



A Message from the AzNA PAC



The purpose of the AzNA PAC is to endorse candidates for the Arizona Legislature based upon the principles of the AzNA Public Policy Agenda. AzNA-PAC encourages nurses to become active and effective in shaping public policy through the electoral process. With the legislative session approaching, one way nurses can begin to become involved with AzNA-PAC is through donations.

The AzNA PAC raises money for a variety of causes including the education of nurses about politics and contribution to selected campaigns.

Our elected legislators make laws and now, more than ever, we need laws that not only help us manage and mitigate the effects of the COVID-19 pandemic but laws that enhance a culture of health that will enable the people of Arizona to live the healthiest lives possible. This is just what nurses do.

The PAC is gearing up for 2022 elections and needs your donations now. Save the date for our Spring 2022 Casino Night Fundraiser in April or don't wait and become a PAC subscriber today by going to <https://www.aznurse.org/page/PACdonate>. Don't miss out – become a monthly subscriber and know your donations are going towards electing the right people at the right time for the right job.

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It's Time to Recognize a Nurse-Patient Evidentiary Privilege

Michael D. Moberly

The physician-patient privilege enables physicians to maintain the confidentiality of sensitive information about their patients' health.¹ The privilege is intended to ensure that patients receive the best medical treatment possible "by encouraging full and frank disclosure of medical history and symptoms."² Although a nurse-patient privilege would serve precisely the same purpose,³ this privilege has never been recognized in Arizona.⁴

A nurse's inability to claim the protection of an evidentiary privilege might cause some patients to withhold information essential to their care.⁵ The implications of this situation are clear. In the absence of a privilege,

[t]he patient's only surefire means to prevent . . . disclosure would be to forgo turning over the confidential information in the first place. This is not a realistic option because a patient cannot expect delivery of medical services without disclosing such data. . . . In order to receive treatment, a patient must reveal personal information.⁶

The Gomez Case

The only reported Arizona case in which the potential recognition of a nurse-patient privilege was addressed is the nearly century-old decision of a federal appellate court in *Southwest Metals Co. v. Gomez*.⁷ The court in *Gomez* refused to extend the protection of Arizona's statutory physician-patient privilege to a nurse who assisted a physician during a medical procedure. Because the relevant statutory language limits the privilege's application to physicians and surgeons, the court concluded that any extension of its protection to nurses is the prerogative of the legislature, and could not be accomplished through an expansive judicial interpretation of the statute.⁸

The Tucson Medical Center Case

The Arizona legislature has shown no inclination to extend the protection of the physician-patient privilege to nurses. However, Arizona's state courts have occasionally interpreted the privilege expansively in order to protect patient privacy.⁹ In *Tucson Medical Center v. Rowles*,¹⁰ for example, the Arizona Court of Appeals held that the privilege's protection encompasses information contained in a patient's hospital records, even though those records invariably reflect nurse-patient communications.¹¹

In reaching this result the court concluded that it was not bound by the narrow interpretation of the privilege in the *Gomez* case.¹²

Conclusion

The physician-patient privilege is premised on the assumption that patients will be more forthcoming about their health conditions if they know their communications with their physicians can be kept confidential.¹³ Because this assumption is equally applicable to communications between nurses and patients,¹⁴ there is no persuasive reason for failing to extend to nurses the protection of a privilege that has long been enjoyed by physicians.¹⁵

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References

1. The Arizona legislature has adopted physician-patient privilege statutes applicable in both civil and criminal proceedings. See Ariz. Rev. Stat. Ann. §§ 12-2235 & 13-4062(4).
2. *Lewin v. Jackson*, 492 P.2d 406, 410 (Ariz. 1972).
3. See Rebecca J. Pierce, Comment, *Statutory Solutions for a Common Law Defect: Advancing the Nurse Practitioner-Patient Privilege*, 47 J. Marshall L. Rev. 1077, 1087 (2014) ("[T]he necessity of encouraging people to divulge private medical information is not limited to communications between physicians and patients, but extends to communications between nurses and patients.").
4. Arizona is not alone in this regard, as "many states that support a physician-patient privilege do not recognize a general nurse-patient privilege." *Id.* at 1086.
5. See Peter A. Winn, *Confidentiality in Cyberspace: The HIPAA Privacy Rules and the Common Law*, 33 Rutgers L.J. 617, 622 (2002) ("[N]urses . . . have long known that fear of disclosure of health information may cause people to withhold information, to lie, or to avoid treatment altogether.").
6. *Doe v. Guthrie Clinic, Ltd.*, 5 N.E.3d 578, 583 (N.Y. 2014) (Rivera, J., dissenting).
7. 4 F.2d 215 (9th Cir. 1925).
8. See *id.* at 217, 218.
9. See *State v. Zeitner*, 436 P.3d 484, 491 (Ariz. 2019) (noting that "Arizona courts have expanded the physician-patient privilege beyond its original testimonial protections").
10. 520 P.2d 518 (Ariz. Ct. App. 1974).
11. See *Johnston v. Miami Valley Hosp.*, 572 N.E.2d 169, 171 (Ohio Ct. App. 1989) ("Since nurses often spend more time than physicians with hospital patients, their notes often comprise the bulk of the hospital record.").
12. See *Tucson Med. Ctr.*, 520 P.2d at 521 n.1.
13. See *Carondelet Health Network v. Miller*, 212 P.3d 952, 954 (Ariz. Ct. App. 2009).
14. See Pierce, *supra* note 3, at 1086 ("The reasons underlying the physician-patient privilege apply with equal, if not more, force to communications between nurses and patients.").
15. See *Hermanson v. MultiCare Health Sys., Inc.*, 475 P.3d 484, 491 (Wash. 2020) ("[B]ased on the similar work nurses and physicians conduct with their patients, 'policy considerations . . . dictate[] application of a privilege for registered nurses similar to the physician privilege.'" (quoting Substitute S.B. Rep. 4107, 49th Legis., Reg. Sess., at 1 (Wash. 1985))).

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