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3/11/63

File: URE-Privileges Article

Current Memoranda

First Supplement to Memorandum No. 63-7

Subject: Study No. 34(L) - Uniform Rules of Evidence (Rule 27.1)

Attached to this memorandum as Exhibit I is an extract from the minutes of the Northern Section of the State Bar Committee on URE. This will be considered in connection with Memorandum No. 63-7.

The State Bar would like to see an exception for the situation where the patient claims damages for mental injury or disturbance. As the Commission has revised the rule, it contains a provision that should permit this type of evidence in. See subdivision (3)(e).

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

EXHIBIT I  
EXCERPT FROM MINUTES OF MEETING  
of  
NORTHERN SECTION OF COMMITTEE  
to  
CONSIDER UNIFORM RULES OF EVIDENCE  
(Psychiatrist-Patient)

The Chairman proceeded with the discussion of proposed Rule 27 (a), the Psychiatrist-Patient Privilege, by summarizing the report of the staff of the Law Revision Commission.

Mr. Liebermann expressed the view that irrespective of the nature of the trust which a patient places in his psychiatrist, the privilege should extend no further than the present Physician-Patient Privilege as set forth in Rule 27. Mr. Liebermann's position rested upon skepticism of the value of psychiatry in general. Mr. Pattee concurred generally with Mr. Liebermann but expressed the view that the proposed Rule 27 (a) should be adopted in order to bring into perspective the inordinate privilege now conferred upon the psychologist-client relationship by § 2904 of the California Business and Professions Code.

Mr. Martin suggested that if the proposed Rule should be adopted, there should be an exception for the case in which the patient claims damages for mental injury or disturbance resulting from alleged tortious conduct by the defendant, just as there is an exception to the Physician-Patient Privilege where the patient claims damages for physical injury.

Upon further discussion, the majority of the Committee approved proposed Rule 27 (a) provided that it be redrafted to include an

exception where the patient claims damages for mental injury or disturbance as hereinbefore mentioned.

It was noted that the proposed Rule 27 (a) contains a number of provisions similar to the Physician-Patient Privilege embodied in Rule 27 with respect to which the Committee and the Law Revision Commission had differed. These differences are set forth in the recent letter sent by the Chairman of the Committee to the Law Revision Commission, which summarized the position of the Committee on all of the privilege rules. The Committee was of the opinion that these differences should be considered in the final draft of the Law Revision Commission.