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Physicians Liability For Reports vs. Drivers

29 M.R.S.A. § 547

October 12, 1976

Markham L. Gartley

Secretary of State

David P. Cluchey, Assistant

Attorney General

Liability of Physicians Advising the Secretary of State and
Confidentiality of Medical Reports

SYLLABUS:

Title 29 M.R.S.A. §547(4) provides protection from liability for opinions and recommendations of persons making examinations pursuant to subsection 3 of that statute, but does not provide protection from liability for those persons who contact the Secretary of State on their own initiative with reports of physical or mental impairments of licensed drivers or applicants. Reports to the Secretary of State received for the purpose of assisting in a determination of whether a person is qualified to be licensed are confidential, but are available to the particular licensed driver or applicant on request.

FACTS:

The Secretary of State has requested an opinion on the interpretation of 29 M.R.S.A. §§ 547 relating to reports on the physical and mental qualifications of licensed drivers or applicants. That statute allows the medical advisory committee of the Secretary of State to examine or to designate a qualified person to examine a licensed driver or applicant when the Secretary of State has cause to believe that the licensed driver or applicant may not be physically or mentally qualified to hold a license. In addition, the Secretary of State receives reports from persons on their own initiative in regard to the physical and mental qualifications of licensed drivers or applicants. The Secretary of State inquires whether one or both classes are protected from liability for their opinions and recommendations under 29 M.R.S.A. § 547(4).

The Secretary of State is also concerned about the continued free flow of information on physical and mental qualifications of licensed drivers to the Office of the Secretary of State and inquires as to the confidentiality of that information.

QUESTIONS:

(1) Does 29 M.R.S.A. § 547(4) offer any protection from liability to physicians who are designated by the medical advisory committee to examine and report to the Secretary of State on the mental and physical qualifications of licensed drivers or applicants?

(2) Does the "and other persons making examinations" language of 29 M.R.S.A. § 547(4) offer any protection from liability to physicians who on their own initiative contact the Secretary of State with reports of physical or mental impairments in licensed drivers or applicants?

(3) May the reports to the Secretary of State from physicians on their examinations of licensed drivers or applicants be maintained as confidential records available only to the licensed driver or applicant?

ANSWERS:

1. Yes.
2. No.
3. Yes.

REASONS:

Title 29 M.R.S.A. § 547(3) allows the Secretary of State to seek the advice of his medical advisory committee where he has cause to believe that a licensed driver or applicant may not be physically or mentally qualified to hold a license. It further provides that the committee may cause an examination and report to be made by a member of the committee or by any other qualified person. Subsection 4 of the statute states that committee members and other persons making examinations shall not be held liable for opinions and recommendations "pursuant to subsection 3." Subsection 4 is intended, on its face, to afford protection to procedures utilized by the Secretary of State and the medical advisory committee under subsection 3. Hence physicians designated by the medical advisory committee are protected from liability for opinions and recommendations, but those who on their own initiative forward information the Secretary of State are not so protected.

The confidentiality subsection, 29 M.R.S.A. § 547(5), designates reports received or made by the committee for the purpose of determining whether a person is qualified to be licensed as confidential

records. The Freedom of Access Law, 1 M.R.S.A. § 401 et seq. provides a specific exclusion from the definition of public records for records which have been designated confidential by statute, 1 M.R.S.A. § 402(3)(A). Any reports on the physical or mental condition of a licensed driver or applicant which are received for the purpose of assisting in a determination of whether the person is qualified to be licensed regardless of the source are confidential records which may be used by the committee or the Secretary of State but may be divulged only to the licensed driver or applicant.

DPC:js

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