I.R.E.503. Physician and Psychotherapist-Patient Privilege.

Idaho Rules of Evidence Rule 503. Physician and Psychotherapist-Patient Privilege.

(a) Definitions. As used in this rule:

(1) Patient. A "patient" is the person who consults or is examined or interviewed by a physician or psychotherapist for the purpose of obtaining diagnosis or treatment of a physical, mental or emotional condition, including alcohol or drug addiction.

(2) Physician. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) Psychotherapist. A "psychotherapist" is (A) a physician 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.

(4) Confidential communication. 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, or 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.

(b) General rules of privilege.

(1) Civil action. A patient has a privilege in a civil action 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 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.

(2) Criminal action. A patient has a privilege in a criminal action 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 or emotional condition, including alcohol or drug addiction, among the patient, the patient's psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(c) Who may claim the privilege. The privilege may be claimed by the patient or for the patient through the patient's lawyer, 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 may claim the privilege but only on behalf of the patient. The authority of the physician or psychotherapist to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions.

(1) Proceedings for guardianship, conservatorship or hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings for the appointment of a guardian or conservator for a patient for mental illness or 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. There is no privilege under this rule as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his 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 claim or defense.

(4) Child related communications. There is no privilege under this rule in a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the

abuse, abandonment or neglect of a child.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

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