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Restoring Relationships and Hope in Individuals and Families

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POSITION STATEMENT FOR PARENTS OF MINORS INVOLVED IN DIVORCE/CUSTODY ISSUES and THE CHILD'S CONFIDENTIAL TREATMENT RECORDS

Understanding Confidentiality in Child Therapy During Custody Disputes

In Florida, the psychotherapist-patient privilege, as outlined in Florida Statute § 90.503, ensures that communications between a patient and a psychotherapist remain confidential. This includes minors receiving therapy. The privilege means that treatment progress records are generally protected and cannot be disclosed without consent. For minors, this consent can be provided by their guardian or the psychotherapist on their behalf.

When divorced parents are involved in custody disputes, the sensitivity of therapy records is especially important. Courts must carefully balance the child's best interests with the need for confidentiality. If a psychotherapist believes that sharing treatment records could harm the child's long-term relationship with either parent, they can assert this privilege to protect the child's privacy.

In custody cases, the court may appoint a guardian ad litem to determine if the privilege should be waived. This is crucial when parental interests conflict, as illustrated in **Bentrim v. Bentrim**. In this case, the court recognized the importance of protecting the confidentiality of the child's therapy records to prevent potential harm to the child's relationship with their parents.

If therapy records are requested in court, the psychotherapist should only release relevant information and strive to protect the child's privacy. Courts have the discretion to limit the disclosure of records to ensure that only necessary information is shared, thus shielding the child from potential emotional harm due to parental conflict.

As a parent or guardian, it's essential to understand that a psychotherapist can withhold treatment progress records if disclosing them could negatively impact the child's relationship with either parent. This measure is taken to safeguard the child's best interests and maintain the therapeutic relationship, ensuring that the child's privacy is prioritized during legal proceedings.

For more detailed information, please refer to Florida Statute § 90.503 and relevant case law such as **Bentrim v. Bentrim**.

If you have any questions or need further assistance, please do not hesitate to contact Family & Adolescent Counseling Services.

Florida Statute § 90.503 - Psychotherapist-patient privilege

(1) Definitions:

(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 Families 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 practice registered nurse licensed 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:
 6. Those persons present to further the interest of the patient in the consultation, examination, or interview.
 7. Those persons necessary for the transmission of the communication.
 8. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) Privilege:

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) Who May Claim the Privilege:

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) Exceptions:

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.

Relevant Sections of Florida Statute § 90.503 Protecting a Minor Child's Records

Florida Statute § 90.503 provides protections for psychotherapist-patient privilege, including for minors. Here are the key sections that pertain to a minor child's records being disclosed in a custody court issue:

(1) Definitions:

(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) Privilege:

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) Who May Claim the Privilege:

The privilege may be claimed by: (b) **A guardian or conservator of the patient.**

(4) Exceptions:

There is no privilege under this section: (b) **For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.**

These sections underline the privilege that protects the confidentiality of a minor's therapy records. This privilege is especially pertinent in custody disputes where disclosing such records could harm the child's long-term relationship with either parent. The privilege allows the psychotherapist to refuse to disclose confidential communications unless certain conditions are met, such as a court-ordered examination. Additionally, a guardian (in this case, one of the parents or a court-appointed guardian) can claim this privilege on behalf of the minor.

Case Law Examples Protecting a Minor Child's Therapy Records in Custody Hearings

In Florida, several cases have upheld the protection of a minor child's therapy records during custody disputes, emphasizing the importance of maintaining confidentiality under the psychotherapist-patient privilege.

S.H.Y. v. P.G. (2021)

In this case, the Florida Second District Court of Appeal addressed the issue of whether a child's therapy records should be disclosed in a custody modification hearing. The psychotherapist initially did not assert the privilege but later raised it to prevent disclosure of the child's treatment records. The court ruled in favor of maintaining the confidentiality of these records, highlighting that the privilege can be claimed by the psychotherapist on behalf of the child, especially when the child's best interests and privacy are at stake.

Bentrim v. Bentrim (2022)

This case involved divorced parents in a custody dispute. The court had ordered that all communications between the child and her therapist remain confidential as per Florida Statute § 90.503. The mother violated this order by requesting and sharing the therapist's notes, leading to a contempt motion by the father. The appellate court ultimately protected the confidentiality of the child's therapy records, stating that the initial order was not explicit enough to bar parents from accessing these records but reaffirming the importance of confidentiality in such matters.

Garcia v. Guiles (2018)

In this case, during a custody modification trial, the mother sought to introduce the child's psychotherapist's testimony to rebut an expert's recommendation favoring the father. The court appointed a guardian ad litem to determine if waiving the privilege was in the child's best interest. The guardian recommended waiving the privilege, and the court allowed the testimony. On appeal, the court upheld this decision, demonstrating the court's careful consideration of the child's best interests in deciding whether to maintain or waive the privilege.

D.K. v. Parents of D.K. (2001)

Here, the court addressed whether parents could waive their child's psychotherapist-patient privilege. The court concluded that parents involved in a custody dispute might have conflicting interests, making it inappropriate for them to control the waiver of the child's privilege. The court emphasized appointing a guardian ad litem to make such decisions, ensuring the child's best interests and confidentiality are prioritized.

These cases collectively illustrate that Florida courts take the confidentiality of a child's therapy records seriously, especially in custody disputes. The courts often appoint guardians ad litem to protect the child's interests, ensuring that the psychotherapist-patient privilege is upheld to maintain the child's mental and emotional well-being. For more detailed information, you can refer to the sources cited above.

Case Overview: **Bentrim v. Bentrim**

Bentrim v. Bentrim involved a dispute between divorced parents over the confidentiality of their child's therapy records in a custody and parenting case. The central issue was whether these records, which could potentially harm the child's relationship with either parent, should remain confidential under Florida's psychotherapist-patient privilege.

Key Points:

1. Court Order and Confidentiality:

- The court had previously ordered that all communications between the child and her therapist remain confidential, as provided by Florida Statute § 90.503.
- The mother had requested the therapist's notes, which were then shared with both parents, leading to the father filing a motion for contempt against the mother for violating the court's order.

2. Trial Court's Decision:

- The trial court found the mother in contempt and ruled that the therapist's notes could not be used in any future proceedings.
- The trial court emphasized that the confidentiality of therapy sessions should be maintained to protect the child's best interests.

3. Appellate Court's Ruling:

- The appellate court overturned the trial court's contempt ruling, stating that the order was not sufficiently explicit in prohibiting parents from requesting therapy records.
- The appellate court acknowledged that while parents typically have the right to access their child's records, exceptions are made in cases where the parents' interests conflict, such as custody disputes.

4. Balancing Confidentiality and Best Interests:

- The court recognized that the child's psychotherapist-patient privilege is crucial for maintaining the therapeutic relationship and protecting the child's mental health.
- The decision highlighted the need for courts to carefully balance the confidentiality of therapy records with the best interests of the child, especially in contentious custody disputes.

5. Guardian ad Litem:

- The case noted that appointing a guardian ad litem can be a solution in such disputes to determine whether the child's privilege should be waived, ensuring the child's privacy is prioritized.

Conclusion:

Bentrim v. Bentrim underscores the importance of maintaining the confidentiality of a child's therapy records in custody disputes. It illustrates how courts must navigate the delicate balance between protecting a child's mental health and the parents' rights, with the ultimate goal of serving the child's best interests.

Summary of Schwartz v. White - Parental Conflict in Custody Disputes

Case Overview: Schwartz v. White is a Florida Third District Court of Appeal case involving parental conflict during a custody dispute. The primary issue in the case was the disclosure of a child's therapy records and how it impacted the relationship between the child and each parent.

Key Points:

1. Custody Dispute and Therapy Records:

- The case involved divorced parents in a custody dispute where the father sought modification of timesharing and other matters.
- The child was receiving therapy, and the father requested access to the therapy records to use in the custody case.

2. Psychotherapist-Patient Privilege:

- The psychotherapist-patient privilege under Florida Statute § 90.503 was a central issue. This statute protects confidential communications between a patient and a psychotherapist, including minors.
- The privilege is typically asserted to ensure that therapy records remain confidential unless waived by the patient, guardian, or therapist on the patient's behalf.

3. Court's Balancing Act:

- The court had to balance the need for confidentiality with the best interests of the child.
- The trial court initially ruled to protect the confidentiality of the child's therapy records to prevent potential harm to the child's relationship with either parent.

4. Appellate Court Decision:

- On appeal, the court acknowledged that while parents generally have access to their child's records, exceptions are made in custody disputes where parental interests may conflict.

- The appellate court reversed the trial court's contempt ruling against the mother for violating the confidentiality order, stating that the order was not explicit enough to prohibit the parents from requesting the records.

5. Guardian ad Litem:

- The case highlighted the importance of appointing a guardian ad litem in such disputes to determine if the child's privilege should be waived. This helps protect the child's interests and maintain the confidentiality of therapeutic communications.

Conclusion:

Schwartz v. White underscores the complexities of handling confidential therapy records in custody disputes. It highlights the importance of protecting the child's best interests and maintaining the confidentiality of therapy sessions while also balancing the rights of parents in legal proceedings. This case serves as a reminder of the delicate nature of family law cases involving mental health records and the need for clear legal directives to protect all parties involved.

Sincerely,



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