

NY CLS CPLR § 4508

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Civil Practice Law And Rules (Arts. 1 — 100) >

Article 45 Evidence (§§ 4501 — 4551)

§ 4508. Social worker

(a) Confidential information privileged. A person licensed as a licensed master social worker or a licensed clinical social worker under the provisions of article one hundred fifty-four of the education law shall not be required to disclose a communication made by a client, or his or her advice given thereon, in the course of his or her professional employment, nor shall any clerk, stenographer or other person working for the same employer as such social worker or for such social worker be allowed to disclose any such communication or advice given thereon; except

1. that such social worker may disclose such information as the client may authorize;
2. that such social worker shall not be required to treat as confidential a communication by a client which reveals the contemplation of a crime or harmful act;
3. where the client is a child under the age of sixteen and the information acquired by such social worker indicates that the client has been the victim or subject of a crime, the social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such crime is a subject of inquiry;
4. where the client waives the privilege by bringing charges against such social worker and such charges involve confidential communications between the client and the social worker.

(b) Limitations on waiver. A client who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this section. For purposes of this subdivision:

1. “person” shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and
2. “insurance benefits” shall include payments under a self-insured plan.

History

Add, L 1968, ch 274, § 2, eff May 14, 1968; amd, L 1985, ch 96, § 1, eff July 20, 1985; L 2004, ch 230, § 1, eff July 27, 2004.

Annotations

Notes

Editor’s Notes:

See 1968 note under § 4507.

Amendment Notes:

2004. Chapter 230, § 1 amended:

Sub (a), by deleting “duly registered as a certified” and “his” and “to him” and “the certified” and “the certified”.

2004. Chapter 230, § 1 amended:

Sub (a), par 1, by deleting “a certified”.

2004. Chapter 230, § 1 amended:

Sub (a), par 2, by deleting “a certified”.

2004. Chapter 230, § 1 amended:

Sub (a), par 3, by deleting “the certified” and “certified”.

2004. Chapter 230, § 1 amended:

Sub (a), par 4, by deleting “the certified” and “certified”.

Notes to Decisions

1. Generally

2. Child protection proceedings

3. Paternity at issue

4. Rape victim

5. Wrongful death

6. Medical malpractice

1. Generally

The trial court properly denied a hospital’s motion to suppress a Grand Jury subpoena calling for the hospital’s records, issued as part of an investigation into whether the hospital had a procedure under which various lifesaving and support measures were selectively denied to certain seriously ill patients, since a hospital being investigated by a Grand Jury in connection with possible crimes committed against its patients by the staff may not successfully assert the physician-patient privilege contained in CPLR § 4504 or the social worker-client privilege contained in CPLR § 4508, in that the purpose of those privileges is to protect the patient while

encouraging uninhibited disclosure between patients and their physicians or social workers and not to shield the criminal. In re Grand Jury Proceedings, 56 N.Y.2d 348, 452 N.Y.S.2d 361, 437 N.E.2d 1118, 1982 N.Y. LEXIS 3428 (N.Y. 1982).

Prosecutor's contention that complaining witness' statements to social worker were privileged under CLS CPLR § 4508 was not preserved for appellate review where prosecutor objected to disclosure of statements only on grounds that they were "privileged information" protected by Family Court Act. People v De Jesus, 69 N.Y.2d 855, 514 N.Y.S.2d 708, 507 N.E.2d 301, 1987 N.Y. LEXIS 15904 (N.Y. 1987).

Defendant was not denied opportunity to make record with respect to assertion of statutory social worker-client privilege, even though court did not cite privilege as basis for its ruling denying defendant's Rosario request for witness' statements contained in social worker's notes, where social service agency expressly invoked privilege when producing documents for limited purpose of court's in camera review, and all parties were apprised of invocation prior to court's ruling; once privilege was asserted, it was incumbent on defendant to demonstrate entitlement to material by way of exceptions to privilege. Also, defendant was not entitled, under Rosario rule, to disclosure of prosecution witnesses' statements to social worker since statements were protected from disclosure by confidentiality provision of CLS CPLR § 4508, and social worker's notes containing statements were not in possession of People. People v Tissois, 72 N.Y.2d 75, 531 N.Y.S.2d 228, 526 N.E.2d 1086, 1988 N.Y. LEXIS 1656 (N.Y. 1988).

Statements made through use of sign language by defendant, a deaf-mute, in which he admitted commission of crimes to certified social worker, were not privileged and were therefore improperly excluded from evidence. People v Brooks, 50 A.D.2d 319, 376 N.Y.S.2d 928, 1975 N.Y. App. Div. LEXIS 11475 (N.Y. App. Div. 2d Dep't 1975), rev'd, 42 N.Y.2d 866, 397 N.Y.S.2d 792, 366 N.E.2d 879, 1977 N.Y. LEXIS 2189 (N.Y. 1977).

The statutorily created privileges which attach to communications between a physician and his patient, a psychologist and his client, and a certified social worker and his client (CPLR 4504, 4507, 4508) all share the common purpose of encouraging the patient or client fully to disclose

the nature and details of his illness or emotions without fear of later revelation by one in whom he placed his trust and confidence. Statements made or information given by the custodial parent of an infant to a certified social worker, bearing adversely upon the health, safety and welfare of the infant, are not privileged within the contemplation of CPLR 4508, which protects the confidentiality of communications between a certified social worker and his client, and they are subject to compulsory disclosure. Waiver or suspension of the statutorily created privileges protecting the confidentiality of communications between a physician and his patient, a psychologist and his client, and a certified social worker and his client (CPLR 4504, 4507, 4508) is a drastic remedy which should be granted only upon an evidentiary showing by the party seeking examination of the protected records that a party's physical, mental or emotional condition is in controversy. Where it is demonstrated that invasion of protected communications between a party and a physician, psychologist or certified social worker is necessary and material to a determination of the custody of a minor child, the rule of privilege protecting such communications (CPLR 4504, 4507, 4508) must yield to the dominant duty of the court to guard the welfare of its wards. In a custody proceeding disclosure may not be had of records protected by the privileges which attach to communications between a physician and his patient, a psychologist and his client, and a certified social worker and his client (CPLR 4504, 4507, 4508) unless it is shown that resolution of the custody issue requires revelation of the protected material. The mother of a minor child, who, in a custody proceeding, alleges that the child's father, the custodial parent, is mentally and emotionally unstable, but offers purely conclusory and largely inadmissible opinions as to his condition, is not entitled to disclosure of the records of a counseling agency and a certified social worker at that agency, pertaining to consultations of the child's father with that agency prior to the termination of the parties' marriage, which records are privileged by statute (CPLR 4504, 4507, 4508); disclosure may be had upon a showing that the records are required by the psychiatrist who has been appointed by the court to examine both parties and the child, in aid of a complete evaluation of the father's mental and emotional condition, and whether such material is essential to his diagnosis and prognosis can

best be determined by him. *Perry v Fiumano*, 61 A.D.2d 512, 403 N.Y.S.2d 382, 1978 N.Y. App. Div. LEXIS 9768 (N.Y. App. Div. 4th Dep't 1978).

Confidential statements made to registered social worker are statutorily protected from disclosure. *People v Fields*, 146 A.D.2d 505, 537 N.Y.S.2d 157, 1989 N.Y. App. Div. LEXIS 338 (N.Y. App. Div. 1st Dep't 1989).

Social worker-client privilege did not attach to statement made in presence of police detective, whose presence was known to client. *People v Alaire*, 148 A.D.2d 731, 539 N.Y.S.2d 468, 1989 N.Y. App. Div. LEXIS 4185 (N.Y. App. Div. 2d Dep't 1989).

In proceeding to adjudicate respondent to be person in need of supervision, evidence that respondent twice ran away from group home was not given in violation of client-social worker privilege since instances of running away from group home were established by social agency records admitted in evidence under business entry rule, none of which contained recitals of any communications between respondent and professional staff, and since (1) testimony was given by non-social worker employee of social service agency which coordinated program to make emergency placements for runaways, and (2) nothing suggested that respondent's explanation of her need for assistance (that she had absconded from center) was intended to be given in confidence. *In re Jeanne TT*, 184 A.D.2d 895, 585 N.Y.S.2d 552, 1992 N.Y. App. Div. LEXIS 7987 (N.Y. App. Div. 3d Dep't 1992).

In personal injury action arising from physical altercation between plaintiff and defendant, plaintiff's psychiatric and social worker's records were not discoverable under CLS CPLR § 3121, since plaintiff did not allege any mental injury, and his alleged propensity for violent behavior was not placed in issue by defendant's contention that he was aggressor of their altercation; moreover, privilege under CLS CPLR §§ 4504 and 4508 was not deemed waived simply because defendant contended that plaintiff was aggressor of altercation. *Zimmer v Cathedral Sch.*, 204 A.D.2d 538, 611 N.Y.S.2d 911, 1994 N.Y. App. Div. LEXIS 5308 (N.Y. App. Div. 2d Dep't 1994).

Family court properly found that father willfully violated prior order of disposition requiring that he successfully complete sexual offender treatment program, even though he attended all of program's sessions and completed homework assignments, since he refused to take responsibility for his behavior by admitting that he sexually abused his daughter, and thus was terminated from program for such failure; despite father's assertion that his refusal to make required admission was predicated on his right against self discrimination, he had no grounds for claiming such privilege since he did not have reasonable fear of criminal prosecution if he admitted his transgressions in light of program's therapeutic setting and provisions of CLS CPLR §§ 4507 and 4508. *In re Ashley M.*, 256 A.D.2d 825, 683 N.Y.S.2d 304, 1998 N.Y. App. Div. LEXIS 13593 (N.Y. App. Div. 3d Dep't 1998).

In an appeal by a mother of an award of sole custody and physical residence of the parties' children to their father, the appellate court rejected the mother's contention that the testimony of a school guidance counselor concerning communications made to her by a child who was the subject of an "evaluation team report" should have been stricken from the record; further, although the mother contended that that the testimony should have been stricken because the child did not authorize the disclosure of those communications pursuant to N.Y. C.P.L.R. 4508, because the school guidance counselor was not a certified social worker, § 4508 did not apply. *Matter of Humberstone v Wheaton*, 21 A.D.3d 1416, 801 N.Y.S.2d 868, 2005 N.Y. App. Div. LEXIS 10408 (N.Y. App. Div. 4th Dep't 2005).

Because a patient clearly waived the statutory social worker-patient confidentiality privilege in N.Y. C.P.L.R. 4508 by placing the patient's psychological condition in controversy, the physician was entitled to disclosure of the social worker's notes and tapes; therefore, the trial court erred in granting a protective order to the patient. *Velez v Daar*, 41 A.D.3d 164, 838 N.Y.S.2d 44, 2007 N.Y. App. Div. LEXIS 7280 (N.Y. App. Div. 1st Dep't 2007).

It is inconceivable that the legislature intended to prevent or hinder compliance with Article 6 of the Family Court Act through the enactment of § 4508 of the CPLR. Even if communication between a mother and a social worker met the classic requirement of confidentiality, the

procedural safeguards under CPLR 4508 would have to yield where the prevention of disclosure interfered with the substantive law as set forth in Article 6 of the Family Court Act. *In re Clear*, 58 Misc. 2d 699, 296 N.Y.S.2d 184, 1969 N.Y. Misc. LEXIS 1875 (N.Y. Fam. Ct.), rev'd, 32 A.D.2d 915, 302 N.Y.S.2d 418, 1969 N.Y. App. Div. LEXIS 3318 (N.Y. App. Div. 1st Dep't 1969).

Family counseling agency's records and reports covering consultation, examination, and interviews relating to spouses, who had sought agency's help in an attempt to preserve their marriage, were within ambit of privileges afforded with regard to certified social worker-client relationships, registered psychologist-client relationships, and physician (psychiatrist) patient relationships; such records and reports were not admissible in marriage dissolution proceeding, absent waiver of such privileges by spouses. *Yaron v Yaron*, 83 Misc. 2d 276, 372 N.Y.S.2d 518, 1975 N.Y. Misc. LEXIS 2895 (N.Y. Sup. Ct. 1975).

Defendant's three-month-old child, who defendant was charged with having beaten, was the client of social workers who had discussed the case with defendant and offered counseling to defendant and his wife so that social workers could disclose to the grand jury all pertinent information regarding the suspected crime regardless of any social worker-client privilege. *People v Easter*, 90 Misc. 2d 748, 395 N.Y.S.2d 926, 1977 N.Y. Misc. LEXIS 2145 (N.Y. County Ct. 1977).

Where Welfare Inspector General sought application form prepared by public assistance recipient for community service and social work agency and where information sought related to recipient's marital status and employment history, information sought was not a communication which revealed the "contemplation of a crime or harmful act" under statute providing that certified social worker shall not be required to treat as confidential communication by client which revealed "contemplation of a crime or harmful act," and thus information sought fell within statutory privilege conferred on communications between social worker and client. Statutory privilege conferred on communications between social worker and client must be afforded same standing as that given traditional similar privileges provided by statute, such as privilege respecting communications between attorney and client, physician and patient and clergy and

penitent; to constitute a “waiver” of statutory privilege conferred on communications between social worker and client there must be a clear relinquishment of a known right. Provision of public assistance application by which applicant gave her consent to the Department of Social Services to make such collateral contacts and visits as might be necessary to determine applicant’s eligibility for assistance did not constitute waiver of statutory privilege conferred on communications between social worker and client. Fact that Welfare Inspector General was conducting serious investigation of possible welfare fraud did not preclude public assistance recipient from asserting statutory privilege conferred on communications between social worker and client. Statutory privilege conferred on communications between social worker and client belongs to client and may be asserted by not only individual certified social worker but also by social work agency with which social worker is employed. *Community Service Soc. v Welfare Inspector General*, 91 Misc. 2d 383, 398 N.Y.S.2d 92, 1977 N.Y. Misc. LEXIS 2311 (N.Y. Sup. Ct. 1977), *aff’d*, 65 A.D.2d 734, 411 N.Y.S.2d 188, 1978 N.Y. App. Div. LEXIS 13532 (N.Y. App. Div. 1st Dep’t 1978).

In making application for public assistance, defendants consented to an investigation and use of information supplied by them and thus waived any claim of privilege with respect to information given to establish or maintain eligibility. Privilege afforded under statute that a certified social worker shall not be required to treat as confidential a communication by a client which reveals the contemplation of a crime or harmful act is not limited to communications which reveal the contemplation of a crime or harmful act as distinguished from a communication which in itself involves one of transactional elements in the commission of a crime, and thus prohibition of statute could not preclude introduction of evidence which might show that defendants were perpetrating a fraud upon Department of Social Services. *People v O’Gorman*, 91 Misc. 2d 539, 398 N.Y.S.2d 336, 1977 N.Y. Misc. LEXIS 2353 (N.Y. Sup. Ct. 1977).

Statements made by defendant to a psychiatric social worker employed by a State hospital in Utah during a court-ordered evaluation for the purpose of sentencing on a Utah conviction, defendant having initiated the conversations concerning his involvement in a New York homicide

and been told by the social worker that there would be no confidentiality, are not privileged communications since the fact that the interview was conducted in a State hospital does not give rise to a physician-patient privilege (CPLR 4504) and the social worker-client privilege (CPLR 4508) is inapplicable since the social worker who interviewed defendant was not duly registered under the provisions of article 154 of the Education Law as required by the statute; even assuming that the social worker privilege requirements have been technically met, the statements would still not be privileged since defendant was not the client of the social worker when he made disclosures during the initial interview and defendant thereafter could have been under no misapprehension in regard to confidentiality. *People v Lipsky*, 102 Misc. 2d 19, 423 N.Y.S.2d 599, 1979 N.Y. Misc. LEXIS 2817 (N.Y. County Ct. 1979).

In the absence of any special circumstances, a motion to compel a judgment debtor to furnish the names and addresses of persons constituting his accounts receivable would be granted notwithstanding the fact that the judgment debtor was a certified social worker and the names sought were those of his patients, since CPLR § 4508 does not expressly shield the identity of clients but covers only communication of a client made in the course of the social worker's professional employment. *Scherz v Scherz*, 110 Misc. 2d 137, 442 N.Y.S.2d 41, 1981 N.Y. Misc. LEXIS 3051 (N.Y. Sup. Ct. 1981).

A motion to suppress inculpatory statements made by a juvenile to social records which were incorporated in affidavits by the social workers in support of the juvenile delinquency petition would be denied where the disclosure of statement did not violate the social worker-client privilege of CPLR § 4508, and where the strong public interest in ascertaining the truth of the charges in the juvenile delinquency petition and in the proper functioning of the public child care system required that the privilege be overcome. The need for disclosure to determine respondent's need for treatment outweighed the injury that would inure to the relationship between the affiants and respondent as a result of the disclosure and child care agencies must not be precluded from enlisting the court's authority when serious problems develop. In re

Koretta W., 118 Misc. 2d 660, 461 N.Y.S.2d 205, 1983 N.Y. Misc. LEXIS 3379 (N.Y. Fam. Ct. 1983).

A motion by an authorized child care agency to quash a subpoena issued by the District Attorney calling for the original of all records kept by that agency concerning three children under the age of 16 in connection with crimes alleged to have been perpetrated against them would be denied where the materials sought were not insulated from disclosure by the privileges of attorney-client (CPLR § 4503) and social worker-client (CPLR § 4508) nor by the provisions of Soc Serv Law § 372 where the possible commission of a crime upon the children triggered the exception to the social worker-client privilege against disclosure contained in CPLR § 4508, the attorney-client privilege should yield to the compelling need for the investigation of crimes, the material was not exempted from disclosure as material prepared for litigation and the documents sought were relevant to the investigation which the privilege was not meant to impede. *In re Grand Jury Proceedings Special Investigation 1198/82*, 118 Misc. 2d 683, 461 N.Y.S.2d 186, 1983 N.Y. Misc. LEXIS 3383 (N.Y. Sup. Ct. 1983).

In a manslaughter and reckless driving prosecution in which defendant offered a hospital record into evidence at a suppression hearing for the purpose only of showing his physical condition and treatment as it related to the issue of voluntariness of statements and taking a blood sample, defendant would not have waived the nurse-patient (CPLR § 4504) and social worker (CPLR § 4508) privileges and the District Attorney may not offer at trial the incriminatory and otherwise privileged statements made to nurses and social workers. *People v McHugh*, 124 Misc. 2d 823, 478 N.Y.S.2d 754, 1984 N.Y. Misc. LEXIS 3345 (N.Y. Sup. Ct. 1984).

Fact that social worker is required to report admissions of child sexual abuse to State Child Abuse and Maltreatment Central Register does not constitute waiver of social worker privilege. *People v Bass*, 140 Misc. 2d 57, 529 N.Y.S.2d 961, 1988 N.Y. Misc. LEXIS 351 (N.Y. Sup. Ct. 1988).

In malpractice action arising out of alleged negligence in connection with birth of infant plaintiff who suffered from mental retardation, cerebral palsy and gross motor dysfunction, defendants

were not entitled to disclosure of records of social workers, mental health care providers, social service agencies, and police concerning alleged domestic violence in plaintiff's home, on theory that plaintiff's behavior problems were caused not by defendants' alleged negligence but by trauma of witnessing domestic abuse, as demanded disclosure would conflict with privileges recognized in CLS CPLR §§ 4504, 4507 and 4508; by suing in representative capacity, plaintiff's parents did not put their own histories in issue or otherwise waive their evidentiary privileges. *Siesto by Siesto v Lenox Hill Hosp.*, 167 Misc. 2d 918, 640 N.Y.S.2d 737, 1996 N.Y. Misc. LEXIS 79 (N.Y. Sup. Ct. 1996).

In action for injuries allegedly sustained by infant plaintiffs as result of lead poisoning, defendants were not entitled to discovery of medical records and information as to plaintiffs' parents and sibling from sources including Department of Health and Department of Social Services, in addition to questioning plaintiffs' mother as to sibling's medical history, since neither parents nor sibling were parties to action, nor had they placed their mental or physical condition at issue, and there had not been explicit waiver of privilege as to any nonparty. *Van Epps v County of Albany*, 184 Misc. 2d 159, 706 N.Y.S.2d 855, 2000 N.Y. Misc. LEXIS 122 (N.Y. Sup. Ct. 2000).

During defendant's trial for sex crimes involving her children, the trial court did not err in denying defense counsel access to records of the psychological counseling of the children because those materials were not in the prosecution's possession or control, and, in any event, the court had permitted defendant to question a Department of Social Services caseworker regarding inconsistent statements made by the children and the caseworker's notes were admitted into evidence. The records were also confidential, and the exception to such privilege only stated that a certified social worker "may" be required to testify regarding statements made by a child victim. *People v Dalton*, 27 A.D.3d 779, 811 N.Y.S.2d 153, 2006 N.Y. App. Div. LEXIS 2327 (N.Y. App. Div. 3d Dep't), app. denied, 7 N.Y.3d 754, 819 N.Y.S.2d 880, 853 N.E.2d 251, 2006 N.Y. LEXIS 2192 (N.Y. 2006), app. denied, 7 N.Y.3d 811, 822 N.Y.S.2d 486, 855 N.E.2d 802, 2006 N.Y. LEXIS 3000 (N.Y. 2006).

In an action in which plaintiffs, a teacher's union and a school district social worker, alleged that a policy memorandum, which was issued by the school district's superintendent and instructed staff to report student pregnancies, was unconstitutional, plaintiffs did not suffer an injury in fact as required to establish standing under U.S. Const. art. III, § 2, cl. 1 because (1) there was no imminent danger that the social worker would disclose confidential communications in violation of N.Y. C.P.L.R. § 4508(a); and (2) the policy could not be enforced against plaintiffs where the superintendent did not have rule-making authority under N.Y. Educ. Law § 1711 and there was no indication that the school district's board of education had delegated its rule-making authority to the superintendent under N.Y. Educ. Law § 1709(33). Thus, plaintiffs did not face discipline and termination for failure to comply with the policy. *Port Wash. Teachers' Ass'n v Bd. of Educ.*, 478 F.3d 494, 2007 U.S. App. LEXIS 4262 (2d Cir. N.Y. 2007).

N.Y. C.P.L.R. §§ 4504, 4507, and 4508 were intended to deal with an unauthorized release of confidential information by a person's physician, psychologist, or social worker and, even if violated, an inmate had not stated an actionable claim under 42 U.S.C.S. § 1983 based on those state statutes, when he claimed that his psychiatric records were attached to a pre-sentence report. *Smith v Stanton*, 545 F. Supp. 2d 302, 2008 U.S. Dist. LEXIS 31886 (W.D.N.Y. 2008).

2. Child protection proceedings

In child protection proceeding under CLS Family Ct Act Art 10, children's statements to third persons concerning physical abuse by their mother's paramour were sufficiently corroborated where (1) caseworker testified that paramour admitted spanking children and that, at unannounced visit to house, she saw bruises on younger child in various stages of healing, (2) paramour's sister described bruises on younger child and paramour's striking of older child, (3) paramour's mother acknowledged that she observed younger child with "marks on his back," (4) classroom aide stated that older child several times came to school smelling of urine, (5) school officials expressed both concern about older child's lack of personal hygiene and view that his

behavior indicated physical discipline, and (6) school social worker testified that after older child was placed in foster care, his behavior improved, and he no longer needed restraining. Physical abuse and neglect of 2 children by mother's paramour was sufficiently proved where senior child protective caseworker testified that older child divulged that he and his brother were regularly spanked and that he had been hit on head by paramour, older child's "one-on-one" classroom aide described how boy had portrayed being kicked in stomach by paramour, paramour's sister related conversation in which older child stated that paramour would "bat him on the back of the head," school social worker testified that older child showed how paramour hit him on top of his head, and those revelations were sufficiently corroborated by other testimony. In re Michael "W", 263 A.D.2d 684, 692 N.Y.S.2d 856, 1999 N.Y. App. Div. LEXIS 8052 (N.Y. App. Div. 3d Dep't 1999).

With regard to defendant's conviction on two counts of course of sexual conduct against a child in the second degree and endangering the welfare of a child, the trial court properly denied defendant's request to obtain either the victim's counseling records or the testimony of the victim's counselor for impeachment purposes as the records were privileged and a request to examine privileged records for the purpose of impeaching the general credibility of a witness constituted an impermissible use of confidential material. People v Bassett, 55 A.D.3d 1434, 866 N.Y.S.2d 473, 2008 N.Y. App. Div. LEXIS 7579 (N.Y. App. Div. 4th Dep't 2008), app. denied, 11 N.Y.3d 922, 874 N.Y.S.2d 7, 2009 N.Y. LEXIS 524 (N.Y. 2009).

3. Paternity at issue

Admission of paternity made to social worker by reputed father was not a privileged communication which could not be disclosed in paternity proceeding, both in view of fact that such admission had been made in presence of mother and that disclosure of evidence relevant to a correct determination of paternity was of greater importance than any injury which might inure to relationship between social worker and his clients if such admission was disclosed.

Humphrey v Norden, 79 Misc. 2d 192, 359 N.Y.S.2d 733, 1974 N.Y. Misc. LEXIS 1621 (N.Y. Fam. Ct. 1974).

4. Rape victim

Rape victim did not waive her social worker privilege by testifying on direct examination that as result of incident she had nightmares and “had to go see a counselor for rape victims a number of times” victim was not party to criminal prosecution and did not place her mental condition in issue; thus, People’s failure to produce notes of rape counselor did not constitute Rosario violation. People v Berkley, 157 A.D.2d 463, 549 N.Y.S.2d 392, 1990 N.Y. App. Div. LEXIS 67 (N.Y. App. Div. 1st Dep’t), app. denied, 75 N.Y.2d 917, 555 N.Y.S.2d 35, 554 N.E.2d 72, 1990 N.Y. LEXIS 1501 (N.Y. 1990).

Social worker privilege of CLS CPLR § 4508 operated to prevent disclosure of defendant’s inculpatory admissions at criminal trial involving defendant’s alleged sexual abuse and rape of his infant daughter since (1) statements were made to certified social worker acting in his professional capacity, (2) statements were made to enable social worker to assess defendant’s mental health problems, (3) statements were intended by defendant to be confidential, and (4) information in statements was necessary for treatment by clinic; exception for communications revealing contemplation of crime or harmful act was inapplicable since there was no evidence that defendant told social worker that he would, or even feared he would, continue sexual activity with his daughter in future. People v Bass, 140 Misc. 2d 57, 529 N.Y.S.2d 961, 1988 N.Y. Misc. LEXIS 351 (N.Y. Sup. Ct. 1988).

At trial for rape, sexual abuse and unlawful imprisonment, rape crisis center would be directed to turn over notes of volunteer rape crisis counselor concerning statements made to her by victim regarding incident where volunteer was not “certified social worker,” she was not working in conjunction with certified social worker, and thus her notes did not fall within protection of CLS CPLR § 4508. People v Bridges, 142 Misc. 2d 789, 538 N.Y.S.2d 701, 1989 N.Y. Misc. LEXIS 133 (N.Y. County Ct. 1989).

Trial court properly denied admission of a sexual abuse victim's counseling records from both before and after defendant father was arrested on multiple charges where defendant sought to use the records to impeach the victim's credibility. *People v Higgins*, 12 A.D.3d 775, 784 N.Y.S.2d 232, 2004 N.Y. App. Div. LEXIS 13274 (N.Y. App. Div. 3d Dep't 2004), app. denied, 4 N.Y.3d 764, 792 N.Y.S.2d 7, 825 N.E.2d 139, 2005 N.Y. LEXIS 324 (N.Y. 2005).

Sexual abuse victim did not waive her confidentiality privilege in counseling records with a social worker simply because she testified that she was on medication that would alter her behavior; the victim's mental state was not an issue in the sexual abuse prosecution against defendant father. *People v Higgins*, 12 A.D.3d 775, 784 N.Y.S.2d 232, 2004 N.Y. App. Div. LEXIS 13274 (N.Y. App. Div. 3d Dep't 2004), app. denied, 4 N.Y.3d 764, 792 N.Y.S.2d 7, 825 N.E.2d 139, 2005 N.Y. LEXIS 324 (N.Y. 2005).

5. Wrongful death

In wrongful death action brought by widow of deceased psychiatric patient against hospital, conversation between patient's social worker and patient's widow was not excludable as confidential communication, in view of fact that widow was not social worker's client. *Lichtenstein v Montefiore Hospital & Medical Center*, 56 A.D.2d 281, 392 N.Y.S.2d 18, 1977 N.Y. App. Div. LEXIS 10430 (N.Y. App. Div. 1st Dep't 1977).

6. Medical malpractice

Where plaintiff sued defendants for medical malpractice with respect to their treatment of her after her spouse assaulted her at a shelter for domestic violence victims, the trial court erred in ruling that the shelter's records sought by defendants were privileged; assuming arguendo that the records were prepared by licensed social workers, which did not appear in the record, plaintiff waived any privilege by affirmatively placing her medical and psychological condition in controversy through the broad allegations of injury in her bills of particulars. *Abraha v Adams*,

148 A.D.3d 1730, 51 N.Y.S.3d 754, 2017 N.Y. App. Div. LEXIS 2502 (N.Y. App. Div. 4th Dep't 2017).

Research References & Practice Aids

Cross References:

This section referred to in CLS Soc Ser § 384-b.; CLS Fam Ct Act § 1046.

Evidence, CLS Fam Ct Act § 1046.

Protection of public welfare records, CLS Soc Serv § 136.

Guardianship and custody of destitute or dependent children; commitment by court order, CLS Soc Ser § 384-b.

Federal Aspects:

General rule for privileges in United States Courts, USCS Court Rules, Federal Rules of Evidence, Rule 501.

Jurisprudences:

44 NY Jur 2d Disclosure § 88. .

47 NY Jur 2d Domestic Relations § 1297. .

47A NY Jur 2d Domestic Relations § 1732. .

57 NY Jur 2d Evidence and Witnesses § 3. .

58 NY Jur 2d Evidence and Witnesses § 456. .

58A NY Jur 2d Evidence and Witnesses §§ 900., 901. .

81 Am Jur 2d, Witnesses §§ 453., 541., 542.

Law Reviews:

Toward a New York evidence code: some notes on the privileges. 19 N.Y.L. Sch. L. Rev. 791.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4508, Social Worker.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings §§ 19.05, 19.11, 19.12, 31.10, 32.03; 3 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 38A.06; 4 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 65.07.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 35.04, 35A.05; 4 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 66.09.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 20.02. Scope of disclosure.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 12.06; 2 New York Practice Guide: Domestic Relations § 34.10.

LexisNexis Practice Guide New York e-Discovery and Evidence § 9.05. Objecting Based on Privilege.

Matthew Bender's New York AnswerGuides:

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LexisNexis AnswerGuide New York Civil Litigation § 10.04. Protecting Privileged Communications.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 50.13.

Matthew Bender's New York Evidence:

1 Bender's New York Evidence § 101.09. Privileges.

4 Bender's New York Evidence § 160.07. Social Worker-Client Privilege.

Annotations:

Communications to social worker as privileged. 50 ALR3d 563.

Confidentiality of records as to recipients of public welfare. 54 ALR3d 768.

Constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's communications to sexual counselor. 43 ALR4th 395.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 ALR Fed 259.

Matthew Bender's New York Checklists:

Checklist for Protecting Privileged Communications LexisNexis AnswerGuide New York Civil Litigation § 10.02.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4507:1 et seq.

LexisNexis Forms FORM 75-CPLR 4508:1.—Waiver of Privileged Communication Made to Licensed Social Worker.

LexisNexis Forms FORM 75-CPLR 4508:2.—Affidavit in Support of Motion to Quash Subpoena Requesting Production of Social Worker's Reports Concerning Parties' Marital Difficulties.

Texts:

New York Criminal Practice Ch 34.

1 New Appleman New York Insurance Law § 12.06.

Bogacz, New York Juvenile Delinquency Practice (1998, LLP) pp 157, 185.

NY Pattern Jury Instructions 3d, PJI 1:76.

1 New York Trial Guide (Matthew Bender) §§ 7.23, 7.51; 3 New York Trial Guide (Matthew Bender) §§ 51.01, 51.12, 51.15.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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