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IPA Hip Tip: Idaho Code Section 16-2428



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IDAHO CODE 16-2428

Rights of individuals over the age of 14 to limit access to their psychotherapeutic record.

Background

The question is regarding Idaho code 16-2428 as it relates to children's, over the age of 14, ability to restrict their mental health records. There was no clear consensus within a number of psychologists of the Idaho Psychological Association whether the statute only pertains to children who are under the care or auspices of the State of Idaho or pertaining to all children, specifically children that may be seen in private practice by psychologists.

The Idaho Psychological Association paid for an independent legal opinion regarding the basis of or for an individual over the age of 14 to limit access to his or her psychotherapeutic record.

The following is the response by the independent legal counsel. The Idaho Psychological Association Ethics Committee would like to publicly thank Mr. West for his through, prompt, and legal acumen regarding this inquiry.

Response from Kevin West

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April 14, 2017

VIA E-MAIL: drkrackeassociates@qwestoffice.net

Kevin R. Kracke, Ph.D.
Cochair
Idaho Psychological Association Ethics Committee
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RE: Idaho Psychological Association
File #21941.001

Dear Dr. Kracke:

Thank you for the opportunity to provide you with our legal opinion regarding the question you raised.

You have asked for an opinion regarding Idaho Code Section 16-2428, specifically as to its applicability to minors age 14 and older and their ability to restrict their records. Apparently, there is a difference of opinion within the Idaho Psychological Association as to whether the statute pertains only to minors who are under the care or auspices of the State of Idaho, or whether it pertains to all minors, including those being seen in private practice by psychologists or other mental health providers.

At the outset, we observe that Idaho law regarding the confidentiality of mental health records of minors is not a model of clarity. One actually has to look at multiple different statutes and regulations in various places in order to piece together the law in this area. As to Idaho Code Section 16-2428, we believe that those of your colleagues who advocate that this only applies to minors under the care or auspices of the State of Idaho have the correct interpretation. We arrived at this conclusion for several reasons. First, Title 16, from which the code section is taken, is entitled "Juvenile Proceedings." This entire title of the Idaho Code relates to legal proceedings involving minors. Accordingly, this strongly suggests that the entire title, including the code section at issue, only applies to minors who are "in the system." Second, the Statement

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of Legislative Purpose relating to Code Section 16-2428 also speaks in terms of "community services" being provided to minors, another way of stating that this is mental health care provided under the auspices of the State of Idaho. Finally, and most importantly, the code section in question states in the introductory language that it applies to "[a]ll certificates, applications, records, and reports directly or indirectly identifying a patient or former patient or an individual whose involuntary treatment has been sought under this chapter shall be kept confidential and shall not be disclosed by any person . . ." (Emphasis added.) The underscored language is important, because in Idaho Code Section 16-2403(8), "involuntary treatment" is defined as "treatment, services and placement of children provided without consent of the parent of a child, under the authority of a court order obtained pursuant to this chapter, as directed by an order of disposition issued by a designated employee of the department of health and welfare under section 16-2415, Idaho Code." (Emphasis added.) Accordingly, Section 16-2428 only applies to minors who are committed to involuntary treatment by the State of Idaho.

Section 16-2428 goes on to say that statements of minors age 14 years and older, made in the course of treatment, may be disclosed to the minor's parents only in the following situations:

- (1) To obtain insurance coverage;
- (2) To carry out a treatment plan; or
- (3) To prevent harm to the child or others.

Thus, the confidentiality provision in Section 16-2428 is not absolute.


You have also raised a question regarding the language in Idaho Code Section 32-717A. You are correct that this section, taken literally, would seem to contradict various confidentiality provisions under Idaho law and HIPAA, including Section 16-2428. I believe this apparent conflict, however, can be resolved by a longstanding rule of statutory construction: When there is an apparent conflict between general and specific statutory language, the specific language controls. It is my opinion that Idaho Code Section 32-717A is simply a general expression of legislative intent that both custodial and noncustodial parents are entitled to see the medical records of their minor children. This general expression of intent, however, does not override the more specific provisions in state and federal law, such as Idaho Code Section 16-2428, HIPAA, and other provisions. Accordingly, Idaho Code Section 32-717A should not be read as overriding any of these more specific statutory provisions.

I have taken the liberty of attaching a page from a HIPAA manual that I prepared for a psychology practice here in the State of Idaho. I think it does a good job of summarizing and synthesizing the law of privacy and confidentiality relating to minors in Idaho. Section 2.4.f in this document specifically correlates to Idaho Code Section 16-2428.

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If you have any questions regarding the above, feel free to contact me.

Very truly yours,

J. Kevin West

JKW:jp
Enclosure

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- 2.4 **Rights of Minors Under State Law.** If Idaho law allows an unemancipated minor to consent to obtain health care without parental consent, the Practice will not treat the parent as the minor's representative.
- 2.4.a Minors age 14 and over may give consent to their hospitalization for mental health care treatment without parental notification.
 - 2.4.b. Minors age 16 and over may give consent to treatment for drug and alcohol abuse without parental notification.
 - 2.4.c. Minors of any age may give consent for abortion without parental notification if the pregnancy resulted from rape or if the need for an abortion is a medical emergency certified by the treating doctor.
 - 2.4.d. Minors of sufficient maturity and intelligence may give consent to receive and use contraceptives without parental notification.
 - 2.4.e. Minors age 14 and above who have a communicable disease may give consent to the treatment of such without parental notification.
 - 2.4.f. The statements of minors, age 14 and above, made in the course of involuntary treatment ordered by a court, may not be disclosed to parents or others without the minor's written consent, unless doing so is necessary –
 - to obtain insurance coverage or
 - to carry out a treatment plan or
 - to prevent harm to the minor.
- 2.5 Emancipated minors shall be treated as adults with respect to giving consent to treatment as well as all for all other rights set forth in this manual.

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Basis of Statute Concern Idaho Code 16-2428

TITLE 16
JUVENILE PROCEEDINGS
CHAPTER 24
CHILDREN'S MENTAL HEALTH SERVICES

16-2428. Confidentiality and disclosure of information. All certificates, applications, records, and reports directly or indirectly identifying a patient or former patient or an individual whose involuntary treatment has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except with the consent of the person identified or his legal guardian, if any, or as disclosure may be necessary to carry out any of the provisions of this chapter, or as a court may direct upon its determination that disclosure is necessary and that failure to make such disclosure would be contrary to public interest.

(1) **No person in possession of confidential statements made by a child over the age of fourteen (14) years** in the course of treatment may disclose such information to the child's parent or others without the written permission of the child, unless such disclosure is necessary to obtain insurance coverage, to carry out the treatment plan or prevent harm to the child or others, or, unless authorized to disclose such information by order of a court.

The Idaho Psychological Association Ethics Committee, as a member benefit, provides information regarding ethics as it pertains to the practice of psychology in the state of Idaho. If there is an issue or dilemma that an Ethical Hip Tip could address in a broad fashion please inform one of the members on the Ethics Committee. In addition, if you have any recommendations or corrections to this Ethical Hip Tip please let us know, so we may all benefit from your knowledge and experience. Thanks to Kevin Kracke for soliciting and coordinating this information.

For specific issues that require an ethical consultation, please contact of a member of the committee directly. See their contact information on the [Ethics Committee home page](#) or contact the IPA Office.

The information presented in this article is for informational purposes only and does not constitute legal advice.

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