



Iowa Supreme Court Creates Precedent on Access to Children's Records

By Legal and Regulatory Staff

August 27, 2009 — A recent Iowa Supreme Court ruling has broad implications for psychologists and other health care professionals who provide mental health services. The court's decision allows mental health professionals to refuse to grant parents access to their children's health records when doing so is not in the child's best interests.

In 2007, the plaintiff in this case sued to obtain copies of her three minor children's health records related to counseling services the children had received since 2003. The divorced parent who brought the lawsuit has joint legal custody of the children, although their father has primary physical custody.

The defendants were a mental health group practice consisting of licensed psychologists, social workers and mental health counselors, along with the licensed social worker in the practice who provided the counseling services.

In February 2008, the trial court denied the plaintiff's request for records release, finding that under the facts of the case, it would not be in the best interests of the children for the court to mandate disclosure of the records. On appeal, the Iowa Supreme Court upheld the lower court ruling in an April 2009 decision.

In support of its decision, the court cited a history of abuse by the petitioning parent, who had been barred by court order from having contact with one of the children. The court considered the children's request that their records not be provided to their parents.

Further, the decision noted the potential for irreparable harm to the children's therapeutic relationship with their social worker, while also finding her testimony credible.

The Iowa Supreme Court agreed with the district court's reasoning as to why the mother's request for records release should be denied. In applying the "best interests of the child" standard, the high court stated that a noncustodial parent's right to access is not absolute.

Creating Precedent

The Iowa Supreme Court decision has precedential value regarding whether a parent has an absolute right to waive the mental health professional/client privilege that exists between a therapist and minor child. Iowa courts had not ruled previously on this issue. Courts in that state will have to follow the high court ruling, and other states may follow the ruling if they find it persuasive.

Several other states have weighed in on this issue and related matters. The supreme court in New Hampshire ruled in the case of In re Berg that while parents do have constitutional rights to raise and care for their children, those rights are not absolute – for example, divorce and custody proceedings where the parents might not act solely in the child's best interests.

Additional states including California, Florida, Maryland, Massachusetts and Oklahoma have addressed whether a parent has an absolute right to access his or her children's mental health records.

Courts have consistently ruled that a parent or guardian may waive a minor child's psychologist-patient privilege only when waiver is in the child's best interest. However, waiver must not be allowed when the parent's interests are adverse to the child's interests.

The American Psychological Association Psychology Defense Fund provided \$5,000 toward the legal costs incurred by the defendants in Iowa.