

A plaintiff brought a diversity action in State A federal court against a defendant, a spinal surgeon, alleging medical malpractice. The plaintiff claims that the defendant ignored established medical guidelines while performing a procedure on the plaintiff, causing her ongoing and debilitating back pain. The defendant contends that the plaintiff's back pain is attributable to her failure to follow recovery instructions. The defendant has filed a motion to compel production of medical records from the plaintiff's family physician that contain a statement by the plaintiff that her back pain began after she picked up her child against the defendant's recovery instructions. The plaintiff has objected, citing the physician-patient privilege recognized under State A law.

Should the court uphold the plaintiff's privilege claim?

- A. No, because the physician-patient privilege is not applicable in federal proceedings.
- B. No, because the plaintiff's physical condition is at issue.
- C. Yes, because State A recognizes the physician-patient privilege.
- D. Yes, provided the statement was made for the purpose of obtaining medical treatment.

Explanation:

Physician-patient privilege

Applicability	Not recognized by federal common law, which applies in federal-question suits Typically recognized by state law, which applies in federal diversity suits
Scope	Protects confidential communications between patient & physician made for purpose of obtaining medical treatment <i>unless</i> : patient's physical condition is at issue communication was part of crime or tort dispute between physician & patient patient contractually waived privilege
Privilege holder	Patient holds privilege until his/her death, then privilege terminates

The **physician-patient privilege** protects confidential communications between a patient and a physician made for the purpose of obtaining medical treatment. [Federal common law](#), which generally governs privilege claims in federal court, does not recognize this privilege. But **state rules on privilege** must be applied when a federal suit is based on [diversity jurisdiction](#) (as seen here). Since State A recognizes the physician-patient privilege, it *could* apply in this federal diversity action (**Choice A**).

However, even when recognized by state law, the physician-patient privilege is **inapplicable** in the following circumstances:

the patient's **physical condition is at issue**
the communication was part of the **commission of a crime or tort**
a **dispute** exists between the **physician and patient** *or*
the patient contractually **waived** the privilege.

Here, the plaintiff's physical condition is at issue because she alleges that her back pain was caused by the defendant's failure to follow established medical guidelines. The statements in the family physician's medical records are relevant to this issue because they suggest that the pain instead resulted from the plaintiff's failure to follow recovery instructions. Therefore, the plaintiff's privilege claim should *not* be upheld (**Choices C & D**).

Educational objective:

The physician-patient privilege, if recognized by state law, applies in federal diversity suits *unless* (1) the patient's physical condition is at issue, (2) the patient-physician

communication was part of a crime or tort, (3) there is a dispute between the patient and physician, or (4) the patient contractually waived the privilege.

References

Fed. R. Evid. 501 (privileges).

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