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The Psychotherapist-Patient Privilege as Extended to Sexual Assualt and Rape Victims

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Research Guides

The Psychotherapist-Patient Privilege as Extended to Sexual Assualt and Rape Victims

Guide Information

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Overview

The psychotherapist-patient privilege, also known as the mental health privilege, can be asserted to keep an individual's communications with his or her therapist during a civil or criminal trial private. The privilege has developed as a matter of public policy to foster the open communications needed between a therapist and his patient for effective treatment.

Every state has a statutory privilege for communications between a patient and his psychotherapist, however the extension of that privilege is usually limited to a licensed professional such as psychiatrists, psychologists and social workers. In 1996, the Supreme Court held that federal courts must recognize the psychotherapist-patient privilege with similar limitations on the professionals to which the privilege may apply.

Georgia initially recognized the psychologist-patient privilege in 1951 with the enactment of OCGA § 43-39-16. In 1995, Georgia included the communications between a psychologist and patent as those excluded from evidence under OCGA 24-9-21. These two statutes provide patients with a confidential privilege similar to that of the attorney client privilege. These statutes, however, do not establish any privilege for communications between a patient and an unlicensed professional.

However many victims of sexual assault, molestation or rape cannot afford to pay for the services of a licensed professional. Instead they often turn to agencies and organizations, such as rape crisis centers, that promise confidentiality to their clients even though the records of such sessions may be discoverable becuase states lack statutory provisions for these types of agencies or the unlicensed, and often volunteer based, staff that works for such agencies.

This guide seeks to organize the law to provide an overview of the psychotherapist-patient privilege development both in the federal courts and in Georgia law. Additionally, this guide seeks to provide sources that argue both for and against the extension of the privilege to agencies, such as rape crisis clinics, and unlicensed counselors where a patient would reasonably believe that communications would be confidential.

Scope of Topic

This research guide is intended to provide an introduction to Federal and Georgia evidentiary law on the psychotherapist-patient privilege and the professionals to which it applies for victims of sexual assault and rape. An attorney or law student should use this guide as a starting point in researching the mental health privilege. The guide contains both primary and secondary sources related to the privilege. The secondary sources that discuss the common law of many states. Also included are various internet resources. This guide is not meant to address the use of the privilege by defendants in criminal or civil proceedings or specific forms of waiver. However, some of the sources included do provide information on those subjects.

About the Author

Christene Perry is a law student at Georgia State University's College of Law and will graduate in May 2010. This bibliography was written for the Spring 2010 section of Professor Nancy Johnson's Advanced Legal Research class. For further information regarding this bibliography, please email njohnson@gsu.edu.

Disclaimer

This research guide is not comprehensive. It should be used as a starting point for the law student or attorney to research the extension of the patient-psychotherapist privilege as it relates to rape crisis agencies. It is recommended that one Shepardize or KeyCite all statutes and cases included in this guide. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian at the Georgia State University College of Law library or consult an attorney. This guide was created and last updated in April 2010.

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Primary Sources

United States Constitution

U.S. Const. amend. VI

The Confrontation Clause found in the Sixth Amendment is relevant to the application of an absolute mental health privilege when considering a defendant's constitutional rights. It has been argued that the privilege directly competes with the constitutional rights of a defendant when possible exculpatory evidence exists within the privileged communications between a psychotherapist and patient. The confrontation clause provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense".

The Compulsory Process clause is similarly applicable and provides: "In all criminal prosecutions, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor".

U.S. Const. amend. XIV

The Due Process clause also applies to a defendant's rights. In part, the clause requires that legal proceedings be carried out fairly within the established rules and principles, both in substance and procedure. It has been argued that a defendant's due process rights cannot be met if privileged communications that contain exculpatory information are not discoverable. Due Process claims have been highly subject to judicial interpretation and decision making.

Official Code of Georgia Annotated

Free Access to the Official Code of Georgia Annotated is available at http://www.lexis-nexis.com/hottopics/gacode/.

O.C.G.A. § 24-9-21 (2009)

This section of the Georgia code excludes admission and communications on grounds of public policy. Included in this exclusion are admissions and communications between a patient and a psychiatrist, licensed psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapists, or licensed professional counselors who are rendering psychotherapy or have rendered psychotherapy to a patient.

O.C.G.A. § 43-39-16 (2009)

This section of the Georgia Code further defines the privilege between a licensed psychologist by holding it similar to the privilege between an attorney and client.

O.C.G.A. § 43-10A-3 (2009)

This section of the code defines various terms related to professional counselors, social workers, and marriage and family therapists, including the definitions of psychotherapeutic techniques that establish a privileged relationship between a patient and qualified professional.

O.C.G.A § 37-3-166 (2009)

Here, the Georgia code provides some of the rights and privileges of mental health patients regarding their method of care. This section of the code requires that a clinical record for each patient be maintained and defines the minimum standard for what the record shall include. The code further defines allowable waivers for such files and the information that may be released to law enforcement without such a waiver. It also states that any disclosure under this code does not destroy the confidential or privileged character of the information, except for the specific purpose for which authorized disclosure is made. This section of the code also offers those who disclose properly authorized records from liability to the patient or any other person,

O.C.G.A. § 24-9-40 (2009)

This section of the code addresses confidential communications between a patient and his physician or pharmacist. The code specifically states that is does not apply to "psychiatrists or to hospitals in which the patient is being or has been treated solely for mental illness" however, the confidentiality of records may apply to those general practitioners and pharmacists that provide some appropriate form of mental health treatment. This section of the code states that no pharmacist, physician, "hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit, shall be required to release any medical information concerning a patient except to the Department of Community Health, or as required by law unless a waiver is provided by the patient or appropriate guardian in writing". This section of the code also provides liability protection to those that disclose properly authorized information. It should be noted that HIPPA Federal regulations preempt this section of the Georgia code as defined in Moreland v. Austin, 670 S.E.2d 68 (2008).

O.C.G.A. § 15-11-9(b) (2009)

This section of the code states that a court may appoint an Guardian ad litem for a child who is a party to a proceeding. This code was included because case law has since provided that the guardian may then determine if it is in the child's best interest to waive privilege. State v. Herendeen, 613 S.E.2d 647 (2005)

O.C.G.A. § 19-7-5(g) (2009)

Section (g) of this code requires that child abuse be reported to the proper authorities even if the information is based on otherwise privileged communications.

O.C.G.A. § 34-9-207 (2009)

Slightly out of scope, this section of the code addresses the release of medical records and information and waivers of confidentiality related to workers compensation cases.

Rules and Regulations

United States Code

The United States Code can be found, free of charge, online from the Cornell Legal Information Institute.

The Violence Against Women Act, 42 U.S.C. § 13942 (1994)

This act required the Attorney General to study, evaluate and develop model legislation regarding the confidentiality of communications between sexual assault or domestic violence victims and their counselors. The legislation did not define nor expand the privilege or the professionals that are covered under the psychotherapist-patient privilege. The results of the study were published in December of 1995. A free summary of the report can be found at the National Criminal Justice Reference Service's Abstracts Database: http://www.ncjrs.gov/pdffiles1/nij/grants/169588.pdf.

Federal Rules of Evidence

Fed. R. Evid. 501.

The rule states that federal courts should apply state law regarding the privileges of a witness in civil actions if state law provides such a rule. For all other instances, federal courts are to follow federal statutes or "the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."

Case Law

The following cases are some of the most important or relevant cases regarding the Psychotherapist-Patient Privilege and its extension in sexual assault counseling.

Supreme Court Cases

Pennsylvania v. Ritchie, 480 U.S. 39 (1987)

In a plurality opinion, the court provided instruction for balancing the rights of defendants and victims to determine the admissibility counseling records. The Court held that an in camera review of privileged records constitutes the correct constitutional balance among competing interests. The court's analysis was limited to a specific qualified privilege, but the decision ultimately allowed for disclosure to the defense when the evidence was material and necessary for due process.

Jaffee v. Redmond, 518 U.S. 1 (1996)

This was the first case in which the Supreme Court recognized psychotherapist-patient privilege in federal courts. It also extended the privilege to licensed psychiatrists, psychologists or social workers in the course of psychotherapy and rejected the balancing tests previously used to determine if a privilege existed. Though the court held the privilege was absolute, it indicated that there could be instances where the privilege must give way. Those instances were not further defined.

Circuit Court Cases

Malinowski v. Smith, 509 F.3d 328 (7th Cir. 2007)

This case reviews the 6th Amendment Due Process rights of a defendant as compared to that of a statutorily protected communication with a school counselor. Here, the court found that the defendant's due process right to present a defense was not violated when the court excluded a school counselor's testimony regarding counselor's opinion of the child victim's honesty and reputation as privileged under Wisconsin law.

District Court Cases

United States v. Lowe, 948 F. Supp. 97 (D. Mass. 1996).

Here, the court concluded that the federal privilege applied to communications with a rape crisis counselor and that communications were protected under the state statute although the counselors were neither licensed psychotherapists nor social workers. The court held that the "policies expressed in Jaffee" supported a federal privilege for the communications.

Gegorgia Case Law

Georgia Supreme Court Cases

State v. Herendeen, 279 Ga. 323, 613 S.E.2d 647 (2005), affirming Herendeen v. State, 268 Ga. App. 113, 601 S.E.2d 372 (2004).

This case provides an excellent review of the statutory history related to the psychotherapist-patient privilege within Georgia and the precedent as of 2005. Part of the dicta and decision included that court ordered psychological evaluation of the mental state of an individual is not privileged unless the court-ordered sessions with the psychotherapist include some form of treatment. Even involuntary treatment may be protected. The court also found no expectation of confidentiality when the only purpose of the relationship is an evaluation. This case also changed the terminology used from the "Psychotherapist-Patient Privilege" to the "Mental Health Privilege" to better reflect the extension of the privilege to licensed professionals beyond the psychotherapist. see also In re I.M.G., 624 S.E.2d 236 (2005) .

Wiles v. Wiles, **264 Ga. 594,** 448 S.E.2d 681 (1994)

Here the court discusses and ultimately interprets the term "psychiatrist" to mean a "person licensed to practice medicine … who devotes a substantial portion of his or her time engaged in the diagnosis and treatment of a mental or emotional condition, including alcohol or drug addiction" thus extending the psychotherapist privilege to patients seeking treatment with the expectation of confidentiality from medical practitioners.

Bobo v. State, **256 Ga. 357,** 349 S.E.2d 690 (1986)

A plurality opinion held that a "witness' statutory privilege must give way to countervailing interests in the truth-seeking process demand such a result" see also Atkins v. State, 533 S.E.2d 152 (2000) but see Dynin v. Hall, 428 S.E.2d 89 (1993)(holding that the privilege remains absolute in civil cases).

Gegorgia Court of Appeals

Glass v. State, 255 Ga. App. 390, 565 S.E.2d 500 (2002)

The court held that a defendant was not entitled to a rape victim's psychiatric records where there was no evidence provided that would overcome the privilege and the victim's mental condition was not relevant to the credibility of her rape allegations.

Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 526 S.E.2d 622 (1999)

The court discusses that the patient-psychiatrist privilege is absolute and is not waived unless the patient affirmatively waives the privilege. The court further describes that the privilege is not waived "in cases where a patient seeks to recover damages for mental and emotional damages, where a third party necessary for the psychiatric treatment is present during the patient's treatment, or where the patient has made disclosures in a separate unrelated action." The privilege also continues after the death of the patient. However, the fact that a patient saw a psychotherapist is not privileged information. Here, the court held that a patient's failure to object to a request for release of non-privileged hospital records did not equate to a waiver of the release of privileged records.

Mrozinski v. Pogue, 205 Ga. App. 731, 423 S.E.2d 405 (1992)

This case held, in part, that a psychotherapist's opinions or findings regarding a patient are privileged if based on confidential communications with the patient. Furthermore, the court found that participation in a joint therapy sessions does not destroy the privilege. Though this case is not directly on point, the retention of the privilege when a 3rd party is involved with the therapy itself could easily apply to sexual assault victims. see also (Sims v. State, 311 S.E.2d 161 (1984)(when third parties are present while the otherwise privileged communications are made, the privilege is lost unless that parties' presence was necessary to the patient's treatment.)but see In re M.E., 593 S.E.2d 924 (2004) (holding that a behavioral checklist completed by a mother for her child for sexual assault evaluation, as requested by therapist, was not privileged because the child was the patient.)

Lipsey v. State, 170 Ga. App. 770, 318 S.E.2d 184 (1984)

The court held that statements made by a defendant to an individual while completing an "intake evaluation" and a counselor at a family clinic where the defendant had sought counseling were not privileged because neither individual was a psychiatrist or clinical psychologist. (Note that this was before O.C.G.A. 24-9-21 extended the privilege beyond a psychiatrist and psychologist. However, the principle holding still applies to those non-licensed counselors not included in the current statute. see also White v. State, 348 S.E.2d 728 (1986)(holding that the mental health privilege privilege did not apply to a social worker per then current O.C.G.A. 24-9-21 definitions).

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Secondary Sources

Treatises And Hornbooks

The below list is sampling of applicable evidence treatises and hornbooks.

- Georgia Rules of Evidence by Paul S. Milich
  Call Number: KFG540 .M54 2002 c.4
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1246977An updated version is available on Westlaw with a paid subscription.

  Here, Professor Milich discusses the Psychotherapist-Patient Privilege generally. In § 23.1, he addresses the privilege in general and the more recent extensions of the privilege to those other than psychiatrists. Section 23.2 addresses the mental health care professionals that qualify for the privilege, the requirements that may qualify a communication as privileged and that the privilege extends beyond the patient's death. In § 23.3, Professor Milich discusses facts that may defeat the privilege and types of communications that Georgia courts have not found to be privileged. Section 23.4 names the patient as the owner of the privilege and that the Patient can assert or waive the privilege. Implied waivers are also discussed. Section 23.5 addresses the psychotherapist's ability to break privilege for self defense . Section 23.6 addresses the ability of the psychotherapist to break the privilege to report child abuse and plans or intent to commit future crimes.
- Agnor's Georgia Evidence by Agnor, William Harrison; 4th ed. by Jennifer Lewis Roberts
  Call Number: KFG540 .A94 2008
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 1944597Discusses an overview and related cases of the Georgia Mental health privilege and a quick comparison to the federal privilege
- McCormick on Evidence by by Kenneth S. Broun, general editor ; contributing authors, George E. Dix ... [et al.].
  Call Number: KF8935 .M29 2006
  ISBN: 0314161279
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 1518406Although specific information on the Psychotherapist-Patient Privilege is not included, this hornbook provides a good discussion on federal privileges in general.

Legal Encyclopedias

81 Am. Jur. 2d Witnesses § 427 (2010)

This legal encyclopedia article discusses witnesses in judicial proceedings, including privileged communications. This section provides general information regarding the psychotherapist-patient privilege.

81 Am. Jur. 2d Witnesses § 428 (2010)

This legal encyclopedia article discusses application of the privilege to counselors and social workers.

24 Am. Jur. Proof of Facts 3d § 123 (2009)

This legal encyclopedia article provides a general overview Psychotherapy and the Psychotherapist-Patient privilege. The article focuses on the elements needed to show there has been a breach of the privilege, but includes some general discussion as well.

8 Ga. Jur. Family Law § 13:70 (2010)

This Georgia legal encyclopedia states that communications between a licensed psychologist and a patient are privileged and provides a brief illustration.

Books

- Law and Mental Health: A Case-Based Approach by Robert G. Meyer, Christopher M. Weaver.
  Call Number: KF480.A7 M49 2006
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1499499
- Evidence [sound recording] by Steven J. Goode
  Call Number: KF8935.Z9 G66 2004 c. 2
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1442737Recorded discs reviewing the evidence rules. One of the discs addresses the Mental Health Privilege
- Confidentiality: Ethical Perspectives and Clinical Dilemmas by Edited by Charles Levin, Allannah Furlong, Mary Kay O'Neil
  Call Number: RC480.8 .C655 2003
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=1325652
- Privacy and Confidentiality in Mental Health Care by Edited by John J. Gates and Bernard S. Arons.
  Call Number: RC455.2.M38 P73 2000
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=889222This book includes a chapter related to the legal issues of confidentialtiy.
- Psychotherapy and confidentiality : testimonial privileged communication, breach of confidentiality, and reporting duties by Ralph Slovenko
  Call Number: RC480.8 .S59 1998
  ISBN: 0398068275
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=879097
- Legal Issues in Social Work, Counseling, and Mental Health: Guidelines for Clinical Practice in Psychotherapy by Madden, Robert G.
  Call Number: KF2910.P75 M33 1998
  ISBN: 0761912339
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=68473(From Amazon) The book covers a broad range of topics, including providing testimony, responding to subpoenas, dealing with an attorney, influencing the legal system, and understanding the legal side of the business of psychotherapy.
- Law for the Psychotherapist by Robert G. Meyer, E. Rhett Landis, J. Ray Hay
  Call Number: KF2910.P75 M49 1988
  ISBN: 039370033X
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=36256
- The Psychotherapist-Patient Privilege: A Critical Examination by W. Shuman and Myron F. Weiner ; with a foreword by Ralph Slovenko.
  Call Number: KF8959.P4 S52 1987
  ISBN: 0398053383
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=34463
- Ethical Concerns in Psychotherapy and Their Legal Ramifications by Thompson, Andrew
  Call Number: RC455.2.E8 T48 1983
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=25931
- Legal Guidebook in Mental Health by Ronald Jay Cohen, William E. Mariano
  Call Number: KF2910.P753 C629
  ISBN: 002905740X
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 535931

Law Review Articles

Clifford S. Fishman, Defense Access to a Prosecution Witness's Psychotherapy or Counseling Records, 86 Or. L. Rev. 1 (2007).

> This article provides a brief review of the history of the mental health privilege and examines the constitutional right issues in Pennsylvania v. Ritchie.The article then examines how lower courts have applied the Ritchie holding. Procedural issues related to reviewing a victim's records are discussed and the author proposes standards for in camera review and disclosure.

John Scott Husser, Jr., "I Didn't Volunteer for This @&#%!": The Application of Georgia's Psychologist-Patient Privilege to Court-Ordered Mental Health Treatment, 57 Mercer L. Rev. 1327 (2006).

> This note reviews the Georgia Supreme court decision in State v. Herendeen and its implications. The note includes a historical review of the mental health privilege in Georgia and the balancing tests used prior to Herendeen.

Anne W. Robinson, Evidentiary Privileges and the Exclusionary Rule: Dual Justifications for an Absolute Rape Victim Counselor Privilege, 31 New Eng. J. on Crim. & Civ. Confinement 331 (2005).

> This article provides a general background of evidentiary privileges and the rape victim counselor privilege posturing that despite defendant rights, an absolute rape victim counselor privilege is needed. The article supports the conclusion through a discussion of evidentiary privilege and exclusionary rules.

Jennifer L. Hebert, Mental Health Records in Sexual Assault Cases: Striking a Balance to Ensure a Fair Trial for Victims and Defendants, 83 Tex. L. Rev. 1453 (2005).

This article addresses the background of rape and sexual assault cases related to requests for mental health records including perceptions of the victims in the judicial process. It then reviews federal case law regarding access to privileged records and state practices for determining admissibility. Finally, the article proposes the use of in camera review and a balancing test for admissibility in an attempt to balance the victim's and defendant's rights. It should be noted that the article does not discuss Georgia law.

Tera Jckowski Peterson, Distrust and Discovery: The Impending Debacle in Discovery of Rape Victims' Counseling Records in Utah, 2001 Utah L. Rev. 695 (2001).

This comment reviews the United States Supreme Court decision of Ritchie v. Pennsylvania and the defendant's ability to discover privileged material, including open issues and the states attempts to adapt. There is a heavy focus on Utah's case law, but there are a few references to Georgia law.

Adrienne Kotowski, "How Confidential is This Conversation Anyway?": Discovery of Exculpatory Materials in Sexual Assault Litigation, 3 Suffolk J. Trial & App. Advoc. 65 (1998).

This article addresses the conflicting privilege of a sexual assault victim and a criminal defendant arguing that a defendant's constitutional rights should sometimes give way to a victim's confidential counselor-patient relationship. The article further examines the Massachusetts balancing approach. Georgia law is not discussed in this article.

Anne Bowen Poulin, The Psychotherapist-Patient Privlege After Jaffee v. Redmond: Where Do We Go From Here?, 76 Wash. U. L.Q. 1341 (1998).

This article reviews the Supreme Court decision Jaffee v. Redmond and reviews how various states have responded to the decision in applying the psychotherapist-patient privilege to rape crisis counselors. There is only a brief reference to Georgia case law, but the article contains a number of examples of how other states have extended or restricted the privilege.

Stacy Aronowoitz, Following the Psychotherapist-Patient Privilege Down the Bumpy Road Paved by Jaffee v. Redmond, 1998 N.Y.U. Ann. Surv. Am. L. 307, (1998).

This note analyzes Jaffee, its decision to affirm an absolute psychotherapist-patient privilege and the lacking definition and boundaries of that privilege. The note then reviews subsequent definitions as applied by lower courts, focusing on the inconsistency of the decisions before offering a final definition for the mental health privilege.

Carolyn Peddy Courville, Rationales for the Confidentiality of Psychotherapist-Patient Communications: Testimonial Privilege and the Constitution, 35 Hous. L. Rev. 187 (1998).

The comment also discusses Jaffee v. Redmond, outlining the rationales used by the court in creating the mental health privilege. The article then discusses the constitutional basis for the privilege. The article then discusses the different applications of the privilege amongst the states in both civil and criminal cases.

Anna Y. Joo, Broadening the Scope of Counselor-Patient Privilege to Protect the Privacy of the Sexual Assault Survivor, 32 Harv. J. on Legis. 255 (1995).

This article compares a sexual assault survivor's privacy interest, including the right to a testimonial privilege with the confrontation rights of a defendant in order to assist courts and legislatures in striking the optimal balance between the two competing rights. The article explores the four types of mental health privileges available to the courts, contrasting the results experienced in differing states with a focus on Pennsylvania and Massachusetts case law and legislation.

Euphemia B. Warren, She's Gotta Have it Now: A Qualified Rape Crisis Counselor-Victim Privilege, 17 Cardozo L. Rev. 141, (1995).

Following an introduction on rape crisis counseling, this note discusses justifications for rape victim-counselor communications that would permit in camera reviews of any privileged records to ensure the defendant's constitutional rights are protected. The note further outlines the elements for an effective in camera review.

American Law Reports

American Law Reports provide an analysis of specific legal issues including a complete list of each case, in every jurisdiction, that discusses that topic. This series can be found on Westlaw or LexisNexis.

- **B. W. Best, J.D, Annotation, Privilege, in Judicial or Quasi-Judicial Proceedings, Arising From Relationship Between Psychiatrist or Psychologist and Patient, 44 A.L.R.3d 24 (1972).**
  - This A.L.R. was originally published in 1972, but has been frequently updated to include new relevant case law. This annotation focuses extensively on the history of the psychotherapist-patient privilege, its application and its waivers in various possible judicial or quasi judicial proceedings.
- **Erwin S. Barbre, Annotation, Communications to Social Worker as Privileged 50 A.L.R.3d 563 (1973).**
  - This A.L.R. was originally published in 1973, but has been frequently updated to include new relevant case law. This annotation examines cases which discuss whether communications to a social worker are privileged.
- **Diane M. Allen, Annotation, Psychotherapist-Patient Privilege under Federal Common Law, 72 A.L.R. Fed. 395 (1985).**
  - This A.L.R. was originally published in 1985, but has been frequently updated to include new relevant case law. This annotation collects and analyzes the federal cases in which the courts have discussed or decided whether, or under what circumstances, a psychotherapist-patient privilege exists under federal common law.
- **Thomas R. Malia, Annotation, Validity, Construction, and Application of Statute Limiting Physician-Patient Privilege in Judicial Proceedings Relating to Child Abuse or Neglect, 44 A.L.R.4th 649 (1986).**
  - This A.L.R. was originally published in 1986, but has been frequently updated to include new relevant case law. This annotation collects and analyzes the cases in which the courts have discussed the statutes that limit or abrogates the physician-patient or psychotherapist-patient privilege in a judicial proceeding relating to or arising out of alleged child abuse or neglect. Only cases involving statutes enacted for the specific purpose of protecting children from abuse, whether it be in the form of sexual or physical abuse, and neglect are within the scope of this annotation.

Georgia Practice Materials

The following are a few additional Georgia practice materials that discuss the mental health privilege.

- **Paul S. Milich, Courtroom Handbook On Georgia Evidence §P10 (Thomas-West 2010 ed.).**
  - Here, Professor Milich discusses O.C.G.A. § 24-9-21, O.C.G.A. § 43-39-16 and related cases that have influenced further development of the Psychotherapist-Patient privilege in Georgia. A great resource for finding applicable Georgia case law.
- **Jack Goger, Daniel's Georgia Handbook On Criminal Evidence §§ 5.5-5.6 (2009 ed.).**
  - Section 5.5 briefly discusses the application of the privilege to licensed psychologists under O.C.G.A. § 43-39-16. Section 5.6 discussed O.C.G.A. § 24-9-21 and related case law as it applies to the Psychotherapist-Patient privilege.
- **Wayne M. Purdom, Georgia Civil Discovery With Forms § 5.11 (2009-2010 ed.).**
  - This annotation provides information regarding the Psychotherapist-patient privilege and associated case law as it relates to discovery issues. Section 5:1 provides a quick general discussion on privileges.
- **Neal W. Dickert, Georgia Handbook on Foundations and Objections § 2:2 (2010 ed.)**
  - Discusses how to assert and lay a foundation for the privilege and includes some information on the scope of the privilege
- **Michael E. McLaughlin, Herman And McLaughlin Admissibility Of Evidence In Civil Cases: A Manual for Georgia Trial Lawyers § P23 (5th ed.)**

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Interest Groups and Associations

Blogs Containing Related Content

- Justia Blawg Search
  http://lawproxy.gsu.edu:2048/login?url=http://blawgsearch.justia.com/
  This search engine provides a convenient way to search multiple legal blogs for specific topical posts. Some suggested search terms for this topic include: Psychotherapist-Patient Privilege, Mental Health Privilege, and Psychotherapy privilege. NOTE: if the terms you entered do not yield a result, a “page not found" screen will be displayed. You can simply edit your search terms on that page and select search to continue searching using other terms.
  Searches using terms such as rape crisis counseling or sexual assault counseling attempted during the creation of this guide generally pulled information concerning rape or sexual assault cases instead of privilege related materials.
- 5th Circuit Blog - February 13, 2008 Post
  http://circuit5.blogspot.com/2008/02/psychotherapist-patient-privilege-only.html
  Psychotherapist-Patient Privilege Only Applies to Communications Made with Reasonable Expectation of Confidentiality.
  This Post provides discussion on the 5th Circuit decision in United States v. Auster.

Private and Public Associations

Below is a sampling of associations related to the mental health privilege in the United States. A brief description of each organization, pulled from organization’s site, is included, along with a link to that website.

- The National Crime Victim Bar Association
  http://www.victimbar.org/vb/main.aspx?dbID=dash_Home
  Mission Statement: The NCVBA provides technical support to attorneys representing crime victims in civil actions, refers crime victims to lawyers in their local area, and works to increase general awareness about the availability of civil remedies for victims of crime.
- American Association for Justice
  http://www.justice.org/cps/rde/xchg/justice/hs.xsl/default.htm
  The Mission of the American Association for Justice is to promote a fair and effective justice system and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America’s courtrooms. The world's largest trial bar, AAJ promotes justice and fairness for injured persons, safeguards victims' rights.
- American Psychological Association
  http://www.apa.org/index.aspx
  Based in Washington, DC, the American Psychological Association (APA) is a scientific and professional organization that represents psychology in the United States. With 150,000 members, APA is the largest association of psychologists worldwide. The mission of the APA is to advance the creation, communication and application of psychological knowledge to benefit society and improve people’s lives.
  This Association was included for reference to ethics information related to Psychotherapy. Results for specific legal references are very limited.

Interest and Advocacy Groups

The following is a sampling of interest and advocacy groups. Some of the descriptions are taken directly from their publicly accessible website materials. I've also noted, where applicable, how to find information on the site regarding the mental health privilege. Direct website links are also provided.

- The Federal Psychotherapist-Patient Privilege [Jaffee v. Redmond, 518 U.S. 1] History, Documents, and Opinions
  http://www.jaffee-redmond.org/
  The website provides links to the court documents related to Jaffee, numerous articles and links to recent developments.
- Legal Momentum - Women's Legal Defense and Education Fund
  http://www.legalmomentum.org/
  Legal Momentum is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls. Over the past 39 years, Legal Momentum has made historic contributions through litigation and public policy advocacy to secure economic and personal security for women. Current program work is focused on four strategic goals, one of which is expanding rights, justice, and services for victims of violence.
- National Criminal Justice Reference Service
  http://www.ncjrs.gov/
  This site is administered by the Office of Justice Programs, United States Office of Justice. Established in 1972, NCJRS is a federally funded resource offering justice and substance abuse information to support research, policy, and program development worldwide. Performing a site search using terms such as Psychotherapy Privilege will yield related articles and information.
  NCJRS offers extensive reference and referral services to help you find answers to your questions about crime and justice-related research, policy, and practice. Search Questions & Answers to access hundreds of questions related to juvenile and criminal justice, victim assistance, drug policy, and NCJRS services.
- National Sexual Violence Resource Center
  http://www.nsvrc.org/
  The NSVRC is a national information and resource hub for all aspects of sexual violence. The NSVRC staff collects and disseminates a wide range of resources on sexual violence including statistics, research, position statements, statutes, training curricula, prevention initiatives and program information. With these resources, the NSVRC assists coalitions, advocates and others interested in understanding and eliminating sexual violence.
  Based on an initial review, this organization did not contain any specific information on the psychotherapist privilege. However, the website has been included as a reference point for statistical and related informational purposes.
- Women's Law Project
  http://www.womenslawproject.org/
  The Women's Law Project's stated mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, we engage in high-impact litigation, advocacy, and education. Although much of their work is focused on women's rights, they have also championed the rights of sexual assault survivors and thus were included in this list.
- RAIIN: Rape, Abuse and Incest National Network
  http://www.rainn.org/
  The Rape, Abuse & Incest National Network is the nation's largest anti-sexual assault organization. RAINN operates the National Sexual Assault Hotline at 1.800.656.HOPE and the National Sexual Assault Online Hotline at rainn.org, and publicizes the hotline's free, confidential services; educates the public about sexual assault; and leads national efforts to prevent sexual assault, improve services to victims and ensure that rapists are brought to justice.
  A site search using such terms as confidentiality or privilege will pull limited but related mental health privilege information.

Related Federal Government Links

The following is a sampling of related federal government links. The descriptions have been taken from their publicly accessible website materials. I've also noted, where applicable, how to find information on the site regarding the mental health privilege. Direct website links are also provided.

- U.S. Department of Justice, Office for Victims of Crime
  http://www.ojp.usdoj.gov/ovc/
  The Office for Victims of Crime (OVC) was established by the 1984 Victims of Crime Act (VOCA) to oversee diverse programs that benefit victims of crime. The agency supports trainings designed to educate criminal justice and allied professionals regarding the rights and needs of crime victims. A site search using terms such as Psychotherapist and mental health privilege yielded related results.
- National Institute of Justice
  http://www.ojp.usdoj.gov/nij/
  NIJ is the research, development and evaluation agency of the U.S. Department of Justice. They provide objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the state and local levels. A site search using terms such as Psychotherapist returned limited related results.
- U.S. Department of Justice, Office on Violence Against Women
  http://www.ovw.usdoj.gov/
  A search of this website did not yield results related to the mental health privilege. However, this site has been included as a reference to other sexual assault information. The Office on Violence Against Women (OVW), a component of the U.S. Department of Justice, provides national leadership in developing the nation's capacity to reduce violence against women through the implementation of the Violence Against Women Act (VAWA).

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