



EMORY

Office of the General Counsel

Representing Emory University  
and Emory Healthcare

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## OGC ADVISORY\*

### TOPIC: CAN WE TALK?

### UNDERSTANDING THE ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege is an essential part of the legal system that protects communications between attorneys and their clients. Under Georgia law, certain communications between an attorney and a client are deemed confidential and may not be used as evidence in a trial or even seen by the opposing party during the discovery phase (i.e., the initial fact finding period) of litigation. The privilege allows a client to engage in open and frank discussions with their attorney without fear that the information will be disclosed to opposing parties or used as damaging evidence against the client - particularly in the context of a lawsuit.

Confidential communications between the Office of General Counsel attorneys and Emory University and/or Emory Healthcare (collectively, "Emory") officers, administrators, physicians, faculty, and staff for the purpose of seeking legal advice concerning Emory business matters are protected by the attorney-client privilege. Communications are privileged whether in written, oral or electronic form, but must be kept confidential in order for the privilege to apply. If the substance of the communications is disclosed to persons outside of Emory, or even to persons within Emory who are not directly involved in the matter, the privilege may be lost. Therefore, communications with OGC attorneys should not be discussed with anyone outside of Emory, including family members and friends.

While the attorney-client privilege protects a broad range of confidential information shared between a client and an attorney, the privilege does not protect every piece of information shared between the client and the attorney. ***The purpose of the communication must be to request or receive legal advice.*** Therefore, the mere presence of an attorney during a meeting to discuss Emory operational/business issues (without the purpose of obtaining legal advice) will not protect the communication from potential discovery. Likewise, copying an attorney on a string of e-mail exchanges where the attorney is not providing (or not being asked to provide) legal advice will not protect the communications from discovery. Although Emory may be able to assert other privileges in connection with the communications, particularly in the health care context (e.g., peer review), understanding this factor is critical to maximizing the effectiveness of the attorney-client privilege.

As with other types of privileges, the attorney-client privilege does not automatically attach to conversations, documents and other types of communications. The attorney-client privilege must be asserted at the time the disclosure is demanded by a third party. However, please keep in mind that except under very limited circumstances, OGC attorneys, as well as outside counsel retained to

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\* The Office of the General Counsel Advisories are general statements intended to alert the Emory Community or specific portions thereof about significant legal issues and to provide helpful guidelines for complying with legal standards in effect as of the issuance date of each advisory.

represent Emory, are legally obligated to preserve the privileged nature of all confidential communications.

The following practical tips may be helpful in preserving the privileged nature of communications:

- *Do not discuss attorney-client communications with third parties.*
- *Within Emory, attorney-client communications should only be shared on a “need to know” basis for the purpose of conveying legal advice or gathering information for the purpose of requesting legal advice and/or feedback.*
- *Mark written communications (including e-mails) to OGC attorneys requesting or responding to legal advice as “Attorney-Client Information - Privileged and Confidential.”*
- *Do not forward e-mails or other correspondence from OGC attorneys containing legal advice or opinions to third parties.*
- *Treat attorney-client communications in a confidential manner (e.g., do not leave the materials on conference room tables, on the kitchen table or in any other location where the information may be easily viewed by third parties).*

If you have any questions regarding the attorney-client privilege, you may contact any of the attorneys within the Office of General Counsel.