

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

2 Statements made by the defendant in the course of a mental examination or treatment may  
3 be considered only for the limited purpose of showing the information upon which an expert based  
4 the expert’s opinion about the defendant’s mental capacity.

5 USE NOTES

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

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

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

15 Assuming that the statement is not a privileged communication under Rule 11-504, *see, e.g.*[-],  
16 *State v. Milton*, 1974-NMCA-094, 86 N.M. 639, 526 P.2d 436, the statement will be admitted  
17 under the restrictions of Rule 5-602. In construing a similar federal statute, 18 U.S.C. § 4244, the  
18 Tenth Circuit has noted that “such statements could be prejudicial. The district judge must  
19 therefore . . . be careful in instructing the jury as to the significance of the testimony.” *United*  
20 *States v. Julian*, 469 F.2d 371, 376 (10th Cir. 1972); *see also United States v. Bennett*, 460 F.2d  
21 872, 879 (D.C. Cir. 1972).

22 [As amended by Supreme Court Order No. 19-8300-016][~~,- effective for all cases pending or filed~~  
23 ~~on or after December 31, 2019~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]