

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.** If a party shows by a preponderance
34 of the evidence that the ~~For a~~ communications is relevant to an issue of the physical,
35 mental, or emotional condition of the patient:

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

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

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

43 (A) contains a recantation or material inconsistency;

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

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

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

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

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

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

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

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

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

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

76 =

77 2023 Advisory Committee Note. The language of this rule has been amended in light of
78 the Utah Supreme Court's decision in *State v. Bell*, 2020 UT 38, 469 P.3d 929. There, the
79 Court noted "that Mr. Bell raise[d] important constitutional and policy concerns
80 regarding a criminal defendant's access to records that may contain exculpatory
81 evidence[.]" and referred the rule to its advisory committee for review. *Id.* ¶ 1.
82 Specifically, the court directed the committee "to consider the importance of":
83 (1) "maintaining a strong privilege rule"; (2) "more clearly defining what is required to
84 qualify for exceptions to the privilege"; and (3) "respecting a criminal defendant's
85 constitutional rights." *Id.* The amendments contained in subsections (d)(2) and (e) are

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

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

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

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

105 (1) Rule 506 specifically applies to psychotherapists and licensed psychologists, it being
106 the opinion of the Committee that full disclosure of information by a patient in those
107 settings is as critical as and as much to be encouraged as in the “physician” patient setting.

108 The Utah Supreme Court requested that Rule 506 further apply to licensed clinical social
109 workers. To meet this request, the Committee included such individuals within the
110 definition of psychotherapists. Under Utah Code § 58-35-2(5), the practice of clinical
111 social work “means the application of an established body of knowledge and professional
112 skills in the practice of psychotherapy. . . .” Section 58-35-6 provides that “[n]o person
113 may engage in the practice of clinical social work unless that person: (1) is licensed under
114 this chapter as a certified social worker,” has the requisite experience, and has passed an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171