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## **NEW JERSEY SUPREME COURT ADOPTS UNIFIED MENTAL HEALTH PRIVILEGE**

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On September 15, 2015, the Supreme Court of New Jersey adopted a new rule of evidence, N.J.R.E. 534 (the “Rule”), which creates a unified privilege for mental health service providers. The Rule, which takes effect on July 16, 2016, will serve as an omnibus rule that modifies and/or replaces the myriad of different (and sometimes inconsistent) privileges that pertain to professionals who render mental health services.

Patients who invoke the new privilege may refuse to disclose (or prohibit others from disclosing) “confidential communications.” The Rule defines these as communications transmitted between a mental health service provider and a patient during the course of treatment of (or related to) the patient’s mental or emotional health. It will include communications that relate to addiction to legal and/or illegal substances. In addition to the patient himself/herself, the privilege may also be asserted by the patient’s guardian, conservator, personal representative (in the case of a deceased patient) and members of the patient’s family, if authorized by the patient. The Rule requires the provider to assert the privilege, unless he/she is otherwise instructed by the patient, members of the patient’s family, the patient’s guardian or conservator or, in the case of a deceased patient, the patient’s personal representative.

The Rule specifies the following professionals whose services will be subject to the privilege: psychologists, physicians (including psychiatrists), marriage and family therapists, social workers, alcohol and drug counselors, nurses, professional counselors, psychoanalysts, midwives, physician assistances and pharmacists. It excludes communications between the providers and victims of violent crimes, which will be evaluated under the Victim Counselor Privilege contained in N.J.R.E. 517. Moreover, the Rule cannot be utilized to prevent the disclosure of a statement made in compliance with a statutory duty to report, such as child abuse/neglect, elder abuse/neglect, or the abuse or neglect of a disabled or incompetent party.

SPSK is available to assist clients in their review and application of the Rule and other corporate and litigation health care issues.

**DISCLAIMER:** This Client Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Client Alert, please send a message to Deborah A. Cmielewski, Esq., a partner in Schenck, Price Smith & King’s Health Care Practice Group and co-chair of the Pharmaceutical Industry and Pharmacy Practice Group at [dac@spsk.com](mailto:dac@spsk.com).

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