

1 **Rule 506. Physician and Mental Health Therapist-Patient.**

2 **(a) Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

33 **(1) Condition as Element of Claim or Defense.** For a communications relevant to an  
34 issue of the physical, mental, or emotional condition of the patient:

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

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

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

42 **(A)** contains a recantation or material inconsistency;

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

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

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

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48 ~~**(2)**~~**(3) Hospitalization for Mental Illness.** For a communications relevant to an issue  
49 in proceedings to hospitalize the patient for mental illness, if the mental health  
50 therapist in the course of diagnosis or treatment has determined that the patient is in  
51 need of hospitalization; and

52 ~~**(3)**~~**(4)-Court Ordered Examination.** For a communications made in the course of, and  
53 pertinent to the purpose of, a court-ordered examination of the physical, mental, or  
54 emotional condition of a patient, whether a party or witness, unless the court in  
55 ordering the examination specifies otherwise.

56 **(e) Effect of Claiming any Exception in a Criminal Proceeding Case.** The following  
57 provisions apply only in criminal cases and only if a party is claiming an exception under  
58 paragraphs (d)(1) or (d)(2).

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

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

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

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

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74 **2021 Advisory Committee Note.** The language of this rule has been amended in light of  
75 the Utah Supreme Court's decision in *State v. Bell*, 2020 UT 38, 469 P.3d 929. There, the  
76 Court noted "that Mr. Bell raise[d] important constitutional and policy concerns  
77 regarding a criminal defendant's access to records that may contain exculpatory  
78 evidence[.]" and referred the rule to its advisory committee for review. *Id.* ¶ 1.  
79 Specifically, the court directed the committee "to consider the importance of": (1)  
80 "maintaining a strong privilege rule"; (2) "more clearly defining what is required to  
81 qualify for exceptions to the privilege"; and (3) "respecting a criminal defendant's  
82 constitutional rights." *Id.* The amendments contained in subsections (d)(2) and (e) are  
83 intended to address the court's directive. Further, the amendment in subsection (d)(2) is  
84 not intended to change the longstanding requirement that "some type of extrinsic  
85 indication" is necessary to show the exception applies. See *State v. Worthen*, 2009 UT 79,  
86 ¶ 38. The amendments do not limit the availability of this rule's other exceptions in  
87 criminal proceedings. Communications released to the parties may qualify as private

88 records and be subject to Rules 4-202.02 and 4-202.03 of the Utah Rules of Judicial  
89 Administration.

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92 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
93 the restyling of the Evidence Rules to make them more easily understood and to make  
94 class and terminology consistent throughout the rules. These changes are intended to be  
95 stylistic only. There is no intent to change any result in any ruling on evidence  
96 admissibility.

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

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

102 (1) Rule 506 specifically applies to psychotherapists and licensed psychologists, it being  
103 the opinion of the Committee that full disclosure of information by a patient in those  
104 settings is as critical as and as much to be encouraged as in the "physician" patient setting.  
105 The Utah Supreme Court requested that Rule 506 further apply to licensed clinical social  
106 workers. To meet this request, the Committee included such individuals within the  
107 definition of psychotherapists. Under Utah Code § 58-35-2(5), the practice of clinical  
108 social work "means the application of an established body of knowledge and professional  
109 skills in the practice of psychotherapy. . . ." Section 58-35-6 provides that "[n]o person may  
110 engage in the practice of clinical social work unless that person: (1) is licensed under this  
111 chapter as a certified social worker," has the requisite experience, and has passed an  
112 examination. Section 58-35-8(4) refers to licenses and certificates for "clinical social  
113 worker[s]." As a result of including clinical social workers, Rule 506 is intended to  
114 supplant Utah Code § 58-35-10 in total for all social workers.

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

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

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

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

139 The privilege includes those who are participating in the diagnosis and treatment under  
140 the direction of the physician or psychotherapist. For example, a certified social worker  
141 practicing under the supervision of a clinical social worker would be included. See Utah  
142 Code § 58-35-6.

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

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

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

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

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

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

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

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