

5.07. Psychologist (CPLR 4507)

The confidential relations and communications between a psychologist registered under the provisions of article one hundred fifty-three of the education law and his client are placed on the same basis as those provided by law between attorney and client, and nothing in such article shall be construed to require any such privileged communications to be disclosed.

A client who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this section. For purposes of this section:

1. “person” shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and

2. “insurance benefits” shall include payments under a self-insured plan.

Note

This rule is reproduced verbatim from CPLR 4507. (*See Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 4507.*)

The underlying premise of the psychologist-client privilege is that “confidentiality is the essential ingredient for successful psychotherapy” (*Frederick R.C. v Helene C.*, 153 Misc 2d 660, 662 [Sup Ct, Suffolk County 1992]). The privilege as created by CPLR 4507 is analogized to the attorney-client privilege (*People v Wilkins*, 65 NY2d 172, 178 [1985] [privilege was placed “on the same footing as that between attorney and client”]). Thus, the subject communications to be privileged must have been made in confidence and for the purpose of obtaining the psychologist’s professional services. (*See Robert A. Barker & Vincent C. Alexander, Evidence in New York State and Federal Courts § 5:22 [2d ed].*)

For the privilege to be invoked, CPLR 4507 requires the psychologist to be registered under Education Law article 153. Thus, the privilege does not extend to psychologists who are not licensed or authorized to practice in New York.

The psychologist's client may waive the privilege, either expressly or impliedly. (*See e.g. Matter of Charles RR.*, 166 AD2d 763, 764 [3d Dept 1990].) However, CPLR 4507 precludes a finding of waiver of the privilege when the client authorizes disclosure in order to obtain insurance benefits.

Statutory exceptions to CPLR 4507 are set forth in Family Court Act § 1046 (a) (vii) (no privilege in child abuse or neglect proceedings); Social Services Law §§ 413 and 415 (cases of suspected child abuse or maltreatment must be reported in writing and such written reports are admissible in any proceedings relating to child abuse or maltreatment); Social Services Law § 384-b (3) (h) (no privilege in proceedings for guardianship and custody of destitute or dependent children); Mental Hygiene Law § 81.09 (d) (court may authorize court evaluator's inspection of psychological records of person alleged to be incapacitated and order "such further disclosure of such records as the court deems proper"); and Mental Hygiene Law § 33.13 (c) (1) (court may order disclosure of mental health records in specified facilities upon finding that interests of justice significantly outweigh need for confidentiality).

A privilege may be breached in a criminal proceeding when necessary to enforce a constitutional right of a defendant. (*See Pennsylvania v Ritchie*, 480 US 39 [1987]; *People v Bridgeland*, 19 AD3d 1122, 1125 [4th Dept 2005] [where a witness's credibility was "crucial" and there was a good faith basis to believe that her testimony was false, the psychologist privilege "must yield to defendant's constitutional right of confrontation"]; *People v Jaikaran*, 95 AD3d 903, 904 [2d Dept 2012]; *cf. People v McCray*, 23 NY3d 193, 198 [2014] [the trial court properly denied disclosure of confidential mental health records after the court conducted an in camera review of the records and determined the "defendant's interest in obtaining the records to be outweighed by the complainant's interest in confidentiality; and defendant's interest could be outweighed only if there was no reasonable possibility that the withheld materials would lead to his acquittal"].)