

1 **14-5010. Statements made by defendant during psychiatric examination or treatment.**

2 ~~[Evidence has been admitted concerning statements]~~ Statements made by the
3 defendant in the course of a mental examination or treatment~~[. These statements]~~ may be
4 considered only for the limited purpose of showing the information upon which an expert
5 based ~~[his]~~ the expert's opinion ~~[as to]~~ about the defendant's mental capacity.

6 USE ~~[NOTE]~~ NOTES

7 Upon request, this instruction may be given upon completion of the witness'
8 testimony, as well as at the time the balance of the instructions are given to the jury.

9 [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or
10 filed on or after December 31, 2019.]

11 **Committee commentary.** — Under Rule 11-504 NMRA, a statement made in the
12 course of a court-ordered mental examination is not privileged. Under Rule 5-602 NMRA,
13 a “statement made by a person during a psychiatric examination or treatment subsequent to
14 the commission of the alleged crime shall not be admissible in evidence against him in any
15 criminal proceeding on any issue other than that of his sanity.”

16 Assuming that the statement is not a privileged communication under Rule 11-504,
17 ~~[NMRA, (]see, e.g., State v. Milton, 1974-NMCA-094, 86 N.M. 639, 526 P.2d 436[(Ct.~~
18 ~~App. 1974))]~~, the statement will be admitted under the restrictions of Rule 5-602~~[NMRA]~~.

19 In construing a similar federal statute, 18 U.S.C. § 4244, the Tenth Circuit has noted that
20 ~~[because]~~ “such statements could be prejudicial. The [t]he district judge must therefore...
21 be careful in instructing the jury as to the significance of the testimony.” *United States v.*

1 *Julian*, 469 F.2d 371, 376 (10th Cir. 1972)[~~-See~~]; see also *United States v. Bennett*, 460 F.2d
2 872, 879 (D.C. Cir. 1972).

3 ~~[The language of this instruction was derived from California Jury Instructions~~
4 ~~Criminal, 2.10, and altered to conform to Rule 5-602 NMRA.]~~

5 [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or
6 filed on or after December 31, 2019.]