

# Child Abuse Exceptions to Privilege, Child Abuse Reporting and the UMA

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## I. Exceptions to Privilege

A. Section 2710.05 provides in pertinent part as follows:

(A) There is no privilege under section 2710.03 of the Revised Code for a mediation communication to which any of the following applies:

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(7) Except as provided in sections 2317.02 and 3109.052 of the Revised Code, the mediation communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates. [Note-Section 2317.02 is the statute on privileged communication and Section 3109.052 is the statute on the mediation of differences as to allocation of parental rights and responsibilities.]

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(9) The mediation communication is sought in connection with ...a proceeding initiated by the state or child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(B) The general rule set forth in subsection (7) is that there is no privilege, and mediators, parties and non-party participants can be compelled to testify in proceedings involving abuse or neglect in which a child or adult protective service agency is a party. (Adult protective services are limited to cases involving elderly and some severely disabled adults.)

(1) This exception protects children and elderly or disabled adults by allowing courts to hear communications involving abuse, neglect, abandonment or exploitation.

(2) This subsection does not create an exception to privilege to permit testimony on communication involving abuse, neglect, abandonment or exploitation unless a public agency participates in the proceedings. Thus, there is no exception to privilege in cases, such as divorce and custody cases, in which a public agency is not a participant.

(3) This subsection then provides an “exception to the exception” for child protection mediations in which a public agency (usually Children Services) participates in

the mediation. Thus, there is no exception to the privilege for communications involving abuse, neglect, abandonment or exploitation that were made in the course of a child protection mediation in which Children Services was a participant. Mediation communications involving abuse, neglect, abandonment or exploitation made in child protection mediations in which Children Services is a participant are privileged. The theory behind this exception is that Children Services are already involved and temporary orders protecting the child are already in place by the time the child protection mediation is held. Therefore, an exception to the privilege is not needed to protect the child, and the existence of the privilege may be critical to an open discussion of the issues surrounding the case.

- (C) Subsection 9 is consistent with all of subsection 7 except the exclusion of child protection cases. This could cause confusion for some courts. However, since subsection 7 includes a provision that is not addressed either way in subsection 9, subsection 7 provides more specificity and thus, should be considered controlling.

## II. Abuse Reporting

A. Section 2710.06 provides in pertinent part as follows:

- (A) Except as provided in division (B) of this section and section 3109.052 of the Revised Code, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject of the mediation.

(B) A mediator may disclose any of the following:

- (3) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment or exploitation.

B. Thus, the statute permits mediators to make reports to Children Services or Adult Protective Services.

### III. Confidentiality

- A. Section 2710.07 provides as follows: \*\*\* mediation communications are confidential to the extent agreed by the parties or provided under any section of the Revised Code.
- B. Mediators and parties can enter into specific confidentiality agreements and bind themselves to these agreements. Thus, a mediator can state in his/her introduction and Agreement to Mediate that he or she will report allegations of abuse or neglect of a child to Children Services and this can become an agreed upon exception to confidentiality.

#### **2151.421 Reporting child abuse or neglect.**

(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; or employee of the department of mental retardation and developmental disabilities.

(2) An attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to that communication and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The attorney-client or physician-patient relationship does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(B) Anyone, who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or suspicion to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section. Effective Date: 01-30-2004; 09-16-2004; 04-11-2005; 05-06-2005

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