

Privileged Communications

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... It is critical for counselors and therapists to know whether or not they are covered by the psychotherapist-patient privilege (or a similarly named privilege). Generally, the privilege is created for certain relationships that the Legislature recognizes in law (e.g., lawyer-client, physician-patient, priest- penitent). Privilege is different than confidentiality. Privilege involves the right and duty to withhold records and testimony when subpoenaed in a legal proceeding. Those covered by the privilege are generally under a duty to assert the privilege on behalf of the patient, unless the patient waives the privilege or unless the judge orders otherwise.

... It must be remembered that the privilege (like the duty of confidentiality) generally survives the death of the patient. While the patient (now deceased) is no longer the holder of the privilege, the law usually specifies who the holder is – such as, the personal representative of the deceased, perhaps the executor. Therapists may have to assert the privilege (and refuse to release records) until the holder requests otherwise.

Read next month's Avoiding Liability Bulletin regarding psychotherapist-patient privilege [here](#).

Author:

Richard Leslie