

63

1/2/69

Second Supplement to Memorandum 69-6

Subject: Study 63 - Evidence (Revision of Privileges Article)

Attached are three additional letters relating to the psychotherapist-patient privilege revision. You should read these letters prior to the meeting.

The first letter is from Robert L. Dean, representative of the clinical social workers, who suggests that the recommendation relating to the psychotherapist-patient privilege not be deferred but be submitted to the 1969 Legislature.

The second letter is from the President of the California Association of School Psychologists and Psychometrists.

The third letter is from the office of the Attorney General and suggests that a significant exception be added to the psychotherapist-patient privilege, whether or not the privilege is expanded:

There is no privilege under this article in a proceeding brought by a public entity to determine whether a right, authority, license, or privilege (including the right or privilege to be employed by the public entity or to hold a public office) should be revoked, suspended, terminated, limited, or conditioned.

This suggestion was considered and rejected when the Evidence Code was drafted. The Commission and others then concluded that the privilege encourages persons to seek treatment and that proof of the facts giving rise to a right to revoke a license or the like should be established by evidence other than confidential communications to the psychotherapist. For example, there should be sufficient evidence to terminate the

employment of a state employee based on his job performance without the need to require disclosure of his confidential communications to a psychotherapist who has been treating the employee in an effort to improve his job performance.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memorandum 69-6
Second Supplement
CLINICAL SOCIAL WORK

EXHIBIT I

BY APPOINTMENT

ROBERT L. DEAN, M. A.
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OR 3-8363

December 26, 1969

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

Thank you for sharing with me Memorandum 69-6. In reading Sections 5328-5330 of the Welfare and Institutions Code which will become operative on July 1, 1969, it is my impression that they do not touch on the matter of great concern to me, that is, the broadening of the definition of "psychotherapist" in Section 1010 of the Evidence Code to include licensed clinical social workers as well as the other professional persons who lawfully practice psychotherapy. Since this seems to me to be a separate issue, it is with keen disappointment that I note your recommendation that the Commission not approach this part of the problem in the 1969 legislative session.

It is clear to me, of course, that the possible inconsistencies inherent in these new additions to the Welfare and Institutions Code require study and further recommendations by the Commission. It is my hope, however, that the Commission will decide to go ahead with the legislation relating to the psychotherapist-patient privilege in the coming legislative session.

In reference to the Los Angeles meeting of the Commission on January 9, 10, and 11, I should like to ask if it may be possible for one of our group to attend as an observer that portion of the meeting relating to Memorandum 69-6. If this is

CLINICAL SOCIAL WORK

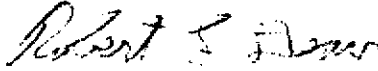
BY APPOINTMENT

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OR 3-8383

possible, I will be glad to take responsibility for arranging with one of our clinical social workers in the Los Angeles area to attend for us.

I appreciate very much your kindness in keeping me informed regarding the progress of the work of the Law Revision Commission relating to the Evidence Code Privileges Article.

Sincerely yours,



Robert L. Dean
Clinical Social Worker

CALIFORNIA ASSOCIATION OF SCHOOL PSYCHOLOGISTS AND PSYCHOMETRISTS

1705 Murchison Drive, BURLINGAME, California 94010

1968 - 1969

December 26, 1968

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John H. DeMouly
Executive Secretary
California Law Revision Commission
School of Law
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Dear John:

Thank you for sending the material with reference to the California Law Revision Commission's recommendations for changes in the Evidence Code. I found your discussion of the recommendations to be extremely well written and addressing themselves to some very important issues. The proposed legislation was discussed at length with our Executive Board at its meeting on December 20. This group formally voted to approve the recommended changes and to praise the Law Revision Commission for its leadership in this area. We strongly agree that the interests of the students with whom we work in the school setting would be better served if the psychologist-patient privilege were extended to school psychologists. This will be increasingly the case as more and more school psychologists begin to function at the High School level.

I am sorry to note that there is the possibility of a conflict between the proposed legislation and certain provisions within the Welfare and Institutions Code. I would appreciate being kept informed of the Commission's decision at its January meeting, as to whether or not they will move toward this much needed legislation at this time. If it is not possible to bring about these changes in this session of the Legislature, the Executive Board urges the Law Revision Commission to expedite the necessary study and changes so that such legislation may be enacted as soon as possible.

Sincerely,

Calvin D. Catterall
Calvin D. Catterall, Ph.D.
President-CASPP

CDC:b
cc: S. Goff

THOMAS C. LYNCH
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December 19, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Subject: Tentative Recommendation Relating to
Psychotherapist-Patient Privilege

Gentlemen:

While we make no objections to the proposed expansion of the psychotherapist-patient privilege set forth in your tentative recommendation dated October 21, 1968, we feel that the privilege, expanded or not, should not be available in certain administrative proceedings mentioned in Evidence Code section 1007. That section provides as follows:

"There is no privilege under this article in a proceeding brought by a public entity to determine whether a right, authority, license, or privilege (including the right or privilege to be employed by the public entity or to hold a public office) should be revoked, suspended, terminated, limited, or conditioned."

There is no good reason why such a provision should not be equally applied to the psychotherapist-patient privilege. In many proceedings before the State Board of Medical Examiners for example, the causes for discipline alleged against the physician concern psychiatric factors, i.e., over-indulgence with alcohol, the improper self-use of narcotics or dangerous drugs, or mental illness itself. The Board is extremely hampered in seeking a result which is at the same time protective of the public and just to the physician involved if it cannot consider relevant and important evidence which might under present law be barred by the psychotherapist-patient privilege.

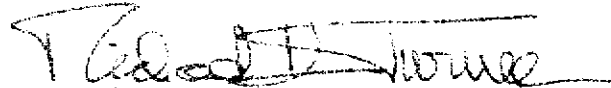
To cite another example, under present law, the State Personnel Board would be hampered in deciding medical

termination cases (see Government Code section 19253.5) where the state employee's medical problem has psychiatric factors involved. The problem now posed by the privilege will be aggravated by its extension to other licensees, such as marriage counselors, social workers, and the like.

Our view would only mean that the psychotherapist-patient privilege and the physician-patient privilege would have equal legal effect in those proceedings mentioned in section 1007. This would not, in our opinion, vitiate in any way the social policy expressed by the Commission in facilitating communications or revelations. The State Board of Medical Examiners has indicated their concurrence with our view.

Very truly yours,

THOMAS C. LYNCH
Attorney General

A handwritten signature in dark ink, appearing to read "Richard K. Turner", written over a horizontal line.

RICHARD K. TURNER
Deputy Attorney General

RKT:ln