No. 22-636

In the Supreme Court of the United States

S.S.,
Petitioner,
v.

UNITED STATES OF AMERICA AND WENDELL E. MELLETTE JR., ELECTRICIAN'S MATE (NUCLEAR) FIRST CLASS PETTY OFFICER, UNITED STATES NAVY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Armed Forces

BRIEF OF *AMICI CURIAE* THE UNITED STATES NAVY VICTIMS' LEGAL COUNSEL PROGRAM, ET AL., IN SUPPORT OF PETITIONER

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Interest of Amici[1]

Amici include the United States Navy Victims' Legal Counsel (VLC) Program, United States Marine Corps VLC Organization, United States Coast Guard Special Victims' Counsel (SVC) Program, and the United States National Guard SVC Program (collectively referred to as "VLC"). Victims' Legal Counsel provide survivors of sexual and domestic violence offenses with attorney representation and advice during the investigation and military justice process. A VLC has standing at a court-martial to protect a victim's rights under Article 6b of the Uniform Code of Military Justice (UCMJ). This includes asserting Military Rule of Evidence (MRE) 513, the psychotherapist-patient privilege, and litigating motions involving the privilege on a victim's behalf.

This case is about MRE 513's scope. The Court of Appeals for the Armed Forces (CAAF) held that mental health treatment and diagnoses are "underlying facts," not communications protected under MRE 513. Victims' Legal Counsel have represented thousands of crime victims. These victims are invested in protecting their mental health treatment and diagnoses from disclosure in court. The CAAF's holding affects a victims' statutory rights during all phases of the military justice process, including a victim's decision to report, to participate in an investigation, to provide input to

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[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to the preparation or the submission of this brief.

military prosecutors, to litigate the disclosure of mental health records, and to testify in court.

Summary of Argument

Mental health diagnoses and treatment are protected communications under MRE 513. The Rule's plain meaning and standard canons of construction support this conclusion. To exclude mental health diagnoses and treatment from protected communications leads to absurd results, such as the privilege not protecting psychotherapy treatment like counseling. The CAAF's holding, moreover, undermines the privilege's purpose.

MRE 513 protects "confidential communication[s] … between the patient and a psychotherapist … made for the purpose of facilitating diagnosis or treatment" of the patient's mental health condition. No language in MRE 513 excludes diagnoses or treatment from protection. Instead, under the general-terms canon, "confidential communication" means *all* confidential communications. Thus, if the diagnosis or treatment is confidentially communicated to facilitate further diagnosis or treatment, it is protected.

The CAAF's exclusion of treatment and diagnosis from the privilege leads to absurd results. Indeed, it is inconsistent to hold that MRE 513 protects substantive communications between a patient and psychotherapist, but does not protect the diagnosis—the psychotherapist's communicated professional opinion—and does not protect psychotherapy treatment like counseling.

Yet this is precisely the CAAF's holding. To reconcile this inconsistency, the CAAF distinguishes

between confidential communications and "underlying facts." *United States v. Mellette*, 82 M.J. 374, 380 (C.A.A.F. 2022). But this distinction lacks a difference and is unmoored to reality for two reasons.

First, a diagnosis is an essential feature of confidential communications. The diagnosis is based on, and thus reveals to some degree, the content of the patient's disclosures. And diagnoses are communicated to facilitate treatment. Similarly, because confidential communications are an essential feature of treatment, the CAAF's holding is unworkable.

Second, because the diagnosis is an opinion, it is not a fact. There may be some metaphysical truth to a patient's underlying condition. But a diagnosis is a doctor's professional opinion rendered to a patient of what the doctor believes the condition is. The doctor delivers this opinion based on the patient's communications to the psychotherapist. Patients routinely seek second *opinions* on medical diagnoses. And in other contexts, this Court acknowledges that the opinions of psychotherapists are not "facts." *See Clark v. Arizona*, 548 U.S. 735, 758 (2006).

The CAAF's holding guts the privilege. As the lower court noted, confining the privilege to "only the patient's description of her symptoms, but not the psychotherapist's diagnosis and treatment of her condition … deter[s] patients from seeking mental health treatment." *United States v. Mellette*, 81 M.J. 681, 692 (N-M. Ct. Crim. App. 2021). It is this exact chilling effect that this Court sought to avoid when it identified a psychotherapist-patient privilege in the Federal Rules of Evidence. Indeed, the "promise of confidentiality would have little value if the patient

were aware that the privilege would not be honored in a federal court." *Jaffee v. Redmond*, 518 U.S. 1, 13 (1996). There is no evidence to suggest that when the President included the psychotherapist-patient in the Military Rules of Evidence, he meant to disregard this chilling effect and—against the Rule's plain text—exclude a doctor's communicated opinion or treatment such as counseling.

Finally, the CAAF's holding deters crime victims from reporting and participating in criminal proceedings. Now, victims must decide whether holding their abusers accountable is worth an open examination of their mental health diagnoses and treatment at a public trial.

Argument

I. Under MRE 513's Plain Meaning, Diagnoses and Treatment Are Protected Communications.

Discovery practice in the military is broader than in the civilian world. The parties to a court-martial generally "have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe." Article 46, UCMJ, 10 U.S.C. § 846(a) (2019). Under the rules prescribed by the President, "[e]ach party is entitled to the production of evidence which is relevant and necessary." Rule for Courts-Martial (RCM) 703(f)(1), Manual for Courts-Martial (MCM) (2019 ed.). But evidence that is both relevant and necessary can be shielded from production or disclosure by a proper claim of privilege. MRE 501.

The privilege at issue here—MRE 513—states:

> "A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the [UCMJ], if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition."

A "communication" is: "the expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception" or "the information so expressed or exchanged." *Communication*, Black's Law Dictionary (8th ed. 2004). Communications are "confidential" if "not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for such transmission of the communication." MRE 513 (b)(4).

"To facilitate" means "to aid, help, ease." Bryan A. Garner, *Garner's Modern American Usage*, 342 (3d ed. 2009). A medical "diagnosis" is "the act or process of discovering or identifying a diseased condition by means of a medical examination, laboratory test, etc." *Diagnosis,* Webster's New World College Dictionary (5th ed. 2018). Medical "treatment" is "the act, manner, method, etc. of treating, or dealing with, a [medical condition]." *Treatment,* Webster's New World

College Dictionary (5th ed. 2018). And psychiatric treatment or psychotherapy is "treatment of mental or emotional disorder by any of various means involving *communication* between a trained person and the patient including counseling, psychoanalysis, etc." *Psychotherapy,* Webster's New World College Dictionary (5th ed. 2018) (emphasis added). In other words, mental health treatment consists of ongoing conversations between the psychotherapist and the patient regarding not only the patient's description of symptoms and experiences, but the diagnosis and treatment.

There are four reasons MRE 513's plain text protects mental health diagnoses and treatment.

First, the rule uses the phrase "diagnosis *or* treatment." MRE 513 (emphasis added). This means the two terms operate independently of each other. *See Garner's Modern American Usage* at 44–46 (discussing the purpose of "and" versus "or" in legal drafting). MRE 513 can thus be read as two separate rules, protecting either: "confidential communications … made for the purpose of facilitating diagnosis" or "confidential communications … made for the purpose of facilitating … treatment." So, if a diagnosis is communicated to facilitate treatment, or vice versa, MRE 513's plain text protects that communication. For example, a doctor may provide treatment by discussing with the patient what the doctor believes the patient's condition is. That opinion, or diagnosis, is a communication made to facilitate treatment.

Second, a mental health "diagnosis" or "treatment" itself may consist of confidential communications. Mental health diagnoses are generally based on what

the patient communicates to the psychotherapist. Suppose a patient confidentially communicates that they feel anxious in social situations and that the anxiety interferes with their normal routine. If a psychotherapist's diagnosis of social anxiety disorder requires that (1) the patient feel anxious in social situations, and (2) that it interfere with their normal routine, then that diagnosis entirely consists of confidential communications made by the patient to facilitate the diagnosis. Disclosing the diagnosis, therefore, also discloses the statements the patient must have made for the doctor to render that opinion.

Third, MRE 513 protects "confidential communication made *between the patient and a psychotherapist*," not *from* a patient *to* a psychotherapist. *See Mellette*, 81 M.J. at 691 (citing MRE 513). That is, "the protection covers not only the patient's description of her symptoms, but also the psychotherapist's rendering of a diagnosis and treatment plan, based on those symptoms, back to the patient." *Id.*; *see also Ramada Inns v. Dow Jones & Co.*, 523 A.2d 968, 971–72 (Del. Super. Ct. 1986) (explaining that the attorney-client privilege applies "equally to a communication made by the client to the attorney and to a communication made by the attorney to the client.").

Finally, there is no language in MRE 513 that excludes records containing only diagnoses or treatment from protection. Under the general-terms canon, "it is presumed, absent some indication to the contrary, that general terms should be accorded 'their full and fair scope' and not be 'arbitrarily limited.'" *Seed Co. Ltd. v. Westerman*, 266 F. Supp. 3d 143, 148 (D.D.C. 2017) (citing Antonin Scalia & Bryan A. Garner,

Reading Law: The Interpretation of Legal Texts, 101 (2012)). "Confidential communication" is a general, categorical term. There is no reason why specific types of communication—like diagnoses or treatment—are excluded. Indeed, a facilitated diagnosis or treatment can facilitate *further* diagnosis or treatment during the ongoing course of patient-psychotherapist communications. In fact, it is hard to imagine the purpose of a diagnosis or psychotherapy treatment, such as counseling, *other than to facilitate* mental health treatment.

In short, the plain language of MRE 513 protects a patient's diagnosis and treatment as confidential communications.

II. The CAAF Erred in Concluding That MRE 513 Does Not Protect Patient Records Containing Diagnoses or Treatment.

The CAAF erred in its narrow construction of MRE 513, erred in its assumptions about Presidential intent, made an arbitrary distinction between communications and medical records, and erred by finding diagnoses and treatment constituted "underlying facts."

A. The CAAF erred in its narrow construction of MRE 513.

The CAAF claimed to apply a narrow interpretation of MRE 513, citing *Trammel v. United States*, 445 U.S. 40, 50 (1980). *See* 82 M.J. at 380. But the court's application of *Trammel* is flawed for three reasons.

First, to construe a rule narrowly cannot mean to interpret the rule against its plain meaning. *See*, *e.g.*, *Seed Co. Ltd.*, 266 F. Supp. 3d at 148. Second, an interpretation of a rule that deviates from its intent and leads to absurd conclusions cannot displace a literal interpretation of that rule. *See United States v. Bryan*, 339 U.S. 323 (1950). Finally, *Trammel*'s strict construction of federal common law privileges has no application to codified privileges, particularly if that narrow construction is against its plain meaning and intent. *See* 82 M.J. at 384 (Maggs, J., dissenting).

B. The CAAF made an erroneous assumption about the President's intent.

The CAAF suggests that if the President had wanted the rule to cover diagnoses, he "could have used express language that unambiguously reflected that intent" like some States use in their statutes. *Id.* at 378. But no canon of construction requires such specificity. Medical diagnoses and psychotherapy treatment are communications. And if the President wanted MRE 513 to cover all communications, he had no reason to list examples of the communications he meant to protect. Thus, the CAAF was wrong to divine that he intended to limit the term by not including such a list. Indeed, the general-terms canon should have led the CAAF to the opposite conclusion.

C. The CAAF erred when it concluded that medical records containing diagnoses and treatment are not confidential communications.

MRE 513 outlines the procedure to determine whether a patient's records or communications should be produced. MRE 513(e). Relatedly, the rule defines "evidence of a patient's records or communication" as "testimony of a psychotherapist, or assistant to the same, or patient records that pertain to communications by a patient to a psychotherapist, or assistant to the same, for the purposes of diagnosis or treatment of the patient's mental or emotional condition." MRE 513(b)(5). The word "pertain usually means 'to relate to; concern'" and records may relate to communications without being a rote transcription. *See Garner's Modern American Usage* at 55.

The CAAF disagreed that all patient records "pertain to communications" between a patient and psychotherapist and are therefore included within the scope of MRE 513(a). *See* 82 M.J. at 379. Instead, the CAAF applied a partial privilege to testimonial or documentary evidence that "reveals what MRE 513(a) expressly protects—confidential communications." *Id*. This interpretation is arbitrary, against the rule's plain text, and is unworkable by current medical communication practices.

The CAAF's interpretation is arbitrary because it failed to explain why a mental health record containing a patient's diagnosis and treatment does not, by its nature, relate to communications between the patient and the provider. *See* 82 M.J. at 378. The CAAF's

arbitrary interpretation results in a clear inconsistent application in its own opinion. On the one hand, the CAAF held that "diagnosis and treatments contained within medical records are not themselves uniformly privileged under MRE 513." 82 M.J. at 375. On the other, the CAAF noted the "well-established rule" that documents that are not communications "may be partially privileged to the extent that those records memorialize or otherwise reflect the substance of privileged communications." *Id.* at 379. As discussed above, diagnoses and treatment "memorialize or otherwise reflect" privileged communications. The CAAF's attempt to separate diagnoses and treatment from communications fails because they are wedded to each other: communications are the basis for a diagnosis and treatment, and a diagnosis and treatment are the basis for—and are contained within—ongoing communications between a patient and psychotherapist.

Moreover, the CAAF's interpretation that a communication "does not naturally include other evidence, such as routine medical records" is unworkable by current medical practices. *See* 82 M.J. at 378. Mental health records are not the doctor's private notes. Instead, they may be accessed by patients who have the right to receive their records. *See* 45 CFR § 164.524. Medical records are thus a means by which a doctor conveys information to a patient. The use of records as a means of communication has increased with the emergence of electronic health records. *See, e.g., United States v. Waguespack*, 935 F.3d 322, 330 (5th Cir. 2019) (explaining that "utilizing software

that lets users exchange digital files through a network of linked computers" is "communication.").

The Department of Defense's electronic health record platform, for example, gives patients access to their health information, including "exchanging messages with [their] care team." Health.mil, *MHS GENESIS: The Electronic Health Record*, https://www.health.mil/Military-Health-Topics/Technology/MHS-GENESIS (last visited Feb. 6, 2023). Thus, patient health records are a bilateral platform through which doctors and patients share information with one another—that is, communicate. The CAAF's distinction between confidential communications and "medical records and other similar evidence that [do] not constitute a confidential communication" therefore has no application in the real world. *See* 82 M.J. at 378.

D. The CAAF erred in finding that diagnoses and treatment are underlying facts not covered by the privilege.

The CAAF also reasoned that diagnoses and treatment are not privileged because they are "underlying facts" and "not confidential communications." 82 M.J. at 380. But this is wrong.

A diagnosis is not an "underlying fact." It is, rather, a doctor's reasoned opinion based on a patient's communications to the doctor. And reasoned opinions based on confidential communications are protected. *See In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984) ("Communications from attorney to client are shielded if they rest on confidential information obtained from

the client.") (*citing Mead Data Central, Inc. v. United States Dep't of Air Force*, 566 F.2d 242, 254 (D.C. Cir. 1977)).

To be sure, patients often seek second *opinions* on medical diagnoses and advised treatments. This Court, moreover, has described "mental-disease evidence" as "*opinion* evidence." *Clark*, 548 U.S. at 758 (emphasis added). In *Clark,* this Court considered a psychotherapist's conclusion that an individual's condition "fell within the category of schizophrenia" "based on factual reports, professional observations, and tests" to be an opinion. *Id.* And this Court warned against treating diagnoses as incontrovertible facts. *Id.* at 742 ("The limits of the utility of a professional disease diagnosis are evident in the dispute between the two testifying experts in this case; they agree that Clark was schizophrenic, but they reach opposite conclusions on whether his mental disease left him bereft of cognitive or moral capacity.").

In short, the CAAF's interpretation of MRE 513 discards the Rule's plain meaning, replacing it instead with a confused understanding of medical practice and ungrounded assumptions about the President's intent. This Court should grant the petition and reverse.

III. Like MRE 513, Many States Have Balanced a Defendant's Right to Access Information With a Witness's Right to Privacy.

"The President has both the authority and the responsibility to balance a defendant's right to access information that may be relevant to his defense with

a witness's right to privacy." 82 M.J. at 380–81. A plain reading of MRE 513 that protects diagnoses and treatment as confidential communications preserves that balance. This is clear from the way several States apply their psychotherapist-patient privilege.

For example, in California, the privilege protects communications, diagnoses, and advice. *In re Lifschutz*, 2 Cal. 3d 415, 429–30 (Cal. 1970). In Louisiana, the privilege protects "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." La. Code Evid. Ann. art. 510. Similarly, correspondence, actions, and occurrences relating to diagnosis or treatment are protected in Massachusetts. Mass. Gen. Laws ch. 233, § 20B (2022). Michigan also protects "treatment and diagnosis." *People v. LaLone*, 432 Mich. 103, 143 n.40 (Mich. 1989).

North Dakota recognizes that a confidential communication includes information, observations, and opinions made for the purposes of diagnosis or treatment. *State v. Schroeder*, 524 N.W.2d 837, 842 (N.D. 1994). Ohio, meanwhile, identifies the media in which communications may be found—record, chart, letter, memorandum, laboratory test and result, x-ray, photograph, financial statement, diagnosis, or prognosis. Ohio Rev. Code Ann. § 4732.19 (2022) (adopting Ohio Rev. Code Ann. § 2317.02(B)(5)'s definition of communication). Not only does healthcare history, diagnosis, and treatment fall within the scope of the privilege in Rhode Island, but "medical, psychiatric, and psychological records" do as well. *See* R.I. Gen. Laws § 5-37.3-

3 (2022); *see also DePina v. State,* 79 A.3d 1284, 1290-91 (R.I. 2013) (stating psychiatric and psychological records are presumptively private, confidential, and privileged). And the privilege covers instructions and prescriptions in West Virginia. *See State ex rel. Register-Herald v. Canterbury*, 192 W. Va 18, 21 (W. Va. 1994).

Like those States, the President balanced the defendant's right to access relevant information against a victim's right to privacy. This balance is embodied in MRE 513(e)—the section of the rule that explains the procedure for producing and admitting patient records and communications. Defendants may seek the production or admissibility of privileged material at trial, so long as the defendant meets the requirements of MRE 513(e). In short, interpreting MRE 513 in line with its plain meaning does nothing to undermine a defendant's rights.

The States' application of the privilege to diagnoses and treatment raises another issue—the CAAF's decision will cause the release of communications that would be privileged in other courts. This is especially important to victims of domestic violence and sexual assault, who are often working through collateral protection orders, marriage separations, child custody proceedings, or concurrent state criminal proceedings.

IV. Excluding Diagnoses and Treatment Guts the Privilege.

There is a "societal interest in a mentally healthy populace," particularly in the military. *Mellette*, 81 M.J. at 692. This manifests in two ways. First, there

is an interest in encouraging victims to seek mental health treatment. Second, there is an interest in maintaining good order and discipline. The CAAF's interpretation of MRE 513 guts the privilege and the interests it is meant to protect.

A. Excluding diagnoses and treatment creates a barrier for victims who need mental health treatment.

"Confidentiality is a *sine qua non* for successful psychiatric treatment." *Jaffee*, 518 U.S. at 10. As this Court explained, the "promise of confidentiality would have little value if the patient were aware that the privilege would not be honored in a federal court." *Id.* at 13. Confining the privilege to "only the patient's description of her symptoms, but not the psychotherapist's diagnosis and treatment of her condition, would deter patients from seeking mental health treatment in precisely the way *Jaffee* sought to avoid." *Mellette*, 81 M.J. at 692; *see also Stark v. Hartt Transp. Sys.*, 937 F. Supp. 2d 88, 92 (D. Me. 2013) (arguing that ordering a psychotherapist to testify about a person's diagnosis or treatment would "defeat the societal interests" undergirding *Jaffee*).

Fears surrounding confidentiality are a top-cited barrier to mental health treatment. Jesi Hall, *Perceptions of Confidentiality and Stigma Associated with Use of Counseling Services*, 12-2018 E. Tenn. St. U. Sch. Grad. Stud. 20–22 (2018). A patient who believes that her mental health diagnosis could be exposed in court is less likely to be forthcoming with a psychotherapist or seek treatment at all. *See Jaffee,* 518 U.S.

at 11–12 (explaining that "confidential conversations between psychotherapists and their patients would surely be chilled" when "the circumstances that give rise to the need for treatment will probably result in litigation.").

This barrier to treatment is exacerbated in the military, where in "many [cases,] victims are reluctant to get the mental health care they need for fear that their supervisors and co-workers, who are likely unaware of the sexual assault, may disparage them for missing too much work." Def. Advisory Committee on Investigation, Prosecution, and Def. of Sexual Assault in the Armed Forces: 2d Ann. Rep. 72 (Mar. 2018). And even when victims do seek mental health treatment, the specter of having their confidential communications exposed inhibits participating in the criminal justice process.

To address the barriers to mental health treatment, the DoD's Psychological Health Center of Excellence turned to RAND's National Defense Research Institute to investigate and synthesize the field of research on sexual assault in the military. Julia Rollison, et al., *Psychological Harms and Treatment of Sexual Assault and Sexual Harassment in Adults: Systematic and Scoping Reviews to Inform Improved Care for Military Populations*, RAND Corp. 24 (Jan. 2023). RAND researchers sought to determine: (1) the effectiveness of psychotherapy treatments designed for adult victims of sexual assault or sexual harassment in military settings; (2) barriers faced by U.S. military members to access and continue mental health care treatment; and (3) associations between

sexual assault or sexual harassment and mental health conditions. *Id.* at 197.

The report found that victims cite privacy and confidentiality concerns as key barriers to seeking mental health treatment. *Id.* at 39. The CAAF's interpretation of MRE 513 exacerbates this, as victims now must fear that their diagnosis or treatment will be disclosed in open court.

Military victims are also often separated from active duty before completion of the offender's court-martial. The separation process involves an evaluation by the Department of Veterans Affairs (VA) or a physical evaluation board to determine whether the victim has a right to care for any service-connected mental disabilities. If victims have reason to withhold their conditions, it may prevent necessary continued mental health care from the VA. This is especially troubling given veterans' unique need for mental health support and suicide rates that are far higher than that of the general population. See Department of Veterans Affairs, *National Veteran Suicide Prevention 2020 Annual Report*, 6–7 (Sep. 2020).

B. The CAAF's interpretation of MRE 513 undermines good order and discipline.

The President mandated that one purpose of the Military Rules of Evidence is to "promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." MRE 102. This Court recognizes "that the military is, by necessity, a specialized society separate from civilian society." *Parker v. Levy*, 417 U.S. 733, 743 (1974). As

such, the military has "developed laws and traditions of its own" and the differences "result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise." *Id.* (internal quotation marks and citation omitted). And so, "the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty." *Id.* (internal quotation marks and citation omitted).

The CAAF's interpretation of MRE 513 undermines good order and discipline in the armed forces because it deters victims from reporting sexual assault or domestic violence. Excluding diagnoses and treatment from MRE 513's protection also deters victims who wish to participate in a court-martial but do not want to publicly disclose their mental health diagnosis and treatment history.

Deterring victims from either reporting their sexual assault or participating in a court-martial has several negative effects. First, it prevents "ascertaining the truth and securing a just determination," which is what the Military Rules of Evidence are meant to promote. MRE 102. Second, the lack of accountability undercuts the military's "overriding demands of discipline and duty" and inhibits its "primary business … "to fight or be ready to fight wars." *Parker*, 417 U.S. at 743. This is particularly true where victims are forced to deploy with their offender in the same unit or on the same ship. Finally, the loss of good order and discipline in the military degrades our national security.

Conclusion

Mental health treatment and diagnoses are protected communications under MRE 513. The Rule's plain meaning and standard canons of construction support this conclusion. The CAAF's interpretation is wrong textually and leads to absurd conclusions such as the rule not protecting psychotherapy treatment like counseling. Its interpretation also undermines the purpose of the privilege by deterring patients from seeking mental health treatment. This Court should grant the petition for writ of certiorari and reverse.

Respectfully submitted.

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