

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 638

H. P. 562

House of Representatives, February 4, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Richard of Madison.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Relating to the Confidentiality of Communications Between Patients and Dentists.

Be it enacted by the People of the State of Maine, as follows:

32 MRSA § 1092-A is enacted to read:

§ 1092-A. Confidentiality

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Confidential" means a communication not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination or interview or persons who are participating in the diagnosis and treatment under the direction of the dentist, including members of the patient's family.

B. "Patient" means a person who consults or is examined or interviewed by a dentist or dental auxiliary.

2. General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his dentist and

persons who are participating in the diagnosis or treatment under the direction of the dentist, including members of the patient's family.

3. Who may claim the privilege. The privilege may be claimed by the patient, by his guardian or conservator or by the personal representative of a deceased patient. The person who was the dentist or dental auxiliary at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the patient.

4. Exceptions. Notwithstanding any other provisions of law, the following are exceptions.

A. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

B. There is no privilege under this section as to communications relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of any party claiming through or under the patient, or because of the patient's condition, or claiming as a beneficiary of the patient, through a contract to which the patient is or was a party, or after the patient's death, in any proceeding in which any party puts the condition in issue.

STATEMENT OF FACT

Contrary to the expectation of most patients, there is no common law dentist-patient privilege to safeguard the confidentiality of information a patient imparts to his dentist and his staff in the course of treatment. This bill corrects that anomaly by placing dentists on the same footing as physicians. The language of this bill closely parallels the physician-patient privilege created by the Maine Rules of Evidence, Rule 503, and extends to patients of dentists the same right to refuse to disclose and to prohibit the disclosure by others of confidential information except when the patient himself puts his condition in issue in litigation or when a court orders him to undergo an examination in connection with litigation.