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THE LAW OF PRIVILEGED COMMUNICATIONS

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With the vast number of television shows involving lawyers and legal drama, most people have heard of the attorney-client privilege. This privilege protects every communication between client and attorney intended to be confidential and made for the purpose of eliciting legal advice.

The rationale underlying the privilege is based upon the belief that the integrity of the lawyer-client relationship is more valuable to society than a third person's need to be privy all relevant information. Lawyers hold this privilege sacred as it is at the very heart of their ability to seek and obtain candid disclosure of facts from their clients necessary to give competent advice.

Despite the fact that the attorney-client privilege is probably the most recognized privilege, it is not the only relationship which the law considers of paramount importance. Here are some other privileges recognized under the law of Indiana:

SPOUSAL PRIVILEGE

Indiana, by statute, allows a privilege for confidential communications between spouses. The communication must be made during marriage and involve information gained by reason of the marriage.

Note that not all acts done privately in the presence of a spouse are privileged. There must be some indication that the spouse intended the communicative act to convey a message. In a famous case in which a man's wife had seen him burying the body of his victim through the kitchen window, the court held that because there was no indication that the husband had intended his action to convey a message, the wife was required to testify to what she had seen.

PHYSICIAN-PATIENT PRIVILEGE

Indiana also recognizes a doctor-patient privilege regarding matters communicated in confidence during professional consultation. This privilege is intended to encourage complete disclosure of facts relevant to the patient's medical condition so that the physician may give the patient the best possible treatment.

Confidential communications include information that the doctor obtains from observation and testing. Persons who place their physical condition at issue in a lawsuit have automatically waived this privilege. The privilege does not apply in cases in which a physician suspects child neglect or abuse.

PRIEST-PENITENT PRIVILEGE

Indiana recognizes a priest-penitent privilege for confidential communications made to a clergyman in the course of the clergyman's role as a spiritual advisor. Like most privileges, this is also limited strictly to the confidential message and not surrounding facts. For example, priests have been required to testify regarding the mental state of the penitent, if not the subject of the communication.

NEWS REPORTER'S PRIVILEGE

News reporters cannot be required to divulge confidential sources so long as the information was gained in the course of the reporter's employment by a newspaper, periodical, television or radio news program. Unlike other privileges, this may be claimed by the reporter, but not by the person divulging information.

OTHER POINTS

Several other privileges exist under Indiana law such as accountant-client and guidance counselor-student. Persons wanting to maintain the strictest confidence should take care to ensure that third persons are not present when talking with their lawyer, doctor, spouse, etc. Courts have uniformly held that the presence of an uninterested person waives the privilege.