

No. 388

**MONTANA STATE COMMISSION FOR THE BLIND—
BLIND PERSONS, information for register of—PHYSICIANS
AND SURGEONS, blind register, furnishing information for—
EVIDENCE, privileged communications between physician and
patient**

Held: Because of the rule of privileged communication between physician and patient, the only way information can be secured concerning the degree of vision, cause of blindness and any other necessary information to be included in the "register of the blind" is to secure the assent of the person with respect to whom the information is desired or, if the person be a child, from the parent or guardian.

April 3, 1942.

Miss Sharon R. Cromeenes
State Supervisor
Montana Commission for the Blind
Great Falls, Montana

Dear Miss Cromeenes:

I have received your recent letter relating to the matter of keeping a "state register of the blind." You have pointed out that, under the provisions of Chapter 42 of the Laws of 1939, it is the duty of the Montana State Commission for the Blind to keep such a register and that said register must necessarily include information which must be secured from eye doctors throughout the state. You ask what may be done in the event a doctor refuses to divulge information concerning the degree of vision or cause of blindness of a person who has been or is his patient.

The privilege between physician and patient is one recognized in law, but is primarily a rule of evidence. In Montana the rule is stated in Section 10536, Revised Codes of Montana, 1935, as follows:

"There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases: . . .

"4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient."

It is generally held the object of such a statute and of the rule embodied in all similar statutes is not absolutely to disqualify a physician from disclosing facts, or testifying, but to enable a patient to secure medical aid without betrayal of confidence. (28 R. C. L. 542.) With respect to the testimony of a physician, our Supreme Court has held in the case of *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 486, 67 Pac. (2nd) 831, 837:

"The patient may therefore waive objection and permit the physician to testify. In other words, the privilege is the privilege of the patient and not of the physician; and by great weight of authority if the patient assents the court will compel the physician to answer . . . The physician cannot waive the statutory privilege and testify against the wishes of his patient."

Aside from the rule of privileged communications which, as stated, is merely a rule of evidence, it is my understanding the ethical medical practitioner considers as privileged and confidential all communications made to him by his patients. However, with the assent of the patient it should be both legally and ethically proper for a physician to divulge the information you require which is, in a sense, evidence or testimony.

It is my opinion that, because of the rule of privileged communications between physician and patient, the only way you can secure information concerning the degree of vision, cause of blindness and any other necessary information to be included in the "register of the blind" is to secure the assent of the person with respect to whom the information is desired, or if the person be a child, from the parent or guardian. (See 70 C. J. 443.)

Sincerely yours,

JOHN W. BONNER
Attorney General