

A plaintiff sued a defendant for damages for physical injuries allegedly caused by the defendant's violation of the federal civil rights law. The incident occurred wholly within State A, but the case was tried in federal court. The State A code says, "The common law privileges are preserved intact in this state."

At trial, the defendant called the plaintiff's physician to testify to confidential statements made to her by the plaintiff in furtherance of his medical treatment for the injuries allegedly caused by the defendant. The plaintiff objects, claiming a physician-patient privilege.

What law applies here and how should the court rule on the plaintiff's privilege claim?

- A. Federal law applies and the court should recognize the plaintiff's claim of privilege.
- B. Federal law applies and the court should reject the plaintiff's claim of privilege.
- C. State law applies and the court should recognize the plaintiff's claim of privilege.
- D. State law applies and the court should reject the claim of privilege.

Explanation:

Common-law privileges

Attorney-client	Communications between attorney & client made to obtain or provide legal assistance for client Client holds privilege forever—even after client is no longer represented or dies
Work product	Materials prepared by or for attorney in preparation for litigation
Spousal	Marital communications – communications between spouses <i>during</i> marriage Both spouses hold privilege—even after marriage has ended Spousal immunity – shields spouse from testifying against criminal defendant-spouse about events that occurred <i>before or during</i> marriage
Psychotherapist-patient	Witness-spouse holds privilege until marriage ends Communications between psychotherapist (or clinical social worker) & patient made for diagnosis or treatment for mental or emotional condition Patient holds privilege & psychotherapist must assert in patient's absence
Religious	Communications between clergy member & penitent Penitent holds privilege & clergy member must assert in penitent's absence

*Federal courts apply common law privileges except in diversity cases where state rules apply.

When a claim **arises under federal law** (eg, a federal civil rights law), **federal law applies** to both substantive and procedural issues. As a result, the court should only recognize the plaintiff's claim of privilege if it involves a federal common law privilege (**Choices C & D**). And since there is **no physician-patient privilege** under federal law, the court should reject the plaintiff's claim of privilege (**Choice A**).

Educational objective:

Federal rules of privilege apply to claims arising under federal law. However, the physician-patient privilege is not recognized under federal law.

References

Fed. R. Evid. 501 (federal common law privilege).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.