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Witnesses—Privileged Communications—Physician-Patient Privilege in Workmen's Compensation Cases*

In general, persons are required to testify and disclose any information they possess which is germane to the issues in a trial.[1] Certain communications, however, are recognized for policy reasons as being privileged and therefore exceptions to the general disclosure rule.[2] Most of these exceptions have arisen by enactment of specific statutes since the common law recognized the existence of privileged communications only in the "cases of counsel, solicitor, and attorney."[3]

One of these exceptions covers communications between a physician and his patient.[4] Some jurisdictions have allowed the physician-patient privilege to be invoked regardless of the nature of the judicial proceeding. Such a general application is designated a "general

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* N.M. Stat. Ann. § 20-1-12(d) (1953).

1. United States v. Bryan, 339 U.S. 323, 331-32 (1950). The Court quoted with approval Dean Wigmore's statement of the proposition:

> For more than three centuries it has now been recognized as a fundamental maxim that the public (in the words sanctioned by Lord Hardwicke) has a right to every man's evidence. When we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional, being so many derogations from a positive general rule.

This statement appears in 8 J. Wigmore, Evidence § 2192 (J. McNaughton rev. 1961).

2. United States v. Bryan, 339 U.S. 323, 331-32 (1950):

> Certain exemptions [for witnesses] from attending or, having attended, giving testimony are recognized by all courts. But every such exemption is grounded in a substantial individual interest which has been found, through centuries of experience, to outweigh the public interest in the search for truth.

Professor Wigmore posits four fundamental conditions which must all exist in order to justify a recognition of privilege against disclosure:

> (1) The communication must originate in a *confidence* that they will not be disclosed.
>
> (2) This element of *confidentiality must be essential* to the full and satisfactory maintenance of the relation between the parties.
>
> (3) The *relation* must be one which in the opinion of the community ought to be sedulously *fostered.*
>
> (4) The *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of litigation.

8 J. Wigmore, Evidence § 2285 (J. McNaughton rev. 1961).

3. Wilson v. Rastall, 4 Term. R. 753, 759, 100 Eng. Rep. 1283, 1287 (1792).

4. *E.g.*, First Trust Co. of St. Paul v. Kansas City Life Ins. Co., 79 F.2d 48, 52 (8th Cir. 1935).

physician-patient privilege," and is presently recognized in various forms and degrees by two-thirds of the jurisdictions of the United States.[5] It is often justified as being necessary to encourage people to present themselves for medical treatment.[6]

> The purpose of the statute . . . is to facilitate and make safe full and confidential disclosure by patient to physician of all facts, circumstances, and symptoms, untrammeled by apprehension of their subsequent enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion, and be enabled safely and efficaciously to treat his patient.[7]

It is sometimes suggested that requiring the doctor to testify places him in conflict with his Hippocratic Oath requirement of secrecy and might cause him to perjure himself.[8] It is argued also that "company doctors" often examine and treat injured employees immediately after an accident and may unfairly obtain information to defeat a potential claim for damages.[9]

None of these arguments are particularly persuasive and none of them satisfy Wigmore's fundamental conditions for recognition of a privilege.[10] The injury to society from those few persons who would not submit themselves for treatment would not likely be as great as the benefit gained from the just disposal of litigation. Maintenance of a confidence to the point of perjury is not a relationship which ought to be sedulously fostered. An injured employee being examined by the "company doctor" does not expect the examination results to be kept confidential. In addition to these specific arguments which tend to refute the necessity for the privilege, "The trend in American jurisprudence is toward greater admissibility of evidence consonant with the need to safeguard the rights of the

5. 8 J. Wigmore, Evidence § 2380 (J. McNaughton rev. 1961).

6. *E.g., In re* Bruendl's Will, 102 Wis. 45, 78 N.W. 169 (1899).

7. *Id. But see* Chafee, *Privileged Communications: Is Justice Served or Obstructed by Closing the Doctor's Mouth on the Witness Stand?*, 52 Yale L.J. 607, 609 (1943). In criticising the privilege between doctor and patient, Chafee suggests:

> [M]edical treatment is so valuable that few would lose it to prevent facts from coming to light in court. . . . Not a single New England state allows the doctor to keep silent on the witness stand. Is there evidence that any ill or injured person in New England has ever stayed from a doctor's office on that account?

8. *Id.* at 610.

9. *Id.* at 610-11.

10. See note 2 *supra.*

opposite party."[11] In accordance with this trend and with arguments which refute justifications for the "general physician-patient privilege," many articles critical of the privilege have been written.[12]

Even in states having a "general physician-patient privilege," it is denied almost unanimously in certain matters. An example of this is workmen's compensation law.[13] In New Mexico, however, the privileged communications statute extends the physician-patient privilege to only two specific situations: those concerning workmen's compensation claimants and those concerning venereal or loathsome diseases.[14] The statute allows a workmen's compensation claimant to exclude the testimony of any doctor or nurse employed by him to make an examination relating to his claim. The privilege is lost if the claimant waives it or if the doctor was actually paid by the em-

11. State v. Schrader, 64 N.M. 100, 103, 324 P.2d 1025, 1026 (1958); *accord*, Williams v. City of Gallup, 421 P.2d 804 (N.M. 1966) (separate opinion of Wood, J., Ct. App.).

12. Chafee, *Privileged Communications: Is Justice Served or Obstructed by Closing the Doctor's Mouth on the Witness Stand?*, 52 Yale L.J. 607 (1943); Lipscomb, *Privileged Communication Statute—Sword and Shield*, 16 Miss. L.J. 181 (1944); Long, *The Physician-Patient Privilege Statutes Obstruct Justice*, 25 Ins. Counsel J. 224 (1958); Comment, *Physician-Patient Privilege: A Need to Revise the Arizona Law*, 6 Ariz. L. Rev. 292 (1965).

13. 8 J. Wigmore, Evidence § 2380 (J. McNaughton rev. 1961): "modern industrial accident legislation has invariably repudiated the privilege in that class of inquiries. . . ."

14. N.M. Stat. Ann. § 20-1-12(d) (1953):

> A person duly authorized to practice physic or surgery, or a professional or registered nurse, cannot be examined without the consent of his patient as to any communication made by his patient with reference to any real or supposed venereal or loathsome disease or any knowledge concerning such disease obtained by personal examination of such patient; nor shall any doctor or nurse employed by a workmen's compensation claimant be examined relating to a workmen's compensation claim without the consent of his patient as to any communication made by his patient with reference to any physical or supposed physical disease or injury or any knowledge obtained by personal examination of such patient except in instances where the doctor has examined or treated the patient at the expense of the employer, and such payment is consented to by the patient.

The present form of the statute was passed in 1939, N.M. Laws 1939, ch. 235, § 1. When enacted, in 1933, the statute created a "general physician-patient privilege." See note 22 *infra* and accompanying text.

Disclosure of information concerning venereal or loathsome disease is in the best public health interest, and jurisdictions that allow a "general physician-patient privilege" deny this application of it. 8 J. Wigmore, Evidence §§ 2220, 2380 (J. McNaughton rev. 1961). New Mexico's recognition of the physician-patient privilege in cases of venereal and loathome disease is merely one further anomaly of the New Mexico statute.

ployer with the claimant's consent. The effect of this statute is mitigated somewhat by the Workmen's Compensation Act which requires claimants to submit to physical examination by the employer's physician to determine the extent of their disability.[15] Communications to the physician performing *that* examination are *not* privileged. It is the purpose of this Comment to suggest that recognition of privileged communications between physician and patient in workmen's compensation actions is unnecessary and unjustifiable, and that the applicable statutes should be amended to deny it.

In 1917 New Mexico enacted a Workmen's Compensation Act[16] which required claimants to submit to examination by the employer's physician for determination of the extent of the claimant's disability.[17] The wording of that section was similar to the analogous, present-day statute.[18] Significantly, however, it specifically stated that for the purpose of that act *any communications* between a workman and any physician attending him in a professional capacity were not privileged.[19] This section of the Workmen's Compensation Act was reenacted without change in 1929.[20] In 1933 New Mexico enacted a statute which recognized privileges for communications between attorney and client, clergyman and confessor, physician and patient, and accountant and client.[21] That statute created a

15. N.M. Stat. Ann. § 59-10-20 (Repl. 1960):

> Any employer or insurer shall be entitled to have a physical examination of the claimant by a physician of its choice before or after the filing of a claim in the district court or before or after an award of compensation in order to determine the extent of claimant's disability . . . .
>
> . . . .
>
> Any physician selected by the employer and paid by the employer who shall make or be present at an examination of the claimant conducted in pursuance of this section may be required to testify as to the conduct thereof the findings made. Communications made by the claimant upon such examination to such physician or physicians shall not be considered privileged.

16. N.M. Laws 1917, ch. 83.

17. N.M. Laws 1917, ch. 83, § 19.

18. N.M. Stat. Ann. § 59-10-20 (Repl. 1960) which is partially set forth in note 15 *supra.*

19. N.M. Laws 1917, ch. 83, § 19. The statute provided in part:

> Any physician having attended any workman in a professional capacity may be required to testify before the court when it shall direct and any communication made by such workman to such physician at such examination shall not be considered privileged.

20. N.M. Laws 1929, ch. 113, § 19.

21. N.M. Laws 1933, ch. 33, § 1.

"general physician-patient privilege" for New Mexico.[22] An amendment to that statute in 1939 made the physician-patient privilege applicable only in cases of venereal or loathsome disease and workmen's compensation claims.[23] The availability of the physician-patient privilege in New Mexico's workmen's compensation actions, therefore, has changed from one extreme to the other. Before the 1939 amendment to the "general physician-patient privilege," it was available "in general" but excluded in workmen's compensation claims.[24] After the 1939 amendment to the "general physician-patient privilege" statute, an apparent contradiction existed: the privileged communications statute recognized the physician-patient privilege in workmen's compensation actions,[25] but the Workmen's Compensation Act denied it.[26] In 1947 the apparent contradiction was eliminated by amending the workmen's compensation statute.[27] After this amendment, the physician-patient privilege was indisputably recognized by statute for workmen's compensation actions.[28]

The New Mexico Supreme Court has been called on twice to elaborate upon the physician-patient privilege in a workmen's compensation case. Recently, in *Williams v. City of Gallup*,[29] a claimant used the privilege to exclude the testimony of a specialist who had

22. N.M. Laws 1933, ch. 33, § 1(d):

> A person duly authorized to practice physic or surgery, or a professional or registered nurse, cannot be examined without the consent of his patient as to any communication made by his patient with reference to any physical or supposed physical disease or any knowledge obtained by personal examination of such patient.

23. See notes 14 and 22 *supra*, and accompanying text.

24. Specific exceptions to a general privilege are not uncommon. N.M. Stat. Ann. § 54-7-44 (Repl. 1962) excludes from privilege any "Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug . . . ." The Election Code excludes from privilege any transaction concerning contributions collected or made to any candidate, political committee, or campaign fund, N.M. Stat. Ann. § 3-10-25 (1953).

25. N.M. Stat. Ann. § 20-1-12(d) (1953). The text of this section is set forth in note 14 *supra*.

26. See note 19 *supra*, and accompanying text.

27. N.M. Laws 1947, ch. 109, § 1 amended the predecessor of N.M. Stat. Ann. § 59-10-20 (Repl. 1960) to the form set out in note 15 *supra*.

28. The applicable statutes have been unchanged since 1947 and their effect is as explained in notes 14 and 15 *supra*, and accompanying text.

29. 421 P.2d 804 (N.M. 1966). The claimant in this case suffered a skull fracture and his condition was diagnosed as post-traumatic epilepsy. He was treated by a local doctor but was sent to an Albuquerque specialist after he had suffered two seizures. The Albuquerque doctor, a specialist in neurological surgery, performed a neurological examination and a lumber puncture on the claimant, and prescribed drugs for him which apparently cured the affliction.

treated him. In deciding a question of waiver of the privilege, the court elaborated upon what "communications" are included in the physician-patient privilege:

> The communications privileged under § 20-1-12(d), N.M.S.A. 1953, includes [*sic*] information or knowledge obtained by the physician by observation or examination of the patient or any part of his body. The privilege also extends to inferences and conclusions drawn from such observation or examination.[30]

Five years earlier in *State ex rel. Miller v. Tackett*,[31] the court considered the statute and said that its language was "clear and unambiguous." The New Mexico court also said that:

> [W]here the statute specically grants the privilege it is beyond the powers of the court to direct petitioner to waive the same. The situation differs from that which is present where the court is given power and authority to do certain acts upon proof of good cause or other proper showing provided for in the statute.[32]

The court's interpretation is broad, but justifiable considering the terms of the statute. The court has passed-up two opportunities to restrict the operation of the statute, and if change is to occur, it likely must be legislative.

Many courts hold that one who initiates an action for damages on an injury waives the physician-patient privilege in matters relating to that injury. They note that one of the most prevalent justifications for the "general physician-patient privilege" is the necessity to assure people that their infirmities will not be disclosed by the physician they attend.[33] These courts reason that it would be inconsistent to protect from disclosure medical facts upon which the patient is

30. *Id.* at 808.

31. 68 N.M. 318, 361 P.2d 724 (1961). A workman's compensation claimant had been examined by three doctors who had been paid by the employer. The employer wished to interview a fourth doctor who had examined the claimant at his own request. The claimant refused to permit the interview relying on the privilege of N.M. Stat. Ann. § 20-1-12(d) (1953). The bill for consultation with the fourth doctor comprised part of the damages sought in the action. The trial court *ordered* the claimant to authorize disclosure by the fourth doctor of any information concerning his "physical condition and treatment." The supreme court, however, sustained the employee's contention that such an order was improper.

32. *Id.* at 323, 361 P.2d at 727-28.

33. See text accompanying note 6 *supra*.

relying in his action for damages.[34] To allow the privilege to be claimed in these situations would be ludicrous: the patient is not concerned with concealing his physical condition. He is, instead, preventing one of his doctors from divulging the medical facts as he knows them, while simultaneously requesting another doctor to publicly disclose his interpretation of those facts. This reasoning was suggested by counsel in the *Miller* case,[35] but the court held that "such assertion cannot be reconciled with the language of § 20-1-12. . . ."[36] Rationalization of this strategic advantage for the claimant seems impossible.

Most jurisdictions which recognize a "general physician-patient privilege" require existence of a "physician-patient relationship" before the privilege can be claimed. This determination depends upon whether the physician was administering "treatment" to the patient or was merely performing an examination, with no intention of "treating" the patient.[37] Payment of the physician's bill is considered irrelevant.[38] In New Mexico, however, the statute provides that the

34. *E.g.*, City & County of San Francisco v. Superior Court, 37 Cal. 2d 227, 231 P.2d 26 (1951). In this case the claimant's attorneys had requested the doctor to perform a physical examination to aid in preparation of the claim. The court said:

> The whole purpose of the privilege is to preclude the humiliation of the patient that might follow disclosure of his ailments. When the patient himself discloses those ailments by bringing an action in which they are in issue, there is no longer any reason for the privilege. The patient-litigant exception precludes one who has placed in issue his physical condition from invoking the privilege on the ground that disclosure of his condition would cause him humiliation. He cannot have his cake and eat it too.

Id., 231 P.2d at 28.

35. State *ex rel.* Miller v. Tackett, 68 N.M. 318, 261 P.2d 724 (1961).

36. *Id.* at 321, 361 P.2d at 726.

37. *E.g.*, Kramer v. Policy Holders' Life Ins. Ass'n, 5 Cal. App. 2d 380, 42 P.2d 665 (Ct. App. 1935) (attendance of patient at *free* clinic for examination by a doctor to test the efficiency of a cancer treatment given by the clinic created physician-patient relationship); Holtzen v. Missouri Pac. Ry., 159 Mo. App. 370, 140 S.W. 767 (1911) (injured railroad passenger examined by railroad doctor in railroad hospital pursuant to treatment for his injuries was allowed to claim the privilege); Smart v. Kansas City, 208 Mo. 162, 105 S.W. 709 (1907) (patient in defendant's hospital allowed to claim the privilege excluding testimony of defendant's doctors who had merely donated their assistance in treatment).

38. Smart v. Kansas City, *supra* note 37, held that the privilege would exist whether patient was "poor or paying, in private residence or hospital, or was charity patient in public hospital." See Battis v. Chicago, R.I. & Pac. Ry., 124 Iowa 623, 100 N.W. 543 (1904), where the defendant railroad called its local surgeon for the sole purpose of examining an injured passenger to ascertain his condition for the railroad's benefit should a claim subsequently arise. The surgeon, however, attended to the passenger by dressing a small wound. The court held that the passenger could claim privilege upon this relationship.

> [I]t [the railroad company] may send a physician to inspect and take notes, or

employee-patient's acquiescence in payment of the physician by the employer is determinative of his right to claim the privilege.[39]

A study of the purposes of workmen's compensation legislation will demonstrate that those purposes are not furthered by the physician-patient privilege. In an early New Mexico case, *Gonzales v. Chino Copper Co.*,[40] Judge Sam G. Bratton, in the syllabus by the court, outlined the policy of workmen's compensation in this state.

> The theory upon which the Workmen's Compensation Acts of the several states have been adopted was to substantiate a more humanitarian and economical system of compensation for injured workmen or their dependents in case of death; to provide a speedy and inexpensive method by which such compensation might be made, which is more in harmony with modern methods of industry than the common-law liability for torts, which usually involved long, tedious, and expensive litigation. In addition, it was thought the industry to which the employee contributed his labor should bear the expense of such economic burdens which become a legitimate part of the commercial life and is borne by the consuming public because the cost thereof is added to the cost of the article, and, in the final analysis, is borne by the community at large.

In *Sanchez v. Hill Lines, Inc.*[41] the United States Federal District Court for New Mexico quoted with approval a United States Supreme Court opinion that dealt with workmen's compensation laws of Vermont and New Hampshire:[42] "[T]he purpose of . . . workmen's compensation laws . . . is to provide . . . not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinate."[43] The rights typically provided by workmen's compensation legislation allow wage benefits and medical expenses for accidental injuries arising out of and sustained by an employee in the course of

otherwise inform himself of existing conditions. But this can avail the company nothing unless the physician shall strictly retain his character as an employé of the company. If, upon request or upon his own motion, he assumes to advise or administer treatment to the patient, and the latter in any manner acquiesces therein, the physician thereby casts aside his relation as an employé of the company, and transfers his allegiance to the patient. . . . It matters not, in this connection, who calls him in the first instance, or who pays him.

39. N.M. Stat. Ann. § 20-1-12(d) (1953). The section is set forth in note 14 *supra*.
40. 29 N.M. 228, 222 P. 903 (1924).
41. 123 F. Supp. 42 (D.N.M. 1954).
42. Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932).
43. Sanchez v. Hill Lines, Inc., 123 F. Supp. 42, 44 (D.N.M. 1954).

his employment. Awards are not large enough to encourage malingering, but they are almost certain because liability is not based upon a determination of fault.[44] The New Mexico Workmen's Compensation Act does not coincide exactly with "typical" acts,[45] but in many respects it is similar.[46]

Fair and just application of these rights to spread the risk of a workman's injury and have it borne by the community at large demands that full disclosure be made of all relevant facts at the trial.

44. A concise statement of the *typical* features of a workmen's compensation act is given in A. Larson, Workmen's Compensation § 1.10 (1965). Larson says:

> (a) the basic operating principle is that an employee is automatically entitled to certain benefits whenever he suffers a "personal injury by accident arising out of and in the course of employment"; (b) negligence and fault are largely immaterial, both in the sense that the employee's contributory negligence does not lessen his rights and in the sense that the employer's complete freedom from fault does not lessen his liability; (c) coverage is limited to persons having the status of employee, as distinguished from independent contractor; (d) benefits to the employee include cash-wage benefits, usually around one-half to two-thirds of his average weekly wage, and hospital and medical expenses; in death cases benefits for dependents are provided; arbitrary maximum and minimum limits are ordinarily imposed; (e) the employee and his dependents in exchange for these modest but assured benefits, give up their common law right to sue the employer for damages for any injury covered by the act; (f) the right to sue third persons whose negligence caused the injury remains, however, with the proceeds usually being applied first to reimbursement of the employer for the compensation outlay, the balance (or most of it) going to the employee; (g) administration is typically in the hands of administrative commissions; and as far as possible, rules of procedure, evidence, and conflict of laws are relaxed to facilitate the achievement of the beneficent purposes of the legislation; and (h) the employer is required to secure his liability through private insurance, state-fund insurance in some states, or "self-insurance"; thus the burden of compensation liability does not remain upon the employer but passes to the consumer, since compensation premiums, as part of the cost of production, will be reflected in the price of the product.

45. N.M. Stat. Ann. §§ 59-10-13.7,-13.10 (Repl. 1960) require any claim for recovery of workmen's compensation benefits to be filed and tried in district court in the same manner as a civil complaint. N.M. Stat. Ann. §§ 59-10-7, -8 (Repl. 1960) retain some elements of fault determination before imposition of liability by allowing reduction of benefits if the workman failed to use a provided safety device; by allowing increase of benefits if the employer failed to provide a safety device; and by disallowing any benefits if the workman's injury was caused by his intoxication.

46. Wright v. Schultz, 55 N.M. 261, 265, 231 P.2d 937, 939 (1951): "Contributory negligence has no place in our Workmen's Compensation Act, unless it be in failure of the workman to observe a statutory safety regulation . . . in which event a claimant suffers a reduction . . . in the compensation he would otherwise receive." McKinney v. Dorlac, 48 N.M. 149, 152, 146 P.2d 867, 869 (1944): "A liberal construction of the Workmen's Compensation Act has been adopted by this court. The theory of the legislation is compensation, not the denial of it." Cuellar v. American Employers' Ins. Co., 36 N.M. 141, 143, 9 P.2d 685, 686 (1932): "The idea of negligence as an essential to recovery is generally foreign to the theory of workmen's compensation."

Liability of employers who are free from fault can be justified, but procedures should not be imposed to hinder accurate determination of the legitimacy of a claim. Numerous situations may be imagined in which the employer's position would be unnecessarily prejudiced if he were not allowed to examine all doctors who have treated the claimant.

Hypothetically, an employee might have injured his back in non-work activity and discovered that it was serious after disclosure to and treatment by his personal doctor. If he then can feign that the injury occurred on the job, he can satisfy his medical burden of proof for workmen's compensation by consulting a different doctor for verification that an injury does exist without disclosing the cause.[47] The employer's only practical defense in this situation—testimony of claimant's first doctor—may be pre-empted by the claimant. In some cases the employer, by additional medical examination of the claimant, may be able to show that the cause of the injury was not job-related. This type of proof will, however, be problematical at best and expensive.

A different inequitable situation for the employer can occur when the claimant is treated by one doctor who sends him to another doctor, possibly a specialist, for further treatment. The second doctor may treat and cure the ailment; he may realize, contrary to the first doctor, that it was not job-related. He might even realize that the ailment is congenital. The claimant need not rely on the second doctor, however, to make out his workmen's compensation claim; and furthermore by use of the privileged communications statute the claimant can prevent the second doctor from disclosing

47. N.M. Stat. Ann. § 59-10-13.3 (Repl. 1960) sets forth the proof required for compensable claims:

> A. Claims for workmen's compensation shall be allowed only:
>
> (1) when the workman has sustained an accidental injury arising out of, and in the course of his employment;
>
> (2) when the accident was reasonably incident to his employment; and
>
> (3) when the disability is a natural and direct result of the accident.
>
> B. In all cases where the defendants deny that an alleged disability is a natural and direct result of the accident, the workman must establish that causal connection as a medical probability by expert medical testimony. No award of compensation shall be based on speculation or on expert testimony that as a medical possibility the causal connection exists.

This burden of proof requirement, however, was elaborated in Clower v. Grossman, 55 N.M. 546, 549, 237 P.2d 353, 354 (1951):

> [I]t is not necessary that the proof [that the employee sustained an accidental injury in the course of and arising out of his employment] . . . be direct, but may be shown by circumstantial evidence alone.

facts that would jeopardize his claim. New Mexico law makes such artifice a legitimate tactic.

The employer can require the claimant to submit to a medical examination by another doctor;[48] but when there has been treatment, possibly cure, and there is an uncooperative patient, the subsequent medical examination may not unearth the information necessary to defend against a fraudulent claim.

The inequitable situations described above arise only when the claimant has consulted two or more doctors, but in the present age of medical specialization this commonly occurs. A bona fide claim for workmen's compensation should not require exclusion of the testimony of any doctor who has treated the claimant.

The "general physician-patient privilege" is subject to many criticisms. In workmen's compensation law, the privilege is even more questionable because a claimant can take unjust advantage of it. Although awards of compensation for loss of earning capacity are not lucrative,[49] the payment of medical and related benefits pursuant to the injury may amount to 30,000 dollars during the five-year period following it.[50] Those awards can provide adequate incentive for presentation of false claims. The "beneficent purposes of the legislation"[51] are not furthered by preserving an evidentiary device which hinders determination of a claim's legitimacy. The provisions for the physician-patient privilege should be amended to exclude it in workmen's compensation cases.

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48. N.M. Stat. Ann. § 59-10-20 (Repl. 1960), set forth partially in note 15 *supra*.

49. *E.g.*, Ch. 151, § 2, [1967] N.M. Laws 1st Sess. which amended N.M. Stat. Ann. § 59-10-18.4 (Supp. 1965). Maximum compensation benefits for injuries to "specific body members" are set at sixty % of the claimant's average weekly earnings, but they are not to exceed forty-five dollars per week for specified maximum periods.

50. N.M. Stat. Ann. § 59-10-19.1 (Supp. 1965).

51. A. Larson, Workmen's Compensation § 1.10(g) (1965).