DIVISION OF HEALTH:
PRIVILEGED COMMUNICATIONS: A regulation of the Division of Health requiring privileged communications to be held confidential.

May 26, 1950

5/26/50

FILED
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Mr. L. M. Garner, M.D., M.P.H.
Director, Maternal and Child Health
Division of Health
Jefferson City, Missouri

Dear Sir:

I.

This will acknowledge receipt of your letter in which you request an official opinion from this department as to the legality of the following regulations adopted by the Division of Health:

> "The following is a regulation adopted by the State Division of Health on May 20, 1950, in regard to keeping information confidential.
>
> "All information as to personal facts and circumstances obtained by the State or local staff administering the health program shall constitute privileged communications, shall be held confidential and shall not be divulged without the individual's consent. This means all personal items such as social, medical or financial facts and circumstances pertaining to any individual served or recorded by the State or local staff, except such information that must be revealed to comply with the law, or required as evidence in any proper court.
>
> "General information such as total expenditures made, number of people served and other statistical information is not considered as confidential provided such general information cannot be identified with any particular individual.
>
> "The use of all information and records shall be limited to purposes directly connected with the administration of the Division of Health program and no disclosure of such information shall be made other than in the administration of this program.

"The person in charge of any office or unit of the Division of Health shall provide for the adequate protection of any confidential records and procedures and shall be responsible for the enforcement of this regulation.

"As new staff members are hired the person in charge of the office to which they are assigned must inform them of this regulation."

II.

Section 1895, R. S. Mo. 1939, provides as follows:

"The following persons shall be incompetent to testify: First, a person of unsound mind at the time of his production for examination; second, a child under ten years of age, who appears incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; third, an attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the consent of such client; fourth, a minister of the gospel or priest of any denomination, concerning a confession made to him in his professional character, in the course of discipline enjoined by the rules of practice of such denomination; fifth, a physician or surgeon, concerning any information which he may have acquired from any patient while attending him in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or do any act for him as a surgeon."

The Supreme Court of Missouri held in the case of Gartside v. Connecticut Mutual Life Insurance Company, 76 Mo. 446, as follows:

"The construction contended for by defendant's counsel, that by the statute a physician is forbidden to disclose only such information as may have been communicated to him orally by his patient would, in our opinion, nullify the law. To hold that, while under the statute a physician would be forbidden from disclosing a statement made to him by his patient that he was suffering from syphilis; and to allow him to state as the result of his observation and examination of the patient that he was diseased with syphilis would

> be to make the statute inconsistent with itself. It is doubtless true that a physician learns more of the condition of a patient from his own diagnosis of the case than from what is communicated by the words of the patient; and to say that while the mouth of a physician is sealed as to the information acquired orally from his patient, it is opened wide as to information acquired from a source upon which he must rely, viz: his own diagnosis of the case, would be to restrict the operation of the statute to narrower limits than was ever intended by the legislature and virtually to overthrow it.
>
> "It follows from what has been said that the circuit court erred in permitting Drs. Gregory and Bauduy, two physicians, to give in evidence the information acquired by them while attending Gartside, their patient, professionally, although such information was acquired not from what the patient said but from observation and examination. * * *"

Your regulation is in accordance with the above section and is within the rule-making power of the Division of Health.

CONCLUSION

It is the opinion of this department that the above and foregoing regulation adopted by the Division of Health, May 20, 1950, is hereby approved as to legal form and content.

Respectfully submitted,

Stephen J. Millett

STEPHEN J. MILLETT
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APPROVED:

C B B

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Attorney General

SJM:mw