

**11-504. Physician-patient and psychotherapist-patient privilege.**

**A. Definitions.** For purposes of this rule,

(1) a “patient” is a person who consults with or is examined by a physician, psychotherapist, or state or nationally licensed mental-health therapist;

(2) a “physician” is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so licensed;

(3) a “psychotherapist” is a person engaged in the diagnosis or treatment of a mental or emotional condition, including drug addiction, and who is

(a) a physician; or

(b) a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified.

(4) a “state or nationally licensed mental-health therapist” is a person licensed or certified to provide counseling services as a social worker, marriage or family therapist, or other mental-health counselor; and

(5) a communication is “confidential” if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

**B. Scope of the privilege.** A patient has a privilege to refuse to disclose, or to prevent any other person from disclosing, a confidential communication made for the purpose of diagnosis or treatment of the patient’s physical, mental, or emotional condition, including drug addiction, between the patient and the patient’s physician, psychotherapist, or state or nationally licensed mental-health therapist.

**C. Who may claim the privilege.**

(1) The privilege may be claimed by

(a) the patient;

(b) the patient's guardian or conservator; or

(c) the personal representative of the deceased patient.

(2) The privilege may be asserted on the patient's behalf by

(a) the patient's physician;

(b) the patient's psychotherapist;

(c) the patient's state or nationally licensed mental-health therapist; or

(d) any other person included in the communication to further the patient's interests, including individuals participating under the direction of the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist.

(3) Authority to claim the privilege is presumed absent evidence to the contrary.

**D. Exceptions.**

(1) ***Proceedings for hospitalization.*** If a physician, psychotherapist, or state or nationally licensed mental-health therapist has determined that a patient must be hospitalized due to mental illness or presents a danger to himself or others, no privilege shall apply to confidential communications relevant to the proceedings to hospitalize the patient.

(2) ***By order of the court.*** Unless the court orders otherwise, any communications made by an individual during an examination of that individual's physical, mental, or emotional condition that has been ordered by the court are not privileged.

1           (3)     ***Elements of a claim or defense.*** If a patient relies on a physical, mental, or  
2           emotional condition as part of a claim or defense, no privilege shall apply concerning  
3           confidential communications made relevant to that condition. After a patient’s death,  
4           should any party rely on a patient’s physical, mental, or emotional condition as part of a  
5           claim or defense, no privilege shall apply for confidential communications made relevant  
6           to that condition.

7           (4)     ***Required reports.*** No privilege shall apply for confidential communications  
8           concerning any material that a physician, psychotherapist, state or nationally licensed  
9           mental-health therapist, or patient is required by law to report to a public employee or  
10          public agency.

11   [As amended, effective July 1, 1990; January 1, 1995~~[-1993]~~; as amended by Supreme Court Order  
12   No. 13-8300-025, effective for all cases pending or filed on or after December 31, 2013; as  
13   amended by Supreme Court Order No. 22-8300-039, effective December 15, 2022.]

14          **Committee commentary.** — Under the previous version of the rule, the privilege applied  
15   only to confidential communications with physicians, psychiatrists, and licensed or certified  
16   psychologists. The Supreme Court, however, endorsed expanding the scope of the privilege  
17   in *Albuquerque Rape Crisis Center vs. Blackmer*, 2005-NMSC-032, 138 N.M. 398, 120 P.3d  
18   820 (holding that confidential communications with a victim counselor are privileged).  
19   Although *Blackmer* did not address the issue of licensure, expanding the privilege to include  
20   communications with a “state or nationally licensed mental-health therapist” is consistent with the  
21   broader view of the privilege recognized in that case. *See also generally Jaffee v. Redmond*, 518  
22   U.S. 1 (1996) (applying the psychotherapist-patient privilege under the Federal Rules of Evidence

1 to communications with a licensed social worker). The remaining amendments to the rule are  
2 intended to be stylistic only.

3 [Adopted by Supreme Court Order No. 13-8300-025, effective for all cases pending or filed on or  
4 after December 31, 2013.]

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