



# 2023 Professional Liability Mini Seminar

## August 11, 2023

### Sword and Shield: Defeating and Defending Assertions of Privilege in Professional Liability Claims

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Moderator

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In this session panelists will discuss the impact of attorney-client, work product and other privileges in the context of professional liability litigation. The panel will explore what privileges are available to parties in professional liability matters, their scope, how privilege may be protected and when it is waived. Through a review of recent cases, the panel will consider how defense counsel can both protect the rights of their clients and safeguard privileged information but also how they can attack claims of privilege from adverse parties and obtain information useful to the defense of the case.

Use Bullet List Style for bulleted lists

1. Attorney-Client, Work Product and Other Applicable Privileges in Professional Liability Matters
  - a. History of Attorney Client Privilege
  - b. History of Work Product Privilege
2. Scope of Privilege, Communications v. Facts  
Upjohn, privilege applies to communications not facts; application in legal and medical professional liability actions
3. Waiver of Privilege – Implied and Express Waiver, Waiver  
*Hearn v. Rhay & Pappas* cases, what constitutes an implied v. express waiver of attorney-client privilege, discussion of recent decision on this topic
4. Privilege for Corporate Defendants, and Related Corporate Entities
  - a. Communications between corporate entities such as parent and subsidiary,
  - b. Communications including or from in-house legal department and general counsel, when are they and aren't they privileged
5. Criminal Overlap, the Right Against Self-Incrimination
6. Peer Review and Related Privilege in Medical Professional Liability Matters
  - a. Peer Review Privilege Statutes
  - b. HIPPA and other medical confidentiality issues, mental health records and separate confidentiality and privilege issues