



NEW JERSEY ASSOCIATION for JUSTICE^{Inc.}

Formerly the Association of Trial Lawyers of America - New Jersey (ATLA-NJ)

PRESIDENT

Thomas M. Comer, Monmouth
Lomurro, Munson, Comer, Brown & Schottland
100 Willow Brook Road, Suite 150
Freehold, NJ 07728

PRESIDENT-ELECT

Daniel E. Rosner, Cumberland

1ST VICE PRESIDENT

Michael G. Donahue, III, Mercer

2ND VICE PRESIDENT

Eric G. Kahn, Union

3RD VICE PRESIDENT

Lynne M. Kizis, Middlesex

TREASURER

Kevin M. Costello, Burlington

SECRETARY

Edward P. Capozzi, Bergen

ASST. SECRETARY

Kathleen M. Reilly, Hudson

PARLIAMENTARIAN

James S. Lynch, Bergen

IMMEDIATE PAST PRESIDENT

Francisco J. Rodriguez, Hudson

NATIONAL GOVERNORS

E. Drew Britcher, Bergen

Diane L. Cardoso, Hudson

Joseph C. Grassi, Cape May

Christopher M. Placitella, Monmouth

STATE DELEGATES

Michael A. Galpern, Camden

Scott G. Leonard, Morris

BOARD OF GOVERNORS

Northern Region

Jeffrey I. Amtman, Bergen

Donald A. Caminiti, Bergen

Michael J. Epstein, Bergen

Michael A. Fruhling, Bergen

Evan L. Goldman, Bergen

Lee S. Goldsmith, Bergen

Deborah R. Gough, Bergen

Eric H. Jaso, Bergen

Adam B. Lederman, Bergen

Michael J. Maggiano, Bergen

Kristen B. Miller, Bergen

Garry R. Salomon, Bergen

Marc C. Saperstein, Bergen

Jonas K. Selgel, Bergen

Hugh M. Turk, Bergen

Paul M. da Costa, Essex

William J. Ewing, Essex

Amos Gern, Essex

John D. O'Dwyer, Essex

Ellen Reikin, Essex

Jeffrey A. Rizika, Essex

Nancy Erika Smith, Essex

Gregg Alan Stone, Essex

Gerald H. Baker, Hudson

Alan T. Friedman, Hudson

Jonathan Koles, Hudson

John E. Molinari, Hudson

Rolando Orbe, Hudson

Evelyn Padin, Hudson

Jorden N. Pedersen, Jr., Hudson

George Rios, Hudson

Elizabeth Kronisch, Morris

Steven J. Loewenthal, Morris

Howard D. Popper, Morris

Jack Corradino, Passaic

Michael S. Raff, Passaic

Louis J. Serafini, Passaic

Christian M. Perrucci, Warren

Central Region

Mark W. Davis, Mercer

Jeffrey S. Monaghan, Mercer

Bruce H. Stern, Mercer

Sherri L. Warfel, Mercer

Alfred M. Anthony, Middlesex

Harold J. Gerr, Middlesex

Michael F. Lombardi, Middlesex

Adam L. Rothenberg, Middlesex

Brian D. Drazin, Monmouth

Dennis A. Drizin, Monmouth

Kelly Krail, Monmouth

Jonathan H. Lomurro, Monmouth

Bettina E. Munson, Monmouth

Frances A. Tones, Monmouth

Michael J. Daem, Ocean

Barry R. Sugerman, Somerset

Lawrence M. Simon, Union

Francis M. Smith, Union

Shelley L. Stangler, Union

Wade F. Suthard, Union

Southern Region

Richard J. Albuquerque, Atlantic

Alexa D'Amato Barrera, Atlantic

Barry D. Cohen, Atlantic

Paul R. D'Amato, Atlantic

Robert S. Sandman, Atlantic

Thomas J. Vesper, Atlantic

Stephen P. DeNittis, Burlington

Saul G. Gruber, Burlington

Michael A. Kaplan, Burlington

Deborah L. Malins, Burlington

Kenneth G. Andres, Jr., Camden

Esther E. Berezofsky, Camden

Michael S. Berger, Camden

Vincent J. Ciocka, Camden

Reno John Cicotta, Camden

Jennifer L. Emmons, Camden

Michael A. Ferrara, Jr., Camden

Thomas F. Flynn, III, Camden

Tommie Ann Gibley, Camden

Patricia M. Giordano, Camden

David J. Karbasian, Camden

Jerry A. Lindheim, Camden

Charles N. Riley, Camden

Richard J. Talbot, Camden

Heidi Ruth Weintraub, Camden

John A. Zohman, III, Camden

Joseph D. O'Neill, Cumberland

Michael L. Testa, Cumberland

Michael L. Testa, Jr., Cumberland

Daniel A. Zehner, Salem

* Past President

022

150 West State Street

Capitol View Building • Trenton NJ 08608

P: 609-396-0096 • F: 609-396-2463

www.nj-justice.org • info@nj-justice.org

EXECUTIVE DIRECTOR

Cornelius J. Larkin, CAE, CMP

DIRECTOR OF GOVERNMENTAL RELATIONS

Deborah R. Bozarth

April 10, 2015

Glenn A. Grant, J.A.D.

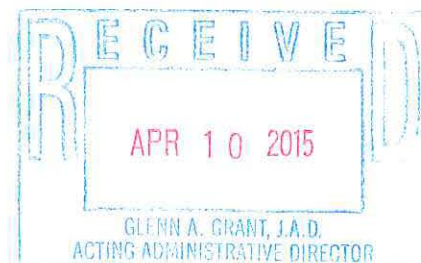
Acting Administrative Director of the Courts

Rules Comments

Hughes Justice Complex

P.O. Box 037

Trenton, New Jersey 08625-0037



RE: New Rule N.J.R.E. 534

Mental Health Service Provider–Patient Privilege

Dear Judge Grant:

The New Jersey Association for Justice is an organization of over 2,400 attorneys, most of whom represent plaintiffs in personal injury cases. Our members are regularly involved in the civil justice system including the discovery and litigation of claims. As a result, we are intimately familiar and deeply concerned with the New Jersey Rules of Evidence.

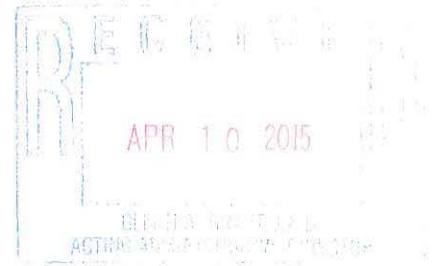
NJAJ has reviewed the report of the 2013-2015 Supreme Court Committee on the Rules of Evidence. We agree with the recommendation of the Committee that the Supreme Court adopt draft N.J.R.E. 534, Mental Health Service Provider – Patient Privilege.

The Committee notes that the current Rules of Evidence provide for “different and sometimes inconsistent privileges” for communications with mental health service providers such as:

1. A psychologist, Rule 505;
2. A physician, Rule 506;
3. A marriage counselor, Rule 510;
4. A cleric, Rule 511;
5. A victim counselor, Rule 517; and
6. A social worker, Rule 518.

In addition, there are statutory privileges for psychoanalysts, alcohol and drug counselors, and professional counselors.

Protecting People's Rights.



Glenn A. Grant, J.A.D.

April 10, 2015

Page 2

The Committee notes that the current Rules create a “hierarchy of privileges” which often depend “on the license or professional credentials of the provider.” This “disparate treatment” is not consistent with the two policy goals governing communication with mental health service providers:

1. The “utilitarian justification” that encourages the use of mental health services; and
2. The “privacy justification” that protects the confidentiality of the patient’s medical records.

Thus, the Committee has drafted N.J.R.E. 534 which creates a new unified “Mental Health Service Provider – Patient Privilege.” The new Rule would prohibit the disclosure of any confidential communications between a patient and the following mental health service providers:

1. Psychologists;
2. Physicians including psychiatrists;
3. Marriage and family counselors;
4. Victim counselors;
5. Social workers;
6. Alcohol and drug counselors;
7. Nurses;
8. Professional counselors;
9. Psychoanalysts;
10. Midwives;
11. Physician assistants; and
12. Pharmacists.

The proposed unified privilege has some exceptions and does not apply to the following proceedings:

1. To commit the patient;
2. To establish competence;
3. To recover damages on account of criminal conduct;
4. To determine the validity of a will;
5. To claim testate or intestate succession;



Glenn A. Grant, J.A.D.

April 10, 2015

Page 3

6. To determine the physical, mental or emotional condition of the patient in the course of any investigation or examination ordered by the court or compelled by a court rule in discovery;

7. To determine the condition of the patient in a claim or defense of an insurance contract;

8. To cause the provider to testify about knowledge gained through the communication;

9. To aid in the commission of a crime or fraud;

10. To bring a claim against the provider; and

11. To carry a firearm.

In 2012 and 2014, the Committee published Notices to the Bar and sent letters to organizations that “might have an interest in the subject of a unified mental health services provider program.” The Committee received responses from a variety of sources including government agencies, academic institutions and professional organizations.

Most of the commentators favored the adoption of “some type of unified privilege” to protect the medical interests of patients in obtaining mental health services (the “utilitarian justification”) and in protecting their privacy (the “privacy justification”). In contrast, NJAJ is interested in protecting the legal rights of those patients who submit claims for compensation for personal injuries, including mental and emotional distress that requires mental health services (the “legal justification”).

The basic purpose of the Rules of Evidence is to provide a uniform procedure for the discovery of evidence prior to trial and for the presentation of evidence at trial. The Rules include guidelines to determine whether the evidence is competent, relevant and credible.

NJAJ agrees with other commentators that the current Rules with respect to confidential communications are “uncertain” and “unpredictable” since there are different rules for different providers. As trial lawyers, we recognize that these deficiencies interfere with the proper discovery and presentation of evidence.

NJAJ believes that the civil justice system would benefit in the Supreme Court adopts a unified Mental Health Service Provider privilege that extends to all providers. The draft NJRE 534 would provide certainty and predictability



NEW JERSEY
ASSOCIATION
for JUSTICE^{INC.}

Formerly the Association of Trial Lawyers of America - New Jersey (ATLA-NJ)

Glenn A. Grant, J.A.D.

April 10, 2015

Page 4

whenever an attorney attempts to obtain medical records through discovery prior to trial or attempts to introduce medical evidence at trial. We support the adoption of N.J.R.E. 534.

Sincerely,

Thomas Comer, Esq.

President

cc: Daniel E. Rosner, Esq.
Michael G. Donahue, III, Esq.
Gerald H. Baker, Esq.
NJAJ Civil Practice Committee
Cornelius J. Larkin, CAE CMP, Executive Director
Deborah R. Bozarth, Director of Governmental Relations