

TITLE 9
EVIDENCE

CHAPTER 2
WITNESSES

9-201. WHO MAY BE WITNESSES -- CREDIBILITY OF WITNESSES. All persons, without exception, otherwise than is specified in the next two (2) sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

[(9-201) C.C.P. 1881, sec. 897; R.S., R.C., & C.L., sec. 5956; C.S., sec. 7935; I.C.A., sec. 16-201.]

9-202. WHO MAY NOT TESTIFY. The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten (10) years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. At the time a child under the age of ten (10) years of age is called to testify in any court proceeding, the court shall conduct a hearing in chambers to determine whether the child qualifies as a witness under this section. In conducting such hearing the court shall take every reasonable means necessary to prevent intimidation or harassment of the child by the parties or their attorneys. The judge, rather than the parties, shall examine the child but he shall do so in the presence of the parties and he shall pose to the child any reasonable questions requested by the parties and previously submitted to the court. The judge may rephrase any questions so that the child is not intimidated.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator, upon a claim or demand against the estate of a deceased person, as to any communication or agreement, not in writing, occurring before the death of such deceased person.

[(9-202) C.C.P. 1881, sec. 898; R.S., R.C., & C.L., sec. 5957; C.S., sec. 7936; am. 1927, ch. 51, sec. 1, p. 67; I.C.A., sec. 16-202; am. 1947, ch. 12, sec. 1, p. 12; 1965, ch. 113, sec. 1, p. 219; am. 1985, ch. 215, sec. 1, p. 524.]

9-203. 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) 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) 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, guardians or legal custodians.

(8) (a) As used in this subsection:

(i) "First responder" means:

1. A peace officer as defined in section [19-5101](#) (d), Idaho Code, when employed by a city, county, or the Idaho state police;
2. A firefighter as defined in section [59-1302](#) (16), Idaho Code;
3. A volunteer emergency responder as defined in section [72-102](#) (31), Idaho Code;
4. An emergency medical service (EMS) provider certified by the department of health and welfare pursuant to sections [56-1011](#) through [56-1018B](#), Idaho Code, and an ambulance-based clinician as defined in the rules governing emergency medical services as adopted by the department of health and welfare; and
5. An emergency communications officer as defined in section [19-5101](#) (f), Idaho Code.

(ii) "Peer support counseling session" means a meeting conducted by a peer support specialist, which meeting is held in response to a critical incident, traumatic event, or other personal or professional wellness issue.

(iii) "Peer support specialist" means a person designated by a public agency employing first responders to lead, moderate, or assist in a peer support counseling session.

(b) Any peer support specialist or participant in a peer support counseling session cannot disclose and shall not be forced to disclose a communication made during or arising out of a peer support counseling session without the consent of the person who made the communication or about whom the communication was made, unless the communication:

- (i) Involves a threat of suicide or a threat to commit a criminal act;
- (ii) Involves information required by law to be reported; or
- (iii) Is an admission of criminal conduct.

(c) Any disclosure permitted by paragraph (b) of this subsection that is made during or as part of court proceedings is subject to the rules of the Idaho supreme court.

(9) A person employed by or volunteering at a nongovernmental domestic or sexual violence program shall not, without the written and signed consent

of the recipient of services, be required to or compelled to disclose any communication made between the person in the course of employment or volunteer services for the domestic or sexual violence program and a recipient of the program's services or to disclose information or records about a recipient of the services of a domestic or sexual violence program, provided that disclosure of communications during or as part of court proceedings is subject to the rules of the Idaho supreme court. The provisions of this subsection shall not apply to communications made to a provider or employee during medical services, medical procedures, medical exams, medical evaluations, or forensic interviews.

(10) For purposes of this section:

(a) "Recipient" means any individual who has received or inquired about receiving services or assistance from a domestic or sexual violence program, including shelter, advocacy, counseling, or other services offered by a domestic or sexual violence program.

(b) "Domestic or sexual violence program" means any nonprofit organization, nongovernmental organization, private entity, or tribe or tribal organization that has as its primary purpose the operation of shelters or supportive services for victims of domestic or sexual violence and their dependents or counseling, advocacy, or self-help services to victims of domestic or sexual violence.

[(9-203) C.C.P. 1881, sec. 899; R.S., R.C., & C.L., sec. 5958; C.S., sec. 7937; I.C.A., sec. 16-203; am. 1963, ch. 104, sec. 1, p. 324; am. 1963, ch. 122, sec. 1, p. 351; am. 1967, ch. 121, sec. 1, p. 265; am. 1971, ch. 36, sec. 1, p. 81; am. 1972, ch. 29, sec. 1, p. 42; am. 1979, ch. 151, sec. 1, p. 465; am. 1996, ch. 302, sec. 1, p. 994; am. 2022, ch. 119, sec. 1, p. 430; am. 2022, ch. 303, sec. 1, p. 960; am. 2023, ch. 218, sec. 1, p. 603.]

9-203A. CONFIDENTIAL COMMUNICATIONS WITH ACCOUNTANTS. 1. Any licensed public accountant, or certified public accountant, cannot, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

2. Notwithstanding the provisions of subsection 1 of this section, as part of a proceeding or investigation conducted by the board of accountancy or quality review program required, implemented, conducted or approved by the board of accountancy, a certified public accountant or a licensed public accountant may be examined and may disclose any communication made by a client to the certified public accountant or licensed public accountant, or any advice given by that accountant in the course of his professional employment.

3. Any person participating in a proceeding or investigation by the board of accountancy or in the conduct of a quality review program required, implemented, conducted or approved by the board of accountancy shall only be entitled to use the information disclosed by the certified public accountant or licensed public accountant for purposes related to the proceeding, investigation or quality review program and otherwise cannot, without the consent of the accountant's client disclose or be examined regarding the information obtained from the accountant in the course of the proceeding, investigation or quality review program except in connection with the proceeding, investigation or quality review program. In addition, any person participating in the proceeding, investigation or quality review program cannot, without

the consent of the accountant's client, disclose or be examined regarding their analysis of the information provided by the accountant pursuant to the proceeding, investigation or quality review program, except in connection with the proceeding, investigation or quality review program.

4. The word "client" used herein shall be deemed to include a person, a corporation or an association. The word "communication" as used herein shall be deemed to include but shall not be limited to, reports, financial statements, tax returns, or other documents relating to the client's personal and/or business financial status, whether or not said reports or documents were prepared by the client, the licensed public accountant or certified public accountant, or other person who prepared said documents at the direction of and under the supervision of said accountants.

[9-203A, added 1978, ch. 262, sec. 1, p. 570; am. 1989, ch. 149, sec. 1, p. 359.]

9-204. JUDGE OR JUROR MAY TESTIFY. The judge himself, or any juror, may be called as a witness by either party, but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another judge or jury.

[(9-204) C.C.P. 1881, sec. 900; R.S., R.C., & C.L., sec. 5959; C.S., sec. 7938; I.C.A., sec. 16-204.]

9-205. INTERPRETERS. In any civil or criminal action in which any witness or a party does not understand or speak the English language, or who has a physical disability which prevents him from fully hearing or speaking the English language, then the court shall appoint a qualified interpreter to interpret the proceedings to and the testimony of such witness or party. Upon appointment of such interpreter, the court may have the interpreter served with a subpoena as other witnesses, and such interpreter shall be sworn to accurately and fully interpret the testimony given at the hearing or trial to the best of his ability before assuming his duties as an interpreter. The court shall determine a reasonable fee for all such interpreter services which shall be paid out of the district court fund.

[9-205, added 1975, ch. 64, sec. 2, p. 130; am. 1994, ch. 215, sec. 1, p. 673; am. 2010, ch. 235, sec. 2, p. 542; am. 2023, ch. 77, sec. 1, p. 264.]

9-206. DECEASED OR ABSENT WITNESSES -- TRANSCRIBED TESTIMONY ADMISSIBLE. The testimony of a witness who testified at the trial in an action or proceeding in any district court of the State of Idaho, when transcribed and certified to be true or correct by the court reporter reporting such testimony at such trial or proceeding, shall be admissible at any subsequent trial between the same parties and relating to the same subject matter, when such witness is deceased, absent from the state or otherwise unavailable or unable to testify as a witness.

[9-206, added 1945, ch. 16, sec. 1, p. 25.]

9-207. ADMISSIBILITY OF EXPRESSIONS OF APOLOGY, CONDOLENCE AND SYMPATHY. (1) In any civil action brought by or on behalf of a patient who experiences an unanticipated outcome of medical care, or in any arbitration

proceeding related to, or in lieu of, such civil action, all statements and affirmations, whether in writing or oral, and all gestures or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, made by a health care professional or an employee of a health care professional to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence for any reason including, but not limited to, as an admission of liability or as evidence of an admission against interest.

(2) A statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (1) of this section shall be admissible.

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Health care professional" means any person licensed, certified, or registered by the state of Idaho to deliver health care and any clinic, hospital, nursing home, ambulatory surgical center or other place in which health care is provided. The term also includes any professional corporation or other professional entity comprised of such health care professionals as permitted by the laws of Idaho.

(b) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected, hoped for or desired result.

[9-207, added 2006, ch. 204, sec. 1, p. 624.]