NOTICE TO THE BAR

New Rule of Evidence 534 Takes Effect -- Mental Health Service Provider-Patient Privilege

In a September 15, 2015 Notice to the Bar, the Supreme Court announced that, pursuant to N.J.S.A. 2A:84A-35, it had adopted New Jersey Rule of Evidence 534, as a new rule creating a unified mental health service provider privilege. As set forth in that earlier notice, this new Rule of Evidence, adopted on the recommendation of the Supreme Court Committee on the Rules of Evidence, is intended to modify or replace the different and occasionally inconsistent privileges that have existed for communications between patients and various mental health service provider categories. There having been no legislative action with regard to this amendment to the Rules of Evidence as provided for by N.J.S.A. 2A:84-36, new N.J.R.E. 534 became effective on July 1, 2016.

Please note one typographical correction to the text of N.J.R.E. 534 as published with the September 15, 2015 notice. In the "Definitions" section, paragraph (a)(3)(i) should read as follows: "Psychologists, consistent with the definition under N.J.R.E. 505 and N.J.S.A. 45:14B-2(a), 'licensed practicing psychologist,' and N.J.S.A. 45:14B-6(a)(1), (b), (c), (d), (e), (f), and (g), governing persons engaged in authorized activities of certain unlicensed practicing psychologists...."

As set forth in the earlier notice, the N.J.R.E. 534 privilege applies to confidential communications between a patient and the following mental health service providers during the course of treatment of, or related to, the patient's mental or emotional health condition: (1) psychologists; (2) physicians, including psychiatrists; (3) marriage and family therapists; (4) social workers, including social work interns and certified school social workers; (5) alcohol and drug counselors; (6) nurses; (7) professional counselors, associate counselors or rehabilitation counselors; (8) psychoanalysts; (9) midwives; (10) physician assistants; and (11) pharmacists. The proposed rule, however, specifically excludes communications made between those service providers and victims of violent crimes. Those communications are instead evaluated under the "Victim Counselor Privilege" contained in N.J.R.E. 517.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: August 12, 2016