

Columbia Bioethics/ Columbia Law
CLE Program
Outline/ Timed Agenda
April 28th, 2022
6:15-7:45pm

Title: Confidentiality of the Treatment Records of Rape Victims: An Interdisciplinary Discussion

Program description:

When the mental health treatment records of a rape victim are sought by the defendant, for use as trial evidence in a criminal prosecution, the presiding judge is obligated to determine whether, when contemplating such an order “requiring disclosure ... the interests of justice significantly outweigh the need for confidentiality.”

What section 33.13 of the New York State Mental Hygiene Law does define is the criteria a judge should use in striking that balance between the clinical need for confidentiality of those records and the right of a criminal defendant to “every man’s evidence.”

That determination, and application of those criteria, requires consideration of profoundly important philosophical, legal, ethical, and clinical principles and priorities, which will be examined in this continuing legal education seminar. These questions are, in the first instance, matters of legal ethical obligations, but they also implicate the ethical duty of disclosure born by practitioners in a variety of clinical disciplines including mental health providers, emergency department clinicians and primary care providers. Those clinical obligations in turn implicate the ethical obligations of lawyers, both those representing criminal defendants, and those advising clinicians, on their duty to advocate for preservation of the confidentiality rights of their patients. The panel will examine the ethical obligations born by each of the stakeholders in these circumstances, and each of their obligations to consider the ethical duties of the others.

- 1) What are a lawyers ethical obligations when considering issuance of a subpoena for the mental health records of a sexual assault victim/survivor/complaining witnesses?

David N. Hoffman

6:15-6:20pm

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| 2) | Presentation of case study: order to show cause, legal briefs and court decision
Robert Klitzman | 6:20– 6:30pm |
| 3) | What rights does NYS Mental Hygiene Law section 33.13 provide to criminal defendants and how should those rights be viewed from the perspective of the bioethical privacy rights of rape victims?
David N. Hoffman | 6:30– 6:40pm |
| 4) | What are the ethical responsibilities that a criminal defense lawyer should consider when requesting court authorization under §33.13 to request victim medical records?
Are there limits to zealous advocacy?
Daniel A. Arshack | 6:40-6:50pm |
| 5) | What interests of the victim should be considered, particularly regarding “re-victimization of a complainant, when a request for disclosure treatment records is made?
LaShawn Rivera | 6:50-7:00pm |
| 6) | Do the prosecuting attorney and presiding judge have an ethical obligation to serve as advocates for the privacy and confidentiality concerns of the victim?
Hon. Elyse Lazansky | 7:00-7:10pm |
| 7) | Where does this situation leave the health care facility that is custodian to the records?
David N. Hoffman | 7:10-7:20pm |
| 8) | To what extent, if any, do the attorney and non-attorney participants in this circumstance have an ethical obligation to consider and balance their responsibilities against the responsibilities of the other involved parties?
Panel Discussion | 7:20-7:45pm |

Reading Materials (provided by hyperlink):

- 1) People v Griffin- court papers and decision for case study
[Click Here](#)

Statutes:

- 2) NYS CPLR § 4507
[Click Here](#)

- 3) 33.13 of the New York State Mental Hygiene Law
[Click Here](#)

- 4) NYS PHL § 18
[Click Here](#)

Case Law:

- 5) UNITED STATES v. NIXON, PRESIDENT OF THE UNITED STATES, ET AL. 418 U.S. 683 (1974).
[Click Here](#)
- 6) DONALD J. TRUMP, PETITIONER v. CYRUS R. VANCE, JR., IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK, ET AL. SUPREME COURT OF THE UNITED STATES No. 19-635
[Click Here](#)

- 7) Lightman v Flaum, 97 NYS2d 128, 736 NYS2d 300, 761 NE2d 1027 (2001).
[Click Here](#)

Regulations:

- 8) New York Attorney Rules of Professional Conduct (22 NYCRR 1200.0), Rules 1.1 and 4.1
[Click Here](#)

Articles:

9) Amanda M. Hall et al., The Influence of the Therapist-Patient Relationship on Treatment Outcome in Physical Rehabilitation: A Systematic Review, 90(8) Physical Therapy 1099 (2010);

[Click Here](#)

10) Adam O. Horvath, The role of the Therapeutic Alliance in Psychotherapy, 61(4) J Consult Clin Psychol 561 (1993).

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