

EV 2.7. *Psychotherapist-Patient Privilege – Mil.R.Evd. 513*

Mil.R.Evd. 513 established this privilege in the military. A patient has the privilege to prevent the disclosure of any confidential communications made between the patient and a psychotherapist, or an assistant to the psychotherapist, if the communication was made to facilitate diagnosis or treatment of the patient's mental health condition. Patient records that pertain to any such communications between a patient and a psychotherapist are included in the privilege.

Psychotherapist is defined as a psychiatrist, clinical psychologist, or any clinical social worker licensed to provide mental health services in any state, territory or possession of the United States. The privilege may be claimed by the patient, or by the psychotherapist on behalf of the patient. The rule has eight (8) exceptions to the privilege, some seemingly very broad. There is no privilege when:

1. The patient is dead
2. The communication is evidence of spouse abuse, child abuse or neglect, or in a proceeding when one spouse is charged with a crime against the other spouse
3. Federal law, state law, or service regulation imposes a duty to report information contained in a communication.
4. The psychotherapist believes that a patient's mental condition makes the patient a danger to any person, including the patient.
5. The communication clearly contemplated the commission of a future crime or fraud, or the psychotherapist's services are sought to assist anyone in planning or committing what the patient knew or reasonably should have known to be a crime or fraud.
6. It is necessary to ensure the safety and security of military personnel, military dependents, military property, classified information or the accomplishment of a military mission.
7. When an accused offers statements or other evidence concerning his mental condition in defense, extenuation or mitigation.
8. The admission or disclosure of the communication is constitutionally required.

It is ***highly recommended*** that when a legal officer identifies communications that are privileged under this rule, he or she seek the assistance of a judge advocate before applying any of the exceptions to force the disclosure of the communication in question.

EV 2.8. *Classified information - Mil.R.Evid 505.*

As a general rule, classified information is privileged from disclosure if disclosure would be detrimental to national security. Classified information is any information or material that has been determined by the United States Government, pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security. The privilege may be invoked *only* by the head of the executive or military department having control over the matter. When faced with a request for disclosure of classified information, a convening authority should withhold the information and seek the advice of the trial counsel or staff judge advocate. Improper release of classified information waives the privilege and could detrimentally affect national security.

EV 2.9. *Voluntary disclosure for drug abuse rehabilitation.*

Voluntary self-referral for counseling, treatment, or rehabilitation is a one-time procedure that enables drug-dependent Sailors to obtain help without risk of disciplinary action. Disclosure of *use or possession incident to use* will be considered confidential as long as the disclosure is solely to obtain assistance under the self-referral program. There is no confidentiality for disclosure of drug distribution. Any evidence obtained directly or derivatively from a qualified disclosure may not be used at disciplinary proceedings, on the issue of characterization of service at