

NY CLS CPLR § 4507

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 45 Evidence (§§ 4501 — 4551)

§ 4507. Psychologist

The confidential relations and communications between a psychologist registered under the provisions of article one hundred fifty-three of the education law and his client are placed on the same basis as those provided by law between attorney and client, and nothing in such article shall be construed to require any such privileged communications to be disclosed.

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 section:

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 1984, ch 913, § 2, eff Oct 5, 1984.

Annotations

Notes

Revision Notes;

[1968] This amendment recommended by the Law Revision Commission. See Leg. Doc. (1968) No. 65 (I). Its purpose was to transfer Education Law, §§ 7611 and 7710 to article 45 of the CPLR so that all statutory provisions relating to privileged communications may be located in one place.

Notes to Decisions

Defendant, who testified in support of his justification defense that stab wounds on his body were inflicted by the decedent for whose murder he was being tried, did not thereby waive the psychologist-client privilege established by CPLR § 4507; it was, therefore, reversible error to permit the hospital psychologist, who interviewed defendant in order to determine whether he was suicidal, to testify, over defendant's objection and claim of privilege, that defendant had stated that his stab wounds were self-inflicted. CPLR § 4507 provides that "[t]he confidential relations and communications between a psychologist . . . and his client are placed on the same basis as those provided by law between attorney and client," and a party who testifies in his or her own behalf may not be cross-examined concerning statements to his or her attorney, nor may the attorney be called as a witness to such statements, nor will the courts imply a waiver of the privilege from the client taking the stand in his or her own behalf. *People v Wilkins*, 65 N.Y.2d 172, 490 N.Y.S.2d 759, 480 N.E.2d 373, 1985 N.Y. LEXIS 15868 (N.Y. 1985).

In divorce action, defendant husband waived his right to psychologist-client privilege by actively contesting custody and thereby putting his mental and emotional well-being into issue. *Baecher v Baecher*, 58 A.D.2d 821, 396 N.Y.S.2d 447, 1977 N.Y. App. Div. LEXIS 12994 (N.Y. App. Div. 2d Dep't 1977), app. denied, 43 N.Y.2d 645, 1978 N.Y. LEXIS 2530 (N.Y. 1978).

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. 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. 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. *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).

CLS CPLR § 4507 is rule of evidence and does not create cause of action. *Oringer v Rotkin*, 162 A.D.2d 113, 556 N.Y.S.2d 67, 1990 N.Y. App. Div. LEXIS 6797 (N.Y. App. Div. 1st Dep't 1990).

In civil damage action brought by molested child, admitted child molester should be compelled to respond to deposition questions regarding fact of psychiatric treatment, as distinguished from content of such treatment, since privilege of CLS CPLR §§ 4504 and 4507 does not extend to mere fact that treatment was sought. *Child C. v Fleming School*, 179 A.D.2d 460, 578 N.Y.S.2d 185, 1992 N.Y. App. Div. LEXIS 238 (N.Y. App. Div. 1st Dep't 1992).

Court properly dismissed complaint alleging that state negligently released copy of claimant's psychiatric records to attorney who represented her husband in contested child custody proceeding since (1) CLS Men Hyg § 33.13 authorizes disclosure of such records on court order, (2) claimant was notified of subpoenas from husband's attorney and did not attempt to have them quashed, or records redacted, (3) claimant was deemed to have waived any privilege against disclosure she may have had under CLS CPLR § 4507 when she sought to maintain custody of her children, whose welfare was paramount, and (4) there was no indication that husband or his attorney showed file to anyone who was unauthorized to see it; claimant's damages stemmed, not from attorney's lack of authority to view her file, but from her unfounded fears regarding its possible improper use. *Ace v State*, 207 A.D.2d 813, 616 N.Y.S.2d 640, 1994 N.Y. App. Div. LEXIS 8883 (N.Y. App. Div. 2d Dep't 1994), *aff'd*, 87 N.Y.2d 993, 642 N.Y.S.2d 855, 665 N.E.2d 656 (N.Y. 1996).

Reversal of defendant's conviction was not warranted by trial court's refusal to provide defendant with complete examination reports, prepared under CLS CPL Art 730, of accomplice who testified for prosecution, where defendant failed to make sufficient showing to overcome confidentiality of reports under CLS CPLR § 4507. *People v Cohen*, 242 A.D.2d 473, 662 N.Y.S.2d 310, 1997 N.Y. App. Div. LEXIS 9024 (N.Y. App. Div. 1st Dep't), *app. denied*, 91 N.Y.2d 871, 668 N.Y.S.2d 569, 691 N.E.2d 641, 1997 N.Y. LEXIS 4492 (N.Y. 1997).

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).

Defendants were not entitled to production of plaintiff's psychiatric records where amended complaint eliminated causes of action for intentional infliction of emotional distress and defamation, leaving only contract and tortious interference claims, and thus plaintiff had removed affirmative interjection of her mental or emotional state from case. *Brown v Telerep, Inc.*, 263 A.D.2d 378, 693 N.Y.S.2d 34, 1999 N.Y. App. Div. LEXIS 7808 (N.Y. App. Div. 1st Dep't 1999).

Physician was not denied due process as to his cross-examination of patient due to his inability to obtain patient's counseling records, despite fact that patient testified as witness in underlying disciplinary proceeding, since witness did not thereby place her psychological status in issue, nor did it constitute waiver of privilege between her and her treating therapist. *St. Lucia v Novello*, 284 A.D.2d 591, 726 N.Y.S.2d 488, 2001 N.Y. App. Div. LEXIS 6001 (N.Y. App. Div. 3d Dep't 2001).

Report from the psychologist was directly addressed to the bishop, and any arrangement between those two did not create a psychologist-patient relationship. In any event, having agreed to the direct dialogue between the bishop and the psychologist, the priest waived any privilege. *Harmon v Diocese of Albany*, 204 A.D.3d 1270, 167 N.Y.S.3d 601, 2022 N.Y. App. Div. LEXIS 2503 (N.Y. App. Div. 3d Dep't 2022).

§ 4507. Psychologist

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).

The regulatory framework underlying the Medicaid program does not grant the Deputy Attorney-General for Medicaid Fraud Control, or the Department of Social Services, the right of unlimited access to confidential medical and psychological records of Medicaid patients as a matter of routine since, in the absence of an express statutory provision excepting the department or the Deputy Attorney-General from the psychologist-client privilege (CPLR 4507), Medicaid patients cannot be required to leave their expectations of privacy at the clinic door merely because they are too poor to afford a private physician; however, petitioner psychologist is required to produce his records sought in the subpoena duces tecum pertaining to his Medicaid billings for the named patients, such records being unlikely to reflect "confidential relations and communications" and thus not covered by the psychologist-client privilege, since the strong State interest in preventing Medicaid fraud outweighs the interests of the named patients in keeping their records a private matter between themselves and their psychologist and, in addition, facts which are plainly observable by a layman, such as the dates and times of visits and the fees charged, are not within the privilege; petitioner's assertion of his Fifth Amendment rights is premature since the privilege against self incrimination may not be asserted or claimed in advance of questions actually propounded. *Doe v Hynes*, 104 Misc. 2d 398, 428 N.Y.S.2d 810, 1980 N.Y. Misc. LEXIS 2287 (N.Y. Sup. Ct. 1980).

Psychiatric and psychological examination and evaluation records pertaining to an infant student, for use in an administrative appeal taken by the student's parents, pursuant to Educ Law § 4404, to review a recommendation of the school district's committee on the handicapped,

although partially admissible in evidence at the de novo administrative hearing required by § 4404, fall within the privilege for confidential communications between psychologist and client, under CPLR § 4507, which would preclude release of the information sought over the objection of one of the student's parents. *In re Handicapped Child*, 118 Misc. 2d 137, 460 N.Y.S.2d 256, 1983 N.Y. Misc. LEXIS 3279 (N.Y. Sup. Ct. 1983).

Psychologist husband in matrimonial action would not be compelled to disclose to wife identities of patients who made payments to him in cash, which were not reported to government, since identities of patients were privileged and confidential pursuant to CLS CPLR § 4507. *Frederick R. C. v Helene C.*, 153 Misc. 2d 660, 582 N.Y.S.2d 926, 1992 N.Y. Misc. LEXIS 115 (N.Y. Sup. Ct. 1992).

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 in which plaintiff alleged that he suffered psychological and emotional harm as result of defendants' defamatory conduct, necessitating visits with family counselor who had also provided pre-incident services to him and his family, psychologist-patient privilege did not bar disclosure of redacted pre-incident family counseling records; communications to family counselor were integral to defendants' preparation of defense, and benefits to be gained from limited disclosure of otherwise privileged communications outweighed injury to psychologist-

client relationship. *LeVien v La Corte*, 168 Misc. 2d 952, 640 N.Y.S.2d 728, 1996 N.Y. Misc. LEXIS 87 (N.Y. Sup. Ct. 1996).

Psychiatrists fall within ambit of CLS CPLR § 4504, which includes physicians and various medical personnel; CLS CPLR § 4507 is limited to psychologists. *People v Sanders*, 169 Misc. 2d 813, 646 N.Y.S.2d 955, 1996 N.Y. Misc. LEXIS 264 (N.Y. Sup. Ct. 1996).

Husband's assertion, in a custody matter, that production of the husband's therapist's testimony or notes was barred by the psychologist-client privilege had no merit because the husband waived the privilege by actively contesting custody, as, by doing so, the husband placed the husband's mental and emotional well-being at issue. *A.L. v C.K.*, 866 N.Y.S.2d 514, 21 Misc. 3d 933, 240 N.Y.L.J. 81, 2008 N.Y. Misc. LEXIS 6010 (N.Y. Sup. Ct. 2008).

When, in a custody matter, a wife sought to depose a husband's therapist and production of the therapist's notes, it was appropriate to require the therapist's court testimony, subject to objection and argument on relevancy, because a deposition of the therapist, without court supervision, provided a potential for abuse, as there could be areas of that therapeutic relationship that were not relevant to the custody issues, and an order requiring disclosure of all the therapist's notes would be too broad, but the notes could be germane to trial preparation, if the wife called the therapist to testify, so it was appropriate for the court to conduct an in camera inspection of the notes. *A.L. v C.K.*, 866 N.Y.S.2d 514, 21 Misc. 3d 933, 240 N.Y.L.J. 81, 2008 N.Y. Misc. LEXIS 6010 (N.Y. Sup. Ct. 2008).

Because the notes and records of a child's psychologists were subject to the privileges in N.Y. C.P.L.R. 4504 and 4507, pursuant to N.Y. C.P.L.R. 3103, the court determined that it was in the child's best interests that neither the parties nor their counsel have access to the notes and records and that all such notes and records in their possession be returned to the provider or given to the child's attorney for immediate destruction. *Liberatore v Liberatore*, 955 N.Y.S.2d 762, 37 Misc. 3d 1034, 2012 N.Y. Misc. LEXIS 4925 (N.Y. Sup. Ct. 2012).

Pastor's and an assistant pastor's medical/psychological reports were privileged under N.Y. C.P.L.R. 4504 and 4507; the victim's negligent supervision claim against the pastor did not implicate the pastor's sexual conduct and therefore, documents pertaining to his care, treatment and counseling for improper sexual conduct were not relevant. *Krystal G. v Roman Catholic Diocese of Brooklyn*, 933 N.Y.S.2d 515, 34 Misc. 3d 531, 2011 N.Y. Misc. LEXIS 4903 (N.Y. Sup. Ct. 2011).

DA was entitled to information pertaining to the admission, treatment, mental, and physical condition of defendant because, while the Mental Hygiene Law expressly prevented disclosure, defendant requested a hearing, and the need for the level of disclosure requested by the DA did not significantly outweigh defendant's right to confidentiality, the DA could examine defendant's complete psychiatric record, and if necessary, interview a member of the psychiatric committee who evaluated and diagnosed defendant in connection with the underlying proceeding, thus eliminating any need to disturb the psychotherapist-patient privilege. *Matter of K.M.*, 51 Misc. 3d 322, 22 N.Y.S.3d 357, 2016 N.Y. Misc. LEXIS 70 (N.Y. Sup. Ct. 2016).

Parolee's rights were violated when a psychiatrist was permitted to testify, during a revocation proceeding, to confidential information he acquired in attending to the parolee in a professional capacity because the parolee did not waive the physician-patient privilege, there was no court order requiring disclosure, and there was no finding that the interests of justice significantly outweighed the need for confidentiality; the parolee was entitled to a writ of habeas corpus. *People ex rel. Davis v Warden, Anna M. Kross Ctr.*, 51 Misc. 3d 849, 26 N.Y.S.3d 452, 2016 N.Y. Misc. LEXIS 685 (N.Y. Sup. Ct. 2016).

Alleged child victim of sexual abuse by a Catholic priest was entitled to production of documents in the priest's personnel file pertaining to his treatment for sexual misconduct; the privilege asserted by the Diocese belonged to the priest, and the privilege was destroyed when the records were provided by the priest to his employer. *Doe v Haight*, 70 Misc. 3d 715, 139 N.Y.S.3d 476, 2020 N.Y. Misc. LEXIS 10174 (N.Y. Sup. Ct. 2020).

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).

Trial court's refusal to conduct an in camera inspection of an eyewitness's psychiatric records and refusal to permit cross-examination regarding the eyewitness's mental health history did not violate an inmate's Sixth Amendment right of confrontation because the eyewitness had an expectation of confidentiality, the prosecution represented that the eyewitness suffered from no serious psychiatric problems that would have affected the eyewitness's perception, and evidence of the eyewitness's psychiatric condition was not necessary to evaluate whether the eyewitness's testimony regarding an assault was credible. *Drake v Woods*, 547 F. Supp. 2d 253, 2008 U.S. Dist. LEXIS 29570 (S.D.N.Y. 2008).

Research References & Practice Aids

Cross References:

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

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 §§ 70., 84., 164. .

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

48 NY Jur 2d Domestic Relations § 2356. .

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

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

58A NY Jur 2d Evidence and Witnesses §§ 855., 898., 899. .

81 Am Jur 2d, Witnesses §§ 445., 452., 456.

24 Am Jur Proof of Facts 3d 123., Proof of Unauthorized Disclosure of Confidential Patient Information by a Psychotherapist.

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. 4507, Psychologist.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 31.10; 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 § 9.06. Guardian of Incapacitated Adult.

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:

Lexis Nexis AnswerGuide New York Civil Disclosure § 8.17. Asserting Psychologist Privilege.

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 § 160.06. Psychologist-Client Privilege.

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

Annotations:

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient. 44 ALR3d 24.

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 4506:1 et seq.

LexisNexis Forms FORM 75-CPLR 4507:1.—Waiver of Privileged Communication Made to Psychologist.

LexisNexis Forms FORM 75-CPLR 4507:2.—Affidavit in Support of Motion to Quash Subpoena Directing Production of Psychologist's Records.

Texts:

New York Criminal Practice Ch 34.

1 New Appleman New York Insurance Law § 12.06.

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

3 New York Trial Guide (Matthew Bender) §§ 51.01, 51.11, 51.12, 51.15.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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