

CONFIDENTIAL AND PRIVILEGED INFORMATION

What is the physician-patient privilege?

The physician-patient privilege protects the patient in a civil action from the physician's disclosure—without the patient's consent—of any information that the physician acquires in the course of attending the patient that was necessary to enable the physician to prescribe or act for the patient.¹ Privileged information is not limited to communications between the physician and the patient, but also covers all information acquired by the physician in the course of attending the patient, including tests conducted, x-rays, prescriptions, and statements in hospital charts or other records.²

Are there exceptions to the physician-patient privilege?

Yes. The physician-patient privilege has several specific exceptions, including the following:

- There is no privilege in any judicial proceeding regarding a child's injury, neglect, sexual abuse, or their respective causes.³
- When a patient files an action for wrongful death or personal injury, the patient is deemed to have waived the privilege 90 days after filing.⁴ **But see DISCLOSURE OF HEALTH CARE INFORMATION** concerning when a physician may disclose a patient's health care information in litigation.
- The privilege does not apply when a patient has an active workers' compensation claim and a treating physician is asked to testify concerning, or to provide information relevant to, the worker's occupational injury or illness.⁵ **See WORKERS' COMPENSATION.**
- Information communicated to a physician in an effort to unlawfully procure a controlled substance or to procure the administration of a controlled substance is deemed not to be a privileged communication.⁶
- The privilege may be waived, in the court's discretion, in involuntary civil commitment proceedings for chemical dependency⁷ or mental illness,⁸ and the privilege is waived in

¹ RCW 5.60.060(4).

² See *State v. Gibson*, 3 Wn. App. 596, 598 (1970); *Randa v. Bear*, 50 Wn.2d 415, 420–21 (1957). See also *State v. Rochelle*, 11 Wn. App. 887, 892 (“[A] urinalysis performed pursuant to a physician's direction is a privileged communication between physician and patient.”).

³ RCW 5.60.060(4)(a). See also RCW 26.44.030(1) (physician's duty to report child abuse); *In re Coverdell*, 39 Wn. App. 887, 891–93 (1984) (mother's hospital records regarding her mental health not privileged in dependency proceeding for her child).

⁴ RCW 5.60.060(4)(b).

⁵ See RCW 51.36.060.

⁶ RCW 69.50.403(2).

⁷ RCW 70.96A.140(3).

proceedings relating to the administration of anti-psychotic medications.⁹ The waiver, however, is limited to records or testimony relevant to evaluation of the detained person for purposes of the proceeding.¹⁰

- Neither the victim nor the alleged perpetrator of a crime can assert the privilege to prevent the State from offering evidence of the victim's injuries or other evidence of the crime.¹¹
- The privilege does not prevent a court-appointed investigator from obtaining a child's medical information in a custody dispute, but the child's permission is generally required if the child is age 12 or older.¹²

Who is bound by the physician-patient privilege?

The physician and any agents or employees of the physician who have access to the patient's health care information are bound by the privilege.¹³

When does the physician-patient privilege arise?

In general, the physician-patient privilege arises when a person consults a physician for treatment or medical advice. Whether a physician-patient relationship is created depends on whether the patient believes that the patient's contact with the physician was for the purposes of treatment.¹⁴ Therefore, each situation is highly dependent on the facts. See **PHYSICIAN-PATIENT RELATIONSHIP**.

Who may waive the physician-patient privilege?

The privilege belongs to the patient and, except where the privilege is waived by law, only the patient or the patient's legal representative may waive the privilege.¹⁵

⁸ RCW 71.05.360(9).

⁹ RCW 71.05.360(9).

¹⁰ RCW 71.05.360(9); RCW 70.96A.140(3).

¹¹ See *State v. Boehme*, 71 Wn.2d 621, 635–37 (1967). See also *State v. Smith*, 84 Wn. App. 813, 820–22 (1997) (application of privilege in criminal case requires balancing test between benefit to privilege holder and public interest).

¹² RCW 26.09.220(2) (in dissolution proceedings); RCW 26.10.130(2) (in non-parental actions for custody).

¹³ See *State v. Gibson*, 3 Wn. App. 596, 599–600 (1970) (privilege applies to physician's agents, which includes jail officer present for physician's treatment of prisoner patient); *State v. Godsey*, 131 Wn. App. 278, 286 (2006) (law officers present at hospital for defendant's treatment were effectively hospital agents subject to the privilege when defendant confessed to drug use).

¹⁴ *State v. Gibson*, 3 Wn. App. 596, 598 (1970).

¹⁵ See *State v. Rochelle*, 11 Wn. App. 887, 892–93 (1974) (patient waived privilege by having his physician testify at trial); *State v. Smith*, 84 Wn. App. 813, 820 (1997) (defendant waived privilege when he testified about matters that would have fallen under privilege); *In re Estate of Thomas*, 165 Wash. 42, 60 (1931) (patient's personal representative or heir may waive privilege after patient's death).

Does the physician-patient privilege terminate upon the patient's death?

No. Except where the privilege is waived by law, only the personal representative or an heir of the patient's estate may waive the privilege after the patient's death.¹⁶

When may medical records or privileged health care information be disclosed?

See **DISCLOSURE OF HEALTH CARE INFORMATION.**

May medical records and privileged health care information be released in response to a subpoena?

Under certain circumstances, yes. See **DISCLOSURE OF HEALTH CARE INFORMATION;** and **SUBPOENAS.**

¹⁶ See *In re Estate of Thomas*, 165 Wash. 42, 60 (1931).