PHYSICIANS AND SURGEONS: Records obtained by laboratory tests from samples submitted by physicians are privileged and not open for inspection to the public.

PUBLIC RECORDS:

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FILED
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E. T. McGaugh, M. D.
Commissioner of Health
State Department of Health
Jefferson City, Missouri

Dear Dr. McGaugh:

This is to acknowledge your request for an opinion concerning the status of records obtained by your Department when it makes laboratory tests for medical doctors, in particular concerning communicable diseases. You desire to know whether or not the records thus obtained are public in so far as they are open to the inspection of any person desiring to see them.

We assume that you have in mind concerns those records made in your laboratory after conducting a laboratory analysis upon the request of a medical doctor after he has submitted a sample from which your Department makes the test. If the medical doctor does not send to your laboratory the samples, then your Department would have no record concerning the matter. The laboratory tests are conducted solely upon the request of the doctor attending the patient. The result of the laboratory test is made known to the medical doctor and we presume that you also keep a record of the result of said examination.

Section 9018, R. S. Mo. 1929, provides as follows:

> "The board shall designate those diseases which are infectious, contagious, communicable or dangerous intheir nature and shall make and enforce adequate rules, regulations and procedures to prevent the spread of those diseases and to determine the prevalence of said diseases within the state."

The prevention of contagious, infectious and communicable diseases is a matter of public health and the Board of Health is charged with the solemn duty of preventing and eradicating said diseases in so far as possible.

Section 1731 R. S. Mo. 1929, provides in part as follows:

> "The following persons shall be incompetent to testify:* * * * * * * * * * * * * * * *
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> 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."

It is thus seen from the above statute that communications between a physician and patient are privileged and such cannot be divulged except by the consent of the patient. In other words, a physician treating a patient for some disease could not testify as to knowledge imparted to him by virtue of his relationship with his patient. However, the patient may waive the privilege.

In Galli v. Wells, 239 S. W. 894, the St.Louis Court of Appeals, page 896, said the following:

"It will be noted that the foregoing statement offered in evidence is a record preserved by the hospital of the plaintiff's condition and treatment made by her physicians while she was a patient at the hospital. Ordinarily such a record would be inadmissible because it is privileged communication between physician and patient. Under the provisions of our disqualification statute (section 5418, R. S. 1919), a physician is incompetent to testify concerning any information which he may have acquired from any patient while attending him in a professional character, and which was necessary to enable him to prescribe for such patient.

In the case of Smart vs. Kansas City, 208 Mo. 162, 105 S. W. 709, 14 L. R. A. (N.S.) 565, 123 Am. St. Rep. 415, 13 Ann. Cas. 932, it is held that a hospital physician is not competent to testify as to what he learned of the patient's condition while so attending him, and it is further ruled that the official hospital record into which the physician had copied the diagnosis of the case is privileged, and not admissible in evidence. In that case it was further ruled that the fact that the city ordinance of Kansas City required such records to be kept furnished no reason why the statute against disclosure of privileged communications should be violated.

In the present case, however, we have an entirely different question, as it is conceded that the plaintiff, by taking the stand and testifying to her physical condition, and also by calling her own physician to testify on that subject, has waived the privilege given to her by the statute." * * * *"

If a physician or surgeon, in treating a patient, determines that it is necessary for him to have certain laboratory tests performed by the laboratory of the Department of Health, and submits to said laboratory a sample of the substance sought to be analyzed and examined, and certain facts are obtained by said test or examination, then, in our opinion, such information would be privileged and could not be divulged except by waiver of the patient. In other words, records obtained by the laboratory of the Department of Health from samples submitted by physicians would be in the same classification as information obtained by physicians. from patients.

We do not understand your request to be as to the admissibility of your records in a court. Consequently we have not written on that mateer. Kirkpatrick et al. vs. Wells, 6 S. W. (2d) 591. Our understanding of your request is, whether or not records obtained from samples submitted by physicians are public in the sense that any one has a right to the inspection of them.

We have ruled above that if the patient waives his right of privilege, then such records may be open to the inspection of the public. In this connection we add that the patient would have a right to the use of said information.

Respectfully submitted,

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APPROVED:

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JLH:MM