

A plaintiff sued a defendant in federal court for allegedly violating the plaintiff's civil rights. The plaintiff claims that the defendant's actions caused him ongoing mental and emotional distress. The defendant has filed a motion to compel production of the plaintiff's psychiatric therapy session notes. The plaintiff has objected, citing the psychotherapist-patient privilege.

Should the court uphold the plaintiff's privilege claim?

- A. No, because federal common law does not recognize the psychotherapist-patient privilege.
- B. No, because the plaintiff's mental condition is at issue.
- C. Yes, because the plaintiff's claim is based on federal law.
- D. Yes, because the records contain communications made during psychiatric treatment.

Explanation:

Psychotherapist-patient privilege

General rule Protects confidential communications between patient & psychotherapist or social worker made during course of treatment or diagnosis

Exceptions Protection does not apply when:

communication was result of court-ordered exam
case is commitment proceeding against patient *or*
patient's mental condition at issue

Under Federal Rule of Evidence 501, claims of privilege in federal cases are generally governed by federal common law.* Federal common law **recognizes the psychotherapist-patient privilege (Choice A)**. This privilege protects confidential communications between a patient and a psychotherapist (ie, psychologist, psychiatrist) or social worker made during the course of treatment or diagnosis. However, it **does not apply** when:

the communication was the result of a **court-ordered exam**
the case is a **commitment proceeding** against the patient *or*
the patient's **mental condition is at issue**.

Here, the plaintiff claims that the defendant's actions caused him ongoing mental and emotional distress—thereby placing his mental condition at issue. As a result, the psychotherapist-patient privilege does *not* apply in this federal suit, and the court should deny the plaintiff's claim of privilege as to the psychiatric therapy session notes (**Choices C & D**).

*Federal 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.

Educational objective:

Federal common law recognizes the psychotherapist-patient privilege. But the privilege does not apply when (1) the communication resulted from a court-ordered exam, (2) the case is a commitment proceeding against the patient, or (3) the patient's mental condition is at issue.

References

Fed. R. Evid. 501 (privileges).

