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CHAPTER 11.

COMPETENCY OF WITNESSES

**SECTION 19‑11‑10.** Repealed by 1995 Act No. 104, Section 7, eff September 3, 1995.

**SECTION 19‑11‑20.** “Dead man’s” statute.

Notwithstanding the provisions of Section 19‑11‑10, no party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding, no person who, previous to such examination, has had such an interest, however the same may have been transferred or come to the party to the action or proceeding, and no assignor of anything in controversy in the action shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic as a witness against a party then prosecuting or defending the action as executor, administrator, heir‑at‑law, next of kin, assignee, legatee, devisee or survivor of such deceased person or as assignee or committee of such insane person or lunatic, when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him. But when such executor, administrator, heir‑at‑law, next of kin, assignee, legatee, devisee, survivor or committee shall be examined on his own behalf in regard to such transaction or communication or when testimony of such deceased or insane person or lunatic in regard to such transaction or communication, however the same may have been perpetuated or made competent, shall be given in evidence on the trial or hearing in behalf of such executor, administrator, heir‑at‑law, next of kin, assignee, legatee, devisee, survivor or committee, then all other persons not otherwise rendered incompetent shall be made competent witnesses in relation to such transaction or communication on said trial or hearing.

**SECTION 19‑11‑25.** Repealed by 1995 Act No. 104, Section 7, eff September 3, 1995.

**SECTION 19‑11‑30.** Competency of husband or wife of party as witness.

In any trial or inquiry in any suit, action, or proceeding in any court or before any person having, by law or consent of the parties, authority to examine witnesses or hear evidence, no husband or wife may be required to disclose any confidential or, in a criminal proceeding, any communication made by one to the other during their marriage.

Notwithstanding the above provisions, a husband or wife is required to disclose any communication, confidential or otherwise, made by one to the other during their marriage where the suit, action, or proceeding concerns or is based on child abuse or neglect, the death of a child, criminal sexual conduct involving a minor, or the commission or attempt to commit a lewd act upon a minor.

**SECTION 19‑11‑40.** Repealed by 1995 Act No. 104, Section 7, eff September 3, 1995.

**SECTION 19‑11‑50.** Testimony of defendant in criminal cases.

The testimony of a defendant in a criminal case shall not be afterwards used against the defendant in any other criminal case, except upon an indictment for perjury founded on that testimony.

**SECTION 19‑11‑60.** Repealed by 1995 Act No. 104, Section 7, eff September 3, 1995.

**SECTION 19‑11‑70.** Repealed by 1995 Act No. 104, Section 7, eff September 3, 1995.

**SECTION 19‑11‑80.** Privilege against self‑incrimination.

No person shall be required to answer any question tending to incriminate himself.

**SECTION 19‑11‑90.** Priest‑penitent privilege.

In any legal or quasi‑legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred.

**SECTION 19‑11‑95.** Confidences of patients of mental illness or emotional conditions.

(A) For purposes of this section:

(1) “Provider” means a person licensed under the provisions of any of the following and who enters into a relationship with a patient to provide diagnosis, counseling, or treatment of a mental illness or emotional condition:

(a) Chapter 55 of Title 40;

(b) Chapter 75 of Title 40;

(c) Section 40‑63‑70 as a licensed master social worker or a licensed independent social worker;

(d) Section 40‑33‑10 as a registered nurse who meets the requirements of a clinical nurse specialist and who works in the field of mental health.

(2) “Patient” means a person who consults or is interviewed by a provider to diagnose, counsel, or treat a mental illness or emotional condition as authorized in item (A)(1) of this section.

(3) “Confidence” is a private communication between a patient and a provider or information given to a provider in the patient‑provider relationship.

(4) “Written authorization after disclosure”, or a similar phrase, includes an authorization in the application or claims procedure of an insurer or a person providing a plan of benefits.

(5) “Mental illness or emotional condition” is defined consistent with accepted diagnostic practices.

(B) Except when permitted or required by statutory or other law, a provider knowingly may not:

(1) reveal a confidence of his patient;

(2) use a confidence of his patient to the disadvantage of the patient;

(3) use a confidence of his patient for the advantage of himself or of a third person, unless the patient gives written authorization after disclosure to him of what confidence is to be used and how it is to be used.

(C) A provider may reveal:

(1) confidences with the written authorization of the patient or patients affected, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed;

(2) confidences when allowed by statute or other law;

(3) the intention of the patient to commit a crime or harm himself and the information necessary to prevent the crime or harm;

(4) confidences reasonably necessary to establish or collect his fee or to defend himself or his employees against an accusation of wrongful conduct;

(5) in the course of diagnosis, counseling, or treatment, confidences necessary to promote care within the generally recognized and accepted standards, practices, and procedures of the provider’s profession;

(6) confidences in proceedings conducted in accord with Sections 40‑71‑10 and 40‑71‑20;

(7) confidences with the written authorization of the patient or patients affected for processing their health insurance claims, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed.

(D) A provider shall reveal:

(1) confidences when required by statutory law or by court order for good cause shown to the extent that the patient’s care and treatment or the nature and extent of his mental illness or emotional condition are reasonably at issue in a proceeding; provided, however, confidences revealed shall not be used as evidence of grounds for divorce;

(2) confidences pursuant to a lawfully issued subpoena by a duly constituted professional licensing or disciplinary board or panel;

(3) confidences when an investigation, trial, hearing, or other proceeding by a professional licensing or disciplinary board or panel involves the question of granting a professional license or the possible revocation, suspension, or other limitation of a professional license.

(E) A disclosure pursuant to subsection (C) or (D) is limited to the information and the recipients necessary to accomplish the purpose of the subsection permitting the disclosure.

(F) A person to whom a disclosure is made pursuant to subsections (C)(1), (5), and (7), an employee to whom a disclosure is made pursuant to subsection (G), and any other person to whom a confidence, written or oral, is disclosed by a provider are bound by the same duty of confidentiality as the provider from whom he received the information.

(G) A provider shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences of a patient, except that a provider may reveal the information allowed by subsections (C) and (D) through an employee.

(H) A provider releasing a confidence under the written authorization of the patient or under the provisions of this section is not liable to the patient or other person for release of the confidence to the person authorized to receive it; provided, however, a patient has a cause of action for damages against a provider, associate, agent, employee, or any other person who intentionally, wilfully, or with gross negligence violates the provisions of this section.

(I) Nothing in this section alters the existing requirements of nonproviders to preserve confidences or the requirements of providers subject to Sections 44‑23‑1090 and 44‑52‑190.

**SECTION 19‑11‑100.** Qualified privilege against disclosure for news media; waiver.

(A) A person, company, or entity engaged in or that has been engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, radio, television, news or wire service, or other medium has a qualified privilege against disclosure of any information, document, or item obtained or prepared in the gathering or dissemination of news in any judicial, legislative, or administrative proceeding in which the compelled disclosure is sought and where the one asserting the privilege is not a party in interest to the proceeding.

(B) The person, company, or other entity may not be compelled to disclose any information or document or produce any item obtained or prepared in the gathering or dissemination of news unless the party seeking to compel the production or testimony establishes by clear and convincing evidence that this privilege has been knowingly waived or that the testimony or production sought:

(1) is material and relevant to the controversy for which the testimony or production is sought;

(2) cannot be reasonably obtained by alternative means; and

(3) is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.

(C) Publication of any information, document, or item obtained in the gathering and dissemination of news does not constitute a waiver of the qualified privilege against compelled disclosure provided for in this section.