

Laws about Private Communications Louisiana

Last Updated: April 2023

Question	Answer
What relationships qualify for privileged communications and how is "privilege" defined?	<p>There are three statutes that cover private communications.</p> <p>Healthcare provider and victim</p> <p>La. Code Evid. art. 510</p> <ul style="list-style-type: none">• Limited to civil proceedings only—a victim has a privilege to refuse to disclose and to prevent another person from disclosing any confidential communication made between the victim and his or her health care provider and their respective representatives for the purpose of advice, diagnosis or treatment of the victim’s health condition. La. Code Evid. art. 510(B)(1)• Limited to criminal proceedings only - a victim has a privilege to refuse to disclose and to prevent another person from disclosing any confidential communication made between the victim and his or her physician or psychotherapist and their representatives for the purpose of advice, diagnosis or treatment of the victim’s health condition. La. Code Evid. art. 510(C)(1) <p>Confidentiality between representatives/employees of community shelter and victim</p> <p>La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters</p> <ul style="list-style-type: none">• No person shall be required to disclose, by way of testimony or otherwise, a privileged communication or to produce records, documentary evidence, opinions, or decisions relating to such privileged communication in any civil or criminal proceeding and by way of any discovery procedure. La. Rev. Stat. § 46:2124.1(B)• The prosecuting attorney or any person who is a party in a civil proceeding or who has been arrested or charged with a criminal offense may petition the court for an in-camera inspection (i.e. private review by the judge) of the records of a privileged communication concerning such person. La. Rev. Stat. § 46:2124.1(D) <p>Sexual Assault Centers</p> <p>La. Rev. Stat. § 46:2187- Sexual Assault Centers</p> <p>No person shall be required to disclose, by way of testimony or otherwise, a privileged communication or to produce records, documentary evidence, opinions, or decisions relating to such privileged communication, in connection with any civil or criminal proceeding. La. Rev. Stat. §</p>

<p>Is the privilege qualified or absolute?</p>	<p>46:2187(B)</p> <p>There are three statutes that cover laws about private communications.</p> <p>La. Code Evid. art. 510</p> <p>Qualified by statute and judicial decision</p> <p>La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters</p> <p>None specified.</p> <p>La. Rev. Stat. § 46:2187 – Sexual Assault Centers</p> <p>None specified.</p>
<p>Who holds the privilege and has the right to waive it? What are the standards for waiver of the privilege?</p>	<p>There are three statutes that cover laws about private communications.</p> <p>La. Code Evid. art. 510</p> <p>Holder of Privilege:</p> <ul style="list-style-type: none"> • Privilege may be claimed by the victim or by the victim's legal representative. La. Code Evid. art. 510(D) • Physician, psychotherapist or other health care providers or their representatives are presumed to have the authority to claim the privilege on behalf of the victim. La. Code Evid. art. 510(D). <p>Waiver of Privilege: No procedure specified.</p> <ul style="list-style-type: none"> • The statutory exceptions to privilege in a civil proceeding specified below only waive the privilege as to testimony at trial or discovery of the privileged communications. La. Code Evid. art. 510(E). <p>La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters</p> <p>Holder of Privilege: Not specified.</p> <p>Waiver of Privilege: No procedure specified.</p> <p>La. Rev. Stat. § 46:2187- Sexual Assault Centers</p> <p>Holder of Privilege: Not specified.</p> <p>Waiver of Privilege: No procedure specified.</p>

Are there any exceptions to the privilege?

There are three statutes that cover laws about private communications.

La. Code Evid. art. 510(B)(2)(a)-(m); 510(C)(2)(a)-(f); 510(F)

• **Civil and Criminal:**

- Communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.
- Communication was made in the course of a court-ordered examination with respect to the health condition of a patient, under certain circumstances.
- Communication is relevant to proceedings concerning child abuse, elder abuse, or abuse of persons with disabilities or persons who are or incompetent.
- Communication regarding blood alcohol level or drugs, under certain circumstances.

• **Civil only:**

- Communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker's compensation proceeding.
- Communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker's compensation proceeding brought or asserted as a consequent of the death or injury of the deceased patient.
- Communication is relevant to an issue of the health condition of the victim in any proceeding in which the victim is a party and relies upon the condition as an element of his claim or defense.
- Any party relying upon a deceased victim's health condition as an element of a claim or defense.
- Communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.
- Communication is relevant to a peer review committee or disciplinary bodies to determine whether a health care provider has deviated from applicable professional standards.
- Victim is the subject of a commitment proceeding when victim has failed or refused to submit to an examination by a health care provider appointed by the court regarding issues relating to the interdiction or commitment proceeding, provided the patient has been informed of the appointment and consequences of not submitting to the examination.
- Communication is necessary for the defense of the health care provider in a malpractice action brought by the patient (see further discussion below).
- Communication is relevant to a now deceased patient's capacity to enter into a contract or execute any testament.
- Communications relevant in an action contesting any testament executed or claimed to

have been executed by a now deceased patient.

• **Criminal only:**

- Communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense
- Communication in the form of a tangible object removed from the patient's body, relevant to the crime charged.

• **Medical malpractice. Code Evid. art. 510(F)**

- There shall be no health care provider-patient privilege in medical malpractice claims as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.
- In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by law.

La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters

None specified.

La. Rev. Stat. § 46:2187 – Sexual Assault Centers

None specified.

When and how may a judge review case documents in private?

There are three statutes that cover laws about private communications.

La. Code Evid. art. 510

- Statute is silent, but courts appear to permit in camera review (i.e. private review by the judge). See, e.g., *Rullan v. Adobbati*, 674 So.2d 417 (La.App. 4 Cir. 1996).
- *Prine v. Bailey*, 964 So.2d 435, (La. 2007)
 - Burden on party seeking to overcome the privilege to establish the propriety of disclosure.
 - Must be a substantial showing of relevance and need, i.e., lack of ability to obtain evidence elsewhere, by the party seeking disclosure.
 - Any exception to the privilege should be narrowly tailored and should extend only to information necessary and relevant to the condition relied on as a defense or claim.

La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters

Provided for by statute: La. Rev. Stat. § 46.2124.1(D)

- Prosecuting attorney or a party in a civil proceeding or a person who has been arrested or charged with a criminal offense may petition the court for an in camera inspection of the records of a privileged communication.
- The petition must show that the requested records would provide admissible evidence

	<p>favorable to the moving party.</p> <ul style="list-style-type: none"> • In criminal proceedings, the petition must show that the requested records are relevant to the issue of guilt or punishment. The petition must also be verified. • If the court determines that the moving party is entitled to all or any part of the requested records, it may order production and disclosure as it deems appropriate. <i>See also Treas v. Koerner</i>, 2020 WL 4012309 (La.App. 4 Cir. July 15, 2020), where the court held that in camera inspection of medical records held by a community shelter was required prior to ordering production of such records. <p>La. Rev. Stat. § 2187 – Sexual Assault Centers</p> <p>None specified.</p>
<p>What other definitions are important to know?</p>	<p>There are three statutes that cover laws about private communications.</p> <p>La. Code Evid. art. 510</p> <p>Confidential Communication:</p> <ul style="list-style-type: none"> • The transmittal or acquisition of information not intended to be disclosed to persons other than: <ul style="list-style-type: none"> • a health care provider and a representative of a health care provider; • those reasonably necessary for the transmission of the communication; • persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist; • a patient’s health insurer; and • in special circumstances, those present at the behest of patient, physician, or psychotherapist and reasonably necessary to facilitate the communication. La. Code Evid. art. 510(A)(1)(a) • Includes any information, substance, or tangible object obtained incidental to the communication process and any opinion formed as a result of the consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives. La. Code Evid. art. 510(1)(b) <p>Health Care Provider:</p> <ul style="list-style-type: none"> • A hospital, person, corporation, facility or institution licensed by the state to provide health care or professional services as a physician, hospital, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker, or licensed professional counselor and an officer, employee or agent thereof acting in the course and scope of his employment. La Code Evid. Art. 501(A)(2) and LSA-R.S. 13:3734 • Includes any person who is engaged in any office, center, or institution referred to as a rape crisis center, and who gives advice, counseling, or assistance to victims of sexual

assault. Also includes a physician or psychotherapist. La Code Evid. art. 510(A)(2)

- Includes persons reasonably believed to be such by the victim or his/her representative. La. Code Evid. art. 510(A)

Training Requirements for Health Care Providers:

- At least 40 hours of sexual assault training. La. Code Evid. art. 510(A)(2)

Patient:

- A person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person's health. La. Code Evid. art. 510(A)(4)

La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters

Privileged Communication:

- A communication made to a representative or employee of a community shelter by a victim.
- A communication made by a representative or employee of a community shelter to the victim in the course of rendering services authorized by statute. La. Rev. Stat. § 46:2124.1(A)(2)

Community Shelter:

- A community shelter or other program established by statute. La. Rev. Stat. § 46:2124.1(A)(1)

Family Violence:

- Any assault, battery, or other physical abuse which occurs between family or household members who reside together or who formerly resided together. La. Rev. Stat. § 46:2121.1(2)

Victim:

- A victim or potential victim of an act of family or domestic violence and his or her children. La. Rev. Stat. § 46:2124.1(A)(3)

La. Rev. Stat. § 46:2187- Sexual Assault Centers

Privileged Communication:

- A communication made to a representative or employee of a sexual assault center by a victim. La. Rev. Stat. § 46:2187(A)(1)
- A communication not otherwise privileged made by a representative or employee of a sexual assault center to a victim in the course of rendering services authorized by statute. La. Rev. Stat. § 46:2187(A)(1)

Sexual Assault Center:

- A program established and accredited in accordance with the standards set by the Louisiana Foundation Against Sexual Assault. La. Rev. Stat. § 46:2187(A)(2)

Victim:

- A person against whom an act of attempted or perpetrated sexual assault was committed. La. Rev. Stat. § 46:2187(A)(3)

Anything else I should know?

There are three statutes that cover laws about private communications.

La. Code Evid. art. 510

- The provision summarized is the healthcare provider-patient privilege. Health care provider-patient privilege applies broadly for civil proceedings but is limited to physicians and psychotherapists in criminal proceedings.

La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters

La. Rev. Stat. § 46:2121(C)

- This statute established family violence centers throughout the state, which provide shelter, counseling, and referrals to social services, medical care, and legal assistance to victims of family violence.
- The privilege established in this section protects communications between victims and employees of community shelters.

La. Rev. Stat. § 46:2124.1(C)

- Records relating to a privileged communication kept by a community shelter or other agency or department shall not be public records, but may be used for the compilation of statistical data if the identity of the victim or the contents of any privileged communication are not disclosed.

La. Rev. Stat. § 46:2187- Sexual Assault Centers

La. Rev. Stat. § 46:2181, § 46:2187

- This statute provides a civil remedy for all victims of sexual assault that will afford the victim immediate and easily accessible protection.
- The privilege established in this section protects communications between victims and employees of sexual assault centers.

La. Rev. Stat. § 46:2187(C)

- Records relating to a privileged communication maintained by a sexual assault center shall not be public records, but such records may be used for the compilation of statistical data if

	the identity of the victim and the contents of any privileged communication are not disclosed. La. Rev. Stat. § 46:2187(C)
Statutory citation(s):	<ul style="list-style-type: none">• La. Code Evid. art. 510• La. Rev. Stat. §§ 46:2121-46:2128- Family Violence Shelters• La. Rev. Stat. § 46:2187 – Sexual Assault Centers