

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1490**

In re State of Minnesota, Petitioner,
State of Minnesota,
Petitioner,

vs.

Luis Alberto Martinez Ramirez,
Respondent.

**Filed February 13, 2023
Writ granted
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-21-492

Kathryn Keena, Dakota County Attorney, Heather D. Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for petitioner)

Cathryn Middlebrook, Chief Appellate Public Defender, Jon Stanek, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bryan, Judge.

SYLLABUS

The statutory privileges afforded to medical and mental-health records by Minnesota Statutes section 595.02, subdivision 1(d) and (g) (2022), do not permit disclosures of protected information to a district court for *in camera* review in a criminal prosecution without the consent of the patient or another applicable statutory exception.

SPECIAL TERM OPINION

ROSS, Judge

Respondent Luis Alberto Martinez Ramirez, a defendant accused of engaging in criminal sexual conduct against a teenage boy, successfully moved the district court to review the boy's medical and mental-health records for information material to Ramirez's defense. Relying on the supreme court's recent decision in *State v. Conrad (In re Hope Coalition)*, 977 N.W.2d 651 (Minn. 2022), the state challenges the district court's decision to grant Ramirez's request by asking this court to prohibit enforcement of the subpoena to obtain the records. Because the reasoning in *Hope Coalition* informs us that the statutory privileges restricting the disclosure of these records are absolute, and because preventing their disclosure would not violate Ramirez's constitutional rights, the district court was bound by law to grant the state's motion to quash the subpoena. We therefore grant the state's writ of prohibition.

FACTS

A 15-year-old boy told his psychiatrist in February 2021 that "Uncle Alex" repeatedly sexually assaulted him two years earlier. The psychiatrist reported the disclosed abuse to child protective services, adding that the boy "was in and out of psychosis two days ago when the disclosure was first made," that the boy had been hospitalized at a mental-health facility on January 27, 2021, and that his hospitalization was anticipated to continue for at least a week. Police learned that "Uncle Alex" is Luis Ramirez. The state charged Ramirez with one count of first-degree criminal sexual conduct.

Ramirez asked the district court to review *in camera* the boy's medical and mental-health records from the mental-health facility to determine whether they contained information material to Ramirez's defense. The state objected, asserting that the records were privileged.

The district court granted Ramirez's motion for *in camera* review and issued a subpoena directing the mental-health facility to produce the records. The state unsuccessfully moved the district court to reconsider and to quash the subpoena. The state then petitioned this court for a writ of prohibition to prevent the subpoena's enforcement. We issued an order granting the state's petition and reversing the district court's order denying the state's motion to quash the subpoena. We now explain our decision.

ISSUE

Can the district court order the disclosure of privileged medical and mental-health records for *in camera* review in a criminal prosecution without the consent of the patient or another applicable statutory exception?

DECISION

We granted the state's petition for a writ of prohibition because the subpoenaed records are subject to a statutory privilege precluding even *in camera* review and because disclosure is not required to protect Ramirez's constitutional rights. We recognize that a writ of prohibition is reserved for "extraordinary cases." *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 710 (Minn. 2007). We will not issue a writ unless the petitioner meets three requirements: "(1) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power

must be unauthorized by law; and (3) the exercise of such power must result in injury for which there is no adequate remedy.” *State v. Hartman*, 112 N.W.2d 340, 346 (Minn. 1961) (quotation omitted). These requirements for the writ to issue are “essential,” and “if the [petitioner] fails to establish any one of them the writ must be denied.” *Smith v. Tuman*, 114 N.W.2d 73, 77 (Minn. 1962). A writ of prohibition may also issue “to prevent an abuse of discretion where there is no other adequate remedy at law.” *Wasmund v. Nunamaker*, 151 N.W.2d 577, 579 (Minn. 1967). Because district courts are afforded “broad discretion to make discovery rulings,” *State v. Burrell*, 697 N.W.2d 579, 604 (Minn. 2005), a writ of prohibition on a discovery matter should be

issued [only] if it appears that the court is about to exceed its jurisdiction or where it appears the action of the court relates to a matter that is decisive of the case; *where the court has ordered the production of information clearly not discoverable and there is no adequate remedy at law*; or in rare instances where it will settle a rule of practice affecting all litigants.

In re Paul W. Abbott Co., 767 N.W.2d 14, 17 (Minn. 2009) (quotation omitted). The state’s request for the writ meets this standard.

To resolve whether the district court was obligated to quash the subpoena for the boy’s records, we first consider the applicable privileges and the circumstances under which they permit a district court to compel disclosure. The parties agree that the subpoenaed records are subject to the privileges conferred by Minnesota Statutes section 595.02, subdivision 1(d) and (g) (2022):

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a

professional capacity, and which was necessary to enable the professional to act in that capacity

. . . .

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of section 626.557 and chapter 260E.

The state argues persuasively that the structure and nature of these statutory provisions parallel the provision that established the privilege analyzed by the *Hope Coalition* court and that we are obligated to hold similarly that the district court may order disclosure only when the patient consents or another exception applies.

In *Hope Coalition*, 977 N.W.2d at 657–58, the supreme court considered the privilege afforded by paragraph (k) of the same statute, which applies to records of sexual-assault counselors:

(k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of section 626.557 and chapter 260E.

Minn. Stat. § 595.02, subd. 1(k) (2022). The *Hope Coalition* court held that the paragraph plainly prohibits any disclosure except in cases involving the statute's express exceptions. 977 N.W.2d at 658. The court consequently concluded that a district court may not order the disclosure of protected records in criminal prosecutions if no exception applies. *Id.* at 659.

Ramirez argues that *Hope Coalition* is limited to paragraph (k) and does not require us to similarly interpret paragraphs (d) and (g). Ramirez is correct that the *Hope Coalition* court interpreted only paragraph (k). *Id.* at 653. But the supreme court's analysis provides the blueprint for the construction and application of paragraphs (d) and (g) because of the substantively similar manner in which the legislature designed the privileges. Like paragraph (k), paragraphs (d) and (g) prohibit custodians of protected records from disclosing them except when a specifically stated exception applies. Following the supreme court's approach in *Hope Coalition*, we hold that a district court may not order the production of records protected by these privileges absent an express exception. *See id.* at 659. Ramirez does not argue that any of the statutory exceptions apply here. We therefore conclude that the district court lacked the statutory authority to compel the facility to disclose the subpoenaed records.

We turn to whether the district court was nevertheless authorized to compel the requested disclosure to preserve Ramirez's constitutional rights to confrontation and due process. The *Hope Coalition* court acknowledged that "even an unpierceable statutory privilege must yield to a defendant's constitutional rights if nondisclosure would violate those rights." *Id.* at 661. Courts considering whether nondisclosure violates a defendant's

constitutional rights should weigh the state's interest in the privilege against the nature of the defendant's right. *Id.* (citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987)). "When the defendant's constitutional right does not outweigh a compelling interest of the state, the privilege remains unpierced." *Id.*

Hope Coalition again guides our analysis. The supreme court balanced the competing interests by first concluding that the state has a "compelling interest in protecting the privacy of sexual assault victims" because maintaining the victim-counselor privilege is essential for victims to willingly share pertinent information. *Id.* at 662. On balance, the court reasoned that the criminal defendant's constitutional rights to confront witnesses and to present a complete defense did not outweigh the state's interest. *Id.* It first considered that the right of confrontation is designed to secure only "the *opportunity of cross-examination*, not limitless pretrial discovery." *Id.* (quotation omitted). It reasoned that the lack of access to the requested records did not impair the defendant's ability to cross-examine the victim or other state witnesses. *Id.* It next considered that the records sought were possessed by a nongovernmental third party and subject to a privilege that expressly prohibits their disclosure. *Id.* It therefore concluded that enforcing the privilege would not violate the defendant's due-process rights. *Id.*

We follow the same reasoning here. We observe no distinction between the privacy concerns inherent in the victim-counselor relationship protected by paragraph (k) and the privacy concerns inherent in each patient-provider relationship protected by paragraphs (d) and (g). The records created as part of each relationship will almost certainly include sensitive personal information that the patient would want to remain confidential. And

preserving confidentiality is essential to ensuring a patient's (and victim's) willingness to seek help and proper treatment. *See id.* at 661–62. We likewise see no distinction as to weighing the defendant's constitutional rights against the state's interest. As in *Hope Coalition*, the lack of access to the records at issue here does not preclude Ramirez from confronting and cross-examining witnesses against him, the records sought are maintained by a private nonparty, and those records are protected by a strict statutory privilege subject only to narrow exceptions not relevant here. We hold that preserving the confidentiality of the protected records does not violate Ramirez's constitutional rights.

We are not persuaded otherwise by Ramirez's assertion, citing *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992), that the supreme court has recognized that medical and mental-health records protected by paragraphs (d) and (g) may be ordered disclosed in a criminal prosecution when the defendant has made a threshold showing that the records are likely to contain favorable information. Although *Hummel* articulates the standard to be applied when a particular privilege may be pierced, the supreme court did not address the foundational question of whether a privilege may be pierced in the first place. The *Hummel* defendant similarly sought the disclosure of records privileged under paragraphs (d) and (g). *Id.* at 71. The supreme court noted that the privileges applied but recognized that “[t]he medical privilege, like other privileges, sometimes must give way to the defendant's right to confront his accusers.” *Id.* (quotation omitted). The *Hummel* court held that, when the privilege may be pierced, *in camera* review by the district court before disclosure to the defendant is the appropriate way to balance the interests of the privilege holder against the rights of the defendant, but that the defendant must first “make some plausible showing

that the information sought would be both material and favorable to his defense.” *Id.* at 72 (quotations omitted).

As Ramirez points out, the court in *Hope Coalition* cited *Hummel* for the proposition that Minnesota courts have used this balancing test “to evaluate whether privileged medical records should be disclosed.” 977 N.W.2d at 660. But the *Hope Coalition* court then noted that it had not yet had occasion to apply its “judicial mind” to the validity of the presumption “that all privileges must sometimes give way to a criminal defendant’s right to confront their accuser.” *Id.*; see also *Fletcher v. Scott*, 277 N.W. 270, 272 (Minn. 1938) (“The rule of stare decisis is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question.”). And in the *Hope Coalition* court’s final analysis, it concluded that privileged sexual-assault-counseling records maintained by a nongovernment third party are in fact *not* subject to disclosure by order of the district court in a criminal proceeding for the reasons discussed. 977 N.W.2d. at 663. While *Hummel* may have presumed that the medical and mental-health privileges could be subordinated to the constitutional rights of a criminal defendant, *Hope Coalition* clarifies that this presumption was not part of *Hummel*’s holding. *Id.* at 660. We therefore reject Ramirez’s interpretation of *Hummel* and hold, consistent with the framework provided by *Hope Coalition*, that Ramirez’s constitutional rights to confrontation and due process do not outweigh the state’s interest in preserving the confidentiality of the protected records.

Writ granted.