

November 14, 1968

185 W. State Street

Trenton, N.J. LEGISLATIVE NOTES ON R.S. 2A:84A-22.1 et seq.

(Confidential communications between physicians and patient)

Two reports leading up to the Evidence Act of 1960 included this section in the act. See:

974.90 N.J. Supreme Court. Committee on the Revision of the Law of Evidence. Report ... May 25, 1955. p. 69-72. COPY NO. 2

974.90 N.J. Commission to Study the Improvement of the Law of Evidence. Report ... November 1956. p. 33-35.

The section, however, did not become part of the Evidence Act of 1960. (We have not searched for reasons why).

When the "Practicing Psychology Licensing Act was enacted in 1966 (Chapter 292, L. 1966) it provided for confidentiality of communications in Section 28. In late 1966, the Board of Trustees of the New Jersey Medical Society recommended that physicians be covered by the same privilege. See:

974.905 Journal of the Medical Society of
M49 New Jersey. Vol. 64, April 1967,
p. 184 (copy enclosed).

However, we do not find that this particular suggestion was introduced in the Legislature in 1966, 1967 or 1968.

No similar bills were introduced in 1965, 1966 or 1967.

The bill which became law:

- L. 1968, Chapter 185 - S274
- Introduced January 15 by Woodcock [and 4 others].
- No statement.
- May 6 - Passed Senate (copy of original bill enclosed).
- June 24 - Passed Assembly, amended (copy enclosed).
- June 24 - Repassed in Senate.
- July 19 - Approved.

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The Medical Society lists S274 of 1968 as "society-sponsored" legislation. See:

974.905 Journal of the Medical Society of New
M49 Jersey. Vol. 65, July 1968, p. 339
(enclosed).

Although Assemblymen Scancarella and Coleman are listed as co-sponsors of S274 of 1968 (above) in the N.J. Legislative Index, they (along with Assemblyman Mabie) introduced a similar bill in the Assembly:

1968 - A604 (Scancarella, Coleman & Mabie).
April 8 - Introduced (no statement) (copy enc.)
May 13 - Reported, 2d reading.
June 24 - Recommitted.

RSL/PC

CHAPTER 185 PASSED IN J. 1968
APPROVED 7-19-68

[OFFICIAL COPY REPRINT]

SENATE, No. 274

STATE OF NEW JERSEY

INTRODUCED JANUARY 15, 1968

By Senators WOODCOCK, RIDOLFI and COFFEE

and

Assemblymen SCANCARELLA and COLEMAN

Referred to Committee on Judiciary

AN ACT relating to confidential communications between physician and patients, and supplementing "The Evidence Act, 1960," approved June 20, 1960 (P. L. 1960, c. 52).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act, (a) "patient" means a person who, for
2 the sole purpose of securing preventive, palliative, or curative
3 treatment, or a diagnosis preliminary to such treatment, of his
4 physical or mental condition, consults a physician, or submits to
5 an examination by a physician; (b) "physician" means a person
6 authorized or reasonably believed by the patient to be authorized,
7 to practice medicine in the State or jurisdiction in which the con-
8 sultation or examination takes place; (c) "holder of the privilege"
9 means the patient while alive and not under the guardianship or
10 the guardian of the person of an incompetent patient, or the per-
11 sonal representative of a deceased patient; (d) "confidential com-
12 munication between physician and patient" means such information
13 transmitted between physician and patient, including information
14 obtained by an examination of the patient, as is transmitted in
15 confidence and by a means which, so far as the patient is aware,
16 discloses the information to no third persons other than those
17 reasonably necessary for the transmission of the information or the
18 accomplishment of the purpose for which it is transmitted.

1 2. Except as otherwise provided in this act, a person, whether or
2 not a party, has a privilege in a civil action or in a prosecution for
3 a ***[misdemeanor]*** **crime or violation of the disorderly persons*
4 *law or for an act of juvenile delinquency** to refuse to disclose,
5 and to prevent a witness from disclosing, a communication, if he

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

6 claims the privilege and the judge finds that (a) the communication
7 was a confidential communication between patient and physician,
8 and (b) the patient or the physician reasonably believed the com-
9 munication to be necessary or helpful to enable the physician to
10 make a diagnosis of the condition of the patient or to prescribe or
11 render treatment therefor, and (c) the witness (i) is the holder of
12 the privilege or (ii) at the time of the communication was the
13 physician or a person to whom disclosure was made because reason-
14 ably necessary for the transmission of the communication or for
15 the accomplishment of the purpose for which it was transmitted
16 or (iii) is any other person who obtained knowledge or possession
17 of the communication as the result of an intentional breach of the
18 physician's duty of nondisclosure by the physician or his agent or
19 servant and (d) the claimant is the holder of the privilege or a
20 person authorized to claim the privilege for him.

1 3. There is no privilege under this act as to any relevant com-
2 munication between the patient and his physician (a) upon an
3 issue of the patient's condition in an action to commit him or other-
4 wise place him under the control of another or others because of
5 alleged mental incompetence, or in an action in which the patient
6 seeks to establish his competence or in an action to recover damages
7 on account of conduct of the patient which constitutes a criminal
8 offense other than a misdemeanor, or (b) upon an issue as to the
9 validity of a document as a will of the patient, or (c) upon an
10 issue between parties claiming by testate or intestate succession
11 from a deceased patient.

1 4. There is no privilege under this act in an action in which the
2 condition of the patient is an element or factor of the claim or
3 defense of the patient or of any party claiming through or under
4 the patient or claiming as a beneficiary of the patient through a
5 contract to which the patient is or was a party **or under which the*
6 *patient is or was insured*.*

1 5. There is no privilege under this act as to information which
2 the physician or the patient is required to report to a public official
3 or as to information required to be recorded in a public office, unless
4 the statute requiring the report or record specifically provides that
5 the information shall not be disclosed.

1 6. No person has a privilege under this act if the judge finds
2 that sufficient evidence, aside from the communication has been
3 introduced to warrant a finding that the services of the physician
4 were sought or obtained to enable or aid anyone to commit or to
5 plan to commit a crime or a tort, or to escape detection or appre-
6 hension after the commission of a crime or a tort.

1 7. A privilege under this act as to a communication is terminated
2 if the judge finds that any person while a holder of the privilege
3 has caused the physician or any agent or servant of the physician
4 to testify in any action to any matter of which the physician or his
5 agent or servant gained knowledge through the communication.

1 8. This act shall take effect immediately.

SENATE, No. 274

STATE OF NEW JERSEY

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4 physical or mental condition, consults a physician, or submits to
5 an examination by a physician; (b) "physician" means a person
6 authorized or reasonably believed by the patient to be authorized,
7 to practice medicine in the State or jurisdiction in which the con-
8 sultation or examination takes place; (c) "holder of the privilege"
9 means the patient while alive and not under the guardianship or
10 the guardian of the person of an incompetent patient, or the per-
11 sonal representative of a deceased patient; (d) "confidential com-
12 munication between physician and patient" means such information
13 transmitted between physician and patient, including information
14 obtained by an examination of the patient, as is transmitted in
15 confidence and by a means which, so far as the patient is aware,
16 discloses the information to no third persons other than those
17 reasonably necessary for the transmission of the information or the
18 accomplishment of the purpose for which it is transmitted.

1 2. Except as otherwise provided in this act, a person, whether or
2 not a party, has a privilege in a civil action or in a prosecution for
3 a misdemeanor to refuse to disclose, and to prevent a witness from
4 disclosing, a communication, if he claims the privilege and the judge
5 finds that (a) the communication was a confidential communication
6 between patient and physician, and (b) the patient or the physician
7 reasonably believed the communication to be necessary or helpful
8 to enable the physician to make a diagnosis of the condition of the
9 patient or to prescribe or render treatment therefor, and (c) the

10 witness (i) is the holder of the privilege or (ii) at the time of the
11 communication was the physician or a person to whom disclosure
12 was made because reasonably necessary for the transmission of
13 the communication or for the accomplishment of the purpose for
14 which it was transmitted or (iii) is any other person who obtained
15 knowledge or possession of the communication as the result of an
16 intentional breach of the physician's duty of nondisclosure by the
17 physician or his agent or servant and (d) the claimant is the holder
18 of the privilege or a person authorized to claim the privilege for
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4 wise place him under the control of another or others because of
5 alleged mental incompetence, or in an action in which the patient
6 seeks to establish his competence or in an action to recover damages
7 on account of conduct of the patient which constitutes a criminal
8 offense other than a misdemeanor, or (b) upon an issue as to the
9 validity of a document as a will of the patient, or (c) upon an
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4 to testify in any action to any matter of which the physician or his
5 agent or servant gained knowledge through the communication.

1 8. This act shall take effect immediately.

ASSEMBLY COMMITTEE AMENDMENTS TO
SENATE, No. 274

STATE OF NEW JERSEY

ADOPTED JUNE 13, 1968

Amend page 1, section 2, line 3, omit "misdemeanor", insert "crime or violation of the disorderly persons law or for an act of juvenile delinquency".

Amend page 2, section 4, line 5, after "party", insert "or under which the patient is or was insured".

ASSEMBLY, No. 604

STATE OF NEW JERSEY

INTRODUCED APRIL 8, 1968

By Assemblyman SCANCARELLA

Referred to Committee on Revision and Amendment of Laws

AN ACT relating to confidential communications between physician and patients, and supplementing "The Evidence Act, 1960," approved June 20, 1960 (P. L. 1960, c. 52).

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7 to practice medicine in the State or jurisdiction in which the con-
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11 representative of a deceased patient; (d) "confidential communi-
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13 transmitted between physician and patient, including informa-
14 tion obtained by an examination of the patient, as is transmitted
15 in confidence and by a means which, so far as the patient is
16 aware, discloses the information to no third persons other than
17 those reasonably necessary for the transmission of the informa-
18 tion or the accomplishment of the purpose for which it is trans-
19 mitted.

1 2. Except as otherwise provided in this act, a person, whether
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5 the judge finds that (a) the communication was a confidential com-
6 munication between patient and physician, and (b) the patient or

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8 sary or helpful to enable the physician to make a diagnosis of the
9 condition of the patient or to prescribe or render treatment
10 therefor, and (c) the witness (i) is the holder of the privilege or
11 (ii) at the time of the communication was the physician or a person
12 to whom disclosure was made because reasonably necessary for
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14 of the purpose for which it was transmitted or (iii) is any other
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16 tion as the result of an intentional breach of the physician's duty
17 of nondisclosure by the physician or his agent or servant and (d)
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6 patient seeks to establish his competence or in an action to re-
7 cover damages on account of conduct of the patient which consti-
8 tutes a criminal offense other than a misdemeanor, or (b) upon
9 an issue as to the validity of a document as a will of the patient,
10 or (c) upon an issue between parties claiming by testate or in-
11 testate succession from a deceased patient.

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3 or defense of the patient or of any party claiming through or
4 under the patient or claiming as a beneficiary of the patient
5 through a contract to which the patient is or was a party.

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3 has caused the physician or any agent or servant of the physician
4 to testify in any action to any matter of which the physician or his
5 agent or servant gained knowledge through the communication.

1 8. This act shall take effect January 1, 1969.