

A man was prosecuted in federal court for making threats against the President of the United States. The man was a voluntary patient in a private psychiatric hospital and told a nurse, shortly before the President came to town, that he planned to shoot the President. The nurse reported the threat to FBI agents. The man filed a motion to prevent the nurse from testifying.

Is the man's motion likely to be granted?

- A. No, because the man had not been committed involuntarily by court order.
- B. No, because the statement was not within any privilege.
- C. Yes, because the nurse violated a confidence in reporting the statement.
- D. Yes, because the statement was made in a medical setting.

Explanation:

Psychotherapist-patient privilege

Confidential communication between psychotherapist/social worker & patient protected if made during the course of diagnosis or treatment of mental/emotional condition *unless*:
patient's mental condition at issue

communication made during court-ordered mental exam *or*

communication introduced at involuntary-commitment proceeding

Patient holds privilege & psychotherapist must assert in patient's absence

A privilege protects confidential communications from disclosure, discovery, or admission in a legal proceeding. Under Federal Rule of Evidence 501, claims of privilege are generally governed by the common law.* For instance, the common law **psychotherapist-patient privilege** protects confidential communications **between a psychotherapist** (ie, a psychologist or psychiatrist) or social worker and a **patient** made during the course of **treatment or diagnosis**.

Here, the psychotherapist-patient privilege is implicated because the man is a patient in a psychiatric hospital. But his statement—ie, the threat against the President—does not fall within that privilege because it was not made to a psychotherapist or social worker OR during treatment or diagnosis. Therefore, though the nurse may have violated a confidence in reporting the statement, the man's motion is unlikely to be granted **(Choice C)**.

*Common law governs claims of privilege in federal court unless (1) the Constitution, a federal statute, or a rule provides otherwise or (2) the suit is based on [diversity jurisdiction](#) so state rules on privilege must be applied.

(Choice A) Involuntary commitment is not required to protect a confidential communication under the psychotherapist-patient privilege.

(Choice D) The statement *was* made in a medical setting. But this alone is not a basis to prevent the nurse from testifying about the man's threat against the President.

Educational objective:

The psychotherapist-patient privilege applies to confidential communications (1) between a psychotherapist/social worker and a patient (2) made during the course of treatment or diagnosis.

References

Fed. R. Evid. 501 (privilege in general).

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