

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

FRANCIS J. FARRELL	)	
	)	
Plaintiff	)	FAM. NO. D192/1983
	)	
vs.	)	ACTION FOR DIVORCE
	)	
DORIS FARRELL	)	
	)	
Defendant	)	
	)	

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FINCH, Judge

MEMORANDUM OPINION

A protective order was entered by this court on March 20, 1984. Defendant moved to vacate the protective order and for an order compelling inspection. Upon consideration of defendant's motion, this court entered an order compelling inspection of plaintiff's financial office records. This order excluded the names of Dr. Farrell's patients. Defendant thereafter renewed his motion to vacate and for an order compelling inspection of plaintiff's non-medical office

records, including his patients' names. Dr. Farrell opposed defendant's motion on the ground that the names of his patients are protected under the physician-patient privilege and thus are not subjected to discovery. This court requested a memorandum of law from both parties in support of their respective positions on the issue presented.

At common law there was no physician-patient privilege. The information which was acquired by a physician while attending or treating a patient was not privileged or protected from disclosure by the physician. Therefore, any privilege claimed must be specifically established by statute, and any such statutory provision must be strictly construed.

5 V.I.C. §855 defines and sets forth the scope of the physician-patient privilege in the Virgin Islands. The statute accords the privilege only to "confidential communications." A confidential communication is defined as:

Such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

In addition, the statute requires the patient or physician to reasonably believe the communication to be necessary or help-

ful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment. 5 V.I.C. 855(2)(b). On its face, our statute does not protect the identity of a physician's patients. The name of a patient is generally not transmitted in confidence or necessary or helpful in enabling the physician to make a diagnosis or render treatment.

The general rule is that the identity of a patient is not a confidential communication and therefore is not afforded protection under the physician-patient privilege. 81 Am. Jur. 2d 251.

Non-confidential matters or communications are not within the physician-patient privilege. Accordingly, the privilege does not prevent testimony by a physician as to the fact that he was consulted in a professional capacity by a person on a certain day, and it has likewise been held that a physician may testify that he was the attending physician, may give the dates of professional visits and testify as to whom he rendered his bill.

Id. at 276. Exceptions to this rule have been limited to cases where the identity of the patient would reveal the illnesses of such patients. (See discussion below).

The defendant relies on Smith v. Superior Court of State of Cal., etc., 118 Cal. App. 3d. 136, 176 Cal. Rptr. 145 (1981) as his basis to protect the identity of his patients.

Smith, however, can be distinguished from the case at bar on two important grounds --

1. it deals with the psychotherapist-patient privilege; and
2. the California statute involved is much broader in scope than the Virgin Islands' physician-patient privilege statute.

Defendant's interpretation that his patients' names are protected under the physician-patient privilege is not applicable in this case. Defendant argues that since he is an allergist, this case is analogous to the psychotherapist-patient cases where disclosure of the patient's name will reveal a confidential communication, namely, that the patient has a mental illness. This rationale does not follow because disclosing the names of Dr. Farrell's patients will not reveal their specific illnesses.

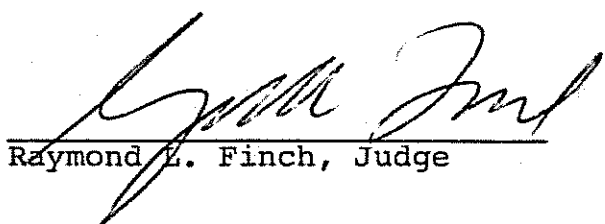
In addition, the rationale of the Smith court has not been adopted in all jurisdictions. For example, the Sixth Circuit Court of Appeals specifically held in In Re Subpoena Served Upon Jorge S. Zuniga, M.D., No. 82-1906 (CA 6th, Aug. 3, 1983) that the rationale of the psychotherapist-patient privilege does not reach the identity of patients and dates and length of treatments.

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Accordingly, defendant's motion to vacate the protective order and for an order compelling inspection is hereby GRANTED.

DATED:

May 31, 1984


Raymond L. Finch, Judge