

#63

10/14/68

First Supplement to Memorandum 68-102

Subject: Study 63 - Evidence Code (Privileges Article)

The attached letter from Dr. Judah Landes, President of the California State Marriage Counselors Association, gives additional information concerning the qualifications and functions of marriage, family, and child counselors and their need for a privilege not to disclose confidential communications.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

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Mr. John DeMouilly
California State Law Revision Commission
Stanford University Law School
Palo Alto, California

Dear Mr. DeMouilly:

I am sending to you as you requested some information regarding the California State Marriage Counseling Association's position on privileged communication. I feel that I should say at the outset that we feel it is absolutely essential that marriage, family and child counselors be given the right of privileged communication so that their work may proceed.

The marriage counselor works in some of the most sensitive and delicate areas of human interaction and communication. The role of the marriage counselor is to explore and examine close, intimate, personal and emotional interaction within marriage and family. Any overt need for public disclosure of these matters could very well destroy disturbed or distressed marriages. It is quite possible that public disclosure of family interactional data could lead one or more family members to very disturbed emotional states including psychosis and perhaps suicide. For these reasons I feel that it is important that the marriage, family and child counselor have the right of privileged communication as do psychiatrists and psychologists.

Our recent attempts to introduce new legislation changing the current Business and Professions Code, Section 17800 to 17847, included a privileged communication section. I will quote to you the Association's proposed amendment: "For the purposes of this chapter the confidential relations and communications between licensed marriage, family and child counselors and clients shall be placed upon the same basis as those provided by law between attorney and client and nothing contained in this chapter shall be construed to require any privileged communication be disclosed."

Definition of a marriage counselor: A marriage counselor may be defined as one who provides advice and personal and interpersonal counseling services to individuals, groups, families in relation to marital, family or children's problems. The marriage counselor engages in this business for remuneration, either in the form of fees or donations, specifically

offers these services to the public and advertises himself as such a counselor as set forth in Section 17800 of the Business and Professions Code.

(My personal comment on this definition is that the emphasis is on counseling of marriage and family problems as opposed to psychotherapeutic treatment per se. The issue is subtle because we are presuming that disturbed marriages do not necessarily mean individuals with psychological or psychiatric disturbance, i.e. marriage and family distress situation may well occur between psychologically and psychiatrically normal individuals. Also, the marriage counselor may have quite competent training and be from such heterogeneous disciplines as law, psychology, social work, education, the church, etc.)

Educational, training, and intake characteristics of marriage, family and child counselors: According to the current legislative licensing law, a marriage counselor is required to have a master's degree in marriage counseling, social work or one of the behavioral sciences including, but not limited to, sociology or psychology, obtained from a college or university approved by the Director of the Department of Professional Vocational Standards.

It is also required in the law that at least one year of supervised practicum experience that is fully documented, be required for a marriage, family and child counselor. (The Association's proposed new licensing law requires that this experience shall involve not less than 1,000 clock hours of supervised marriage, family or child counseling and not less than 100 hours of individual supervision between the trainee and the supervisor. That this supervision shall be under the direction and responsibility of a person who is acceptable to the director, has a degree appropriate to the licensing law. We are also suggesting that a written examination be given twice each year for all candidates for the marriage, family and child counseling license. This examination shall test the candidates on their knowledge of professional, ethical and substantive issues concerning marriage, family and child counseling.)

Kinds of marriage counseling problems that arise requiring privileged communication: In the short time available to me it is hard to give you many specific situations where privileged communication has been required in the past, but I shall give you some practical circumstances where it has been found necessary. This information comes not only from my own private practice experience but from the experience of other marriage counselors in the area that I have talked with. 1. A situation where there is disclosure of confidentially communicated information concerning extramarital sexual relationships confided by one spouse to the marriage counselor during an individual appointment. If this knowledge were to be brought to the attention of the other spouse without adequate preparation or by public disclosure, this could well lead to a destruction of the marriage and perhaps even greater emotional and physical

harm to all parties concerned. Very often this kind of confidential information is only given to the marriage counselor under the condition that it not be disclosed to other members of the family. This assists the counselor in understanding what is going on and helping him become sensitized to various communication processes and problems occurring within the marriage. It also helps establish a trusting relationship which is necessary for the therapy to work. Oftentimes, open disclosure of these matters, particularly at the outset of treatment, can be very destructive.

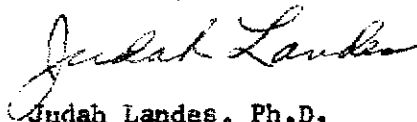
2. Very often marital situations are discussed during the counseling hour that involve peculiar, aberrant, unusual but non-sexual behavior processes involving one or more spouses. If this odd or peculiar behavior pattern were made public, both parties in the marriage might be terribly embarrassed and it may cause them substantial harm in their own business or professional areas. People come into marriage counseling under the assumption that they are permitted the privacy of communicating openly and without threat of disclosure and the resultant effect that it may have on their lives. If this becomes open to public access, this could well destroy the effectiveness of a marriage counselor trying to help a disturbed or emotionally upset family.

3. At times marriage problems occur within families that are engaged in an active business enterprise. The disclosure of an impending divorce can upset and can destroy the ability of the family to borrow or obtain money. Credit and money granting institutions, upon hearing of the instability of the family will frequently put constraints on the ability of this family to obtain money or loans for their business purposes. This would effect the trusting relationship necessary to counseling and make it very difficult to proceed with getting a full understanding of the facts in the marriage and the emotional feeling content that this family faces.

I realize that what I am presenting to you are hypothetical examples. However, I think it should be clear that almost all marriage counselors that I have talked to have faced all three of these kinds of situations in real life where any kind of public disclosure would have had disastrous effects not only on the treatment of the disturbed family but on the likelihood of the disturbed family to stay married. Marriage counselors cannot work without client trust and client privacy.

I feel it is absolutely essential that we maintain confidentiality for marriage counselors and I urge that the California State Law Revision Commission recommend that privileged communication be given to marriage, family and child counselors.

Sincerely,



Judah Landes, Ph.D.

Pres., Calif. State Marriage Counselors Assoc.