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may be able to avoid the sanctions of section 8(a)(5) and still communicate his bad-faith intentions to his employees if section 8(c) precludes any evidence of such communications. Thus, if he is able to persuade the courts to adhere strictly to the language of section 8(c), he has safely avoided the duty imposed by the NLRA to bargain in good faith. If he cannot persuade a court to preclude use of this evidence at the hearing of an 8(a)(5) charge, he will have to rely solely on his "hard bargaining" at the negotiations; and this alternative is less likely to bring about capitulation of the union and more likely to effectuate the policies of the NLRA. Judges Kaufman and Waterman, by consciously balancing the interests of the parties, have adopted the only feasible method for protecting the policies embodied by the Act.

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Medical Problems in the Law—Automobiles—Reporting Patients for Review of Drivers' Licenses

A person licensed to drive a motor vehicle by the State of North Carolina may lose this privilege[1] if he is adjudged incompetent, is admitted as an inpatient to an institution for the treatment of the mentally ill, or enters an institution for the treatment of alcoholism or drug addiction.[2]

[1] "A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute." Underwood v. Howland, 274 N.C. 473, 476, 164 S.E.2d 2, 5 (1968), *quoting from In re* Wright, 228 N.C. 584, 589, 46 S.E.2d 696, 699-700 (1948).

[2] N.C. GEN. STAT. § 20-17.1 (Supp. 1969) in pertinent part provides:

(a) The Commissioner, upon receipt of notice that any person has been legally adjudged incompetent or has been admitted as an inpatient to an institution for the treatment of the mentally ill or has entered an institution for the treatment of alcoholism or drug addiction shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. No driving privilege revoked hereunder shall be restored unless and until the Commissioner is satisfied that the person is competent to operate a motor vehicle with safety to persons and property.

. . . .

(c) The person in charge of every institution of any nature for the care and treatment of the mentally ill, the care and treatment of alcoholics or habitual users of narcotic drugs shall forthwith report to the Commissioner in sufficient detail for accurate identification the admission of every person.

. . . .

(e) Notwithstanding the provisions of G.S. 8-53, G.S. 8-53.2, G.S. 122-8.1

Those in charge of institutions treating these conditions are required to report admissions to the Commissioner of Motor Vehicles.[3] The original legislation in this area of reporting and revocation was enacted in 1947,[4] and was substantially amended and put in its present form in North Carolina General Statutes, section 20-17.1, in 1969. There was little compliance with the provisions of the former statute concerning reporting, and no significant increase in reporting has been noted under the current enactment.[5] The latest amendment has accomplished desirable changes in the law; some additional improvements should be considered. These include amendments to effect a more equal application of the statute and to establish a discretionary system of reporting in certain situations.

The original legislation required that the Commissioner "forthwith revoke [the] license" upon receipt of notice of admission to an appropriate institution or of adjudication of incompetency unless the individual had since been adjudged competent or discharged with a certificate of competency.[6] The present law, however, requires the Commissioner, upon receiving notice, to inquire into the facts for the purpose of determining driving competency. Unless he is satisfied that a person is competent to drive with safety, the Commissioner is required to revoke the license.[7] Thus, the Commissioner is now vested with some discretion; before the amendment in 1969, he had none. This element of discretion is important for purposes of judicial review since the right of appeal to the courts is not available if the revocation or cancellation of the license is mandatory.[8]

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and G.S. 122-8.2, the person or persons in charge of any institution as set out in subparagraph (c) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Department of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the Department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(f) Revocations under this section may be reviewed as provided in G.S. 20-9(g)(4).

[3] *Id.* § 20-17.1(c).

[4] Ch. 1006, § 9,[1947] N.C. Sess. L. 1417.

[5] Interview with Edward H. Wade, Director, Driver License Div., N.C. Dep't of Motor Vehicles, in Raleigh, N.C., Mar. 4, 1970. Mr. Wade estimated that no more than ten per cent of reportable admissions are actually reported.

[6] Ch. 1006, § 9(a), [1947] N.C. Sess. L. 1417.

[7] N.C. GEN. STAT. § 20-17.1(a) (Supp. 1969).

[8] N.C. GEN. STAT. § 20-25 (1965) provides in part: "Any person denied a

The new statute, unlike the former, also provides for an elaborate administrative review of revocations[9] before a board consisting primarily of medical specialists.[10] Another improvement of the current enactment is that it grants immunity to all those persons reporting the required information;[11] the former statute did not. Indeed, the argument might have been made before the latest amendment, that physicians were not allowed to disclose admissions to institutions because such action would have involved divulgence of information "acquired in attending a patient."[12]

It is elementary that regulation of the operation of motor vehicles is a valid exercise of a state's police power in the furtherance of the safety and welfare of its citizens.[13] Still, there are constitutional questions to consider. Since the present statute does not require summary revocation by the Commissioner and any loss of license is reviewable both administratively and judicially, this legislation should satisfy the requirements of due process of the fourteenth amendment.[14] Whether the demands of the equal protection clause are likewise met is not as clear.

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license or whose license has been cancelled, suspended or revoked by the Department, *except where such cancellation is mandatory under the provisions of this article,* shall have a right to file a petition . . . for a hearing . . . in the superior court . . . ." (emphasis added). *See* Carmichael v. Scheidt, 249 N.C. 472, 476, 106 S.E.2d 685, 688 (1959); Fox v. Scheidt, 241 N.C. 31, 34, 84 S.E.2d 259, 261 (1954).

[9] N.C. GEN. STAT. § 20-17.1(f) (Supp. 1969).

[10] N.C. GEN. STAT. § 20-9(g)(4) (Supp. 1969).

[11] *Id.* § 20-17.1(e).

[12] N.C. GEN. STAT. § 8-53 (1969) provides:

> No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, that the court, either at the trial or prior thereto, may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice.

Query whether this prohibition applied to the reporting of patients admitted for treatment. In any case, reporting is now required "[n]otwithstanding the provisions of G.S. 8-53." N.C. GEN. STAT. § 20-17.1(e) (Supp. 1969).

[13] *See* South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177 (1938).

[14] In addition, the procedures adopted by the Department of Motor Vehicles for the initial review of the records of reported drivers generally reflect a presumption of competency to drive unless a reasonable ground exists for concluding otherwise. For example, if a person reported as an alcoholic patient has no history of having driven after consuming alcoholic beverages, no medical evaluation is required upon his release. On the other hand, if the patient's driving record shows evidence of his having driven after consumption of alcoholic beverages, a medical evaluation is required upon his release, and the Commissioner is furnished with a copy of the patient's medical summary. Interview with Edward H. Wade, *supra* note 5.

The classification made by the statute must be reasonable to satisfy the constitutional mandate of equal protection.[15] Thus, the legislation should equally affect "all persons who are similarly situated with respect to the purpose of the law."[16] The obvious purpose of section 20-17.1 is to promote highway safety by removing drivers who are unsafe. Therefore, the statute's scheme of classification should be expected reasonably to contribute to these objectives, and there should be no unreasonable exclusions from its application.

It cannot be denied that a considerably high percentage of fatal automobile accidents and traffic violations involve drinking drivers[17] and the mentally ill.[18] It is also fairly well established that the alcoholic, and not the social drinker, is the major problem.[19] The drug addict, too, is a hazardous user of the highways.[20]

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[15] "[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

[16] Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 346 (1949).

[17] J. WALLER, GUIDE FOR THE IDENTIFICATION, EVALUATION AND REGULATION OF PERSONS WITH MEDICAL HANDICAPS TO DRIVING 3, 23 (1967) [hereinafter cited as WALLER] (indicating that alcohol is involved in fifty to seventy-five per cent of all severe and fatal traffic accidents); Univ. of N.C. News Bureau, News Release No. 1515, Nov. 10, 1969 ("Seventy-eight percent of the automobile drivers killed in single-car vehicle crashes in North Carolina during September and October were under the influence of alcohol according to figures released . . . by the State Medical Examiner."); AMA Committee on Medical Aspects of Automobile Injuries and Deaths, *Medical Guide for Physicians in Determining Fitness to Drive a Motor Vehicle*, 169 J.A.M.A. 1195 (1959); Borkenstein, *Alcohol and Traffic Safety*, in LAW, MEDICINE, SCIENCE—AND JUSTICE 382, 398-99 (L. Bear ed. 1964); Waller, King, Nielson & Turkel, *Alcohol and other Factors in California Highway Fatalities*, 14 J. FOR. SCI. 429, 442 (1969).

[18] WALLER 3, 25-28; Brandaleone, Blaney, Irwin, Kuhn, Miller, Penalver, Seth, Sim & Friedman, *Recommendations for Medical Standards for Motor Vehicle Drivers*, 26 IND. MED. & SURG. 25, 30 (1957) (The authors list the following as probable non-acceptable conditions for one who drives: psychosis; moderate severe chronic psychoneurosis; severe transient psychoneurosis (situational); marked character, behavioral or personality disorder that prevents good adjustment, such as antisocial tendencies, overt homosexuality, chronic alcoholism, or drug addiction; marked mental deficiency; and perversion.); Crancer & Quiring, *The Mentally Ill as Motor Vehicle Operators*, 126 AM. J. PSY. 807, 807-09 (1969).

[19] *E.g.*, WALLER 23.

[20] Conclusive research on this point is lacking. One survey showed that persons convicted for illegal possession or use of drugs were not involved in more accidents than non-drug users of the same age; however, the drug users had nearly twice as many traffic violations. WALLER 28-29. It is important to differentiate between "users" and "addicts." Those truly addicted are thought by medical personnel to be greater than average accident risks. *Id.* *See* Brandaleone, *supra* note 18.

But neither can it be doubted that many persons whose mental and physical condition does not warrant revocation of their licenses are required by the statute to be reported. Thus, if the Commissioner was under the obligation to revoke the license of everyone reported, the statute would be open to attack for overbreadth. The 1969 amendment should avoid the weakness of overinclusiveness because it vests the Commissioner with discretion not to revoke as well as providing for an opportunity of administrative and judicial review if the Commissioner decides upon revocation. At the same time, many drivers whose records should be reviewed will avoid scrutinization simply because they have not been adjudged incompetent or have not been admitted to institutions for treatment of alcoholism or drug addiction.

Does the omission of this latter group render the statute unconstitutional as a denial of equal protection? In *Buck v. Bell*[21] the United States Supreme Court upheld a Virginia statute requiring sterilization by salpingectomy of certain mental inmates found afflicted with an hereditary form of insanity or imbecility. To the argument that the statute applied only to the small number of persons within institutions and not to the multitudes outside, the Court replied: "But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow."[22]

The North Carolina reporting statute could not feasibly be made to apply to persons who have not sought treatment. However, section 20-17.1 does not apply to many persons who *do* seek treatment because it does not require physicians to report those persons who undergo treatment for alcoholism, drug addiction, or mental problems privately in the doctors' own offices. In all likelihood, those individuals who would escape detection through operation of the statute by seeking such treatment are not among the lower income classes. If this probability can be demonstrated, an argument can be made that there is discrimination in favor of the wealthy.[23] This discrimination is not of much significance, however,

[21] 274 U.S. 200 (1927).

[22] *Id.* at 208. In Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 542 (1942), the Court approved *Buck* but struck down the Oklahoma Habitual Criminal Sterilization Act because that law unreasonably excepted prisoners convicted of embezzlement while applying to those convicted of larceny.

[23] *Cf.* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

if it can be authoritatively said that institutionalized patients are in much greater need of treatment that those treated outside institutions.

Excluding the possibility of an attack on the statute on the theory of discrimination based upon individual wealth, an argument under the equal protection clause that persons being treated privately by physicians are excluded from the reporting provisions is almost certain to fail. In addition to the strong barrier that *Buck* poses to such an argument is the familiar rule in equal-protection cases that a state need not attempt to solve all of the problems of the same kind within reach of its police powers while eradicating some of them.[24] Nevertheless, since the risk to highway safety presented by non-institutionalized patients may be comparable to the risk presented by those confined for treatment, the statute should be amended to require reporting by doctors of all persons being treated for the conditions set out in the present law. A possible constitutional attack on the present reporting provisions is colorable at best,[25] and the statute could readily be expanded to apply to an even greater number of persons.

Some members of the medical profession have raised objections to the statute's provisions for reporting.[26] The required disclosures interfere with the physician-patient relationship and force the doctor to become, in effect, an agent of the state. However, the only rational objection is that the therapeutic relationship may be impaired, not that breach-of-confidence actions by patients will be asserted against physicians who obey the law. Immunity is specifically granted by the statute,[27] and the legal requirement of disclosure is a traditional defense to such suits.[28]

Mandatory reporting by physicians of information acquired in the course of treatment is hardly a novel concept. Many states require doctors and other persons to report the discovery of various conditions and

[24] *See* Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949).

[25] The patient's right to privacy in his relationship with his physician probably is not a "relationship lying within the zone of privacy created by several fundamental constitutional guarantees." Griswold v. Connecticut, 381 U.S. 479, 485 (1965). Confidential communications between a physician and patient were not privileged at common law. State v. Martin, 182 N.C. 846, 849-50, 109 S.E. 74, 76 (1921); C. DEWITT, PRIVILEGED COMMUNICATIONS BETWEEN PHYSICIAN AND PATIENT 10 (1958). Only about two-thirds of the states have conferred the privilege by statute. R. SLOVENKO, PSYCHOTHERAPY, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION 15-16 (1966).

[26] N.C. Neuropsychiatric Ass'n, Newsletter, Nov. 1969.

[27] N.C. GEN. STAT. § 20-17.1(e) (Supp. 1969).

[28] Note, *Medical Practice and the Right to Privacy*, 43 MINN. L. REV. 943, 954 (1959).

diseases.[29] North Carolina requires reporting of venereal disease,[30] inflammation of the eyes of newborn infants,[31] and certain other diseases designated by the State Board of Health to be reportable.[32] Thus, there is ample precedent for mandatory reporting under the statute. There is no conflict with medical ethics:

> A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.[33]

To the extent that the requirement of disclosure interferes with treatment and thus is detrimental to the patient, a valid objection is raised. Due to the unique intimacy between doctor and patient attained in psychiatric treatment, the confidential relationship is an especially essential element of the practice of psychiatry.[34] The success of therapy in psychiatric and related treatment may be jeopardized by mandatory disclosures of the sort required by the North Carolina statute; this danger must be weighed heavily against the social value of reporting. However, patients treated outside institutions are not reportable under the present law; so many psychiatric patients are not affected. If amendment of the law to make the reporting requirements applicable to the non-institutionalized patient is envisioned, perhaps consideration should also be given to softening the requirements concerning all those being treated by psychiatrists. For example, equally satisfactory traffic-safety results might be obtained by requiring psychiatrists to report only those patients that they determine under broad statutory guidelines to be hazardous drivers.

Another valid objection to the statute is that some unsafe drivers,

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[29] *E.g.*, D.C. CODE ANN. § 6-202 (1967) (eye inflammation in newborn children); MINN. STATS. § 144.68 (Supp. 1969) (malignant disease); R.I. GEN. LAWS ANN. § 23-5-4 (hearing defects in children), § 23-5-5 (occupational diseases), § 23-11-6 (venereal diseases) (1968); S.D. COMPILED LAWS ANN. § 26-10-10 (1967) (child abuse). For a more complete list of applicable statutes, see Note, *Medical Practice and the Right to Privacy*, 43 MINN. L. REV. 943, 953-54 (1959).

[30] N.C. GEN. STAT. § 130-95 (1964).

[31] *Id.* § 130-107.

[32] *Id.* § 130-81.

[33] AMA, OPINIONS AND REPORTS OF THE JUDICIAL COUNCIL § 9, at 55 (1969) (Principles of Medical Ethics).

[34] J. ROBITSCHER, PURSUIT OF AGREEMENT, PSYCHIATRY & THE LAW 230 (1966); R. SLOVENKO, PSYCHOTHERAPY, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION 40-44 (1966).

fearing loss of driving privileges, may possibly be discouraged from seeking necessary treatment. It is conceivable that the driver posing the highest risk to society, who faces almost certain loss of his license if reported, might forego treatment, continue to drive as his condition worsens, and eventually kill himself and others. If he had sought treatment, he might have improved or been cured. This assumption may be purely speculative and is founded on the presumption that the patient avoiding treatment because of the law is aware of its existence. In fact, the general public probably is not aware of the law. Nevertheless, the risk that some, and perhaps many, drivers with reportable problems will be discouraged from seeking needed medical help must be weighed in any evaluation of section 20-17.1.

In conclusion, the statute appears to be a valid exercise of the power of the state to protect the motoring public, pedestrians, and the affected individuals. However, to avoid possible constitutional defects and to achieve fully the policy behind the legislation, the present law may need to be broadened to require reporting of *all* patients possessing the enumerated characteristics whether they are institutionalized or not. Moreover, it would be desirable for some concessions to be made in the area of psychiatric treatment. Finally, in view of the present reporting rate, the appropriate penalty provisions[35] should be utilized to bring about full compliance.

JAMES E. CLINE

Poverty Law—Is a Search Warrant Required for Home Visitation by Welfare Officials?

> The fact that public assistance is a statutory right means, therefore, that it is subject to conditions imposed by the Legislature. . . . It means that the Legislature may require that the applicant waive his right to privacy to permit a thorough investigation of his eligibility for public assistance. It means that the applicant must open his home to admit representatives of the Welfare Department to enter and to observe. . . . [I]f he refuses to submit and refuses to permit such infringement upon his right to privacy, then he may not exercise his right to receive public assistance.[1]

[35] N.C. GEN. STAT. § 20-35 (1965) provides that it is a misdemeanor to violate any of the article's provisions, which is punishable by a fine up to five-hundred dollars or by imprisonment for not more than six months.

[1] Ruebhausen & Brim, *Privacy and Behavioral Research*, 65 COLUM. L. REV.