a court, about communications made by the client to the attorney or by the attorney to the client that are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communications has made a prima facie showing of bad faith, fraud, or criminal misconduct by the client.

(B)(1) A physician or a dentist concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise provided in this division, division (B)(2), and division (B)(3) of this section, and except that, if the patient is deemed by section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the physician may be compelled to testify on the same subject.

The testimonial privilege established under this division does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent;

(iii) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(c) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.

(d) In any criminal action against a physician or dentist. In such an action, the testimonial privilege established under this division does not prohibit the admission into evidence, in accordance with the Rules of Evidence, of a patient's medical or dental records or other communications between a patient and the physician or dentist that are related to the action and obtained by subpoena, search warrant, or other lawful means. A court that permits or compels a physician or dentist to testify in such an action or permits the introduction into evidence of patient records or other communications in such an action shall require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the records is maintained. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(e)(i) If the communication was between a patient who has since died and the deceased patient's physician or dentist, the communication is relevant to a dispute between parties who claim through that deceased patient,

regardless of whether the claims are by testate or intestate succession or by inter vivos transaction, and the dispute addresses the competency of the deceased patient when the deceased patient executed a document that is the basis of the dispute or whether the deceased patient was a victim of fraud, undue influence, or duress when the deceased patient executed a document that is the basis of the dispute.

(ii) If neither the spouse of a patient nor the executor or administrator of that patient's estate gives consent under division (B)(1)(a)(ii) of this section, testimony or the disclosure of the patient's medical records by a physician, dentist, or other health care provider under division (B)(1)(e)(i) of this section is a permitted use or disclosure of protected health information, as defined in 45 C.F.R. 160.103, and an authorization or opportunity to be heard shall not be required.

(iii) Division (B)(1)(e)(i) of this section does not require a mental health professional to disclose psychotherapy notes, as defined in 45 C.F.R. 164.501.

(iv) An interested person who objects to testimony or disclosure under division (B)(1)(e)(i) of this section may seek a protective order pursuant to Civil Rule 26.

(v) A person to whom protected health information is disclosed under division (B)(1)(e)(i) of this section shall not use or disclose the protected health information for any purpose other than the litigation or proceeding for which the information was requested and shall return the protected health information to the covered entity or destroy the protected health information, including all copies made, at the conclusion of the litigation or proceeding.

(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.

(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.

(3)(a) If the testimonial privilege described in division (B)(1) of this section does not apply as provided in division (B)(1)(a)(iii) of this section, a physician or dentist may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(b) If the testimonial privilege described in division (B)(1) of this section does not apply to a physician or dentist as provided in division (B)(1)(c) of this section, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence.

Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of results submitted in accordance with this division. Nothing in this division shall be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision the results were compiled.

(4) The testimonial privilege described in division (B)(1) of this section is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

(5)(a) As used in divisions (B)(1) to (4) of this section, “communication” means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A “communication” may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, “health care provider” means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(c) As used in division (B)(5)(b) of this section:

(i) “Ambulatory care facility” means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. “Ambulatory health care facility” does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(ii) “Emergency facility” means a hospital emergency department or any other facility that provides emergency medical services.

(iii) “Health care practitioner” has the same meaning as in section 4769.01 of the Revised Code.

(iv) “Hospital” has the same meaning as in section 3727.01 of the Revised Code.

(v) “Long-term care facility” means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; an adult care facility, as defined in section 3722.01 of the Revised Code; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the “Social Security Act,” 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) “Pharmacy” has the same meaning as in section 4729.01 of the Revised Code.

(d) As used in divisions (B)(1) and (2) of this section, “drug of abuse” has the same meaning as in section 4506.01 of the Revised Code.

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists.

(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 of the Revised Code or the immunity from civil liability conferred by section 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, “employee,” “employer,” and “physician” have the same meanings as in section 2305.33 of the Revised Code.

(C)(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

(a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:

(i) The confession or confidential communication was made directly to the cleric.

(ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(E) A person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(G)(1) A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

(a) The communication or advice indicates clear and present danger to the client or other persons. For the purposes of this division, cases in which there are indications of present or past child abuse or neglect of the client constitute a clear and present danger.

(b) The client gives express consent to the testimony.

(c) If the client is deceased, the surviving spouse or the executor or administrator of the estate of the deceased client gives express consent.

(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the client is not germane to the

counselor-client, marriage and family therapist-client, or social worker-client relationship.

(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.

(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

(I) A communications assistant, acting within the scope of the communication assistant's authority, when providing telecommunications relay service pursuant to section 4931.35 of the Revised Code or Title II of the "Communications Act of 1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication made through a telecommunications relay service. Nothing in this section shall limit the obligation of a communications assistant to divulge information or testify when mandated by federal law or regulation or pursuant to subpoena in a criminal proceeding.

Nothing in this section shall limit any immunity or privilege granted under federal law or regulation.

(J)(1) A chiropractor in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, except as otherwise provided in this division. The testimonial privilege established under this division does not apply, and a chiropractor may testify or may be compelled to testify, in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(a) If the patient or the guardian or other legal representative of the patient gives express consent.

(b) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent.

(c) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(2) If the testimonial privilege described in division (J)(1) of this section does not apply as provided in division (J)(1)(c) of this section, a chiropractor may be compelled to testify or to submit to discovery under the Rules of Civil Procedure only as to a communication made to the chiropractor by the patient in question in that relation, or the chiropractor's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the medical claim, dental claim, chiropractic claim, or optometric claim, action for wrongful death, other civil action, or claim under Chapter 4123. of the Revised Code.

(3) The testimonial privilege established under this division does not apply, and a chiropractor may testify or be compelled to testify, in any criminal action or administrative proceeding.

(4) As used in this division, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a chiropractor to diagnose, treat, or act for a patient. A communication may include, but is not limited to, any chiropractic, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

(K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.

(2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true:

(a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger.

(b) The individual who received crisis response services gives express consent to the testimony.

(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject.

(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member.

(f) The communication or advice pertains or is related to any criminal act.

(3) As used in division (K) of this section:

(a) "Crisis response services" means consultation, risk assessment, referral, and on-site crisis intervention services provided by a critical incident stress management team to individuals affected by crisis or disaster.

(b) "Critical incident stress management team member" or "team member" means an individual specially trained to provide crisis response services as a member of an organized community or local crisis response team that holds membership in the Ohio critical incident stress management network.

(c) "Debriefing session" means a session at which crisis response services are rendered by a critical incident stress management team member during or after a crisis or disaster.

(L)(1) Subject to division (L)(2) of this section and except as provided in division (L)(3) of this section, an employee assistance professional, concerning a communication made to the employee assistance professional by a client in the employee assistance professional's official capacity as an employee assistance professional.

(2) Division (L)(1) of this section applies to an employee assistance professional who meets either or both of the following requirements:

(a) Is certified by the employee assistance certification commission to engage in the employee assistance profession;

(b) Has education, training, and experience in all of the following:

(i) Providing workplace-based services designed to address employer and employee productivity issues;

(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;

(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;

(iv) Selecting and evaluating available community resources;

(v) Making appropriate referrals;

(vi) Local and national employee assistance agreements;

(vii) Client confidentiality.

(3) Division (L)(1) of this section does not apply to any of the following:

(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;

(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;

(c) A communication that is made by a client who is an unemancipated minor or an adult adjudicated to be incompetent and indicates that the client was the victim of a crime or abuse;

(d) A civil proceeding to determine an individual's mental competency or a criminal action in which a plea of not guilty by reason of insanity is entered;

(e) A civil or criminal malpractice action brought against the employee assistance professional;

(f) When the employee assistance professional has the express consent of the client or, if the client is deceased or disabled, the client's legal representative;

(g) When the testimonial privilege otherwise provided by division (L)(1) of this section is abrogated under law.