

Rule 506. Physician and Mental Health Therapist-Patient.

(a) Definitions.

(1) "Patient" means a person who consults or is examined or interviewed by a physician or mental health therapist.

(2) "Physician" means a person licensed, or reasonably believed by the patient to be licensed, to practice medicine in any state.

(3) "Mental health therapist" means a person who

(A) is or is reasonably believed by the patient to be licensed or certified in any state as a physician, psychologist, clinical or certified social worker, marriage and family therapist, advanced practice registered nurse designated as a registered psychiatric mental health nurse specialist, or professional counselor; and

(B) is engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.

(b) Statement of the Privilege. A patient has a privilege, during the patient's life, to refuse to disclose and to prevent any other person from disclosing information that is communicated in confidence to a physician or mental health therapist for the purpose of diagnosing or treating the patient. The privilege applies to:

(1) diagnoses made, treatment provided, or advice given by a physician or mental health therapist;

(2) information obtained by examination of the patient; and

(3) information transmitted among a patient, a physician or mental health therapist, and other persons who are participating in the diagnosis or treatment under the direction of the physician or mental health therapist. Such other persons include guardians or members of the patient's family who are present to further the interest of the patient because they are reasonably necessary for the transmission of the communications, or participation in the diagnosis and treatment under the direction of the physician or mental health therapist.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, or the guardian or conservator of the patient. The person who was the physician or mental

health therapist at the time of the communication is presumed to have authority during the life of the patient to claim the privilege on behalf of the patient.

(d) Exceptions. No privilege exists under paragraph (b) in the following circumstances:

(1) Condition as Element of Claim or Defense. If a party shows by a preponderance of the evidence that the ~~For a~~ communications ~~s~~ is relevant to an issue of the physical, mental, or emotional condition of the patient:

(A) in any proceeding in which that condition is an element of any claim or defense, or

(B) after the patient's death, in any proceedings in which any party relies upon the condition as an element of the claim or defense;

(2) Necessary to a Criminal Case Matter. If a party in a criminal case matter shows by a the preponderance of the evidence that the communication is necessary to a fair determination of guilt or innocence and the communication:

(A) contains a recantation or material inconsistency;

(B) shows that an accusation was the product of suggestion or undue influence;

(C) relates to the reliability of the method or means by which the communication was disclosed; or

(D) is necessary to protect a criminal defendant's constitutional rights.

~~(2)~~**(3) Hospitalization for Mental Illness.** For a communications ~~s~~ relevant to an issue in proceedings to hospitalize the patient for mental illness, if the mental health therapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization; and

~~(3)~~**(4) Court Ordered Examination.** For a communications ~~s~~ made in the course of, and pertinent to the purpose of, a court-ordered examination of the physical, mental, or emotional condition of a patient, whether a party or witness, unless the court in ordering the examination specifies otherwise.

(e) Effect of Claiming any Exception in a Criminal ~~Case~~Matter. The following provisions apply only in criminal ~~cases~~-matters and only if a party is claiming an exception under paragraphs (d)(1) or (d)(2).

(1) If the party claiming any exception makes the required showing, the court will ~~shall~~ conduct an in-camera review of the communications and will ~~shall~~ release to the parties any communication to which the exception applies, subject to any protective orders entered by the court.

(2) If the party claiming the exception makes the required showing and the court has not released all communications that were subject to the in-camera review, upon motion of a party based on changed circumstances, the court will ~~shall~~ conduct further in-camera review of the communications to re-examine the applicability of an exception and to release any additional communication to which the exception applies.

(3) Any communications submitted to the court for in-camera review and that are not otherwise released under an exception will ~~shall~~ be sealed and made part of the record.

(f) Reasonable Protective Orders and Procedures. The court may make reasonable orders regarding confidentiality protections and the procedure to be followed when a party claims an exception.

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2024 Advisory Committee Note. The language of this rule has been amended in light of the Utah Supreme Court's decision in *State v. Bell*, 2020 UT 38, 469 P.3d 929. There, the Court noted "that Mr. Bell raise[d] important constitutional and policy concerns regarding a criminal defendant's access to records that may contain exculpatory evidence[.]" and referred the rule to its advisory committee for review. *Id.* ¶ 1. Specifically, the court directed the committee "to consider the importance of": (1) "maintaining a strong privilege rule"; (2) "more clearly defining what is required to qualify for exceptions to the privilege"; and (3) "respecting a criminal defendant's constitutional rights." *Id.* The amendments contained in subsections (d)(2) and (e) are

intended to address the court’s directive. Further, the amendment in subsection (d)(2) is not intended to change the longstanding requirement that “some type of extrinsic indication” is necessary to show the exception applies. See *State v. Worthen*, 2009 UT 79, ¶ 38. The amendments do not limit the availability of this rule’s other exceptions in criminal proceedings. Communications released to the parties may qualify as private records and be subject to Rules 4-202.02 and 4-202.03 of the Utah Rules of Judicial Administration.

2011 Advisory Committee Note. The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Original Advisory Committee Note. Rule 506 is modeled after Rule 503 of the Uniform Rules of Evidence, and is intended to supersede Utah Code §§ 78-24-8(4) and 58-25a-8. There is no corresponding federal rule. By virtue of Rule 501, marriage and family therapists are not covered by this Rule.

The differences between existing Utah Code § 78-24-8 and Rule 506 are as follows:

(1) Rule 506 specifically applies to psychotherapists and licensed psychologists, it being the opinion of the Committee that full disclosure of information by a patient in those settings is as critical as and as much to be encouraged as in the “physician” patient setting. The Utah Supreme Court requested that Rule 506 further apply to licensed clinical social workers. To meet this request, the Committee included such individuals within the definition of psychotherapists. Under Utah Code § 58-35-2(5), the practice of clinical social work “means the application of an established body of knowledge and professional skills in the practice of psychotherapy. . . .” Section 58-35-6 provides that “[n]o person may engage in the practice of clinical social work unless that person: (1) is licensed under this chapter as a certified social worker,” has the requisite experience, and has passed an

examination. Section 58-35-8(4) refers to licenses and certificates for “clinical social worker[s].” As a result of including clinical social workers, Rule 506 is intended to supplant Utah Code § 58-35-10 in total for all social workers.

(2) Rule 506 applies to both civil and criminal cases, whereas Utah Code § 78-24-8 applies only to civil cases. The Committee was of the opinion that the considerations supporting the privilege apply in both.

(3) In the Committee's original recommendation to the Utah Supreme Court, the proposed Rule 506 granted protection only to confidential communications, but did not extend the privilege to observations made, diagnosis or treatment by the physician/psychotherapist. The Committee was of the opinion that while the traditional protection of the privilege should extend to confidential communications, as is the case in other traditional privileges, the interests of society in discovering the truth during the trial process outweigh any countervailing interests in extending the protection to observations made, diagnosis or treatment. However, the Supreme Court requested that the scope of the privilege be broadened to include information obtained by the physician or psychotherapist in the course of diagnosis or treatment, whether obtained verbally from the patient or through the physician's or psychotherapist's observation or examination of the patient. The Court further requested that the privilege extend to diagnosis, treatment, and advice. To meet these requests, the Committee relied in part on language from the California evidentiary privileges involving physicians and psychotherapists. See Cal. Evid. Code §§ 992 and 1012. These features of the rule appear in subparagraphs (a)(4) and (b). The Committee also relied on language from Uniform Rule of Evidence 503.

Upon the death of the patient, the privilege ceases to exist.

The privilege extends to communications to the physician or psychotherapist from other persons who are acting in the interest of the patient, such as family members or others who may be consulted for information needed to help the patient.

The privilege includes those who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist. For example, a certified social worker

practicing under the supervision of a clinical social worker would be included. See Utah Code § 58-35-6.

The patient is entitled not only to refuse to disclose the confidential communication, but also to prevent disclosure by the physician or psychotherapist or others who were properly involved or others who overheard, without the knowledge of the patient, the confidential communication. Problems of waiver are dealt with by Rule 507.

The Committee felt that exceptions to the privilege should be specifically enumerated, and further endorsed the concept that in the area of exceptions, the rule should simply state that no privilege existed, rather than expressing the exception in terms of a "waiver" of the privilege. The Committee wanted to avoid any possible clashes with the common law concepts of "waiver."

The Committee did not intend this rule to limit or conflict with the health care data statutes listed in the Committee Note to Rule 501.

Rule 506 is not intended to override the child abuse reporting requirements contained in Utah Code § 62A-4-501 et seq.

The 1994 amendment to Rule 506 was primarily in response to legislation enacted during the 1994 Legislative General Session that changed the licensure requirements for certain mental health professionals. The rule now covers communications with additional licensed professionals who are engaged in treatment and diagnosis of mental or emotional conditions, specifically certified social workers, marriage and family therapists, specially designated advanced practice registered nurses and professional counselors.

Some mental health therapists use the term "client" rather than "patient," but for simplicity this rule uses only "patient."

The committee also combined the definition of confidential communication and the general rule section, but no particular substantive change was intended by the reorganization.