

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 25, 1967 yes

To Warden Allan L. Robbins

Dept. Maine State Prison

From Courtland D. Perry, Asst. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Privileged Communications Between Institutionalized Persons and Psychologists and Psychological Examiners

The 103rd Maine Legislature by P.L., 1967, c. 321, §1 enacted the following with respect to privileged communications between individuals and psychologists or psychological examiners:

"A person has a privilege to refuse to disclose, and to prevent a witness from disclosing, a communication between himself and a psychologist or psychological examiner if he claims the privilege."

QUESTION:

May this privilege be invoked by persons hospitalized or confined in State Institutions?

ANSWER:

Yes

OPINION:

It is our opinion that a person hospitalized or confined in a State Institution may claim the privilege provided for in Title 32, §3965; this is not to say that a patient or inmate can prevent the use by authorized institutional personnel of a communication between him and a psychologist or psychological examiner. Such communication may be used in effecting the inmate's rehabilitation or in treating the patient. The communication of an inmate or patient made to a psychologist or psychological examiner in the course of an interview may be reduced to writing and made a part of the person's institutional file.

The privilege to which §3965 refers may be claimed by an individual hospitalized or confined in a State Institution in litigation involving him, wherein his own testimony with respect to such communication is attempted to be obtained, or wherein testimony with respect to such communication is attempted to be obtained from the psychologist or psychological examiner. If reduced to writing, and made a part of the institutional file of the patient or inmate, testimony with respect to the communication attempted to be obtained from any other person having knowledge of the contents of such communication as appears in the file may be excluded upon claim of the privilege.

It is our further opinion that an individual's right to claim the privilege is not dependent upon his having made communication to a licensed psychologist or psychological examiner. It is possible that a patient or inmate at a State Institution

may be interviewed by an unlicensed psychologist or psychological examiner, since the practice of such persons is permitted by Title 32, §3962 within State Agencies. The fact that a patient or inmate communicated in the course of an interview with an unlicensed practitioner does not strip such person of his right to claim the privilege.

"Psychologist" and "psychological examiner" are defined in Title 32, §3961 in terms of the nature of the practice. In our view, therefore, a patient or inmate who communicates with a person practicing as a psychologist or psychological examiner as defined in §3961 with or without a license may render such communication privileged as hereinbefore discussed by claiming the privilege under §3965.



Courtland D. Perry
Assistant Attorney General