

Donald Bliss

94-01-038MD

ADMINISTRATIVE HEARING Physician-Patient Privilege

A witness has standing to assert the physician-patient privilege and psychologist-patient privilege and request a protective order regarding patient records. RCW 34.05.452(1) permits the presiding officer to exclude evidence on constitutional or statutory grounds or on the basis of evidentiary privilege. The presiding officer may exclude privileged information, including the physician-patient privilege, RCW 5.60.060(4), and psychologist-patient privilege, RCW 18.83.110. Further, the privilege belongs to the patient. *Citing State v. Clevenger*, 69 Wn.2d 136 (1966). . . **Donald Bliss**, 94-01-038MD (Medical; July 26, 1994)

JURISDICTION Protective Orders

Respondent argued that the Uniform Health Care Information Act requires that a patient obtain a protective order from a court of law rather than a disciplining authority. RCW 70.02.060(1) and (2) require the patient to seek a protective order from a “court of competent jurisdiction forbidding compliance.” Given the Board’s authority under the Uniform Disciplinary Act and the Administrative Procedure Act, it is a court of competent jurisdiction from which any protective order should be issued. . . **Donald Bliss**, 94-01-038MD (Medical; July 26, 1994)

PHYSICIAN-PATIENT PRIVILEGE Public Interest/Benefit

Although the public has an interest in full disclosure and the respondent has a right to have discovery opportunities in the preparation of his case, a witness, who asserts the physician-patient and psychologist-patient privileges, has not prevented the truth from being revealed and impeaching testimony from being disclosed. To allow the unnecessary disclosure of all of a complaining patient’s medical records would deter any patient from coming forward and reporting unprofessional conduct. . . **Donald Bliss**, 94-01-038MD (Medical; July 26, 1994)

Waiver

Waiver of the physician-patient privilege may occur due to the filing of a civil action, or where the patient’s medical or mental condition is at issue. Waiver of the physician-patient privilege occurs ninety days after filing an action for personal injuries or wrongful death. Where the patient is a witness in a disciplinary action and had not filed an action for personal injuries or medical malpractice and has not chosen physicians to testify concerning a mental or physical condition, the witness has not waived the privilege. Where the alleged unprofessional conduct involves sexual contact during a shoulder

examination, the physical condition is not an issue in the disciplinary proceeding, and the privilege still applies. . . .**Donald Bliss**, 94-01-038MD (Medical; July 26, 1994)

Witness did not waive her privilege when she complied with the Department's investigation and signed a release for medical records. Under RCW 70.02.050(2)(a), the Department had access to the information without the witness's authorization for purposes of determining compliance with licensure rules or laws. The patient/witness did not introduce through medical testimony her treatment or diagnosis. Similarly, she did not waive the privilege by testifying at a deposition. . . .**Donald Bliss**, 94-01-038MD (Medical; July 26, 1994)